THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 17 October 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Walker and Another v Schabort Potgieter Attorneys Inc. and Others (320/2024 and 368/ 2024) [2025] ZASCA 154 (17 October 2025 2025).

Today the Supreme Court of Appeal (the SCA) handed down a judgment in which it dismissed the appeal with costs, including the costs of two counsel against an order of the Gauteng Division of the High Court, Pretoria (the high court)

The high court granted various orders in favour of the respondents, Gert Lourens Steyn De Wet N O, Karen Keevy N O, Simone Liesel Margadie N O, and Irene Susan Ponnen N O (the Aurora liquidators); and Aurora Empowerment Systems (Pty) Ltd (in liquidation) (Aurora).

Aurora was placed into final liquidation on 4 October 2011. One of its major creditors, Pamodzi, lodged a claim of R1.5 billion against Aurora. Consequently, an inquiry under ss 417 and 418 of the Companies Act 61 of 1973 (Companies Act) was conducted concerning Aurora. This inquiry revealed the existence of impeachable dispositions made under the Insolvency Act, which unfairly disadvantaged Aurora's creditors. As a result, the court's intervention was required to recover Aurora's assets.

Aurora was not in a financial position to pursue the recovery of these impeachable dispositions and other claims. As a major creditor of Aurora, Pamodzi, represented by its liquidators, offered to finance the prosecution and recovery of the claims. This led to the conclusion of a tripartite fee and mandate agreement between Mr Walker, Aurora and Pamodzi, represented by their respective liquidators.

The fee and mandate agreement concluded between Mr Walker, Aurora, and the Pamodzi liquidators specifically mandated Mr Walker to take all necessary steps regarding Aurora's claims. In return, Pamodzi agreed to cover the costs of Aurora's litigation as outlined in the agreement and indemnified Aurora in respect thereof. Consequently, the liquidators of Pamodzi co-signed the fee and mandate agreement. A material term of the fee and mandate agreement required Mr Walker to render a final account with supporting vouchers.

Mr Walker maintained that he was mandated by the liquidators of Pamodzi to prosecute the claims; therefore, he had no duty to account to Aurora and its liquidators for the legal fees or the settlement of the amounts. He argued that, under s 32 of the Insolvency Act, Aurora was merely a nominal applicant. In addition, he submitted that his professional fees, paid by Pamodzi, were reasonable and that he had provided Aurora with a bill of costs regarding these fees. As a result, he claimed he owed no duty to account to anyone else.

Aurora countered by arguing that Mr Walker had a legal obligation to account to them, deriving from the fee and mandate agreement, and that he owed a fiduciary duty under the Attorneys Act 53 of 1979 (now repealed by s 119 of the Legal Practice Act 28 of 2014). They further contended that the payments made by the debtors were claimed and paid for Aurora's benefit. Therefore, Mr Walker was required to account to Aurora and not to Pamodzi. Aurora emphasised that it was not merely a nominal litigant; Mr Walker was required to account to them, settle accounts, and address any issues arising from the discharge of his professional mandate. Aurora stated that furnishing and debating the account was necessary because the bill of costs included overlaps with unrelated payments that had nothing to do with Aurora.

The following were the key issues: (a) Whether Aurora has a right to claim the delivery and debatement of an account from Mr Walker, based on the express terms of the fee and mandate agreement, a fiduciary relationship, arising from the applicable statutory framework; (b) The admissibility of Mr Walker's evidence, particularly concerning the alleged new evidence introduced on appeal; (c) Whether s 32(1)(*b*) of the Insolvency Act is applicable in the circumstances of this matter, and if so, whether the said section applies to the relationship between Aurora and Pamodzi in a manner that ousts Mr Walker's duty to account to Aurora; and (d) Whether the relief granted a quo has become moot due to Mr Walker's partial accounting.

This Court found that the fee and mandate agreement was concluded in terms of s 32 (1)*(b*) of the Insolvency Act. Therefore, Mr Walker had a duty to account to Aurora as Aurora were not mere nominal litigants. It also found that the word 'fails 'in s 32(1)(*b*) does not mean only the refusal to pursue claims arising from the impeachable transactions, but that it should include the inability to do so. In this case, Aurora was not in a financial position to prosecute the claims, but nonetheless co-operated with the major creditor, Pamodzi, to recover the assets of the company in liquidation.

This Court finds that Mr Walker did not adequately account to Aurora for the following reasons: the account analysis was conducted by a forensic auditor, rather than being based solely on the claims of the Aurora liquidators; the report from the forensic auditor remains unchallenged; and the funds collected have not been paid to Aurora. Additionally, the JW9 statement, allegedly reflecting all the amounts received by Mr Walker in the conduct of the various matters, is wholly insufficient. It does not constitute a full and proper accounting, as there are no details of who paid the amounts or received any of the amounts. It does not even distinguish payments made by Pamodzi. He has failed to provide a sufficient accounting to Aurora. Aurora is entitled to an appropriate accounting, not a bill of costs, or a bundle of statements. Aurora is also entitled to the debatement of the account. This Court cannot find fault with the orders granted by the high court, as they set out each and every matter in which accounting and debatement is sought. In the event that proper accounting has been provided, the parties may proceed with the debatement of the accounts. For all the above reasons, the appeal is dismissed with costs, including the costs of two counsel.

The dissenting judgment accepts that the appeal should fail with costs. However, it does not agree with the confirmation of the order that was granted by the high court on the basis that it was overbroad.

--------oOo--------