THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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JP Fourie NO and Another v The Master of the High Court, Mahikeng and Another (959/2024) [2026] ZASCA 104 (29 July 2026)

Today, the Supreme Court of Appeal (SCA) upheld an appeal concerning the appointment of final liquidators in a company winding-up and clarified the effect of s 18(4) of the Insolvency Act 24 of 1936 (the Insolvency Act) as applied to company liquidations through s 339 of the Companies Act 61 of 1973 (the Companies Act).

The appellants, Mr JP Fourie (Mr Fourie) and Mr SM Rampoporo (Mr Rampoporo), were appointed by the Master of the High Court, Mahikeng (the Master), as provisional liquidators of Boxberry Express (Pty) Ltd (Boxberry). When the first meeting of creditors was convened, none of the creditors attended to prove claims or nominate final liquidators. Despite this, the Master appointed only Mr Rampoporo as the final liquidator and declined to appoint Mr Fourie. The appellants challenged that decision, contending that s 18(4) of the Insolvency Act obliged the Master to appoint both provisional liquidators as final liquidators where no nomination was made at the creditors' meeting.

The North-West Division of the High Court, Mahikeng (the high court) dismissed the application, holding that the Master retained a residual discretion not to appoint a provisional liquidator as a final liquidator even where creditors failed to participate in the meeting. The appellants successfully appealed that decision to the SCA.

The SCA held that the language of s 18(4) is peremptory. Once a creditors' meeting has been held and no liquidator has been elected, the Master 'shall' appoint the provisional liquidator as final liquidator, subject only to the furnishing of any additional security required by the Master. The court found that the provision leaves no room for a residual discretion permitting the Master to refuse such an appointment.

This Court rejected the Master's argument that the creditors' failure to attend the meeting or to honour the undertaking contained in a requisition form justified refusing Mr Fourie's appointment. It held that creditors are entitled, but not obliged, to attend and prove claims at the first meeting. Their failure to do so could not create a discretion that the statute itself does not confer.

The SCA further held that the Master's reliance on s 370 of the Companies Act was misplaced because that section applies only where a nomination has in fact been made at a creditors' meeting. In this case, no nomination occurred and the statutory mechanism in s 18(4) therefore applied. The court also emphasised that Mr Fourie remained a duly appointed provisional liquidator and had never been removed from office in accordance with the Companies Act.

This Court concluded that the high court had erred by reading into s 18(4) a discretion that the Legislature had not provided. Properly interpreted, the section promotes continuity and certainty in the administration of insolvent estates by ensuring that the winding-up process is not disrupted where creditors choose not to participate in the first meeting.

In the result, the appeal was upheld. The SCA declared that the Master is obliged to appoint both appellants as joint liquidators of Boxberry, subject to the furnishing of any additional security required by the Master. The Master was ordered to pay the costs of the application and the appeal, including the costs of two counsel where employed.

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