

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE Number: 2023-130769

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

28 August 2025

In the matters between:-

JONATHAN HENDRICKS

First Applicant

TRACY HENDRICKS

Second Applicant

ROZELDA MEYER

Third Applicant

and

JOHN FREDERICK SCHICKERLING N.O.

First Respondent

NADASEN MOODLEY N.O.

Second Respondent

JOHANNES ZACHARIA MULLER N.O.

Third Respondent

PHP ARMED RESPONSE (PTY) LTD

Fourth Respondent

THE MASTER OF THE HIGH COURT – PRETORIA

Fifth Respondent

JUDGMENT

H F JACOBS, AJ

[1] This is an application for the review and annulment of three subpoenas issued by Mr Schickerling, a commissioner conducting an enquiry under sections 417 and 418 of the Companies Act of 1973 into the affairs of Mamba PHP (Proprietary) Limited ("Mamba PHP") and a ruling he made in that capacity on 21 August 2023. Mamba PHP is subject to final liquidation. On 3 August 2023, Mr Schickerling issued the three subpoenas for Mr Hendricks, Ms Hendricks, and Ms Meyer to attend an enquiry into the affairs of Mamba PHP on 21 and 22 August 2023. The three subpoenas are, in all material respects, identical. The subpoena directed at Mr Hendricks reads as follows:

*"BEFORE THE MASTER OF THE HIGH COURT OF SOUTH AFRICA
(JOHANNESBURG)*

Master Ref: 1002813/2022

IN THE MATTER BETWEEN:

PHP SECURITY NORTH WEST

PROPRIETARY LIMITED

Applicant

and

MAMBA PHP PROPRIETARY LIMITED

Respondent

REGISTRATION NUMBER 2019/521787/07 (IN LIQUIDATION)

*SUBPOENA IN TERMS OF SECTIONS 417 AND 418 OF THE
COMPANIES ACT, 61 OF 1973*

TO: THE SHERIFF OR HIS DEPUTY

INFORM: JONATHAN HENDRICKS

1[...] P[...] Street

E[...]

Edenvale

Gauteng

THAT he is hereby required to appear in person before Mr John Frederick (Derek) Schickerling "Commissioner") at the Enquiry at Town Lodge Johannesburg Airport, 5[...] H[...] Road, H[...] Ext 2, Germiston on 21 and 22 August 2023 and 5 to 8 September 2023 at 10h00 in the forenoon and to remain present until being excused by the Commissioner at the time and place as aforesaid and there and then given

information under oath concerning Mamba PHP Proprietary Limited (in liquidation) ("Estate"), or concerning the administration of the Estate, or concerning, any claim or demand made against the Estates, or concerning any indebtedness to the Estate. He is furthermore required to bring with him and to produce all books, documents, accounts and/or correspondence in whatever form, electronically or otherwise, relating to the affairs of the Estate or any of its related entities, and produce same at the enquiry.

AND FURTHER THAT if he fails to appear as aforesaid at the time and place aforesaid, and having no lawful impediment (made known to the Commissioner at the time of its sitting and allowed by it) it may constitute an offence in terms of Section 418 of the old Companies Act.

AND FURTHER THAT he is entitled to be represented at the enquiry by an attorney and/or an advocate at his own cost. The non availability of a particular legal representative does not constitute good reason to ignore this subpoena.

AND FURTHER THAT at the Enquiry he will be ordered in terms of Section 417(3) of the Act to produce the documents as set out in Annexure "A" hereto¹. In order to save time and a possible further appearance by him, he is requested to bring the aforesaid documents with him to the Enquiry.

AND FURTHER THAT he is entitled to testify in the language of his choice.

AND FURTHER THAT his evidence will be recorded. He is entitled to a copy of his evidence at his own cost. His evidence may not be used against him directly in criminal proceedings but may be used against him in civil proceedings.

AND FURTHER THAT the Commissioner shall ensure that he is treated politely during the enquiry that he is not harassed or subjected to unduly repetitive or irrelevant questions or to questions that might elicit an answer that might incriminate him.

Failure to be present as demanded constitutes an offence in terms of the Act punishable by a fine and/or imprisonment."

[2] The underlined sentence is referred to in evidence and has caused some controversy. More about that presently.

¹ The underlining is mine

[3] At the enquiry, the applicants' attorney appeared on their behalf and informed Mr Schickerling as follows:

"Attorney: Thank you, Mr Commissioner, what I'm going to do is I'm going to make a number of statements. Just to put them on record and then I am going to excuse myself. The first statement to go on record is that there was a second meeting of creditors on Friday in Germiston and that meeting of creditors was postponed because I asked the liquidators representative for details of the two proven claims and I'm going to come back to what I mean by details in a few moments. And one of the resolutions that was to be adopted at the second meeting of creditors was in fact to convene an inquiry. So at this stage there's no resolution by the liquidators and the creditors to convene this inquiry. So this inquiry is premature. It's illegitimate. That's my first point. My next point is that I want to talk about the subpoenas before I deal with the proven claims. Mr Commissioner, with all due respect you did not apply your mind to issue of these subpoenas, if they were indeed properly issued subpoenas. They don't bear any endorsement from the Master's office. I'm not sure if that's necessary or not. But I just want to refer you to the substance of these subpoenas before I talk about the case authority. The first subpoena and what I say applies equally in respect of all three subpoenas. The first subpoena I'm reading from that of Jonathan Hendricks, what you've allowed the creditor to subpoena is as follows, All books, documents, accounts and or correspondence in your possession in whatever form electronic or otherwise relating to the affairs of Mamba PHP (Pty) Limited [in liquidation] or, very important word or any one of the following entities. So what you've allowed is a subpoena to be issued demanding that my clients bring along information relating to a list of a entities A to Q, to bring all of their financial information, that's not correct because you should have asked and I'm going to refer you to (inaudible) in a moment, you should have asked what is the relationship of these entities of the company in liquidation and you should not have allowed a fishing expedition and likewise Ms Manalios should not have come to you and asked to issue a subpoena without proper motivation. And I can't find any motivation other than a fishing expedition for all these entities because most of these entities, some of which are dormant or may have even been deregistered have never done business with the company in liquidation."

[4] The applicants' attorney informed Mr. Schickerling of the applicants' challenge to his (Mr. Schickerling's) decision to insist on the supply of documents concerning the entities listed on annexure "A" to the subpoenas.

[5] During his address, the applicants' attorney, relying on the judgment of the Supreme Court of Appeal in Beinash, suggested that the subpoenas issued by Mr Schickerling amount to an abuse of process, lack a legitimate purpose, and constitute a "fishing expedition", while the liquidators accepted as proved claims against Mamba PHP that are without substance or merit. The applicants were not present at the inquiry, and their attorney made it clear from the outset that he would leave the proceedings after concluding his address. He did so.

[6] After the applicants' attorney and other legal representatives addressed Mr Schickerling, he ruled as follows:

"Commissioner: I'm ready to give my ruling. Mr Hood, Mr Hood's instruction is that his client are not going to appear before these proceedings, subpoenas were issued by myself in terms of the provisions of section 418(2) of the Companies Act, Act 61 of 1973. They were all accompanied by motivation that was premised on the application that brought about the inquiry. I am satisfied that the subpoenas that are issued were proper. I applied my mind and the law in issuing them. The objection raised by Mr Hood is that certain documents that were sought in the subpoena were improper and that no proper case was made out for them. I make a distinction between the attendance of the witness and the documents that the witness is required to produce. I am satisfied that the witness is capable of giving evidence and I'm also satisfied that the documents sought is relevant. To the extent that there is an objection to relevance that objection must be addressed to me in person under oath as a matter of evidence and I can rule on each and every of those documents on a case by case basis. The second issue raised by Mr Hood is that there appears to be no authority for the convening of this inquiry, he premises that submission on the fact that certain resolutions were placed before creditors at a second meeting of creditors that was convened before the magistrate Germiston on Friday the 18th August. Mr Hood contends that because those resolutions were not adopted that these proceedings are in irregularity for lack of authority. What Mr Hood does not appreciate is that there are two inquiries that are capable of being convened. That in

terms of section 417 read with 418 which is the current inquiry there is also a separate manner in which witnesses can be interrogated, that is in terms of section 415 where meetings of creditors are postponed before the magistrate or the Master as the case may be. The fact that those resolutions weren't adopted by creditors insofar as section 415 is concerned is of no moment to these proceedings. These proceedings have been authorised by the Master and they stand until they have been set aside. Mr Hood also asks for these proceedings to be postponed so that an application for expungement can be brought by his clients, a creditor of that insolvent company. The, even if those claims were to be expunged they do not have any bearing on the locus standi of the current applicant. I say this and I quote Henochsberg directly when I refer to the general note under section 417, "that a, any person having an interest in the company is entitled to bring an application for an inquiry even a person having no financial interest or other interest" and I refer to the authorities listed there. My ruling then is that there is no legitimate purpose to excuse Mr Jonathan Hendricks and Ms Tracy Hendricks from these proceedings. They have been properly served with subpoenas. A proper case has been made out of their attendance and the relevance of their testimony and I find no cogent reason why they could not appear today. Insofar as Ms Rosalda De Mayer is concerned although I did not hear submissions on her testimony I note from the subpoena that her, from the return of service that she was only served on the 14th August, that is not sufficient time to my mind for her to be in appearance and am willing to excuse her from these proceedings. That is my ruling.

Mr Hood: Mr Commissioner, can I just clarify one of your statements please.

Commissioner: Yes

Mr Hood: If I may. These are formal proceedings. You said that the subpoenas were accompanied by motivation and that you applied your mind to that motivation, is that correct?

Commissioner: Yes

Mr Hood: Thank you.

Commissioner: Mr Hood there is, Mr Van Der Merwe did indicate that there is an opportunity, there is a further date for these proceedings 5 to 8 September. In light of my ruling do you want to take instructions on your client's availability between the 5th or the 8th of September? If your clients are not willing to voluntarily provide their, make themselves available I am going to issue a directive that they appear.

Mr Hood: You, Mr Commissioner with all due respect you may do what you wish. Mr instructions are after your rulings to leave.

Commissioner: Thank you Mr Hood. Thank you. We can go off record to excuse Mr Hood."

[7] Dissatisfied with the subpoenas and the ruling during the proceedings on 21 August 2023, the three applicants initiated these review proceedings under Rule 6 of the Uniform Rules of Court early in December 2023. In paragraph 19 of their founding affidavit, the applicants state their challenge to the subpoenas as follows:

19 *It is submitted that:*

19.1 *the conduct of First Respondent in issuing the subpoenas is procedurally unfair as envisaged in Section 6(2)(c) of the Promotion of Administrative Justice Act No 3 of 2000 ("PAJA") alternatively Is so unreasonable that no reasonable person could have made the finding to Issue the subpoenas as envisaged in Section 6(2)(h) of PAJA.*

19.2 *the Ruling of First Respondent that the subpoenas are "proper" is procedurally unfair as envisaged in Section 6(2)(c) of PAJA alternatively is so unreasonable that no reasonable person could have made such a finding, as envisaged in Section 6(2)(h) of PAJA;*

[8] The first applicant states in his papers the following facts and makes the following assertions in support of the application:

“28. *It is correct that I was a director, and it is correct that the Second Applicant was employed by the company in liquidation as a financial manager. However, this does not mean that the Second Applicant has all the information at her disposal as set out in the subpoenas. She is neither a director nor shareholder in the multiple companies specified in the subpoena.*

29. *With respect to the Third Applicant, her employment is historical, and she does not have any documents from her time where she was employed by the company in liquidation.*

30. *It follows quite logically, that Second and Third Applicants would not have at their disposal any information relating to the affairs of the company in liquidation nor the companies in the subpoenas.*

and

33. *Parsons and her husband on behalf of Fourth and Fifth Respondents are competitors of not only Mamba Strike Force but the Mamba Group.*
34. *They have adopted a vindictive approach to the group and seek to steal the clients of the Mamba Group.*
35. *This is why the information that they have sought is challenged because they require details of clients and addresses (which calls into question the issue of POPIA) where there is no basis for them to be given that Information.”*

[9] Mr Schickerling and the fourth and fifth respondents oppose an order requiring the three applicants to comply with the issued subpoenas. All three applicants, Mr Schickerling, and the fourth and fifth respondents, who are creditors of Mamba PHP, were represented before me. The two liquidators and the Master did not take part in the proceedings.

[10] It is a common cause that Mr. Schickerling has been appointed as a commissioner to gather evidence in connection with the winding up of Mamba PHP. Under sections 418(1) and (2) of the Act, the commissioner has the same powers as the Master outlined in section 417. The collection of evidence under these sections aims to gather information about a company's affairs, and once obtained, it remains confidential. The reasons for establishing a statutory enquiry and the investigational powers possessed by the Master and a Commissioner have been reiterated many times by our courts and courts in jurisdictions similar to ours. The excerpt from Megarry J's judgment in *Rolls Razor* conveniently records some of the reasons for the existence of such a process, as follows:

“The process ... is needed because of the difficulty in which the liquidator in an insolvent company is necessarily placed. He usually comes as a stranger to the affairs of the company which has sunk to its financial doom. In that process, it may well be that some of those concerned in the management of the company, and others as well, have been guilty of some misconduct or impropriety which is of relevance to the liquidation. Even those who are wholly innocent of any wrong-doing may have motives for concealing what was done. In any case, there are almost certain to be many transactions which are difficult to discover or to understand merely from the books and papers of the company. Accordingly, the legislature has provided this extraordinary process so as to enable the requisite information to be

obtained. The examinees are not in any ordinary sense witnesses, and the ordinary standards of procedure do not apply. There is here an extraordinary and secret mode of obtaining information necessary for the proper conduct of the winding up.”

[11] Our Constitutional Court has considered and pronounced on sections 417 and 418 of the Act over the past decades in Levin² and Bernstein³, and our Supreme Court of Appeal in Gumede⁴, Roering⁵ and Smith⁶.

[12] The first and second applicants' challenge to the subpoenas at the enquiry on 21 August 2023 was unfounded and inconsistent with the legal principles applicable to enquiries of this nature. The third applicant was not required to comply with her subpoena on 21 August 2023, as it was served on her late, and a judicial review of her subpoena was unnecessary. The applicants referred to the enquiry before Mr Schickerling as a “fishing expedition”. According to their view, every statutory enquiry amounts to a fishing expedition.

[13] Mr Schickerling asserts, correctly in my view, that his authority to request documentation from the three applicants to assess the merits and demerits of the allegations concerning R16 000 000 of Mamba PHP funds allegedly transferred to other entities is valid. If the applicants intend to challenge their obligations to comply with the subpoenas, they have the right to do so under the legislation at the inquiry (with legal representation). The legislation explicitly safeguards the confidentiality of the information presented before a commissioner in this context. Their objections regarding the “over broad” descriptions of documents and the difficulty in complying with the subpoenas are issues that can be raised, and evidence on these points can be presented during the enquiry.

[14] The applicants rely on the PAJA⁷ and allege that the decision of Mr Schickerling to issue the subpoenas and to make the ruling mentioned above constitutes an administrative action and must be set aside in terms of that act.

² *Ferreira v Levin NO and Others: Vryenhoek and Others v Powell NO and Others* 1996 (1) SA 984

³ *Bernstein and Others v Bester NO and Other* 1996 (2) SA 751 (CC)

⁴ *Gumede v Subel NO* 2006 (3) SA 498 (SCA)

⁵ *Roering NO v Mahlangu* 2016 (5) SA 455 (SCA)

⁶ *Smith v Master of the High Court, Bloemfontein* 2023 (4) SA 554 (SCA)

[15] The applicants argue that the redacted sections of the annexure to the subpoena and the limited information available to Mr Schickerling prevent them from being properly and lawfully informed, making the process, as they state in paragraph 19.1 of their founding affidavit, “procedurally unfair” as envisaged by section 6(2)(c) of the PAJA.

[16] In my view, there is nothing unreasonable or improper about Mr Schickerling's decision within the applicable statutory context, and no grounds for review exist as envisaged by the PAJA. A liquidator and commissioner may have reasons for choosing not to disclose their intentions until a specific stage of an enquiry. The law does not entitle everyone who is required to appear at an enquiry under these provisions to be informed of the reasons for their summons or why a particular document is requested. Doing so would undermine the purpose of the statutory provisions. The applicants are not witnesses in the usual sense, and the circumstances of an enquiry may require, as they often do, that the “ordinary standards of procedure” applicable to subpoenas duces tecum under Rule 38 do not apply. The applicants’ reliance on Wixley (*supra*) is misplaced and quoted out of context.

[17] The application lacks merit. The applicants' failure to appear at the proceedings on 21 August 2023 was a clear breach of the law, which has been well established for many years. The applicants benefited from the ruling and the assertions of the first respondent from the beginning but continued to oppose the process and those responsible for managing the inquiry. They instructed their representatives to advance contentions that undermine the procedure outlined in Chapter XIV of Act 61 of 1973. Their conduct has caused the other litigants to incur unnecessary costs, which could have been avoided had the applicants adhered to the law. I will grant a costs order that expresses disapproval of the applicants’ conduct and aims to compensate the opposing litigants for the expenses they had to bear.

I make the following order:

1. The application is dismissed.
2. The counter application is upheld, and the applicants are ordered to attend the enquiry into the affairs of Mamba PHP (Proprietary) Limited convened by the first respondent in accordance with sections 417 and 418 of the Companies Act 61 of 1973, when it resumes, after written notice to them of the date, time, and venue of the enquiry not less than 14 days before the resumed enquiry.
3. The applicants are ordered to produce at the resumed enquiry the documents listed in the written notice to them mentioned in paragraph 2 above.
4. The first, second, and third applicants are ordered to pay the costs of the first, second, and third respondents of the application and counter application on a scale as between attorney and client.

H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is on the 22nd of August 2025 at 10h00.

DATE OF HEARING: 15 AUGUST 2025

DATE OF JUDGMENT: 28 AUGUST 2025

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