



## 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:** 1 June 2026

**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***

*Stephen Malcolm Gore v Abduruman Moollajie NO and others* (268/2025 and 489/2025) [2026] ZASCA 82 (1 June 2026)

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Today, the Supreme Court of Appeal (the SCA) dismissed an appeal concerning the remuneration of trustees of an insolvent estate, and in particular, whether a final trustee who was not a provisional trustee may share in remuneration earned for work done before he was appointed.

The insolvent estate of Mr Mohamed Ismail Patel was finally sequestrated in April 2017. Mr Moollajie and Ms Fey were appointed as joint provisional trustees in December 2016. The estate proved difficult to administer: the insolvent had left the country, his family were uncooperative, and substantial work was required to trace assets, hold enquiries and conduct litigation. By the end of November 2017, Mr Moollajie and Ms Fey had substantially completed the winding-up and had applied to the Master for a special fee.

Disputes about the appointment of a final trustee delayed the administration for nearly four years. In October 2021, the Master appointed Mr Moollajie, Ms Fey and Mr Gore as joint final trustees. Mr Gore, who had played no part in the earlier work, contended that as a joint final trustee, he was entitled to a one-third share of all remuneration earned in the estate, including the remuneration for work done before his appointment. Mr Moollajie and Ms Fey contended that they alone were entitled to remuneration for the work they had performed as provisional trustees.

The Master ruled that the trustees' remuneration was to be reflected in the liquidation and distribution account as a single composite amount, without distinguishing between the provisional and final periods. On review, the Western Cape Division of the High Court set that ruling aside. It remitted the matter to the Master to apply Tariff B separately to the period during which the two provisional trustees administered the estate and the period during which the three final trustees did so. The appeal to the SCA was with the leave of the High Court.

The SCA held that, on a proper construction of s 63(1) of the Insolvency Act 24 of 1936 read with Tariff B in the Second Schedule, a trustee is entitled to remuneration for his services, which presupposes both an appointment as trustee at the time the work was done and the actual rendering of services. The tariff is the measure of remuneration, not its source; the source remains s 63(1), which ties remuneration to services rendered. A trustee who was not in office when the work was done could not have rendered services in respect of that work. Tariff B confirmed this conclusion by providing separately for the remuneration of a provisional trustee.

The SCA distinguished *Cooper v The Master of the Supreme Court*, on which Mr Gore had relied for the principle that, absent agreement, co-trustees share their remuneration equally. In *Cooper*, the trustees had been jointly appointed from the outset, and the rule rested on a contractual analysis. Mr Gore was not a party to the joint appointment of Mr Moollajie and Ms Fey for the period from December 2016 to October 2021. It could not have been party to any agreement, express or tacit, regarding the sharing of remuneration for that period, since he was not yet a trustee. The equal-division rule, therefore, did not apply to remuneration earned before his appointment.

The SCA also held that the question whether a person is entitled to share in remuneration at all is anterior to the apportionment of remuneration between joint trustees, and is a matter relating to the estate within the meaning of s 56(5) of the Act. The Master's decision proceeded on a material error of law, in that she applied *Cooper* to a situation it does not govern and failed to give effect to the requirement in s 63(1) that remuneration must be for services rendered. The decision was accordingly reviewable.

The SCA found no merit in the contentions that the impugned ruling was a mere reaffirmation of an earlier decision, that the separate application of Tariff B to the two periods would impose an untenable burden on the Master, or that the special fee of R600 000 had been awarded to all three trustees. The application for the special fee had been made by Mr Moollajie and Ms Fey alone, in respect of work performed before Mr Gore was appointed, and the Master's reasons related exclusively to their work.

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

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