

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2025-073204

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

Date: 4 August 2025

E van der Schyff

In the matter between

GEORGE HARROP-ALLIN

and

ANTON HARROP-ALLIN N.O.

ANTON HARROP-ALLIN

PERRY GEUENS N.O.

PERRY GEUENS

MICHELLE JOY HUBBARD

THE MASTER OF THE HIGH COURT, PRETORIA

FIRST APPLICANT

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

FIFTH RESPONDENT

SIXTH RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

- [1] The applicant seeks an interim interdict preventing the trustees of the Anton Harrop-Allin Trust ('the Trust') from making any payments or effecting any transfers on the Trust's bank account either to themselves personally, or to any natural person or juristic entity that is a related person to them as contemplated in section 2 of the Companies Act 71 of 2008, any family member or any juristic person of which either the first or third respondent is a director, member or employee. The interim relief is sought to restrain any payment to any beneficiary of the Trust pending the final determination of an application brought under case number 16556/2025, the so-called 'amendment application', and the relief sought in Part B of the current application, the 'removal application.'
- [2] The applicant is an erstwhile beneficiary of the Trust. His removal as beneficiary through amendments to the Trust Deed is the subject of litigation in the amendment application. The applicant seeks the court's urgent intervention because he believes there is a risk of assets being dissipated if the application is not heard and granted. In Part B of the application, the applicant seeks the removal of the first and second respondents as trustees of the Anton Harrop-Allin Trust.

Urgency

- [3] Rule 6(12) provides that in urgent applications, a judge may dispense with the forms and service provided in the rules. The decision to enroll any application in the urgent court, however, has the consequence of requiring an applicant to make out a case that it would not be afforded substantial redress at a hearing in due course.
- [4] Rule 6(12)(b) prescribes that the applicant must set forth explicitly the circumstances which are averred to render the matter urgent. A court must first condone the applicant's non-compliance with the Uniform Rules of Court before it proceeds to decide on the remainder of the relief sought.
- [5] The question is then, did the applicant in this matter make out a case that it would not be afforded substantial redress at a hearing in due course if the relief sought is not granted. To put this in simple terms, did the applicant make out a case that he

would suffer harm or loss that cannot, in time, be adequately compensated if he is obliged to wait for the matter to be dealt with on the ordinary motion roll, or that the delay in having the matter heard if it is enrolled in the ordinary course would defeat the very purpose of the relief sought?¹

- [6] The question of urgency is intertwined with a consideration of the facts underpinning the application. The timeline preceding an urgent application often informs the issue of urgency.

- [7] In the current matter, the application was brought on a semi-urgent basis. The applicants had due regard to the appropriate degree of urgency. The applicant issued the application in May 2025. The timelines within which the respondents were required to file opposing papers accord with the periods provided for in the Uniform Rules of Court.

- [8] The respondents deny that the application is urgent. They contend that the applicant failed to show that the Trust is in the process of making disbursements to beneficiaries, and aver that there is no evidence that the Trust intends to do so in the near future. The deponent to the answering affidavit, the second respondent, claims that the application is unnecessary. He unequivocally states that he:

‘confirm that the Trust has no intention of selling the shareholdings or making any disbursements to any beneficiary in the near future.’

- [9] If regard is had to this averment by the respondents, I find it strange that the parties could not reach an agreement prior to the launch of this application that would have eliminated the need for an interim order pending the finalisation of the removal application. The urgent application could have been averted if the trustees had provided the information and undertakings sought by the applicant prior to the institution of the urgent application. Although he is not currently a beneficiary of the Trust, his removal is the subject matter of the amendment and removal applications. He has *locus standi* to approach the court for the relief sought in the amendment

¹ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

application as he has a direct legal interest in the subject matter of the litigation. If successful in the amendment application, the applicant will have *locus standi* in the removal application. The respondents' refusal to provide the applicant with the information sought regarding the impugned transactions can, at best, be seen to be obstructive. In any event, it led to this application for interim relief

- [10] The need to seek interim relief on an urgent basis arose when the applicant decided to approach the court seeking the removal of the current trustees, and the respondents' refusal to provide him with the information and undertakings sought. The applicant afforded the respondents time to file their answering affidavits. Having regard to the factual matrix, I am of the view that the applicant made out a case for this application to be considered on a semi-urgent basis. As a result, any non-compliance with the Uniform Rules of Court stands to be condoned.

The interim relief sought

- [11] In applications for interim relief, applicants are not required to establish their right to relief on a balance of probabilities. It is sufficient to show that such a right is *prima facie* established, although open to some doubt. The test was explained clearly in *Webster v Mitchell*.²
- [12] The applicant contends that the interim relief is sought to protect his *prima facie* right to the relief sought in the amendment and removal application. If successful in the amendment application, the applicant as reinstated beneficiary will have access to trust records through which he would be able to obtain better insight into how the Trust has been administered. He would also retain the rights afforded to beneficiaries in terms of the Trust Deed. He would, to name but two, subject to the discretion of the trustees, be eligible to receive benefits, and when the trust terminates, be able to require that any excess expenditure incurred by the trustees for 'the pleasure' of a beneficiary be refunded.³

² 1948 (1) SA 1186 (W) 1189-1190.

³ Clause 10.2 of the Trust Deed.

- [13] Success in the amendment application is a requirement to establish *locus standi* in the removal application.
- [14] If I consider the facts set out by the applicant pertaining to the amendment application, together with the facts set out by the respondents in answer, and consider the inherent probabilities, I am of the view that the applicant has prospects of success, even if open to some doubt, in the amendment application. On my reading of the papers, the amendment application essentially hinges on the interpretation of clause 20.2 of the Trust Deed in the context of the Trust Deed as a whole. The respondents also refer to clause 9.2, wherein it is stated that the Trust was created for the benefit of the children born to Anton Harrop-Allin. The submission that the applicant's statement that he is not a son of the said Anton Harrop-Allin justifies his removal does not hold water in the absence of any proof that the applicant was not 'born to' Anton Harrop-Allin. This statement seems to be nothing more than an emotive statement uttered amid intense acrimony.
- [15] The applicant's prospects of success in the amendment application enhance his prospects of success in the removal application. The trustees amended the Trust Deed to exclude the applicant as beneficiary, while specifically adding the second respondent, a trustee, as a beneficiary. The applicant's descendants were also removed from the Trust as potential beneficiaries. This in itself raises serious questions regarding the first to fourth respondents' *bona fides* and the manner in which they exercised their fiduciary duties as trustees. It might well be that the court deciding the removal application holds that a case has not been made out for the removal of the trustees, but at this juncture, the applicant has established *prima facie* that he could obtain the rights he seeks to protect.
- [16] The applicant's *prima facie* right is, however, only one of the factors which must be considered in an application for interim relief.⁴ In the current application, the respondents' averment that the application is unnecessary because the trustees do not intend to make any disbursement to any beneficiary in the near future sways the balance of convenience in the applicant's favour. On account of this

⁴ *Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son* 1995 (1) SA 725 (T) 729I-730G.

acknowledgement, the court can rest assured that the respondents will not be prejudiced if the relief sought is granted. If the relief is, however, not granted and the respondents change their stance and make significant disbursements to beneficiaries or related persons to thwart the applicant's rights, the applicant will suffer harm. The respondents' refusal to agree to the interim relief sought pending the finalisation of the amendment and removal applications, while they claim that the relief sought is unnecessary because they do not intend to make any disbursement in the near future, causes unease and, ironically, lends some credibility to the applicant's fear that trust assets will be dissipated, or that the trust is maladministered.

- [17] The remedy provided for in section 20(1) of the Trust Property Control Act 57 of 1988, is to be exercised with circumspection. The overriding question is whether or not the conduct of the trustees imperils the trust property or its proper administration. The obvious friction and enmity between the applicant and trustees do not, in and of themselves, provide sufficient reason for removing trustees, particularly not on an interim basis.⁵ However, in the particular factual context of this matter, I am of the view that the applicant's prospects of success in the amendment application, as I see it, are sufficient for granting the interim relief sought. Success in the amendment application points to trustees not having had regard to the interests of all the trust beneficiaries.
- [18] I am alive to the fact that although the Trust was constituted for the benefit of the children born to the second respondent, the trustees were not precluded from applying any portion of the trust assets and income, in their discretion, to his welfare and benefit. I am also alive thereto that the trust is a discretionary trust and even if the applicant was still a beneficiary, that he would not have been able to claim specific disbursements. However, if the trustees are found derelict in their fiduciary responsibilities, they may be removed. The apprehended loss or injury need not be of a pecuniary nature. Where trustees act contrary to their fiduciary responsibility, beneficiaries suffer irreparable harm.

⁵ *Gowar v Gowar* 2016 (5) SA 225 (SCA) at paras [30]-[32]; *Fletcher v McNair* (1350/2019) [2020] ZASCA 135 (23 October 2020).

Consolidation application

- [19] The applicant seeks an order consolidating the amendment and removal applications. The applicant's *locus standi* in the removal application is dependent on him being the successful party in the amendment application. The amendment application thus needs to be decided before the removal application is considered, as a result of which it is not convenient to consolidate the applications. There is, however, no obstacle preventing the parties from approaching the Deputy Judge President of this Division with a request that the applications be enrolled as special motions before the same judge at the same time and for the parties to argue both applications simultaneously.

Miscellaneous

- [20] The respondents' counsel took issue with the fact that some of the confirmatory affidavits were 'virtually' commissioned. While this highly technical point may have merit in appropriate circumstances, the subsequent commissioning of identical statements renders the point moot.
- [21] In considering the relief to be granted, this court is not inclined to usurp the powers afforded to another court in terms of section 18 of the Superior Courts Act 10 of 2013.

Costs

- [22] The costs of this application should ultimately be carried by the party who is unsuccessful in the removal application.

ORDER

In the result, the following order is granted:

1. Condonation is granted for non-compliance with time limits, forms, and service provided for in the Uniform Rules of Court, and the application is heard as an urgent application;
2. Pending the final determination of both the application brought under case number 2025-16556 ('Amendment Application') and the application brought as Part B under case number 2025-073204 ('Removal Application'),
 - 2.1. The first and third respondents, and any person acting through, by or under them, are interdicted and restrained from making any payments or effecting any transfers on the bank accounts held by the Anton Harrop-Allin Trust either to themselves personally or to any natural person or juristic entity that is a 'related person' to them, as contemplated in section 2 of the Companies Act 71 of 2008, any family member to them or any juristic person of which either the first, second, third or fourth respondents is a director, member or employee.
 - 2.2. The first and third respondents, and any person acting through, by or under them, are interdicted and restrained from making any distributions of any kind to any beneficiary of the Anton Harrop-Allin Trust, whether by way of a distribution, dividend, loan or otherwise.
 - 2.3. The first and third respondents, and any person acting through, by or under them, are interdicted and restrained from making any payments or distributions of any kind from the sale of proceeds derived from the sale of any of the Anton Harrop-Allin Trust's assets, which sale proceeds are to be retained in trust by a conveyancing attorney to be mutually agreed upon by the applicant and the first and third respondents for the account and benefit of the Anton Harrop-Allin Trust, failing such agreement, by such attorneys as nominated by the chairperson of the Legal Practice Council.
 - 2.4. Subject to paragraph 2.1 above, the first and third respondents are permitted to effect payments to the Anton Harrop-Allin Trust's creditors in respect of expenses incurred in the administration of the Anton Harrop-Allin Trust, provided that a list of the Anton Harrop-Allin Trust's creditors and expenses are submitted to the Master of the High Court and the Master's consent to such payments is obtained before the payments being made.

3. The parties may approach the Deputy Judge President of this Division to request that the applications under case numbers 2025-16556 and 2025-073204 be allocated to a judge to be heard simultaneously on the special motions or third court roll.
4. The applicant must ensure that the applications under case numbers 2025-16556 and 2025-073204 are enrolled without undue delay, and if the applicant unduly delays the enrolment of the applications under case numbers 2025-16556 and 2025-073204, the respondents may approach the court on notice to the applicant for an order that this order has lapsed.
5. The costs of this application are costs in the removal application. If the applicant does not proceed with the removal application, any party may enrol the matter for argument on costs.



E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the applicant:

Adv. M Kritzinger

Instructed by:

STORK LAW

For the first to fifth respondents:

Adv. L Pearce

Instructed by:

MANLEY MANLEY INC

Date of the hearing:

30 July 2025

Date of judgment:

4 August 2025