THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 490/2022

In the matter between:

THE SOUTH AFRICAN MEDICAL ASSOCIATION TRADE UNION **APPELLANT**

and

THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC **FIRST RESPONDENT**

THE REGISTRAR OF LABOUR RELATIONS **SECOND RESPONDENT**

Neutral citation: *The South African Medical Association Trade Union v The South African Medical Association NPC and Another* (Case no 490/2022) [2023] ZASCA 71 (24 May 2023)

Coram: GORVEN, MEYER, GOOSEN and MOLEFE JJA and MASIPA AJA

Heard: 8 May 2023

Delivered: 24 May 2023

Summary: Liquidation – unable to pay debts – indebtedness and inability to pay *bona fide* disputed – just and equitable – wide discretion of court – discretion properly exercised – appeal dismissed.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Davis J, sitting as court of first instance):

The appeal is dismissed with costs, including those consequent on the employment of two counsel.

JUDGMENT

Gorven JA (Meyer, Goosen and Molefe JJA and Masipa AJA concurring)

[1] This appeal arises from the dismissal of an application for a final winding-up order. The South African Medical Association NPC, the first respondent in this matter (SAMA), which has functioned since 1927, is a non-profit company registered under the company laws of South Africa. It represents and serves the needs of medical professionals. Some of these are employed by the State (public sector employees) and others are self-employed or employed in the private sector (private sector members). In 1995, the Labour Relations Act 66 of 1995 (the LRA) was promulgated. It provided that only registered trade unions could represent the public sector employees at the bargaining councils or the Commission for Conciliation, Mediation and Arbitration. As a result, SAMA established the South

African Medical Association Trade Union (SAMATU).[1] SAMATU is the appellant in this appeal and was registered in 1996 in terms of s 96(7)*(a)* of the LRA. It is the relationship between SAMA and SAMATU which is at the core of the matter before us.

[2] It is common ground that SAMATU never functioned as a separate entity from SAMA. SAMA conducted it as one of its divisions. No bank account was opened for it. No audited financial statements were prepared as required by the LRA. On 10 October 2019, by order of the Gauteng Division of the High Court, Pretoria, SAMATU was placed under administration in terms of s 103A(1)*(a)* of the LRA. On 27 February 2020, Mr Gerhard Vosloo was appointed administrator (the administrator). His remit was to render SAMATU fully functional.

[3] The administrator came to learn that deductions had been, and were being, made from the salaries of the public sector employees by way of the PERSAL system (the PERSAL deductions). This is a payroll system used to pay all public sector employees. These were paid into the account of SAMA. Private sector members paid their membership fees by way of debit orders. It is common ground that PERSAL deductions could only lawfully be made in respect of trade union membership subscriptions and levies. These deductions gave rise to the present dispute. SAMA claimed that they were membership fees of SAMA. It acknowledged that the amounts in question 'may have been incorrectly debited via PERSAL' but stated that this did not mean that they were trade union subscriptions and levies due to SAMATU. The administrator, on the other hand, took the contrary view.

[1] SAMATU was originally named the Medical Association of South Africa Trade Union. On 7 October 2002, it changed its name to SAMATU.

[4] It is also common cause that all the public sector employees were members of SAMA. The issue was which of those members were also members of SAMATU. Without that information, the administrator was unable to contact them or to provide them with services. The administrator's requests to SAMA to provide him with particulars of SAMATU members fell on deaf ears.

[5] As a result, the administrator and SAMATU approached the Labour Court on the basis of urgency. The first respondent was SAMA. This resulted in an order being granted by Van Niekerk J, the material parts of which were:

'2. It is declared that all amounts deducted in favour of the second applicant on the PERSAL payroll system pursuant to the right to the deduction of trade union subscriptions and levies in terms of s 13 of the Labour Relations Act, were remitted in terms of s 13(3)[2] to and for the account of the second applicant.

3. It is declared that in the absence of any proof to the contrary, all SAMA members in respect of whom such stop order deductions were and continue to be made through the PERSAL payroll system, are and remain members of the second applicant.'

Van Niekerk J refused leave to appeal this order and a petition to the Labour Appeal Court was pending at the time the application leading to the present appeal was launched. Subsequent to that, however, and prior to the papers in the present matter being finalised, the petition was refused by both that court and the Constitutional Court.

[6] In paragraph 1 of the order, SAMA was directed to provide documents and information to the administrator. It declined to do so pending the outcome of those applications for leave. A dispute also arose over the interpretation of paragraphs 2 and 3 of the order set out above. This prompted the administrator, as the first

[2] There was no dispute that this was intended to be a reference to s 13(1) and (2) and not s 13(3). These sections will be dealt with later.

applicant, and SAMATU as the second applicant duly represented by the administrator, to approach the Gauteng Division of the High Court, Pretoria (the high court) for a final winding up order against SAMA. The first ground was that SAMA was unable to pay its debts. The administrator claimed that the PERSAL deductions rendered SAMA indebted to SAMATU in the sum of R307 million and that SAMA had failed to satisfy its indebtedness. The second, alternative, ground was that it was just and equitable for SAMA to be finally wound up. The second respondent, which was cited as an interested party, did not take part in either the application or the appeal.

[7] The contention that SAMA was unable to pay its debts placed reliance on the provisions of s 344 read with s 345 of the Companies Act 61 of 1973 (the old Act). In this SAMATU sought to prove, in the alternative:

(a) that SAMA was deemed to be unable to pay its debts in terms of s 344*(f)* read with s 345(1)*(a)*(ii) of the old Act. This provision deems a company to be unable to pay its debts if a letter of demand is delivered in a certain manner and the debtor fails to 'pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor' within three weeks of delivery. This ground was abandoned on appeal;

(b) that, if it could not rely on the deeming provision, SAMA was factually unable to pay its debts in terms of s 344*(f)* read with s 345(1)*(c)* of the old Act. This requires a creditor to prove 'to the satisfaction of the Court that the company is unable to pay its debts'. Under that section, SAMATU had to prove that it was a creditor and that SAMA was unable to satisfy its indebtedness.

[8] The contention that it was just and equitable to wind-up SAMA was founded on s 344*(h)* of the old Act. This provided that a 'company may be wound up by the

Court if . . . it appears to the Court that it is just and equitable that the company should be wound up'. Somewhat curiously, SAMATU also relied on s 81(1)*(c)*(ii) of the Companies Act 71 of 2008 (the new Act) which applies to the winding-up of a solvent company. As will be seen in due course, it is not necessary to go into this issue.

[9] The high court (per Davis J) held that the alleged indebtedness of SAMA to SAMATU was disputed on *bona fide* grounds and that SAMA could therefore not be wound up on the basis that it was unable to pay its debts. He briefly considered whether it was just and equitable to finally liquidate SAMA and concluded that this was not the case. He accordingly dismissed the application but ordered that each party should pay its own costs. The appeal before us is with his leave.

[10] Prior to the hearing of the appeal, certain events took place. The administration of SAMATU was terminated and the administrator discharged. This left SAMATU as the sole appellant. SAMATU abandoned its reliance on the provisions of s 81(1)*(c)*(ii) of the new Act. It also conceded that it could not rely on the deeming provisions of s 345(1)*(a)*(i) of the old Act. This left two issues for decision. Had SAMATU shown that SAMA was indebted to it and was unable to pay its debts? And, if not, was it just and equitable that SAMA be liquidated?

[11] It is appropriate to deal first with the ground that SAMA is unable to pay its debts. SAMATU relied primarily on the order of Van Niekerk J to found the indebtedness of SAMA to it. It argued that all the PERSAL deductions which had been made, and were being made, were due to it. It contended that this was the effect of paragraphs 2 and 3 of the order set out above.

[12] On the other hand, in both its papers and its heads of argument, SAMA argued for a very different interpretation. It interpreted the phrase 'all amounts deducted in favour of the second applicant on the PERSAL payroll system' as follows. Because the deductions had been made at the instance of SAMA and were deposited into its account, they were not made 'in favour of' SAMATU. They were thus not 'remitted to and for the account of' SAMATU. As such, the order did not mean that SAMATU had been, or was, entitled to any of the PERSAL deductions. In the second place, SAMA contended that paragraph 3 of the order applied only to SAMA members absent 'proof to the contrary'. It was therefore open to SAMA members to show that they had not intended the deductions to be made in favour of SAMATU. If SAMA members elected to belong solely to SAMA, the past deductions could not be considered to have been in favour of SAMATU.

[13] The *locus classicus* on the approach to interpreting court orders is set out in *Eke v Parsons*:

'The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order . . . and the court's reasons for giving it must be read as a whole in order to ascertain its intention.'[3]

[14] The plain meaning of the two paragraphs in question is that all members of SAMA whose deductions had been made via PERSAL in the past were members of SAMATU. Those deductions should have been paid to SAMATU. If deductions via PERSAL continued to be made from salaries of those members without their terminating the mandate of their employer to do so, they would continue to be

[3] *Eke v Parsons* [2015] ZACC 30; 2016 (3) SA 37 (CC) para 29.

regarded as members of SAMATU. Those deductions would then also be due to SAMATU. This much appears from a textual analysis.

[15] This is buttressed by the reasoning in the judgment which provides the immediate context for the order. It is made clear in the following passage in the judgment:

'To the extent that SAMA denies that the subscriptions deducted from the remuneration of those of its members who are employed by the state accrue to [SAMATU], the statutory basis on which the deductions are made and remitted is such that only [SAMATU] is the proper beneficiary of those funds. Those of SAMA's members who have been and remain party to authorisations to effect deductions from the PERSAL payroll system are union members, since only union members may grant such authorisations to a registered trade union. They remain bound by those authorisations until the authorisations are validly terminated.'

Further clarity is lent by the following passage:

'Given that the stop order deductions in place in respect of doctors employed in the public sector [were] deductions made in terms of s 13 of the LRA and solely for the benefit of the union, the union is entitled to a declaratory order to that effect, as well as a declaratory order to the effect that all employees in respect of whom such stop orders were and are being made, are union members, at least for as long as they have not terminated their membership of the union.'

[16] It is also consistent with the reference to s 13(1) and (2) of the LRA in paragraph 2 of the order. They provide:

'(1) Any employee who is a member of a representative trade union may authorise the employer in writing to deduct subscriptions or levies payable to that trade union from the employee's wages.
(2) An employer who receives an authorisation in terms of subsection (1) must begin making the authorised deduction as soon as possible and must remit the amount deducted to the representative trade union by not later than the 15th day of the month first following the date each deduction was made.'

Deductions under that section may only be paid to trade unions. Since SAMA states that it was not a trade union and specifically set up SAMATU in order for its public sector employees to enjoy the benefits offered by one, it can only mean that the entity in favour of which the deductions were made was SAMATU and not SAMA. This confirms the agreement between the parties referred to above that the only lawful deductions via PERSAL are for 'subscriptions or levies payable to [a] trade union'.

[17] In argument, SAMA retreated from its initial position and accepted that the order meant that deductions made via PERSAL up to the date of the order had been made in favour of SAMATU. As such, since SAMA had received them, it was obliged to account for them to SAMATU. Likewise, any deductions made thereafter should be accounted for if the persons in whose name they were made remained members of SAMATU. This concession was well-made. It is so, as SAMA argued, that if public sector employees revoke the authority of their employer to deduct the contributions from their salaries via PERSAL, SAMATU would not be entitled to their contributions from the date on which the notice to terminate elapsed in terms of s 13(3) of the LRA.[4]

[18] This, however, did not without more establish that SAMA was indebted to SAMATU. The submission of SAMATU was that the indebtedness of SAMA was undisputed. SAMATU argued that the financial statements of SAMA of 31 December 2019 showed that indebtedness in an amount of at least some

[4] Section 13(3) of the LRA provides:
'An employee may revoke an authorisation given in terms of subsection (1) by giving the employer and the representative trade union one month's written notice or, if the employee works in the public service, three months' written notice.'

R32.5 million was not disputed. In support, SAMATU referred to a note in those financial statements which reflected a loan from SAMATU in that sum. What this submission ignored, however, was the full content of that note. It explained that the loan had been reflected as such due to the order of van Niekerk J but that the management of SAMA was of the view that 'expenses related to servicing the public members also need to be shared' by SAMATU. This certainly falls short of an undisputed indebtedness. The submission of SAMATU to that effect falls to be rejected.

[19] In its affidavits, SAMATU accepted that, since SAMA had operated SAMATU as one of its divisions, it had incurred costs in doing so. Likewise, SAMATU accepted that certain administrative costs should be shared between SAMA and SAMATU. Contrary to this concession, however, in both oral argument and its heads of argument, SAMATU ignored the fact that an overall indebtedness on the part of SAMA, which took account of those costs, had to be shown. It contended that all that was necessary to show an indebtedness was that moneys due to SAMATU had been paid to SAMA.

[20] That submission is clearly incorrect. In order to arrive at the conclusion that SAMA is indebted to SAMATU, it must be shown that the income received on behalf of SAMATU exceeded the expenditure incurred on its behalf. In a supplementary answering affidavit, SAMA put up an affidavit by one Dr van Romburgh, a chartered accountant with a PhD in forensic accounting. He set out to quantify and reconstruct 'the income received and expenses incurred by SAMA on behalf of SAMATU during the period 1996 to 2019, so as to ultimately determine an attributable portion of equity to each'. He concluded that, since 1998, the public sector employees had been subsidised by the private sector members to the tune of

between R15.6 million and R30.7 million. As such, the expenses attributable to conducting the affairs of SAMATU exceeded the PERSAL deductions during that period. He made it clear that the exercise he had undertaken was complex and that the outcome was by no means 'absolutely conclusive'. This evidence was not addressed by SAMATU in its supplementary replying affidavit. As such, it at the very least casts doubt on the assertion by SAMATU that SAMA is indebted to it. Whether or not that will ultimately prove to be the case, on the papers the indebtedness is disputed on *bona fide* grounds.

[21] In addition, even assuming that SAMATU showed an indebtedness on the part of SAMA, the latter put up its draft balance sheet as at 31 December 2020 showing that it is not insolvent. It also testified that it was able to satisfy any indebtedness to SAMATU which might be proved. This evidence, too, was left unchallenged by SAMATU. It is fair to say that in the founding papers the issue whether SAMA was able to satisfy any indebtedness to SAMATU or to pay its debts as and when they fell due was not dealt with at all.

[22] As a result, these two factors combine to mean that no case was made out that SAMA was unable to pay its debts within the meaning of s 344*(f)* read with s 345(1)*(c)* of the old Act. The indebtedness was disputed on *bona fide* grounds and it was not shown that SAMA could not satisfy any such indebtedness. The conclusion of Davis J that a case had not been made out that SAMA was unable to pay its debts, cannot be faulted.

[23] That then brings into focus the second ground relied upon by SAMATU that it was just and equitable for SAMA to be wound up. This SAMATU was obliged to

prove on a balance of probabilities.[5] In *Cuninghame and Another v First Ready Development 249 (Association Incorporated under Section 21)* (*Cuninghame*), Brand JA held:

'As has often been said about the only remaining winding-up ground persisted in by the appellants, namely that of "just and equitable" - it postulates not facts but a broad conclusion of law, justice and equity.'[6]

In that matter, this Court mentioned with approval the recognition, in *Rand Air (Pty) Ltd v Ray Bester Investments (Pty) Ltd*,[7] of five broad categories of circumstances in which a final winding up order had been granted on the just and equitable ground. These were:

(a) The disappearance of the company's substratum.

(b) The illegality of the objects of the company and fraud pursuant to this.

(c) Deadlock to the extent that the only solution is to wind up the company.

(d) Circumstances where, if it was a partnership, would result in the court dissolving the partnership on the ground that it would be just and equitable to do so.

(e) Oppression towards minority shareholders regardless of whether they might have other remedies under the company laws.

Cuninghame, however, cautioned against viewing these broad categories as a closed list.

[24] A court's power to grant a winding-up order is a discretionary power. This is so on any ground under s 344 of the old Act.[8] As with any such discretion, it must be exercised on judicial grounds and not whimsically. In arriving at the conclusion

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[5] *Paarwater v South Sahara Investments (Pty) Ltd* [2005] ZASCA 4; [2005] 4 All SA 185 (SCA) para 3.
[6] *Cuninghame and Another v First Ready Development 249 (Association Incorporated under Section 21)* [2009] ZASCA 120; 2010 (5) SA 325 (SCA); [2010] 1 All SA 473 (*Cuninghame*) para 3.
[7] *Rand Air (Pty) Ltd v Ray Bester Investments (Pty) Ltd* 1985 (2) SA 345 (W) at 350A–I.
[8] *F & C Building Construction Co (Pty) Ltd* v *Macsheil Investments (Pty) Ltd* 1959 (3) SA 841 (N) at 844; *Re JD Swain Ltd* [1965] 2 All ER 761 (CA) at 762.

that it is just and equitable to wind up a company, a court must weigh in the scale all relevant factors. In particular, it must assess those factors relied upon by the applicant for liquidation. It is thus appropriate to begin with these.

[25] SAMATU advanced three such factors in its heads of argument, the first being that SAMA's substratum, as an alleged trade union, had disappeared. Even assuming that SAMA itself functioned as a trade union, which is at least doubtful, that was and is not its only substratum. SAMATU made out no case that the balance of SAMA's objects could no longer be fulfilled. The Memorandum of Incorporation of SAMA lists ten objects. Of these, only one could conceivably relate to SAMA performing trade union functions. Reference to only the first three objects will suffice to demonstrate this:

'2.1.1 [To] represent the medical profession with authority and credibility, collectively and individually, in all matters, and to act as the principal co-ordinating and negotiating body for the medical profession,

2.1.2 [To] serve the needs of members of SAMA to enable them to function optimally as professionals,

2.1.3 [To] promote health through the expertise and influence of the medical profession'.

By no stretch of the imagination can it be said that if SAMA forgoes any role as a trade union, it no longer has valid objects to fulfil.

[26] This is confirmed by the fact that SAMA had a membership of 16 000 medical professionals. Even at the highest estimate of there being 4 000 public sector employees who have elected to be sole members of SAMATU, 12 000 members remain, including some 4 000 public sector employees who have elected not to belong to SAMATU. SAMA provides a range of services to its members. In doing so, SAMA has 78 employees and supports in excess of 100 contractors. As will be

seen below, it also plays a significant role in the wider medical environment in South Africa. The ground that the substratum of SAMA has disappeared has no merit.

[27] The second factor advanced by SAMATU was that SAMA had functioned unlawfully over a period of some two decades. The averments in this regard boiled down to the following:

(a) SAMA had abused the corporate personality of SAMATU by using it to unlawfully divert and misappropriate funds to which SAMATU was, by law, entitled.

(b) After SAMATU was placed under administration, SAMA had refused to co-operate with the administrator, thus committing a 'serious breach of the Labour Relations Act, the terms of the administration order, and the Labour Court order.'

[28] Regarding the first of these, the case made out by SAMATU itself was that SAMA 'exercised complete control over the affairs of [SAMATU] and treated it for all intents and purposes as an operating division of SAMA.' SAMATU also contended that 'the Trade Union concluded various bargaining council agreements with employers, with other trade unions, and with various bargaining councils' and 'partnered with another trade union, Denosa, to obtain organisational rights in terms of the LRA'. What this must mean is that SAMA performed those functions on behalf of SAMATU since it was run as a division of SAMA. This does not amount to diversion and misappropriation of funds on the part of SAMA. The ambit of any potential unlawfulness was twofold. First, SAMA did not keep separate books and bank accounts for SAMATU. Secondly, SAMA had requested Treasury to pay the PERSAL deductions into its account rather than an account in the name of SAMATU. Treasury acceded to this request and would, on that reasoning, have participated in the unlawful activity.

[29] As to the second of these, SAMA took the view that it was entitled to the subscriptions as membership fees rather than trade union subscriptions or levies. It claimed to have used them in serving its members. At least some use on behalf of SAMATU is uncontested. The public sector employees had elected to be members of SAMA. As mentioned above, SAMA contested the interpretation of the order of Van Niekerk J right up to the hearing of the appeal. In this, it erred. The approach of SAMA can certainly be characterised as obdurate but it hardly demonstrates unlawfulness on its part.

[30] SAMA certainly failed to co-operate with the administrator. That obstructive conduct had the effect of undermining the attempts of the administrator to perform his duties. The administrator had instructed the Department of Health to change the bank account into which the PERSAL deductions were deposited. This prompted SAMA to apply urgently to prohibit the Department of Health from paying the PERSAL deductions into the account nominated by the administrator. That application was refused. SAMA then launched an application to review the decision of the Department of Health to pay the PERSAL deductions into that account. The outcome of that application was not disclosed on the papers. All of this was done in the mistaken belief that SAMATU was not entitled to the PERSAL deductions. Even after the order of Van Niekerk J was made, SAMA refused to provide the administrator with particulars of the public sector employees. This conduct must be strongly deprecated even though SAMA was entitled to pursue avenues to appeal that order and to protect its interests. It was not, however, unlawful conduct.

[31] Even if certain of the conduct of SAMA can be said to have been unlawful, the present matter differs markedly from those cases where the entire conduct of a company was unlawful. It appears to have been on that basis that the courts have

held that it was just and equitable to wind-up a company. One such example was *Cuninghame*. There, an association not for gain, incorporated under s 21 of the old Act, had as its sole object the running of a purely commercial enterprise. Section 21(1)*(b)* of the old Act required such a company to have as its main object the promotion 'of . . . religion, arts, sciences, education, charity, recreation, or any other cultural or social activity or communal or group interests'. Section 21(2)*(a)* required the memorandum of the company to provide that all income and property would be 'applied solely towards the promotion of its main object'. This Court held that, since the company was conducting a purely commercial enterprise, '[b]oth its main object and its business [were] . . . in contravention of s 21(1)*(b)* and therefore unlawful'.[9] As a result, it was wound-up on the basis that it was just and equitable to do so. In the present matter, there is no such averment concerning SAMA. The second factor advanced by SAMATU does not, certainly in and of itself, mean that it is just and equitable to wind-up SAMA.

[32] The third factor advanced by SAMATU was that the relationship between SAMA and SAMATU was akin to that of a partnership. As such, SAMATU was entitled to an account, debatement of the account, and payment over of amounts due. This, of course, operates to undermine the contention of SAMATU that it had shown that there was an undisputed indebtedness in a certain amount. The relationship between them lacks the character of a partnership. That said, however, SAMA conducted SAMATU's affairs on its behalf, both receiving funds due to it and incurring costs in doing so. As was conceded in argument, this means that SAMATU is entitled to such an account, debatement and payment over. This is a factor which must be weighed in the balance in the just and equitable enquiry. However, unless

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[9] *Cuninghame* para 26.

liquidation is the only way in which SAMATU can give effect to that entitlement, that factor cannot be decisive. It is clear that SAMATU has a legal remedy to require SAMA to account to it. In the light of the disputed indebtedness to it, that was the more appropriate remedy for SAMATU to have invoked.

[33] A number of factors weigh in favour of SAMA in this determination. It has been operating since 1927. It is solvent and has 12 000 health profession members who look to it for the services it offers and performs. The board of management is functional. It has 78 employees and supports more than 100 contractors. Affidavits were put up in opposition to the liquidation of SAMA by Dr Ryan Noach, the Chief Executive Officer of Discovery Health, and Dr Unben Pillay, the Chief Executive Officer of Alliance of South Africa Independent Practitioners Association. The former averred that:

'[T]he winding-up of SAMA will be to the detriment of the entire medical fraternity in South Africa as the services rendered by SAMA to its members and the remainder of the medical industry (public and private hospitals, medical aid companies, insurance companies and the like) is invaluable. Should SAMA be wound-up, the entire medical industry in South Africa will suffer as a result thereof.'

And the latter said something similar and, in addition, gave a concrete example:

'… SAMA is responsible for the creation and maintenance of the entire coding system used in the medical industry. Without those codes, the medical industry will be severely hamstrung and the operation of the entire medical industry, would be severely prejudiced.'

The countervailing considerations, and, in particular the obdurate and obstructive behaviour of SAMA towards the erstwhile administrator and SAMATU itself, as well as the need to obtain an account of its operation of SAMATU, cannot be said to tip the scales in favour of a winding-up. Despite the fact that Davis J dealt with the just and equitable ground somewhat cryptically, his conclusion that it was not just and equitable to liquidate SAMA can also not be faulted.

[34] SAMA submitted that SAMATU did not have the requisite *locus standi* to apply for its liquidation. It is not necessary to decide that issue in the light of the conclusion to which I have come. For the purposes of the appeal I shall assume, without deciding, in SAMATU's favour that it has the necessary *locus standi*.

[35] SAMATU submitted that, should the appeal be dismissed, each party should pay its own costs. I disagree. It failed to make out a case for liquidation and, in fact, misconceived its legal remedy, thus causing SAMA to incur costs in resisting the application and subsequent appeal.

[36] In the result, the following order issues:

The appeal is dismissed with costs, including those consequent on the employment of two counsel.

T R GORVEN
JUDGE OF APPEAL

Appearances

For appellant:	P A Swanepoel SC, with D J Groenewald
Instructed by:	Serfontein Viljoen & Swart, Pretoria
	Van Den Berg Van Vuuren Attorneys, Bloemfontein
For first respondent:	D M Fine SC, with M J Cooke
Instructed by:	Werksmans Attorneys, Sandton
	Matsepes Attorneys, Bloemfontein