IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 1602/2025

In the matter between:

LOOMAR BOERDERY (PTY) LTD **APPLICANT**

and

ELRICH RUWAYNE SMITH N.O **FIRST RESPONDENT**

ELNA ELSA POHL N.O **SECOND RESPONDENT**

DHANESVARIN APPAVOO N.O **THIRD RESPONDENT**

MASTER OF THE FREE STATE
HIGH COURT, BLOEMFONTEIN **FOURTH RESPONDENT**

STEPHANUS PETRUS BOTHA HANCKE N.O **FIFTH RESPONDENT**

Neutral citation: *Loomar Boerdery (Pty) Ltd v Elrich Ruwayne Smith and Others* (1602/2025) [2026] ZAFSHC 83 (6 March 2026)

Coram: MOLITSOANE J

Heard: 7 August 2025

Delivered: 6 March 2026

Summary: Insolvency law-removal of liquidators – whether the applicant may approach a court for the removal of a liquidator before first approaching the Master of the High Court – whether a claimant whose claim has not been proven is a creditor is an interested person for the purposes of s 379(2) of the Companies Act 61 of 1973 – whether the first respondent must be disqualified to hold office as a liquidator for a period to be determined by this Court.

ORDER

The application is dismissed with costs which costs include the costs of two counsel where so employed on scale C.

AMENDED JUDGMENT

Molitsoane J

[1] The applicant seeks orders to have the first to third respondents (the liquidators) removed as liquidators of Sandvet Pecans (Pty) Ltd, in liquidation (Sandvet in liquidation), in terms of s 379(2) of the Companies Act 61 of 1973 (the Act); further that the first respondent be disqualified from holding office as a liquidator and removed from office for such period as this court would in its discretion determine.

[2] The following background is necessary for the adjudication of this dispute.

A group of farmers in the Hoopstad area and later in Hartswater area started a nursery for pecan trees and established a company known as Sandvet. They obtained financing from the Land Bank (Landbank) in the form of a loan. Different directors and shareholders including the applicant also bound themselves as sureties for the debt of Landbank. The applicant also advanced an amount of more than R16m into the project. However, it appears that the project was not successful and ran into financial difficulties, and in April 2022, Sandvet was placed under liquidation. The first to third respondents were appointed liquidators. Sandvet (in liquidation) went on to obtain financing from Landbank for more than R10 million; the applicant stood surety for this debt. The Landbank registered security in the form of a Special and General Notarial Bond over the assets of Sandvet in liquidation.

[3] On the version of the applicant, Sandvet in liquidation's biggest assets were its pecan trees, about 240 000 in total. The applicant contends that the respondents neglected their duties and caused these trees to be damaged and their negligence reduced their value from R85.00 to R2.50 per tree. This alleged negligent conduct of the respondents, according to the applicant, caused the sureties and creditors of the company in liquidation to suffer loss of about R22m. The applicant contends that the respondents had a duty to preserve the most precious assets of the company in liquidation, the pecan trees in order to enable them to apply it for the benefit of the *concursus creditorum*.

[4] It is also the case for the applicant that the respondents failed to act as expected of liquidators by failing to collect the outstanding debt in the amount of more than R2m. Subsequent to the liquidation, Mr FJ Senekal, a director from the office of the instructing attorneys of the applicant, was instructed by the applicant to conduct ss 417 and 418 enquiries into the affairs of the company in liquidation. On 3 May 2023 the applicant's attorneys directed a letter to the Master in which permission was sought to conduct the inquiry above. In the said letter, it is stated that the applicant was obliged '. . . to tender the cost of the enquiry as envisaged in terms of section 417(6) and (7) of the Companies Act 61 of 1973.'

[5] However, contrary to the letter of 3 May 2023, in a subsequent letter dated 11 March 2025, Mr Senekal requested the Master to exercise his discretion in terms of s 417(6) of the Companies Act and order the liquidators to

pay the costs of the enquiry as administration costs in the estate. On the same day, the Assistant Master forwarded a letter to the respondents in which he said the following: 'In the light of the finding of the Commissioner's report dated 30 January 2024 and 5 March 2025 and in terms of section 417(6) of the Companies Act, Act 61 of 1973, as amended, I direct you to pay the whole of the costs and expenses of the 417/8 interrogations out of the assets of the company in liquidation'. It appears that the liquidators did not act as directed by the Master as they apparently did not pay the costs of the enquiry. This non-payment of the costs of the inquiry, is one of the grounds relied upon by the applicant to have the respondents removed as liquidators as the applicant perceives it as a failure to heed the directives of the Master. This ground may be disposed of at this stage.

[6] The fact is that the applicant had agreed to pay the costs which were initiated at its request. When the Commissioner and the Master ordered the liquidators to now pay the costs of the enquiry which they were not party to, they were also not invited to make any submissions. It appears to me that the process of ordering them to pay the costs appear to be unfair. I cannot fault them for not following the Master's directives and refusing to make the payment. They could also not simply refuse to adhere to the Maste's directive and they should have taken steps to review and set aside the decision of the Commissioner and the Master. In view of the apparent procedural unfairness, their conduct may be excused.

[7] The other problem the applicant faces, is reliance on the proceedings during the section 417 inquiry. The applicant seeks to rely on these proceedings to prove that the liquidators were negligent. This reliance is misplaced. It is common cause that the liquidators did not participate in these proceedings. I agree with the contention of the liquidators that the evidence of a witness at an

enquiry in terms of s417 is only admissible against such a witness. While such evidence may be admissible to prove the testimony of the witness during the enquiry and may be used to test his evidence, it cannot be used as proof of the facts against a person who did not participate in such proceedings. This is understandable because the evidence remains untested against the person who took no part in the proceedings. For these reasons I decline to interrogate the issues raised against the liquidators during the s417 proceedings.

[8] The applicant also contends that the respondents have a conflict of interest. This contention ties with the allegation that the respondents have been negligent in dealing with the assets of the company in liquidation. In this regard, it is contended that the respondents ought to be held liable for the negligent and reckless manner in which they handled the estate, particularly their actions which resulted in the diminished value of the trees as well as prescription of the debts of the company in liquidation. In other words, the respondents cannot institute an action against themselves for their alleged negligence, them being the plaintiffs and defendants in the same suit.

[9] One of the reasons the applicant proffers for the removal of the respondents as liquidators is the allegation that the liquidators refused to provide all accounts to the Master in terms of s 393 of the Act. On 5 February 2025, the applicant's attorney addressed a letter to the Master in which he implored the Master to invoke the provisions of s 393 Companies Act and 'instruct the Liquidators to produce and make available all statements of monies, goods, documents and accounts and other documents which include financial data statements, CM100 received by the liquidators on behalf of the company for inspection.' The Master agreed with the request on the basis that Mr Conradie agreed to the arrangement.

[10] According to the applicant, the respondents only furnished the applicant with the cash book and none of the other documents requested. However, in a letter dated 18 March 2025 the liquidators indicated that they were unaware of any request for the documentation. The letter records that the discussion was between the office of the Master and the applicant's attorneys. The liquidators questioned the reasons for the request and the manner of the request. It turns out that at the time of the request, the parties were already embroiled in litigation and the proper cause to follow was to seek an order to compel in terms of rule 35 of this court. In my view there is no merit on this ground. Furthermore, the applicant also seeks the removal of the liquidators on the basis that they expended more than R450 000 from estate funds to litigate for their personal benefit.

[11] The respondents, in turn, oppose the application on a number of grounds. They first contend that the applicant has no *locus standi* as it is not a creditor of Sandvet. The basis for this contention is that, at a special meeting of the creditors convened by the applicant and presided over by the Master, the claim of the applicant was rejected. It is contended that the applicant is for that reason not an 'interested person' as contemplated in s 379(2) of the Act.

[12] The liquidators also contend that this application is premature. The basis for this contention is that the applicant ought to have approached the Master first for their removal before venturing to approaching the court. They further contend that the applicant failed to satisfy the jurisdictional requirements for the relief it seeks. According to the liquidators, a liquidation and distribution account has been submitted to the Master who has confirmed this account. This leaves the applicant with no basis for relief.

[13] As indicated above, the case for the removal of the liquidator is based on a number of reasons and it is also opposed on many reasons. It is apt in my view to start with the issue of whether the application is premature. Relying on *First Time Trading CC vs Magistrate for the District of the City of Cape Town sub district Bellville and Others*[1] (*First Time Trading*) the applicants submit that the applicant ought to have approached the Master first for their removal instead of rushing to the court. *In First Time Trading*, the court said the following:

'Section 379 of the Company's Act is the provision which specifically provides for removal of liquidators. It provides further removal of a liquidator by the Master and by the court in certain specified circumstances. Notably in terms of subsection 2 the court may on application by the Master or any person remove a liquidator from office if the master fails to do so in any of the circumstances in subsection one or for any other good cause. Thus, in terms of section 379 an applicant is first required to approach the Master before approaching this court for removal of the third respondent. It is common cause that the applicant has not done so in this case. The application is premature.

Furthermore, section 379 provides for various grounds upon which a liquidator's removal may be sought. However, the applicant has not specified the grounds he seeks to invoke. It is strike that it falls upon the applicant to plead its case clearly and precisely and the applicant has failed to comply with this requirement. At a hearing the applicants council considered that no cases made out regarding any misconduct by the 3rd respondent.'[2]

[14] I agree with *First Time Trading* that the applicant ought to have approached the Master first for the removal of the liquidators. Section 381 of the Act provides as follows:

'(1) The Master shall take cognizance of the conduct of liquidators and shall, if he has reason to believe that a liquidator is not faithfully performing his duties and duly observing all the requirements imposed on him by any law or otherwise with respect to the performance of his

[1] *First Time Trading CC vs Magistrate for the District of the City of Cape Town sub district Bellville and Other* [2024] ZAWCHC 163.

[2] Ibid paras 41 and 42.

duties or if any complaint is made back to him by any creditor member, or contributor in regard there to enquire into the matter and take such action there thereanent as he may think expedient.

(2) The Master may at early time require any liquidator to answer any inquiry in relation to any winding- up in which such liquidator is engaged, and may, if the things fit, examine such liquidator or any other person on oath concerning the winding- up.

(3) They Master may at any time appoint a person to investigate the books and vouchers of a liquidator.'

On the other hand, s 379(2) of the Act provides:

'The court may, on application by the Master or any interested person, remove a liquidator from office <u>if the Master fails</u> to do so in any of the circumstances mentioned in subsection one or for any other good cause.' (Emphasis added.)

[15] Section 381 empowers the Master to exercise control over the duties of the liquidators. In this regard, I hold the view that in the exercise of control and supervision, if the Master opines that the winding process is flawed or there is some compelling reason to do so, he may approach the court for the removal of a liquidator. Should the Master fail or refuse to do so, then in that case, an interested party may approach the court in terms of s 379(2).

[16] The applicant however contends that there is no provision obliging it to first approach the Master for the removal of the liquidators. In this case it is undisputed that the applicant had addressed issues raised in this application with the Master. It was up to the Master to have invoked his controlling powers in terms of s 381, which he did not do. In any case, the applicant also did not ask him to invoke s 381, let alone the removal of the liquidators. Rather, what the applicant did was to bring what it perceived to be conduct worthy of the removal to the Master's attention. Whether the Master shared this sentiment is, however, another thing and his inaction may be attributed to the fact that the

Master saw nothing untoward in the performance of the liquidators in their fiduciary duties.

[17] In my view, the operative words in s 379(2) are '*if the Master fails'*. These words connote some form of deliberate positive conduct or omission on the part of the Master, which would trigger the jurisdictional basis for the court to remove the liquidator. There is consequently no case made that the Master has failed or even refused to remove the liquidators. Rather, the Master was simply not approached to remove the liquidators as envisaged in s 379(2). I align myself with *First Time Trading* and hold that there is an obligation to approach the Master first, for the removal of the liquidators, before launching these proceedings. The applicant did not do so, and the application is accordingly premature. Failure to approach the Master before approaching this Court is dispositive of this application.

[18] The next issue to consider is the *locus standi* of the applicant. This attack is based on the assertion that the applicant did not prove a claim against the insolvent estate. It is common cause that the claim of the applicant was rejected in the meeting of the creditors presided over by the Master. It is trite that *locus standi* relates to the capacity of a party to sue or to be sued. Harms in *Amler's Precedents of Pleadings*[3] defines *locus standi* thus:

'The question of *locus standi* is in a sense procedural, but it is also a matter of substance. It concerns the sufficiency and directness of a person's interest in the litigation to be accepted as a litigating party. It is also related to the capacity of a person to conclude a jural act. Sufficiency of interest depends on the facts of each case and there are no fixed rules.'[4]

[3] LCT Harms *Amler's Precedents of Pleadings* 9 ed LexisNexis.
[4] Ibid at 247.

[19] As a starting point it is necessary to point out that a 'creditor' for the purposes of an insolvent estate has not been defined in the Act. Bertelsman *et al* in *Mars: The Law of Insolvency in South Afric*a[5] (Mars) states:

'A "creditor" as referred to in the Act, can be either a proved or an unproved creditor, or both depending on the circumstances. A 'creditor' who applies for sequestration is obviously an unproved creditor; the trustee sends his report to 'each creditor' of the estate whose name and address is known to the trustee, whether the creditor has proved a claim or not; but 'creditors' who give directions to the trustee at the second meeting are approved creditors only, although this is not explicitly stated.' (Footnotes omitted.)

[20] It is not in dispute that the applicant has a claim against the insolvent estate. What is disputed in view of the rejection of the claim of the applicant is whether the applicant has *locus standi*. It is immaterial in my view whether the applicant has a proven or not proven claim. What is important, rather, is that he has a claim against the estate and therefore becomes a person who has an interest as envisaged in s 379(2). Apart from having a claim against the insolvent estate, the applicant is again a surety of the liquidators' debts and obligations and thus has a substantial interest in the outcome of these proceedings. His standing is based on the fact that he has a claim against the insolvent estate although same has been rejected and also, he bound himself as a surety for the due fulfilment of the debts of the company in liquidation. The liquidators also assert that the claim of the applicant has prescribed. The attack on the *locus standi* of the applicant must accordingly fail. This finding does not assist the applicant in view of other findings I make.

[21] Section 379 of the Companies Act 61 of 1973 regulates the removal of

[5] Bertelsman *et al Mars: The law of Insolvency in South Africa* 9 ed at 372.

liquidators. It provides:

'(1) The Master may remove a liquidator from his office on the ground–

(a) that he was not qualified for nomination or appointment as liquidator or that his nomination or appointment was for any other reason illegal or that he has become disqualified from being nominated or appointed as a liquidator or has been authorized, specially or under a general power of attorney, to vote for or on behalf of a creditor, member or contributory at a meeting of creditors, members or contributories of the company of which he is the liquidator and has acted or purported to act under such special authority or general power of attorney; or

(b) that he has failed to perform satisfactorily any duty imposed upon him by this Act or to comply with a lawful demand of the Master or a commissioner appointed by the Court under this Act; or

(c) that his estate has become insolvent or that he has become mentally or physically incapable of performing satisfactorily his duties as liquidator; or

(d) that the majority (reckoned in number and in value) of creditors entitled to vote at a meeting of creditors or, in the case of a members' voluntary winding-up, a majority of the members of the company, or, in the case of a winding-up of a company limited by guarantee, the majority of the contributories, has requested him in writing to do so; or

(e) that in his opinion the liquidator is no longer suitable to be the liquidator of the company concerned.

(2) The Court may, on application by the Master or any interested person, remove a liquidator from office if the Master fails to do so in any of the circumstances mentioned in subsection (1) or for any other good cause.'

[22] In *Ma Africa Groepbelang (Pty) Ltd v Millman and Powell's NNO*[6] *(Ma Africa*) the following was said:

'It goes without saying that the removal of a liquidator is a radical form of relief which will not be granted unless the court is satisfied that a proper case is made out therefor. In this regard it will not be sufficient merely to show that there is an apprehension or perception of

[6] *Ma Africa Groepbelang (Pty) Ltd v Millman and Powell's NNO* 1997 (1) SA 547 (C) at 566A-E.

bias, partiality, lack of independence or unfairness on the part of the liquidator. Nor will it suffice to establish even prima facie here that the liquidator has not performed satisfactorily, has made questionable decisions or committed errors of judgment. This may well point to a lack of competence or experience but will not necessarily be regarded as "good cause" justifying the removal of the liquidator obliged to assess the conduct of the liquidator in its full context with reverence to all relevant facts and circumstances. And at the end of the day, it is of cardinal importance that the court must be satisfied that removal of the liquidator is to the general advantage and benefit of all persons concerned or otherwise interested in the winding-up of the company in liquidation. In this regard a relevant factor is the expense which will be incurred and inconvenient suffered to appoint a new liquidator for purpose of completing the work already done by his predecessor. A court would hence be less inclined to remove a liquidator at a late stage in the winding-up process than it would be to replace him at an early stage.' (Emphasis added.)

[23] I now tend to be grounds underpinning this application. The court in *Standard Bank of South Africa v the Master of the High Court*[7] (*Standard Bank*) referred with approval to *Lawsa* para 236 and held that '[A] liquidator stands in a "fiduciary relationship towards the company and its members and creditors. As such, he occupies a position in some ways analogous to that of a trustee."' The court went further and referred with approval to *Commentary on the Companies Act*[8] in which the following was said:

'The liquidator stands in a fiduciary relationship to the company of which he is the liquidator, to the body of its creditors as a whole and to the body of its members as a whole.
As a fiduciary, the liquidator must at all times act openly and in good faith, and must exercise his powers for the benefit of the company and the creditors as a whole, and not for his own benefit or the benefit of a 3rd party or for any other collateral purpose. He must act in the interests of the company and all the creditors, both as individuals and as a group. He must not make a decision which would prejudice one creditor and be of no advantage to any of the other creditors or to the company.

[7] *Standard Bank of South Africa v The Master of the High Court* [2010] ZASCA 4; 2010 (4) SA 405 (SCA).
[8] Blackman *et al Commentary of the Companies Act* vol 3.

He may not act in any matter in which he has a personal interest or a duty which conflicts, or which might possible conflict with his duties as a liquidator of the company.'[9]

[24] The high watermark of the applicant's case is that the liquidators were negligent in the performance of their duties. Their negligence is attributed, according to the applicant, to the fact that the liquidators caused the pecan trees to be damaged which, as a direct result thereof, caused their value to be diminished. This ground ties in with the allegation that the liquidators where consequently liable for the damage and ought to be defendants while at the same time being plaintiffs as liquidators, in that they have a duty to institute actions against those who caused the loss, and who incidentally are the same liquidators.

[25] The difficulty of the applicant in satisfying this Court that the liquidators were negligent in the performance of their duties is the fact that there is a material dispute of fact. In line with *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty)Ltd*[10] the contention of the applicant must be rejected, and I explain why. On the version of the applicant, the liquidators have caused Sandvet to suffer damages by not tendering to the upkeep of the pecan trees and thus causing their value to reduce by R82.50 per tree. The liquidators responded comprehensively to the allegations in their answering affidavit. It is common cause that Landbank is the largest proven creditor of Sandvet. It has a proven claim of more than R9 million. On the other hand, the applicant is not even a proved creditor and could not even, as indicated by Mars, 'give directions to the trustees at the second meeting of the creditors.'

[9] Footnote 7 para 112.
[10] *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

[26] This debt, according to the liquidators, attracts interest of about R900 000 per month. The liquidators assert that Sandvet was insolvent by an amount exceeding R12 million as there were no funds available which could be used for the preservation of the pecan trees. To illustrate the challenge in the upkeep of the trees, the liquidation and distribution account filed with the Master and confirmed by him, reflects that creditors of proven claims against Sandvet were liable for a contribution. The liquidators also make the following point in the answering affidavit: 'Given that the Landbank's notarial security extends over the pecan nut trees, and that the proceeds of the sale thereof would first go to the Landbank, it was exclusively for it to decide whether or not it wanted to extend funds to the liquidators for the preservation of the same.'

[27] The liquidators were acutely aware that the main estate assets consisted of pecan trees and needed daily maintenance. Correspondence was directed to Landbank as the biggest secured creditor in which it was informed that the trees required daily maintenance. In a letter dated 10 November 2022, the liquidators also forwarded the quotation for the maintenance costs per month which came from Mr Van Niekerk, a former director of Sandvet. According to the liquidators, the upkeep costs for the maintenance of the pecan trees amounted to about R150 000 per month. In view of the costs of maintenance, permission was sought from Landbank to sell the assets.

[28] It appears that Landbank agreed only to incurring minimum expenses for the preservation of the trees. According to the liquidators, the reason for agreeing thus was that: (i) 'the trees in the condition that they were found by the liquidators, did not hold great value nor was their value capable of being substantively/ commercially increased; (ii) to fund Sandvet expenses, relevant to the pecan nutrients would be a case of the Landbank throwing good money after bad debts; (iii) and that the market demand for the pecan nut trees was

poor'. Notwithstanding this, it is important to emphasise that the Landbank did not support the removal of the liquidators. In a letter dated 4 June 2025, it says:

> '[We] participated in the administration of the liquidated company. We have also obtained a copy of the application for the removal of the liquidators under case number 1602 / 2025.
> We do not support the application for the removal of the liquidators and would prefer <u>that the current liquidators finalize the administration process as the administration is already at a mature stage and the liquidators at all times acted in the best interest of the body of the creditors.</u>' (Emphasis added.)

Jac N Coetzer Inc, which is also one of the proven creditors, also does not support the removal of the liquidators.

[29] With the liquidation and distribution account duly confirmed by the Master, this liquidation is at its tail end. It seems that the only reason that the liquidation cannot be completed is because of several applications which the liquidators were obliged to bring because of the conduct of the applicant. I will deal succinctly with those applications when I deal with the issue raised that the liquidators used the Sandvet funds to litigate in their own interests. What, however, is important to note is that the removal and new appointment of liquidators will delay the finalization of this liquidation and will escalate further costs towards this factually insolvent estate to the detriment of the general creditors and interested persons.

[30] The liquidation and distribution account confirmed by the Master indicates that Sandvet is factually insolvent by an amount of more than R12 million. It could not be expected of the liquidators to employ someone to look after and maintain the pecan trees, when the upkeep expenses would be prohibitory. If they did that, they would be acting against the general advantage and benefit of the creditors. I, therefore, cannot find that they were negligent in the performance of their duties and further, the contentions by the applicant are

denied by two major proven creditors of Sandvet. In any case, even if it could be said that I am wrong in my analysis, the applicant still faces an insurmountable hurdle in the form of material dispute of facts on this issue which cannot be resolved on affidavits. The relief sought by the applicant also must be rejected on this basis.

[31] It is, at this stage, necessary to deal with the issue of conflict of interest as well. The applicant avers that, because the liquidators caused damages to the pecan trees, they ought to hold themselves liable and consequently must be defendants in their cause. In the replying affidavit the applicant makes the following allegation:

‘The liquidators nowhere in their answering affidavit properly explain why and despite the material conflict of interest they have (where they cannot investigate themselves, being Plaintiff and Defendant in the same case), how they can further keep their position as liquidators.’

[32] In my view this contention is without merit. Launching such an investigation would entail that the liquidators first admit negligence in the performance of their fiduciary duties. I have already found that no negligence can be imputed on their part and consequently it cannot be correct that they be removed on allegations of conflict of interest in the absence of any proof thereof. One would have expected the applicant to approach the Master to implore him/her to remove the liquidators if there was any impropriety on their part; I have already made a finding that such an approach was not embarked upon. Failure to prove a prima facie case of negligence also affects the assertion that the liquidators are conflicted. On this basis the application must also be dismissed.

[33] Another ground raised by the applicant is that the liquidators had litigated and incurred costs for their own interests. In this regard, it is an alleged that an amount of R455,000 was expended by the liquidators. In *Standard Bank* the court said the following with reference to use of monies of a liquidated company:

'It is self-evident that monies in the estate of the company being wound up cannot be put to private use by the liquidators. For a liquidator to act in that fashion is the very anti thesis of what should rightly be expected of a liquidator.'[11]

[34] All the litigation had been financed from the coffers of Sandvet. What, however, cannot be denied is that the litigation had not been pursued for the private gratification or self-serving interests of the liquidators. What the liquidators sought to do in the litigation was to prevent, rightly or wrongly, what they perceived to be unlawful conduct against Sandvet.

[35] For the purposes of this discussion, it is unnecessary to go into the merits of the litigation in which the liquidators were embroiled. First, the applicant requested leave of the Master to convene interrogation proceedings in terms of ss 417 and 418 of the Company's Act. The applicant's attorneys caused subpoenas to be issued by the Commissioner against the liquidators and their appointed agents. Pursuant to this, the liquidators brought an urgent interdictory application to suspend the operation and execution of the issued subpoenas pending an application to review and set aside the decision of the Master to order and direct an enquiry in terms of ss 417 and 14 to be convened, as well as the decision of the Commissioner to issue the subpoenas against the liquidators.

[11] Footnote 7 para 113.

[36] The review application was defended by the applicant and at that time of the hearing of this application had not been finalized. There were two further review applications brought by the liquidators. None of the litigation can be attributed to a notion that the liquidators were acting in their private interest. The litigation went into the deep end of the administration of this winding up. From the affidavits, the issues raised as to whether the liquidators litigated for their own benefits can only be resolved by leading *viva voce* evidence. I am unable to grant the order sought in view of a material dispute of fact.

[37] It has thus not been established, at least at this stage as the three review applications are still outstanding, that their conduct was motivated by any ulterior motive, and I cannot, therefore, find that *Standard Bank* was applicable in this case. Furthermore, I can also not find that the liquidators pursued their own interests and, importantly, that the litigation was not engaged in for the benefit of Sandvet. Whether the litigation was engaged based on an ulterior motive would have to be adjudicated upon by the courts seized with review proceedings. This ground must also accordingly fail.

[38] I now turn to the alleged conduct of Mr Smith, the first respondent. It is alleged that the applicant was approached by the first respondent to garner support for the first respondent to be appointed provisional liquidator of Sandvet. This allegation is denied. A material dispute of fact arises as the first respondent categorically denies the allegation and has someone confirming his version which goes against the version of the applicant. In my view, such conflict cannot be resolved on papers.

[39] It is further alleged that the liquidators failed to collect debts amounting to over R2m, which belonged to Sandvet in liquidation. The applicant, however, has not furnished full particulars surrounding the identity of the debtors and the

circumstances surrounding the indebtedness. The liquidators admit that Mr Van Niekerk had approached the first respondent and informed him about the alleged debt of a former director of Sandvet, Mr Fanus Van Jaarsveld and one Willem du Plessis. On the version of the first respondent, the two debtors were represented by Mr Gustav le Grange of Jan Coetzer Attorneys, who was contacted by the first respondent to verify the assertions. However, Mr Le Grange could not confirm them. Ultimately, the undisputed evidence of the first respondent is that the financial statement attached to the papers make no refence to the alleged liabilities of the debts of Van Jaarsveld and Du Plessis.

[40] The first respondent also avers that he was given the minutes of a meeting which culminated in the production of the above-mentioned financial statement. The relevant part of the minute states that the directors established Sandvet with the aim of obtaining free trees. It then goes further to set out how many trees certain individuals have obtained. It is, however, silent on the alleged debt of Van Jaarsveld and Du Plessis. It also appears that during the interrogation in terms of ss 417 and 418, these debts were not interrogated.

[41] The applicant through his attorney had an opportunity to delve into these pre-liquidation debts during the ss 417 and 418 interrogations, if they existed, and make any information discovered available to the liquidators. On the undisputed evidence of the first respondent, he had no evidence to ascertain the facts that substantiated the allegations of Mr Van Niekerk. In addition, he avers that Landbank was also not prepared to fund the interrogations herein. It cannot be correct to litigate on suspicion. Consequently, based on the scant information and lack of resources to hold interrogations, the conduct of the liquidators cannot be impugned.

[42] In the result, I hold the view that the applicant has not made out a case for the relief sought and the application must accordingly fail with costs. I order as follows:

The application is dismissed with costs which costs include the costs of two counsel where so employed on scale C.

P E MOLITSOANE
JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	MP Hershonsohn SC
	RD Leeuw
Instructed by:	FJ Senekal Inc
	Bloemfontein
For the First, Second and Third Respondent:	MP Van Der Merwe SC
	S Tsangarakis
Instructed by:	Hendre Conradie Inc
	Bloemfontein
For the fifth respondent:	No appearance