



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 489/2025

In the matter between:

STEPHEN MALCOLM GORE

APPELLANT

and

ABDURUMAN MOOLLAJIE N O

FIRST RESPONDENT

EILEEN MARGARET FEY N O

SECOND RESPONDENT

ABDURUMAN MOOLLAJIE

THIRD RESPONDENT

EILEEN MARGARET FEY

FOURTH RESPONDENT

STEPHEN MALCOLM GORE N O

FIFTH RESPONDENT

**THE MASTER OF THE HIGH COURT,
WESTERN CAPE DIVISION, CAPE TOWN**

SIXTH RESPONDENT

Neutral citation: *Gore v Moollajie NO and Others* (489/2025) [2026] ZASCA 82 (1 June 2026)

Coram: MAKGOKA and MATOJANE JJA, and SERITI, STEYN and MOLITSOANE AJJA

Heard: 14 May 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, published on the Supreme Court of Appeal website, and released to SAFLII. The date and time for hand-down are deemed to be 11h00 on 1 June 2026.

Summary: Insolvency – s 63(1) of the Insolvency Act 24 of 1936 – remuneration of trustees – joint provisional trustees subsequently appointed as final trustees together with an additional final trustee who was not a provisional trustee – whether the additional final trustee is entitled to share in remuneration earned for services rendered before his appointment. Review of Master's decision under s 151 of the Act.

ORDER

On appeal from: Western Cape Division of the High Court (Allie J sitting as court of first instance):

The appeal is dismissed with costs, including the costs of two counsel.

JUDGMENT

Matojane JA (Makgoka JA and Seriti, Steyn and Molitsoane AJJA concurring):

Introduction

[1] This appeal raises a narrow but practically significant question in the law of insolvency: whether a final trustee of an insolvent estate, who was not a provisional trustee, is entitled to share equally in the remuneration earned by the provisional trustees for work done before their appointment. The Master of the High Court, Cape Town, ruled that the trustees' remuneration must be reflected in the liquidation and distribution account (the L&D account) as a single composite amount, without distinguishing between work done during the provisional and final stages of administration. On review, the Western Cape Division of the High Court (the High Court) set aside that ruling. It held that the appellant, Mr Gore, was not entitled to share in the remuneration earned by Mr Abduruman Moollajie and Ms Eileen Margaret Fey, respectively the first and second respondents, during the period when they alone administered the estate as provisional trustees. The appeal is with the leave of the High Court. The Master did not oppose the appeal.

[2] The appeal turns on the one hand, a proper construction of s 63(1) of the Insolvency Act 24 of 1936 (the Act), read with Tariff B in the Second Schedule to the Act, and on the other, the scope of the principle in *Cooper v The Master of the*

*Supreme Court*¹ that, in the absence of agreement, co-trustees share their remuneration equally.

Factual background

[3] The salient facts are largely common cause. On 14 December 2016, the estate of Mr Mohamed Ismail Patel (the insolvent) was provisionally sequestrated, and on 18 April 2017, it was finally sequestrated. Mr Moollajie and Ms Fey were appointed as the joint provisional trustees on 22 December 2016. They were joined in the High Court in their individual capacities; hence, they were cited as the third and fourth respondents, respectively.

[4] The estate proved to be complex. The insolvent had absconded, having left the country, and his family were uncooperative. Substantial work was required to trace and recover assets, to hold enquiries, and to institute and defend litigation. By the end of November 2017, Mr Moollajie and Ms Fey had substantially completed the winding-up. On 30 November 2017, they lodged a first L&D account, and on 4 December 2017, they requested a special fee from the Master under the proviso to s 63(1) of the Act.

[5] Certain creditors objected to the lodging of the L&D account on the ground that only the final trustees may lodge such an account. The Master upheld the objection, and a subsequent review of the decision failed in the High Court. The administration of the estate thereafter went into hiatus while disputes about the appointment of a final trustee were resolved. A creditor, Mr Glaum, was elected by the majority in value to be the final trustee, but proved to be disqualified, as he was himself a debtor of the estate. After further proceedings, Mr Glaum's firm nominated the appellant, Mr Stephen Malcolm Gore (Mr Gore), in his place. On 19 October 2021, almost four years after the work giving rise to the application for a special fee had been completed, the Master appointed Mr Moollajie, Ms Fey and Mr Gore as joint final trustees. Like Mr Moollajie and Ms Fey, Mr Gore was joined in his personal capacity, hence his citation as the fifth respondent.

[6] A dispute promptly arose. Mr Moollajie and Ms Fey contended that they alone were entitled to the tariff remuneration and special fee for the work performed by them

¹ *Cooper v The Master of the Supreme Court* [1998] 1 All SA 158 (*Cooper*).

as provisional trustees, since Mr Gore had played no part in that work and had not held office at the time. Mr Gore took the contrary view that, once appointed as a joint final trustee, he was entitled to a one-third share in all the remuneration generated in the estate, including remuneration for work performed before his appointment.

[7] The dispute was referred to the Master under s 56(5) of the Act. On 13 June 2022, the Master held that no distinction could be drawn ‘between the services conducted by the provisional trustees and the final trustees, at least when it comes to reflecting the trustees’ remuneration in a liquidation account’. The Master added that the apportionment of trustees’ fees *inter se* was not a matter relating to the estate within the meaning of s 56(5) of the Act. In reaching that conclusion, the Master relied on *Cooper*. On 9 November 2022, the Master allowed a special fee of R600 000.00, a substantial reduction from the R1.5 million applied for and stated that she was awarding ‘the trustees an increase in remuneration of R600 000 accordingly’.

[8] The trustees could not agree on how the remuneration was to be reflected in the L&D account. Mr Moollajie and Ms Fey drafted an account reflecting separate amounts for the provisional and final periods; Mr Gore objected and insisted upon a single, undifferentiated trustees’ fee. On 31 March 2024, Mr Moollajie and Ms Fey referred the matter to the Master again and on 17 April 2024, the Master ruled that the trustees were ‘once again’ to amend the draft L&D account to reflect their total fee as a single amount, without distinguishing between the special fee and the tariff fee. This is the decision which Mr Moollajie and Ms Fey took on review.

[9] On 25 February 2025, the High Court set aside the Master’s decision. The court declared that a trustee of an insolvent estate, whether provisional or final, may only claim or receive remuneration earned during the term of their appointment. It accordingly remitted the matter to the Master to apply Tariff B separately to the periods during which two provisional trustees administered the estate, and three final trustees administered the estate, respectively.²

Issues for determination

² *Moollajie N O and Another v The Master of the High Court Western Cape Division, Cape Town and Another* [2025] ZAWCHC.

[10] Three issues fall for determination, which I consider in turn, are whether:

- (a) On the proper interpretation of s 63(1) of the Act read with Tariff B, a final trustee is entitled to share in remuneration earned in respect of services rendered before he was appointed;
- (b) The principle in *Cooper* that, absent agreement, co-trustees share their remuneration equally applies where the contending co-trustees were not jointly appointed throughout the period to which the remuneration relates; and
- (c) The Master's decision of 17 April 2024 was reviewable on the grounds set out in PAJA and the test in *Nel and Another NNO v The Master (Absa Bank Ltd and Others Intervening)* (*Nel*).³

Whether a final trustee is entitled to share in remuneration earned in respect of services rendered before being appointed

[11] Section 63(1) of the Act provides:

'Every trustee ... shall be entitled to a reasonable remuneration for his services, to be taxed by the Master according to tariff B in the Second Schedule to this Act: Provided that the Master may, for good cause, reduce or increase his remuneration, or may disallow his remuneration either wholly or in part on account of any failure of or delay in the discharge of his duties or on account of any improper performance of his duties.'

[12] The word 'trustee' includes a provisional trustee.⁴ Tariff B sets out the percentages at which the trustee's remuneration is to be calculated upon various categories of realisations, and concludes with a separate provision for the remuneration of a provisional trustee, which is to be 'a reasonable remuneration to be determined by the Master, not to exceed the rate of remuneration of a trustee under this tariff'.⁵

[13] Two textual features of these provisions are important. First, the right to remuneration is conferred upon 'every trustee' for 'his services'. The remuneration is

³ *Nel and Another NNO v The Master (Absa Bank Ltd and Others Intervening)* [2004] ZASCA 26; 2005 (1) SA 276 (SCA) (*Nel*).

⁴ Section 2 of the Act.

⁵ Final line of Tariff B in the Second Schedule to the Act.

the trustee's personal entitlement, earned by reference to the services rendered in his capacity as trustee. Second, Tariff B itself distinguishes the remuneration of a trustee and that of a provisional trustee. The latter is determined separately by the Master, subject only to the ceiling that it must not exceed the trustee's tariff.

[14] Section 56(4) of the Act requires joint trustees to act in concert; and s 56(5) of the Act empowers the Master, where co-trustees disagree on 'any matter relating to the estate of which they are trustees', to determine the disagreement. Section 151 of the Act confers upon 'any person aggrieved by any decision, ruling, order or taxation of the Master' the right to bring it under review by the court.

Proper construction of s 63(1) and Tariff B

[15] The starting point is the plain language of s 63(1). A trustee is entitled to remuneration for his services. The provision presupposes both an appointment *qua* trustee at the time the work was done and the trustee's rendering of services. The Master's function in taxing remuneration is, in the ordinary case, to ensure that the correct tariff percentages have been applied to the various realisations: see *Cooper*.⁶ But the antecedent question, whose remuneration is being taxed, is governed by s 63(1), which requires that the trustee must have rendered services. A trustee who was not appointed when the work was done cannot have rendered services in respect of that work.

[16] Mr Gore contended that the tariff operates as a form of commission, accruing automatically upon realisations and falling to be shared among whoever happens to hold office as final trustee when the L&D account is confirmed. I disagree, as this construction is inconsistent with the provision's text. The tariff is the measure of remuneration, not its source. The source remains s 63(1), which ties remuneration to services rendered. As this Court observed in *Nel*, the overarching consideration is that the trustee must receive 'reasonable remuneration for his services'.⁷

[17] Tariff B confirms this conclusion. By providing separately for the remuneration of a provisional trustee, it acknowledges that a provisional trustee's entitlement to

⁶*Cooper* above fn 1 at 3.

⁷ *Nel* above fn 2 para 20.

remuneration is a discrete one, arising from the services rendered by him in that capacity. On behalf of Mr Gore, reliance was placed on Meskin's opinion that, where the provisional trustee subsequently becomes the final trustee, his entitlement as provisional trustee 'becomes absorbed in his entitlement to remuneration as trustee'.⁸ That submission proceeds on the unstated but obvious assumption that the same person holds both offices. Absorption is a matter of accounting convenience: there is no need for two taxations when the entitlement vests in the same person. The doctrine has no application where, as here, the provisional trustees and one of the final trustees are different people.

[18] Mr Gore's argument, taken to its logical conclusion, would entitle a person appointed for the first time as a final trustee on the eve of confirmation of the L&D account to a one-third share of all remuneration generated by the provisional trustees. That cannot be reconciled with s 63(1)'s express linkage of remuneration to services. The contrary construction would create the very mischief of which Mr Moollajie and Ms Fey warned: an incentive for the late appointment of additional trustees not for the proper administration of the estate but for the enrichment of the late appointee.

The scope of the principle in Cooper

[19] Mr Gore placed considerable reliance on *Cooper*, in which it was held that, in the absence of agreement, co-trustees share their remuneration equally.⁹ It was further held that the apportionment of trustees' remuneration *inter se* was not a matter relating to the estate, with the consequence that it fell outside the Master's power of determination under s 56(5).¹⁰

[20] Two features of *Cooper* must, however, be kept in mind. First, the trustees in that case had been jointly appointed from inception, and the dispute concerned only how their joint remuneration was to be divided between them. Second, the court's reasoning rested explicitly on a contractual analysis: the obligation to share equally was a *natural consequence* of the relationship between persons who had jointly accepted office. Sharrock states the position in the same terms:

⁸ P M Meskin *Insolvency Law and its Operation in Winding-up* (loose-leaf, issue 59, 2023) para 4.21 at 4-30 (Meskin).

⁹ *Cooper* above fn 1.

¹⁰ *Cooper* above fn 1.

'In the absence of actual consensus, express or tacit, to the contrary, joint trustees are obliged to divide the remuneration between them equally, irrespective of the nature and extent of the services rendered by each'.¹¹

[21] Neither feature is present here. Mr Gore was not a party to the joint appointment between Mr Moollajie and Ms Fey during the period December 2016 to October 2021. As such, he could not have been a party to any agreement, express or tacit, regarding the sharing of remuneration for that period because he was not yet a trustee. The implied *naturale* upon which the equal-division rule rests cannot operate to bind a non-party retrospectively. The default rule in *Cooper* is thus inapplicable to remuneration earned before Mr Gore's appointment.

[22] The holding in *Cooper* that the Master cannot apportion remuneration *inter se* is similarly confined to the situation it addressed. Where the contention is not about apportionment between joint trustees who served together, but about whether a person is entitled to share in remuneration at all, the question is anterior to apportionment. It concerns the entitlement under s 63(1), and that is a matter relating to the estate within the meaning of s 56(5): the L&D account by which the estate is wound up must reflect the trustees' remuneration accurately, and the resolution of competing claims as to those entitlements is plainly connected with the administration of the estate.

[23] It follows that *Cooper* is distinguishable on its facts and on its principle. The High Court was correct to hold so.

Whether the Master's decision was reviewable

[24] The review proceeded under s 151 of the Act, read with the Promotion of Administrative Justice Act 3 of 2000 (PAJA). In *Nel*, this Court held that a court will not lightly interfere with the Master's exercise of the discretion conferred by s 63(1) of the Act; it will do so only where the decision is 'wrong' or 'clearly wrong'.¹² That standard reflects the Master's institutional expertise in the administration of insolvent estates and the discretionary nature of the proviso to s 63(1) of the Act.

¹¹ A Smith, K van der Linde and J Calitz *Hockly's Law of Insolvency Winding-Up & Business Rescue* 10th ed (2022) para 10.7 at 156.

¹² *Nel* above fn 2.

[25] On the construction set out above, the Master's decision proceeded on a material error of law. The Master applied *Cooper* to a situation to which it does not extend and, in doing so, failed to give effect to the requirement in s 63(1) of the Act that remuneration must be for services rendered. That is an error of the kind contemplated by s 6(2)(d) of PAJA and rendered the decision reviewable.

[26] Mr Gore contended that the Master had only ever made one substantive decision, namely, the decision of 13 June 2022, and that the impugned decision was no more than a reaffirmation of the first. Since the 13 June 2022 decision was never taken on review, so the argument ran, the standing position must be that the trustees' remuneration is a single composite fee. This argument cannot be sustained. The Master herself acknowledged on 17 April 2024 that she was being called upon to provide directions in respect of an ongoing dispute and did so. That ruling was a fresh exercise of power under s 56(5) and was susceptible to review on its own terms. In any event, even if the 13 June 2022 decision were treated as the operative ruling, it was open to challenge on the same grounds: it embodied the same error of law.

[27] Mr Gore further contended that the High Court's order obliging the Master to apply Tariff B separately to the two periods would impose an 'untenable hardship' on the Master of the kind warned against in *Cooper*. The objection is overstated. Tariff B operates by reference to specific realisations and amounts collected. The date upon which each realisation occurred is a matter of record. To allocate realisations to the period preceding 19 October 2021 and the period following that date is no more demanding than the exercise already required of the Master in every estate in which a provisional trustee does not become a final trustee. The High Court held that the Master is not called upon to undertake any qualitative assessment of 'which work is worth what'; the Master is called upon to apply the tariff to the realisations attributable to each period. The High Court so held, and that conclusion is unimpeachable.

[28] As to the special fee of R600 000, the High Court correctly found that the Master's ruling of 9 November 2022 must be read in the context in which it was made. The application for the special fee was made on 4 December 2017 by Mr Moollajie and Ms Fey alone, in respect of work performed by them during the period 22 December 2016 to 30 November 2017. Mr Gore was not yet a trustee and could not have been a party to that application. The Master's reference to 'awarding the trustees

an increase in remuneration of R600 000' must, when read with the rest of the ruling and the application to which it responded, be understood as referring to the applicants for the special fee, namely, Mr Moollajie and Ms Fey. The reasons given by the Master, the complexity of the estate, the recalcitrance of the insolvent and his family, and 'the amount of time spent in exercising their duties' over a period of six years, are exclusively referable to work done by Mr Moollajie and Ms Fey, much of it during their tenure as provisional trustees alone.

[29] Finally, it must be observed that this Court's decision in *Nel* does not assist Mr Gore. *Nel* concerned the conditions under which the Master may exercise the discretion under the proviso to s 63(1) of the Act to increase or reduce remuneration. It did not concern the apportionment of remuneration between trustees and, *a fortiori*, did not address a trustee's entitlement to share in remuneration earned before his appointment. The general statement in *Nel* that the Master's function in taxing remuneration deals with which assets were sold, not when they were sold, was made in the context of a dispute about the quantum of remuneration in a single-trustee insolvency. It cannot be transposed, without qualification, to a context in which different trustees held office at different times.

Conclusion

[30] The High Court correctly held that Mr Gore is not entitled to share in the remuneration earned for services rendered before his appointment as a final trustee. An error of law vitiated the Master's decision of 17 April 2024 and was rightly set aside. The remittal of the matter to the Master for the application of Tariff B separately to the two periods of administration involves no untenable burden. It gives proper effect to s 63(1) of the Act.

[31] Costs must follow the result. The matter was complex and raised a question of some general importance for the administration of insolvent estates. The employment of two counsel was justified.

Order

[32] The following order is made:

The appeal is dismissed with costs, including the costs of two counsel.

KE MATOJANE
JUDGE OF APPEAL

Appearances:

For the appellant: G W Woodland SC (with him C Morgan)

Instructed by: Edward Nathan Sonnenbergs Inc., Cape
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MM Hattingh Attorneys, Bloemfontein

For the first to fourth respondents: R van Riet SC

Instructed by: De Waal Grobbelaar Fischer Inc., Bellville
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