



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 23 September 2015
STATUS Immediate

Mayo NO v De Montlehu (20504/14) [2015] ZASCA 127 (23 September 2015)

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

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the liquidators of a company against a decision in the Gauteng Local Division which held that the sole member and shareholder in that company had correctly challenged the decision of the Master of the High Court that the provisions of s 44(1) of the Insolvency Act 24 of 1936 – which affected time frames for the lodging of claims and the setting of costs and the payment thereof in respect of late claims – did not apply to companies in liquidation.

After considering conflicting decisions in the high court on the issue, the SCA found that the words ‘mutatis mutandis’ in s 366(1) of the old Companies Act (61 of 1973), read with s 366(2) thereof, did not exclude the provisions of s 44(1) of the Insolvency

Act but that s 366(2) of the old Companies Act operated to exclude the applicability of s 104(1) of the Insolvency Act.

The inapplicability of s 104(1) of the Insolvency Act to companies in liquidation facilitated distributions under the accounts of a company in liquidation. The process of participating in and benefitting from a distribution is different under the old Companies Act from the sequestration of a natural person. Therein, in the opinion of the SCA, lay the rationale for the provisions of s 366(2) of the old Companies Act.

The SCA found that the court from which the appeal had been heard had correctly decided the case and that the importance of the matter, as well as the difficulties in determining the questions of law had justified the costs of two counsel.