

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

CASE NO: LCC184/2024

Before the Honourable Flatela J

Date of Hearing: 27 January 2025

Date of Judgment: 18 September 2025

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDES: YES/~~NO~~

(3) REVISED: YES/NO

DATE: 18/09/2025

SIGNATURE

In the matter between:

MUZI GIBSON CHIRWA N.O.

First Applicant

NOMSA VERONICA SHONGWE N.O.

Second Applicant

NOZIPHO JOYCE SHONGWE N.O.

Third Applicant

THABILE WINNIE NZIMANDE N.O.

Fourth Applicant

MAJAHAM SAMUEL ZULU N.O.

Fifth Applicant

And

LOBAMBA SHONGWE

First Respondent

DUMISILE SHONGWE N.O.

Second Respondent

ZANELE ELIZABETH VILAKATI N.O.

Third Respondent

Summary – Trust Law - Majority decision trust-Trustees are not required to act jointly and unanimously if the Trust Deed authorises a majority decision. The decision of a majority of trustees is binding, subject to compliance with the notice of meeting provisions specified in the trust deed, and the required quorum rules are satisfied.

ORDER

1. The First Respondent's point *in limine* is upheld.
 3. Each party to pay their own costs
-

JUDGMENT

FLATELA J

Introduction

[1] The dispute in this application concerns access to and control over the properties known as Doornhoek 614 JT, Doyershoek 702 JT, Goedehoop 622 JT, Groenvallei, Rous 621 JT, Vaalkop 608 JT, and Vriesland 620 JT (collectively referred to as Trust Property). The Trust Property is owned by the Dvunge Trust, with the trustees overseeing its management.

[2] On 1 November 2024, the Applicants, in their capacity as trustees for the time being of the Dvunge Trust ("the Trust"), brought an urgent *ex parte* application in

terms of Rule 34 of the Rules of this Court seeking an urgent interdict against the First Respondent from accessing and holding a meeting scheduled for 2 November 2024, on Trust Property belonging to the Dvunge Trust and ancillary relief. The orders sought were as follows:

1. "That the Court applies Rule 34 of the Land Court Rules to this application and -
 - 1.1. Dispenses with any provisions of the Rules, including those which prescribe the forms, service requirements and time limits for applications.
 - 1.2. Disposes of the matter in accordance with procedures and at a time and place that it considers just; and
 - 1.3. Issues directions as envisaged in Rule 34 of the Land Court
2. That the first respondent and those who act in concert with him, be restricted and prohibited from accessing, holding meetings or gatherings, to the following Trust property owned by the Dvunge Trust ("the Trust")
 - 2.1. Portions 3 of Doornhoek 607 J.T.
 - 2.2. Remaining extent Doornhoek 607 J.T.
 - 2.3. Portion 1 of Vriesland 620 J.T.
 - 2.4. Craters Edge 615 J.T,
 - 2.5 The remaining extent" refers specifically to the remaining extent of Vriesland 620 J.T.
 - 2.6. Portion 7 of Vriesland 620 J.T.; and
 - 2.7. Portion 13 of Goedehoop 622 J.T.

Without the express and written authorisation of a majority of the trustees currently in office and/or the Chairperson and/or secretary of the Trust.

3. That the first respondent and his associates are directed to forthwith cease to invite members of the public and/or beneficiaries to meetings that are to be held on any of the farms constituting Trust property unless such a meeting has been authorised by a majority of the trustees currently in office and/or the Chairperson of the Trust, the Secretary of the Trust.
4. That the first respondent should forthwith cease to disseminate information and/or communications containing claims that he is a chief that presides over Trust property with powers to alienate and/or encumber Trust property.
5. That the first respondent is hereby interdicted from allocating stands and/or inviting members of the public and/or trustees to meetings pertaining to the allocation of stands and/or the development of Trust property.

6. That the fifth respondent (the SAPS) be authorised and directed to take all steps that are required to enforce the relief set out in the preceding paragraphs in the event of the first respondent, and/or his associates or those acting in concert with him, not abiding by the Order of this Honourable Court.
7. Directing that the relief set out in paragraphs 2 – 6 operate as an interim order with effect from the date of this order pending the finalisation of this application on such return date as may be directed by this Court.
8. Further and/or alternative relief.

[3] The farms were awarded to the Dvunge Community in terms of the Restitution of Land Rights Act 22 of 1994 (“The Restitution Act”). This followed the successful lodgement of land claims on behalf of the Shongwe Tribe and the Mashinini family. The Mashinini family's claim was consolidated with the Shongwe community's claim following advice from the Regional Land Claim Commission to the Dvunge community.

[4] The Dvunge Trust was established in 2004 to receive and manage various properties purchased by the State in settlement of the land claim and to hold them for the benefit of the beneficiaries. However, since its inception, it has become embroiled in lengthy litigation initiated by beneficiaries contesting the administration and control of the Trust's assets.

[5] The First Respondent in this matter is Lobamba Shongwe, a major male beneficiary of the Dvunge Trust, currently residing in Eswatini. The First Respondent claims to be the Chief of the Shongwe Tribe under the Mahlabatsini Tribal Authority, situated in Baadplaas, Mpumalanga Province.

[6] On consideration of the application, I was satisfied that the allegations rendered the matter urgent and justified the relief sought in the notice of motion. I was also of the view that no prejudice could arise if an interim interdict were granted. I granted the interim interdict, returnable on 2 December 2024, and issued directives regarding service and the filing of pleadings.

[7] The hearing scheduled for 2 December 2024 did not proceed as directed. Mr Dlamini, representing the First Respondent, informed the court of logistical difficulties in the timely filing of pleadings, primarily due to the First Respondent's residency in Eswatini. Revised directives for filing were issued, postponing the matter to 27 January 2025.

[8] The First Respondent has since filed a notice of participation along with an answering affidavit. In his response, the First Respondent raised several points *in limine* that he argues are dispositive of the case. These are a lack of urgency and a lack of *locus standi* due to non-compliance with the Joint Action Rule. The First Respondent argued that the Applicant acted *ultra vires* as the Trust Deed did not authorise their actions.

[9] In the context of a joint action rule argument, the First Respondent heavily relied on the Supreme Court of Appeal judgment in *Shepstone and Wylie Attorneys v Abraham Johannes de Witt NO & Others*¹. The issue involved Trust law, specifically the principle of joint action of trustees. In this case, Shepstone and Wylie, a law firm, claimed payment of legal fees from the Trust based on the Deed of Suretyship signed by two out of three trustees. The third trustee was notified of the meeting but did not attend, where the decision was made that the Trust would be responsible for paying one of the trustees' legal fees. The Trust opposed the application and raised a point *in limine* that the deed of suretyship was signed by only two trustees instead of three; therefore, it was not properly authorised by the Trust and was legally invalid. The High Court upheld the Trust's point *in limine*.

[10] The Supreme Court of Appeal majority held that where a Trust Deed requires trustees to act jointly to bind the trust, a majority decision will not bind the trust if one of the trustees did not participate in the decision-making. After the SCA judgement, Shepstone & Wylie appealed the decision to the Constitutional Court, where the matter remained pending at the time of the hearing.

¹ *Shepstone & Wylie Attorneys v Abraham Johannes de Witt N O & Others* (1270/2021) [2023] ZASCA 74 (26 May 2023)

[11] Considering the point *in limine* raised by the First Respondent, it was crucial to defer the judgment in this case until the Constitutional Court pronounced on these issues. It is prudent to emphasise that the matters at hand are both preliminary and fundamental to the case's ultimate resolution.

[12] On 1 August 2025, the Constitutional Court delivered a judgment that effectively reversed the ruling of the Supreme Court of Appeal..

[13] With the context established, I will start by outlining the relevant parties involved, followed by a brief factual background. Then I will analyse the pertinent facts and their legal implications regarding the potential outcomes of this application.

The Parties

[14] The First Applicant is Muzi Gibson Chirwa N.O., chairperson of the Dvunge Trust, with registration number IT 349/04 (T). The Second Applicant is Nomsa Veronica Shongwe N.O., acting in her capacity as a trustee for the time being of the Dvunge Trust. The Third Applicant is Nozipho Joyce Shongwe N.O., acting in her capacity as a trustee for the Dvunge Trust. The Fourth Applicant is Thabile Winny Nzimande N.O. in her representative capacity as a trustee for the time being of the Dvunge Trust. The Fifth Applicant is Majaha Samuel Zulu N.O. in her representative capacity as a trustee for the time being of the Dvunge Trust.

[15] The First Respondent is Lobamba Shongwe, a male beneficiary of the Dvunge Trust, currently residing in Eswatini. The First Respondent described himself as the Chief of Mahlabatsini situated in the Baadplaas, Mpumalanga Province. The First Respondent also claims South African citizenship, a status that the applicants dispute. His domicile address in South Africa remains undisclosed. All correspondence between the parties was by email to [c\[...\]](#). However, for these proceedings, pleadings are served at his attorneys' address.

[16] The Second Respondent is Dumisile Dorah Shongwe N.O., who is a major female trustee of the Dvunge Trust. She holds the position of Secretary. She is also the spouse of the First Respondent and has a direct interest in the overall

proceedings. Notice of the application was duly served to the Second Respondent via email at [S\[...\]](#).

[17] The Third Respondent is Zanele Elizabeth Vilakati N.O., a major female trustee of the Dvunge Trust. The application was served at her email address, [V\[...\]](#).

[18] The Fourth Respondent is Bachazile Lindie Dlamini N.O., a major female trustee of the Dvunge Trust. The application was served at her email address at [b\[...\]](#).

[19] The Fifth Respondent is the station commander: Baadplaas Police Station. The sixth respondent is the master of the High Court, Pretoria.

[20] The Second to Fourth Respondents are also the Trustees for the time being of the Dvunge Trust. The Applicants asserted that they are cited as Respondents in these proceedings because they may have an interest; no relief is sought against them. The Applicant submitted that the Second to Fourth Respondents were not involved in the decision to initiate these proceedings, as they had not participated in meetings of the Trust or the Annual General Meeting.

[21] The Applicants argued that the First Respondent held a meeting for the Dvunge/Shongwe community on the Trust Property scheduled for 2 November 2024 without obtaining the necessary consent from the Trustees. In support of their claim, the applicants provided a translated voice note from the First Respondent, converting the original IsiSwati into English. This voice note was addressed to the Dvunge Community and the Shongwe community, conveying the following message:

“Greetings to Dvunge Community, Shongwe Community

Today is 6 October. I would love to thank all those who led us as we embarked on the journey on Saturday. The journey was a beautiful and safe one.

It was as if there was a King present, being guarded by official security details, nothing stood our way. I feel sorry for those left behind because of the

people who are distracting them, they need to change their mindset. I got my stand without hindrance yesterday.

The map was available showing how the land will be developed. It will look like an estate with a wall fences, schools, shops inside the development. I am encouraging every Shongwe community member to join in. No one is perfect so one needs to ensure that they don't fight other people's fight.

Let us make sure that the leader left by our elders is taken care of, so that if he has wronged us, he will come apologise, and if we have wronged him, we can go and apologise to him.

Let us make sure that no one enters Dvunge land without Lobamba's permission . Lobamba is the only one with documentation for the land and who knows everything about the land. Let us unite and one day we will reach Cannan."

[22] The applicants also attached an email dated 23 September 2024 from the First Respondent to its founding affidavit, where the First Respondent addressed a letter to the First Applicant in his capacity as Chairperson of the Trust, informing him about the planned visit to the Trust Property by himself in his capacity as chief and the other beneficiaries on 5 October 2024 (**the first meeting**). He requested that the First Applicant ensure the gates were opened to access the Trust Property, that there was security in place, and that there was no intimidation or assault by other beneficiaries.

[23] The First Applicant contends that he consulted with fellow trustees by telephone regarding the correspondence in question. Following the discussion, the First Applicant formally declined this request. The First Applicant pointed out that since there was no resolution from the Trustees and beneficiaries to visit the farms on the stipulated date, they would not accede to his request, as operations were also ongoing on some of the farms and his visit would interfere with them. The First Applicant also asserted that the Trust operates under its Trust Deed, not under the First Respondent's authority. The First Applicant highlighted the obstructive behaviours of the First and Second Respondents, including their non-attendance at

meetings and unfounded complaints they lodged with the Master, as well as their objections to the issuance of letters of authority to newly elected Trustees from a High Court-ordered general meeting. He alleged that the First Respondent is attempting to create a parallel structure outside the Trust, aimed at dividing beneficiaries from Swaziland and South Africa.

[24] In defiance of this refusal, the First Respondent accessed the Trust Property with the assistance of the members of the South African Police Service (SAPS). He presented them with a court order issued against the Khumalo family under the case number LCC 04/2016. This order was originally granted in favour of the Trustees of Dvunge Trust, of whom the First Respondent, as the former Trustee, was an applicant. The Khumalo family had prevented the Trustees from accessing the Trust Property, which they were occupying. The First Respondent was cited as one of the applicants in the application. The order permitted the then Trustees and the First Respondent to access the Trust Property without being intimidated by the Khumalo Family, who were the respondents in that matter.

[25] Following this visit, the First Respondent announced another visit to the Trust Property, scheduled for 2 November 2024. He invited the Mahlabatsini community and other beneficiaries to a meeting.

[26] On 25 October 2024, the Trustees, through the Trust attorneys, sought an undertaking that the scheduled meeting on 2 November 2024 would not proceed. The letter is lengthy. The letter addresses the allegations about the planned sale of Trust Property and the development of the land without consent from the Trustees. The First Respondent responded on 29 October 2024 and advised that the meeting was proceeding. He also challenged the Trust's authority to act on behalf of the Trust on the basis of a conflict of interest.

[27] The applicants approached the Court on an urgent basis to seek an interdict to prevent a meeting from being convened by the First Respondent, which was scheduled for Saturday, 2 November 2024, at properties owned by the Trust. The applicants argued that the First Respondent, a former Trustee and a Trust beneficiary who also refers to himself as the Chief of the Mahlabatsini Tribal

Authority, had shared information about this meeting with the media and a local radio station. The applicants contended that the First Respondent intended to alienate (i.e., sell) or encumber (i.e., use as collateral) Trust Property. The applicants aver that the properties are not the properties of Mahlabatsini Community or the properties of any chiefdom.

[28] The applicants asserted that at the meeting of 5 October 2024, the First Respondent presented a sketch outlining the stand allocation on the Trust Property, particularly the farm Vriesland. This sketch plan involved the development of the township and shopping malls on the Trust Property. The First Applicant asserted that the beneficiaries and the Trustees of the Trust never approved of this sketch. The applicants asserted that, as Chairperson of the Trust, having served in that capacity and as trustee for an extended period, he had never attended a meeting where such a plan was approved or even considered. The applicants annexed a photograph of the intended development.

[29] On clear right, the applicants contended that the Trust is the owner of the Trust Properties in question, and access to these properties is regulated by the Trust Deed, thereby establishing a clear right.

[30] On irreparable harm, the applicants argued that the First Respondent is disguising himself as a chief, operating a parallel structure, and attempting to usurp the functions of the Trustees and hijack the Trust Property. The applicants claimed that holding the unauthorised meeting and granting access could cause irreparable harm to the Trust, including the potential unlawful alienation or encumbrance of Trust Property and disruption of the Trust's business operations on the land. They stated that, in a voice note to the members of the "Mahlabatsini community," the purpose of the meeting was to discuss plans for the land that the government acquired for the "Mahlabatsini" Community. Additionally, the Trustees submitted that the Trust property may be the subject of unlawful agreements that the First Respondent and his associate may conclude with innocent third parties.

[31] The applicants also stated that the First Respondents left the gates open at the meeting on 5 October 2024, and some of the cattle kept on the properties got

lost. The applicants asserted that there is a possibility that the Trust Property might be invaded, and any litigation to remove these illegal occupiers could be costly.

[32] The applicants asserted that there was no alternative legal remedy available to the Trust. Any alternative would amount to Trustees or beneficiaries taking the law into their own hands, which is undesirable. Therefore, approaching the Court was necessary to protect the Trust's interests.

[33] The applicants contended that, as fiduciaries (Trustees), they are obliged to protect the Trust and its beneficiaries and have the authority to bring the application to prevent unauthorised actions that jeopardise the Trust's property and management. Together, these reasons justified the Trust's urgent application for an interdict to prevent the First Respondent from unlawfully accessing and alienating Trust Property and to preserve the *status quo*.

[34] On urgency, the First Respondent asserts that the applicants have failed to satisfy the requirement under Rule 34(2) of the Court Rules to set out circumstances rendering the matter urgent and that the applicants failed to explain why substantial redress cannot be obtained at a hearing in due course.

[35] I am satisfied that the issues raised by the Applicant regarding the First Respondent's interference in the management of Trust Property merit urgent attention. This includes actions such as undermining the authority of the Trust Chairperson, convening meetings without the Trust's consent, misusing a court order related to a separate matter involving different parties to enlist assistance from the South African Police for accessing Trust property, and the alleged alienation of Trust Property. These issues exhibit a sufficient degree of urgency to warrant consideration under Rule 34(2).

Factual Background

[36] This application is one of many brought before this Court and in other courts in the context of a lengthy legal dispute between the Trustees for the time being of

the Trust and the beneficiaries regarding their entitlement. Several judgments have been handed down in this court regarding the issue. The most recent judgment is the matter of *Eric Sabatha Khumalo and Others v Musi Gibson Chirwa N.O and Others*, Case No. 4868/2021, a judgment of the Mbombela High Court, which ordered that the AGM be held on 9 March 2024.

[37] Given the urgency of the application, the factual background of the dispute between the parties is not detailed in their pleadings. However, in the matter of *Shongwe NNO and Others v. Regional Land Claims Commission, Mpumalanga and Others (LCC 46/2009) 2021 ZALCC 27, dated July 27, 2012*, an unreported judgment penned by Meer AJP, the retired Acting Judge President of this court, offers invaluable perspectives pertinent to our current examination. Meer J succinctly encapsulated the background facts as follows:

[6] On 4 September 1995, Inkosi Zulu Cayphus Shongwe lodged a claim for the restitution of land rights concerning the following properties: Belmont 606 JT, Doornhoek 607 JT, Doyershoek 702 JT, Goedehoop 622 JT, Rous 621 JT, Vaalkop 608 JT, and Vriesland 620 JT, Sterkspruit 709 JT, Vygeboom 619 JT. The land claim form indicates that in lodging the claim, Cyphus Shongwe was acting on behalf of the community in his capacity as Chief. The claim form also stated that “*Claim based on our great-grandfather Chief Dvunge, who was allocated chieftaincy of the area by the late King Mbanzeni of Swaziland*”. The claim form also makes a reference to the area at a later stage being under the supervision of the headman or Induna, Gama Mashinini.

[7] Mncedisi Sipho Mashinini lodged a claim on behalf of the Mashinini Family in respect of Doornhoek 607JT and Vriesland 620JT. The claim form indicated that the Shongwe family might have an interest in the land claimed and that the farm Vriesland “belongs to the Mashinini and Shongwe families”. The claim form bears a stamp from the Commission on Restitution of Land Rights, indicating submission on 31 December 1998. Following the gazetting of both claims, the Mashinini

family, upon receiving guidance from the Regional Land Claims Commissioner-Mpumalanga, opted to consolidate their claim with that of the Shongwe family.

[8] In the Government Gazette of 10 February 2006, under notice 185 of 2006, the first respondent gave notice of the Shongwe claim in respect of the farm, Doornhoek 607 JT. In the Government Gazette of 17 February 2006 under notice to 210 of 2006, the acting Regional Land Claims Commissioner Mpumalanga gave notice in terms of section 11(1) of the restitution act that a land claim has been lodged by Cayphus Shongwe as a representative of the Shongwe family and Mr Mncedisi Sipho Mashinini acting on behalf of Mashinini family to the farms Crater Edge 615 JT, Belmont 606 JT , Onver544 JT, Horton Pope 622 JT and Friesland 620 JT. The notice is clearly incorrect, as is indicated on the claim form, the Mashini claim was in respect of two farms only namely, Doornhoek 607 JT and Vriesland 620JT the subject properties.

[9] After the publication of the claims the Mashinini family, on the advice of the First Respondent consolidated their competing claim with that of the Shongwe family. The founding affidavit of the First Applicant states they were advised to do so because the Shongwe family was, according to the Commission, further down the road towards a settlement and had already formed a trust.

[10] Prior to the consolidation however, the merits of the Shongwe claim to the subject properties were conceded in 2003. The claim was settled on the basis, as aforementioned, that the state would purchase the subject properties from their respective owners, the Seventeenth and Eighteenth Respondents, for restoration to the claimants. It was also agreed that the Sixteenth Respondent would continue operating a lodge and game farm on the subject properties but would do so as a tenant of the successful claimants and in partnership with them. The founding affidavit of the First Applicant refers to the settlement

framework recording that "the Commission will pay the current owners R25 million and that the land would be transferred to the claimants".

[11] The founding affidavit records that "the Commission" recommended that the Shongwe family should form a trust which would take transfer of the properties to be purchased by the State in settlement of their claim. Consequently on 06 December 2003 the Shongwe family took a resolution to form the Dvunge Trust ("the trust") as a vehicle to receive the restitution benefits. An official of the First Respondent together with an attorney from Mncedisi attorneys in Nelspruit attended the meeting at which the resolution was taken. The community was informed by the official that the attorney would, on the instruction of the First Respondent register the Dvunge Trust on behalf of the Shongwe family, for the purpose of taking transfer of any properties purchased in settlement of their claim. A decision was taken as to who the trustees would be and the Dvunge Trust was thereafter formed and registered early in 2004. Letters of authority for the trustees were issued by the Fourteenth Respondent on 8 August 2004."

[38] In their answering affidavit in the matter of *Eric Sabatha Khumalo and Others v Musi Gibson Chirwa N.O and Others*, Case No. 4868/2021, which concerns an urgent application against the Trustees filed in the High Court of South Africa, Mpumalanga Division (Mbombela), the Applicants elaborated on this historical background and stated that the Shongwe and Mashinini families trace their origins to present-day Eswatini. They assert that in the 1850s, Dzunge Shongwe and Bhevula Mashinini migrated to a place known as Esigodini Sakwa Mbhuyana, also called Mbhuyana Village or Hhwayimba. The reasons for their departure from Eswatini remain undocumented. Both individuals served as warriors under Prince Dlamini of the eMbhuleni Royal House and later established their residence in what is now Goedehoop 622 JT. The Applicant states that Shongwe attained the rank of induna, representing the interests of the eMbhuleni Royal House. The final resting places of both Shongwe and Bhevula are situated on the farm Goedehoop 622 JT.

[39] The Applicants aver that Embhuleni Royal House has a lineage of leadership that began with Queen LaMagadlela, followed by her successor, Maquba Dlamini. Currently, the head of the royal house is Makhosonke Cambridge Dlamini, who has held his position since 1992.

[40] Dvunge Shongwe was succeeded by Dlangamandla Shongwe, who departed from the village in 1922 to return to his country of origin, Eswatini. Following Shongwe's exit, Gama Mashinini assumed leadership as the headman. He established traditional councils that convened at Doornhoek after being dispossessed of land and grazing rights on the Belmont farm. Subsequently, Mashinini was evicted from Doornhoek and relocated to present-day Baadplaas under Chief Dlamini's jurisdiction.

[41] This context provides a clear rationale for the residence of other beneficiaries in Eswatini and South Africa.

The status of the Trust

[42] As stated earlier, the Trust has been experiencing ongoing conflict that has led to litigation for some time now. There are various court decisions concerning internal disputes between the Trustees regarding the control of the Trust. Following the litigation between 2015 and 2017, the Master issued the letters of authority IT3409/04(T) to the following individual as the Trustee of Dvunge Trust on 7 March 2017.

- a. Nomsa Veronica Shongwe
- b. Muzi Gibson Chirwa
- c. Nozipho Joyce Shongwe
- d. Dumisile Dorah Shongwe
- e. Thabile Winny Nzimande
- f. Baby Silvia Shongwe
- g. Majaha Samuel Zulu
- h. Zanele Elizabeth Vilakati
- i. Bachazile Lindie Dlamini

[43] Following the appointment of the Trustees, the Applicant contends that an Annual General Meeting (AGM) occurred in 2018, during which new trustees were appointed. However, due to protracted disputes over control of the Trust, the incumbent Trustees have retained their position since 2017.

[44] Following the order of the Mpumalanga Mbombela High Court, the AGM took place on 9 March 2024, resulting in the appointment of new trustees. Despite their appointment at the time of the hearing, the new trustees have been awaiting the issuance of letters of authority from the Master of the High Court.

[45] Following the recent AGM, prospective trustees have approached the Master's office to request the issuance of new letters of authority. The Applicants claim that the First and Second Respondents have raised objections to the appointment of the new trustees, which has caused the current trustees to remain in office beyond their designated term. These objections have effectively reverted the situation to the pre-2017 status quo.

[46] The Applicants asserted that, notwithstanding the historical disputes, the Trust is in a stable financial position in that the financial statements for 2017 have been produced and there was proper accounting for the use of Trust funds at the 9 March 2004 AGM. The Trust is VAT-compliant.

[47] The Applicants assert that since 2018, the Second to Fourth respondents have been absent Trustees in that they refused and neglected to attend meetings. The applicants state that the Second to Fourth Respondents have been absent to the extent that the applicants, as trustees, even organised an ANNUAL GENERAL MEETING, which elected new trustees who are waiting for letters of authority from the Sixth Respondent without the participation or involvement of these trustees.

The First Respondent's contentions

[48] The First Respondent raised points in *limine*, and they contend that these points are dispositive of the matter. These are

- i. The First Respondent asserts that the resolution to bring the application was taken irregularly; therefore, the Applicants acted *ultra vires* in bringing this application. Not all trustees received the notice of the meeting convened by the trustees as outlined in the Trust Deed.
- ii. The First Respondent contends that there was no lawful resolution passed authorising the Applicants to bring the application.
- iii. The Respondent asserts that the Trust Deed requires joint action with concurrence among Trustees for matters such as launching an application. The First Respondent asserts that the failure to cite all Trustees or to show a valid resolution means the Applicants are not acting on behalf of the Trust;
- iv. The Applicants have failed to satisfy the requirement under Rule 34(2) of the Court Rules to set out circumstances rendering the matter urgent and that the Applicant failed to explain why substantial redress cannot be obtained at a hearing in due course.

[49] The First Respondent further contends that the Applicants failed to produce the minutes of the meeting, thereby ensuring compliance with the Trust. Consequently, the First Respondent contends that no lawful resolution was passed authorising the Applicants to bring the application. The First Respondent asserts that the Trust Deed requires joint action with concurrence among Trustees for matters such as launching an application.

[50] The First Respondent disputes that the Applicants are in good standing, challenges any claims by the Applicants to be "Trustees in good standing," indicating that this is a legal fiction without basis.

[51] The First Respondent raised the following grounds

- a. Applicants are a full complement of eight trustees
- b. The notice of the meeting was not sent to all the Trustees by clause 12.1 of the Trust
- c. There are no resolutions passed by the Trustees to launch the Application.
- d. The Trust Deed did not succeed the application

[52] On merits, the First Respondent admitted to calling a meeting scheduled for 2 November 2024 at Vriesland with the descendants of Dvunge under the Shongwe Kingship residing in the Republic of South Africa at Mahlabatsini and Eswatini. While the First Respondent disputes that the purpose of calling the meeting was to sell the land, he clarifies that its main purpose is to inform and to show beneficiaries about the land acquired for them by the South African government.

[53] The First Respondent argues that he called the meeting in his official capacity as Chief of Mahlabatsini. He maintains that the Applicants do not have the jurisdiction or authority to restrict his constitutional right to freedom of association, as provided in section 18 of the Constitution. He asserts that, as a Chief and traditional authority, he is entitled to initiate a community meeting. Furthermore, he asserts that even if the meeting was called in his capacity as a private citizen and beneficiary, the Applicants lack the authority to impede such a gathering under the terms of the Trust Deed.

[54] The First Respondent argues that the Applicants are not authorised to prohibit or permit community gatherings, whether under the Trust Deed. On merits, the First Respondent admitted to calling a meeting scheduled for 2 November 2024 at Vriesland with the descendants of Dvunge under the Shongwe Kingship residing in the Republic of South Africa at Mahlabatsini and Eswatini. While the First Respondent disputes that the purpose of calling the meeting was to sell the land, he clarifies that its main purpose was to inform and to show beneficiaries about the land acquired for them by the South African government.

[55] The First Respondent contends that he called the meeting in his official capacity as Chief of Mahlabatsini. He maintains that the applicants lack the jurisdiction or authority to restrict his constitutional right to freedom of association, as outlined in section 18 of the Constitution. He asserts that, as a Chief and traditional authority, he is entitled to convene a community meeting. Furthermore, he claims that even if the meeting was called in the beneficiary's name as a private citizen and beneficiary, the applicants do not have the authority to hinder such a gathering under the terms of the Trust Deed.

[56] The First Respondent argues that the applicants are not authorised to prohibit or permit community gatherings, whether under the Trust Deed.

[57] The First Respondent contends further that there was no evidence of actual violence that was established, as he was on the Trust Property on 5 October 2024 and was escorted by the police. He states further that the court order relied upon to solicit the escort of the South African Police Service is valid.

[58] I find it essential to address the legal framework governing the Trust. To that end, I will scrutinise the pertinent provisions of the Dzunge Trust to assess the validity of the First Respondent's claims.

Legal Framework governing the Trust:

[59] In South African law, the administration of trusts is governed by both the trust instrument (Trust Deed) and the Trust Property Control Act 57 of 1988 ("the Act"). The Act codifies the fiduciary duties of trustees, mandating that trustees exercise their powers and perform their duties with the care, diligence, and skill reasonably expected of a person managing the affairs of another.

The Trust Control Property Act 57 of 1998 ("The Act")

[60] Act 57 of 1998 defines a **“trust”** as the arrangement through which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed –

- (a) To another person, the trustee, in whole or in part, to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument or for the achievement of the object stated in the trust instrument; or
- (b) To the beneficiaries designated in the trust instrument, which property is placed under the control of another person, the trustee, to be administered or disposed of according to the provisions of the trust instrument or for the achievement of the objective stated in the trust instrument.

“Trust property” or **“property”** means movable or immovable property and includes contingent interests in property, which in accordance with the provisions of the trust instrument are to be administered or disposed of by a trustee.

Section 9 of the Act: **Care, diligence and skill required of a trustee**

- (1) A trustee shall in the performance of his duties and the exercise of his powers act with care, diligence, and skill which can be reasonably be expected of a person who manages the affairs of another.
- (2) Any provision contained in a trust instrument shall be void in so far as it would have the effect of exempting a trustee from or indemnifying him against liability for breach of trust where he fails to how the degree of care, diligence and skill as required in subsection (1).

Section 12 of the Act: **Separate position of trust property**

Trust property shall not form part of the personal estate of the trustee except he in so far, he as the trust beneficiary entitled to the trust property.

[61] Cameron JA in *Land and Agricultural Development Bank of SA v Parker and Others*² held as follows regarding the trust :

‘Except where statute provides otherwise, a trust is not a legal person. It is an accumulation of assets and liabilities. These constitute the trust estate, which is a separate entity. But though separate, the accumulation of rights and obligations comprising the trust estate does not have legal personality. It vests in the trustees and must be administered by them, and it is only through the trustees, specified as in the trust instrument, that the trust can act.’ (footnotes omitted).³

[62] Lately, Nugent JA in *Lupacchini NO and Another v Minister of Safety and Security*⁴ , approved the principle expressed in *Land and Agricultural Development Bank of SA v Parker* and held that :

‘A trust that is established by a Trust Deed is not a legal person – it is a legal relationship of a special kind that is described by the authors of Honoré’s South African Law of Trusts as “a legal institution in which a person, the trustee, subject to public supervision, holds or administers property separately from his or her own, for the benefit of another person or persons or for the furtherance of a charitable or other purpose”⁵

The Dvunge Trust Deed

[63] The following definitions contained in the Trust Deed are relevant:

- a. “Beneficiaries “shall collectively mean those persons as per the list attached hereto marked “B”, as well as those persons appointed as beneficiaries in terms of this Trust Deed, membership vesting in the individuals and not households.

² *Land and Agricultural Development Bank of SA v Parker and Others* (186/2003) [2004] ZASCA 56.

³ Ibid, para 10

⁴ *Nugent JA in Lupacchini NO and Another v Minister of Safety and Security* 2010 (6) SA 457 (SCA); [2011] 2 All SA 138 (SCA).

⁵ Ibid, para 1

- b. Beneficiaries for the purposes of an annual general meeting or a general meeting at which it is required that a vote be taken for any reason whatsoever, shall mean beneficiaries present at such meeting and not younger than 18 years of age as being a beneficiary qualified to vote.
- c. General meeting shall mean a meeting of all the beneficiaries under the trust, and annual general meeting shall have a corresponding meaning.
- d. Disputes shall also include, for this Trust Deed, without limiting the generality of the term, any dispute as to.
- e. the interpretation of the provisions of this document means any matters arising from the implementation of the provisions of this document.
- f. In the matter arising or in regard to any aspect of the communal nature of the farm in this document.

Principles, Beneficiaries, and Entitlements

[64] The trust operates on the principles of fairness, equity, accountability, and transparency. The main rights and obligations of the Beneficiaries under the Trust are provided in clause 8 of the Trust. The beneficiaries have the following rights and obligations.

Right to Improvements and Maintenance

8.1 Every Beneficiary shall have the right to make improvements upon the land allocated to that Beneficiary by the Trust, but such right is subject to the obligation of that Beneficiary to maintain such improvements.

Access Rights:

8.2 Subject to the consent of the Trust and on terms decided by it, every Beneficiary shall have the right of access to communal land and other communal facilities and amenities. Included in the aforementioned, is the right of access to land for grazing and cultivating purposes, gathering of firewood of thatching grass,

fetching of water and access to other assets, resources and projects of the Trust.

8.3 All rights of the Beneficiaries shall be exercised subject to the rules as determined by the Trust in general meeting from time to time. Any such rules may be amended or rescinded by the Trust in general meeting.

Voting Rights:

8.4 Every Beneficiary over the age of 18 years shall have the right to vote at the general meeting of Beneficiaries in person or by proxy.

Right to Site Use:

8.5 Beneficiaries to whom a site has been allocated and recorded in the register are entitled to the undisturbed use and benefit of the site, subject to the Trust Deed's terms and conditions.

8.6 Every Beneficiary shall be obliged to pay any levy lawfully imposed on it by the Trust in general meeting.

8.7 Every Beneficiary shall be obliged to make contributions required by the Trust towards the maintenance of the common areas of the property for the common good.

8.8 Every Beneficiary shall abide by the rules established by the Trust.

Right to Nominate a Successor:

8.9 Each Beneficiary shall, on becoming a Beneficiary, nominate one successor in the event of his or her termination of membership by death or otherwise save that such choice shall be subject to the approval of the Trust who shall consider the following factors in approving or disapproving such nomination:

8.9.1 The protection of interests of the Beneficiary's dependants.

8.9.2 The principles of the law.

8.9.3 The minimization of risk and conflict within the Trust.

8.9.4 The maximization of the well being and interests of the Trust.

8.9.5 Principles of fairness and equity.

8.10 On the termination of membership referred to in paragraph 8.9 the Trust may, notwithstanding its prior approval of the nomination referred to, set aside such nomination should circumstances have changed taking into account the factors referred to in that paragraph.

8.11 On the death or resignation of a Beneficiary all such Beneficiary's rights as a Beneficiary shall pass to the Beneficiary who succeeds such member in terms of this Trust Deed.

8.12A Beneficiary wishing to relinquish the benefits and rights accruing to it by virtue of this Trust Deed, or whose membership of the Trust is terminated in accordance with the Trust Deed, may dispose of its benefits and rights to a purchaser of its choice; provided that the terms of the sale are disclosed to the Trust, and the Trust in a general meeting consents to such sale and to the admission of the purchaser as a Beneficiary of the Trust. The Trust shall not unreasonably withhold its consent to a sale or unreasonably refuse to admit a purchaser as a Beneficiary. In determining whether to consent or not the Trust shall take account of the factors referred to in paragraph 8.9.

8.13 Every member shall be entitled to make a copy of the Trust Deed of the Trust at his or her own expense.

[65] Clause 13 empowers the trustees to deal with trust property and trust income for the trust for the benefit of the beneficiaries.

Powers of the Trustees:

The Trustees shall have the following powers:

- 13.1 To acquire and hold for the Trust, by purchase, lease, donation, bequest, in exchange or in any lawful manner whatsoever, any property (whether movable or immovable) provided that the Trustees shall not:
- 13.1.1 alienate, let or mortgage any immovable property of the Trust, unless this is done with the full knowledge and consent of 75% (seventy five percent) of the total number of Beneficiaries present at a General Meeting called for that purpose in terms of paragraph 19 hereof; or
- 13.1.2 Permit or condone the rent-free occupation of any land or building owned by the Trust from time to time by persons or Association of Persons, save for purposes which are to the benefit of the Beneficiaries and consistent with the objections of the Trust.,
- 13.2 To pay over to the Beneficiaries their equitable dividend from the profits accrued as a result of the farming activities on the Farm, all Beneficiaries receiving equal dividends;
- 13.3 To raise, accept and acquire, for the Trust, any monies, gifts, bequests or payment from any person, firm, company or association, that may be raised, given, bequeathed or paid to them as an addition or with the intention, to add to the Trust Fund hereby donated to them. Any addition so accepted and acquired shall be deemed to form part of the Trust Fund to be administered and dealt with subject to the terms of this Trust Deed, including the compliance with any conditions subject to which any monies are paid to the Trust, provided that the Trust shall not accept any donation which is unilaterally revocable at the instance of the donor thereof, or which seeks to impose a condition on the Trust which is inconsistent with the terms and conditions of this Trust Deed.
- 13.4 From time to time, to invest all or any part of the Trust Deed in or with financial institutions in accordance with the Financial Institution (Investment Funds) Act, 1984, and in accordance with the provisions of this Trust Deed in order to achieve the objects of the Trust and in

accordance with any condition (if any) which may be attached to the provision or any part thereof;

- 13.5 To open and operate (either themselves or by a person or persons authorised by them) accounts in banking institutions, building societies and other financial institutions, and to utilise such accounts for the purposes of the Trust save that all cheques of the Trust shall be signed by at least two Trustees.
- 13.6 To reimburse from the Trust Fund for all reasonable and necessary expenses that may be incurred by them on behalf of the Trust in or about the execution of the trusts and powers conferred upon them in terms of this Trust Deed and upon having provided proof of such expenditure.
- 13.7 To employ staff, agents and other people (either casually, temporarily, permanently or on secondments) to carry out the object of the Trust upon such terms and conditions as they may from time to time consider desirable, to terminate such employment or agency, and to pay their salaries, fees, commissions, remuneration and other charges out of the Trust Fund,
- 13.8 To enter into contracts on behalf of the Trust and to adopt and to accept benefits under contracts entered into for the benefit of the Trust, whether before or after the creation of the Trust,
- 13.9 To appoint auditors to the Trust and to negotiate their remuneration,
- 13.10 To do all things reasonably ancillary to the foregoing powers in order to efficiently and effectively achieve the objects of the Trust,
- 13.11 To facilitate the planning, development and upgrading of the immovable property of the Trust in order to achieve objects of the Trust,
- 13.12 To create conduct rules binding on all Beneficiaries and occupants of the Farm that will regulate the orderly use of and conduct on the Farm and the operation of all commercial business and agriculture by the said Beneficiaries and occupants,
- 13.13 To create committees and sub-committees or other structures to achieve the objects of the Trust.

[66] The First Respondent appears to mistakenly believe that, because he is both a beneficiary and a chief, he has unrestricted access to the Trust Property. However, this interpretation is incorrect. The provisions of the Trust Deed clearly specify that access to the Trust Property requires prior consent from the Trust, regardless of the First Respondent's position.

Discussion

Non-compliance with the joint action Rule

[67] The First Respondent contended that the applicants' resolution dated 23 October 2024 to launch this urgent application is inconsistent with the Trust Deed as not all the Trustees were involved in the process; thus, the applicants violated the joint action principle, which states that the Trustees must act jointly if the Trust is to be bound by their acts. Therefore, the First Respondent asserts that the resolution is incompetent as it was the result of an irregular procedure.

[68] Reliance was placed on clause 11.2 of the Trust Deed, which stated as follows:

“Save as may be otherwise provided in this Trust Deed, the decision of a simple majority of Trustees shall be deemed to be the decision of them.”

[69] Reliance was also placed on clauses 11.7 and 12.1 of the Trust Deed. Specifically, the First Respondent contends that the meeting notice was not sent to all Trustees, highlighting that the Second to Fourth Respondents, who are also Trustees, were not informed of the meeting. They were not given an opportunity to participate. As a result, he claims that the Trustees acted *ultra vires*, given that the Trust Deed does not authorise the convening of the meeting in question. Furthermore, the First Respondent maintains that any actions or decisions arising from this resolution are consequently irregular.

[70] The First Respondent also relied on several cases to support the argument that the absence of the second to the fourth respondent rendered the resolution invalid. These cases are:

Shepstone & Wylie Attorneys v Abraham Johannes de Witt N O & Others
(1270/2021) [2023] ZASCA 74 (26 May 2023)

Steyn and Others N N O v Blockpave (Pty) Ltd 2011 (3) SA 528 (FB)
(*Blockpave*)

Land and Agricultural Development Bank of SA v Parker and Others (Parker)
[2004] 4 All SA 261 (SCA)

Joint Action Rule

[71] The First Respondent contended that, where a majority vote applies as in the present matter, the minority is obliged to act jointly with the other Trustees in executing any resolution adopted through such a majority vote.

[72] The respondent submitted further that it is not the majority vote but the resolution by the entire Trust board that binds the Trust despite dissent. The Respondent relied on the Supreme Court of Appeal Judgement on *Shepstone & Wylie Attorneys v Abraham Johannes de Witt N O & Others* (1270/2021) [2023] ZASCA 74 (26 May 2023). In that matter, V, RV, and W were trustees of the Penvaan Property Trust (the Trust). The FirstRand Bank brought an application for the sequestration of the Trust, after liquidating two companies which did business from premises owned by the Trust. TV and RV were in divorce proceedings when RV and W arranged a trustee meeting. Since TV lived quite far away at the time, he indicated that he could not attend the meeting at the place suggested by RV and W. To accommodate him, the meeting was moved closer to him, but he still did not attend. At the meeting, W and RV decided that the Trust would stand surety for RV's legal costs in the divorce proceedings and signed a deed of surety in favour of the appellants. When RV could not pay the appellants' legal bills because she was dependent on income from the two companies, the appellants looked to the trust for payment. The appellants then issued summons in the High Court for payment of their fees. The trustees of the Trust at the time denied that the surety was properly signed, as TV was not at the meeting and did not sign the deed of surety, because the trustees did not act jointly as required by the Trust Deed. The high court upheld the defence by the trustees. The appellants then appealed to the SCA.

[73] The question for determination by the SCA was whether the deed of suretyship signed by Mrs Volker and Mr de Witt (in their capacity as trustees) in favour of the appellant was duly authorised by the Trust and was legally binding on it. The Trust Deed does not explicitly provide that the decisions of the trustees may be taken by majority vote. The Supreme Court of Appeal produced two judgments agreeing that Shepstone and Wylie's appeal should be dismissed but differed on the reasons. The Supreme Court of Appeal majority noted the trite principles that trustees are co-owners of a trust's assets and must make resolutions jointly to bind the trust unless the Trust Deed has a specific majority clause. The Supreme Court of Appeal majority purportedly applied Parker, concluding that where a Trust Deed requires trustees to act jointly to bind the trust, a majority decision will not bind the trust if a trustee did not participate in the decision-making.

[74] The Supreme Court of Appeal minority found that the Trust Deed does not explicitly provide that the decisions of the trustees may be taken by majority vote. The minority relied on *Endumeni* to interpret the Trust Deed as a whole. The minority rejected Shepstone and Wylie's interpretation of clause 26's reference to "unanimous agreement to conduct business" as meaning that unanimity is only required where the Trust is conducting business in a narrow commercial sense.

[75] The court dismissed the appeal, stating that all trustees needed to sign the deed of surety or provide a mandate for one or more to do so, even if internal decisions could be made by majority vote. The court held as follows:

[25] As held by this Court in *Le Grange*, the trustees, when dealing with trust property, are required to act jointly. Even when the trust deed provides for a majority decision, the resolutions must be signed by all the trustees. A majority of the trustees may take a valid internal decision, but a valid resolution that binds a trust externally must be signed by all trustees, including the absent or the dissenting trustee. It is a fundamental rule of trust law, which this Court restated in *Nieuwoudt N O and Another v Vrystaat Mielies (Edms) Bpk* [2004] 1 All SA 396 (SCA), that in the absence of a contrary provision in the trust deed, the trustees must act jointly if the Trust estate is to be bound by their acts. The rule derives from the nature of the trustees' joint ownership of the trust property. Since co-owners must act jointly, trustees must also act jointly.

[26] It therefore follows that where a trust deed requires that the trustees must act jointly if the Trust is to be bound, a majority decision will not bind the Trust where one of the trustees, such as in this case, did not participate in the decision-making. This is imperative particularly when the trustees are required to take a decision involving the assets of the Trust. In the case where the majority decision prevails, all trustees are still required to sign the resolution. In *Land and Agricultural Development Bank of SA v Parker and Others (Parker)* 2005 (2) SA 77 (SCA); [2004] 4 All SA 261 (SCA), this Court held that when dealing with third parties, even if the Trust instrument stipulates that the decision can be made by the majority of trustees, all trustees are required to participate in the decision making and each has to sign the resolution. The court in *Blockpave* restated the aforementioned principles in *Parker*. It went on to state that a trust operates on resolutions and not on votes. This is significant as the Trust does not explicitly provide that external decisions may be taken by a majority vote.

[27] Similarly, in *Van der Merwe*, the court also endorsed the principle that trustees have to act jointly and that the minority is obliged to act jointly with other trustees in executing the resolution adopted by the majority. A majority decision prevails only where there has been participation by all trustees where the trust deed expressly provides for it. In this case, on every possible interpretation of what happened on 25 March 2013, there is no room to conclude that Mr Volker participated in the decision-making. It is a misnomer for the appellant to infer participation in the meeting only on the basis that Mr Volker received reasonable notice thereof. The high court was therefore correct to conclude that the trustees did not act jointly.

[28] The appellant's reliance on clause 16 of the main provisions is misplaced. It is difficult to follow the rationale for relying on clause 16, as it refers to disagreements at the meeting. There were no disagreements at the meeting. *Honoré's South African Law of Trusts*, as pointed out by the high court, authoritatively confirms that all important decisions are to be taken unanimously. The reliance in *Le Grange* on *Van der Merwe*, which held that the decisions of the majority of trustees present at a meeting shall prevail, was misplaced (see para 15 of *Van der Merwe*). The decision in *Blockpave* paras 37-38 endorses the trite principle that a trust operates in two different spheres, that is internally and externally. Internally, trustees may disagree and if the trustees are not unanimous, a matter may be put to a vote. The majority vote prevails and the dissenting trustee has to subject himself to the democratic vote of the majority. Externally, trustees cannot disagree. In the external sphere the Trust functions by virtue

of its resolutions, which have to be supported by the full complement of the Trust body. External decisions are those relating to the trust property with the outside world and internal decisions may relate to the use of income for the welfare of the beneficiaries of the trust.

[76] According to Shepstone and Wylie, the Supreme Court of Appeal's majority judgment represents a material deviation from the law as previously expressed in the Supreme Court of Appeal and is wrong. Shepstone and Wylie further argue that the Trust Deed stipulates that legal documents needing execution must be signed by at least two trustees and implicitly not by all three, as long as reasonable notice is given to each trustee.

[77] Tolmay AJ writing for the unanimous court in *Shepstone & Wylie Attorneys v De Witt N.O*⁶ expressed herself as follows:

“The question now is, did the Supreme Court of Appeal majority indeed get the law wrong? The answer is yes. The Supreme Court of Appeal majority stated that it is trite that “trustees must act jointly in taking decisions and resolutions for the benefit of the Trust and beneficiaries thereof, *unless a specific majority clause provides otherwise*”.⁷ In terms of *Parker*⁸ and *Nieuwoudt*,⁹ However, the principle is that a Trust Deed can provide for something other than joint action by trustees, and it can do so through a majority clause. The Supreme Court of Appeal majority therefore construed the principle narrowly with no authority for doing so.”

[78] At paragraph 57 the learned judge continued and stated the following:

[57] This takes us to another error in the Supreme Court of Appeal majority's analysis of trust law. After relying on *Le Grange*, the Supreme Court of Appeal majority stated that “[e]ven when the Trust Deed provides for a majority decision, the resolution must be signed by all the trustees”.¹⁰ This is plainly in conflict with the principle expressed in *Nieuwoudt* and *Parker* that a Trust Deed can provide

⁶ *Shepstone and Wylie Attorneys v De Witt N.O. and Others* (CCT 171/23) [2025] ZACC 14.

⁷ Supreme Court of Appeal judgment above n 3 at para 20 (emphasis added).

⁸ *Parker* above n 10 at para 15.

⁹ *Nieuwoudt* above n 32 at para 16 of Harms JA's judgment (the second judgment).

¹⁰ Supreme Court of Appeal judgment above n 3 at para 25.

for decision-making other than by joint action. The apparent reliance on *Le Grange* is misconceived. *Le Grange* stated that resolutions signed by trustees are “usually” a manifestation of trustees’ joint decision.¹¹ The Court went on to say that where (as on the facts of that case) the majority (being two trustees) had signed a resolution and the third abstained, it would be placing “form over substance” to insist on having the third trustee’s signature on the resolution.¹²

[58] The majority seemingly failed to appreciate the important distinction between unanimous-decision trusts and majority-decision trusts. What we have here is of the latter. Thus, in a trust of this type, where the Trust Deed includes a freestanding majority vote clause (as was the case in *Van der Merwe* and *Le Grange*), the trustees must act *jointly* but are not required to act *unanimously*. Absent a freestanding majority clause (as was the case in *Parker*), the trustees must act not only jointly but also unanimously.

[59] The Supreme Court of Appeal majority recorded that the High Court had stated that *Honoré’s South African Law of Trusts* “authoritatively confirms that all important decisions are to be taken unanimously.”¹³ However, the High Court actually quoted *Honoré’s South African Law of Trusts* as stating that “unless the trust instrument so provides – as it usually does – it is doubtful whether matters of substance can be regulated by majority decisions”.¹⁴ The important part of the principle, namely that a Trust Deed can provide for decisions to be taken by fewer than all trustees, was overlooked by the Supreme Court of Appeal majority. The reliance on *Blockpave* is also misplaced. *Blockpave* is clearly wrong when it states that “externally trustees cannot disagree” and that in the external sphere a trust “functions by virtue of resolutions, which have to be supported by the full complement of the trust body”.¹⁵ As has now been stated repeatedly, trust law allows for a Trust Deed to provide for majority or quorate decision-making.

[60] The Supreme Court of Appeal majority’s misstatement of the principles set out in *Nieuwoudt* and *Parker* and its reliance on the principle set out in *Blockpave*

¹¹ *Le Grange* above n 18 at para 14.

¹² *Id* at para 23.

¹³ Supreme Court of Appeal judgment above n 3 at para 28.

¹⁴ High Court judgment above n 7 at para 35.

¹⁵ *Blockpave* above n 34 at para 38.

have the potential of changing trust law if uncorrected. That will lead to the consequences envisaged by Shepstone and Wylie.¹⁶

[79] The court found that the Supreme Court of Appeal majority misconstrued *Parker* by narrowly interpreting the principle to mean that trustees must act jointly and unanimously unless there is a majority clause, but then also placed unwarranted restrictions on this principle. Specifically, the Supreme Court of Appeal majority limited joint action to internal matters. It stated that externally all trustees had to agree, which conflicted with the broader principles in *Parker v Parker*, which recognises that a Trust Deed can provide for decisions to be taken other than unanimously, including through a "majority clause" that allows decisions by fewer than all trustees.

[80] The Constitutional Court held that insisting on unanimous decisions in all cases "places form over substance," especially in trusts that include majority decision clauses, with reference to *Parker* and *Le Grange* as supporting flexibility. *Parker* does not mandate unanimous decisions in all cases but supports that trusts may include majority decision-making mechanisms. The Supreme Court of Appeal's majority judgment misapplies *Parker* by ignoring this flexibility and by failing to correctly interpret the Trust Deed provisions allowing for decisions by a subset of trustees.

[81] In the current matter, the joint action rule was clearly modified by the Trust Deed. Clause 11.2 states that the decision of a simple majority of Trustees shall be considered the decision of them all, and Dvunge Trust permits decisions to be made at a quorum meeting by only the trustees present. Clause 11.5 of the Trust Deed states that at meetings of the Trustees, a majority of the Trustees holding office shall constitute a quorum.

[82] Clause 12.1 provides that a reasonable notice of meetings of the Board of Trustees shall be sent to all Trustees, either personally or by registered post, addressed to the last address notified by such person to the theft. Each trustee shall be obliged to notify the board in writing of a postal address at which such notice may be given. Alternatively,

¹⁶ Ibid at [42] above.

notice of the aforesaid shall be given by affixing the notice in a prominent public place within the residential area of the farms.12.2 provides that if posted, notices shall be deemed to have been received as of asserted four days after the notice has been posted."

[83] In the current case, clause 11.2 of the Trust stipulated that the decision of a simple majority shall be deemed to be a decision of all. In the current case, the Trustee does not need to be physically present at the meeting, provided that: (a) proper notice of the meeting is given to all trustees, and (b) those in attendance meet the quorum requirement. Clause 11.3 provides that the Trustees shall meet for the despatch of business, adjourn and otherwise regulate their meetings as they see fit.

[84] The First Respondents raised a number of grounds challenging the decision of the Applicants to launch this application as outlined above. It remains to be considered whether the resolution to institute these proceedings followed an irregular procedure.

[85] It is common cause that the Second to the Fourth Respondents, who are also the Trustees for the time being of Dvunge, were not served with the notice of the meeting contrary to clause 12.1 of the Trust Deed. The applicant explains that the meeting was organised through a Trustees' WhatsApp group, and the WhatsApp screenshot was sent to all active Trustees. Mr Magagula is the elected secretary of the trust. The applicants advanced the following reasons for not inviting the Second to the Fourth Respondents.

- a. Since 2018, the Second to Fourth Respondents have been absentee Trustees, as they have refused or neglected to attend meetings of the trustees. They were not present at the AGM ordered by the Mbombela High Court under case number 4868/2021, where new Trustees were elected and are awaiting approval from the Sixth Respondent.
- b. Following the elective general meeting of the Trust held on 9 May 2024, as per court order (the High Court) and as directed by the beneficiaries for transparency, a WhatsApp group comprising current

active Trustees and elected Trustees was formed. The WhatsApp group was used to call the meeting on an urgent basis.

- c. The Second Respondent, as a Secretary of the Trust, has effectively absconded from his responsibilities. She is supporting the First Respondent and has objected to the appointment of new Trustees, which has led to the current Trustees staying beyond their term of office. The objections led to the status quo prior to 2017 remaining.
- d. The Second Respondent has now objected to the newly elected Trustees being issued the letters of executorship. Attempted to legitimise the status of the applicants who are trustees, along with their decisions.
- e. The Second Respondent has also supported applications that sought to have the Trustees removed from the office through the letters that she directed to the master and launched a complaint against the applicant's activities before any contract was concluded. She is also objecting to the appointment of the new Board of Trustees, which was elected on 09 March 2024.
- f. Lastly, the Second Respondent objected to the issuance of the letters of authority to the newly elected Trustees. Their objections concern the lack of accounting, verification of beneficiaries, the sidelining of the Trustees from Swaziland, and they allege that some of the prospective Trustees are not eligible for office, among other issues.

[86] While the Applicants have articulated their rationale for excluding the Second to Fourth Respondents from the meeting, it remains clear that these individuals have not been removed as trustees. The Trust Deed stipulates that all trustees are entitled to receive proper notice of the meeting.

[87] Addressing a similar complaint from the Trust's beneficiaries, who themselves had hindered the functioning of the Trustees, Binns-Ward, J, *in Smith and Others v Stellenbosch Municipality and Others*¹⁷ said:

'The irony of the applicants' complaint that the trustees' conduct was inconsistent with the trustees' obligation to *'ensure ... that the initiatives the Trust embarks on are wisely managed, coordinated and implemented so that the resultant benefits devolve to beneficiaries and stakeholders "in a transparent manner and in a spirit of partnership of partnership with all concerned"'* in the face of a land incursion by a small section of the community, some of whom were confessedly not even beneficiaries of the Trust, appears to have been lost on them. It is another of the paradoxical features of the case that persons who are beneficiaries or potential future beneficiaries of the Trust should complain about the trustees' failure to comply faithfully with the decision-making formalities prescribed in the trust deed when they themselves have unilaterally and unlawfully appropriated the Trust's property, thereby frustrating the trustees' ability to be able to discharge their functions in the manner contemplated by the trust deed.'¹⁸

[88] Clause 11 of the Dvunge Trust regulates the proceedings of the Trustees and stipulates the duties of the Trustees. It provides as follows:

11.1 Each Trustee shall have one vote

11.2 Save as may otherwise provide in this Trust Deed, the decision of a simple majority of Trustees shall be deemed to be decision of them all.

11.3 Trustees shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit.

11.4 At the meetings of the Trustees, a majority of the Trustee holding office at the time shall constitute a quorum.

11.5 Any three (3) Trustees may at any time summon a meeting of the Trustees

11.6 Stipulates that the Trustees shall keep written minutes of their meeting and all resolution passed by the Trustees shall be duly minuted. The

¹⁷ (18381/2022) [2022] ZAWCHC 134.

¹⁸ Ibid para 56.

minutes shall be open to perusal by both Trustees and Beneficiaries at all times

[89] Clause 12 deals with Notice of the meetings. It provides as follows:

12.1 Reasonable notice of meetings of the Board of Trustees shall be sent to all Trustees, either personally, or by the registered post addressed to the last address notified by such person to the theft. Each trustee shall be obliged to notify the board in writing of a postal address at which such notice may be given. Alternatively notice of the aforesaid shall be given by affixing the notice in the prominent public place within the residential area of the farms.

12.2 If posted, notices shall be deemed to have been received as asserted four days after the notice has been posted.

[90] The Applicants stated that, following the elective general meeting of the Trust held on 9 March 2024, as directed by the beneficiaries for transparency, a WhatsApp group comprising current active Trustees and the elected Trustees was formed, and they used the WhatsApp group to call the meeting on an urgent basis.

[91] Unfortunately, the Trust does not distinguish between active and inactive Trustees, regardless of whether they are in good standing. The Trust Deed requires that all trustees be given proper notice of meetings. In this case, it is widely accepted that the Second to the Fourth Respondent did not receive notices of the meeting as outlined in the Trust Deed. Consequently, the process leading to the resolution of this application was irregular. Therefore, the First Respondent's point in limine must be upheld.

Costs

[92] The general rule is that costs are in the discretion of the court, which discretion the court must exercise judicially. This matter presents a notable paradox, akin to what the learned judge observed in the Smith case. The First Respondent, who criticises the trustees for not adhering to the provisions set out in the trust deed, has clearly demonstrated through his own documents that he himself failed to follow

the Trust's provisions. He defied the Chairperson of the Trust by calling meetings without authorisation and used an order obtained in another case to access the Trust Property.

[93] Considering the history of power struggles between the Trustees and the First Respondent, it appears that the trustees were genuinely concerned about the Trust Property, which may be the subject of unlawful agreements that the First Respondent and his supporters may conclude with the Third Parties. The Applicants alleged that the Second Respondent, who remains a trustee, has kept the original title deeds relating to the Trust Property and refused to return them to the Trust. The Applicants explained that they bear a fiduciary duty to protect the Trust Property, especially considering that the First Respondent attempted to divest the Trust Property by establishing an alternative Trust, the Dlangamandla Trust, which is now defunct. The First Respondent, in his answering affidavit, did not deny the allegations but instead stated that they are not relevant and are based on speculation.

[94] It is my considered view that each party should bear their own costs in the circumstances

[95] In the premises, I order as follows:

1. The First Respondent's first point *in limine* is upheld.
2. Each party to pay its own costs.

Luleka Flatela
Judge of the Land Court of South Africa

Date of Hearing: 27 January 2025
Date of Judgment: 18 September 2025

Appearances

Counsel for Applicants:	Advocate Mbuso Majozi
Instructed by:	Kgaugelo Baloyi Incorporated Attorneys
Attorney for the Respondents:	Mr Eugene Dlamini
Law firm:	Bouwer Cardona Incorporated