



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

DATE: 4 June 2021

STATUS: Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

De Wet and Another v Khammissa and Others (358/2020) [2021] ZASCA 70 (4 June 2021).

Today, the Supreme Court of Appeal (the Court) dismissed an appeal against an order of the Gauteng High Court, Pretoria, which upheld the respondents' application to review and set aside the decision of the Master of the High Court, Gauteng Division, Johannesburg (the Master) in terms of which the Master had purported to replace her earlier decision (the first decision) not to appoint the appellants as joint co-liquidators with the respondents, with a decision (the second decision) to appoint the appellants as joint co-liquidators with the respondents.

The Court found that the Master's first decision was final and binding, and therefore the Master had no power to rescind it and replace it with the second decision. The Master was therefore *functus officio* and thus the second decision a nullity.

The Court criticised the high court for failing to properly identify the legal issue for determination, which had led it to consider irrelevant sections of the Companies Act 61 of 1973 and the Insolvency Act 24 of 1936, as well as decisions related thereto. The Court emphasised that the identification of issues remained the task of a court and should never be left solely to the parties or their legal representatives.

The Court, per Makgoka JA (with Saldulker and Mbatha JJA and Gorven and Goosen AJJA concurring), dismissed the appeal with costs of two counsel.

END