

REPUBLIC OF SOUTH AFRICA



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

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
	
19 November 2025	_____
DATE	SIGNATURE

CASE NUMBER: 2024/109954

In the EX PARTE matter of:

JACO NEL FAMILIE TRUST

APPLICANT

(TRUST NUMBER: IT2379/04)

Heard: 27 October 2025

Delivered: 19 November 2025

Headnote: Insolvency – Voluntary surrender – Trust – Requirements – Advantage to creditors – Solvent trust with no liabilities – Application brought by sole remaining trustee to terminate trust due to administrative difficulties – Whether voluntary surrender appropriate.

JUDGMENT

WINDELL J:

[1] This is an application brought by the sole remaining trustee of the Jaco Nel Familie Trust for the voluntary surrender of the trust's estate in terms of section 4 of the Insolvency Act 24 of 1936. The application was previously enrolled but removed due to defects in publication. It has now been re-enrolled following a fresh notice to creditors.

[2] The factual background can be summarised as follows. The trust originally had three trustees. One trustee has passed away and another has indicated that he no longer wishes to continue acting. The deponent is therefore the only remaining trustee. He states that he finds himself in a predicament because he cannot administer the trust alone and is unable to take decisions or perform the necessary functions without the participation of the other trustees. It is for this reason that he now seeks the surrender of the trust's estate.

[3] The founding affidavit makes it clear that the trust is dormant and that it has no liabilities. The applicant expressly states that the trust has no debts and no creditors. No creditor has come forward, and no outstanding obligation or liability is identified in the papers. The trust is solvent and holds sufficient funds to cover the costs associated with the application. The applicant further records that he paid R20 000 to the attorneys to cover administrative expenses and that the trust has adequate funds to finalise its affairs. He states that he wishes to sequester the trust so that he "does not have consequences

later on”, and that he does not want to face difficulties in future as the sole remaining trustee.

[4] It is therefore common cause on the papers that the trust is not insolvent. The object of the application is not to address financial distress but to bring the trust to an end because the remaining trustee does not wish to continue administering it on his own. The applicant appears to proceed from the incorrect premise that sequestration is required where a trust has only one trustee or encounters administrative difficulties. That understanding is mistaken.

[5] Voluntary surrender is a statutory remedy intended to facilitate the orderly administration and distribution of an insolvent estate for the benefit of creditors. Sections 3 to 7 of the Insolvency Act set out the jurisdictional requirements. These include that the estate must be insolvent and that surrender will be to the advantage of creditors. In terms of section 6(1), the court must be satisfied, at minimum, that creditors will derive some benefit from the sequestration. The requirement of advantage to creditors is central and cannot be waived.

[6] In *Ex parte Hayes*,¹ the Court held that even in voluntary surrender proceedings, the court must be satisfied that sequestration will yield a real and tangible benefit to creditors, and that surrender cannot be granted merely because a debtor finds it convenient. As remarked by Van Den Heever J, if it is not complied with the requirements of the Insolvency Act would only amount ‘wasem’ (vapor). In *Ex parte Ogunlaja and*

¹ 1970 (4) SA 94 (N.K.A) at 96H–97C.

Others,² the Court reiterated that voluntary surrender cannot be used as a mechanism to escape administrative difficulties or to bring an entity to an end in circumstances where there is no insolvency and no advantage to creditors.

[7] The applicant relies on *Ex parte Deemter*³ and *Absa Bank Ltd v Ackerman*.⁴ Those cases, however, do not assist him. In both matters the estates were indebted, and the courts were satisfied that despite the possibility that the assets exceeded liabilities, the statutory requirement of advantage to creditors was met. The reasoning in those cases does not extend to a situation such as the present, where the estate is wholly solvent and where no creditor exists who could benefit from sequestration.

[8] The purpose of voluntary surrender is confined to the protection and advantage of creditors. It is not designed to dissolve a trust or to relieve a trustee of administrative burdens. The sequestration procedure under the Act is not available to persons or entities seeking an expedient method of bringing their legal affairs to a close. Where a trust faces administrative or governance challenges, the proper remedies lie within the framework of the Trust Property Control Act 57 of 1988. The Master may appoint replacement trustees, or a trustee may approach the High Court for directions, removal, or discharge. None of these avenues require or justify the sequestration of a solvent trust.

[9] In this matter, the statutory requirements for voluntary surrender have not been satisfied. The trust is solvent, there are no creditors, and no advantage to creditors has been shown. The application seeks to employ the machinery of the Insolvency Act for a

² 2011 (2) JOL 27029 paras 14–16.

³ 1962 (2) SA 228 (E.C.D)

⁴ Case no. 61678/2013.

purpose for which it was not intended. A court's discretion to grant voluntary surrender arises only once the jurisdictional requirements in the Act have been met. Honesty and full disclosure by the applicant, while relevant, cannot substitute for the statutory prerequisites.

[10] For these reasons, the applicant has not established a basis for the voluntary surrender of the trust's estate as contemplated in section 6(1) of the Insolvency Act. The application falls to be dismissed.

[11] In the circumstances, the following order is made:

1. The application is dismissed.



L WINDELL

Judge of the High Court

Gauteng Division, Johannesburg

Delivered: This judgement 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 19 November 2025.

Appearances

For the applicant:

Mr H. Bucksteg

Instructed by:

G.D. Ficq Attorneys

Date of Hearing:

27 October 2025

(Heads of argument delivered on 7 November 2025)

Date of Judgment:

19 November 2025