



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHER JUDGES: YES /NO	
(3) REVISED	
DATE: 3 FEBRUARY 2026	
SIGNATURE:	

Case No. 2024-146523

In the matter between:

ROERING, LEIGH WILLIAM N.O

FIRST APPLICANT

BOTHA, JOACHIM HENDRIK N.O

SECOND APPLICANT

HENNING, HANNLIE N.O

THIRD APPLICANT

And

**THE MASTER OF THE HIGH COURT,
PRETORIA**

FIRST RESPONDENT

NAIL RED RUST TRADING (PTY) LTD

SECOND RESPONDENT

WENDRA INDUSTRIAL HOLDINGS (PTY) LTD

THIRD RESPONDENT

ELMIR PROPERTY PROJECTS (PTY) LTD

FOURTH RESPONDENT

Coram: Millar J

Heard on: 26 January 2026

Delivered: 3 February 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 10H00 on 3 February 2026.

Summary: *Liquidation – dispute raised by liquidators against claims proven at a meeting of creditors – dispute raised in terms of s 45(2) of the Insolvency Act – Master’s adjudication of the dispute requires a decision in terms of s 45(3) to either confirm, reduce or disallow disputed claim - Master declined to make a decision citing disputes of fact to be decided by Court – failure of the Master to make a decision in terms of s 45(3) reviewable in terms of s 151 of the Insolvency Act - decision reviewed and set aside and disputed claim disallowed.*

JUDGMENT

MILLAR J

- [1] This is a case concerning a dispute between the liquidators of two companies, African Brick Centre Limited (ABC) and African Brick (Pty) Ltd (AB), the applicants and two creditors of both of those companies, the second, Nail Red Rust Trading (Pty) Ltd (NRR) and third, Wendra Industrial Holdings (Pty) Ltd (WIH) respondents. The dispute falls within the ambit of s 45(3) of the Insolvency Act¹ (the Act) and its application.
- [2] What makes this dispute unusual, is that the statutory “referee”, the Master of the High Court, the first respondent in these proceedings, refuses to decide on the dispute. The dispute concerns claims that were initially proven before the Master and allowed, but which were subsequently disputed.
- [3] S 45 of the Act provides:
- “(1) After a meeting of creditors the officer who presided thereat shall deliver to the trustee every claim proved against the insolvent estate at that meeting and every document submitted in support of the claim.
- (2) The trustee shall examine all available books and documents relating to the insolvent estate for the purpose of ascertaining whether the estate in fact owes the claimant the amount claimed.
- (3) If the trustee disputes a claim after it has been proved against the estate at a meeting of creditors, he shall report the fact in writing to the Master and shall state in his report his reasons for disputing the claim. Thereupon the Master may confirm the claim, or he may, after having afforded the claimant an opportunity to substantiate his claim, reduce or disallow the claim, and if he has done so, he shall forthwith notify the claimant in

¹ 24 of 1936.

writing: Provided that such reduction or disallowance shall not debar the claimant from establishing his claim by an action at law, but subject to the provisions of section seventy five."

- [4] The background relating to the claims of NRR and WIH which are in issue may be summarized as follows:
- [4.1] A company by the name of Yakani Infracore (Pty) Ltd (Yakani), as a creditor, had historical claims against ABC and other companies within the African Brick group of companies. This claim was ostensibly in respect of shareholder loan accounts in the sum of R17.1 million.
- [4.2] The African Brick group of companies fell into financial distress and various companies within the group including ABS and AB commenced voluntary business rescue proceedings.
- [4.3] The business rescue plan that was proposed *inter alia* provided for a reduction or other treatment of these historical shareholder loans to R1.756 million as set out in paragraph [4.5] below.
- [4.4.] The plan was adopted, including by Yakani
- [4.5] When the plan was implemented, it was necessary for Yakani to sell 74% of its shares to the fourth respondent, Elmir Property Projects (Pty) Ltd (Elmir) in return for the injection of funds into the companies.
- [4.6] A sale of shares agreement was concluded on 14 February 2014 which *inter alia* provided for the treatment of Yakani's historical loans. Elmir's

interpretation of the agreement is that these loans were reduced from R17.1 million to R1.756 million as contemplated in the plan.

- [4.7] Such claims as Yakani may have had, then appear to have been ceded to NRR and WIH during the business rescue proceedings together with certain securities.
- [4.8] Notices of substantial implementation of the plan were filed and the business rescue proceedings terminated during April 2015.
- [4.9] Both ABC and AB were placed under provisional winding up on 12 August 2015 and were finally liquidated on 6 December 2021.
- [5] It is common cause between the parties that at a meeting of the creditors, the following claims were proven:
 - [5.1] In respect of ABC (in liquidation), the meeting of creditors took place on 10 March 2022. WIH proved a claim in the sum of R6 224 744.50. The substantiation of this claim was contained in a three-page document. NRR similarly proved a claim in the same amount which was substantiated in an eleven-page document. Both claims were admitted.
 - [5.2] In respect of AB (in liquidation), the meeting of creditors took place on 5 September 2022. NRR proved a claim in the sum of R2 825 000.00. The substantiation of this claim was contained in a five-page document. WIH similarly proved a claim in the same amount which was substantiated in a three-page document. Both claims were admitted.

- [5.3] It is not in issue that at the time of the presentation and proving of the respective claims, besides the claim documents (as referred to above), the NRR and WIH also (apparently) made available at the respective creditors' meetings, a lever arch file consisting of 489 pages of documents, in support of the claims. Nowhere in the claim documents for each claim are these documents referenced and so it was not possible to readily link these documents to the claims that were proven.
- [6] It is not in issue that the claims that were submitted and proven, were done so in circumstances where *ex facie* what was submitted, there was insufficient information or documentation for the applicants to ascertain whether those amounts were due.
- [7] In this regard, for example, the claim form of WIH for the claim submitted against ABC describes the claim in respect of "*monies lent and advanced (ceded to the creditor)*" which then goes on to describe three sources of indebtedness in the following terms:
- [7.1] "*Secured loan, advanced by Yakani Infraco (Pty) Ltd to African Brick Lenasia (Pty) Ltd for which the debtor is guarantor – 50% of debt has been ceded to the creditor*" and dated January 2010.
- [7.2] "*Secured loan, advanced by Yakani Infraco (Pty) Ltd to African Brick (Pty) Ltd for which the debtor is guarantor – 50% of debt has been ceded to the creditor*" and dated September 2010.
- [7.3] "*Secured loan, advanced by Yakani Infraco (Pty) Ltd to African Brick (Pty) Ltd to the debtor– 50% of debt has been ceded to the creditor*" and dated August 2013.

- [8] No supporting documents were attached to any of the claim forms, whether in relation to the principal indebtedness or the guarantees referred to. No documents were attached to support the existence of the alleged loan/s or in respect of any of the alleged cessions.
- [9] In view of the ultimate decision of the Master regarding the claims, it is not necessary to set out each one of the four claims made in detail. It suffices to state that the claims were all beset with the same or similar deficits referred to above and hence the applicants dispute of such claims.
- [10] It bears mentioning also, that Elmir, also addressed a letter to the applicants setting out the reasons why they, as a shareholder, disputed the veracity of the claims of NRR and WIH and requesting that the applicants seek the expungement of those claims.
- [11] The Master notified the applicants of the claims that had been proven and had furnished them with the documents that had been submitted in support, the applicants then considered these in terms of s 45(2).
- [12] The consideration resulted in the applicants lodging a written dispute with the Master on 22 May 2024, substantiating their reasons for disputing each of the respective claims and requesting *inter alia* the reduction and/or expungement of certain claims. On 27 May 2024 NRR and WIH then delivered a response to the applicants' reports asserting why the claims as proven, should be allowed.
- [13] In issue relating to whether the claims should be allowed or not is *inter alia* the interpretation of events surrounding the business rescue plan, whether it was ever valid and whether conditions relating to transactions entered pursuant to it

were ever fulfilled. These issues are historical and as the Master correctly found would require evidence for proper adjudication.

- [14] The Master, having now been presented with the report of the applicants as to why the claims should be disallowed, and of the second and third respondents as to why they should be allowed, concluded on 25 July 2024 that:

"Therefore, in light of the factual dispute as to the validity of the Business Rescue Plan whether it was indeed adopted and (substantially) implemented, which will require evidence to be lead, the parties will need to refer this matter to the Court for its Ruling."

- [15] The Master then indicated that it would abide the decision of this Court. It is the case for the applicants that the Master must decide as provided for in terms of s 45(3) of the Act. NRR and WIH for their part assert that the Master was quite entitled to refuse to make any decision.

- [16] S 45(3) is clear in its terms. The Master must make a decision once a claim has been disputed. The section permits the Master to make one of three decisions –

[16.1] He may either confirm the claim, or

[16.2] He may reduce the claim or

[16.3] He may disallow the claim.

- [17] The section does not permit the Master to refuse to make any decision simply because there is a dispute of fact. S 45(3) is clear in its terms that before either the applicants or NRR or WIH can take any further action in respect of their dissatisfaction with the decision of the Master (whatever that decision may have been within the ambit of the section) a decision in terms of the section is required.

[18] Is the Master's decision to refuse to decide in terms of s 45(3) in the present circumstances reviewable? The succinct answer is that it is.

[19] In *Nel and Another NNO v The Master (ABSA Bank Ltd and Others intervening)*,² it was held that:

“[22] In terms of s 151 of the Insolvency Act, read together with s 339 of the Companies Act

‘ . . . any person aggrieved by any decision, ruling, order or taxation of the Master . . . may bring it under review by the court. . . ’

South African courts have long accepted that the review envisaged by s 151 of the Insolvency Act is the ‘third type of review’ identified more than a hundred years ago in Johannesburg Consolidated Investment Co v Johannesburg Town Council, i.e, where Parliament confers a statutory power of review upon the Court. In the Johannesburg Consolidated Investment Co case, Innes CJ stated, with reference to this kind of review, that a Court could

‘ . . . enter upon and decide the matter de novo. It possesses not only the powers of the Court of review in a legal sense, but it has the functions of a Court of Appeal with the additional privileges of being able, after setting aside the decision arrived at . . . , to deal with the matter upon fresh evidence. . . ’

² 2005 (1) SA 276 (SCA) at paras [22]-[23]. Besides the third type of review referred to in this case, the provisions of 6(2)(d) and 6(2)(e)(iii) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) may also be of application. However, this review need not be decided in terms of PAJA as the Insolvency Act has the specific statutory provision in s 151 to accommodate reviews of the decision of the Master.

[23] *Thus, when engaged in this third kind of review, the Court has powers of both appeal and review with the additional power, if required, of receiving new evidence and of entering into and deciding the whole matter afresh. It is not restricted in exercising its powers to cases where some irregularity or illegality has occurred. However, while it is sometimes stated that the Court's powers under this kind of review are 'unlimited' or 'unrestricted', this is not entirely correct. The precise extent of any 'statutory review type power' must always depend on the particular statutory provision concerned and the nature and extent of the functions entrusted to the person or body making the decision under review. A statutory power of review may be wider than the 'ordinary' judicial review of Administrative Action ('the second type of review' identified by Innes CJ in the Johannesburg Consolidated Investment Co case), so that it combines aspects of both review and appeal, but it may also be narrower, 'with the Court being confined to particular grounds of review or particular remedies.'* [References omitted]

[20] In *Constantia Insurance Company Ltd v The Master, Johannesburg High Court and Others*,³ it was held that:

"[18] *When the reduction or expungement of a claim is contemplated, the Master would generally have before him or her not only the report of the trustee/liquidator, but also the material submitted to substantiate the claim. The Master is enjoined to apply his or her mind objectively to all the relevant material thus placed before him or her. Whilst the Master is not required to determine whether the insolvent estate is in fact not indebted (or indebted) to the claimant, he or she should not reduce to expunge a claim unless there is sufficient ground for doing so.*"

³ 2023 (5) SA 88 (SCA) at para [18].

- [21] In *Mantis Investments Holdings (Pty) Ltd and Another v De Jager NO and Another*,⁴ it was held that:

"[17] A liquidator may not review the decision of the Master to admit the claim, unless the liquidator has followed the procedure contemplated in s 45(3) of the Act, which is peremptory. A creditor who has unsuccessfully objected to a Master's decision to admit the claim, may take the Master's decision on review in terms of s 151 of the Act. The Master's decision to reject a creditor's proved claim may also be taken on review by the aggrieved creditor. However, where no steps are taken to review the Master's decision to admit or reject approved claim, that claim becomes conclusive and enforceable in law against the company in liquidation. In that event the Master's decision would stand."

- [22] The failure to decide as required by the section, leads to an absurd situation. It was argued for the applicants that *"the liquidators are hamstrung in their winding up of the two estates as they cannot proceed to draft liquidation and distribution accounts. Indeed, the Master in her letters of 25 July 2024 specifically states that the liquidators cannot lodge a liquidation and distribution account until the court has decided inter alia on the validity of the proven claims. Yet, absent the Master making a decision, there is no procedure for a court to so decide."*
- [23] The refusal to decide in terms of section 45(3) is in and of itself a reviewable decision as provided for in section 151 of the Act. Its irrationality is demonstrable from the position adopted in the letter of 25 July 2024.
- [24] The consequence of this decision is that no litigation may be instituted until a decision is made by the Court on the dispute of fact, but in terms of section 45(3),

⁴ 2024 (3) SA 431 (SCA) at para [17].

neither NRR nor WIH may proceed to Court to establish their claims without such decision. The winding up of these estates will also be unable to proceed.⁵

- [25] Since the review in this matter is of the third type as referred to in *Nel and Another NNO v The Master (ABSA Bank Ltd and Others intervening)*, it behooves this Court having reached the conclusion that the refusal of the Master to decide is reviewable to then consider the decision that ought to have been made.
- [26] The conclusion by the Master that there are disputes of fact which cannot be decided on the papers, and which will require evidence lead one to the ineluctable conclusion that the claims ought never to have been admitted as proven in the first place. Had the claims been conclusively proven in totality, the Master would have confirmed them. Had the claims been proven in part then the Master would have reduced them. The failure of the Master to do either leaves the disallowance of the claims as the only logical decision that could (and should) have been made in terms of s 45(3).
- [27] NRR and WIH opposed the application primarily on the basis that the claims ought to have been confirmed. However, in doing so, they made far reaching claims and serious allegations of misconduct by the business rescue practitioners who are not before this Court and in relation to events which preceded the provisional and final liquidation orders and the tenure of the applicants in the affairs of ABC and AB. It should have been apparent to them that this Court would also not be able to adjudicate such matters on the papers alone.
- [28] It is for these reasons that the review succeeds and the claims of NRR and WIH in ABC and AB are disallowed.

⁵ See *Wilkens v Potgieter NO and Another* 1996 (4) SA 936 (T)

[29] Besides opposing the application, NRR and WIH also counterclaimed for an order against Elmir relating to matters arising from the business rescue plan. This counter claim was ill conceived because the very subject matter to which it relates forms part of the dispute between the parties to this application and in respect the leading of evidence is required. The counterclaim simply has no merit in these proceedings and is dismissed.

[30] The costs will follow the result. Since the applicants are acting on behalf of insolvent estates, I am making an order for costs qua their attorney and own client costs to be recoverable from the respective estates. In respect of the opposition by the NRR and WIH, the costs order I make is in respect of the cost's payable to the respective estates of ABC and AB arising out of their unsuccessful opposition to this application.

[31] In the circumstances, it is ordered:

[31.1] The first respondent's refusal on 25 July 2024 to confirm, or to reduce or disallow, the claims proven by the second and third respondents in the insolvent estate of African Brick Centre Ltd (in liquidation) (Master's reference number T2150/2015) in terms of s 45(3) of the Insolvency Act, as read with s 339 and/or s 336 of the Companies Act, 1973 is reviewed and set aside.

[31.2] The first respondent's refusal on 25 July 2024 to confirm, or to reduce or disallow, the claims proven by the second and third respondents in the insolvent estate of African Brick (Pty) Ltd (in liquidation) (Master's reference number T2151/2015) in terms of s 45(3) of the Insolvency Act, as read with s 339 and/or s 336 of the Companies Act, 1973 is reviewed and set aside.

- [31.3] The second and third respondents claims in respect of African Brick Centre Ltd (in liquidation) is disallowed, subject to the second and third respondents being entitled to establish their disallowed claims by an action at law as provided for in s 45(3) of the Insolvency Act, 1936 as read with s 339 and/or s 336 of the Companies Act, 1973 provided however that such action is to be instituted within 60 (sixty) days of the granting of this order.
- [31.4] The second and third respondents claims in respect of African Brick (Pty) Ltd (in liquidation) is disallowed, subject to the second and third respondents being entitled to establish their disallowed claims by an action at law as provided for in s 45(3) of the Insolvency Act, 1936 as read with s 339 and/or s 336 of the Companies Act, 1973 provided however that such action is to be instituted within 60 (sixty) days of the granting of this order.
- [31.5] The applicants' costs of this application as between attorney and own client, are to be paid jointly and severally in the administration of the respective insolvent estates of African Brick Centre Ltd (in liquidation) and African Brick (Pty) Ltd (in liquidation).
- [31.6] The costs of the opposition to this application are to be paid jointly and severally by the second and third respondents to the respective insolvent estates of African Brick Centre Ltd (in liquidation) and African Brick (Pty) Ltd (in liquidation) on the scale as between party and party with counsels' costs on scale C.

[31.7] The second and third respondents' counterclaim is dismissed.



A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 26 JANUARY 2026

JUDGMENT DELIVERED ON: 3 FEBRUARY 2026

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NO APPEARANCE FOR EITHER THE FIRST OR FOURTH RESPONDENTS