



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: 29 June 2015  
Status: Immediate

*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*

---

**Neutral citation:** *Naidoo v Kalianjee NO* (20345/2014) [2015] ZASCA 102 (29 June 2015)

At issue in this matter was the validity of the search and seizure warrant issued by a magistrate under s 69(3) of the Insolvency Act 24 of 1936 issued in an effort to find and secure assets of the company placed into liquidation that were reasonably suspected of having been concealed and hidden from the liquidators.

The appellants who were persons affected by the warrant had unsuccessfully applied to the high court to have the warrant set aside. The judgement of that court is reported as *Naidoo & others v Kalianjee NO & others* 2013 (5) SA 591 (GNP). With leave of a high court the appellants appealed to the Supreme Court of Appeal repeating their assertion that the warrant had been invalid.

The appellants' challenge to the warrant was multi-faceted. Chief amongst their contentions was an argument that it ought not to have been issued without notice being given to them. However this, as well as several other challenges, were abandoned in the SCA. Nevertheless a variety of other contentions were raised by the appellants all of which were ultimately rejected by the SCA. Briefly the issues raised were as follows

- (a) The appellants argued that the application for a warrant had constituted an abuse of the process of court. This was rejected.
- (b) The appellants argued that certain assets that were subject to the warrant had been acquired by them independently. The SCA held on the strength of previous authority that the issue of the warrant did no more than give the liquidators provisional physical possession and that the assets concerned were liable to be returned to the appellants if it was shown that they had been the

owners thereof at the date of liquidation. But this was no reason to set aside the warrant.

(c) There were certain anomalies in the warrant – relating to what was referred to as a ‘return date’ and an order for costs. These it was argued rendered the warrant invalid. The SCA however held that the return date did not render the warrant provisional, as advanced by the appellants, and many conveyed that it could be challenged on that date. It further held that the costs order had been meaningless and ineffective. Neither of these anomalies thus rendered the warrant invalid.

(d) The SCA also rejected the appellants argument that the warrant was one issued under the Criminal Procedure Act 51 of 1977 and should therefore have been issued to a policeman named therein. It held that there were fundamental differences between a warrant issued under s 69 of the Insolvency Act and a criminal warrant, and that there could be no doubt that the sheriff and the liquidators had been authorised thereunder to execute the warrant with the assistance of the police.

(e) A further contention that the warrant was overboard was also dismissed.

As the appellants therefore failed to establish that the warrant was invalid, the SCA concluded that there was no merit in the appeal which was dismissed with costs of two counsel.

---ends---