



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2023-013876

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



SIGNATURE

26/09/2025
DATE

In the matter between:

JACOB CHARLES MNISI

MENZI JOHN NYAMBI

MAHLEKISANE MOSA CHIRWA

FANYANA ENOCH BHEMBE

FIRST APPLICANT

SECOND APPLICANT

THIRD APPLICANT

FOURTH APPLICANT

And

**THE MASTER OF THE HIGH COURT
OF SOUTH AFRICA, GAUTENG DIVISION,
PRETORIA**

FIRST RESPONDENT

SMILE ZANDILE NKOSI N. O.	SECOND RESPONDENT
HLUPHEKA SALMINA MOHALE N.O.	THIRD RESPONDENT
RODAH LINDIWE NGWEBYA N.O.	FOURTH RESPONDENT
JOSIAH NDABAMBI MOKOENA N.O.	FIFTH RESPONDENT
BONGAKE KENNETH SHAKOANE N.O.	SIXTH REPENDENT
MAQUANDASHI ELIAS MATHABA N.O.	SEVENTH RESPONDENT
ISAAC SITHOLE N.O.	EIGHTH RESPONDENT
HENRY SIPHO LAMOLA N.O.	NINETH RESPONDENT
MOKWAZI THEMBEKA NDZINGASE NKAMBULE N.O.	TENTH RESPONDENT
MAGOLIDI JIM MANDLAZI N.O.	ELEVENTH RESPONDENT
ZULU SAMEUL CHIRWA N.O.	TWELVETH RESPONDENT
HENRY NTININI MZIMBA N.O.	THIRTEENTH RESPONDENT
AGNES NTOMBIKAISE MAVUSO N.O.	FOURTEENTH RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time of hand-down is deemed to be on 26 September 2025

JUDGMENT

Phahlamohlaka AJ

Introduction

[1] The applicants herein are seeking a declaratory order against the respondents in the following terms:

- 1.1 That the second to fourteenth respondents were not duly elected as Trustees of the Trust at a properly constituted annual general meeting of Trustees;

1.2 The annual general meeting held on 13 July 2022, was not duly constituted as same did not comply with the provisions of clauses 16 and 21 of the Trust Deed.

1.3 The second to fourteenth respondents are not eligible to be elected and appointed as Trustees of the Trust as they are no longer permanently resident on the Trust Property as defined in clauses 3.7 and 3.8 of the Trust Deed and in accordance with the provisions of clause 15 of the Trust Deed:

1.4 An order directing the first respondent to cancel, alternatively withdraw the letter of authority issued on 3 November 2022 in respect of the appointment of Trustees of the Lebuyile Community Trust, IT number 4939/06(T).

1.5 An order directing the first respondent to appoint the applicants as Trustees of the Trust together with an independent Trustee to be nominated by the first respondent to act in such capacity, pending the election of Trustees for the Trust at a duly constituted annual general meeting to be held within 30 days from the date of this order:

1.6 Directing that the second to fourteenth respondents pay the costs of Part B jointly and severally.

[2] The application is opposed by the second to fourteenth respondents. However, the first respondent, the Master of the High Court, is not opposing the application.

Background facts

[3] The application was initially brought in two parts, namely Part A which was an urgent application, and Part B which is the current application. Part A served before Khumalo J who *dismissed* the application for lack of jurisdiction.

[4] After Part A of the application was dismissed, the applicants set Part B down, and same served before Leathern AJ, who dealt with the issue of jurisdiction after the respondents

contended that this court lacks jurisdiction to deal with Part B of the application. Leathern AJ ordered that this court has jurisdiction to deal with Part B of the application.

[5] The background of this matter is premised primarily on common cause facts. During 2006 the first respondent (the Master of the High Court, Pretoria), registered Libuyile Community Trust (“the Trust”) in terms of section 6(1) of the Trust Property Control Act, 57 of 1998. The Trust emanated from a successful claim for restoration of land rights in terms of the Restitution of Land Rights Act.

[6] During 2019, the Applicants, together with the second to fourteenth respondents were duly elected as Trustees of the Trust and subsequent thereto, the first respondent issued a letter of authority in terms of section 6(1) of the *Trust Property Act, 57 of 1998*.

[7] Disagreements between the applicants and the second to fourteenth respondents led to the current application whereby the applicants are seeking, among others, that the second to fourteenth respondents be removed as Trustees of the Trust.

Issues for determination

[8] In view of the fact that Khumalo J dismissed the application for lack of jurisdiction the respondents initially contended that this matter has been finalized and therefore *res judicata*. The respondents had also contended that this court lacks jurisdiction because the cause of action arose in Mpumalanga where all the applicants as well as the second to fourteenth respondents reside. However, these two points of law were abandoned at the commencement of the hearing.

[9] The issues for determination are therefore, whether the second to fourteenth respondents were duly elected as Trustees of the Trust at a properly constituted annual general meeting held on 13 July 2022. It is the applicants’ case that the meeting held on 13 July 2022 did not comply with the provisions of clauses 16 and 21 of the Trust Deed.

[10] Further, this court has to determine whether the second to fourteenth respondents were eligible to be appointed as the Trustees of the Trust.

The legal framework

[11] Section 20 of the *Trust Property Control Act*¹ provides that:

“A trustee may, on the application of the Master or any person having an interest in the trust property, at any time be removed from his office by the court if the court is satisfied that such removal will be in the interest of the trust and its beneficiaries...”

[12] The Trust Deed provides as follows:

“In addition to the eligibility requirements provided for by the trust property Control Act, number 57 of 1988, the following eligibility requirements and conditions (All being subject to each other) relate to trustees:

13.12.1 Any member who wishes to stand for elections as a trustee shall have been a member of a trust property for a total of nine months in the 12 months preceding the date of the elections;

13.12.2 only one person from one household may be a trustee at any given time; provided that beneficiaries show the overwhelming support in favour of a candidate from where a member has been elected. In that event the beneficiaries will be free to nominate or to elect another member of the trust from the very same household...”

The applicants' case

[13] The applicants contend that at the second to fourteenth respondents were not resident within the boundaries of the trust property as required by clause 15.4 of the Trust Deed. The applicants contend that at that time the second to fourteenth respondents were

¹ Act 57 of 1998

resident outside the boundaries of the trust property at least since November 2022. It is the applicants' case that only during the last two weeks of April 2023 did the respondents start renovating three houses on the trust property for the purpose of occupying same in an attempt to rectify the impasse and merely for the purpose of claiming to now reside permanently on the trust property.

[14] The applicants further submit that contrary to the provisions of the directive issued by the Master of the High Court Pretoria, dated 7 January 2022, the second to fourteenth respondents conducted a purported annual general meeting at which they caused themselves to be elected as the new trustees of the trust on 13 July 2022.

Respondents' case

[15] The second to fourteenth respondents contend that the applicants are seeking a declaratory relief relating to the lawfulness of the annual general meeting held on 13 July 2022 and the eligibility of the trustees to remain trustees as elected, while being fully aware that the trustees were following their appointment in terms of the trust deed issued with a valid letter of authority by the Master.

[16] It is further contended on behalf of the respondents that the decision to appoint has not been reviewed or set aside and stands until such time as it is reviewed and set aside. In the circumstances, the respondents contend, the relief of the court declaring on a right prior to a reviewing and setting aside of a meeting and decision taken to appoint is premature.

[17] On the alleged disqualification of the trustee based on section 15.4 of the Deed of Trust, the respondents contend that it is not a requirement for a trustee to reside on the property physically and permanently. According to the respondents all that is required for the trustee to remain in office is to be entitled to be a permanent resident.

Discussion

[18] It is common cause between the parties that an annual general meeting was held on 13 July 2022 in terms whereof the second to fourteenth respondents were elected as Trustees of the Trust. That annual general meeting was conducted in conjunction with, and facilitated by, the Department of Agriculture, Land Reform and Rural Development. The Master of the High Court subsequently appointed the elected Trustees.

[19] It is true that the applicants' complaint is premised on the fact that the second to fourteenth respondents were not eligible to be appointed trustees of the trust property at the time the annual general meeting was convened.

[20] It is not in dispute that the annual general meeting was facilitated by the Department of Agriculture, Land Reform and Rural Development. I do not understand the applicants contend that the meeting was improperly or irregularly held. If that was the case the applicants would have brought a review application in that regard.

[21] Clause 15 of the trust deed deals with the trustees vacating office. The relevant sub-clause for the purposes of this judgment is 15.4 which provides that;

“15.1 the office of the TRUSTEE shall be vacated if s/he:

15.4 is no longer permanently resident on the PROPERTY;”

[22] As alluded to earlier, the applicants contended that the second to fourteenth respondents were not resident on the property at the time the annual general meeting was held where they were elected trustees of the trust property. The second to fourteenth respondents refuted this. They submitted that even if the court were to find that at the time they were elected trustees of the property they were not resident within the property, they corrected this by coming back into the property. Therefore, they are currently resident on the trust property and consequently the argument that they are not legible on the basis of them not being resident on the trust property falls flat.

[23] In motion proceedings the parties must make out their case on the papers. It is therefore incumbent upon the applicants to put facts before court that the impugned meeting wherein the second to fourteenth respondents were appointed was not properly constituted.

[24] Further, it is now settled that in motion proceedings the affidavits constitute both the pleadings and the evidence. Hence, the party to the motion proceedings stands and falls on its papers. The applicant must make out its case in the founding affidavit which must contain sufficient facts upon which a court may find in the applicant's favour.

[25] In *Director of Hospital Services v Mistry*², Dietmont JA said the following:

“When, as in this case, the proceedings are launched by way of notice of motion, it is to the founding affidavit which a Judge will look to determine what complaint is ...and as has been said in many other cases: ‘... an applicant must stand or fall by his petition and the facts alleged therein and that, although sometimes it is permissible to supplement the allegations contained in the petition, still the main foundation of the application is the allegation of facts stated therein, because those were the facts which the respondent is called upon either to affirm or deny.’”

Conclusion

[26] It appears from the papers that there is rivalry between the applicants and the second to fourteenth respondents. This much was conceded by the applicants and it appears in their heads of argument where they said, “Given the rivalry between the parties and the history of conflict between them, the Master of the High Court, Pretoria is best suited to appoint an interim board of trustees to conduct a meeting of members of the trust for the purpose of electing trustees to the board of trustees of the trust.”

² 1979(1) SA 626 (A) at 635H-636B

[27] I agree with the second to fourteenth respondents that the applicants are not seeking to review the results of the meeting nor are they seeking to review the Master's decision to award the certificate. The applicants approached this court on a declarator.

[28] In my view the second to fourteenth respondents were eligible to be elected, and further there is no evidence that that meeting that elected them was not properly constituted. The applicants argued that because the Master did not oppose the application this court should make an order as prayed against the Master. In my view, this argument is flawed because in order for this court to order the Master to cancel or withdraw the certificate I must first find that the second to fourteenth respondents were not properly appointed.

[29] The facts in this application do not support the applicant's case and therefore the application stands to be dismissed.

Costs

[30] It is a trite that the award of costs vests within the discretion of the court. However, it is an accepted principle of our law that the successful party must be awarded costs. I cannot find any reason to deviate from the principle.

Order

[31] In the result I make the following order:

(a) The application is dismissed with costs including costs of Counsel to be taxed on scale B.

[Redacted signature]

KF PHAHLAMOHHLAKA
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA

Appearances

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Date of judgment: 26 September 2025
Date judgment reserved: 02 May 2025