

**PROPERTY IN INSOLVENT ESTATES – *EDKINS v REGISTRAR OF DEEDS*,
FOURIE v EDKINS, AND *MOTALA v MOLLER***

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SUMMARY

The question of the ownership of property which vests (by virtue of sections 20(1) and 21(1) respectively of the *Insolvency Act* 24 of 1936) in the Master and, upon appointment, in the trustee of the insolvent estate, has been the source of academic debate and conflicting court judgments over a lengthy period. It was thought that the question had been finally settled by the (then) Appellate Division in *De Villiers v Delta Cables (Pty) Ltd* 1992 1 SA 9 (A), which concerned property belonging to the solvent spouse (as defined in section 21(13)), where it was held that ownership passes to the Master and subsequently the trustee. This was accepted by the Constitutional Court for the purposes of its judgment in *Harksen v Lane* 1998 1 SA 300 (CC). However, recent judgments, in *Edkins v Registrar of Deeds, Johannesburg* 2012 6 SA 278 (GSJ) and, on appeal, *Fourie v Edkins* 2013 6 SA 576 (SCA), have seemingly again opened up the question for debate, particularly in view of the fact that the Supreme Court of Appeal in *Fourie v Edkins* ignored its own precedent on this issue. These two judgments concerned property registered in the name of the insolvent. In a third recent judgment, in *Motala v Moller* (GSJ) unreported case number 32654/11 (GSJ) of 11 September 2013 (copy on file with authors) concerning property which had belonged to the solvent spouse at the time of the sequestration of the estate of her husband, the court regarded section 25(4) of the *Insolvency Act* as countering the precedent established by *De Villiers v Delta Cables*. In this article, each of these three judgments is analysed and criticised.

KEYWORDS: Ownership of assets of insolvent estate; solvent spouse; section 21 *Insolvency Act* 24 of 1936; section 25 *Insolvency Act* 24 of 1936.

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