REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, JOHANNESBURG

Case No: A2024-060194

(1) REPORTABLE: no
(2) OF INTEREST TO OTHER JUDGES: no
(3) REVISED: NO

10 February 2026 ....
DATE SIGNATURE

In the matter between:

STANLEY LACEY Appellant

And

D[…] K[…] M[…] First Respondent

INDEPENDENT REGULATORY BOARD OF AUDITORS Second Respondent

M[…] M[…] Third Respondent

JUDGMENT

KRÜGER AJ

DLAMINI J AND DE SOUZA-SPAGNOLETTI CONCURRING

[1] This matter came before the Court of appeal on Wednesday 10 September 2025 and the issue before this Court as set out in the notice of appeal is essentially:

a. "*The whole of the judgment of Yacoob J delivered on 10 October 2023, in terms of which the learned Judge ordered:*

   i. *That the appellant had not satisfactorily carried out his fiduciary duties in the matter;*

   ii. *The appellant's fees and disbursements associated with the preparation of his first interim account, the attempt to amend the settlement agreement between the appellant and the third respondent, and the final account attached to the supplementary answering affidavit of 23 May 2019 are disallowed;*

   iii. *Ordered the appellant to pay the cost of the application."*

[2] The matter has a long and protracted history and was before Court on numerous occasions before now, to wit, before Dippenaar J on 3 December 2019, before Fisher J on 4 May 2023 and before Yacoob J on 9 October 2023.

[3] Herein the parties are referred to throughout as they appear in this appeal.

[4] The first respondent and the third respondent *("the respondents")* were divorced on 8 February 2017, by order of this Court with incorporation of a settlement agreement *("the settlement agreement")*. The respondents were married out of community of property with the inclusion of the accrual system. The appellant was appointed to determine the accrual pursuant to being nominated by the Second respondent for this purpose.

[5] The appellant made some interim payments to the respondents. Aggregate payments in the amount of R 80 000.00 were made to the first respondent

and on 2 February 2018 an amount of R 385 000.00 was made to the third respondent.

Dippenaar J Judgment

[6] The third respondent launched an application before Dippenaar J during November 2018, complaining that the appellant investigated requests by the first respondent for interim payments but did not investigate the request for payment by the third respondent before paying the amount of R 385 000.00 to her. He further complained that the appellant was bias against the third respondent, which according to him became clear from the interactions between the parties.

[7] The application was for the removal of the appellant and the appointment of a new referee and an amendment to the order aimed at the instruction for the newly appointed referee to conduct certain investigations and report his findings to the Court.

[8] The reasons for the application that resulted in the Dippenaar J judgment is set out in the judgment as follows:

"The basis of the application is that the first respondent has breached fiduciary obligations by acting with bias in favour of the third respondent, has failed to conduct his obligations as a referee and receiver with reasonable care, diligence and skill and has acted in an unreasonable and irregular manner outside the ambit of his powers as he has exceeded his powers as referee appointed under sec 19bis of the Supreme Court Act as referee and exceeded the powers afforded to him under the settlement agreement."

[9] The appellant opposed the application on the following grounds:

[8.1] the appellant was not appointed as referee but as liquidator and receiver;

[8.2] the application is moot as the appellant has completed his account as envisaged by clause 14.3.9 of the settlement agreement;

[8.3] the first respondent has misconceived his recourse as he should have challenged the account if he was dissatisfied with it and not apply for the removal of the appellant;

[8.4] the grounds relied on for the removal of the appellant is disputed.

[10] The Court found that the appellant, who was appointed as a referee who exceeded his powers according to the first respondent, was appointed as a liquidator and receiver and that the appellant had not exceeded his powers. The Court further found that the nature of a liquidator such as the appellant is thus that of a curator. He is an officer of the court and not a representative of one of the parties and has certain fiduciary duties.

[11] It was further found that the appellant has not illustrated bias towards the first respondent.

[12] Dippenaar J ordered as follows:

[12.1] directed the appellant to provide the first and third respondents before 31 January 2020, with a comprehensive accounting report, inclusive of supporting vouchers and explanations for all steps taken and payments made, pertaining to his appointment as liquidator in terms of clauses 12 and 14 of the settlement agreement;

[12.2] the appellant is directed and authorised to file a copy of his report referred to in [12.1] as part of the papers in that application, accompanied by an affidavit, if deemed necessary;

[12.3] the appellant is directed to allow the first and third respondents a period of 15 days to debate the account with him and to raise any objections to the account and determine any objections within 15 days of receipt thereof;

[12.4] the parties were granted leave to supplement their papers and/or amend the relief sought within 15 days of final debatement of the account or determination of any objections raised;

[12.5] pending the final determination of this application, the appellants discharge from office and his entitlement to charge fees and disbursements is stayed;

[12.6] the remainder of the application is postponed sine die;

[12.7] the costs are reserved.

Fischer J Judgment

[13] The court ordered:

[13.1] The application is postponed sine die;

[13.2] The appellant is allowed the opportunity to file a supplementary affidavit dealing with the full account of the pension assets issue, including whether any withdrawals have been made therefrom and whatsoever other explanations he might see fit to make for his repeated failure to give an accounting in relation to these pension assets;

[13.3] The wasted cost of the postponement is to be borne by Mr Lacy [appellant] in his personal capacity on the scale as between attorney and client

Yacoob J Judgment (this Appeal) [14]

The court ordered:

[14.1] The first respondent[appellant] has not satisfactorily carried out his fiduciary duties in this matter.

[14.2] The first respondent's[appellant] fees and disbursements associated with the preparation of his first interim account, the attempt to amend the settlement agreement between the applicant [first respondent] and the third respondent, and the final account attached to the supplementary affidavit of 23 May 2019 are disallowed.

[14.3] The first respondent[appellant] is to pay the costs of this application.

This Appeal

[15] The finding of the Court *a quo* that the appellant has not satisfactorily carried out his fiduciary duties does not necessarily mean that the appellant breached his fiduciary duties. To determine if the appellant was merely incompetent or whether he breached his fiduciary duties regard must be had to what constitutes a breach of fiduciary duties. In this regard the Court was referred to case law by the counsel of the appellant*. Millett LJ (as he then was) stressed this axiom in* *Bristol and West Building Society v Mothew (t/a Stapley & Co) [1998] 1 Ch*

1, [1996] 4 All ER 698 (CA) at p.712 (All ER), *noting that 'The various obligations of a fiduciary merely reflect different aspects of his core duties of loyalty and fidelity. Breach of fiduciary obligation, therefore, connotes disloyalty or infidelity. Mere incompetence is not enough. A servant who loyally does his incompetent best for his master is not unfaithful and is not guilty of a breach of fiduciary duty'.* It seems that mere incompetence does not constitute the breach of fiduciary duty, which entails something materially different from the negligent discharge of his or her functions by a person in a fiduciary position. It then follows that a finding that the appellant has not satisfactorily carried out his fiduciary duties, does not constitute or equate to a finding that the appellant breached his fiduciary duties.

[16] If this is the case, there would be no basis of finding that the appellant's fees be disallowed, even if the Court *a quo* had the power to disallow such fees. In this regard the Court was referred to the matter of Standard Bank of South Africa v The Master of the High Court and Others 2010 (4) SA 405 SCA

("Standard Bank"). In the Standard Bank matter the liquidators were in breach of their duties, by using company monies for personal interest and not for the benefit of the company. It also states that in terms of section 394(7) of the

Companies Act "*The Master may reduce or increase such remuneration if in his opinion there is good cause for doing so, and may disallow such remuneration either wholly or in part on account of any failure or delay by the liquidator in the discharge of his duties.'* and "*Bearing in mind what is set out in the preceding paragraph I am not of the mind to impose a penalty in terms* *of s 394(7) of the CA. However, having regard to the nature and gravity of the misconduct, considering the protracted, costly and unnecessary litigation engaged in by Nel and De Villiers, and taking into account what can rightly be demanded of liquidators, it is my view that they should be deprived of 5 per cent of their fee. The Master was requested to disallow or reduce their remuneration and refused to do so."* This bears the question – did the court a quo have the power to disallow the fees of the appellant or is this in the power of the Master of the High Court.

[17] The counsel of the first respondent also referred the Court to the Standard Bank matter and more specifically:

"A liquidator would be failing in his duties under the Act if he refrains from embarking on an investigation when it would have been judicious for him to have done so (Moolman v Builders & Developers (Pty) Ltd (in provisional liquidation)

[18] In the Dippenaar J Judgment it was stated that the appellant is appointed as a liquidator and the remuneration of the appellant is provided in the Administration of Estates Act 66 of 1965. *("AE Act")* Section 84(1) and Section 84(2) of the AE Act provides:

"84(1)

(1) Every tutor and curator shall, subject to the provisions of subsection (2), be entitled to receive out of the income derived from the property concerned or out of the property itself-

(a) Such remuneration as may have been fixed by any will or written instrument by which he has been nominated; or

(b) If no such remuneration has been fixed, a remuneration which shall be assessed according to a prescribed tariff and shall be taxed by the Master"

(2) The Master may-

(a) If there are in any particular case special reasons for doing so, reduce or increase such remuneration; or

(b) If the tutor or curator has failed to discharge his duties or has discharged them in an unsatisfactory manner, disallow any such remuneration, either wholly or in part"

[19] These are powers conferred on the Master by the AE Act. In my view, the powers of disallowing or allowing fees is conferred on the Master and these powers are not vested in the Court. If regard is had specifically to Section 84(2), it is very clear that the legislator and the EA Act as a result, conveys on the Master the powers to increase, decrease and disallow the fees of a liquidator.

[20] The first respondent's counsel contended that the appellant stated in his supplementary affidavit "*…This is therefore an aspect for determination by this Honourable Court and the Taxing Master thereafter should the Honourable Court agree that I am entitled to remuneration and that such remuneration is to be taxed……"* This argument does not hold any water as it is trite that the Court can not give preference to what is stated by a person over what is provided for by the EA Act as to how the law must be applied.

[21] In the Standard Bank matter the Court SCA stated that:

"[136] Bearing in mind what is set out in the preceding paragraph I am not of the mind to impose a penalty in terms of s 394(7) of the CA. However, having regard to the nature and gravity of the misconduct, considering the protracted, costly and unnecessary litigation engaged in by Nel and De Villiers, and taking into account what can rightly be demanded of liquidators, it is my view that they should be deprived of 5 per cent of their fee. The Master was requested to disallow or reduce their remuneration and refused to do so."

[22] Again it is clear that the Master had been requested to disallow the fees of the liquidators in the Standard Bank matter and refused to do so. Only after the Master already refused to do so did the Court state that the Court is of the view that 5% of the fees should be disallowed. This was in a matter where there had been misappropriation of monies and gross misconduct of fiduciary

duties. Yet the Court was of the view that 5% of the fees is to be disallowed and only after the Master refused to do so.

[23] The AE Act provides in section 83: *"(1) Every tutor or curator shall-*

(a) *On or before the date in every year which the Master may in each case determine, lodge with the Master a complete accounting in the prescribed form of his administration during the year ending upon a date three months prior to the date so determined supported by vouchers, receipts and acquittances and including a statement of all property under his control at the end of such last – mentioned year, and if he carries on any business or undertaking in his capacity as tutor or curator, also a statement relating to such business or undertaking; and*

(b) *If required to do so by the Master by notice in writing, produce, within a period specified in the notice, for inspection by the Master or by any person nominated by him for the purpose, any securities held by him as tutor or curator"*

[24] In my view it is clear that the Court has the powers to review the decision of the Master regarding the fees of a liquidator. This would entail that the Master must be the port of first call for the fees to be reduced, increased or disallowed and then only does the Court have the power to review such decision. In the matter on appeal the Court a quo did not have the power to disallow the fees of the appellant at first instance.

[25] It is noteworthy that according to the Fischer J judgment the only outstanding issue seemed to be that the appellant had to give the full account of the pension assets issue, including whether any withdrawals have been made therefrom and whatsoever other explanations he might see fit to make for his repeated failure to give an accounting in relation to these pension assets.

[26] It is stated further in the Yacoob J judgment that:

"I am of the view that the first respondent's [appellant] mandate has in fact been completed, and that the applicant [first respondent] has other remedies

to deal with any dissatisfaction that results from the outcome of the process. There is nothing to be gained from removing the first respondent [appellant] and causing a new referee to determine and distribute the difference in accrual which resulted from the existence of the marriage." The relief asked for by the first respondent who was the applicant in the Court a quo, at least in this regard was not granted and it has been stated since the Dippenaar J judgment that such relief is moot.

[27] Yacoob J goes further:

"*The passage through the courts*

20 The application was first set down for hearing in the opposed motion court in November 2019. In a written judgement, Dippenaar J found, amongst others that there was merit in the contention that the final account was only prepared so that he could argue the application was moot and to avoid scrutiny of his conduct, and that the first respondent had not properly explained his conduct. Finding that there were insufficient facts to determine the question, she directed the first respondent to provide a comprehensive accounting report, and that the applicant and third respondent be permitted to challenge the report. She also permitted that the papers be supplemented and reserved costs.

21. In August 2022 the applicant attempted to amend the relief sought, to simply ask the first respondent to file an interim liquidation and distribution account, a report of what had been done, and certain information regarding the third respondent's finances. The amended notice of motion was filed shortly before the matter was set down on the opposed roll, and resulted in a postponement. The applicant was ordered to file an affidavit setting out why he should not have to pay cost, and in that affidavit withdrew the purported amendment and tendered cost of

the postponement. His reason was that he had received poor legal advice, I do not venture assessment of the attempt to amend.

22. *The third time the matter was set down on the opposed motion roll was in may 2023. Fischer J in her judgment noted that the first respondent continued to asset that he has no obligation to investigate or account in relation to the third respondent's pension fund assets. In fact, contrary to the finding of Dippenaar J. he continued and still continues to assert no obligation to investigate at all.The first respondent requested yet another opportunity to deal with the matter properly. He was indulged because of the seriousness of the failure to comply of a court order. He was ordered to pay the costs because of his approach to the matter. He was ordered to file an affidavit dealing in particular with the third respondent's pension fund assets.*

Assessment of the third respondents further explanations

23 *None of the first respondent's three supplementary affidavits show that he has taken heed of the judgments of this court. He continues to assert that he had no duty to investigate, and that he did not have to explain the basis on which he paid the third respondent such a hefty advance. He appears to resent being called upon to account, either to the court or to the parties, for his conduct. He does finally show some explanation of the manner in which he assessed the third respondent's assets, but still maintains, somehow, that there is no obligation on him. It still remains a mistery why he felt it necessary to scrutinise the applicant's [first respondent] and not those of the third respondent.*

24 *The fact that the respondent continues to merely assert his position, without providing a proper basis for that assertion, and that much of his conduct still remains a mystery leads to the unavoidable conclusion that there is no proper basis for that conduct. He is therefor, at the very least, liable for the costs of this matter.*

25 *The respondent's [appellant] entitlement to fees is also still to be determined, as that question was stayed by by Dippenaar J. It is clear that the respondent [appellant] was not sufficiently diligent in fulfilling his duties, and that he did certain things either without properly*

considering the issues, or even for his own interest. In particular, the first interim calculation which was, with no explanation, prepared before he had seen the antenuptial contract. Similarly, the attempt to get the applicant [first respondent] to sign an amendment to the settlement agreement, had absolutely no justification in the context of this matter. Finaly the socalled final account was clearly prepared in his own interest so that he could avoid the consequences of this application. It has already been found not to be a proper account. I do not consider that the first respondent [appellant] should be entitled to fees for those activities.

26 As I have mentioned above, there is nothing to be gained by removing the first respondent [appellant], as he has now finally completed his mandate, and if the applicant is unhappy with the outcome he has other remedies available to him."

[28] It is clear that the court a quo misdirected itself in respect of what constitutes a breach of fiduciary duties as well as to whether the Court has the power as the port of first call to decrease, increase or disallow the fees of a liquidator.

[29] I am therefor of the view that the Court a quo misdirected itself in the judgment appealed against herein and I make the following order:

[1] the appeal is upheld with costs.

[2] the order of the Court a quo is hereby set aside and replaced with the following order:

a. The application is dismissed;

b. The appellant's [first respondent in the Court a quo] fees are to be referred to the Master of the High Court for taxation and assessment;

c. the first respondent [applicant in the Court a quo] is to pay the costs of the application.

M KRŰGER

ACTING JUDGE OF HIGH COURT
GAUTENG DIVISION

Date of hearing: 10 September 2025

Date of judgment: 10 February 2026

For the Appellant : Adv Y Alli

Instructed by : Moss March & Georgiev

For the First Respondent : Adv KT Kgole

Instructed by : Mafenya Attorneys