

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION JOHANNESBURG

CASE NO: 2024/084385

DOH: 28 May 2025

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
..... SIGNATURE 12/8/2025 DATE	

NUHARVEST (PTY) LTD
JARED DEAN PETERS
TANNER ARON PETERS

First Applicant
Second Applicant
Third Applicant

And

ADEL DOREEN MCQUARRIE N.O

Respondent

*(In her nominal capacity as the Court appointed
Receiver of the assets of the Dennis Ronald Peters Will
Trust IT No. T007360/2001)*

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 12 August 2025

JUDGMENT

MALI J

INTRODUCTION

1. This application originates from the Urgent Court where it was struck from the roll for lack of urgency. The order sought against the respondent is for the respondent to comply with the court order granted by this court per the Honorable Manoj J dated 4 March 2020. The order empowers the respondent as the liquidator and or the receiver of the estate of Dennis Ronald Peters Will Trust (trust); to do all things necessary to wind up the estate of the trust.
2. The first applicant is Nuharvest (Pty) Ltd ("Nuharvest"), a company with limited liability, duly incorporated and registered in terms of the laws of the Republic of South Africa. Nuharvest was founded as a result of the transfer of Tanner Estates, the business of the trust. Nuharvest trades as a supplier of fresh produce with its major client being a fast-food chicken outlet, Kentucky Fried Chicken (KFC).
3. The second applicant Jared Peters (Jared), and third applicant, Tanner Peters (Tanner) are the sons of the late Dennis Ronald Peters. They are both 50% shareholders each and directors in Nuharvest, and they are also beneficiaries of the trust.

4. The respondent is Adel Doreen McQuarrie N.O, the receiver of the trust. Dispute between the parties concerns the alleged reluctance of the respondent to distribute the proceeds of the estate of the Trust to the beneficiaries.

BACKGROUND

5. The trust was created for the purpose of holding assets on behalf of and for the benefit of the second and third applicants, until they each became entitled to their shares in terms of the will, upon attaining the age of thirty-three. Regrettably, due to the dispute between Jared, and their mother who was once a trustee, the trust assets could not be transferred. Consequently, Jared, the second approached the court to remove their mother as the trustee, which application became successful and thus resulting in the appointment of the respondent.
6. It is common cause that during 2021 in accordance with paragraph 1.4.5 of the order, the business of Tanner Estates, an asset of the trust (the business) was transferred to Nuhaverst as a going concern. However, the immovable property where the business is being conducted was not transferred.
7. The five assets or properties due to be transferred from the trust by the respondent are worth approximately R35 million. In respect of some properties, Absa Bank Limited (Absa) hold bonds as security for funds which Absa has advanced to Nuhaverst or the business.
8. It is not in dispute that the parties agreed that in order to minimize tax liabilities, the remainder of the trust properties would be transferred to the second and third applicants and thereafter be transferred to Nuharvest in exchange for shares in Nuharvest, in accordance with **section 42 of the Income Tax Act, 58 of 1962**.

Since 2021 the respondent has managed to transfer only one property. The applicants not being pleased with this situation launched this application.

9. The applicants' case is that the respondent is being obstructive and or refuses to transfer properties until she has been paid her legal fees, despite being provided with payment or bank guarantees.
10. The respondent disputes that she is obstructive. She has not been provided with adequate guarantee to cover liabilities which include legal fees. Therefore, she is not in position to transfer the assets or make early distribution without being provided with the appropriate bank guarantee. She has been offered payment and personal guarantees which are not good instruments to guarantee the debts of the trust.

APPLICATION

11. This application was set down for hearing on 28 May 2025. On 2 May 2025 after the date on which the hearing bundle for this application was required to be completed indexed and paginated, the respondent filed a "supplementary affidavit" without making substantive application for leave of the court and condonation for the filing of the supplementary affidavit. On 26 May 2025, the applicants filed conditional answering affidavit to the respondent's supplementary affidavit.
12. Respondent's counsel referred to the supplementary affidavit in passing whilst dealing with the main arguments, in an attempt to request leave from the bar to file the "supplementary affidavit". Applicant's counsel applied for the admission of the conditional answering affidavit to respondent's answering affidavit, only in the

event the court were to allow the further “(supplementary affidavit)” by the respondent.

13. Rule 6(5)(e) clearly states that the filing of further affidavits is only permitted with the leave of the court. The court, as arbiter, has the sole discretion whether to allow the affidavits or not. The court will only exercise its discretion in this regard where there is good reason for doing so.
14. Further affidavits can be permitted if it is in the interest of administration of justice to do so. I now deal with these two further affidavits.

FURTHER AFFIDAVITS

15. In the supplementary affidavit the respondent first deals with the issue of liabilities of the trust, and updated information regarding the trust liabilities. In the update the tax liability in the sum of R5,717,254.44 is no longer a liability of the trust. Nevertheless, penalties and interest owing by the trust to SARS amount to R755,728.00 (which amount continues to accrue interest).
16. The respondent submits that on 28 October 2024, realizing that interest keeps accruing and that the amount due with further interest may be significantly more than R755,728.00 instructed the accountant to make an offer to SARS to settle this amount. The accountant, Mr Rossouw, responded by email on 28 October 2024, stating that he was unable to execute the instruction because the Trust does not have liquidity to pay the amount due, should SARS accept the offer.
17. The respondent's supplementary affidavit further deals with statutory remuneration due to the respondent in terms of the tariff set out in regulation 8(3) of the regulations made by the Minister under **section 103 of the Administration**

of Estates Act 66 of 1965 in the sum of R4,750,790.80, as at the time of filing the answering affidavit. Considering that the respondent must register with SARS as a VAT vendor the total amount owing to the respondent including VAT is therefore R5,463,409.42.

18. It is further submitted that additional costs have been incurred by the Trust, in respect of legal costs and disbursements due and owing to respondent's attorneys of record ("RVR"). Given that the applicants have sought to dispute every aspect of the respondent's administration of the trust, the respondent states she deemed it prudent for RVR to instruct an independent expert cost consultant, Mr Ray Gertzen (Gertzen) from Gertzen attorneys, to prepare a bill of costs for RVR's fees and disbursements. Gertzen proceeded to do so and the legal fees totalled R1,036,811.57, as is evident from the bill of costs drafted by Gertzen.
19. On 7 November 2024 the applicants made a payment in the amount of R213,037.50 towards legal fees and disbursements, with a remaining balance of R823,774.07. The trust's legal fees continue to accumulate as long as the present litigation persists. Despite the respondent requesting the first applicant to assist in settling the debt for legal fees, Ms Potgieter, applicants' attorney of record vehemently disputes the fees.
20. It is submitted that the indebtedness of the trust to the amount of R7,042,911.49 will exceed due to SARS' interest accumulating on daily basis. The amount of R7,042,911.49 consists of R755,728.00 for penalties and interest owing to SARS; respondent's statutory remuneration in the sum of R5,463,409.42 and legal fees and disbursements due and payable to RVR (another firm of attorneys who consulted for the respondent).

21. Since 7 March 2024, the respondent had requested the applicants to furnish a bank guarantee for the Trust's liabilities. It is only on 22 October 2024 after this application was struck from the urgent roll that Ms Potgieter advised that the applicants had managed to secure a bank guarantee for the Trust's liabilities which would be presented "shortly".
22. From the date the draft payment guarantee was furnished to the respondent, there had been exchanges between the parties about the inadequacy of the guarantee and other issues not covered in the guarantee. Consequently, on 22 January 2025 the respondent furnished comments and proposed amendments to the draft payment guarantee. Among other comments the following is relevant to the adjudication of this application:

" 20 In addition to the above, I have a concern regarding the possibility of any further litigation, for example with SARS. The guarantee amount does not provide for this possibility. Here we can consider that two of the portions remains in the Trust as a form of security.

PENDING LEGAL DISPUTE

20 sic) If we agree on this Guarantee, then we can agree on a draft order whereby the properties can be transferred to Nuharvest and, to the extent necessary that my powers are extended to provide for the foregoing early distribution to the beneficiaries. Nuharvest may also investigate whether the matter can be heard earlier than 26 May 2025, should same be enrolled on the unopposed motion roll. 21. As per paragraph 12 above, the Trust' legal costs must be paid in full, whether by the Trust or beneficiaries/ Nuharvest, and no further legal costs for the Trust should have to be incurred henceforth..."

23. To the above, on 12 February 2025 the first applicant advised the respondent that the proposed changes have just been approved by Absa bank. Despite these assurances the guarantee incorporating changes was never forthcoming. On 11

March 2025, the applicants served a final notice of set down for the hearing of this application. And again, from 17 March 2025, the exchange between parties about the guarantee resurfaced, this time from Ms Potgieter who referred to the unacceptable guarantee of 21 November 2024.

24. Ms Potgieter further advised that she intended to file supplementary affidavit in these application proceedings. RVR requested Ms Potgieter to file the supplementary affidavit timeously in order to avoid postponement of these application proceedings.
25. There was no response to the request, instead on 23 April 2025 the applicants served a tender in terms of Rule 34 in which they attached a draft bank guarantee from Absa and the proposed amendments by the respondent. The Rule 34 tender repeats the intention to register the mortgage bonds over two of the properties and for payment guarantees to be issued by the applicants. The value of the properties is R800 000.00, and insufficient. This was communicated as early as November 2024. The respondent further submits that the Rule 34 tender constitutes irregular step, as the applicants should have filed supplementary affidavit as they once intimated.
26. The gist of the applicants' conditional answering affidavit is that the court must grant the respondent powers to transfer the assets. Furthermore, that the court is persuaded to order the respondent on the basis of the unsigned guarantee by Absa as discussed and referred to above according to the respondent. The proposed order of the applicants amongst others reads as follows:

"The respondent must be "directed to accept the forms of security provided (Tendered Securities) in settlement and discharge of any current or future liabilities of the Trust payable by her in her capacity as receiver of the Trust's

assets in order to finally wind up the Trust, which liabilities include but are not limited to her fees (inclusive of any disbursements paid or due to be paid by her) in her capacity as receiver appointed in terms of the Order, the amount of which is still to be determined by the Master of this Court or this Court ("the Fees"), and any liabilities owed by the Trust to the South African Revenue Services ("SARS") until the Trust is finally wound up ("the SARS Liabilities").

25.5 To the extent necessary, it is declared that the respondent has the power to make an early distribution of the Trust assets. Nuharvest is ordered to fully indemnify the Trust in respect of its current and future liabilities and is ordered to provide the Trust (represented by the respondent, its receiver) and the respondent with an irrevocable, unconditional and unlimited guarantee that Nuharvest will pay any liabilities, costs and disbursements of the Trust including but not limited to the Fees and the SARS Liabilities, which irrevocable, unconditional and unlimited guarantee must be provided in writing by Nuharvest within 5 (five) days of an order of this Court. 25. 7 Nuharvest is ordered to register, at its cost, a mortgage bond over the properties described as Portions 171 and 172 (otherwise known as the Remaining Extent of Portion 2) of the Farm Lindley 528, Registration Division J.O., the Province of Gauteng in favour of the Trust (represented by the respondent, its receiver) and still to be paid by the respondent in her capacity as receiver of the pending the final winding up of the Trust, including but not limited to the SARS Liabilities as soon as possible after the Properties are transferred to Nuharvest in accordance with paragraphs 25.1, 25.2 and 25.3 above. 25.8 Jared be ordered to fully indemnify the Trust in respect of its current and future liabilities and be ordered to provide the Trust (represented by the respondent, its receiver) and the respondent with an irrevocable, unconditional and unlimited guarantee, that should Nuharvest fail to perform its obligations (or any of them) after having been called upon to do so by the respondent in writing, Jared will pay any remaining liabilities, costs and disbursements of the Trust including but not limited to the Fees and the SARS Liabilities, which guarantee is to be provided by me within 5 (five) days of an order of this Court. The respondent is directed to accept as further (and covering security) to be called upon at the election of the respondent in respect of any remaining liabilities, costs and disbursements of the Trust, including the Fees and the SARS Liabilities, the ABSA Guarantee being a bank guarantee approved and presented by ABSA in the amount of R5,500.000.00, a copy of which is attached hereto as annexure ASA 1. Proof

that ABSA has approved the ABSA Guarantee in the form of an email sent to me by Ivy Nanjee ("Ms Nanjee") of ASSA dated 15 May 2025 is attached hereto as ASA2."

27. The applicants submit that the tendered assets are more than sufficient to meet the current and future liabilities of the trust. When the trust is finally wound up the fees and the SARS Liabilities would be covered. If the court grants an order on the terms set out above, ordering the respondent to transfer the properties to Nuharvest, she will have the necessary comfort that, as the trust's receiver.
28. The respondent's refusal to accept such tendered securities (and her consequent refusal to transfer the properties) is unreasonable and, accordingly, should this court grant an order in the terms set out above (or any other order in favor of the applicants), the respondent should be ordered to pay the applicants' costs in her personal capacity, on the scale as between attorney and client to include the costs of counsel on Scale C.
29. The trust has a potential liability to SARS for penalties and interest following the SARS audit of the trust's tax returns for the 2017, 2018 and 2019 tax years in the amount of R755, 728.00 which amount, as set out in the replying affidavit, is the subject of a dispute which is currently pending with SARS and is, at best, a contingent liability. The trust is currently awaiting a date for the hearing of its case in the tax court and, as such, the payment of this liability is suspended. It is correct that interest is running on the aforementioned amount.
30. Trust's prospects of successfully disputing this amount during the tax court proceedings are high and, if not, it is likely that the matter will be able to be settled for less than the current liability. The Trust has a potential liability to the respondent for a maximum amount of R4, 750,790.80 in respect of her fees,

according to her own calculation and confirmed by her under oath in the answering affidavit filed in the application. As set out in the founding and replying affidavits, however, this fee is disputed by the applicants, and it is admitted by the respondent in her answering affidavit that this amount is subject to taxation by the Master of the Court.

31. Taking into consideration that the supplementary affidavit by the respondent addresses crucial issues for determination of this application, it is in the interests of justice that it be admitted. It follows that the applicants conditional answering affidavit must also be admitted.

DISCUSSION

32. The powers of the respondent as the receiver, are derived from the court order amongst others as follows: In terms of paragraph 1.4.12 the respondent is ordered to deal with the assets of the trust at her discretion in order to complete the winding up of the trust. In this regard, the respondent is required to exercise her discretion *arbitrio boni viri* as it is held in **CG v AG & Another 2020 (6) SA 487 (ECP)** at para 23.

In the case of **Mount Amanzi Share Block Ltd v Body Corporate of Windsor Heights Sectional Title Scheme & Others (537/2016) [2017] ZASCA** at para 31 it is held: "*Whether or not the exercise of such a discretion is made arbitrio boni viri "requires a determination of whether it was exercised both reasonably and honestly."* Therefore, the respondent is required to act reasonably and to exercise reasonable judgment.

In paragraph 1.4.15, the respondent is ordered to deduct her fees from the amount available for distribution to the beneficiaries **after the collection of all**

assets and discharge of the liabilities of the trust. (added emphasis)

Paragraph 1.4.16 further orders the respondent to distribute the assets of the trust or the value of such assets to the beneficiaries of the trust, being the second and third applicants, in equal shares, **after all debts due and liabilities owed by the trust have been paid or settled.** (added emphasis).

33. It is apparent from the order that what constitutes trust liabilities is the debt owing to SARS and respondent's fees including disbursements. The applicants insist that the amount of R5,5M is sufficient to cover the debts of the trust, therefore early distribution must take place.
34. It is clear that the applicants are only concerned with SARS debt. This approach does not take into consideration respondent's fees. The fact that the applicants are disputing the respondent's fees does not make legal fees not to be the liability of the trust. In the event that the respondent first distributes the assets to the beneficiaries as suggested; having not collected all the assets and having not paid legal fees, she would be left with next to no recourse for the legal fees.
35. The proposed indemnification on the part of Jared, is thwarted by his own averments. In his replying affidavit Jared indicated as much that he is not financially sound, to the extent that he relies on financial assistance from his in-laws.
36. On a closer examination of the applicants' case, it becomes apparent that there is urgency to keep Nuharvest afloat. Whilst one understands this situation on the backdrop that the business of the trust was transferred to Nuharvest, it must be noted that Nuharvest is not the beneficiary of the Trust. I cannot discern from the powers granted in the court order that the respondent is able to transfer the assets

of the trust to non- trust beneficiaries like Nuhaverst. No matter how close Nuhaverst is to the issues, there is no legal basis for the proposed transaction by the applicants without adequate bank guarantee.

37. The applicant's position regarding the asset for share transaction, the respondent was exercising her discretion appropriately. The applicants never queried the transaction. The applicants must adhere to the conditions attached thereto.
38. The applicants decry the refusal by the respondent to sign a resolution for Absa to sign the guarantee. The respondent's case is clear cut, that the proposed guarantee does not cover all the liabilities. The court is persuaded to order the respondent to accept the flawed guarantee. The court cannot sanction unlawfulness.
39. With regard to SARS debt, the applicants are speculating that SARS might come to a conclusion favorable to the applicants. This is not supported by evidence. The assurance by their accountants is a mere speculation. SARS is a third party, if the issue of SARS debt was as easy as the applicants want this court to believe, the amount of debt would not have been the subject of these proceedings. It would have been solved a long time ago.
40. The applicants' version is that they are waiting for the date of the hearing in the Tax Court. Seemingly there is a dispute. There is no proof of the suspension of tax debt. A tax debt gets suspended by the Senior SARS official in terms of **section 164 of the Tax Administration Act 28 of 2011**. Dispute of the debt resulting in referral to the Tax Court does not automatically suspend the debt, even further interests. It is trite that the undisputed debt is accumulating interest. The respondent is not speculating, she is stating the obvious.

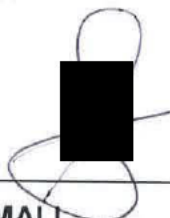
41. The nature of the respondent's appointment as receiver is akin to that of a curator. The respondent is an officer of the Court and not a representative of the parties. See Wilken v Willie N.O. (8813/2019) [2019] ZAGPJHC 353 (19 September 2019) at para 23.

CONCLUSION

42. It is therefore concluded that there is no evidence that the respondent failed to exercise her discretion reasonably and honestly. Furthermore, the order empowering the respondent does not sanction early distribution. The application cannot succeed. In the result, the following order is granted.

ORDER

1. The application is dismissed with costs.
2. Applicants are ordered to pay the costs jointly and severally, the one paying the others to be absolved, on scale C.


A handwritten signature in blue ink is written over a solid black rectangular redaction box. The signature is a cursive-style name, likely 'N P Mali'. Below the signature and redaction box is a horizontal line.

N P MALI

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION

JOHANNESBURG

Date of Hearing:

28 May 2025

Appearances

For the applicant

Adv P Bosman

Instructed by: **Brand Potgieter Inc**

Email: corien@brandpotgieter.com/tarryn@brandpotgieter.com/

Nombuso@brandpotgieter.com

Tel: 011 781 0169

For the respondent:

Adv MT Costa

Instructed by: **Reenen Van Reenen Inc**

Email: reenen@rvrlaw.co.za / nicole@rvrlaw.co.za/ anzel@rvrlaw.co.za

Tel: 010 035 4275