IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 4592/2020

In the matter between:

JC VILJOEN	**FIRST APPLICANT**
MICHELLE VILOEN	**SECOND APPLICANT**

and

NICO MAREE	**RESPONDENT**

Neutral citation: *Viljoen and Another v Maree* (4592/2020) [2025] ZAFSHC 177 (12 June 2025)

Coram: Mbhele AJP

Heard: 5 December 2024

Delivered: 12 June 2025

Summary: Compliance with a court order- whether the account rendered for is sufficient to satisfy the court order- applicants failed to show that the account rendered is inadequate for purposes of debatement.

ORDER

The application is dismissed with costs, which costs shall include counsel fees to be taxed on scale C.

JUDGMENT

Mbhele DJP

Introduction

[1] The applicant brought an application seeking to, *inter alia,* declare the respondent in contempt of an order granted by Reinders J on 11 May 2023 (the court order). The applicant sought the following relief:

'1. That the respondent be held in contempt of the Court order dated 11 May 2023 for failure to submit an account supported by documentation reflecting all transactions executed by the respondent in his capacity as trustee and executor of the will of the late JJ Viljoen and Testamentary Trust created in terms of such will as ordered to do in prayer on of the order of Court date 11 May 2023.

2. That any sanctions imposed on the respondent following the order that the respondent be in contempt of the order of 11 May 2023 be suspended, pending the relief claimed in prayer 3 *infra*.

3. That the respondent be ordered to comply in all material respects with the order of Court dated 11 May 2023, including (but not limited to):

   3.1 Delivering a statement of account, duly framed in the form of an account, reflecting all transactions and actions concluded by the respondent in his capacity as executor of the estate of the late JJ Viljoen and his appointment as trustee of the Testamentary Trust envisaged in the last will of JJ Viljoen; and

   3.2 To reflect all transactions referred to in the report of the forensic auditor dated 4 February 2020, supported by documentary evidence, as it appears from paragraph 9.3 to 9.10 (pages 22 to 52) of such report, and deliver all documents referred to therein as listed by the forensic auditor to be outstanding.

4. In the event of the respondent failing to comply with the orders above, within the time period as stipulated therein, leave be granted to the applicants to approach this Court on the same papers, duly supplemented, for an order that the respondent's defence in the

action under the abovementioned case number be struck out and that leave be granted to the applicants to approach this Court to obtain default judgement on an unliquidated claim against the respondent for any damages which the applicants may have suffered, quantified by the evidence as contemplated in the forensic report dated 4 February 2020.

5. That the respondent be ordered to pay the costs of the application on a scale as between attorney and own client.
6. Further and/or alternative relief.'

[2] The applicants abandoned the prayer holding the respondent in contempt and the proposed sanction as prayed for in payers 1 and 2. With the abandonment of the contempt of court order, the applicants pursued the relief sought in prayer 3, wherein they, inter alia, require that the respondent respond to allegations contained in the report of a forensic auditor they employed before institution of their action.

[3] The applicants are beneficiaries of a testamentary trust to be formed in terms of the last will of their father (JJ Viljoen) and, in terms of this will, all assets of their father were bequeathed to the said trust. After the passing of JJ Viljoen on 13 July 2008, one, JPW Maree, was appointed as the executor of the estate, as well as the sole trustee of the testamentary trust of the last will of JJ Viljoen. The respondent succeeded JPW Maree as both the executor of JJ Viljoen's estate and trustee of the testamentary trust of JJ Viljoen's will.

[4] JJ Viljoen became a beneficiary of a trust in which his father WCJ Viljoen bequeathed his assets. JPW Maree was appointed as the sole trustee of the testamentary trust created in terms of the last will of the late WCJ Viljoen. When JPW Maree passed, the respondent, Nico Maree, succeeded him as a trustee of the trust formed in terms of the provisions of the will of WCJ Viljoen.

[5] The applicants instituted an action against the respondent and other parties demanding any information relating to the financial administration of the respective estates and the testamentary trusts created in terms of the two respective wills. The action was instituted after a forensics auditor appointed by the applicants alleged that there were irregularities relating to the administration of certain trusts and estates by the respondent. The parties reached a settlement agreement in terms of which the following order was made:

'1. Second Defendant shall fully account to the First Plaintiff and the Second Plaintiff within 90 (ninety) days of the date of this order in respect to the execution of the last Wills of the estates of the late JCJ Viljoen and JJ Viljoen, as well as the administration of any Testamentary Trusts created in terms of such Wills *ab initio* to date hereof insofar as the administration of such Trusts and/or execution of such Wills affected the rights and/or contingent rights of the First Plaintiff and Second Plaintiff in their respective capacities as heirs and/or beneficiaries, by rendering an account duly supported by any and all supporting documentation, reflecting all transactions and action conducted by the Trustees of such Trusts in relation to the administration of such Trusts, including (but not limited to) the following:

1.1 Lists of all assets which vested in such estates and trust;

1.2 If any assets were disposed of, full particulars relating to such disposal including (but not limited to) documentary proof of the disposal, funds received as a result of such disposal, and where such funds were deposited;

1.3 Copies of all provisional and final liquidation and distribution accounts submitted to the Third Defendant;

1.4 Copies of all valuations obtained in respect of any assets which vested in the respective estates of the late WCJ Viljoen and JJ Viljoen;

1.5 Copies of all deeds of trusts created in terms of the last Wills of WCJ Viljoen and JJ Viljoen, as well as the letters of appointment as trustees of such trusts and the following documentation in respect of such trusts namely:

1.5.1 Annual financial statements submitted to the South African Revenue Services;

1.5.2 Copies of any and all bank statements of any and all bank accounts opened in respect of such trusts;

1.5.3 All documentation pertaining to the acquisition and/or disposal of assets of the trusts;

1.5.4 Any contract entered into between a trustee and any third party relating to any asset and/or business of the trusts;

1.5.5 Statements of any and all income received by the trusts, the source of such income and utilization of such income;

1.5.6 Full particulars of any commission and/or administration fees earned by any trustee during the subsistence of the trusts and the modus of calculation of such commission and/or administration fee;

1.5.7 Copies of all resolutions of trustees and minutes of meetings of trustees;

2. Prayers 2 and 3 of the Plaintiffs' particulars of claim are postponed *sine die*;

3. Costs shall be reserved for determination by the Trial Court adjudicating the Plaintiffs' claims in terms of prayers 2 and 3 of the Plaintiffs' particulars of claim.'

[6] Subsequent to the court order, the respondent supplied the applicants with certain documentation which documents were, in the respondent's view, sufficient to satisfy the court order. The documents were supplied in the form of 13 lever arch files, accompanied by an index depicting where each document fits in and explanatory notes.

[7] From the respondent's answering affidavit, it is apparent that the delivered documents included: the assets that vested in the estates/trusts; FICA documentation, including documents such as the last will and testament, trust deed, antenuptial contracts, letters of executorship; an inventory; financial statements; fixed assets (together with the identified subsections); loose assets; claims against the estates/trusts; valuations obtained; disposal of assets (together with its subsections and proof of such transactions); liquidation and distribution accounts; a breakdown of administration costs etc.; bank account statements, including Maree & Bernard trust account statements, deceased estate cheque account statements and copies of handwritten office notes, requisitions, etc.; correspondence with the Master of the High Court, the South African Revenue Service, general correspondence, various debtors and creditors; all the documents in the respondent's possession concerning transactions apropos Namib Diamante; financial statements for Namib diamante; valuations obtained; an exposition on auctions and sales held; statements of assets and liabilities; bank account statements, SARS correspondence, etc.; assets vesting in the trusts in the form of fixed assets, claims in favour of initial investment agreements; contracts concluded concerning the trusts; chronological notes (and the documents) of correspondence sent to and fro; the same documents (concerning the trusts) for the James and Andre Viljoen Testamentary Trust.

[8] The applicants are not satisfied with the documents supplied by the respondent and submitted that they do not constitute compliance with the court order as well as the respondent's duties as trustee and administrator of the estates. They lament that the respondent failed to deliver a statement of account which is capable of debatement and that he failed to account to the applicants in relation to the issues raised by the forensic auditor. The gravamen of the applicants' complaint is that whatever the respondent supplied did to satisfy the court order, it is inadequate for the purpose of debatement. In their view, the duty to render an account involves reflecting, *inter alia*, deposits and withdrawals, substantiating opening and closing balances, and including entries of all

transactions which have a positive or negative effect on the trust capital. The applicants further submitted that the respondent's duty to account does not entail dumping thousands of documents on the applicants with an expectation that they would have to conduct their own audit or prepare their own account in order to make sense of how the respondent administered the relevant estates and trusts.

[9] Mr Grobler, on behalf of the respondent, took issue with the fact that the respondent was brought to court to respond to a contempt of court application which has evolved into whether he has sufficiently accounted. The respondent was brought to court to meet a specific case and all he had to answer was under the rubric that he was in contempt of a court order, so it is argued. He contends that the agreement between the parties was no ordinary agreement which required the respondent to deliver a specific identifiable item.

[10] It became apparent during the hearing that the applicants want a narrative. A party claiming delivery of a statement and its debatement must aver their right to receive such an account and the basis for such an entitlement, whether through a contract, a fiduciary relationship or a statutory obligation.[1] They must establish any contractual terms or other circumstances which have a bearing on the accounting sought and a failure to render such an account.[2]

[11] The applicants predicate the respondent's duty to account on the basis that they are beneficiaries of a trust of which the respondent was a trustee and beneficiaries of the late JJ Viljoen's estate. The fiduciary relationship existing between the respondent and the applicants as well as the existing contract which culminated into a court order embody a common law duty to provide an account.

[12] The specifics of what constitutes an account in the circumstances of the current matter are contained in the court order which was made after a settlement agreement was reached. The court order does not require the respondent to respond to the findings made by the forensic auditor and yet, the applicants seek the respondent's comments and reply thereto. The applicants sought to unilaterally broaden the scope of

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[1] *Absa Bank Bpk v Janse Van Rensburg* [2002] ZASCA 7; 2002 (3) SA 701 (SCA) para 15.
[2] *Doyle and Another v Fleet Motors PE (Pty) Ltd* 1971 (3) SA 760 (A) (*Doyle*) at 762F-H. *Doyle* was also applied in *Warren Bowles Corporation Communications CC v Rheinmettal Denel Munion Ltd* [2014] ZASCA 35 para 10.

the court order which is a product of a settlement agreement without variation of the said order. The applicants are not entitled to such a relief.

[13] It is the court that has to enquire into and determine the issue of sufficiency, in order to decide whether to order the rendering of a proper account.[3] The documents that are said to have been supplied by the respondent to the applicants are not before me, making it difficult to determine sufficiency or otherwise thereof. It is important to point out that there is nothing to gainsay the respondent's evidence on the nature, impact and relevance of the documents he supplied. The question whether they were source documents or whether they reflected the assets and monies received, and how such monies were disposed of, must be answered on the version of the respondent, in line with *Plascon Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd.*[4] His evidence is not farfetched nor untenable.

[14] In *Doyle*[5] it was contended that an 'account' entails the following:

'By "account", in the context of this form of action, is meant a full account or "accounting" by a defendant of his administration or management by disclosure of all moneys received or disbursed by him over the relevant period supported by proper vouchers.'

As stated, I am not privy to the nature of the account submitted by the respondent. With the respondent's version that the documents supplied contained lists of assets vested in the estates/trusts, audited financial statements, bank statements, inventory and explanatory notes showing how monies and assets were disposed of, I am unable to find that the account rendered lacked the specifics outlined in the court order. The applicants did not make out a case for the relief sought.

Costs

[15] There is no reason why costs should not follow the result.

Order

[16] In the result, I make the following order:

The application is dismissed with costs, which costs shall include counsel fees to be taxed on scale c.

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[3] *Doyle* at 763.
[4] *Plascon Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 635C.
[5] *Doyle* at 761B.

[redacted]

MBHELE AJP

Appearances

For the applicants:	P A van der Merwe SC Symington & De Kok, Bloemfontein
For the respondent:	S Grobler SC Honey Attorneys, Bloemfontein.