

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No: 1883/2020

In the matter between:

EBANS TOISE

Applicant

And

**THE TRUSTEES FOR THE TIME
BEING OF THE BLAAUWKRAANTZ
EMPLOYEES TRUST (“THE TRUST”)**

First Respondent

THE BENFICIARIES OF THE AFORESAID TRUST

Second Respondent

**THE MASTER OF THE HIGH COURT,
GRAHAMSTOWN**

Third Respondent

JUDGMENT

BESHE J:

Introduction

[1] This is an application for an order in the following terms:

“1. An order declaring that the persons referred to in Annexure “A” hereto are no longer eligible to remain as Trustees of the Blaauwkrantz Employees Trust (Blaauwkrantz Werknemerstrust) (the Trust), or to be appointed as Trustees.

2. An order in terms of Section 20(1) of the Trust Property Control Act, CT 57 OF 1988, that the persons referred to in Annexure “A” hereto be removed forthwith from their office as Trustees.

3. That the Master of the High Court (the Third Respondent herein) be directed to appoint new Trustees of the Trust from that category of persons qualifying to be appointed as Trustees, having regard to the provisions of clause 2.2 of the Trust Deed of the Trust.

4. An order declaring that the persons set out in Annexure “C” hereto are qualified to be beneficiaries of the Trust and to be appointed as Trustees of the Trust.

5. That there be no order in respect of the costs occasioned by this application, save in the event of any of the aforesaid Respondents opposing the application, in which event, such persons who oppose the application, be directed to pay the costs occasioned by such opposition jointly and severally.

6. Further and/or alternative relief.”

[2] Listed in Annexure “A” are the following persons:

1. Zwelothando Z A Moni, P[...] Farm, Uitenhage District;

2. Steven S G Jackson, [...] M[...] Street, Blikkiesdorp, Kirkwood;

3. Zandisile Z E Jackson, [...] M[...] Straat, Blikkiesdorp, Kirkwood;

4. Nomthandazo N C Cuba, [...] M[...] Street, Blikkiesdorp, Kirkwood;

5. Eunice Koza, [...] S[...] Street, Mandela Village, Uitenhage.

Applicant's case

[3] The founding affidavit is deposed to by the applicant who describes himself as follows: As an adult farm worker who is employed by Blaauwkrantz Farming Enterprises CC. who had been employed as such for approximately 15 years. He resides at a farm that belongs to the Close Corporation. He asserts that he by virtue of his employment and residential address, he qualifies to be a beneficiary of the Blaauwkrantz Employees Trust and to act as a trustee should he be so appointed. The Close Corporation has at all material times been represented by **Mr Arthur Rudman**. The first and second respondents as can be seen from the appellation are trustees for the time being and beneficiaries respectively of the Blaauwkrantz Employees Trust. According to the applicant, the Trust came about as a consequence of the initiation of an employment scheme by **Mr Arthur Rudman** in or about 2005. With the assistance of a state grant, a farm (immovable property) was purchased with a view to utilize income from farming operations in the farm for the benefit of the beneficiaries of the Trust. According to the Trust deed **Toise** is one of the beneficiaries

[4] Even though **Mr Toise** alludes to the existence of ongoing disputes regarding the operations of the trust in question and resultant court battles, he is adamant that reasons for the said breakdown in operations of the Trust are not relevant for the purposes of the relief sought in this application. According to him, the purpose of this application is to resuscitate the Trust and to make sure that persons appointed as Trustees are not only entitled to be so appointed but will work in the interest of the beneficiaries.

[5] **Toise** makes the point that according to the Trust deed, for one to qualify as a beneficiary, it is required that he works as a farm worker and is working for Blaauwkrantz Farming CC and resident at a property owned by the Close Corporation. Further that to qualify as a Trustee of the Trust one must qualify as a beneficiary. He asserts that none of the original trustees currently qualify as beneficiaries of the trust and therefore to remain as trustees. The following reasons are cited for this assertion:

Mr Moni is said to have resigned his employment with the Close Corporation in 2015. **Mr S G Jackson** is alleged to have been dismissed and resided at Uitenhage (now known as Kariega). **Mr Z E Jackson** is likewise alleged to have been dismissed and residing at Uitenhage. **Ms N C Cuba** is alleged to have been dismissed initially but later agreed to a retrenchment. **Ms Koza** is said to have left the employ of the Close Corporation on her own accord and resides in Uitenhage.

[6] It is furthermore alleged that they no longer operate the affairs of the Trust.

[7] **Mr Toise** goes on to list the names of the original beneficiaries who still qualify as such. He lists a total of seven names including his.

Opposition

[8] The application is opposed by the first and second respondents, being the Trustees for the time being of the Blaauwkrantz Employees Trust and beneficiaries of the Trust respectively.

[9] The Master of the High Court, Grahamstown being the third respondent, elected to abide by the decision of the court.

[10] I earlier made mention of the existence of other disputes between the parties which gave rise to pending litigation between them.

[11] Over and above opposing the granting of the relief sought by the applicant, first and second respondents have instituted a counter-application of their own. They *inter alia* seek the following order:

1. The transfer of application for the winding up of an entity known as Blaauwkrantz Share Equity (Pty) Ltd. serving before the High Court of South Africa, Gqeberha, to this court or *vice versa* as well as the consolidation thereof with this application.
2. The amendment of the Blaauwkrantz Employees Trust.

[12] They also raise the following points *in limine*, failure to join the beneficiaries whose names are listed in annexure “C” to notice of motion. This on the basis that all the beneficiaries have a real and substantial interest in the outcome of this application. Lack of *locus standi in judicio* on the part of **Mr Toise**. According to **Mr Moni** who deposed to the answering affidavit, **Mr Toise** is not a beneficiary to the Trust. His name was inserted by **Mr Rudman** in the place of **Mr F Jackson** who sadly passed on before the Trust was registered. But at all time **Toise** was not employed by **Mr Rudman** but by the owner of the farm that was purchased for purposes of the employment project. He also did not make any financial contribution as required by the Trust deed. I understand the financial contribution to refer to the grant paid by the state on behalf of the beneficiaries at the inception of the Trust and procurement of the farm from the operations of which the identified beneficiaries were to benefit.

[13] Persons that constitute first and second respondents, according to **Mr Moni**, deny that they no longer qualify to be Trust beneficiaries. They can only be removed as such in terms of *Clause 14.2.8* of the Trust Deed. In the alternative, and by means of a counter-application, respondents seek the amendment of the Trust Deed to reflect that first beneficiaries can only be removed in terms of *Clause 14.2.8* of the Deed. Asserting that even though the founder of the Trust was *bona fide* when he established it, some of the consequences brought about by some of the provisions hamper the achievement of trust’s objectives and prejudice the interest of the beneficiaries and or are in conflict with the public interest. Something that was not foreseen by the founder. He enumerates the said provisions. **Mr Moni** also avers that the applicant has no knowledge of the running of the Trust concerned. He cannot read or write and has no idea about the concept of the Trust including rights and obligations flowing therefrom. Accordingly, therefore, so he asserts, the application is instigated by **Mr Rudman** and or the **Rudman** family who are funding the application.

Applicant’s reply

[14] Some of the allegations made by **Mr Moni** in this regard seem to find some resonance in the manner the applicant’s reply was formulated. An extensive affidavit styled “supporting affidavit in reply” was deposed to by **Mr Arthur Rudman**. It is

followed by a shorter replying affidavit deposed to by **Mr Toise** in which he confirms the truth of what **Mr Rudman's** affidavit contains. He further confirms that **Mr Rudman** has more detailed knowledge of certain factual and legal issues which arise in the matter.

Discussion

[15] Regarding the non-joinder complained of by **Mr Moni**, **Mr Rudman** asserts that the said persons are already identified as respondents as would appear from annexures "A" and "B" to the notice of motion. Annexures "A" and "B" is a list of persons who are no longer eligible to remain as trustees and beneficiaries, respectively. Be that as it may, the persons listed in the two annexures were all served with the founding papers and so are aware of these proceedings.

[16] Regarding the application for the application for the consolidation of this matter with the one pending before the Gqeberha High Court, **Rudman** asserts that the issues involved in the two matters are separate and distinct. The application serving before that court is for the liquidation of the first respondent *in casu*. I have been urged to regard the contents of papers in that matter as being incorporated into this matter as the issues there also have a bearing in this matter. It is clear that the relations between **Mr Rudman** and the trustees is beset with problems. There appears to be a dispute as to whether or not **Mr Rudman** or **Mr Moni** is the founder of the Trust. **Mr Rudman** claims that he erroneously signed on the space provided for a "founder". This to me seems to be of no moment. He claims that contrary to wanting to remove certain trustees, the relief sought is for a declaratory order that certain persons are no longer eligible to remain as trustees. This in my view is a simplistic way of looking at the matter, as such a declaratory, if made will result in the "removal" of those trustees.

[17] The removal of trustees is of course provided for in *Section 20* of the *Trust Property Control Act*¹. They can be moved by the court if the court is satisfied that such removal will be in the interest of the Trust and its beneficiaries. They can also be removed by the Master under certain circumstances. It is not clear why the

¹ Act 57 of 1988.

Section 20 route has not been followed given the allegations made against some of the trustees. This is so because it is not altogether accurate to say the respondents misconstrue the relief sought. Prayer 2 of the notice of motion clearly seeks the removal of persons listed in Annexure “A” thereto from their office as trustees. Prayer 3 seeks an order directing the Master to appoint new trustees. This clearly is designed to remove the current trustees or some of them.

[18] The basis for seeking the removal of the trustees in question is that they no longer qualify to be beneficiaries of the Trust and therefore it follows that they no longer qualify to be trustees. And also in view of the fact, so asserts **Mr Toise**, that the Trust is inefficient and ineffective, with the result that the beneficiaries do not derive any real benefit from the Trust.

[19] Even though applicant denies that the other suits between the parties are relevant to this application, it is common cause that such suits exist. In respect of the liquidation application, some of those who are part of first and second respondents who include the deponent to the answering affidavit **Mr Moni**, have over and above opposing the application instituted a counter-application. In the counter-application they are seeking the exchange of **Arthur Rudman’s** family trust shares to the Trust in respect of which first and second respondents are trustees and beneficiaries, respectively. The application is in terms of *Section 163* of the *Companies Act*.² There is a suggestion which also emerges from the other litigation between the parties, that the Trust was established to uplift and empower the employees who were employed by the **Rudman** family. Hence the identification of the beneficiaries as well as trustees. See in this regard **Mr Rudman’s** supporting affidavit in reply paragraph 10.2 in response to **Mr Moni’s** assertion that the Trust was a black economic empowerment project meant to empower those farm workers who had a long history with the **Rudman** family. **Mr Rudman** confirms that he wished to empower loyal workers who were employed by him or his family. It is common cause that this was as far back as 2005. But, as acknowledged by **Mr Toise** in paragraph 18 of the founding affidavit, ongoing disputes regarding the Trust have emerged. He mentions the matter in respect of which an appeal is still pending and the liquidation

² Act 71 of 2008.

application. It would also appear that there is a gnawing feeling amongst the beneficiaries and or trustees of the Trust that the more things change the more they remain the same. Hence the ongoing disputes between the parties. This is also confirmed by **Mr Toise** that the beneficiaries do not derive any real benefit from the Trust.

[20] Consequently, **Mr Moni** asserts that if the main application were to succeed, **Mr Rudman** is the only person who stands to gain in that he will have control over the remaining beneficiaries. They will not be willing to oppose the liquidation application for fear of losing their jobs. The persons listed in Annexure “A” will no longer have the *locus standi* to oppose the liquidation.

[21] In terms of the Trust deed, the requirements for qualifying as a beneficiary are that one has to be employed as a farm worker by the Blaauwkrantz Farming Enterprise and reside on the property that is owned by the **Rudman** Family. To qualify as a trustee one should “*kwalifiseer as ‘n begunstigde (beneficiary) and, ten minste vir 5 vyf jaar in dienswees van Blaauwkrantz Farming Enterprise CC*”.³ It is common cause or at least not in dispute that all those who were identified as beneficiaries were employees of the **Rudmans**. This is not denied by **Mr Rudman**.⁴

[22] As far as termination of trusteeship is concerned, the Trust Deed only deals with the suspension of membership – “*opskorting van Lidmaatskap*” at *Clause 14.2.8*. *Clause 14* in general deals with the rights of the beneficiaries as the heading suggests. *Clause 14.2.8* states that:

“Opskorting van Lidmaatskap

Indien ‘n begunstigte homself skuldig maak aan enige enige gedrag of optrende wat onder enige wetgewing in Suid-Afrika dissiplinêre stappe tot gevolg sal hê, is die raad van trustees, onderworpe aan ‘n spesiale algemene vergadering se toestemming, geregtig om sodenige lid se lidmaatskap tydelik of permanent op te skort.”

³ See article 2 of the Trust Deed.

⁴ Paragraph 6 of the answering affidavit page 129 of the indexed papers.

[23] This is not a basis upon which the declaratory or removal of the respondents as trustees is sought.

[24] I could not come across any clause that provides for the disqualification as a beneficiary once identified as such, by reason of no longer being an employee of the **Rudman's** or residing in one of their farms.

[25] *Section 20 of the Trust Property Control Act 57 of 1988* provides for the removal of trustee and reads as follows:

“20 Removal of trustee

(1) A trustee may, on the application of the Master or any person having an interest in the trust property, at any time be removed from his office by the court if the court is satisfied that such removal will be in the interest of the trust and its beneficiaries”

Subsection 2 provides for removal from office by the Master.

[26] No case is sought to be made that it will be in the interest of the Trust and its beneficiaries that the respondents be removed. What is contended for by the applicant is that the respondents no longer qualify to be beneficiaries and consequently to be trustees. In his report, the Deputy Master of the High Court states that he had not received any information that will allow him to invoke his powers in terms of *Section 20 (2) of the Trust Property Act*. The last action on their file was the issuing of letters of authority on the 24 February 2006.

[27] It is noteworthy that the deponent to the answering affidavit is said to have resigned his employment with Balaauwkrantz Enterprises in 2015. Examples of other trustees sought to be disqualified: **Ms Cuba** is said to have been dismissed in November 2006. **Ms Koza** is reported to have left the employment of the enterprise in question during 2005. Yet, no steps have been taken to disqualify them or have them removed in terms of *Section 20* of the Act all these years.

Applicant's argument

[28] Applicant agitates for an interpretation that translates to: if you are no longer employed by the Blaauwkrantz Farming enterprise or the **Rudman** family and you no longer reside in a property owned by the **Rudman's** you cease to be a beneficiary and because to qualify as a trustee one needs to be a beneficiary, you are therefore also disqualified from being a trustee. This is the basis upon which the orders set out in the notice of motion are sought. Reliance for this is assertion is placed on the Trust Deed.

[29] In endeavouring to interpret the Trust Deed concerned, I will be mindful of the approach to interpretation as suggested in *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁵ where the following was said:

“[18] Over the last century there have been significant developments in the law relating to the interpretation of documents, both in this country and in others that follow similar rules to our own. It is unnecessary to add unduly to the burden of annotations by trawling through the case law on the construction of documents in order to trace those developments. The relevant authorities are collected and summarised in *Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School*. The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be

⁵ 2012 (4) SA 593 SCA 603-4 at [18].

alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The ‘inevitable point of departure is the language of the provision itself’, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.”

This approach has recently once again been affirmed in the matter of **Capitec Holdings Ltd and Another v Coral Lagoon Investments and Others**.⁶ In the heads of argument applicant comprehensively addressed respondents’ counter-application to have the Trust Deed amended / varied, arguing that the proposed amendment would result in persons who no longer have an interest in administration of the Trust property remaining beneficiaries. However, not much argument is directed at the interpretation of clauses relied upon by the applicant for contending that the respondents are no longer qualified to be beneficiaries and consequently trustees by reason of the fact that they are no longer employees of the Farming Enterprise concerned.

[30] I propose not to deal with arguments relating to the counter-claim in this regard in any detail because of my conclusion in this matter in respect of the main application.

[31] Respondents, on the other hand, presented a full argument in support of the interpretation of the Trust Deed they contend for. After examining relevant case law dealing with the current approach to interpretation, it is submitted that the proper interpretation of the Trust Deed is that once a person has qualified as a beneficiary or trustee, his status does not change just because he is no longer employed by the **Rudman** family. Further that, this is gleaned from the language and the context of the Trust Deed as a whole. Furthermore, that the Trust Deed does not provide for the disqualification of a beneficiary on the basis that they are no longer employed by

⁶ 2022 (1) SA 100 SCA at [25].

the **Rudman** family. The deed only provides for the suspension of a beneficiary from membership of the Trust. We know that the application is not based on the grounds set out in the clause dealing with suspension. As far as the context is concerned, it was submitted on behalf of the respondents that the Trust was set up to empower the beneficiaries. As indicated earlier, according to the respondents, the Trust was meant to be a black empowerment project , the purpose of which was to empower farm workers who had a long history with the **Rudman** family.⁷ In response thereto, **Mr Rudman** confirms that he was the project mentor and wished to empower his loyal workers who were employed by him or his family.⁸ Not loyal workers who would from time to time be employed by the **Rudman's**.

[32] Respondents argue that it does not make business sense that a person who has contributed to the Trust losses their contribution or benefits thereof because they have stopped working for, in this case, **Rudman** family. Further, that the Trusts objective could never have been to tie the beneficiaries down to working for the **Rudman** family for the rest of their lives no matter what the circumstances are. As this would not advance respondents' rights to human dignity, equality and other human rights and freedom. The respondents also argue that the removal of trustees in the manner suggested by the applicant would be against the principle of Ubuntu which entails a duty of good faith, fairness and justice.

[33] I am inclined to agree with the respondents' submissions in the preceding paragraph. A reading of the Trust Deed i.e. the language used and the context in which it was executed does not support the interpretation contended for by the applicant. This, over and above the fact that nowhere does it provide for the disqualification of a beneficiary by reason of not being in the employ of the **Rudman's** once identified as such. It appears to be common cause that not all the farm workers that were in the employ of the **Rudman's** at the time of the execution of the Trust Deed were identified as beneficiaries.

[34] I earlier alluded to the existence of other proceedings that involve the parties in this matter, namely the liquidation matter. That matter is opposed by the present

⁷ Page 129 of indexed papers paragraph 5 of the answering affidavit.

⁸ Paragraph 10 of the replying affidavit.

respondents, at the same time instituting a counter-claim seeking relief provided for in *Section 163* of the *Companies Act*. Presumably on the basis that they are shareholders.

[35] In my view, this lends credence to the assertion that these proceedings or the relief sought is aimed at stripping the respondents of their judicial standing (*locus standi*) so that they are unable to pursue their opposition and counter-application in that matter and other litigation involving the parties.

Consolidation

[36] Respondents seek an order that the matter serving before the Gqeberha High Court and this one be consolidated and that this matter be transferred to Gqeberha for purposes of having it consolidated with the matter pending before the Gqeberha High Court. I understand that, that matter has been referred for oral evidence to be heard.

Whilst it is so that on application for consolidation can be made at any time, I think the horse has already bolted in this case because the application has already enjoyed the attention of this court. I am also not persuaded that it would have been convenient to the parties for the two applications to be consolidated or for this application to be transferred to Gqeberha High Court.

Counter-application and Costs

[37] In my view of my conclusion in this matter, it will not be necessary to order the amendment of Trust Deed. My understanding is that the counter-application was conditional upon the court's finding that the Trust Deed should be interpreted in the manner suggested by the applicant. I therefore propose not to make any costs order in this regard. In respect of the main application, costs will follow the result. I am not satisfied that the applicant has made out a case for the order it seeks.

Order

[38] Accordingly, the main application is dismissed with costs.

N G BESHE
JUDGE OF THE HIGH COURT

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