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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case Number: 54318/2021

**REPORTABLE
OF INTEREST TO OTHER JUDGES
REVISED
DATE:12/03/2024**

In the matter between:

AFRIFORUM NPC

First Applicant

SOLIDARITY TRADE UNION

Second Applicant

JOYCE KATHRYN JANSEN VAN RENSBURG

Third Applicant

(ID: 5[...])

IJAY VAN DER WALT

Fourth Applicant

(ID: 9[...])

BABSIE SHARON KRUGER

Fifth Applicant

(ID: 7[...])

IGNATIUS JOHANNES DU PREEZ N.O.

Sixth Applicant

(ID: 6[...])

MARIUS WYNAND SCHOEMAN N.O.

Seventh Applicant

(ID: 6[...])

And

FREDERICK JOHANNES VAN DER WALT

First Respondent

(ID: 6[...])

IGNATIUS JOHANNES VAN DER WALT

Second Respondent

(ID: 6[...])

ENGELA CAROLINA NEL

Third Respondent

(ID: 6[...])

THE MASTER OF THE HIGH COURT, PRETORIA

Fourth Respondent

WILLEM FRANCOIS BOUWER

Fifth Respondent

(ID: 5[...])

WILLEM ANDRIES FILMALTER

Sixth Respondent

(ID: 5[...])

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 12 March 2024.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

POTTERILL J

[1] The sixth and seventh applicants, two of the trustees of the Trust, are seeking leave to appeal against only the granting of prayers 4 and 5 of the judgment as well as the costs order of the judgment dated 16 January 2024. Prayers 4 and 5 related to declaratory relief to the effect that the removal of the first respondent as a trustee is in the best interests of the Trust and consequently the first respondent is to be removed as trustee.

[2] The first respondent opposes this application and raised two points *in limine*.

The sixth and seventh applicants are cited in their capacity as co-trustees of the Trust. Counsel for these applicants submitted that indeed they are not acting on behalf of the Trust. As it is common cause that they are not beneficiaries to the Trust they do not have *locus standi*.¹

¹ *Ras NO and Others v Van der Meulen and Another* (635/09) [2010] ZASCA 163; 2011 (4) SA 17 (SCA) (1 December 2010)

[3] On this basis alone the application for leave to appeal must be dismissed.

[4] I do however feel compelled to address some of the other appeal grounds. It was conceded that paragraph 4 of the grounds of appeal incorrectly use the word “ulterior” as there was no recording of such word in my judgment. The ground is that I blemished the two applicants by finding that they interrogated the first respondent pertaining to the administration of the estate. This finding was based on issues ventilated in the papers; i.e. the minute of the meeting reflecting that one of the two agenda items was to obtain feedback from the first respondent in his capacity as executor. On this common cause fact the purpose of the meeting was not Trust business, but the administration of the estate business.

[5] A ground of appeal is against the finding that at “this juncture a trustee’s powers cannot be executed.” It is common cause that the trustees have been appointed, but there are no trust assets yet transferred to the Trust. The seventh applicant himself opined that a Trust meeting will only be convened “as soon as there is a decision on the settlement of the estate as the Trust could not function until the assets has been transferred to the Trust.”

[6] For the other grounds of appeal the findings and ratio for the findings are deferred to as in my judgment.

[7] The application for leave to appeal is dismissed. The sixth and seventh applicants are to carry the costs, in their personal capacity as they are not acting on behalf of the Trust.

S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NO: 54318/2021

FOR THE 6th and 7th APPLICANTS: ADV. Q. PELSER SC
INSTRUCTED BY: Hurter Spies Incorporated

FOR THE 1ST RESPONDENT: ADV. A. COERTZE
INSTRUCTED BY: WF Bouwer Attorneys

HEARD ON: 8 March 2024

DATE OF JUDGMENT: 12 March 2024