



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

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From: The Registrar, Supreme Court of Appeal  
Date: xx March 2010  
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*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

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**R MILLER v NAFCOC INVESTMENT HOLDING COMPANY**

A company, Serveco (Pty) Ltd, was finally liquidated. Directors/employees of its major shareholder Nafcoc brought urgent proceedings aimed at preventing their examination, and the attendance of Miller, a professional liquidator acting on behalf of the joint liquidators, at an enquiry of Serveco's affairs authorised by the Master in terms of ss 417 and 418 of the Companies Act.

The court a quo set aside the Master and the Commissioner's decisions to convene the enquiry; to permit its continuation; and to issue the notices served on the applicants to attend the enquiry. Furthermore, Miller was interdicted from access to the enquiry, the record and any inspection thereof.

In upholding Miller and the joint liquidators' appeal against the court a quo's decision, to set aside the Master's decision to convene the enquiry, which had been made by Miller (acting on behalf of the joint liquidators), the SCA held that in ordering an enquiry, the Master does not have to act on an application by a limited category of persons, or any application at all for otherwise the Master would be unable to act unless he was given information from specified persons. The SCA held that as the

notices requiring the attendance of the applicants were issued by the Commissioner during the period that Serveco was deregistered (as a result of a mistake in the CIPRO office), they were invalid and new notices would have to be served. The SCA further held that the Commissioner was entitled to allow Miller to attend the enquiry as it was not only competent but also sensible for the Master, in invoking s 418 to appoint a Commissioner, to delegate to her the power of deciding who might be allowed to attend the hearing and have access to the record. There was therefore no legitimate basis for the court below interdicting Miller from access to the enquiry. Lastly, it was not incompetent in law for the liquidators to delegate the conduct of the enquiry to Miller. The liquidators did no more than delegate to Miller acts he was required to perform as their subordinate agent.

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