



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED:
<u>4 November 2025</u>	
DATE	SIGNATURE

Case No. 068889/25

In the matter between:

CEPPWAWU

Intervening Party

In re:

CHEMICAL, ENERGY, PAPER, PRINTING, WOOD,

AND ALLIED WORKERS' UNION

First Applicant

SIPHO ERIC SONO, N.O

Second Applicant

and

MASTER OF THE HIGH COURT, PRETORIA

First Respondent

REGISTRAR OF LABOUR RELATIONS

Second Respondent

NEUKIRCHER J:

1] On 14 May 2025, the applicants¹ launched the main application in which they seek the appointment of three trustees to the CEPPWAWU Development Trust (the Trust) in terms of certain provisions of the Trust's Deed of Trust and a court order dated 14 May 2024.

2] The main application is opposed by the second respondent who is the Registrar of Labour Relations (the Registrar).

3] On 12 June 2025 CEPPWAWU Investments (Pty) Ltd (CI) launched an application for leave to intervene as the third respondent in the main application. It argues that it has an interest in the outcome of the main application and that its interest is, *inter alia*, rooted in an order granted by Van Der Schyff J and the following which is contained in her judgment:

“The application (the Union and the then Administrator Ms TN Mashanda) attack the nineteenth respondent's (CI) *locus standi* in the relief it seeks in the appeal. The applicant's conceded the nineteenth respondent's interest in the litigation when it was cited as a respondent in the main application. Although the nineteenth respondent is not empowered to appoint Union trustees, it has an interest in whether the Union trustees are lawfully appointed. The nineteenth respondent [consequently] has the necessary locus standi to apply for leave to appeal” (my emphasis)

4] The leave to intervene is opposed by the applicants. They argue that the

¹ Who are a trade union (the Union) and its appointed Administrator (Sono)

appointment of the three trustees is a power conferred upon them solely and in terms of the Deed of Trust, that CI has does not need to be consulted nor its approval sought in respect of these appointments, and that CI has no direct and substantial interest in the main application. It is for this reason that CI is not cited as a party in the main application. They argue that this leave to intervene application must therefore be refused.

5] It is this leave to intervene that stands to be adjudicated.

The Background

6] The Union is a registered trade union in terms of the Labour Relations Act 66 of 1995. It was placed under administration in terms of an order dated 4 June 2020, at the instance and request of the Registrar². Apart from the original order that placed the Union in administration, another three orders have subsequently been granted.

7] In terms of the order of 4 June 2020, Ms TN Mashanda was appointed as the administrator of the Union and she was given wide and extensive powers in terms of that order. In effect, Ms Mashanda fully stepped into the shoes of the Union and the Union's national structures. As a result, the Union's national structures – in the form of its the National Office bearers and the National Executive Committee - were divested of all administration powers. These powers then vested in Ms Mashanda.

² It was placed under administration for, *inter alia*, failing to submit its audited financial statements for approximately four years.

8] On 14 May 2024, Molotsi AJ³ varied the original administration order and granted an extension of powers to the Administrator to include the following:

“3.1.7 The powers

- i) to revoke the appointments of any persons appointed to serve as the second applicant's designated Union trustees of the CEPPWAWU Development Trust by the second applicant's national executive committee on 25 July 2019.
- ii) in consultation with the Registrar of Labour Relations, to appoint any person he considers suitable as union trustees of CEPPWAWU Development Trust, provided that any person so appointed must be independent and accredited and/or registered with the relevant organisation; and
- iii) to revoke any appointed made in terms of (ii) above or any subsequent appointments and to appoint other persons to replace such appointees.
- iv) once the Union is no longer under administration, the powers to appoint Union trustees in accordance with the deed of trust of CEPPWAWU Development Trust will revert and vest to the National Executive Committee of the second respondent.”

9] The CEPPWAWU Development Trust (the Trust) was established as a vehicle to hold investments⁴ to the benefit of the Union. The Trust's sole beneficiary is, in fact, the Union.

10] In terms of the Deed of Trust there are seven trustees:

³ In the Labour Court

⁴ As at 28 February 2019 the value was R 1, 5 billion

- a) three are union trustees appointed by the Union (and now by Sono as appointed administrator);
- b) two Investco trustees appointed by the Board of Directors of the holding companies of the ventures established by the Trust. To date, CI is the sole venture established by the Trust and therefore CI appoints two trustees;
- c) two professional trustees from professional bodies and/or a business person appointed jointly at a sitting off the Trustees at a meeting.

11] According to Sono, the Trust has been dysfunctional since approximately 2011 because its Trustees fell below the minimum threshold of five, which resulted in inquorate meetings⁵. He states that, to date, this is still the position. He states that the appointment of the three Union trustees will enable it to operate “so that it can fulfil the role for which it was established by managing its asset portfolio for the ultimate benefit of the Union and its members” as the dysfunction of the Trust means CI effectively has a shareholder that is powerless to dictate the investment objectives of CI and, among other things, to influence the strategic direction of CI.

12] But Ms Mashanda’s powers to appoint, and revoke the appointment, of Union trustees was challenged in the application that served before Van Der Schyff J. I have already referred to the fact that CI was the nineteenth respondent in that application. Although the court set out the basis upon which it found that CI had *locus standi*, the applicants *in casu* argue that they have abandoned the relief upon which CI relies for its argument that its interest is established.

⁵ Which is denied by CI in its replying affidavit in the intervention application

13] The following are the portions of the order granted by Van Der Schyff J which are relevant to the present issue:

1. The following persons are declared to be duly appointed trustees to the CEPPWAWU Development Trust in accordance with the provisions of section 6(1) of the Trust Property Control Act 57 of 1988, read with the Trust Deed of the CEPPWAWU Development Trust, and the Labour Court Order granted on 4 June 2020 in case number: J289/18
 - 1.1 Thulisile Njapa-Mashanda, in terms of clause 5.3.1 of the Trust Deed
 - 1.2 Thabo Sindisa Kwinana, in terms of clause 5.3.1 of the Trust Deed
 - 1.3 Bongani Manzi, in terms of clause 5.3.1 of the Trust Deed
 - 1.4 Kgomoitso Ditsebe Moroka, in terms of clause 5.3.1 of the Trust Deed
 - 1.5 Lancelord Ndumiso Luthuli, in terms of clause 5.3.1 of the Trust Deed
2. The Master of the High Court is directed to appoint two professional trustees in terms of section 7 (1) of the Trust Property Control Act 57 of 1988 within 15 (fifteen) days of this Order being served on it. The Master of the High Court is directed to consult with representatives of the first applicant and the 19th respondent, and any other party it deems to have an interest in the appointment of the professional trustees, prior to the appointments being made;
3. The Master of the High Court is directed to authorise in writing, in terms of section 6(1) Trust Property Control Act 57 of 1988, and within seven (7) business days from the date of appointing the two professional trustees in terms of paragraph 2 of this Order, the persons declared to be duly appointed trustees of the CEPPWAWU Development Trust in paragraph 1 of this Order and the persons appointed as professional trustees of the CEPPWAWU Development Trust in terms of paragraph 2 of this Order, to act as Trustees of CEPPWAWU Development Trust;

4. The persons mentioned in paragraph 1 above and appointed in terms of paragraph 2 above are exempted from furnishing security to the Master of the High Court in terms of the Trust Property Control Act 57 of 1988, in accordance with the Trust Deed;
5. The first meeting of the trustees of the CEPPWAWU Development Trust must be held within ten (10) business days from receipt of the letters of authority from the Master issued in terms of paragraph 3 of this Order...
6. Each party is to pay its own costs incurred in relation to the main application. Fifty percent (50%) of the costs of suit of the counter application, including costs of senior and junior counsel, is to be paid by the first applicant."

14] On 23 August 2021, Van Der Schyff J granted CI leave to appeal on the basis that it had *locus standi*⁶. The leave to appeal was limited to paragraphs 1.1, 1.2, 1.3, paragraph 3 and paragraph 8 of her order. A petition filed by CI in the SCA in respect of paragraph 2 of the order was successful and the order granting leave to appeal is dated 12 November 2021.

15] The appeal is presently pending before the Supreme Court of Appeal.

16] On 7 August 2024, the present applicants filed a Notice to Abandon paragraphs 1.1, 1.2, and 1.3 of Van Der Schyff J's order. The appeal therefore remained extant in respect of paragraphs 2, 3 and 8 of her order.

17] On 7 February 2025, the applicants filed a Notice of Withdrawal of Opposition to paragraphs 2, 3, and 8 of the order.

⁶ See paragraph 3 supra

18] The applicants argue that, as a result of this, there is no *lis* that requires adjudication by the Supreme Court of Appeal and that the Master is free to issue the letters of Authority to the applicants three nominated trustees. However, the Master has yet to do so.

19] But, as stated, the issue is not quite as simple as this. It is common cause that the Administrator (presently Mr Sono), can only appoint the three trustees nominated “in consultation with” the Registrar. It is the Registrar’s argument in the main application that Mr Sono did not consult with him and that the main application was launched in an effort to side-step him.

20] Even though applicants did not join CI as a respondent to the main application, they served the application on it. In the Founding Affidavit the applicants state:

“[13] In paragraph 35 of the Founding Affidavit Sono disingenuously asserts that “with the Labour Court having ordered that CI neither has locus standi on the issue of the appointment of Union Trustees nor will its interest be prejudiced thereof (sic), CI will most likely approach this court to seek to intervene and oppose the application and hoping to maintain the status quo of the dysfunctionality of CDT.” Sono goes on to “implore this Honourable Court to discourage and not allow the abuse of its due processes for nefarious reasons. Any CI intervention and opposition will be exactly meddling herein.”

21] But CI argues that this view is misleading: the Labour Court was not concerned at all with the appointment of the Union’s trustees – its sole adjudicative function was to pronounce on the powers of the Administrator. This is not an issue with which CI

concerns itself, nor does it have the power to do so as it has no direct and substantial interest in that application⁷. In fact, it concedes and it argues that

“15.4 CI did not seek to intervene in those proceedings, and did not contend that it had *locus standi* to do so, but merely filed an affidavit as a person whose interests may be affected, in order that such interests may be considered by the Court before deciding whether or not to grant the order;

15.5 hence clause 2 of the order granted, held “*CI interest which the Court considered will not be prejudiced by the current application*.” (emphasis provided)

22] However, the issue of the legality of the appointments of the Union’s trustees is of concern to CI.

23] CI alleges in the interlocutory application that:

“It is this very interest in whether the Union Trustees are lawfully appointed (amongst other interests dealt with hereunder), that Judge van der Schyff held CI does indeed have. I am advised that the determination by Judge van der Schyff of this issue and the affirmation of CI’s interest in the legality of the appointments of Union designated Trustees, is final and binding on the basis of issue estoppel. This will be fully addressed in legal argument at the hearing of this CI application to intervene. This constitutes a direct and substantial interest CI has in the subject matter of the main application in which CI is seeking leave to intervene, which interest would be subverted and prejudiced by the Order sought by the second Applicant in the main application. The lack of merit of such application by Sono will be dealt with fully in the answering affidavit to be filed by CI once this Honourable Court has granted the joinder of CI as the Third Respondent in the main application.”

⁷ Which was ruled by the Labour Court

24] CI argues further that its direct and substantial interest extends to its rights and interests which stand to be adversely affected should appointments of trustees not be lawfully made, or whilst the appeal pending in the Supreme Court of Appeal has yet to be determined.

25] It argues that the issues in the appeal remain live issues, the withdrawal of some paragraphs of the order, and abandonment of others, notwithstanding. It argues that the appeal is not rendered moot simply because applicants are not opposing it and that until the order of Van Der Schyff J is upheld, substituted or amended by the Supreme Court of Appeal, the order, albeit suspended, remains valid – it is simply not enforceable by virtue of the pending appeal.

26] What is significant is that, by virtue of applicants' withdrawal from the appeal, it is clear that it takes no issue with the orders that flowed from the finding that CI has an interest in whether the Union trustees are lawfully appointed."

27] The reason for this according to CI is that:

"[7] As such the question of the validity of the appointment of Prof. de Koker as a professional trustee of the CEPPWAWU Development Trust , as ruled upon by the court a quo on a point of law, having interpreted the trust deed and section 6(1) of the Trust Property Control Act in this regard in order to arrive at its finding, still need to be finally determined and pronounced upon by the SCA, and the appeal thus remains very much alive and pending, until such time that the SCA ruled on the Appellant's appeal and has determined whether the Court a quo's Order is indeed to be set aside and substituted by the Amended Order as prayed for by the Appellant.

[8] Furthermore, depending on the outcome of the appeal in regard to the validity of the appointment of Prof. de Koker as trustee, the SCA will also have to rule on whether the process as set out in paragraphs 3 and 5 of the Amended Order sought by the Appellant, or the process as set out in original Order of the Court a quo, will have to be followed by the Master of the High Court and the parties concerned. The Appellant is pursuing the appeal to this end as well.”

The case law

28] Rule 12 states:

“Any person entitled to join as a plaintiff or liable to be joined as defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or a defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet.”

29] Our case law has crystalised the principles to be applied to joinder applications as the following:

a) the applicant must meet the direct and substantial interest test in order to succeed:

“[9] What constitutes a direct and substantial interest is the legal interest in the subject matter of the case which could be prejudicial affected by the order of the Court. This means that the applicant must show that it 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 intervention that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to relief.

[10] If the applicant shows that it has same right which is affected by the order issued, permission to intervene must be granted..."⁸

b) In *Nelson Mandela Metropolitan Municipality v Grayvenouw CC*⁹ the court stated:

"In addition, when, as in this matter, the applicants base their claim to intervene on a direct and substantial interest in the subject matter of the dispute, the court has no discretion: it must allow them to intervene because it should not proceed in the absence of parties having such legally recognized interests."

30] CI argues that, in addition to Rule 12, it can also be joined under the common law on grounds of convenience, equity, the saving of costs and the avoidance of multiplicity of actions.¹⁰

31] In this matter the issue is not whether CI has a say in who the Administrator appoints as trustees – that was conceded by Mr Wessels in argument - but the argument is that CI has an interest in the process by which the Union's trustees are appointed. The argument is further that CI has an interest in the legitimacy of the appointments.

32] CI argues that, in any event, the interest has already been decided by Van Der Schyff J and the re-argument of the issue amounts to no more than issue estoppel.

⁸ *SA Riding for the Disabled Association v Regional Land Claims Commissioner* 2017 (5) SA 1 (CC)

⁹ 2004 (20 SA 81 (SE) at para 9 and as quoted with approval in *SA Riding School (supra)*

¹⁰ *Ex parte Suderhavid (Pty) Ltd: In re Namibia Marine Resources (Pty) v Ferina (Pty) Ltd* 1993 (2) SA 737 (NM) at 741 E-F; *Morgan v Salisbury Municipality* 1935 AD 167 at 171

33] The applicants argue that the only issue before this court in the main application is the appointment of the three trustees nominated by the Union. They argue that this is not an issue that is the subject matter of the Supreme Court of Appeal – that appeal concerns the appointment of the professional trustee and that, as CI does not challenge his appointment, the appointment of the Union trustees will have no impact on that issue.

34] But in my view this argument is not correct: there are two independent trustees. They are appointed by the three Union trustees and CI's two appointed trustees. It is common cause that one of the two independent trustees has passed away. Thus, the five other trustees must still appoint the second independent trustee. Furthermore, the Trustees are together tasked with administering the Trust which owns the share in CI which is the investment arm of the Union. CI therefore has an interest in ensuring that the Union trustees are properly qualified and properly appointed. Its direct and substantial interest stems directly from the Trust Deed and proper administration of its assets all of which are administered by the appointed Trustees.

35] The Registrar has taken a point of non-joinder in the main application. According to the Registrar:

“[33] As mentioned by Mr Sono in his founding affidavit, the whole purpose of this application is to appoint trustees in order to operationalize CDT so that it may obtain funds from CI for the benefit of union members. As such, the Union and/or its members are the ultimate beneficial owners of the funds of CI yet CI has not been joined to the proceedings. It is quite clear that CI has a direct and substantial interest in the matter of trustees to the Union. Mr Sono might well argue that CI does not have a say in the appointment of Union Trustees but

should this be the case, it does not detract from CI's interest in who gets appointed as a trustee of CDT as CI would have to declare its dividends to CDT as managed by the relevant trustees.

[34] CI accordingly has a direct and substantial interest in who it will be handing funds over and should therefore have been joined to these proceedings.”

36] Furthermore, Van Der Schyff J has already ruled on the direct and substantial interest that CI has in the issue of the appointment of trustees. That order is subject to confirmation or variation by the SCA. It matters not that the appeal is unopposed – the SCA has yet to rule on the issue.

37] In my view, all of the above demonstrate CI's direct and substantial interest in the outcome of the main application. Given this, the interlocutory application must be granted.

Costs

38] Mr Wessels originally moved for a *de bonis propriis* order against Mr Sono. He, however, conceded in argument that there was insufficient evidence before court to show that Mr Sono was vexatious or his conduct of such a nature that it warrants censure from the court. He instead moved for costs on Scale C.

39] In my view, costs on Scale B are appropriate. The application is not so complex or the issues so involved that Scale C is warranted. The fact that the parties both briefed Senior Counsel also is simply demonstrative of the fact that the parties view the matter as one of importance. But that is simply one of the factors a court weights when determining costs.

ORDER:

1. CEPPWAWU Investments (Pty) Ltd, is granted leave to intervene, and is hereby joined, as third respondent in the above application ("Main Application")
2. The third respondent is granted leave to file its answering affidavit in the Main Application within 15 days of the grant of this order.
3. The costs of the joinder application are to be paid by the applicants in the main application, which costs shall include the costs consequent upon the employment of a senior counsel and are to be taxed in accordance with Scale B.



NEUKIRCHER J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment was prepared and authored by the judge whose name is reflected, and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 4 November 2025.

Appearances

For the appellant	:	Adv Wessels SC
Instructed by	:	Mendelow Jacobs Attorneys
For the respondent	:	Adv Sikhakhane SC, with him Adv Mndebele
Instructed by	:	KMNS Inc
Matter heard on	:	22 August 2025
Judgment date	:	4 November 2025