



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

CASE NO: 2025-206267

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|-----|----------------------------------|
| (1) | REPORTABLE: YES |
| (2) | OF INTEREST TO OTHER JUDGES: YES |
| (3) | REVISED. |

10 April 2026

Date

K. La M Manamela

In the *ex parte* application of:

NICO JOHN MOORCROFT

First Applicant

and

ADRI MOORCROFT

Second Applicant

SUMMARY: Insolvency Law – rehabilitation in terms of section 124(3) of the Insolvency Act 24 of 1936 ('the Act') on the ground that no claims have been proven against the estate – six concurrent creditors listed in the applicants' statement of affairs – no proof that a meeting of creditors has been held - applicants based their application on section 124(3) despite being informed by the provisional trustees that the Master had not yet convened the first meeting of creditors – the provisional trustees furnished a report stating that: no claims were proven or submitted against the estate and no facts for the application to be declined or rehabilitation qualified – a trustee has to direct report to the Master, not the Court – Master's report noting that the application is based on s 124(3) and stating that the applicants qualify for rehabilitation based on the provision - Master did not state whether a meeting of creditors has been held – Court requesting counsel to address concerns by way of written submissions filed after the hearing - rehabilitation is possible without the first meeting of creditors being held only in terms of section 127A of the Act (i.e. rehabilitation through effluxion of time) – although s 124(3) of the Act does not expressly require that a first meeting of creditors be held, it clearly presupposes that a meeting of creditors has been convened at which creditors could have proven claims – s 124(5) of the Act is similarly constituted - tenets of interpretation from *Natal Joint Municipal Pension Fund v Endumeni Municipality* used - the Master could have been compelled to comply – that the Master and the provisional trustees supported

rehabilitation or that the application is not opposed by creditors or anyone does not affect the discretion of the Court, to be exercised judicially and not arbitrarily - the application postponed to a specified date for the Master to file a supplementary report – the Master to also furnish reasons why the Master should not be held liable for wasted costs due to non-disclosure on the first meeting of creditors

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge’s secretary. The date of the judgment is deemed to be **10 April 2026**.

JUDGMENT

Manamela, J

Introduction

[1] This is an application for rehabilitation of Mr Nico John Moorcroft and Mrs Adri Moorcroft (‘the applicants’ or ‘the Moorcrofts’) in terms of section 124(3)¹ of the Insolvency Act 24 of 1936 (‘the Act’) on the ground that no claims have been proven against their insolvent joint estate. The applicants are married to each other in community of property. Their joint estate was sequestrated through the order of this Court granted on 27 October 2022 following their voluntary surrender application.

¹ Section 124(3) of the Insolvency Act 24 of 1936 reads as follows: ‘[a]fter the expiration of a period of six months as from the sequestration of an estate, the insolvent concerned may apply to the court for his rehabilitation-

- (a) if he has, not less than six weeks before making the application, given to the Master and to the trustee, if any, of his estate notice in writing, and published in the *Gazette* a notice of his intention to make the application; and
- (b) if, at the time of making the application, no claim has been proved against his estate; and
- (c) if he has not been convicted of an offence mentioned in paragraph (c) of subsection (2); and
- (d) if his estate was not sequestrated under any law prior to the sequestration which he desires to end.’

See, generally, André Boraine, Jennifer A Kunst and David A Burdette (eds), *Meskin’s Insolvency Law* (LexisNexis, November 2025) (‘*Meskin’s Insolvency Law*’) par 14.3.1.3 and Eberhard Bertelsmann and others, *Mars: The Law of Insolvency* 10th Ed, 2019 (‘*Mars: The Law of Insolvency*’) at 25.4.3; RD Sharrock, ‘Insolvency’ in *The Law of South Africa (LAWSA)* (LexisNexis 2008) (‘*Sharrock LAWSA*’) at 465 on the provision.

[2] This application for rehabilitation came before me in the Insolvency Motion Court on 13 February 2026. Mr RP Loibner appeared for the applicants. I raised during the hearing a few issues of concern. In the main, I was concerned that rehabilitation is sought on the basis that no claims have been proven against the applicants' joint estate without proof that a meeting of creditors has been held in terms of the Act.

[3] For, I couldn't imagine any other way a creditor could be said not to have proven a claim against an insolvent estate without such opportunity being availed to her by way of a meeting of creditors. In my view, a meeting of creditors (where claims may be proved) is the *sine qua non* (an indispensable condition)² for reliance on section 124(3) of the Act. Mr Loibner for the applicants, even at that stage, appeared to hold a different view. I reserved this judgment to afford him an opportunity to address the issue by way of post-hearing written submissions. This was done on 23 February 2026. I am grateful to counsel for the comprehensive submissions filed.

Brief background

[4] A brief background is necessary to lay out a chronology of events or activities from the date of the sequestration order granted by the Court in October 2022 onwards. These events will provide the necessary context for the discussion to follow, below. But here and there I would add a comment to a particular issue even at this background stage.

[5] On 3 June 2022, the applicants completed – under oath – a statement of their affairs, as debtors, required to be lodged with the Master and, in their case, also with the office of the magistrates of the district prior to the hearing of the voluntary surrender application.³ The cause

² VG Hiemstra and HL Gonin, *Trilingual Legal Dictionary* (3rd edn, Juta 1992).

³ Section 4(3)-(6) of the Act.

of the applicants' insolvency was captured (quoted *verbatim*) as follows in the statement of affairs, which is also annexed to the current application:

- a. Our financial problems developed over a period of time, mostly as a result of unforeseen expenses that we could not finance from our salaries. We took out loans in the hope that we would be able to repay them by living more frugal. When we later realised that we could not keep up with the payments we approached a debt counsellor and placed our estate under debt review.
- b. Initially we could keep up with the payment of our installments. Our situation however took a turn for the worse after my wife lost her job. The loss in income put us in a situation where we defaulted on our payments and the subsequent termination of our debt review. We have now reached a point where we realise that our estate is not only hopelessly insolvent but that there are no reasonable prospect that we will ever be able to repay our debts.⁴

[6] The above clearly confirms that there were – at all material times - creditors with possible claims against the applicants' joint estate. In fact, this is directly confirmed by a list of six concurrent creditors in the applicants' statement of affairs. These creditors include Capitec Bank and Nedbank, then owed R29 116.25 and R176 196.95, respectively, both for monies lent and advanced to the applicants.

[7] The applicants in their own words described their estate as being hopelessly insolvent.⁵ They had to their name no immovable property, but only movables. Their movable assets were in the form of household furniture and appliances, valued at R50 900. They had also entrusted an amount of R17 500 to their then attorneys of record, which formed part of the insolvent estate. Overall, the Court was satisfied that their estate was factually insolvent in that their liabilities exceeded their assets, hence the sequestration order granted by this Division on 27 October 2022.⁶

[8] On 13 June 2024, the Master of the High Court, Pretoria ('the Master') appointed Ms Adele Janine Snyders and Ms Retha Stockhoff, as joint provisional trustees in the applicants'

⁴ Founding affidavit ('FA') annexure 'B' (i.e. statement of affairs), CaseLines ('CL') 007-22.

⁵ Section 6(1) of the Act.

⁶ FA annexure 'A' (i.e. court order), CL 007-11 to 13.

estate. The Master is empowered to appoint provisional trustees, at any time, after a provisional or a final sequestration order is granted, or upon a vacancy arising in that office.⁷ Therefore, it is rather disconcerting to note that it took the Master about 20 months from the date of the sequestration order to appoint the provisional trustees.

[9] On 18 July 2024, the applicants' former attorneys of record wrote to the provisional trustees informing them of final payment made in respect of the movables and requesting for a number of documents, including details of any claims already proven against the applicants' insolvent estate. Notably, this was just over a month after the provisional trustees were appointed by the Master.

[10] The provisional trustees, promptly, on 19 July 2024 informed the attorneys of the unavailability of the requested documents. They also advised them that the Master had not yet convened the first meeting of creditors. To place this in context, I point out that in terms of section 40 of the Act, the Master is responsible for convening the first meeting of creditors immediately upon receipt of a final sequestration order by publishing a notice to that effect in the Government Gazette ('the Gazette').⁸ The purpose of the first meeting of creditors is to allow creditors to prove their claims against the estate and to elect a trustee.⁹ There is no doubt that the Master was in receipt of the final sequestration order when appointing the provisional trustees. The order is referred to in the certificate of appointment issued by the Master on 13 June 2024.¹⁰

[11] In May and September 2025, the attorneys followed up on the documents, previously requested, and on whether the first meeting of creditors has been held.¹¹ In fact, the latter issue

⁷ Section 18(1) of the Act.

⁸ Section 40(1)-(2), read with s 39, of the Act.

⁹ Section 40(1) of the Act.

¹⁰ FA annexure 'C' (i.e. certificate of appointment), CL 007-24.

¹¹ FA annexure 'D' (i.e. correspondences), CL 007-25 to CL 007-28.

was a constant feature in the correspondences between the trustees and applicants' attorneys. There is no doubt that the attorneys enquired about the first meeting of creditors for purposes of the launch of this rehabilitation application. The constant response by the trustees was that the Master is yet to convene the meeting.

[12] On 28 November 2025, a notice to apply for rehabilitation (on 13 February 2026) was published by the applicants in the Gazette. In the notice, the applicants made it clear that they would be bringing their application in terms of section 124(3) of the Act.

[13] On 1 December 2025, the applicants – again, through their attorneys - gave notice to the Master and the trustees of their intention to apply for rehabilitation. In the letter to the Master, the attorneys requested the Master to furnish them with a report. But they did not state in the letter that the intended application will be based on section 124(3). In fact, they disclosed no ground or statutory provision to be relied upon for the application. The Master is required to furnish a report to the Court at the hearing of a rehabilitation application.¹² In practice, as done in this matter, the Master makes the report available to the applicant or the attorneys to include in the papers to serve before the Court, when the application is heard.

[14] Ms Stockhoff, as the provisional trustee 'dealing with the administration of the insolvent estate' of the applicants, furnished a report to the applicants, ostensibly, also on behalf of her joint provisional trustee, Ms Snyders. The report is undated, but appears to have been uploaded on the CaseLines filing platform of the Court on 13 February 2026. This was the date of the hearing of this application. The material part of the report reads as follows:

1. I have received notification from Herman Esterhuizen Smalman Attorneys in terms of Section 124 of the Insolvency Act, Act No. 24 of 1936 (as amended) that the insolvent intends to apply for rehabilitation and I would like to comment on the application as follows:
 - 1.1 No claims were proven or submitted against the estate;

¹² Section 127(1) of the Act.

1.2 The insolvents gave their full co-operation.

2. I place herewith on record that in terms of Section 124 of the Insolvency Act I am not aware of any facts on which this Honourable Court can extend, decline or disqualify this application for rehabilitation.
3. There are no further facts that we wish to bring to the attention of this Honourable Court and will abide the decision of the Honourable Court.¹³

[underlining added]

[15] It is notable that the provisional trustees purported to inform ‘this Honourable Court’ of their unawareness of any facts upon which the Court ‘can extend, decline or [qualify] this application for rehabilitation’. The provisional trustees do not have the powers they purported to exercise in this regard, let alone direct their report to the Court. I am even overlooking the fact that they are still only provisional trustees. I will return to this below, including on the provisional trustees’ assertion in their report that no claims have been proven against the applicants’ insolvent estate.

[16] The Master appears to have already furnished her report to the applicants on 9 February 2026, being four days before the hearing of this application. The material part of this report (quoted *verbatim*) is the following:

3.

The applicants does comply in full with the requirements as set out in **Ex Parte Burroughs 1965(2) SA 640 (T)** and I have received sufficient notice of their intention to apply for rehabilitation as required by section 124(2) (a) of the Insolvency Act 1936 (Act 24 of 1936).

4.

It is prudent to note that I did receive the trustee's report in terms of Section 124(4) of the Insolvency Act, 24 of 1936 (as amended) wherein they confirmed that they see no reason why the said application should be refused, postponed or and qualified.

5.

According to my records the applicants’ does qualify to apply for rehabilitation in terms of section 124(3).

- a) A period of 3 years has expired as from date of sequestration of the estate.
- b) There are no creditors who proved claims against the estate as to date.
- c) According to my records the applicants have not been convicted of an offence mentioned in paragraph B or C of subsection 124(2) of Act 24 of 1936, as amended.
- d) The estate of the applicants’ was not sequestrated under any law prior to the

¹³ FA annexure ‘I’ (i.e. trustees’ report), 007-37.

sequestration which they desire to end.

6.

I have no further information which may be of assistance to the Honourable Court and abide by the decision of the Honourable Court.¹⁴

[underlining added, save for the first instance]

[17] The Master's report, for all intents and purposes, ought to be based on the trustee's report. Section 124(4) of the Act enjoins a trustee – after receipt of a notice of a debtor's intention to apply for rehabilitation under section 124(1)-(3) of the Act - to 'report to the Master any facts which in [her or his] opinion would justify the court in refusing, postponing, or qualifying the insolvent's rehabilitation'.¹⁵ The trustee's report should be directed to the Master not the Court.¹⁶ The trustee's report would, undoubtedly, assist the Master in making her own report.¹⁷

[18] On 13 February 2026, this matter came before me in the Insolvency Motion Court. As stated above, I expressed some concerns regarding the absence of proof that a meeting of creditors has been held. I turn my attention to the concerns raised.

Concerns raised by the Court

[19] To recap: this application for rehabilitation is premised on section 124(3) of the Act.¹⁸ In terms of this provision an insolvent debtor may apply for her rehabilitation, primarily, on the basis that no claims have been proven against her insolvent estate.¹⁹

¹⁴ FA annexure 'E' (i.e. Master's report) dated 9 February 2026, CL 10-2.

¹⁵ *Meskin's Insolvency Law* par 14.3.4.

¹⁶ Par [14] above.

¹⁷ *Meskin's Insolvency Law* pars 14.3.3-14.3.4.

¹⁸ Footnote 1 above for a reading of s 124(3) of the Act.

¹⁹ *Ibid.*

[20] I consider it trite that the venue at which creditors may prove their claims against an estate is a meeting of creditors of the estate.²⁰ This may be in the form of the first,²¹ second²² or a special²³ meeting of creditors. For current purposes, only the first meeting of creditors is relevant. To avoid doubt, a special meeting of creditors can only be convened after the second meeting of creditors has been held.²⁴

[21] The Master convenes the first meeting of creditors.²⁵ No first meeting of creditors appears to have been held in the insolvent joint estate of the Moorcrofts, the applicants in this matter. Therefore, the creditors have not yet had an opportunity to prove claims against the estate.

[22] Rehabilitation is only possible without the first meeting of creditors being held in terms of section 127A of the Act providing for automatic (i.e. without the involvement of the court) rehabilitation through effluxion of time, after a lapse of a period of 10 years from the date of sequestration. All other instances of rehabilitation by the court in terms of section 124 of the Act are possible after the first meeting of creditors has been held.

[23] In addition to the proof of creditors' claims, the first meeting of creditors is vital for another reason: the election of a trustee (i.e. a final trustee).²⁶ Provisional trustees, as with Mesdames Stockhoff and Snyders (i.e. the joint provisional trustees), are not elected at a

²⁰ *Meskin's Insolvency Law* par 9.2.2; *Mars: The Law of Insolvency* pars 18.1 and 18.3.4.

²¹ Section 40(1)-(2) of the Act. See also *Mars: The Law of Insolvency* par 17.2.2; *Meskin's Insolvency Law* par 7.1.

²² Section 40(3) of the Act. See also *Mars: The Law of Insolvency* par 17.2.3; *Meskin's Insolvency Law* par 7.2.

²³ Section 42 of the Act. See also *Mars: The Law of Insolvency* par 17.2.4; *Meskin's Insolvency Law* par 7.4.

²⁴ *Ibid.*

²⁵ Section 40(1)-(2) of the Act.

²⁶ Section 40(1) of the Act.

creditors' meeting, but appointed by the Master in terms of a prevailing policy, as determined by the Minister.²⁷

[24] Bearing in mind all these, I was concerned when hearing this matter that, despite the Court being urged by all concerned to grant an order for the rehabilitation of the applicants, there is clear non-compliance with the provisions of the Act. As already indicated, I reserved this judgment to allow counsel for the applicants to address the relevant issues by way of written submissions, after the hearing. I, now, turn to counsel's post-hearing submissions.

Submissions on behalf of the applicants

[25] Mr RP Loibner, as already stated, appeared for the applicants at the hearing. He, gratefully, furnished brief, but comprehensive, written submissions after the hearing to address the concerns of the Court regarding, primarily, the absence of the first meeting of creditors. The submissions by counsel included what appears next.

[26] Mr Loibner, firmly, submitted that the jurisdictional requirements under section 124(3) of the Act were met.²⁸ In his view the provision does not require that a first meeting of creditors should have been convened before an applicant can apply for rehabilitation. This, he concluded, is not a substantive requirement for rehabilitation under section 124(3).

[27] Counsel, further, submitted that the Master is enjoined by section 40(1) of the Act to convene the first meeting of creditors immediately upon receipt of a final sequestration order. But, the Master has failed to do so for over three years since the order. The failure constitutes only a procedural irregularity and omission not attributable to the applicants. But this, counsel concluded, should not prejudice the applicants or bar them from the relief sought.

²⁷ Section 18(1) of the Act.

²⁸ Footnote 1 above on a reading of s 124(3) of the Act.

[28] Another contention on behalf of the applicants is that, despite being aware that no first meeting was held, both the Master and the provisional trustees filed reports in support of the rehabilitation. This, it is submitted, confirms that the Master deemed the absence of a first meeting not dispositive of the relief sought. Equally, the provisional trustees, ‘who [act] on behalf of the body of creditors and not on behalf of the applicants’, has not objected to the rehabilitation of the applicants. In fact, they clearly stated that they are not aware of any facts upon which the Court could ‘extend, decline or [qualify] the rehabilitation’, counsel’s submission concluded.

[29] Counsel, also, found it apposite to submit that the provisional trustees stated that no claims were ‘submitted’ against the estate. This, it is suggested, is telling given that a period of more than three years has elapsed since sequestration of the applicants’ estate. Also, no creditor or other person has opposed the application for rehabilitation, despite publication of a notice in the Gazette that the applicants would apply for same. This creates a distinct impression that the creditors have no interest in the estate. Therefore, to convene a first meeting of creditors at this late juncture would serve little practical purpose, counsel surmised.

[30] Overall, counsel submitted that the Court should exercise its wide discretion in determining an application for rehabilitation, judicially on the facts of this matter, to grant rehabilitation of the applicants.

Issues to be determined

[31] I am satisfied that the main palpable hurdle to the applicants’ quest for rehabilitation is the absence of proof of the first meeting of creditors. This appears necessary to support the ground upon which their rehabilitation is based that no claims have been proven against their estate. Therefore, this is the primary issue for requiring determination. And the rest of the issues, particularly those arising from counsel’s submissions above, are ancillary.

[32] In the latter category of issues to be discussed, I consider the following as requiring the attention of the Court: (a) whether section 124(3) of the Act requires that a first meeting of creditors ought to have been convened; (b) the implications of the Master's failure to convene the first meeting; (c) the effect, if any, of the support by the Master and the trustees of this application; (d) other issues, such as the alleged lack of interest by the creditors in the administration of the insolvent estate, and (e) the discretion exercisable by the Court in rehabilitations. These are just baskets of issues to be discussed and the discussion may yield more issues. Also, due to interlinkages between some of the issues, such issues would be discussed jointly.

Does section 124(3) of the Act prescribe a first meeting of creditors?

[33] This is a question arising from the principal submission by counsel that section 124(3) of the Act does not require that a first meeting of creditors should have been held for an applicant to peg her rehabilitation on this provision. Counsel's ancillary submission in this regard is that the absence of the first meeting does not bar an applicant from rehabilitation.

[34] The approach by counsel to section 124(3) - with respect – appears to be placing the proverbial cart before the horse. The approach appears not to comport with the mechanism or remedy of rehabilitation. Rehabilitation is both forward- and backwards looking. For, it requires of the Court to consider: (a) what took place before that led to sequestration constraining the subsequent economic life of the insolvent applicant and (b) whether the applicant deserves to be rehabilitated, so as to participate in future economic life unconstrained by the insolvency.

[35] The notion of a historical approach or my so-called 'backwards-looking' in rehabilitations concerns the cause or reasons for the insolvency and the subsequent administration of the insolvent estate. The latter includes the conduct of the unrehabilitated

insolvent. The trustees are required to report to the Master on the facts which ‘would justify the court in refusing, postponing, or qualifying the insolvent's rehabilitation’.²⁹ It is little wonder that the trustees stated that the applicants, as insolvents, ‘gave their full co-operation’,³⁰ whatever this really means. At a higher level, the impugned conduct, potentially inimical to the grating of rehabilitation, may be in the form of fraudulent acts in relation to the insolvency or offences or concealment of books or assets or liabilities.³¹ Section 124(3) requires that the applicants in this matter be cleared of these malfeasances to qualify for rehabilitation.³² The Master, notably, cleared the applicants in this regard.

[36] The other leg of the historical approach to rehabilitations concerns the administration (of the insolvent estate) process itself. Section 124, as the enabling provision for rehabilitations, directly or indirectly considers aspects in the administration process, including composition or compromise (between the insolvent and her proven creditors);³³ confirmation of a liquidation and distribution account;³⁴ confirmation of a distribution plan providing for full payment of claims,³⁵ and proof of claims of creditors.³⁶ The latter is relevant to this application based on section 124(4) and an application based on section 124(5) of the Act. Section 124(5) provides for rehabilitation on the ground that all claims proven against the estate have been paid.

²⁹ Section 124(4) of the Act.

³⁰ Par [13] above.

³¹ Section 124(2)(c), read with ss 132 to 133, of the Act.

³² Section 124(3)(b), read with s 124(2), of the Act.

³³ Section 124(1), read with s 119, of the Act.

³⁴ Section 124(2)(a)-(b) of the Act.

³⁵ Section 124(5) of the Act.

³⁶ Section 124(2), (3) and (5) of the Act.

[37] The forward-looking approach in rehabilitations involves a consideration whether the insolvent is a fit and proper person to be allowed back into an unrestricted future economic life, as a rehabilitated insolvent.³⁷

[38] Bearing all these in mind, the court seized with a rehabilitation application may even postpone such application, including one premised on section 124(3),³⁸ to ensure compliance. This principle forms part of the discretion of the Court, to be discussed below.

[39] To directly answer the question under this part, being whether section 124(3) of the Act prescribes that a first meeting of creditors be held, my answer is an emphatic yes. I agree that section 124(3) does not contain express words to that effect. But, the provision clearly presupposes that a meeting of creditors - at which creditors would have had the opportunity to prove claims - was convened. This is not unique to section 124(3). Section 124(5) is of similar constitution.³⁹ Whilst under section 124(3) no creditors would have proven claims, despite the appropriate meeting having been convened, under section 124(5) all creditors who proved claims (at a meeting held for that purpose) would have been paid. The latter, also, presupposes the convention of a meeting of creditors without expressly stating so.

[40] Therefore, although there is no literal requirement (that a meeting be held) under 124(3), as in section 124(5), the tenets of interpretation of legislation or other documents authoritatively urged upon by the Supreme Court of Appeal in *Natal Joint Municipal Pension*

³⁷ *Ex parte Purdon* (53894/2013) [2014] ZAGPPHC 95 (24 January 2014) [15]; *Van Zyl NO and Others v Mulaudzi and Others* (29047/2015) [2025] ZAGPPHC 1302 (28 November 2025) [27]. See also *Ex parte Phillips* 1938 CPD 381 at 384; *Ex parte Fourie* (2867/2008) [2008] ZAKZHC 45; [2008] 4 All SA 340 (D) [45], [47]. See further *Meskin's Insolvency Law* par 14.4.1.

³⁸ *Ex parte Snooke* 2014 (5) SA 426 (FB) [43], [54]-[55] where the Court was not satisfied with the trustee's report for the second meeting of creditors and directed the trustee to convene a special meeting of creditors for the late proof of creditors' claims, whilst postponing the rehabilitation application. See also *Mars: The Law of Insolvency* at 25.4.3; 25.10.1

³⁹ Section 124(5) reads as follows in the material part: '[a]t any time after the confirmation by the Master, of a plan of distribution providing for the payment in full of all claims proved against an insolvent estate, with interest thereon from the date of sequestration ... and of all the costs of sequestration, the insolvent concerned may apply to the court for his rehabilitation'.

*Fund v Endumeni Municipality*⁴⁰ denotes, among others, that there be preference to a ‘sensible meaning’ rather than ‘one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document’.⁴¹

[41] The interpretation of section 124(3), urged upon by the applicant’s counsel, would insensibly qualify any insolvent – irrespective of her circumstances - for rehabilitation after a period of six months from sequestration without claims being proven against her estate due to the fact that no meeting of creditors has been convened. This – in the most part - would be taking advantage of the Master’s shortcomings, as opposed to the absence of proved creditors’ claims.

[42] But the answer may actually lie elsewhere. For the applicants to rely on section 124(3) and convincingly inform the Court that no claims have been proven against their estate, they ought to have satisfied themselves that this is so. Part of their task in this regard would be in the form of a review of the relevant records as kept by the Master or the trustees. What they would be looking for in their search or review of such records would include documents evincing that a meeting of creditors has been held. The best proof of the latter fact is the minutes of such a meeting. The applicants did exactly this in their correspondences exchanged with the provisional trustees prior to launching this application.⁴² These exchanges spanned a period of over a year. This is clear confirmation that the applicants considered proof of such meeting necessary for their application.

⁴⁰ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (16 March 2012).

⁴¹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) [18].

⁴² Pars [9]-[11] above.

The implications of the Master's failure to convene the first meeting of creditors

[43] Other submissions on behalf of the applicants are to the effect that the omission or failure by the Master to convene the first meeting of creditors is not attributable to the applicants. It is also said that this constitutes a procedural irregularity. I immediately reject this. This is not a formal or procedural defect capable of being addressed in terms of the provisions of section 157.⁴³

[44] There are many role-players in the process of administration of insolvent estates. They include trustees, the Master, the court and the creditors. Their respective roles are determined by the Act or the insolvency law in general. When one of these role-players has not fulfilled her respective role there is a resultant weakness or break in the chain of administration. We see it in this matter, in the one respect, in the Master having appointed the provisional trustees almost two years after the order of sequestration and, another respect, being the Master's apparent total failure to convene the first meeting of creditors. But, it would not be proper to simply proceed as if there has been proper administration or compliance with the Act or the law, because calling for compliance would be prejudicial to innocent third parties, such as the applicants in this matter, as consumers of the Master's services.

[45] There is a recent comparison or example in this regard. Just over a year ago, this Division, dealt with several applications for voluntary surrender which were filed without the certificates by the Master confirming that the statements of affairs in the matters lay for inspection, as required by the Act. The Master was said to have refused to furnish the certificates by reason that proof of publication in the Gazette was filed late. This Division, *per*

⁴³ Section 157(1) of the Act provides: '[n]othing done under this Act shall be invalid by reason of a formal defect or irregularity, unless a substantial injustice has been thereby done, which in the opinion of the court cannot be remedied by any order of the court'. See also *Ex parte Snooke* 2014 (5) SA 426 (FB) [34]-[37] on instances of formal defects within the purview of s 157(1) of the Act.

Kubushi J, ordered the Master to issue the certificates.⁴⁴ It did not just proceed to grant relief, whilst ignoring the material non-compliance, because the applicants were blameless.

[46] Therefore, it is not about an appropriation of blame or a determination of who is at fault, but about compliance with statutory requirements. As for consideration of any prejudice suffered by an interest-bearer, such as the applicants in this instance, that would feature prominently in the remedy the Court is to craft. But such considerations cannot justify the disregard of the law.

Effect, if any, of the support of the application by the Master and trustees

[47] It is further submitted that both the Master and the provisional trustees – in their respective reports - supported the rehabilitation of the applicants. And, that this is the position notwithstanding both offices’ knowledge that the first meeting of creditors has not been convened.

[48] I reiterate that the Act does not require a trustee to report to the Court in respect of applications for rehabilitation.⁴⁵ A trustee’s report (on ‘any facts which in [her] opinion would justify the court in refusing, postponing, or qualifying the insolvent’s rehabilitation’)⁴⁶ is to be directed to the Master and, in turn, the Master reports to the Court.⁴⁷ The Act, though, allows the Master and the trustee, as well as a creditor or other person with interest in the estate, to

⁴⁴ *Ex Parte Nel and Others* (094974/2024; 099273/2024; 103517/2024; 099376/2024; 098532/2024; 094973/2024; 091407/2024; 113545/2024; 113455/2024; 114126/2024) [2025] ZAGPPHC 18 (13 January 2025).

⁴⁵ Actually, an application for rehabilitation under s 124(3) is possible, despite there being no trustee in office. This is foreshadowed by the inclusion of the words ‘if any’ in the phrase ‘the trustee, if any’, contained in s 124(3)(a) of the Act. An insolvent may also invoke s 54(5) of the Act (where the Master does not appoint a trustee, following the non-election of a trustee at a meeting of creditors) and apply to court to set aside the sequestration order. See *Meskin’s Insolvency Law* par 14.3.1.3; *Mars: The Law of Insolvency* at 25.4.3; Sharrock *LAWSA* at 467.

⁴⁶ Section 124(4) of the Act.

⁴⁷ Sections 124(4) and 127(1) of the Act. See also Sharrock *LAWSA* at 467, 470.

appear in Court in person or by counsel for purposes of opposing the grant of the application for rehabilitation.⁴⁸ The latter doesn't feature in the application currently before the Court.

[49] But all these do not tamper with the discretion of the Court. Whether rehabilitation is to be granted or not is in the discretion of the Court.⁴⁹ A report of the Master or, if filed with the Court, that of the trustee, serves a vital purpose to assist the Court when determining an application for rehabilitation. But, such report is not a substitute for the Court's discretion as to the outcome of an application. I deal broadly with the nature and extent of the discretion of the Court in this type of applications, later below.

Other issues (including the role of the creditors with regard to proof of claims)

[50] The report by the provisional trustees states that '[n]o claims were proven or submitted against the estate'.⁵⁰ But the submission of a claim to a trustee has no statutory purpose or effect. I have briefly dealt with proof of claims when dealing with meetings of creditors above.⁵¹ The use of the word 'submitted' must be avoided, lest it inadvertently grows a convenient tentacle to section 124(3), contrary to the clear reference to 'proved' claims in the provision.

[51] Counsel, appears to have exploited the unfortunate choice of words by the trustees to submit that creditors have shown no interest by not only proving claims against the estate, but 'submitting' same to the trustees, for over three years since the sequestration order was granted. To convene the first meeting of creditors at this stage would serve little practical purpose, counsel also submitted. But, with respect, this conclusion is pure conjecture. There is no factual basis for this.

⁴⁸ Section 127(1) of the Act. See also Sharrock *LAWSA* at 470.

⁴⁹ *Mars: The Law of Insolvency* at 25.10.1. See also *Ex parte Isaacs* 1962 (4) SA 767 (W) at 769G; *Kruger v The Master and Another NO*; *Ex parte Kruger* 1982 (1) SA 754 (W) at 757F-G.

⁵⁰ FA annexure 'I', CL 007-37.

⁵¹ Pars [20]-[21] above.

[52] Also, there is no basis for the submission that creditors or other persons with interest could have opposed the application for rehabilitation after the publication of the statutory notice, at the instance of the applicants, in the Gazette. Besides, non-opposition to an application by an interest-bearer is not an equivalent of agreement with or acquiescence to the relief sought. There is a legion of reasons why parties do not oppose court proceedings. In insolvency matters, such reasons could be an avoidance of throwing good money after bad money, as the saying goes.⁵² But, the absence of opposition – whatever the reason - does not relieve the Court of its jurisdiction to determine material facts for the granting or refusal of relief. I deal with the discretion of the Court, next.

Judicial discretion in rehabilitation applications

[53] I deem it is necessary to deal briefly with the nature and extent of the discretion of the Court in rehabilitations. One gets the impression from this and other matters that regularly come before this Division that the discretion of the Court – capacious in its scope as it is – is a panacea for all ills to do with non-compliance with the prescripts of the law. It is, definitely, not.

[54] The learned authors of *Mars: The Law of Insolvency* authoritatively confirm that the granting of a rehabilitation is not there just for the asking but an aspect which lies entirely within the discretion of the court.⁵³ They emphatically state that whether the application for rehabilitation is opposed or not, the court's discretion remains extant⁵⁴ and the discretion is to be exercised judicially and not arbitrarily,⁵⁵ in granting or refusing the application, or even

⁵² *Ex parte Snooke* 2014 (5) SA 426 (FB) [42].

⁵³ *Mars: The Law of Insolvency* at 25.10.1 See also *Ex parte Snooke* 2014 (5) SA 426 (FB) [33], [39]; *Ex parte Purdon* (53894/2013) [2014] ZAGPPHC 95 [5]; *Ex parte De Villiers and Another* (M108/2023) [2024] ZANWHC 29; [2024] 2 All SA 67 (NWM) (9 February 2024) [9].

⁵⁴ *Ex parte Fourie* 1937 OPD 31; *Ex parte Hittersay* [1974] 4 All SA 296 (SWA); 1974 (4) SA 326 (SWA) at 327-328.

⁵⁵ *Ex parte Phillips* 1938 CPD 381 at 384; *Ex parte Fourie* (2867/2008) [2008] ZAKZHC 45; [2008] 4 All SA 340 (D) (1 July 2008) [22].

postponing the hearing of the application.⁵⁶ Rehabilitation may also be granted with conditions the court thinks fit.⁵⁷

[55] It ought to be emphasised that an applicant is saddled with an onus to show that the court's discretion should be exercised favourably to her.⁵⁸

[56] Overall, the determination of rehabilitation involves an enquiry whether the applicant-insolvent before the Court is a person befitting of rehabilitation. The applicant ought to be a person worthy of being allowed 'to trade with the public on the same basis as any other honest' person.⁵⁹ This entails a determination by the court seized with the application whether the applicant is a fit and proper person to take part in the world of commerce without the constraints and disabilities imposed on unrehabilitated insolvents.⁶⁰ The enquiry in this regard is preceded by a full and frank disclosure on the part of an applicant for rehabilitation.⁶¹

Conclusion

[57] From the above, it is clear that the reliance by the applicants on section 124(3) of the Act in their quest for rehabilitation is incompetent under the circumstances. The clear evidence before the Court establishes that the creditors in the applicants' insolvent estate have not had an opportunity - by way of a meeting of creditors - to prove their claims. This renders the

⁵⁶ *Mars: The Law of Insolvency* at 25.10.1; Sharrock LAWSA 472. See *Ex parte Hittersay* [1974] 4 All SA 296 (SWA); 1974 4 SA 326 (SWA) at 326H.

⁵⁷ Section 127(2) of the Act. See also *Ex parte Fourie* (2867/2008) [2008] ZAKZHC 45; [2008] 4 All SA 340 (D) [22]; *Ex parte Snooke* 2014 (5) SA 426 (FB) [33]. See further *Mars: The Law of Insolvency* at 25.10.1; *Meskin's Insolvency Law* par 14.4.1.

⁵⁸ *Mars: The Law of Insolvency* at 25.10.1; *Meskin's Insolvency Law* par 14.4.1. See also *Ex parte Fourie* (2867/2008) [2008] ZAKZHC 45; [2008] 4 All SA 340 (D) [25]; *Ex parte Snooke* 2014 (5) SA 426 (FB) [33].

⁵⁹ *Mars: The Law of Insolvency* at 25.10.1. See also *Ex parte Heydenreich* 1917 TPD 657 at 658; *Greub v The Master and Others* 1999 (1) SA 746 (C) at 752-753; *Ex parte Fourie* (2867/2008) [2008] ZAKZHC 45; [2008] 4 All SA 340 (D) [43]-[45]; *Ex parte Harris* (9357/2015) [2016] ZAWCHC 4; [2016] 1 All SA 764 (WCC) (26 January 2016) [84].

⁶⁰ *Mars: The Law of Insolvency* at 25.10.1. See also *Ex parte Fourie* (2867/2008) [2008] ZAKZHC 45; [2008] 4 All SA 340 (D) [43]-[45]; *Ex parte Snooke* 2014 (5) SA 426 (FB) [33]; *Ex parte Purdon* (53894/2013) [2014] ZAGPPHC 95 [15]; *Van Zyl v Mulaudzi* (29047/2015) [2025] ZAGPPHC 1302 [27]; *Ex parte Harris* (9357/2015) [2016] ZAWCHC 4; [2016] 1 All SA 764 (WCC) [84].

⁶¹ *Ex parte De Villiers* (M108/2023) [2024] ZANWHC 29; [2024] 2 All SA 67 (NWM) [30].

ground for rehabilitation that no claims have been proven against the estate incompetent, as it is at this stage premature.

[58] The first meeting of creditors needs to be convened and the outcome thereof known as would be borne by the minutes of the meeting. Then, if no claims have been proven at the meeting, the applicants can invoke section 124(3) for their rehabilitation, unless by the date of the hearing of such application creditors may have, subsequently, proven claims at the second meeting or special meeting of creditors.⁶² But the process needs to unfold.

[59] Back to the reports filed in this matter, it is rather concerning that the Master has not said a word about the first meeting of creditors in her report to the Court. One, as no doubt counsel for the applicants would, may say that the Master (similarly to the trustees) had no cause to refer to a meeting of creditors in the report filed. But, should it be a fact that no such meeting was held and the Master is aware of this, as she should, her report which is silent on the issue, would constitute misleading the Court. This would be a serious issue given that the Master is a creature of statute.⁶³ The Master has very specific powers and duties including reporting to this Court, as referred to above, albeit that the Master may not be an officer of the Court.⁶⁴

[60] But the Court is not left adrift at sea and hapless in all these. I will make an order which would cater for the following scenarios or possibilities, borne by the facts of this matter. First, should it indeed be that no first meeting of creditors has been held, rehabilitation on the basis of section 124(3) will be premature, as already stated. The application would have to be removed from the roll. Secondly, should it be that, that a meeting was held and claims proven,

⁶² Par [20] above.

⁶³ The Master is an officer in public service appointed in terms of the Administration of Estates Act 66 of 1965. See *De Lange v Smuts NO* 1998 (3) SA 785 (CC) [160]. See also *Mars: The Law of Insolvency* at 222.

⁶⁴ *De Lange v Smuts* 1998 (3) SA 785 (CC) [160]. See also *Mars: The Law of Insolvency* at 222.

the application would be dismissed. Thirdly, should the true position be that such meeting was indeed held and no claims have been proven, *cadit quaestio*,⁶⁵ the application would succeed. Only the Master can shed light in all these scenarios.

[61] Therefore, a prudent approach would be to postpone the application⁶⁶ for the Master to file a supplementary report. As stated above, the Master has a statutory responsibility to furnish the Court with a report in terms of section 127 of the Act.⁶⁷ The current report has been found inchoate or perhaps ambiguous, as stated above, particularly regarding the true position on the first meeting of creditors. I will utilise section 127 for the filing of a supplementary report within a specified time. The Master would also be asked to explain in that report why she should not be held liable for wasted costs occasioned by the postponement of this matter in the event that no meeting of creditors was held and the Master did not divulge this aspect under the circumstances of this matter. For current purposes, the costs occasioned by the postponement of the application will be reserved.

[62] The application will be postponed to a specific date when I am in the unopposed motion court in the next term. My sitting in the Insolvency Motion Court, next term, would come too early for the order to be made to have been complied with. The applicants, if so minded or advised, would be entitled to use the report sought from the Master to file supplementary material for an appropriate relief based on the report. This, should it be applicable, may include compelling the Master (as in *Ex Parte Nel and Others*)⁶⁸ to comply with the statutory duty or responsibility of convening the first meeting of creditors.

⁶⁵ 'The question falls away; there is no further room for argument': Hiemstra and Gonin, *Trilingual Legal Dictionary*.

⁶⁶ *Mars: The Law of Insolvency* at 25.10.2. See also *Ex parte Snooke* 2014 (5) SA 426 (FB) [54].

⁶⁷ Pars [13], [48] above.

⁶⁸ Par [45] above.

Order

[63] In the premises, I make the order, that:

1. the application is postponed to 10 June 2026;
2. the Master of the High Court, Pretoria (hereafter referred to as the Master) is directed to file a supplementary report within twenty (20) days from the date of service of this order, by hand and email, on the Master by the applicant's attorneys to address the issue whether the first meeting of creditors has been convened in the insolvent estate of Nico John Moorcroft and Adri Moorcroft, Master's Reference T002238/2022, and if such meeting was held to furnish a copy of the minutes thereof as part of the supplementary report;
3. In the event that the first meeting of creditors has not been held or had not been held when the matter was heard on 13 February 2026, the Master should furnish reasons in the supplementary report to be furnished in terms of 2 of this order why the Master should not be held liable for the costs occasioned by the postponement of this application due to the Master having informed the Court in the report already filed by the Master that rehabilitation may be granted in terms of section 124(3) of the Insolvency Act 24 of 1936, when no claims could not have been proven against the insolvent estate of Nico John Moorcroft and Adri Moorcroft, Master's Reference T002238/2022; and
4. Costs occasioned by the postponement of this application are reserved, subject to 3 of this order.



Khashane La M. Manamela
Judge of the High Court

Date of Hearing : **13 February 2026**

Date of Post-Hearing Submissions : **23 February 2026**

Date of Judgment : **10 April 2026**

Appearances:

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