



**THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

- (1) REPORTABLE: Yes ☐ / No ☒  
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒  
(3) REVISED: Yes ☐ / No ☒

Date: 08 October 2024

WJ du Plessis

Case 2021/10445

In the matter between:

**SIR ISAAC NEWTON SCHOOL NPO**

Applicant

and

**HOEK PLEIN PROPERTIES (PTY) LTD**

First Respondent

**SIR ISAAC NEWTON SCHOOL (PTY) LTD**

Second Respondent

**PRETTY KANGAUSARU**

Third Respondent

**FIRST NATIONAL BANK**

Fourth Respondent

**SHERIFF OF THE COURT**

Fifth Respondent

**Coram:** Du Plessis AJ

**Heard on:** 13 August 2024

**Decided on:** 8 October 2024

This judgment has been delivered by uploading it to the CaseLines digital database of the Gauteng Division of the High Court of South Africa, Johannesburg, and by e-mail to the attorneys of record of the parties. The deemed date and time of the delivery is 10H00 on 8 October 2024.

## **JUDGMENT**

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DU PLESSIS AJ

### *Introduction*

[1] The first respondent, Hoek Plein Properties (Pty) Ltd (hereafter “Hoek Plein”), obtained judgment against the second respondent, Sir Issac Newton School Pty Ltd (hereafter “the school”), the judgment debtor, which it is entitled to execute. To this effect, Hoek Plein attached the bank account of “Isaac Newton School” (hereafter the FNB bank account).

[2] The applicant, Sir Isaac Newton School NPO (hereafter “the NPO”), launched an urgent application to uplift the attachment as it states that the bank account belongs to the NPO and not the judgment debtor. Hoek Plein then launched a counter-application, which it abandoned at the hearing. It merely seeks that the NPO’s application be dismissed with costs because, they argue, the NPO did not show that it is the bank account owner. The crisp issue in this case is thus who the owner of the FNB bank account is.

[3] To assess whether the NPO have proven their ownership of the FNB bank account, it is necessary to set out the facts succulently.

[4] The NPO alleges that it is a non-profit organisation comprising an association of people for charitable causes. It states it is a separate entity from the school. It states that it is the bank account holder. Since the judgment was against the school, Hoek Plein could not attach the NPO’s bank account.

[5] To demonstrate that it is the bank account holder, it states that it opened the bank account and that this was done before the school was incorporated and came into existence. The NPO states that the school was incorporated on 19 December 2012 by conversion from a closed corporation to a company.

[6] However, Hoek Plein points out the following contradictions: The bank account was opened on 29 August 2008, while the NPO was registered on 17 March 2009. This contradicts the NPO's argument that they opened the bank account. Also, while the company was incorporated on 19 December 2012, the closed corporation was formed in 2007, a year before the opening of the bank account.

[7] As evidence that the NPO was the entity that opened the bank account, the NPO states that it used its constitution to open the bank account in 2008. However, the constitution was signed on 15 November 2016. There is also no other evidence that the constitution was lodged with the bank to open the account.

[8] Furthermore, the NPO submitted an automatically generated account confirmation letter confirming that “Sir Isaac Newton School” is the bank account holder to prove its ownership. However, the letter does not specify if it is the NPO or the Pty (Ltd), nor does it indicate a registration number. This is problematic since there are three similarly named companies at the Companies and Intellectual Property Commission (“CIPC”), namely “Sir Isaac Newton College”, “Sir Isaac Newton High School”, and “Sir Isaac Newton School” (an NPO and (Pty) Ltd), in some instance with the same people serving as directors and members on various entities.

[9] To complicate matters, the school’s registration certificate is in the name of “Sir Isaac Newton School” without indicating if it is the NPO or CC. However, the certificate shows that the school states “Sir Issac Newton High School (Pvt) Ltd” (sic) with the closed corporation’s registration number. The school has always used “Sir Isaac Newton High School” as its trading name, although it uses the name “Sir Isaac Newton College” with the FNB account number in the school application form. They used it on the lease the school concluded with Hoek Plein, and, so says Hoek Plein, on the bank account itself.

[10] Mr Kangauseru is a signatory to the NPO's resolution and a signatory to the constitution document. He is also the deponent of the supplementary answering affidavit in the eviction application (that pertains to the lease agreement in dispute). He stated that he is the acting principal of the school, which he describes as "Sir Isaac Newton School (Pty) Ltd (registration number 2012/225786/07 and non-profit registration number 067-489-NPO), a non-profit organisation functioning as a low fee independent school", after which he refers to the school's registration with the Department of Education as dealt with above. In that same application, he argues that the school is in a precarious financial position. He attaches correspondence with donors he signs as "director" to that effect. He indicates that the school is a close corporation, and where he provides the FNB bank account details for them to deposit monies into. He also applied for the commercial lease of the property in question. In this lease, the entity is referred to as "Sir Isaac Newton School CC", with the FNB bank account details.

#### *The law*

[11] To be successful in interdictory the relief it seeks, the NPO must show as a first requirement that it is a clear or definite right<sup>1</sup> that it is the owner of the bank account. The reference to a clear or definite right relates to the degree of proof required to establish the right. In other words, by providing evidence, the NPO must show that the bank account belongs to them.

[12] However, all the evidence points to the fact that there is, at the very least, ambiguity as to who the owner is, which means that the NPO did not discharge its onus of showing a clear or definite right. However, the evidence submitted more likely indicates that the NPO is not the owner of the bank account. The correspondence of Mr Kangauseru referring to a closed corporation and signing as a director, giving the FNB bank account, does not point to the NPO being the account owner. The only constitution submitted for the NPO was signed in November 2016 – eight years after the opening of

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<sup>1</sup> *Setlegelo v Setlegelo* 1914 AD at 227.

the bank account. The sequence of events, the closed corporation incorporated in 2007 and the bank account opened in 2008, instead supports the contention that it was the judgment debtor's bank account.

[13] If the NPO is indeed the owner of the bank account, nothing prohibited the NPO from approaching the bank to get access to the documents used to open the bank account to show that the bank account was opened using the NPO's constitution and not the then-closed corporation's CIPC documents. It failed to do so.

[14] For all these reasons, the application must fail because it does not meet the first requirement for an interdict.

[15] Hoek Plein asked for a punitive cost order, including the cost of the urgent application in November 2023, as the NPO was untruthful since they made contradictory remarks under oath and because they did not address the ownership of the bank account. I was not persuaded that this warrants a punitive cost order. I am satisfied, however, that in terms of Rule 67A costs on scale B is warranted.

*Order*

[16] The following order is made:

1. The main application instituted by the applicant, Sir Isaac Newton School NPO, is dismissed.
2. The applicant, Sir Isaac Newton School, is ordered to pay the costs of the application on scale B, including the costs reserved on 21 November 2023.

  
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**WJ du Plessis**  
Acting Judge of the High Court

For the Applicants:

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For the Respondents:

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