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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 200576/2025

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

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 19 NOVEMBER 2025

SIGNATURE:

In the matter between:

TSA MAMELODI OILS (PTY) LTD

First Applicant

TIYANI VAVANUNA MBALATI N.O.

Second Applicant

BANGISITA BERNARD MKHONDO N.O.

Third Applicant

GLORIA GWEBU N.O.

Fourth Applicant

and

MANDI OIL (PTY) LTD

First Respondent

GANDHI PII MOGOLEGO

Second Respondent

TOTAL ENERGIES MARKETING SOUTH AFRICA (PTY) LTD Third Respondent

JUDGMENT

LABUSCHAGNE J

- [1] The applicants applied for urgent relief pertaining to a filling station in Mamelodi. The first applicant is the owner of the land on which a filling station has been operated for 16 years by the first respondent and its predecessors in terms of lease agreements.
- [2] The second, third and fourth applicants are trustees of a family trust (the Mbalati Trust) which entered into a lease agreement with the first respondent, leasing the filling station and certain outbuildings to the first respondent. This lease has run from 2019 to November 2024 and expired (according to the applicants) on 01 November 2024. The respondents contend that it has extended the lease to 2029. This is disputed by the applicants. There are pending eviction proceedings in terms of which the applicants seek to evict the respondents for, inter alia, failure to pay rent.
- [3] The applicants contend in argument that one of the suspensive conditions of the lease was not complied with and the lease is consequently invalid. The suspensive condition relates to the second respondent binding himself as surety for the liabilities of the first respondent. This is not an issue before me but before the court hearing the eviction application.
- [4] Attached to the application was a letter of 08 October 2025, in terms of which the first respondent confirmed that it would not be renewing the lease

beyond 2029 and intends selling the goodwill of the business it had built up over 16 years for R18,5 million. The respondents offered the applicants a right of first refusal to purchase the goodwill and gave them 90 days within which to respond.

- [5] In an answering letter the applicants retorted that the goodwill was not attached to the respondents but belongs to the family trust as lessor.
- [6] The applicants consequently seek urgent relief restraining the respondents from representing that they own the goodwill, in their attempts to sell the business. The first respondent is intent on selling the goodwill for its own benefit. The respondents argue that the 90 days given the applicants to purchase the goodwill has not expired. If this is an indication that the respondents will only thereafter offer the business and its goodwill to outside parties, then the applicants would not be able to be in court timeously to interdict such conduct in the normal course. I am therefore satisfied that the matter is urgent.
- [7] The respondents have raised a number of points *in limine*. These include urgency. Urgency is not a point in limine. It is an essential part of the onus of an applicant in urgent court proceedings. I have dealt with urgency. The second point *in limine* is that the first applicant lacks *locus standi*. It is merely the owner of the property and is not a party to the lease agreement. It however does not seek any relief either. As owner of the land its proprietary rights are implicated by a threatened sale of the business by the respondents. It therefore has locus standi as an interested party.

[8] The respondents thirdly contend that the Mbalati Family Trust is not properly before court. It has three trustees but the resolution pertaining to the institution of the application was signed by only two of the trustees. The fourth applicant (who is the third trustee) did not sign it, although she is cited as a party to the court proceedings. She did file a confirmatory affidavit supporting the application.

[9] The fourth point *in limine* is that the applicants effectively seek final relief but have not pleaded all the elements of a final interdict. The respondents contend that the applicants have not established a clear right, that irreparable harm is reasonably apprehended and that they do not have an alternative remedy.

THE FACTS

[10] From the papers it is apparent that the respondents believe that the goodwill of the filling station vests in the first respondent and intend realising that goodwill for its benefit.

[11] The Mbalati Family Trust concluded a lease agreement with the first respondent on 09 August 2019. In terms thereof, the first respondent leased the premises where the filling was situated on Erf 1[...], Mamelodi, including the building used as staff facilities. The premises would only be used for the sale of petrol, diesel, paraffin, sale of other petroleum products and for purposes ancillary to the service/filling station business, including a convenience store.

[12] The lease period run out on 01 November 2024. There is a dispute on whether the lease was extended or not. The applicants contend that it was not extended, or validly extended, whilst the respondents contend that it was extended until 2029.

[13] The first applicant sold the immovable property by public auction on 13 March 2024 and the buyer is avoiding taking transfer of the immovable property, whilst the respondents remain in possession.

[14] On 08 October 2025 the attorney for the first respondent wrote a letter paragraph 2 of which reads:

“2. Our client further instructs us that it does not intend to renew the lease agreement beyond 2029 and it therefore intends to sell its positive brand reputation and goodwill for an amount R18 500 000.00 (eighteen million five hundred thousand Rand) to any suitable buyer, however your client is afforded the right of first option to purchase the business together with its intangible asset, being its goodwill, within a period of 90 days (ninety days) of receipt of this notice.”

[15] In a letter in response to the aforesaid, the attorney for the applicants advised that the position of the applicants is that the lease was invalid and that no renewal could therefore have taken place. In response to the offer of the sale of goodwill, the following is stated:

“8. *In light of our client’s application (for eviction - my insertion) and the relief sought herein, concerning as your client puts it, ‘its positive brand reputation and goodwill’, this letter serves to inform your client that the Total reputation and goodwill belongs to our client and cannot be sold by your client, as our client is in the process of selling it. We therefore have instructions to demand confirmation from your client that it will immediately refrain from marketing the brand reputation and goodwill and that your client will not sell the brand reputation and goodwill, at least pending the final adjudication of our client’s application and the relief sought therein.*”

[16] In **Slims (Pty) Ltd and Another v Morris NO** 1988 (1) SA 715 (A), the Appellate Division (as it then was) dealt with a lessee who, upon termination of a lease, only retransferred the property, but not a liquor licence. The question arose to whom the goodwill attaches. The Court *a quo* had held that the liquor licence has vested in the insolvent estate of the lessee. The Appellate Division found that the liquor licence was essential to the goodwill of the business. At 728 E-F the following is stated in this regard:

“In Receiver of Revenue Cape v Cavanah supra Innes ACJ in fine at p 465 that:

‘Insofar as a licenced house is concerned, the connection between the licence and the goodwill is so close that the cases in which they are separately dealt with must be few indeed. And it was the circumstances

which probably led to Dr Greer's candid admission that there was no distinction between them ...

... Take away the license and the goodwill perishes, because the business of the Phoenix Hotel as a licensed hotel cannot be carried on at all."

[17] At 279 A the Appellate Division stated per Nicholas AJA:

*"The ownership of the goodwill, an inseparable part of which is the privilege of selling liquor, is a **jus in re**, which exists independently of any **jus in personam** constituted by the lease.*

The trustee has restored to the lessor only the premises. Until he redelivers also the goodwill (which requires that he takes the steps necessary to retransfer the liquor license), the Phoenix Hotel will not have the enjoyment of the goodwill attached to a licensed hotel, and will be deprived of that asset.

(Cf. Bosman, Powis and Company v Norton (supra) at 207)."

[18] The goodwill attaches to the premises, and those premises need to be restored at the termination of the lease. By parity of reasoning that includes the restoration of an empowering certificate to operate a filling station in terms of the Minerals Resources and Petroleum Products Act

[19] I was referred to **Rissik Street One Stop CC t/a Rissik Street Engen and Another v Engen Petroleum Ltd** 2024 (4) SA 447 (CC) as countervailing authority. I have read the judgment, but it is not on point. In that matter Engen had no claim to the goodwill but might have received the benefit of it in a sale by evicting Rissik Street One Stop. This was found to be inequitable, and Rissik Street One Stop was permitted to remain in possession of the filling station pending a sale so that it can realise the goodwill it had built up over the years. In the present matter the question is different.

[20] My conclusion is that goodwill vests in the landlord, the Mbalati Trust, and not the first respondent. To this extent, the applicants had cause for concern.

[21] However, a point *in limine* was taken that the landlord (the family trust) was not properly before court and could therefore not assert the rights. The second, third and fourth applicants are the trustees of the family trust and the trust is the lessor in terms of the written lease agreement with the first respondent.

[22] The respondents sought information in terms of Rule 35(12) and obtained a copy of a resolution pertaining to the current proceedings passed by the majority of the trustees.

[23] The document is headed “special resolution” and reads as follows:

“It is hereby agreed, on the 15th day of September 2025, by the majority of the trustees of:

Mbalati Family Trust

(Registration Number IT208/11) that:

- 1. Any action/application deemed necessary may be instituted against Madi Oil (Pty) Ltd and its directors on behalf of the Mbalati Family Trust.*
- 2. The Mbalati Family Trust authorises Tiyani Vavanuna Mbalati to act As the duly authorised agent and fully authorised representative, and that he may sign any documentation on behalf of the Mbalati Family Trust concerning any instructions given to Jordaan & Smit Attorneys in respect of any legal matter herein.*

signed _____

TV MBALATI

Trustee

signed _____

BB MKHONDO

Trustee”

[24] From the aforesaid it is apparent that two of the three trustees have signed. In terms of the Trust Deed, the founder was required to be one of the decision makers until he died. He passed away in 2012. The difficulty however is the absence of the signature of the third trustee on the resolution.

[25] The applicants' counsel contends that the Trust Deed of the family trust permits resolutions to be taken by majority. This is in accordance with clause 8.2 of the Trust Deed. The challenge however does not relate to the validity of the vote but to the validity of the resolution to institute the current proceedings on behalf of the family trust. The first is an internal matter. The second external.

[26] It bears noting that the first applicant's only involvement in these proceedings is as owner of the land, but not as lessor. It would therefore not have the entitlement to claim the goodwill that vests in the family trust.

[27] Counsel for the respondent relied on the SCA case below in support of his contention that the trust is not properly before court.

[28] In **Shepstone and Wylie Attorneys v De Witt N.O. and Another** 2023 (6) SA 419 (SCA) the following is stated:

*“[22] In **Steyn and Others NNO v Blockpave (Pty) Ltd** 2011 (3) SA 528 (FB) (Blockpave), the court succinctly drew the distinction between internal and external business with outsiders. The court held that although trustees may disagree internally on a matter, they are prohibited from disagreeing externally. Internal matters may be debated and put to a vote, thereafter the voice of the majority will prevail. However, in so far as the Trust is required to deal with external business all trustees are required to participate in the decision-making.*

[23] In **Coetzee v Peet Smit Trust en Andere** 2003 (5) SA 674 (T), the court also held that unless the trust deed contained provisions to the contrary, there was legally no reason to follow a different rule. In the case of trusts, joint and unanimous conduct in the alienation, handing and management of trust assets was a prerequisite.”

[29] At paragraph [25] the following was stated:

“[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 NO 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. ... 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 aforesaid 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.”

[30] If this were the current position, the Mbalati Trust would not properly be before court. However, the SCA decision in Shepstone and Wylie was overturned by the Constitutional Court in August 2025. The distinction between internal decisions and outward execution thereof was found to be invalid. By contrast, the question was whether the trust deed required unanimity or whether it permitted decisions to be taken by a majority.

[31] In **Shepstone and Wylie Attorneys v Abraham Johannes de Witt NO and other [2025] ZACC 14 (1 August 2025)** the Constitutional Court stated per Tolmay AJ from par [53]:

“[53] ... In terms of Parker and Nieuwoudt, 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.

[54] *The Supreme Court of Appeal introduced an unwarranted distinction between decisions of trustees in relation to internal and external matters, and in so doing placed an incorrect restriction on the proposition that the requirement of joint action can be modified by a trust deed. The Supreme Court of Appeal also misconstrued provisions which are routinely encountered in trust deeds, even if precise formulations vary.*

[55] *The Supreme Court of Appeal majority conflated two distinct actions: the signing of the deed of surety by the two trustees, and a written (round robin) resolution authorising the signing of the deed of suretyship. The majority stated that the resolution of the two trustees at the 25 May 2013 trustee meeting and the signing of the deed of surety were — ‘contrary to the provisions of clause 13.4 of the trust deed, which provides that a written resolution signed by all trustees for the time being or their respective alternates or proxies shall be as effective as a resolution taken at a meeting of trustees.’*

[56] *Contrary to what the Supreme Court of Appeal majority said, the resolution to sign the deed of surety was not a written resolution in terms of clause 13.4. It was a resolution taken at a quorate meeting of trustees in terms of clause 13.1. The resultant signing of the deed of surety by the two trustees was not a resolution. It was merely the*

execution of the deed following the resolution. Clause 14 of the Trust Deed provides that such execution can be done by “at least two trustees”. That the resolution was not a clause 13.4 resolution is clear from the fact that the resolution is recorded in the minutes of the 25 May 2013 meeting. Honoré’s South African Law of Trusts 82 states in this regard that Blockpave — ‘sought to draw a distinction between trustee decisions (as reflected in, for example, the minutes of trustee meetings) and formal ‘resolutions’ signed by the trustees. The judgment creates the impression that only the latter would bind a trust. However, there is no rule of trust administration that requires such a degree of formality’.”

[32] In these circumstances, the resolution by two trustees was a valid resolution at a quorate meeting and the written and signed resolution is consistent with clause 8.2 of the trust deed. The institution of the current proceedings is in terms of a valid resolution of the family trust.

[33] This matter demonstrates a truism in advocacy, and that is to check whether the cases relied upon have not been overruled. The exhilaration of finding support from the SCA may cloud the urgency of the need to check whether the case is still good law. It must nevertheless be done in all matters, even in urgent matters.

[34] As far as the last argument in limine is concerned, the founding papers do not expressly deal with each element of an interdict. However, the facts of

this matter are self-evident and each element is covered from par 45-51 of the founding affidavit.

[35] The Mbalati Trust as owner of the goodwill of the filling station has a right to protect it against misrepresentation and appropriation. If interdictory relief is not granted, the respondents will continue asserting their claim to the goodwill, thereby hampering the applicants' attempts to provide vacant possession to the buyer who is waiting in the proverbial wings. The delay in obtaining redress creates may scupper the concluded sale at auction of the premises. This constitutes a reasonable apprehension of irreparable harm. And the applicants cannot prevent the continuation of the respondents' claims to the goodwill other than by obtaining urgent relief. Despite the shortcomings in formulation, the facts cover the essential features of interdictory relief.

[36] In the premises the following order is made:

1. The matter is found to be urgent for purposes of Rule 6(12).
2. The first and second respondents are restrained from representing to the public or third parties that the first respondent and/or second respondent are the holders, alternatively the owners of the positive brand reputation and goodwill attached to the business known as Totalenergies Mamelodi East (previously known as Total Mamelodi East).

3. The costs of the application are to be paid by the respondents jointly and severally, the one paying, the other to be absolved, on Scale C.

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

APPEARANCES:

COUNSEL FOR APPLICANT : ADV KRUGER SC

INSTRUSCTED BY : JORDAAN & SMITH INC

COUNSEL FOR RESPONDENT : ADV KWINDA

INSTRUCTSED BY : MAGOGELO ATTORNEYS