



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

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

**FROM:** The Registrar, Supreme Court of Appeal  
**DATE:** 27 NOVEMBER 2008-11-27  
**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**

The liquidators of the Krion pyramid scheme have a duty to recover the property of the companies for the benefit of the creditors. The Insolvency Act provides them with various remedies. In 2004 they relied on s 30 (dispositions made with an intention to prefer one creditor above another) and s 26 (dispositions not made for value). The SCA at that stage determined that they were entitled to reclaim payment under the last-mentioned section but had not proved as section 30 demanded that Ms Prinsloo, the guiding mind of Krion, had paid out moneys to investors (by return of capital or interest) with an intention to prefer. The liquidators then instituted actions against more than 6000 debtors of the companies (that is Krion 'investors' who received some payments from the Krion group) on the grounds that the insolvent had made dispositions to them that were struck by s 26 and in addition, or alternatively, that the dispositions, when made, had the effect of preferring the recipient above other creditors and, therefore, fell to be recovered under s 29.

Several defendants contested the liquidators' right to rely on the two sections, 26 and 29: they contended that the liquidators had not completed the process of recovering dispositions set aside in 2004 and were bound to do so before making equivalent claims under the same section of the Act. As far as s 29 was concerned they alleged that the intention to prefer was an element common to both ss 30 and 29 and since the liquidators had failed to prove that intention in 2004 they were barred from attempting to do so again.

The SCA has now held (in *Van Rensburg and Others NNO v Steenkamp and Others*, Appeal Nos 237/08 and 467/08) that the liquidators *are* entitled to proceed with their actions against individual creditors in reliance on both ss 26 and 29 and that fairness did *not* oblige them to raise all their grounds of action 'once and for all' in the course of the 2004 litigation.

The SCA upheld the liquidators' appeals against orders of the High Court which barred them from so proceeding.