



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 122672/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 25 NOVEMBER 2025

SIGNATURE

In the matter between:

FREDERIK JOHANNES VAN AS

First Applicant

FREDERIK JOHANNES VAN AS N.O.

Second Applicant

FERDINAND SMARTENRYK DEVENIER N.O

Third Applicant

OGOERION CONSTRUCTION CC

Fourth Applicant

and

THE MASTER OF HIGH COURT, PRETORIA

First Respondent

WILLEM JACOBUS VENTER N.O.

Second Respondent

SYBRAND ALBERTUS TINTINGER N.O.

Third Respondent

PETER CLAUDE PAYNE N.O.

Fourth Respondent

GETRUIDA SUSANNA JACOBS N.O.	Fifth Respondent
JAN DIEDERICK POTGIETER N.O.	Sixth Respondent
DAWID MATTHEE N.O.	Seventh Respondent
STAR STONE CRUSHERS CC	Eighth Respondent
KAREL JOHANNES VAN AS N.O.	Ninth Respondent
CHRISTINE CATHERINE VAN AS N.O.	Tenth Respondent
GETRUIDA SUSANNA JACOBS	Eleventh Respondent
KAREL JOHANEES VAN AS	Twelfth Respondent
DAWID MATTHEE	Thirteenth Respondent
JAN DIEDERICK POTGIETER	Fourteenth Respondent
FERDINAND SMARTENRYK DEVENIER	Fifteenth Respondent
DANIAL BARNARD	Sixteenth Respondent

Summary: *Trust Property Control Act 57 of 1988 – Appointment of trustees by the Master pursuant to an order of court – Court order contemplating independent trustees to be appointed – determined that court order superseded the provisions of the trust deed – Master obliged to follow court order. Secondary issue – whether appointment by Master subject to determination of obligation to furnish security – Found that, in issuing letters of authority, Master has exempted independent trustees from furnishing security*

ORDER

Part B of the applicants' application dated 25 October 2024 is dismissed with costs.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 25 November 2025.

DAVIS, J

Introduction

[1] On 27 March 2024, as part of the adjudication of a family feud spanning many years, Kruger AJ directed that the Master nominate and appoint three independent trustees for the Deelkraal Behuisings Trust (IT 4808/08) (the Trust).

[2] The Master complied with the court order and issued letters of authority on 21 October 2024 to the second, third and fourth respondents to the current application.

[3] The applicants now seek the review and setting aside of the above nominations and appointments. The basis of the attack is that the terms of the

trust deed, requiring nominations of trustees by “groups” of beneficiaries, were ignored by the Master, and that this was done contrary to the provisions of section 7(1) of the Trust Property Control Act¹ (the Act).

[4] As secondary dispute, the applicants bemoan the fact that the Master had issued letters of authority to the new trustees without requiring them to furnish security.

Brief background

[5] The trust was created in 2008. It owns various adjoining portions of immovable properties in the Northwest Province. The Deelkraal Estate, comprising some 400 houses, has been established on the immovable properties. The houses are leased to the public and produces a sizable income

[6] The beneficiaries of the Trust are the Sebenga Trust, the Rucinda Trust and a close corporation Star Stone Crushers CC. Various members of the extended and related Van As family were either trustees of the Trust or representatives of the beneficiaries.

[7] From the rental income, the Trust pays its creditors, its employees and makes distributions to the beneficiaries. The management of the Trust and the distribution of income became a bone of contention between the various parties, resulting in extensive and acrimonious litigation in this court. This included interdictory and contempt of court proceedings.

[8] I need not, for purposes of this judgment, elaborate further on the history of the disputes between the trustees and the beneficiaries respectively. This has

¹ 59 of 1988. Section 7(1) reads as follows: “If the office of trustee cannot be filled or becomes vacant, the Master shall, in the absence of any provision in the trust deed, after consultation with so many interested parties as he may deem necessary, appoint any person as trustee”.

already been done in previous judgments, notably that of Kruger AJ, referred to above.

[9] The conclusion reached by Kruger AJ regarding the issue of trusteeship, was the following: “[56] *Both Van As and Mrs Jacobs have indicated that they are prepared to resign as trustees, if the other were to leave office. Both the main application and the counterapplication seek the removal of the present trustees. It is necessary to regularize the affairs of the Deelkraal Trust. The appointment of independent trustees by the Master of the High Court should achieve that*” (my emphasis).

[10] The order granted by Kruger AJ, was the following:

- “1. *It is declared that the first respondent and the second respondent in their representative capacity as trustees of the Deelkraal Behuisings Trust (IT 4808/08) are in contempt of the court order issued by Retief AJ on 6 May 2019.*
2. *The first and second respondents are sentenced to three (3) months imprisonment, suspended for a period of five (5) years on the condition that they are not found guilty of contempt of court in that period.*
3. *The first applicant and the first and second respondents are removed as trustees of the Deelkraal Behuisings Trust (IT 4808/08).*
4. *The Master of the High Court is directed to nominate and appoint three independent trustees for the Deelkraal*

Behuisings Trust (IT 4808/08) in the stead of the first applicant and the first and second respondents.

5. *The costs of the application shall be borne on the scale as between attorney and client by the Deelkraal Behuisings Trust (IT 4808/08)".*

[11] Pursuant to the order, the following took place: on 17 May 2024, Mr Bernhard van der Hoven, the legal representative for the 5th, 7th, 11th and 13th respondents, addressed a letter to the legal representative of the 8th, 9th, 10th and 12th respondents, Mr Le Grange, in which he suggested that either the Fiduciary Institute of South Africa ("FISA"), alternatively the Institute of Chartered Accountants be approached to nominate independent trustees for appointment.

[12] On 24 May 2024, Mr Le Grange addressed an email to Mr van der Hoven in which he stated that the 8th, 9th, 10th and 12th respondents, are not opposed to the idea of approaching the FISA, alternatively, the Institute of Chartered Accountants to nominate independent trustees.

[13] Mr Le Grange further suggested that the two respective sets of respondents (acting on behalf of the beneficiaries of the Trust) compile a list of suitably qualified independent trustees.

[14] On 04 June 2024, Mr van der Hoven called Mr Le Grange and suggested that a letter be addressed to the FISA to be circulated among their members to determine who, if anyone, would be willing to accept the nomination to act as independent trustees of the Trust. Mr Le Grange had no objections thereto and this was done.

[15] On 04 July 2024, Mr van der Hoven contacted Mr Le Grange and indicated that he could not find anyone willing to accept the nomination acting as an independent trustee of the Trust. Mr Le Grange informed him that he would provide him with the contact details of possible nominations to Mr van der Hoven to consider.

[16] On 05 July 2024, Mr Le Grange provided Mr van der Hoven with the contact details of the 2nd, 3rd and 4th respondents.

[17] On the same day, Mr van der Hoven addressed an email to Mr Le Grange in which he indicated that it was his instructions to agree to the replacement of the former trustees of the Trust with the 2nd, 3rd and 4th respondents.

[18] Consequently, Mr Le Grange addressed a letter to the Master with all the required documentation for the former trustees of the Trust to be removed and for the appointment of the 2nd, 3rd and 4th respondents.

[19] On 22 August 2024 the Master addressed a letter to Mr Le Grange's offices in which he requested the following: *"In this regard we hereby request contact details of the Deelkraal Behuisings Trust beneficiaries so that we can be able to request a nomination Please note that the nominated individual must be willing and able to accept the responsibilities of trusteeship"*.

[20] On 27 august 2024 Mr Le Grange addressed an email to Mr van der Hoven, attaching the Master's letter of 22 August 2024, in which he stated that *"you will note that the Master requested that each Group, as defined in the trust deed, to nominate two persons to act as trustees, from whom the Master will choose one from each group, totaling three trustees"*.

[21] It is evident that a reference to “Group” was a typing error, and should have been “beneficiaries”, as stated in the Master’s letter. The applicants were clearly well aware that the reference to “Group” was incorrect, as they were in possession of the Master’s letter and, in paragraph 153 of the founding affidavit, stated that *“Each beneficiary of the DBT was accordingly requested to nominate two individuals and the Master would then choose one trustee for each”*.

[22] The beneficiaries (Sebenza Trust, Rucinda Trust and Star Stone Crushers CC), having already agreed to nominate the 2nd, 3rd and 4th respondents, compiled resolutions to that effect. The resolutions compiled and signed by the 5th, 7th, 11th and 13th respondents corresponded therewith and read as follows (also nominating the 2nd, 3rd and 4th respondents):

“And whereas as the Master of the High Court Required the beneficiaries of the Deelkraal Behuisingstrust to nominate substituting trustees;

And whereas the beneficiaries of the Deelkraal behuisingstrust are ad idem as to the identity of substituting trustees.

Now therefore it is resolved as follows:

The following persons are nominated to serve as trustees of the Deelkraal Behuisingstrust:-

Willem Jacobus Venter

Sybrandt Albertus Tintinger

Peter Claude Payne”.

[23] The 8th respondent compiled a similar resolution.

[24] It is therefore evident that all the beneficiaries of the Trust nominated the 2nd, 3rd and 4th respondents to replace the former trustees. The Master, having made enquiries from the beneficiaries, appointed these respondents as trustees, in compliance with the order of Kruger AJ.

The applicants' subsequent attack on the appointment of the new trustees

[25] Clauses 5.1 and 5.2 of the trust deed provide for three "groups" of beneficiaries. Each "group" is represented by a "group representative". Clause 5.3 provide for the manner in which the groups nominate successive representatives for the respective groups from time to time.

[26] Clause 5.4.1 provides as follows (my translation): *"Each group representative is entitled to appoint ONE trustee, with the understanding that where a group has more than 45% interest (in the Trust), such a group is also entitled to remove a trustee from time to time and appoint another in his (or her) stead"*.

[27] None of the groups had more than 45 "interest" in the Trust at any relevant time.

[28] The applicants' complaints are twofold: firstly, the Master did not consider any group representative for appointment as a trustee and secondly, the Master paid no heed to any nomination put forward by the group representatives, but had regard to the representations of the beneficiaries themselves, through Messrs Van der Hoven and Le Grange, as indicated above.

[29] The applicants contend that the Master, in acting as aforementioned, breached the provisions of section 7(1) of the Act. The corollary of this argument is that the order of Kruger AJ had not and could not oust the application of said section 7(1).

Evaluation

[30] It is clear that section 7(1) contemplates the occurrence of a vacancy in the position of a trustee in two circumstances. The first is where the vacancy “cannot be filled”. This might be, for instance, where there is no-one available from a pool of trustees dictated by a trust deed. The second circumstance is in the event of an ordinary vacancy, say as a result of the passing or resignation of a trustee.

[31] In both the above two circumstances, section 7(1) dictates that the Master shall appoint a replacement trustee. Such replacement would firstly have to be done in accordance with the provision of the trust deed (“instrument”) or, secondly, if the trust deed does not contain provisions about who may or should be a replacement trustee, then the Master may only appoint such a trustee “*after consultation with so many interested parties as he may deem necessary*”.

[32] The first question to be asked, is whether Kruger AJ contemplated that, pursuant to his order, the Master should apply the provisions of the trust deed? In the circumstances of this case, that would result in the appointment of trustees nominated by the group representatives of the three “groups” defined in the trust deed.

[33] The result of the above would be that the warring parties, being groups of beneficiaries who had been at each others’ throats about how the Trust should be run by trustees nominated by them and about how distributions should be made by those trustees, would be right back where they started before litigation ensued. Even if new trustees may were to be nominated, that does not take away the fact that history has shown that, despite the fiduciary duties of the trustees, the “groupings” brought about by the structure of the trust deed and the Trust’s beneficiaries, constantly lead to trustees being partisan. The proposition put

forward by the applicants would therefore undermine the very solution determined by Kruger AJ.

[34] It is further trite that judgments and orders, like other legal instruments must be interpreted with due regard to the language used, the context in which it is used and the purpose of the impugned clause or provision. The evaluation of these concepts should furthermore not be done in a mechanical fashion. Our courts have held that “*it is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitutes the enterprise by recourse to which a coherent and salient interpretation is determined*”².

[35] The interpretational starting point is therefore the words used in the order under consideration. The words used by Kruger AJ were “independent trustees”. He further indicated that these trustees should be in the stead of the three (partisan) trustees previously nominated by the three group representatives at the time. When these words are read with the context of the judgment in which they were used, they could only mean that Kruger AJ contemplated that the Master should appoint trustees other than those nominated by the groups. This would in turn mean that the court ordered the Master not to follow provisions of the trust deed.

[36] The above circumstances are exactly those expressly contemplated in section 6(1) of the Act. This section provides as follows: “*Any person whose appointment as trustee in terms of a trust instrument, section 7 or a court order, ... shall act in that capacity only if authorized thereto in writing by the Master*”.

² *Capitec Bank Holdings Ltd v Coral Lagoon Investments 194 (Pty) Ltd* 2022 (1) SA 100 (SCA) per 26, with reference to *Natal Joint Municipal Pension Fund v Endumeni* 2012 (4) SA 593 (SCA) par 18.

[37] This section therefore contemplates three distinct manners of appointment of a trustee: 1) in terms of a trust deed, 2) in terms of section 7 (as discussed above) or 3) in terms of a court order. In respect of all three manners of appointment, it only takes effect once the Master issues a letter of authority to such a trustee or trustees.

[38] The use of the word or denotes that the three possibilities are distinct alternatives to each other. In the present matter, the latter of the three possibilities found application. As a separate and distinct alternative manner of appointment, a court order can therefore, as it did in this case, validly give directions to the Master which may be contrary to the terms of a trust deed and which would take the matter outside the realm of section 7(1).

[39] If that is the case, the applicants then argued as a further string to their bow, that section 6 finds no application as the appointment of the new trustees contemplated in that section was not done “by the court”, but by the Master. This argument is mere wordplay. Section 6 provides for an “*appointment as trustee in terms of ... a court order*”. The nomination and appointment by the Master was clearly “in terms of a court order”. That is the only manner in which the direction by Kruger AJ can properly and purposely be interpreted.

[40] I therefore find that the applicants’ attack on the appointment of the new trustees must fail.

[41] By way of yet a further attack, the applicants argued that only trustees appointed in terms of the provisions of the trust deed are exempted from furnishing security. In all other instances, such a trustee is obliged to furnish security.

[42] For purposes of this argument, the applicants rely on section 6(2) of the Act, which provides as follows: “*The Master does not grant authority to the trustees in terms of this section, unless – (a) he has furnished security to the satisfaction of the Master ... or (b) he has been exempted from furnishing security by a court or by the Master under subsection (3)(a) or, subject to the provisions of subsection 3(d), in terms of a trust instrument*”.

[43] In this case, the court has not exempted the new trustees from furnishing security and the applicants allege that neither has the Master done so. The enabling provision for the Master to grant such exemption is Section 6(3)(a), which provides that “*the Master may, if in his opinion there are sound reasons to do so – (a) whether or not security is required by the trust instrument (except a court order) dispense with security by a trustees*”.

[44] The simple fact of the matter in this case, is that the Master “does not grant authority” to trustees unless security has been either required and furnished, or dispensed with. In this case, the new trustees had tendered security (despite them being either attorneys or persons in the employee of a corporation which performs trustees work regularly). The Master has however not insisted on this tender being fulfilled, but has issued letters of authority without demanding such security. The only logical conclusion is that the Master has dispensed with security.

[45] The applicants bemoan the fact that there was “no proof” of such dispensing and neither has the Master confirmed it. This complaint must be viewed against the backdrop of the applicants’ notice of motion. Therein not a word was said about the issue of security or any decision to dispense therewith. It is only in a single paragraph of the 219 paragraphs comprising the applicants’ founding affidavit that one finds a reference to the issue of security. Even then, the issue was not raised as a basis for setting aside the appointment of the new

trustees, but only on the basis that there was “no indication” that the said trustees had been exempted and, if they had, the deponent found it “incomprehensible”. In these circumstances, I find that this issue has insufficiently been “pleaded” as a cause of action to warrant a setting aside of the appointment of the new trustees.

Conclusion

[46] I find that Kruger AJ had, by his order, intended that the Master nominate and appoint independent trustees and that the Master was not bound by nominations of the defined “groups” of beneficiaries. The independent trustees appointed, in any event appeared to have the blessing of the beneficiaries, albeit not by way of their “groupings”. In acting in this fashion, the Master had not only complied with a court order, but the appointments were in accordance with section 6(1) of the act. I further conclude that such trustees had been exempted from furnishing security, when the Master had issued their letters of authority.

Costs

[47] I find no reason to depart from the customary rule that costs should follow the success or failure of an application or action.

Order

[48] In the premises, an order is made in the following terms:

Part B of the applicants’ application dated 25 October 2024 is dismissed with costs.


N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 08 October 2025

Judgment delivered: 25 November 2025

APPEARANCES:

For the Applicants:

Attorney for the Applicants:

Adv R Grundlingh
Scheepers & Aucamp
Attorneys, Potchefstroom.
c/o Alers van Aardt Bester
Inc., Centurion

For the 8th, 9th 10th & 12th Respondents:

Attorney for the 8th, 9th 10th & 12th Respondents:

Adv A Vorster
Jaco le Grange Attorneys,
Pretoria