



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

Not reportable / Reportable

Case no: 2320/2025

In the matter between

DEON MARIUS BOTHA N.O.

JOHANNES ZACHARIAS HUMAN MULLER N.O.

LOUISA SIBIYA N.O.

[As co-liquidators of Jonker Produkte CC

(Registration Number 1999/029987/23)

(In liquidation), Master Reference: B102/2020]

FIRST APPLICANT

SECOND APPLICANT

THIRD APPLICANT

and

THE MASTER OF THE HIGH COURT, BLOEMFONTEIN

THE CHIEF MASTER OF THE HIGH COURT

LAND AND AGRICULTURAL DEVELOPMENT

BANK OF SOUTH AFRICA

LOUIS JONKER

LOUIS KONKER N.O.

JOHANNA JACOBA JONKER N.O.

ANNETTER LIEBENBERG N.O.

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

FIFTH RESPONDENT

SIXTH RESPONDENT

SEVENTH RESPONDENT

[As co-trustees of the Louis Jonker Familie Trust, T000118/2024]

Neutral citation: *Botha N.O. and Others v Master of the High Court, Bloemfontein and Others* (2320/2025) [2026] ZAFSHC 266 (28 April 2026)

Coram: MBHELE AJP

Heard: 23 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 28 April 2026.

Summary: Company Law – liquidation – liquidators' duties — sections 403 and 404 of the Companies Act 61 of 1973 – framing and lodging of liquidation and distribution accounts – whether liquidators are obliged to file subsequent accounts before the confirmation of the first account – principles restated.

ORDER

The application is dismissed with costs

JUDGMENT

MBHELE AJP

[1] This is an application in which the applicants, who are the liquidators in the insolvent estate of Jonker Produkte CC (Jonker Produkte), appointed on 21 October 2020, seek a declaratory order in terms of which the liquidators are only obliged to frame and lodge with the Master of the High Court a further account and plan of distribution, as envisaged and/or contemplated by s 403(1)(b) of the Companies Act 61 of 1973 (1973 Companies Act), within six months from the date of confirmation of the first (or interim) account and plan of distribution framed and lodged by the applicants with Master, as envisaged or contemplated in terms of s 403(1)(a) of the 1973 Companies Act. Alternatively, that the applicants are granted an extension of six months from the date of this order, to frame and lodge a further (or second) account and plan of distribution as envisaged and/or contemplated by s 403(1)(b), as read with s 404 of the 1973 Companies Act. No direct relief is sought against the fourth to the seventh respondents. The fifth to seventh respondents are cited in their capacities as co-trustees of the Trust, which held the remaining members' interest in Jonker Produkte prior to its liquidation.

[2] Two issues arose for determination in these proceedings. The first question is whether the liquidators are obligated to frame the second account or any further accounts when the first account has not yet been confirmed. The second question is whether the opposing respondents have a legal interest in the relief sought.

[3] It is appropriate to provide a brief history of this matter, which will show that the liquidation process was riddled with problems from inception. On 6 November 2020, the Master instructed the liquidators to lodge the first liquidation and distribution account by 21 April 2021, six months from the date of their appointment. The first liquidation account

was filed only on 10 January 2022, eight months later. The liquidators brought an application for condonation of their failure to convene the first meeting of creditors within the prescribed period only on 06 July 2021. It is worth mentioning that the liquidators feigned ignorance of the necessity to file a request for condonation. On 7 July 2021, the Master informed the liquidators that he was not aware of any statutory provision conferring on him the power to approve the *ex post facto* request for extension.

[4] The liquidators held the first and general meeting of creditors on 6 May 2021 before a magistrate in Bothaville, more than six months from the date of their appointment without an extension being sought from the Master. The third respondent (the Land Bank) was represented at the meeting and was the only creditor to prove a claim in the estate. The fourth respondent (Jonker) was not in attendance; he attributes his non-attendance to non-receipt of proper notice. The liquidators framed and lodged the first liquidation and distribution account (the first account) on 10 January 2022, eight months after the due date determined by the Master.

[5] On 20 January 2022, the Master directed the liquidators to file the second liquidation and distribution account by not later than 18 March 2022. The liquidators did not file the second liquidation and distribution account on 18 March 2022 as directed and they only filed the application for extension of time on 1 April 2025, more than three years later. The liquidators attribute failure to file the second account to the ongoing litigation between them and the respondents as well as refusal by the Master to allow them to advertise the liquidation and distribution account.

[6] A litany of litigation ensued after the first general meeting of creditors and members. The meeting of 6 May 2021 was set aside by a court order dated 30 March 2022 at the request of the fifth to seventh respondent. The applicants unsuccessfully appealed the decision to set aside this meeting, while the fourth to seventh respondent unsuccessfully appealed the final liquidation order. There is a pending application to review the removal of the applicants as the liquidators of the insolvent estate as well as the rescission appeal, which deals with whether the Landbank has a valid claim against the insolvent estate, and the application to set aside the auction and sale of property of Jonker Produkte, which would determine whether the proceed can be applied and to whom.

[7] At the time of the hearing on this matter, two litigation proceedings were pending

before the courts. The applicants contend that the outcome of the pending litigation may have far-reaching consequences and a significant impact on the future administration of the insolvent estate. Amendment of all submitted accounts may become necessary should the pending litigation result in the setting aside of the sale of certain assets in the estate, so it is argued by the applicants.

[8] The applicants further contend that they are not obliged to file additional accounts until the first account has been confirmed and the validity of the Land Bank's claim has been adjudicated. The respondents oppose this contention, and the Master finds it without merit, maintaining that the first account need not be advertised for inspection and confirmation before the second account can be lodged. The Master's report indicates that the liquidators failed to deal with some of the queries raised by the Master, resulting in the latter not allowing the liquidators to advertise the estate to lie for inspection. Of significance is the Master's complaint that there are funds that were received by the liquidators of which the Master has been kept in the dark, and such funds include proceeds of sale of some assets belonging to Jonker Produkte, as well as cost orders against the liquidators *de boni propriis*. The liquidators have not filed the s 400 report, despite several reminders from the Master, some dating as far back as January 2022.

[9] Sections 403 and 404 of the 1973 Companies Act provide as follows:

403 Liquidator's duty to file liquidation and distribution account

(1) (a) Every liquidator shall, unless he receives an extension of time as hereinafter provided, frame and lodge with the Master not later than six months after his appointment an account of his receipts and payments and a plan of distribution or, if there is a liability among creditors and contributories to contribute towards the costs of the windingup, a plan of contribution apportioning their liability.

(b) If the final account lodged under paragraph (a) is not a final account, the liquidator shall from time to time and as the Master may direct, but at least once in every period of six months (unless he receives an extension of time), frame and lodge with the Master a further account and plan of distribution: Provided that the Master may at any time and in any case where the liquidator has funds in hand, which ought in the opinion of the Master to be distributed or applied towards the payment of debts, direct the liquidator in writing to frame and lodge with him an account and plan of distribution in respect of such funds within a period specified.

(2) Any account shall be lodged in duplicate in the prescribed form, shall be fully supported by vouchers, including the liquidator's bank statements or certified extracts from his bank and building society accounts showing all deposits and withdrawals, and shall be verified by an affidavit in the prescribed form.

404 Master may grant extension of time for lodging account

(1) If any liquidator is unable to lodge an account with the Master under section 403 he shall before the expiration of any relevant period prescribed under that section

(a) make and lodge with the Master an affidavit stating the reasons why he is not able to lodge an account, the amount of funds in hand available for distribution, a summary of the position in respect of the windingup, and whether he has applied for an extension of time, and shall send a copy thereof to each creditor of the company; and

(b) lodge with the Master written reasons for his inability to lodge the account in question together with a statement of the grounds, if any, upon which he claims an extension of time within which to lodge such account,

and the Master may thereupon grant such an extension of time as he may in the circumstances think necessary.

(2) If any liquidator fails to lodge an account with the Master as required by section 403 and to comply with paragraphs (a) and (b) of subsection (1) of this section, the Master or any person having an interest in the company may serve a notice on the liquidator requiring him within two weeks after the date of the notice

(a) to lodge the account in question with the Master; or

(b) to comply with the requirements of the said paragraphs (a) and (b) of the said subsection,

[10] In *General Accident Fire and Life Association Ltd v Insolvent Estate Wiese*¹ the Court, referring to s 94 of the repealed Insolvency Act 32 of 1916, held that although on a strict construction of the Act, the time at which accounts from time to time have to be filed by the trustees dates from the date of lodging the account, the Legislature could not have intended that, and it has in anyway not been the practice that the date of the lodging a further account should be calculated from the date on which the prior account was lodged. This matter was decided in 1924, more than a century ago and long before s 403 of the Companies Act 61 of 1973 came into effect. Section 403 explicitly provides that the liquidator must, if the final account lodged is not a final account, from time to time and as the Master may direct, but at least once in every period of six months (unless he receives an extension of time), frame and lodge with the Master a further account and plan of distribution.

[11] The liquidators, in support of their argument that a second liquidation and distribution account can only be lodged once the first account has been confirmed, rely on para 18 in *De Villiers and Others v GJN Trust and Others*² where Van der Merwe JA remarked as follows:

¹ *General Accident Fire and Life Association Ltd v Insolvent Estate Wiese* 1924 CPD 410.

² *De Villiers and Others v GJN Trust and Others* [2018] ZASCA 80; 2019 (1) SA 120 (SCA).

'In the light of these considerations and of the explicit purpose of the s 420 application, namely investigation aimed at distribution of assets not dealt with in that account, para 2 of the section 420 order must in my view be interpreted to mean that the liquidators shall have the powers in terms of the Act to deal with further assets of the company. It follows that further assets of the company recovered by the liquidators must be dealt with in a further liquidation and distribution account in terms of s 403 of the Act. Section 403(1)(b) of the Act also provides that the Master may at any time and in any case where a liquidator has funds in hand, which ought, in the opinion of the Master, to be distributed or applied towards the payment of debts, direct a liquidator in writing to frame and lodge a liquidation and distribution account within a specified period.'

[12] I must say that the liquidators' reliance on the above dictum is misplaced. The judgment does not endorse their argument that the second account can only be lodged once the first account has been confirmed. To the contrary, it supports the respondents' contention that s 403(1)(b) empowers the Master to direct a liquidator to frame and lodge a liquidation and distribution account at any time, and in the event that a liquidator has funds in hand, that ought, in the opinion of the Master, to be distributed or applied towards the payment of debts. It is clear that the 1973 Companies Act requires further accounts to be filed every six months, or as the Master may direct, regardless if any distribution is made or not. It follows that the liquidators' duty to frame and lodge further accounts in terms of s 403 is independent of whether the first account has been confirmed or not. Furthermore, nothing prohibits the Master from directing liquidators to provide further accounts, even if the first account has been submitted but not yet confirmed.

[13] In the current matter, the liquidators lament that the account has not been confirmed because the Master refused to grant them permission to advertise the account to lie for inspection while they on the other hand have not fully responded to the Master's query sheet. In the circumstances of this case, the Master directed that the second liquidation and distribution account be lodged on 18 March 2022 and there was no application for extension submitted to the Master before the prescribed date.

[14] The fact that there are pending litigation proceedings is not a bar from filing further liquidation and distribution accounts. In any event, the first account was filed while litigation between the liquidators and the respondents was ongoing. The finalization of the liquidation process in the current matter has become more urgent. The liquidators were quite laid back in the handling of this liquidation, which is not in the interest of the creditors and all other interested parties. There has been one application of extension after the other; there is also no prescribed time period with which they have managed to

comply. The circumstances surrounding this matter militate against the granting of any further extension to liquidators for the filing of the second liquidation and distribution account. The application for extension and a declarator should accordingly fail.

[15] The second issue raised by the applicants is that the opposing respondents lack legal interest in the matter. They contend that the 4th through the 7th respondents have only a residual interest in the administration of the insolvent estate and, since there will be no free residue, have no legal standing. It is well established that an insolvent's residual interest in the insolvent estate is an entitlement to any residue remaining after the estate has been wound up.

[16] In *Mears v Rissik, Mackenzie NO and Mears' Trustee*³ Innes CJ remarked as follows:

'Now, no doubt the general rule is that an unrehabilitated insolvent cannot, over the head of his trustee, bring actions connected with his estate . . . The reason of the rule is that his estate has been taken out of him and vested in his trustee; and that therefore the person to deal with that estate, to administer it, to sue in respect of it, and to defend actions concerning it, is the trustee, and not the insolvent. But from the fact that the insolvent is under this disability, it does not follow that he has no rights whatever regarding the estate. In my opinion he has a very real reversionary interest in it. The law provides that if there is any residue after paying the debts it is to be handed to the insolvent. Not only so, but it is to his interest that as many assets as possible shall be brought into the estate, and the debts reduced to their proper limits. He has an interest in seeing that that is done. An asset may suddenly become valuable which has been considered worthless, or he may have a legacy left to him which may enable him to clear off all his liabilities. Apart from that it is to the interests of the insolvent that his assets should be increased and his liabilities reduced, because in that way the stigma of insolvency rests less heavily upon him; and when he applies for his rehabilitation he is in a better position than if he had a very large margin of unpaid debts. Therefore, from whatever standpoint we regard it the insolvent has a very real interest in the administration of his estate.

As I have said, generally the trustee is the person to take action in matters connected with the estate; but if the trustee will not do so, or whether bona fide or mala fide does not see his way to take action, is the insolvent on that ground to be without remedy? I should say upon general principles he ought not to be; the law should provide some remedy.⁴

³ *Mears v Rissik, Mackenzie NO and Mears' Trustee* 1905 TS 303.

⁴ *Ibid* at 305.

In *Sassoon Confirming and Acceptance CO (Pty) Ltd v Barclays National Bank Ltd*⁵
Jansen JA remarked as follows:

'Any residual right the insolvent may have to the estate, must necessarily be subject to the due exercise of the trustee's powers during his regime. Should there in fact be a residue, the insolvent will, in effect, be a successor to the trustee – and, therefore, subject to judgments given against the trustee as representing the estate, which judgments will then be res judicata against the insolvent.'⁶

Should there be any free residue post liquidation process the respondents will have to inherit consequences of decisions taken by liquidators during their tenure. I must say that I have difficulty with the liquidators raising the issue of legal standing only now. The opposing respondents have been involved in several litigation proceedings with the liquidators, and this issue was never raised. The applicants have accepted that the Landbank's claim is being challenged and that a dispute regarding the sale of certain Jonker Produkte assets remains. If the Landbank does not succeed in establishing its claim, there will be a free residue to which the respondents would be entitled. It follows that the respondents have locus standi to oppose this matter. Costs should follow the results.

Order

[17] In the circumstances, I make the following order:

The application is dismissed with costs.


A handwritten signature in black ink, appearing to read 'N M Mbhele', is written over a large black rectangular redaction box. The signature is fluid and cursive.

N M MBHELE

ACTING JUDGE PRESIDENT OF THE HIGH COURT

⁵ *Sassoon Confirming and Acceptance Co (Pty) Ltd v Barclays National Bank Ltd* [1974] 2 All SA 159 (A).

⁶ *Ibid* at 162

Appearances

For the Appellant:

Adv. Hershensohn SC

Adv S N Davis

Instructed by:

Symington De Kok

For the Respondent:

Adv. Janse Van Rensburg

Instructed by:

Hendre Conradie Inc.