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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 8327/2023

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 07 July 2025

SIGNATURE:

In the matter between:

C[...] J[...] R[...]

Identity Number: 4[...]

APPICANT

And

H[...] W[...] R[...]

Identity Number: 7[...]

1ST RESPONDENT

C[...] J[...] R[...] N.O

In his official capacity as co-trustee of the

CJ R[...] TRUST MASTERS REF NO. IT163/2016(L)

2ND RESPONDENT

GIDEON VENTER N.O

3RD RESPONDENT

In his official capacity as co-trustee of the
CJ R[...] TRUST MASTERS REF NO. IT163/2016(L)

PHILIPPUS COETZER N.O

4TH RESPONDENT

In his official capacity as co-trustee of the
CJ R[...] TRUST MASTERS REF NO. IT163/2016(L)

THE MASTER OF THE HIGH COURT, POLOKWANE

5TH RESPONDENT

JUDGMENT

DU PLESSIS AJ:

Introduction:

[1] This is an opposed application in terms whereof the Applicant applies for the following relief:

1.1 That clause 1.5.2 of the Trust Deed dated 27 June 2016, Masters Ref No. IT163/2016(L), be deleted and substituted with the following:

“1.5.2. C[...] J[...] R[...], Identiteitsnommer 0[...] – 25% (vyf en twintig persent) belang; en

1.5.3. H[...] W[...] R[...], Identiteitsnommer 2[...] – 25% (vyf en twintig persent) belang.”

1.2 That the Fifth Respondent be directed to amend or to rectify its records in accordance with the amendment envisaged in paragraph 1 *supra*;

1.3 That the First Respondent be ordered to pay the costs of this application;

[2] The amendment or variation of the trust deed can only be achieved with the First Respondent's consent or by virtue of a court order.

[3] Seeing that the First Respondent refuses to provide such consent, the Applicant is obliged to bring this application.

Factual Background:

[4] The Applicant is the founder and the donor of the Trust, which Trust was established on or about 27 June 2016 with Master's Ref No. IT163/2016(L).

[5] The Applicant is seeking a substitution in terms whereof the First Respondent will be removed as a 50% beneficiary of the Trust and will be replaced by the First Respondent's two children.

[6] The First Respondent is the Applicant's biological son and his children, whom the Applicant seeks to substitute him with, are the Applicant's grandchildren.

[7] It is common cause that the First Respondent has assaulted the Applicant on various occasions. Due to these assaults, the Applicant suffered serious injuries to the extent that the Applicant proceeded to obtain a protection order against the First Respondent.

[8] After being appointed as a beneficiary of the Trust, the Respondent has been found guilty of various criminal offences and in addition thereto various criminal matters against the Respondent are currently being investigated.¹

[9] As a result of the assaults and the habitual criminal behaviour of the First Respondent, the relationship between the Applicant and the First Respondent has broken down irretrievably.

Parties Submissions:

¹ Founding Affidavit, para 29, p16 – 17.

[10] The Applicant submits that he has the necessary *locus standi* to bring this application and to apply for the relief as set out in the notice of motion. The Applicant's *locus standi* is disputed by the First Respondent.

[11] The Applicant further submits that he is entitled to seek an amendment of the trust deed as provided for by the common law principle of donations, revocation and gross ingratitude, as well as by Section 13 of the Trust Property Control Act 57 of 1988.

[12] The First Respondent submits that the Applicant's donation was to the trustees and not the First Respondent, therefore the common law principle of gross ingratitude does not apply.

[13] Even if the principle of gross ingratitude does apply, it is the First Respondent's submission that the gross ingratitude commenced prior to the founding of the Trust and that it should therefore not be taken into consideration.

[14] The First Respondent further submits that the Applicant may not rely on Section 13 of the Trust Property Control Act, as it is not specifically mentioned in the Founding Affidavit and it is further submitted that even if the Applicant were entitled to rely on Section 13 of the Trust Property Control Act, the Applicant's version does not satisfy the requirements thereof.

[15] Finally, the First Respondent argued that Clause 20 of the Trust Deed provides a jurisdictional impediment that the Applicant cannot heed, in that the First Respondent must agree to any amendment to the Trust.

Discussion:

[16] At the onset it is important to consider the Respondent's submission that the Applicant had to specifically refer to Section 13 of the Trust Property Control Act in its Founding Affidavit in order to rely on it.

[17] Rule 6(1) of the Uniform Rules of Court provides that “...every application must be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief.²”

[18] There is no requirement that a founding affidavit should refer to specific legislation in order for such legislation to apply, it is only required to contain the facts upon which the Applicant relies. The Applicant is therefore entitled to rely on the provisions of Section 13 of the Trust Property Control Act, even though it is not specifically stated in the Founding affidavit.

[19] Section 13 of the Trust Property Control Act, No 57 of 1988 provides as follows:

“13. Power of Court to vary trust provisions. –

If a trust instrument contains any provision which brings about consequences which in the opinion of the court the founder of a trust did not contemplate or foresee and which –

- (a) Hampers the achievement of the objects of the founder; or*
- (b) Prejudices the interest of the beneficiaries; or*
- (c) Is in conflict of the public interest.*

The court may, on application of the trustee or any person who in the opinion of the court has a sufficient interest in the trust property, delete or vary any such provision or make in respect thereof any order which such court deems just³, including an order whereby particular trust property is substituted for particular other property, or an order terminating the trust.”

[20] It is common cause that the Applicant is the founder and donor of the Trust and that the Applicant is also a trustee of the Trust. The Applicant therefore has a direct and substantial interest in the Trust.

[21] The Applicant is therefore vested with locus standi in terms of Section 13 of the Trust Property Control Act to bring this application.

² My emphasis added.

³ My emphasis added.

Donation:

[22] Before the Court considers the arguments in respect of Donation, it is first necessary to look at the nature of a Trust.

[23] In **Lupacchini NO & Another v Minister of Safety and Security** the Court stated that:⁴

“...A trust that is established by a trust deed is not a legal person – it is a legal relationship of a special kind that is described by the authors of Honore’s South African Law of Trusts as “a legal institution in which a person, the trustee, subject to public supervision, holds or administers property separately from his or her own, for the benefit of another person or persons or for the furtherance of a charitable or other purpose.”

[24] It is evident that all assets that belongs to the legal institution or Trust is merely held and administered by the Trustees, for the benefit of another person.

[25] In the preamble of the Trust the following is stated:

“...Die Trustees aanvaar en hou die trustbates sowel as alle byvoegings daartoe (indien enige) vir administrasie en uiteindelijke verdeling, onderworpe aan die ondervermelde voorwaardes, bepalinge en trustvoorskrifte.”⁵

[26] The above is an acceptance by the Trustees of the assets and a declaration that the Trust assets will be held and administered for the purpose of final distribution.

[27] The most important provision in this respect is contained in paragraph 3 of the Trustdeed, which provides as follows:

⁴ Lupacchini NO & Another v Minister of Safety and Security 2010(6) SA 457 (SCA) at para 1.

⁵ Founding Affidavit, Annexure “E”, page 31.

“Die trustbates vestig in the Trustees in hulle ampshoedanigheid van trustees ten einde hulle in staat te stel om met die kapitaal en inkomste van die trust te handel ten behoeve van die begunstigde en nie tot die persoonlike voordeel van die trustees nie. Op geen stadium sal die trustees geag word om vir hulleself of hul persoonlike rekening enige gevestigde reg tot die trustbates te verkry nie.”⁶

[28] This paragraph translates as follows:

“The trust assets vest in the Trustees in their capacity as trustees in order to enable them to deal with the trust capital and trust income for the benefit of the beneficiary and not for the personal benefit of the trustees. At no stage will the trustees be considered to have acquired a vested right to the trust assets for themselves or for their personal account.”⁷

[29] This is evidence of the understanding that the Trustees never accepted the trust assets to be a donation to themselves but rather a donation to the beneficiaries. The trustees confirmed the fact that they are merely functionaries managing assets on another person’s behalf.

[30] One should further consider Paragraph 1.5 of the Trustdeed, that states the following:

“Die “begunstidges” van die Trust word die volgende persone benoem in die verhouding soos teenoor die begunstigde se naam vermeld....

1.5.1 C[...] J[...] R[...], - 50% (vyftig persent) belang;

1.5.2 H[...] W[...] R[...], -50% (vyftig persent) belang.

Indien H[...] W[...] R[...] voor ontbinding van die Trust te sterwe kom sonder om wettige afstammeling na te laat, sal sodanige belang ‘n bate in sy boedel vorm, met dien verstande dat indien H[...] W[...] R[...] te sterwe kom na die ontbindingsdatum van die Trust soos bepaal in Klousule 14.1 en sou verkies

⁶ Founding Affidavit, Annexure “E”, page 33.

⁷ My translation.

om die Trust voort te sit en dan te sterwe kom, sal **sodanige belang in die Trust 'n bate in sy boedel vorm**⁸.

[31] The First Respondent has been donated a 50% interest as a beneficiary of the Trust, with the specific instruction that **his interest in the Trust** will form a part of his estate.

[32] The *animus donandi* of the Applicant towards the First Respondent is quite evident if the trust deed is considered wholistically, and is expressly stated in paragraph 3 thereof. Such *animus donandi* does not exist towards the trustees.

[33] The Applicant has argued that both the donation of the assets to the trust as well as the Act of appointing the First Respondent as a beneficiary of the trust constitutes a “pure donation” from the Applicant to the Trust as well as to the First Respondent. In terms thereof, the First Respondent benefits substantially from such donation.

[34] In the Full bench decision in the matter of **Commissioner, South African Revenue Services v Marx**, Van Zyl J dealt with the issue of donation in detail. The Court confirmed the following⁹:

‘A donation is an agreement which has been induced by pure (or disinterested) benevolence or sheer liberality, whereby a person under no legal obligation undertakes to give something... to another person, called the ‘donee’, with the intention of enriching the donee, in return for which the donor receives no consideration nor expects any future advantage.’

[35] It must be noted that this decision provides that in order for a donation to be induced the donor must **have the intention of enriching the donee**.¹⁰ As discussed supra this intention to enrich the donee, is absent in respect of the trustees, further confirming that no donation has been made to the trustees.

⁸ My emphasis added.

⁹ Commissioner, South African Revenue Services v Marx NO 2006 (4) SA 195 (CPD).

¹⁰ My emphasis.

[36] However, this intention to enrich was present towards the First Respondent in his capacity as beneficiary of the trust.

[37] At paragraph 23 of the judgment the Court further held that¹¹:

'[24] The donor's intention to make a donation (animus donandi) must arise from generosity (liberalitas) or liberality (munificentia) and be expressed as a promise (offer) to donate, which promise (offer) must be accepted by the donee before a binding contract of donation comes into existence. Once this happens the donation is perfected and it may be revoked only under certain circumstances.'

[38] If the Act of appointing the First Respondent as a beneficiary of the Trust is viewed through the requirements of a binding contract of donation as set out above, the following is evident:

25.1 The Applicant or the Donor intended to make a donation to the First Respondent, out of generosity or liberality, by offering to appoint the First Respondent as a beneficiary of the Trust;

25.2 The offer of appointing the First Respondent as a beneficiary of the Trust, had to be (and was) accepted by the First Respondent as the donee. The First Respondent never indicated that he did not want to be appointed as a beneficiary of the Trust;

25.3 As a result thereof a binding contract of donation came into existence between the Applicant and the First Respondent.

[39] This Court is thus of the view that both the trust assets as well as the act of appointing the First Respondent as a beneficiary of the trust constitutes a donation as set out *supra*.

Revocation and Gross Ingratitude:

¹¹ Commissioner, South African Revenue Services v Marx NO 2006 (4) SA 195 (CPD) at para 24.

[40] It was further argued that, in the premises, the Applicant is entitled to revoke his donation by virtue of the First Respondent's gross ingratitude.

[41] However, a donation may only be revoked under certain circumstances. In order to establish these circumstances, it is necessary to consider the principle of gross ingratitude and its application to this set of facts.

[42] In the matter of **D.E and Another v. C.E and Others**¹² the Court has held that the following constitute sufficient grounds of revocation:

*'(1) the donee physically attacks the donor; (2) the donee intentionally causes the donor a loss of property; (3) the donee attempts to take the life of the donor; and (4) the donee fails to comply with the conditions stipulated by the donor. The above **do not constitute an exhaustive list of the grounds which entitle a donor to resile from the contract due to ingratitude. The donor may demand the return of a gift on any act of ingratitude**¹³. The ingratitude must be of a sufficiently serious nature (for example it must have caused the donor considerable financial loss) and must be accompanied by dolus.'*

[43] It is evident that a donor, or the Applicant in this instance, may revoke a donation in circumstances where the donee, or the First Respondent in this instance, acts with gross ingratitude towards the donor, or the Applicant herein.

[44] It is the Court's view that Gross ingratitude finds application herein in that the First Respondent has physically attacked and assaulted the Applicant on more than one occasion, and that he also attempted to take the Applicant's life.

[45] The First Respondent's conduct did not stop after the physical attacks on the Applicant, but it has escalated into criminal acts which occurred regularly after the

¹² D.E and Another v C.E and Others [2020] 1 All SA 123 (WCC) (10 October 2019) para 43 to 48; See also LAWSA Vol 8 Part 1 2nd ed at para 310.

¹³ My own emphasis.

donation was made by the Applicant by appointing the First Respondent as a beneficiary to the Trust as well as donating assets to the Trust.

[46] In the matter of **D.E and Another v. C.E and Others**¹⁴ the Court further held that the grounds of revocation as set out and which entitles a donor to resile from a contract due to ingratitude, is not an exhaustive list.

[47] Therefore, the fact that the Applicant is severely prejudiced by the First Respondent's history and tendency to commit criminal acts is also taken into account by this Court.

[48] The First Respondents conduct has resulted in the relationship between the Applicant and the First Respondent being broken down irretrievably.

[49] This conduct of the First Respondent has continued after being appointed as a beneficiary, negating the First Respondent's argument that the assaults which happened prior to the appointment cannot serve as a basis for the Applicant's reliance on the common law principle of gross ingratitude.

[50] The First Respondent argued that the decision of the South Gauteng High Court, Johannesburg must take the case of **C.A.W v D.H.W and Another**¹⁵ into account. The Court in this matter held that:

"These assaults preceded the donation. If the assaults preceding the donation were not of such a nature as to prevent the donation, assaults post the donation can hardly be relied upon to demonstrate gross ingratitude."

[51] This matter does not have a similar set of facts as the one in casu seeing that it deals with a divorce. There is not an exhaustive list of facts to take into consideration when dealing with gross ingratitude and the prejudice suffered by one person may not necessarily be the same for another.

¹⁴ D.E and Another v C.E and Others [2020] 1 All SA 123 (WCC) (10 October 2019) para 43 to 48; See also LAWSA Vol 8 Part 1 2nd ed at para 310.

¹⁵ C.A.W. v D.H.W and Another (16760/2018) [2023] ZAGPJHC 811 (21 July 2023).

[52] This Court is therefore of the view that this case do not find application due to the fact that *in casu*, the behaviour of the First Respondent is not only directed at the Applicant, but that the conduct of the First Respondent continued and escalated to such an extent that he is now habitually committing violent criminal acts. The First Respondent has been found guilty of at least six criminal offences and are currently being investigated in respect of at least four more criminal matters.

[53] There is nothing preventing this court from considering acts of ingratitude that happened prior to the donation.

[54] The habitual criminal conduct of the First Respondent is therefore taken into consideration and the Court finds that it also constitutes gross ingratitude as it has far reaching prejudicial consequences for the First Applicant.

[55] By virtue of the fact that Gross ingratitude finds application, the Applicant is entitled to revoke his donation to the Trust as well as his donation of appointing the First Defendant as a beneficiary to the Trust.

Clause 20 of the Trust Deed:

[56] The First Respondent submitted that there is a Jurisdictional impediment in clause 20 of the Trust deed in that no amendment may be made without the agreement of the First Respondent.

[57] Clause 20 of the trust deed reads as follows:

“Die meerderheid van die Trustees mag met toestemming van die Begunstigde van hierdie trustakte hersien of wysig met dien verstande dat sodanige wysiging nie die herroeping van die trust tot gevolg het nie. Die trustees het verder die reg om hierdie trustakte in die geval dat enige wetgewing dit genoodsaak te wysig of te hersien om sodoende aan die vereistes van sodanige wetgewing te voldoen. Die skadeloosstelling soos na

verwys in 13 hierbo sal mutatis mutandis van toepassing wees in vebrand met enige skade wat gely word as gevolg van die wysiging of die hersiening.”

[58] This clause provides that the trust deed may be amended with the consent of the First Respondent insofar as it does not repeal the trust.

[59] The First Respondent submits that Clause 20 of the Trust Deed renders the allegations in the founding affidavit to naught and that the Applicant is not entitled to any relief sought.

[60] The Applicant argued that this contention is not supported by law or by fact. In terms of the Trust Property Control Act 57 of 1988, the Court is clothed with the power to vary trust provisions.

Section 13 of the Trust Property Control Act 57 of 1988:

[61] Finally, it is necessary to deal with the application of Section 13 of the Trust Property Control Act 57 of 1988, which reads as follows:

“13. Power of Court to vary trust provisions. –

If a trust instrument contains any provision which brings about consequences which in the opinion of the court the founder of a trust did not contemplate or foresee and which –

(d) Hampers the achievement of the objects of the founder; or

(e) Prejudices the interest of the beneficiaries; or

(f) Is in conflict of the public interest.

The court may, on application of the trustee or any person who in the opinion of the court has a sufficient interest in the trust property, delete or vary any such provision or make in respect thereof any order which such court deems just, including an order whereby particular trust property is substituted for particular other property, or an order terminating the trust.”

[62] As previously stated, the trust was established due to the fondness and affection that the Applicant had for the beneficiary, to wit the First Respondent.

[63] Unfortunately due to the First Respondent having assaulted the Applicant on more than one occasion as well as the First Respondent's inclination towards criminal behaviour, which escalated after being appointed as a Beneficiary of the Trust, there is no longer any fondness or affection between the Applicant and the First Respondent.

[64] The Applicant submitted in paragraph 19.6.1 of the Replying Affidavit that:

*"The First Respondent is a habitual criminal and his aggression violates the ethos, the fama and the integrity of what I had in mind in respect of the Trust."*¹⁶

[65] And further in paragraph 19.6.2 that:

*"I never envisaged a beneficiary to be a criminal and to act in a violent manner, so as to violate the good intentions that I envisaged..."*¹⁷

[66] Based on this the inclusion of the First Respondent as a beneficiary, hampers the achievement of the objects of the founder of the trust, to wit the Applicant. The Applicant therefore seeks to achieve his object by removing the First Respondent as a beneficiary of the Trust and substituting him with the Applicant's grandchildren as the beneficiaries of the trust.

[67] The Applicant finally submitted that the First Respondent's entitlement or right of being a beneficiary of the trust, with assets to the value of approximately R30 million, in light of his inclination for criminal behaviour and the assaults he has committed upon the Applicant, is in direct conflict with the public interest.

[68] It is the opinion of this Court that the Applicant did not contemplate or foresee that the First Respondent would become a habitual criminal, hampering the achievement of the objects of the Applicant as founder of the Trust nor that the First

¹⁶ Replying Affidavit, para 19.6.1, p188

¹⁷ Replying Affidavit, para 19.6.2, p188

Respondent would be prone to violent behaviour which is in conflict with the public interest.

[69] The Court is satisfied that the Applicant's application has fulfilled the requirements provided in Section 13 of the Trust Property Control Act 57 of 1988.

[70] The Court is further of the view that the Applicant has made a donation to the First Respondent, both directly and indirectly, and that in terms of the principle of gross ingratitude, the Applicant may revoke the donation made to the First Respondent.

[71] The Applicant is therefore entitled to the relief prayed for.

Costs:

[72] There is no reason why the costs should not follow the outcome of the proceedings, and the Applicant is thus entitled to costs.

Order:

[73] **In the result the following order is made:**

1. That clause 1.5.2 of the Trust Deed dated 27 June 2016, Masters Ref No. IT163/2016(L), be deleted and substituted with the following:
 "1.5.2. C[...] J[...] R[...], Identiteitsnommer 0[...] – 25% (vyf en twintig persent) belang; en
 1.5.3. H[...] W[...] R[...], Identiteitsnommer 2[...]– 25% (vyf en twintig persent) belang."
 2. That the Fifth Respondent be directed to amend or to rectify its records in accordance with the amendment envisaged in paragraph 1 *supra*;
 3. That the First Respondent be order to pay the costs of this application.
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S DU PLESSIS
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

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DATE OF HEARING	:	21 February 2025
DATE OF JUDGMENT	:	7 July 2025