REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

APPEAL CASE NO: A143/2024
HIGH COURT CASE NO: 2566/2021

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES:NO
(3) REVISED.

21.07.25
DATE

[redacted]
SIGNATURE

In the matter between:

THE TRUSTEES OF THE N GEORGIOU TRUST Trust Registration Number: TMP 757 namely	
MAUREEN LYNNETTE GEORGIOU N.O.	First Appellant
JOSEPH REYNOLDS CHEMALY N.O.	Second Appellant
and	
SYDNEY CLARENCE WILLIAM POOLE	First Respondent
L.B. SAFFY N.O. (The executor of the deceased estate of N. GEORGIOU)	Second Respondent
In re:	
THE TRUSTEES OF THE N GEORGIOU TRUST Trust Registration Number: TMP 757 namely **MAUREEN LYNETTE GEORGIOU N.O.** **JOSEPH REYNOLDS CHEMALY N.O.**	The Intervening Party

In re:

SYDNEY CLARENCE WILLIAM POOLE Applicant

and

L.B. SAFFY N.O. Respondent
(The executor of the deceased estate of N. GEORGIOU)

JUDGMENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading it to the electronic file of this matter on case lines. The date and time of hand down is deemed to be 10:00 on 21 July 2025.

TEFFO, J (MOTHA, J AND LENYAI, J CONCURRING)

Introduction

[1] The first respondent, Mr Poole obtained monetary judgment for an amount of R4 400 000,00 plus interest and costs against Zephan (Pty) Ltd ("*Zephan*"), previously known as Zelpy 2095 (Pty) Ltd, Mr Georgiou ("*the deceased*") and the N Georgiou Trust ("*the Trust*") jointly and severally. Writs of execution were obtained and executed against Mr Georgiou's properties to which *nulla bona* returns were issued. For the purposes of this judgment, it suffices to mention that Mr Georgiou was the managing director and sole shareholder of Zephan and that Zephan is currently under business rescue.

[2] On 20 January 2021 Mr Poole launched an application for the provisional sequestration of Mr Georgiou. Mr Georgiou opposed the application. He filed an answering affidavit in opposition of the sequestration application and a counterapplication to stay the sequestration application. Subsequently in

September 2021 Mr Georgiou died. Afterwards L.B. Saffy N.O. ("*the executor of the deceased estate*") substituted Mr Georgiou as a respondent in the sequestration application. Prior to his death, Mr Georgiou was one of the trustees of the Trust.

[3] The application for the provisional sequestration of Mr Georgiou's deceased estate was set down for argument in the opposed motion on 24 January 2024. On 23 January 2024 the trustees of the Trust (the first and second appellant) brought an application for leave to intervene as the respondents in the sequestration application to oppose it.

[4] The basis thereof was that Mr Poole was no longer a creditor of the deceased estate in terms of clause 34 of the business rescue plan of Zephan. If necessary, this clause will be dealt with later.

[5] On 24 January 2024 the court *a quo* heard the intervention application, the counterapplication and the sequestration application. It dismissed the intervention application and the counterapplication and granted the provisional sequestration of the deceased's estate.

[6] The matter is before us on appeal. Leave to appeal has been granted to the Full Court by the Supreme Court of Appeal ("*the SCA*") against the judgment and order(s) (including the order as to costs) of the court *a quo*.

[7] The second respondent ("the executor of the deceased estate") did not participate in the appeal.

<u>The findings of the court *a quo*</u>

[8] In dismissing the intervention application the court *a quo* found that the Trust does not have locus standi to bring the intervention application. It also found that the trustees of the Trust could not act on behalf of the Trust as they were inquorate and failed to appoint another trustee when a vacancy occurred after the death of Mr Georgiou as was required of them in terms of the Trust Deed. The court *a quo* further found that the provisions of clause 34 of the business rescue plan of Zephan do not exclude the right of Mr Poole to apply for the compulsory sequestration of the deceased estate. In addition, it held that Mr Poole had satisfied the requirements for the provisional sequestration of the deceased estate,

<u>Grounds of appeal</u>

[9] Various grounds were raised in this appeal. However, the appeal will be limited to the three grounds which we find pertinent:

(a) The trustees of the Trust contend that the court *a quo* erred by holding that the Trust does not have *locus standi* to bring an application for intervention to oppose the sequestration application against the deceased estate.

(b) They claim that the court *a quo* misdirected itself by holding that they cannot litigate on behalf of the Trust as they failed to comply with the provisions of the Trust Deed which require them to appoint a third Trustee when a vacancy occurred after the death of Mr Georgiou. They assert that the court *a quo* ought to have found that the Trust Deed, when read purposively and wholistically, does allow them to bring the intervention application.

(c) A submission was also made that Mr Poole lacked *locus standi* to proceed with an application for the sequestration of the deceased estate since the judgment debt he relies on for the application, had been ceded to a third party ("the Proposer") under the business rescue plan of Zephan.

Applicable legal principles

[10] It is trite that a court of appeal may only interfere on appeal if there was a misdirection of fact or a wrong principle of law.[1]

Locus standi of the Trust

[11] The trustees contend that the Trust is the sole heir and beneficiary in the deceased estate. It would lose out on receiving an inheritance of not less than R200 000,00 if the sequestration order is granted. It therefore has a direct and substantial interest to intervene as a party in the sequestration application against the deceased estate and oppose it.

[12] It is contended that the personal right that the Trust acquires as an heir to claim against the executor of the deceased estate its inheritance and/or benefits in the estate at some future date provides it with sufficient legal interest to intervene in the sequestration application and to introduce a defence to the sequestration application that the executor cannot rely on.

[13] I have read the cases the trustees relied on in support of their argument and I find them to be distinguishable. One of the cases referred to is *Jones and*

[1] *Florence v Government of the Republic of South Africa* 2014 (6) SA 456 (CC) at para 114

Another v Beatty NO and Others[2] where an executor was asked by the heirs to amend a liquidation and distribution account. The court found that the heirs had *locus standi* to seek such relief. The case is distinguishable in that it was between the executor and the heirs which is not the case in the appeal before us.

[14] The right of an heir to claim an inheritance in the estate of the deceased was described by the authors in Wille's *Principles of South African Law*[3] as follows:

> *"However, in the light of modern system of administration of estates that replaced the common law system of universal succession, the right of the beneficiaries to inherit is no longer absolute nor an assured one. If the deceased estate, after confirmation of the liquidation and distribution account, is found to be insolvent, none of the beneficiaries will obtain any property or assets at all. In the case of a legacy, the legatee will only obtain the property bequeathed to him, if, first the property belonged to the testator, for the Will of one person cannot confer a real right in favour of another person over property belonging to a third person, and if secondly, the assets of the deceased not left as legacies are sufficient to pay his debts. In any event, an heir cannot vindicate from a third person property which the heir alleges form part of the deceased estate, only the executor has power. It follows from the above considerations that an heir does not upon the death of a testator acquire the ownership of the assets of the deceased but merely has a vested claim against the*

[2] 1998 (3) SA 1097 (T)
[3] 9th edition

executor for payment, delivery or transfer of the property comprising the inheritance, and this claim is enforceable only when the liquidation and distribution account has been confirmed. The heir in fact becomes the owner of movable property only on the delivery of it, or of immovable property upon registration ... ***The modern position is therefore that a beneficiary has merely a personal right ... against the executor and does not acquire ownership by virtue of a Will.***"

[15] The above position has long been settled and confirmed in many decisions of our courts. See *Greenberg and Others v Estate Greenberg*[4] and *W v Williams-Ashman NO and Others*[5].

[16] It has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned.[6] The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that the other parties should have been joined to the proceedings, has thus been held to be a limited one.[7]

[17] Relying on the decision in *Ploughman NO v Pauw*[8] the appellant contends that apart from a joinder out of necessity, a court can join a party under the common law grounds of convenience, equity, the saving of costs and

[4] 1955 (3) SA 361 (AD) at 364-365
[5] 2023 (4) SA 113 (SCA) at para 13
[6] See *Bowring NO v Vrededorp Properties CC* 2007 (5) SA 391(SCA) para 21
[7] See *Burger v Rand Water Board* 2007 (1) SA 30 (SCA) para 7
[8] 2006 (SA) 334 (C) at 341E-F

the avoidance of multiplicity of actions. The court therefore has an inherent power to order the joinder of further parties in an action or application which has already begun, to ensure that that person's interest in the subject matter of the dispute, and whose rights may be affected by the judgment, are before court.

[18] In my view the decision in *Ploughman NO v Pauw*[9], does not support the trustees' case. In that case the second respondent who was joined as a party to the proceedings had acquired ownership of the property which was the subject matter of the dispute between the parties, together with her brother, the first respondent by acquisitive prescription.

[19] The Trust as an heir and beneficiary in the deceased estate does not acquire ownership of the assets of the deceased upon the deceased's death. It merely has a vested claim against the executor for payment, delivery or transfer of the property and its claim is only enforceable when the liquidation and distribution account has been confirmed. The Trust merely has a personal right which is of a financial nature against the executor. This right which I regard as contingent is deferred until the determination of a preceding interest. It is for the time being uncertain if it will ever take effect.

[20] Although it is trite that a party with a direct and substantial interest should be joined to the proceedings, the qualification for joinder is that the interest must be a legal interest as opposed to a financial interest. The interest of the Trust being a financial interest and not a legal interest does not confer it *locus standi in indicio* to intervene as a party in the sequestration application. In my view

[9] *Supra*

the court *a quo's* finding that the Trust does not have the right to the assets of the estate or a "*sufficient legal interest*" to afford it *locus standi in judicio* to succeed with the intervention application is correct and cannot be faulted.

[21] Having said that I therefore deem it unnecessary to deal with the other remaining grounds. Consequently, the appeal must fail.

[22] Mr Poole also brought an application to adduce further evidence in the appeal which related to a matter that is pending before the Free State High Court and has to do with the setting aside of the business rescue plan of Zephan. The application was not proceeded with.

Costs

[23] Mr Poole sought costs *de bonis propriis* against the Trust and the trustees jointly and severally the one paying the other to be absolved. He contends that the defence that the trustees intended to raise in the intervention application to the effect that in terms of clause 34 of the business rescue plan of Zephan, Mr Poole's claim against the deceased estate has been ceded to the proposer and therefore he would not succeed to sequestrate the deceased estate, is the same as those rejected by the SCA in the precious matters which dealt with the provisions of the business rescue plan in respect of the other companies, where the deceased was involved. It was submitted that reliance by the trustees on the effect of the business rescue plan of Zephan as a defence to the sequestration application against the deceased estate is an abuse of the court's processes and therefore justifies a punitive costs order against the Trust and its trustees.

[24] Having considered the matter, I am not persuaded that the appeal justifies a punitive costs order against the Trust and the trustees.

[25] Regarding the costs in the application to adduce further evidence in the appeal I find no reason that justifies the granting of a cost order against Mr Poole.

Order

[26] In the result the following order is made:

1. The appeal is dismissed with costs.
2. The appellants are ordered to pay the costs of the appeal on a party and party scale C.
3. The application to adduce further evidence in the appeal is dismissed and there shall be no order as costs in this application.

[redacted]

M J TEFFO
JUDGE OF THE HIGH COURT

[redacted]

M MOTHA
JUDGE OF THE HIGH COURT

[redacted]

M M D LENYAI
JUDGE OF THE HIGH COURT

Appearances

For the appellant	R du Plessis SC
Instructed by	Cooper & Associates Inc c/o Couzyn Hertzog & Horak
For the first respondent	L Bolt
Instructed by	Le Grange Attorneys
Heard on	23 January 2025
Delivered on	21 July 2025