

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1) **NOT REPORTABLE**

(2) **NOT OF INTEREST TO OTHER JUDGES**

CASE NO: 2020-42224

DATE: 25 September 2025

In the matter between:

NDIITWANI GRACE NNDWAMMBI N O	First Applicant
DITLHARE CASTALIA MOLOI N O	Second Applicant
SEWKUMAR ASHENDRA CHATHURY N O	Third Applicant
ALEXANDRA JOHANNA RUSSELL N O	Fourth Applicant
HOLGER MAUL N O	Fifth Applicant
MARTIN SEBASTIAN SOLOMON N O	Sixth Applicant
BRENDA BAIJNATH N O	Seventh Applicant
LEBELO ISAAC LUKHELE N O	Eighth Applicant

(Being the Trustees for the time being of the

SASOL SIYAKHA ENTERPRISE AND SUPPLIER DEVELOPMENT TRUST)

and

SEMATRA (PTY) LIMITED	First Respondent
TSELANE MARIA MALATJI	Second Respondent
YINGISANI HOPE MABASA	Third Respondent

Neutral Citation: *Nndwammbi N O and Others v Sematra and Others* (2020-42224) [2025] ZAGPJHC --- (25 September 2025)

Coram: Adams J

Heard: 21 May 2025

Delivered: 25 September 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 11:30 on 25 September 2025.

Summary: Loan and Special Notarial Bond to secure loan – application to perfect security – first respondent in breach of loan agreement – applicant applies for order perfecting its security of pledge in terms of special notarial bond over listed immovable property – no dispute about respondents indebtedness to applicants – ordinarily applicants would be entitled to perfect the security – respondents contending that there was an agreement that they would only be liable to repay the loan if a third party complied with its alleged obligations to engage its services as per a contractual arrangement – applicants deny such agreement – wording of loan agreement belies the respondents claim – no evidence to support the respondents' grounds of opposition to the application –

Pledge perfected – application granted –

Joinder application by respondents to join third party as co-respondent – settled that the direct and substantial interest test to be satisfied in order to succeed – direct and substantial interest is the legal interest in the subject-matter of the case which could be prejudicially affected by the order of the court – not demonstrated that *factually* the third party's right/s to be adversely affected – Joinder application refused.

ORDER

- (1) The respondents' application for a postponement of part 'B' of the main application is refused.
- (2) The respondents' application dated 28 January 2021 for the joinder to these proceedings of Sasol South Africa Limited, as a respondent, be and is hereby dismissed with costs.
- (3) The first, second and third respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicants' costs of the joinder application on the scale as between attorney and client, such costs to include the costs of Counsel on scale 'C' of the applicable tariff provided for in the Uniform Rules of Court.
- (4) The applicants be and are hereby declared to be the mortgagee of all the vehicles, machinery and other equipment listed in annexure 'FA11' to the founding affidavit ('the mortgaged assets'), annexure 'FA11' being an extract of the mortgaged assets from and as specified in the Special Notarial Bond registered in the Pretoria Deeds Office on 11 September 2020 under number B[...] ('the Special Notarial Bond').
- (5) The applicants be and are hereby authorised to remove, take into possession and/or retain possession of the mortgaged assets, and to hold the said mortgaged assets in accordance with the provisions of the Special Notarial Bond as security for the first respondent's indebtedness to it and to dispose of the movable assets in accordance with the provisions of the Special Notarial Bond.
- (6) It be and is hereby declared that the applicants are entitled to execute against each of the mortgaged assets and that the mortgaged assets are specially executable.
- (7) The sheriff and/or his deputy be and are hereby authorised and directed to attach, remove and take into possession the mortgaged movable assets

and to hold and retain same, on behalf of the applicants, as security in terms of the Special Notarial Bond in favour of the applicants, and to take any and/or such steps necessary to give effect to the said Special Notarial Bond.

- (8) The first, second and third respondents and such other persons who are in possession of any of the mortgaged assets are hereby ordered and directed to deliver to the sheriff and/or his deputy or make available the mortgaged assets for collection by the sheriff and/or his deputy, within ten days of this court order, failing which the sheriff and/or his deputy be and is hereby authorised and directed to take such steps as are necessary to give effect to this Order.
- (9) The first, second and third respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicants' costs of this opposed application on the scale as between attorney and client, such costs to include the costs of part 'A' of this application and the costs of Counsel on scale 'C' of the applicable tariff provided for in the Uniform Rules of Court.

JUDGMENT

Adams J:

[1]. The applicants are the Trustees for the time being of the Sasol Siyakha Enterprise and Supplier Development Trust, who, in their official capacities as such, apply in these proceedings to perfect the security the Trust has over movable property owned by the first respondent (Sematra). I shall refer to the applicants collectively as 'the Sasol Siyakha Trust' or simply as 'the Trust'. The second and the third respondents are the shareholders and the sole directors of Sematra and they also bound themselves as sureties and co-principal debtors in respect of Sematra's indebtedness to the Sasol Siyakha Trust.

[2]. This is part 'B' of the applicants' application, in which the Trust applies for final relief declaring that it is entitled to perfect the security it has in respect of Sematra's vehicles, machinery and equipment in terms of a Special Notarial Bond number B[...]. The applicants' cause of action is based on a written Loan Agreement concluded between the Trust and Sematra on 27 June 2019, and the Special Notarial Bond registered in the Deeds Office on 11 September 2020, in terms of which the Trust lent and advanced to Sematra R20 000 000, repayable by Sematra to the Trust, together with interest thereon and other charges provided for in the loan agreement, in sixty monthly, therefore over a period of five years.

[3]. Sematra is and has been since 2020 in breach of the loan agreement in that it is in arrears with its monthly instalments. It is for this reason that the Trust, as it is entitled to do in terms of the loan agreement, read with the Special Notarial Bond, instituted these proceedings with a view to perfecting its security by attaching and taking control of the 'mortgaged property'. The respondents do not dispute Sematra's indebtedness to the Trust and the Trust's entitlement to perfect the security it enjoys in terms of the Special Notarial Bond.

[4]. In that regard, the Special Notarial Bond provides, in express and unequivocal terms, that in the event of a breach by [Sematra], the Trust would be entitled to take the following action: -

- '8.1 ... to declare the full amount of [Sematra's] indebtedness to the [Trust] from whatsoever cause arising to be due and payable forthwith and to claim and recover the same from [Sematra] forthwith on demand;
- 8.2 if the [Trust] has not already been placed in possession of the Assets, to forthwith take possession and thereby perfect its pledge of the Assets.
- 8.3 to hold the Assets as security for the payment of all amounts owing by [Sematra] to the [Trust] and to retain such possession for so long as the [Trust] may deem fit;
- 8.4 to dispose of the Assets or any of them by public auction, public tender, or by private treaty or otherwise in the [Trust's] sole discretion and on such terms and conditions as the [Trust] in its sole discretion may deem fit and to convey good, valid and free title to the purchaser or transferee thereof;

- 8.5 to apply for provisional sentence hereunder;
- 8.8 to employ such other remedies and to take such other steps against [Sematra] as are allowed in law;
- 8.7 to recover all costs and charges incurred by the [Trust] In the exercise of its rights under this bond, including (but without limitation) all costs of storing the Assets and all legal costs and disbursements.'

[5]. The respondents do, however, oppose the application on the basis of an alleged contractual relationship which it has or had at the relevant time with Sasol South Africa Limited ('SSA'), a well-known public company and the holding company in the South African Group of Companies. The Sasol Siyakha Trust was founded by several companies in the Sasol Group of Companies and was formed to '[serve] as a vehicle to assist black suppliers, contractors and entrepreneurs with the creation, development, funding and accelerated growth of their enterprises and thereby deliver successful BBBEE [Broad Based Black Economic Empowerment] enterprises to the local communities in the areas in which the Sasol Group of companies have a presence, for the benefit of the Sasol Group'.

[6]. The case on behalf of the respondents is that Sematra was appointed as a service provider or supplier by Sasol South Africa Limited during 2018 on a five-year contract term. The vehicles and equipment purchased by Sematra and which were in fact financed by the loan from the Trust, were secured solely to service Sasol South Africa Limited. It has been unable to pay the monthly instalments in terms of the loan agreement, so Sematra's case goes, due to a failure on the part of Sasol South Africa Limited and the other companies in the Sasol Group of Companies to allocate work or sufficient work to it. The case for the respondents is therefore that it was agreed upon between the Trust and Sematra that the repayment of the loan amount would be made from the proceeds of the work allocated to Sematra by the Sasol Group of Companies.

[7]. In their answering affidavit, the respondents put forward their case in sum as follows: -

'The agreement is still in force and the first respondent is expected to render services to the applicant's parent Company, herein Sasol South Africa Limited, using aforesaid equipment and vehicles for a further period of 3 (three) years. Unless the terms in the parties' contractual obligations hereto is cancelled, the first respondent must continue to render services to the applicant's parent Company, herein Sasol South Africa Limited. The breach in any of the terms in the contract, although the parties have reciprocal duty to perform, which is considered personal right and same cannot be enrolled and heard on the urgent court roll hereto.'

[8]. Mr Maleka, Counsel for the respondents, also submitted that, before the Trust can enforce its rights in terms of the Special Notarial Bond, it is required to fulfil its main obligation, that being that Sematra, as an appointed supplier of the Sasol Group of Companies, gets work from the said group.

[9]. The difficulty with the case on behalf of the respondents is simply that it is bad in law. No nexus – none whatsoever – is established by the evidence placed before me by the respondents, between the loan agreement and the conclusion that the loan amount was repayable only in the event of SSA utilising the services of Sematra from which engagement the latter company would service the loan account. Sematra, in general and sweeping terms, avers that there was agreement between the parties that the repayment of the loan amount by Sematra to the Trust would be dependent on the contractual relationship between the Sematra and SSA. No details or particulars are provided by the respondents of this alleged agreement. No allegation is made as to whether the agreement was expressly in writing or orally or by implication. The respondents fail to provide details relating to the contractual arrangement between it and SSA and/or the Sasol Group of Companies. The simple point of the matter is that the case on behalf of the respondents is not supported by the evidence before Court.

[10]. The respondents' case, in any event, loses sight of the fact that the applicant in this matter, being the Sasol Siyakha Trust, is a legal entity completely separate and distinct from SSA and the Sasol Group of Companies,

and that is so despite the fact that companies in the Group founded the Trust. It is trite that a Trust is a legal entity separate from its trustees, its founder and its beneficiaries.

[11]. For the foregoing reasons alone, the grounds raised by the respondents in opposition to the applicant's application stand to be rejected.

[12]. What is more is that the case on behalf of the respondents is wholly defeated by the written instruments on which the applicants' cause is based. Importantly, the loan agreement makes no mention of the supposed conditions referenced by the respondents in the answer. The sum total of the reference to the contractual relationship between Sematra and SSA can be found in the definitions section of the loan agreement, which provides that 'the Service Contract' means 'contract CW44231 and all other agreements concluded between [Sematra] and Sasol South Africa (Pty) Ltd'. The agreement then goes on to provide in the introduction as follows: -

'2.1. It is recorded that [Sematra] wishes to borrow the Capital from the [Trust] for purposes of *the Project*, and the [Trust] is willing to lend the Capital to [Sematra] for such purposes, subject to the terms and conditions contained in this Agreement.' (Emphasis added).

[13]. Furthermore, and contrary to what is alleged by the respondents, the loan agreement provides that the assets used in the project and the proceeds from that project can be used to secure Sematra's indebtedness to the Trust. The relevant clauses read as follows: -

'11.1. As Security for the due, proper and timeous performance by [Sematra] of all its obligations to the [Trust] in terms this Agreement: -

11.1.1. The member of [Sematra] shall bind himself/herself as Guarantor and co-principal debtor in solidum with [Sematra] to [the Trust] in terms of a written Guarantee agreement as set out in Annexure G;

11.1.2. The assets purchased by [Sematra] in terms of the proceeds of this Agreement, and set out in Annexure F hereto, will be considered to be used as Security in favour of the [Trust]; and

11.1.3. [Sematra] hereby cedes the proceeds of Contract CW44231 and any other Contract between Sasol and its affiliate Companies and [Sematra] as security for the repayment of the debt and the [Trust] is hereby authorized to recover any outstanding payment from such Contract without prior notice to [Sematra].’

[14]. From the foregoing it is abundantly clear, as I have already stated, that the written agreement between the parties, in particular the express wording, completely defeats the case on behalf of the respondents. Not only does the agreement not contain the provisions contended for by the respondents, but the clauses provide for exactly the opposite to what the respondents contend the agreement was. Moreover, the death knell for the respondents’ case is the following clause in the loan agreement: -

‘20. **Whole Agreement**

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties,’

[15]. For all of these reasons, I conclude that the grounds on which the respondents oppose the applicants’ application are bad in law. Accordingly, the Trust is entitled to the relief claimed in part ‘B’ of the application and the application should be granted.

[16]. Similarly, the interlocutory application by the respondents to have Sasol South Africa joined in these proceedings as a fourth respondent is ill-conceived, ill-advised and equally bad in law. It is settled law that an applicant for the joinder of a third party is required to meet the direct and substantial interest test in order to succeed¹. What constitutes a direct and substantial interest is the legal interest in the subject-matter of the case which could be prejudicially affected by the order of the court. This means that the applicant must show that

¹ *SA Riding for the Disabled Association v Regional Land Claims Commissioner* 2017 (5) SA 1 (CC) at 5A–D, approving *Nelson Mandela Metropolitan Municipality v Greyvenouw* CC 2004 (2) SA 81 (SE) at 89B–C.

the third party has a right adversely affected or likely to be affected by the order sought. But the applicant does not have to satisfy the court at the stage of joinder that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to relief.

[17]. The point about the joinder application *in casu* is that, on the evidence before me, the respondents do not even begin to prove a case against the Trust based on alleged conditions in the loan agreement, which fly in the face of the text and the context of the said agreement and the Special Notarial Bond. The evidence also does not support a sustainable case against Sasol South Africa Limited. But even if I am wrong in this conclusion, the joinder application should still fail if for no other reason than the fact the SSA and the Sasol Siyakha Trust are completely separate legal entities and the fact that one has a contractual claim against the one, does not mean of necessity that you have a claim against the other.

[18]. Lastly, during the hearing of the application on 21 May 2025, Mr Maleka applied for a postponement of the main application on the basis that the interlocutory joinder application should be adjudicated before the main application. Submissions were therefore made in support of the granting of the application for the joinder of SSA. Mr Chavalala opposed the application for a postponement on the basis that the joinder application was meritless and should be dismissed, which then meant that the main application could and should be argued. As I have already held, the joinder application is stillborn and falls to be dismissed for the reasons already mentioned.

[19]. It follows that the respondents' application for a postponement of the main application should be dismissed and an order to that effect is issued.

Costs

[20]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there

are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*².

[21]. I can think of no reason why I should deviate from this general rule. The applicants should therefore be granted its costs of the main application, as well as the costs relating to the respondents' joinder application. In that regard, the loan agreement provides that, in the event of the Trust being required to take action to enforce its rights, the respondents would be liable for the applicants' legal costs on the scale as between attorney and own client.

Order

[22]. In the result, I make the following order:

- (1) The respondents' application for a postponement of part 'B' of the main application is refused.
- (2) The respondents' application dated 28 January 2021 for the joinder to these proceedings of Sasol South Africa Limited, as a respondent, be and is hereby dismissed with costs.
- (3) The first, second and third respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicants' costs of the joinder application on the scale as between attorney and client, such costs to include the costs of Counsel on scale 'C' of the applicable tariff provided for in the Uniform Rules of Court.
- (4) The applicants be and are hereby declared to be the mortgagee of all the vehicles, machinery and other equipment listed in annexure 'FA11' to the founding affidavit ('the mortgaged assets'), annexure 'FA11' being an extract of the mortgaged assets from and as specified in the Special Notarial Bond registered in the Pretoria Deeds Office on 11 September 2020 under number B[...] ('the Special Notarial Bond').

² *Myers v Abrahamson* 1951(3) SA 438 (C) at 455

- (5) The applicants be and are hereby authorised to remove, take into possession and/or retain possession of the mortgaged assets, and to hold the said mortgaged assets in accordance with the provisions of the Special Notarial Bond as security for the first respondent's indebtedness to it and to dispose of the movable assets in accordance with the provisions of the Special Notarial Bond.
- (6) It be and is hereby declared that the applicants are entitled to execute against each of the mortgaged assets and that the mortgaged assets are specially executable.
- (7) The sheriff and/or his deputy be and are hereby authorised and directed to attach, remove and take into possession the mortgaged movable assets and to hold and retain same, on behalf of the applicants, as security in terms of the Special Notarial Bond in favour of the applicants, and to take any and/or such steps necessary to give effect to the said Special Notarial Bond.
- (8) The first, second and third respondents and such other persons who are in possession of any of the mortgaged assets are hereby ordered and directed to deliver to the sheriff and/or his deputy or make available the mortgaged assets for collection by the sheriff and/or his deputy, within ten days of this court order, failing which the sheriff and/or his deputy be and is hereby authorised and directed to take such steps as are necessary to give effect to this Order.
- (9) The first, second and third respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicants' costs of this opposed application on the scale as between attorney and client, such costs to include the costs of part 'A' of this application and the costs of Counsel on scale 'C' of the applicable tariff provided for in the Uniform Rules of Court.

L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON: 21 May 2025

JUDGMENT DATE: 25 September 2025 – Judgment handed down electronically

FOR THE APPLICANTS: T Chavalala

INSTRUCTED BY: Mathopo Moshimane Mulangaphuma
Incorporated t/a DM5 Incorporated,
Illovo, Sandton

FOR THE RESPONDENTS: K J Maleka

INSTRUCTED BY: Leshilo Incorporated Attorneys, Pretoria