IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 2026 - 032702

(1) REPORTABLE: **No**

(2) OF INTEREST TO OTHER JUDGES: **Yes**

(3) REVISED: **Yes**

4 May 2026

In the *ex parte* application of:

MARYKE GREEFF Applicant

[Identity number: 7[...]]

[T1284/25]

[For the rehabilitation of her insolvent estate]

The judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it to the electronic file of this matter on Caselines. The date and time of hand-down is deemed to be 5:00 on 4 May 2026.

JUDGMENT

J Vorster, AJ

[1] This is an application for rehabilitation in which the applicant relies upon the provisions of section 124(3)(b) of the Insolvency Act, 24 of 1936. In terms of this sub-section an insolvent may submit an application for her rehabilitation after the expiration of a period of only six months as from the sequestration of her estate if, at the time of making the application, no claim has been proved against his estate.

[2] During 2025, the applicant applied for the voluntary surrender of her estate. The application was granted, and her estate was accordingly sequestrated on 2 September 2025. The effect of a sequestration order is well established. It results in the establishment of a *concursus creditorum* with the aim to "*ensure a due distribution of assets among creditors in the order of their preference*".[1]

[3] On 4 December 2025, the Master of the High Court appointed Maryna Estelle Symes NO and Junaid Essop Mahomed NO as the applicant's joint provisional trustees.

[4] The Master convened and presided over a first meeting of creditors on 2 December 2026. The minute of this meeting reflects that the trustees mandated a certain O. Malema to attend the meeting of their behalf (which is curious as they were only appointed two days later), that no claims were lodged, and that the meeting was closed.

[5] In her founding affidavit, the applicant contends that she is entitled to an order of rehabilitation solely on the basis that no claims have been proved against her insolvent estate.

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[1] **Walker v Syfret NO** 1911 AD 141 at 166.

[6] The relatively short period that elapsed between the date of sequestration and the launch of this application on 12 February 2026 is a matter that requires consideration. The reports submitted by the applicant's trustees, Ms Symes NO and Mr Mahomed NO, are notably scant in detail. They record merely that "*[n]o claims are proved to date*" and that a first meeting of creditors was held on 2 December 2025. Both reports further indicate that there are no additional facts which the trustees wish to draw to the attention of the Court.

[7] Before the hearing of the application, I requested the applicant's representatives to indicate whether a second meeting of creditors as contemplated in section 40(3) of the Insolvency Act had been convened. In response to my query, the applicant's attorney, Mr Gerhardus Stephanus Scheepers, deposed to a supplementary affidavit in which he confirms that no second meeting of creditors has taken place, and makes the following submission:

> "*It is my submission that the granting of the Applicant's application will in no way prejudice any of the Applicant's creditors should any claims against the estate be proven at the second meeting of creditors. The full assets valuation amount has been collected and can be awarded despite the Applicant's application be granted.*"

[8] For the reasons that follow, I am unable to agree with the quoted submission.

[9] In insolvent estates, claims are submitted to proof in accordance with the procedure prescribed by section 44 of the Insolvency Act. Generally speaking, creditors have two opportunities to proof claims,[2] namely at the first and second meetings of creditors as contemplated in section 40.

[10] In relevant part, section 40 provides as follows:

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[2] In appropriate cases, creditors can also proof claims on a third occasion, being a special meeting of creditors as contemplated in section 42.

"*40 First and second meetings of creditors*

(1) On the receipt of an order of the court sequestrating an estate finally, the Master shall immediately convene by notice in the Gazette, a first meeting of the creditors of the estate for the proof of their claims against the estate and for the election of a trustee.

(2) The Master shall publish such notice on a date not less than ten days before the date upon which the meeting is to be held and shall in such notice state the time and place at which the meeting is to be held.

(3)

(a) After the first meeting of creditors and the appointment of a trustee, the Master shall appoint a second meeting of creditors for the proof of claims against the estate, and for the purpose of receiving the report of the trustee on the affairs and condition of the estate and giving the trustee directions in connection with the administration of the estate.

(b) The trustee shall convene the second meeting of creditors by notice in the Gazette and in one or more newspapers circulating in the district in which the insolvent resides or his principal place of business is situate.

(c) …"

[11] It is well established that only the Master may convene a first meeting of creditors. The position in respect of a second meeting is, however, different. In terms of section 40(3), a trustee is empowered to convene a second meeting of creditors for the purposes of the proof of claims against the estate, the furnishing of a report on the affairs and condition of the estate, and the giving of directions to the trustee in connection with its administration.[3] Whilst a first meeting is convened by the publication of a notice in the Government Gazette, a second meeting requires additional steps. In the latter instance, the trustees are obliged to publish notice of the meeting not only in the Government Gazette, but also in one or more newspapers circulating in the area in which the insolvent resides. In practice, trustees will often further give notice to known creditors by prepaid registered post or even email. As a consequence, the likelihood of creditors receiving notice of a second meeting is materially increased.

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[3] Bertelsmann *et al*, Mars, The Law of Insolvency in South Africa (Juta), 10th Edition, para. 17.2.3. **Agyrakis and Another v Gunn and Another** 1963 (1) SA 602 (T) at 606D: "*The second meeting of creditors was not 'appointed by the Master'. In practice (and this is common cause) he never fixes the date. This is always done by the trustee.*"

[12] There is no explanation in either the founding or the supplementary affidavit for the joint trustees' failure to convene a second meeting of creditors.

[13] As recorded earlier in this judgment, the application is premised on the fact that no claims were proved against the applicant's estate within a period of six months after the sequestration order. The application is based on section 124(3), which provides:

> "*(3) After 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-*
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> *(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*
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> *(d) if his estate was not sequestrated under any law prior to the sequestration which he desires to end.*"

[14] The effect of rehabilitation in relation to the person of the insolvent is to eliminate his/her status as an insolvent: in the words of the statute, it has the effect "*of putting an end to the sequestration*"[4] and "*of relieving the insolvent of every disability resulting from the sequestration*".[5] It also has the effect of discharging each of his debts as existing at the date of sequestration.[6]

[15] However, a rehabilitation order granted pursuant to section 124(3), has the effect that of reinvesting the insolvent with his/her estate. In this regard, section 129(2) provides:

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4 Section 129(1)(a).

5 Section 129(1)(c).

6 **Muller v Kaplan NO and Others** [2011] JOL 27338 (GSJ) para 88: "*It follows that the effect of a rehabilitation under section 127A is to discharge the insolvent from pre-sequestration liabilities. At the same time, the assets of the estate which have not yet been distributed by the Trustees remain vested in the Trustees until they are distributed.*"

> "*A rehabilitation granted on an application made in circumstances described in subsection (3) of section one hundred and twenty-four shall have the effect of re-investing the insolvent with his estate.*"

[16] The re-vesting of assets in a rehabilitated insolvent when a rehabilitation order is granted in terms of section 124(3), was confirmed in **Ex Parte Noriskin**,[7] where the following was said at 856H:

> "*On the petition in this matter it seems to me that the asset in respect of which an order is sought does not remain vested in the trustee on the grant of the rehabilitation order. That follows from the provisions of sec. 129(2) of Act 24 of 1936 where it is provided that, on the grant of an application of rehabilitation under the provisions of sec. 124 (3) of the Act, the insolvent is re-invested with his estate.*"

[17] Consequently, the granting of a rehabilitation order in terms of section 124(3) prior to the holding of a second meeting of creditors would have the effect of neutralising the insolvency process. A creditor who has not yet proved a claim would be deprived of the opportunity to participate in any distribution and would receive no dividend. This result is particularly inappropriate in circumstances where the applicant represented, in her application for voluntary surrender, that creditors would receive a dividend of at least 20 cents in the Rand.

[18] In these circumstances, the mere fact that no claims have been proved within a period of six months cannot, without more, be decisive. The statutory scheme contemplates that creditors are afforded more than one opportunity to prove claims, including at a second meeting of creditors. Where, as in the present matter, no such meeting has been convened and no explanation is provided for that omission, the Court cannot be satisfied that the absence of proved claims reflects the true position. To grant a rehabilitation order in these circumstances would have the effect of re-investing the insolvent with her estate and thereby prematurely terminating the insolvency process, to the

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7 1962 (1) SA 856 (N). See also: **Ex Parte Mavromati** 1948 (3) SA 886 (W) at 891.

potential prejudice of creditors who have not yet had a proper opportunity to prove their claims.

[19] The following order is made:

1. The rehabilitation application is dismissed.

J VORSTER, AJ.

Acting Judge of the High Court

Date heard: 4 May 2026.
Judgment date: 4 May 2026.

Appearance:

For the applicant:

Counsel: B Lee

Instructed by: Scheepers Attorneys
083 292 0219 / (012) 543 2767