



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

**Reportable/Not Reportable**

Case no: 2025-171827

In the matter between:

**E[...] A[...]**

First and Second Applicants

(in her personal capacity and in her representative  
capacity as mother and natural guardian of the minor

**I[...] S[...] A[...] )**

**J[...] A[...]**

Third Applicant

and

**A[...] A[...]**

First Respondent

**THE TRUSTEES FOR THE TIME BEING OF**

**THE ROBLAU TRUST (IT 1295/88 (T))**

Second Respondent

**HAUT ESPOIR (PTY) LTD**

Third Respondent

**ANY PERSON OR ENTITY CLAIMING A RIGHT TO  
IMPLEMENT THE SALE OF THE FARM KNOWN AS  
“HAUT ESPOIR”, SITUATED AT [...] E[...]  
ROAD, FRANSCHHOEK, WESTERN CAPE,  
AND/OR THE SALE OF ANY SHARES IN THE  
ISSUED CAPITAL OF THE THIRD RESPONDENT**

Fourth Respondent

**THINVEST CC t/a**

**FINE AND COUNTRY, FRANSCHHOEK**

Fifth Respondent

**L[...] H[...] A[...]**

Sixth Respondent

**Neutral citation:** *E[...] A[...] and Others v A[...] A[...] and Others* (Case no  
2025-171827) [2025] ZAWCHC \_\_\_\_ (15/12/2025)

**Coram:** Davis AJ

**Heard:** 18 November 2025

**Delivered:** 15 December 2025

**Summary:** Application for interdict *pendente lite* – trust beneficiaries relying on the Beningfield exception – intending to institute proceedings to set aside trust’s disposal of its 50% shareholding in a company and restore the shares to the trust – in the interim seeking to interdict the disposal by the company of its farm property

or the shares in the company – held that the farm property belonged to the company, not the trust, and that success in the main proceedings would merely entitle the trust beneficiaries to a greater share of the proceeds of the farm, and not to insist on the retention of the farm by the company – requirements for interim interdict not met

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## **ORDER**

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1. Save for the relief sought in terms of prayers 3 and 4 of the applicants' notice of motion, the applicants' application is dismissed with costs, including the cost of counsel payable on scale C.
2. The applicants' application for relief in terms of prayers 3 and 4 of their notice of motion is struck from the roll for lack of urgency, with costs, such costs to include the cost of counsel payable on scale C.
3. In respect of the respondents' counterapplication, it is ordered that:
  - 3.1. the first applicant is interdicted and restrained from denying the respondents, potential purchasers and/or their respective representatives, agents, or nominees (collectively 'the Interested Persons') access to the immovable property known as the farm Haut Espoir, situated at E[...] Road, Franschhoek, Western Cape ('the Farm');

- 3.2. the first applicant is directed to provide the respondents and the interested persons with unimpeded and unhindered access to the Farm, and to all and any property of the third respondent, on 24 hours written notice;
- 3.3. the first applicant is directed to provide, make available and/or deliver to the third respondent all and any documentation related to the third respondent and/or the Farm currently in her possession or under her control.
4. The first applicant shall be liable for the cost of the respondents' counterapplication, such costs to be paid on the attorney and client scale.

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## JUDGMENT

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**Davis AJ:**

### **Introduction**

- [1] This application for an interim interdict *pendente lite* plays out in the context of a regrettable family dispute about the fate of a farm in the beautiful Franschhoek valley.
- [2] The application is brought by E[...] A[...] ('E[...]'), acting in her personal capacity and in her representative capacity as the mother and natural

guardian of her minor daughter I[...] A[...] (**I[...]**), and by her son, J[...] A[...] (**J[...]**), who recently turned 18 (**the applicants**).

[3] E[...] is the widow, and J[...] and I[...] are the children, of the late R[...] A[...] (**R[...]**), who died on 29 August 2021. The first respondent, A[...] A[...] (**A[...]**), is the mother of R[...], and the grandmother of J[...] and I[...].

[4] As R[...]’s surviving spouse and children, E[...], J[...] and I[...] are beneficiaries of The Roblau Trust (**Roblau**),<sup>1</sup> a discretionary trust established in 1988 for the benefit of I[...]<sup>2</sup> and A[...] A[...] (the parents of R[...] and L[...] A[...]), and their descendants and surviving spouses of their descendants. The trustees for the time being of Roblau (**the Roblau Trustees**) are cited as the second respondent.<sup>2</sup>

[5] In terms of the amended provisions of the Roblau Trust Deed (**the Trust Deed**), the trust capital is distributable 6 months after the death of A[...] A[...] (**A[...]**).

[6] Until 2019, Roblau was the owner of 51% of the shares in the third respondent, Haut Espoir (Pty) Ltd (**the Company**). The company is the registered owner of a boutique farm and winery in Franschhoek known as ‘Haut Espoir’ (**the Farm**). It is common cause that the farm represents the main and only asset of the company.

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<sup>1</sup> E[...], J[...] and I[...] are income beneficiaries of Roblau. J[...] and I[...] are also potential capital beneficiaries of Roblau, contingent on their being alive at the time of the distribution event.

<sup>2</sup> The current Roblau Trustees are Ms A[...] A[...], Mr Deon Van Schalkwyk and Mr Walter de Wet.

- [7] I shall refer to the first to third respondents collectively as ‘**the respondents**’.
- [8] On 5 September 2019, the Roblau Trustees purported to ratify a transfer of Roblau’s 50% shareholding in the Company to A[...], at cost, with effect from 1 March 2017 (‘**the share transfer**’).
- [9] The shares in the Company are currently held as follows:
- a) A[...]: 172 shares (86%);
  - b) Roblau: 2 shares (1%);
  - c) Elemental Trust (‘**Elemental**’): 26 shares (13%).
- [10] A[...], J[...] and I[...] are the capital beneficiaries of both Roblau and Elemental.
- [11] Up until 2010, the Company was financed by its then shareholders, Roblau and Elemental. In the 2010 financial year, R 15 301 256 owed by the Company to Elemental was transferred to A[...]. In the 2013 financial year, R 10 278 504 owed by the Company to Roblau was transferred to A[...], and in the 2018 financial year, Roblau’s remaining loan claim of R 1 554 168 against the Company was transferred to A[...] (‘**the loan account transfers**’).
- [12] The applicants dispute the validity of the share transfer and the loan account transfers on various grounds. It is stated in the founding affidavit that they intend to bring an action/application for the setting aside of these

transactions, and the return of the shares and loan accounts to Roblau (**‘the main proceedings’**). In the replying affidavit, it is stated that the applicants will also seek the removal of the current Roblau Trustees in the main proceedings, and their replacement with three independent trustees.

[13] A[...] is currently the majority shareholder and sole director of the Company. She is also the largest creditor of the Company, with a loan account currently standing at some R 46 765 866.51.<sup>3</sup> The indebtedness to A[...] has accumulated over the years, as A[...] has historically funded the operations of the Farm, either by way of direct advances to the Company, or by way of advances to Roblau and Elemental which, in turn, advanced monies to the Company.

[14] Even if it is accepted that A[...]’s loan claim against the Company falls to be reduced by the loan accounts transferred from Roblau and Elemental to A [...], she would still have a loan claim against the Company of approximately R 19 000 000. E[...] disputes the extent of A[...]’s loan claim against the Company, maintaining that the amounts are exaggerated. She does not provide detail, however, and she does not dispute that A[...] provided funding to the Company on an annual basis.

[15] A [...], as the current majority shareholder, sole director and largest creditor of the Company, has decided to sell the Farm in order to pay the Company’s debts. Her decision in this regard is motivated by the fact that the Farm, and thus the Company, has never traded profitably since inception. It has traded

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<sup>3</sup> The 2022 Annual Financial Statements of the Company also reflect an indebtedness of some R 14 500 000 to Elemental. The current figure does not appear from the papers.

at a loss every financial year for at least the last decade, and is factually insolvent. As at 30 June 2023, the Company's liabilities exceeded its assets by R 13 759 419. A[...] maintains that the only reason the Company has continued to operate for as long as it has, despite operational losses year on year, is that she has provided continuous injections of capital by way of shareholder loans. She has made it clear that she is no longer willing or able to do so.

[16] E[...] is opposed to the sale of the Farm. She and her children reside in '*Die Eikehof*', the manor house located on the Farm. E[...]’s stance is that it was always I[...]<sup>2</sup> and A[...]’s intention that the Farm would be a family legacy which would be passed on to future generations, and J[...] has indicated that he would like to take over the management of the Farm and follow in his father’s footsteps. E[...] disputes that the Farm is not financially viable, maintaining that the Farm could cover its costs if properly run. In short, E[...] sees the Farm as her children’s birthright. But she does not have an answer as to how to pay the Company’s indebtedness to A[...].

[17] The Farm has been on the market for some time. It has been advertised for sale for a purchase price of R 55 000 000 since April 2024. Since then, there has only been one serious potential purchaser, who has signed a non-binding letter of intent to purchase either the Farm, or the shares in the Company, for an amount of R 50 000 000. The purchaser has recently undertaken a ‘due diligence’ with a view to concluding a sale agreement. This has precipitated the present application.

[18] The applicants seek to interdict the sale of the Farm, or the shares in the Company, pending the determination of the main proceedings. The applicants' case, in a nutshell, is that, if the share transfer were to be set aside, Roblau would own 51% of the shares in the Company, and the Roblau Trustees would be required to consent to the sale of the Farm by virtue of s 112 of the Companies Act 71 of 2008, which requires a special resolution of shareholders to approve the disposal of all or the greater part of the assets of a company. In other words, the Roblau Trustees would have the power to veto the proposed sale of the Farm.

[19] The applicants further contend that the decision as to whether the Farm should be sold should not be made by the current Roblau Trustees, who have allegedly breached their fiduciary duties and failed to act in the interests of the beneficiaries, but rather by three independent trustees.

## **The Law**

[20] The traditional requirements for an interim interdict have been approved in a number of recent Constitutional Court decisions.<sup>4</sup> They are:

- a) a *prima facie* right, which may be open to some doubt;
- b) a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted;

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<sup>4</sup> *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) paras 41 and 45 (“**OUTA**”); *Tshwane City v Afriforum and Another* 2016 (2) SA 279 (CC) para 49 (“**Afriforum**”); *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd and Others* (“**Eskom**”) 2023 (4) SA 325 (CC) para 253.

- c) that the balance of convenience favours the grant of an interim interdict;
- d) that the applicant has no other satisfactory remedy.<sup>5</sup>

[21] In determining whether or not the applicant has established a *prima facie* right, the proper approach is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief at trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown on the case of the applicant, the application cannot succeed, for the right, *prima facie* established, may only be open to some doubt.<sup>6</sup>

[22] The balance of convenience involves a weighing up of the prejudice to the applicant, if the interdict is withheld, against the prejudice to the respondent if it is granted.<sup>7</sup>

[23] Irreparable harm is irreversible or permanent harm which cannot be reversed or undone by a favourable order in the main proceedings, which will ensue if the interim interdict is not granted.<sup>8</sup>

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<sup>5</sup> *Ibid.*

<sup>6</sup> *Webster v Mitchell* 1948 (1) SA 1186 (W) 1189, as qualified in *Gool v Minister of Justice and Another* 1955 (2) SA 682 (C) 688 E.

<sup>7</sup> *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another* 1973 (3) SA 685 (A) 691E.

<sup>8</sup> *Tshwane City v Afriforum and Another* 2016 (6) SA 279 (CC) para 59.

[24] The requirements for an interdict are not individually decisive, but are interrelated. The Court has a discretion, to be exercised judicially on a consideration of all the facts. This involves a weighing of the prospects of success and the balance of convenience: the stronger an applicant's prospects of success the less the need to rely on prejudice. Conversely, the greater the doubt, the greater the need for the other factors to favour the applicant.<sup>9</sup>

### **Has a *prima facie* right been established?**

[25] The right on which the applicants rely is the alleged right to obtain relief in the main proceedings for the return of the Roblau shares and loan account, which they allege were unlawfully transferred to A[...], and the removal of the Roblau Trustees for breach of their fiduciary duties.

[26] As regards the loan account transfer, it is alleged that the transaction is invalid because:

- a) the loan account transfers were not authorised in terms of any valid trustee resolution;
- b) even if the loan account transfers had been authorised, the Roblau Trustees breached their fiduciary duties to the beneficiaries of Roblau, as no value or consideration was received for the loan account transfers.

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<sup>9</sup> *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another (supra)* 691 F – G; *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) 383 E – F.

[27] As regards the share transfer, it is alleged that the transaction is invalid because:

- a) there was no trustees' resolution in 2017 approving the share transfer, and the purported ratification on 5 September 2019 is ineffectual as there can be no ratification of a transaction which is *void ab initio*;
- b) the Roblau Trustees breached their fiduciary duty to the trust beneficiaries as the share transfer effectively disposed of Roblau's majority shareholding in the Company, which owned an asset worth R 50 million, for no value;
- c) the back-dated share transfer was for an ulterior purpose, namely, to enable A[...] to avoid / evade her tax liability in terms of section 7C of the Income Tax Act, Act 58 of 1962 (as amended) (**'the Income Tax Act'**);
- d) the share transfer was done in contravention of various provisions in the Company's Memorandum of Incorporation (**'MOI'**).

*The locus standi of the applicants to bring the main proceedings*

[28] The proceedings which the applicants contemplate bringing are in the nature of a representative action brought by trust beneficiaries on behalf of a trust in circumstances where the trustees are delinquent and will not sue. Such a course of action is permitted as an exception to the general rule that proceedings on behalf of a trust must be brought by the trustees. The

rationale for this exception, known as the *Beningfield* exception,<sup>10</sup> is that a defaulting or delinquent trustee cannot be expected to sue him- or herself.<sup>11</sup>

[29] Mr Walters, who appeared for the first to third respondents, challenged the *locus standi* of the applicants to seek the relief proposed in the main proceedings. In this regard, he sought to distinguish between contingent beneficiaries and potential beneficiaries, with reference to the following *dictum* of Millin, J in *Stern and Ruskin v Appleson* (‘*Stern*’):<sup>12</sup>

“The term “contingent interest” is used in contradistinction to a vested interest. It is something which may ripen into a vested interest on the happening of an event, but it must be such that the happening of the event, without more, gives the vested interest. A person cannot be said to have a contingent interest in something which another may or may not choose to give him in the future. There is ample authority for the view that a bare possibility of getting something in the future is not a contingent interest. In *Davis v Angel*, 4 de G.F. and J. 524; 135 R.R. 275, Lord Westbury distinguished between “an existing interest, whether it be vested or contingent, however future or remote” and the bare expectation of a future right or, more accurately, “the expectation of the possibility of a future event which, if it occurs, may give birth to an interest”. He denied the applicability of the term “contingent interest” to such an expectation. [Emphasis added]

[30] Relying on this distinction, Mr Walters contended that the applicants do not qualify as contingent beneficiaries, as their entitlement is wholly dependent on the exercise of the discretion of the Roblau Trustees. It is apparent from the Trust Deed that the applicants’ entitlement to trust income is

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<sup>10</sup> *Gross and Others v Pentz* 1996 (4) SA 617 (A).

<sup>11</sup> *Gross and Others v Pentz* (*supra*) 628 F – G.

<sup>12</sup> 951 (1) SA 800 (W) 805 D - F

discretionary. As to capital, however, J[...] and I[...] are entitled on the distribution event (i.e. 6 months after A[...]’s death) to receive *per stirpes* that share of the trust capital which I[...]<sup>2</sup> would have received, provided that the trustees are entitled, in their sole discretion, to defer the distribution event to a later date. Thus, while the distribution date depends on the exercise of the trustees’ discretion, once the distribution date has been decided, J[...] and I[...] are entitled to receive a fixed share of the capital, as determined by the provisions of the Trust Deed. Therefore, it is not accurate to say that J[...]’ and I[...]’s entitlement to the trust capital is entirely discretionary. I accept, however, that the entitlement of all the applicants to receive trust income is entirely discretionary.

[31] Mr Walters submitted that the remedy of removal of trustees is not available to potential beneficiaries, as opposed to contingent beneficiaries. For that proposition he relied on the decision in *Nkotobe and Other v Bengu and Others* (*‘Nkotobe’*),<sup>13</sup> a case in which Van Zyl ADJP dismissed an application brought by potential beneficiaries of a trust for the removal of the trustees.

[32] In my view, the reliance on *Nkotobe* is misplaced, as the facts are significantly different. In that case, the application for the removal of the trustees was brought by persons who were not yet beneficiaries of the trust, but who were entitled to apply to become beneficiaries, and would become beneficiaries if selected by the trustees in the exercise of their discretion. In that sense they were described as ‘potential beneficiaries.’ The Court held

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<sup>13</sup> *Nkotobe and Others v Bengu and Others* (580/2014) [2015] ZAECHC 12 (15 May 2015).

that, until such time as the applicants had actually applied and been selected to benefit from the trust, the applicants had nothing more than an expectation to be appointed beneficiaries, as opposed to a beneficiary who has an expectation to receive a benefit from the Trust property after some future event. As such, their legal interest lay in their interest in being appointed as beneficiaries, as opposed to the legal interest of a beneficiary in the administration of the trust property by the trustees. For that reason, they lacked sufficient legal interest in the trust property to clothe them with *locus standi* to seek the removal of the trustees.<sup>14</sup> The position is different in this case: here the applicants do have an interest in the proper administration of the trust property by the trustees.

[33] As the judgment in *Nkotobe* shows, the terms ‘*contingent beneficiary*’ and ‘*potential beneficiary*’ are often used interchangeably. Van Zyl ADJP observed that:

‘A contingent beneficiary is a beneficiary whose rights to the enjoyment of the benefits of the trust property are conditional upon the occurrence of an event such as the death of another (as in the *Hofer* case), the passage of a particular period of time (as in the *Doyle* case), or where the trustee has a discretion, not merely regarding the mode of applying the terms of the trust, but whether or not to distribute to a particular beneficiary (as in *Braun v Blann and Botha NNO and Another* [\[1984\] ZASCA 19; 1984 \(2\) SA 850](#) (A)). (See generally Cameron *et al* **Honore’s South African Law of Trust** 5<sup>th</sup> ed at page 557 to 558 and Joubert (ed) **The Law of South Africa (LAWSA)** 2<sup>nd</sup> edition vol 31 at para 547.)<sup>15</sup>

[Emphasis added]

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<sup>14</sup> *Nkotobe (supra)* paras 13 – 15.

<sup>15</sup> *Nkotobe (supra)* para 9.

[34] In *Gross and Another v Pentz* ('Gross')<sup>16</sup> the Court regarded the interest of the plaintiff beneficiary as merely contingent.<sup>17</sup> There the plaintiff's entitlement to trust income was dependant on the exercise of the trustees' discretion, and his entitlement to a share of the capital was dependant on his being alive when his mother died.<sup>18</sup> Corbett CJ considered the question whether a representative action in terms of the *Beningfield* principle was available to beneficiaries who have no vested right to the future income or capital of the trust. He held in this regard that:

'While the rights of such beneficiaries are contingent, they do ... have vested interests in the proper administration of the trust. Although their does not appear to be any authority directly on point, I am of the view that such a beneficiary may bring a representative action.'<sup>19</sup>

[Emphasis added]

[35] It bears emphasis that the court in *Gross* did not draw the distinction drawn in *Stern* between contingent and potential beneficiaries. It did not distinguish between an interest which may ripen into a vested interest on the happening of a specified event, and an interest which is dependant on the exercise of a discretion. It regarded both types of interest as a contingent interest, which sufficed to give the trust beneficiary a vested interest in the proper administration of the trust property, and hence to clothe the beneficiary to bring a representative action on behalf of the trust against delinquent trustees.

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<sup>16</sup> *Gross and Others v Pentz* (*supra*).

<sup>17</sup> *Gross and Others v Pentz* (*supra*) 626 H – I.

<sup>18</sup> *Gross and Others v Pentz* (*supra*) 621 D – E.

<sup>19</sup> *Gross and Others v Pentz* (*supra*) 628 I – J.

- [36] All trust beneficiaries, vested and contingent, have an obvious interest in the proper administration of the trust property so that they can enjoy the benefits to which they are actually, or may potentially be, entitled.<sup>20</sup> It is this interest in the preservation and increase of the trust property which underlies the *Beningfield* exception.
- [37] Because the *Beningfield* exception is about recovering, or preventing, loss to the trust property, I doubt whether the applicants would have *locus standi* in the main proceedings to sue to set aside the share transfer on the grounds that A[...] thereby sought to evade her obligations to the fiscus in terms of section 7C of the Income Tax Act. Even assuming that tax evasion, as opposed to legitimate tax avoidance, could be established – something which is hotly disputed on the papers – there is no evidence on the papers to demonstrate that the trust property was in any way imperilled thereby, and, in the absence of such a link, the applicants would in my view not have the necessary legal interest to complain about such an infringement.
- [38] I have similar reservations about the applicants' complaint that the share and loan account transfers violated the provisions of the Companies MOI. No detail is provided in the founding affidavit to demonstrate why and how the failure to comply with the MOI would have prejudiced the Roblau Trust.
- [39] I also doubt that trust beneficiaries would enjoy *locus standi* under the *Beningfield* exception to set aside trust transactions approved and honoured by a full complement of trustees merely by virtue of a failure to comply with

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<sup>20</sup> Honoré's *South African Law of Trusts* 6<sup>th</sup> Ed, 2018, Ch 11, p 573.

a requirement in the trust deed that trustees' resolutions be in writing, and without more. In my view, in order to bring themselves within the *Beningfield* exception, the beneficiaries would have to be able to allege and prove that the trust was prejudiced by the transaction in question, in which case the cause of action would be based on the breach of the trustees' fiduciary duty not to cause loss to the trust, rather than the non-compliance with internal trust formalities *per se*. To my mind trust beneficiaries do not have a legal interest in compliance with trust formalities for formality's sake: their interest in compliance with trust formalities will depend on the nature of the formal requirement. In my view, there is a difference between trustees failing to comply with a requirement that there always be a minimum of three trustees in office, or that the trustees act jointly – requirements which go to the very validity of the purported action on behalf of the trust – and trustees failing to comply with a requirement that their resolutions be reduced to writing and minuted. It seems to me that, in all the cases in which the *Beningfield* exception has been applied, the beneficiaries alleged that the delinquent trustees had caused financial loss to the trust estate.<sup>21</sup>

- [40] It is not necessary for me to express a firm view on these aspects, however, for I accept that the applicants would enjoy *locus standi* in the main proceedings to challenge the validity of the share and loan account transfers on the grounds that no value was received therefore, which implies financial prejudice, and that the Roblau Trustees breached their fiduciary duties in relation to these transactions.

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<sup>21</sup> *Gross and Others v Pentz* (*supra*) 626 D – 628 H, and cases cited there.

[41] Whether or not such a claim enjoy prospects of success is another matter – a question to which I now turn.

*Prospects of success in the main proceedings*

[42] As has been mentioned, the applicants impugn the validity of the share and loan account transfers on the grounds that a) no valid written resolutions were signed by the Roblau Trustees authorising the transactions, and b) assets of Roblau were disposed of for no value. For the latter reason it is alleged that the Roblau Trustees breached their fiduciary duty to act in the best interests of the beneficiaries of Roblau, and fall to be removed from office.

[43] In my view, in order to succeed in the relief proposed in the main action, the applicants would have to prove that the actions of the Roblau Trustees in approving or permitting the transfer of the shares and loan accounts were prejudicial to the Roblau beneficiaries, in the sense that they caused Roblau to suffer financial loss.

*The loan account transfers*

[44] Isolated extracts from the annual financial statements of the Company for the years 2003 to 2019 are annexed to the founding affidavit, but the full financial statements have been omitted so as to avoid prolixity. The omission is unfortunate, as relevant evidence has not been placed before the court. Nor have the applicants provided any detail regarding Roblau's finances.

[45] E[...] alleges with regard to the loan account transfers that ‘*despite numerous requests, A[...], the Trust and Company have refused to provide further information and documents in this regard.*’ However, A[...] alleges that, at E[...]’s request, her financial adviser, Mr Laurie Kempster, a retired forensic accountant (**‘Kempster’**), was given authority to liaise with Ms Celia McGuinness of Winelands Tax Shop (**‘McGuinness’**), who was *au fait* with the movements in loan accounts between Roblau, the Company and A[...]. Emails attached to the founding affidavit show that Kempster did reach out to McGuinness in April 2025, and that she stated that she was ‘*more than willing to meet and provide any information you may need.*’ A[...] alleges that the meeting did not materialise, for reasons unrelated to any refusal of information on the part of the respondents.

[46] It is also relevant to note that the applicants, as beneficiaries of the Roblau Trust, are entitled to approach the Master of the High Court (**‘the Master’**) to call upon the Roblau Trustees to furnish copies of the annual financial statements of Roblau and to account to the satisfaction of the Master for their administration, in terms of section 16 of the Trust Property Control Act 57 of 1988 (**‘the TPC Act’**). In terms of section 18 of the TPC Act, they are entitled to request copies of any trust financial statements lodged with the Master. E[...] has evidently failed to avail herself of these remedies.

[47] Be that as it may, for whatever reason, there is scant evidence in the applicants’ papers regarding the broader financial context within which the loan account transfers took place. Crucial detail is missing as to Roblau’s financial position at the time when the loan account transfers were effected,

in particular, whether or not Roblau was indebted to A[...] on loan account prior to the loan account transfers.

[48] It appears that Roblau may well have been indebted to A[...] on loan account prior to the loan account transfers, for A[...] states, and it is not disputed, that the Company's annual farming operation shortfall was funded by her, either by way of amounts advanced directly to the Company, or by way of monies advanced by her to Roblau, which Roblau then advanced to the Company.

[49] Moreover, Ryan McCormick ('**McCormick**'), chartered accountant and director of Nucleus Financial Services (Pty) Ltd ("**Nucleus**"), who at all material times provided accounting services to A[...] and Roblau, states on oath that he has reviewed the accounting records and has determined, as a fact, that, since 2008, all the monies ever advanced by Roblau to the Company came, directly or indirectly, from A[...].

[50] The evidence of A[...] and McCormick suggests that amounts advanced by Roblau to the Company were likely mirrored by, or back-to-back with, amounts advanced by A[...] to Roblau. In other words, they were 'in-and-out' entries in the books of Roblau.

[51] Kempster's response to McCormick takes matters no further. He is not able to contradict McCormick's allegation that all monies advanced by Roblau to the Company came from A[...], since, on his own version, he has not reviewed the accounting records himself. Kempster's response consists entirely of argument and speculation. He contends that, if, for instance, A[...] donated money to Roblau, which Roblau then advanced to the Company,

that would not entitle A[...] to repayment of the funds donated to Roblau. But there is no evidence to suggest that A[...] ever donated funds to Roblau, as opposed to advancing funds on loan account. A[...]’s evidence is clear: she says that she advanced money to Roblau, not that she donated it.

[52] Kempster goes on to say that, ‘... *McCormick’s argument is that because the monies were directly or indirectly provided by A[...], she can dictate which entity has to repay her and the terms thereof, without any regard to the various corporate or trust entities. I deny that this is correct.*’

[53] Kempster misses the point, which is this: if Roblau was indeed indebted to A[...] on loan account when Roblau’s loan claims against the Company were transferred to A[...], the loan account transfers would have brought about a set-off in the books of Roblau. Roblau’s liability to A[...] would have been reduced by the value of the loan claims transferred to A[...]. Roblau might have lost an asset (its loan claim against the Company) but it would simultaneously have reduced or extinguished a liability (its indebtedness to A[...]). Thus, the net effect on Roblau’s balance sheet would have been zero, with no impact on the trust property and no possible prejudice to the beneficiaries of Roblau.

[54] The applicants have not put up any evidence to show, *prima facie*, that the loan account transfers were in fact financially prejudicial to Roblau. They have relied purely on the fact that the loans were transferred for zero consideration. The evidence put up by the respondents strongly suggests that Roblau was indebted to A[...] at the time of the loan account transfers, and

that the loan account transfers would have reduced Roblau's indebtedness to A[...], with zero effect on Roblau's balance sheet and no prejudice to it.

[55] I am therefore of the view that there is little prospect that the applicants would succeed in establishing, at trial, that the loan account transfers caused financial loss to Roblau, and that the Roblau Trustees were guilty of a breach of trust in approving or permitting the loan account transfers.

## The share transfer

[56] The applicants' complaint regarding the share transfer is that Roblau's 50% shareholding in a Company, which owns a farm worth some R 50 million, was transferred to A[...] for zero consideration, resulting in financial loss to Roblau.

[57] The conclusion that Roblau was prejudiced by the share transfer rests on the assumption that the Roblau shares held a value greater than R 0.00 at the time. That is a false premise, however, for E[...] has only taken into account the value of the Farm, while ignoring the liabilities of the Company. She has only looked at one side of the balance sheet.

[58] A[...]’s evidence shows, and it cannot reasonably be disputed, that the Company was insolvent at the time of the share transfer. Its liabilities exceeded its assets. Accordingly, the shares in the Company held no value. McCormick’s evidence in this regard is clear. He states that:

*‘7. By 2017, the Company faced significant financial distress to the point of commercial insolvency. In this regard:*

*7.1 the Farm, which is the Company’s principal asset, had a net asset value that was negative, even after fair market valuation of the land and improvements thereon, due to ongoing trading losses of its business;*

*7.2 the loans advanced to the Company were not fully recoverable;*

*7.3 the shares held by the trusts [Roblau and Elemental], in consequence, had no intrinsic value whatsoever and certainly no market value.*

*[Emphasis added]*

[59] Kempster, however, contends that the mere fact that a purchaser is willing to pay R 50 million to purchase the shares in the Company disproves the allegation that the shares have no value. What Kempster ignores, however, is that it is common practice for the loan accounts in a company to be sold together with the shares, in order to ensure a complete transfer of control to the purchaser. Thus, the purchase price of R 50 million offered for the shares in the Company in all likelihood includes the loan claims against the Company. It is also clear that the proposed price of R 50 million is based on the land value, as the purchaser is also willing to purchase the land for R 50 million, as opposed to the shares. The R 50 million offered is not sufficient to cover the total loan claims against the Company, which figure already exceeded R 56 million in 2022, and has no doubt increased.

[60] But, says E[...], the Company is not in fact insolvent, as it was agreed between I[...]<sup>2</sup> and A[...] A[...] in their divorce separation agreement concluded in 2006, that the initial loans to the Company made by I[...]<sup>2</sup> would not be called up for payment. According to E[...], if these initial loans to the Company are subtracted from the outstanding shareholder loans, the Company is not insolvent.

[61] This argument does not hold water, for several reasons.

[62] Firstly, the Company would not be entitled to rely on an agreement between I[...]<sup>2</sup> and A[...], to which it was not a party, in order to resist a claim for repayment of I[...]<sup>2</sup>'s loan to the Company. The divorce separation agreement is only binding as between A[...] and I[...]<sup>2</sup>. It does not serve to create rights for any other parties. There is no indication in the agreement

that is was intended to create a *stipulatio alteri* in favour of any other person or entity.

[63] Secondly, and in any event, it seems that E[...] has quoted selectively from the separation agreement properly. One sees from the separation agreement that the total value of the loan claims against the Company at the time (2006) was R 19 620 000, comprising R 2 036 000 owed to Roblau, R 5 267 000 owed to I[...]2 and R 12 317 000 owed to an entity called Ironstone. The cryptic note next to these figures, on which E[...] evidently relies, reads as follows, '*agreed to cancel or not call in any of these loans.*' However, that note must be read together with clause g of the settlement agreement and other notes on the schedule to thereto, which show that the share capital and loan accounts in the Company were to be allocated as to 75% to A[...] and 25% to I[...]2, to be held through entities controlled by them (Ironstone in the case of I[...]2 and Elemental in the case of A[...]). The notes in question read as follows in relevant part:

*'Haut Espoir Farm*

1. *Proposed split 75% A[...] and 25% I[...]2. Confirmation required on splitting shares held by Ironstone on this basis and the loan agreements. If Serena Sims confirms then A[...]’s new trust will receive 75% of share capital and 75% of loans, which she can thus control as unsecured and no fixed repayment date. If farm is sold in future then proceeds can be remitted overseas as per current loan agreements with Reserve Bank. 25% of share capital and loan balances can stay in Ironstone and I[...]2 agrees not to call in loans (future sale of farm and repatriation of loans apply as per A[...]).*

...

*Liabilities*

1. *Loan accounts in Ironstone / Haut Espoir are not recorded as an asset for I[...]2 or A[...]. They have generated value of the farm. The loans can be repaid as owners decide depending on farm performance. Some of these monies can be repaid offshore as per Reserve Bank approvals of bringing in the original loan amounts.'*

[Emphasis added]

- [64] It is clear from these notes that any agreement that I[...]2's loan accounts in the Company would not be called up only applied to the 25% of the loan account balances which was to be allocated to I[...]2, i.e., 25 % of R 19 620 000, which amounts to R 4 905 000. A[...] was free to claim repayment of her loan claims, and it appears to have been expressly contemplated that she could sell the farm and repatriate the proceeds in settlement of her loan claims, as evident from the note stating that '*future sale of farm and repatriation of loans apply as per A[...]*'.
- [65] Therefore, at best for E[...], R 4 905 000 of the Company's shareholder loans cannot be called up. Having regard to the fact that the total loan indebtedness of the Company amounted to R 56 427 959 as at 30 June 2022, a figure which has likely increased, whereas the farm is only worth some R 50 million, from which must be deducted any realisation costs and taxes, it is abundantly clear that the Company will still be insolvent, even if an amount of R 4 905 000 is deducted from the shareholder loans payable.

- [66] Given the indisputable evidence that the Company was insolvent at the time of the share transfer,<sup>22</sup> and the expert evidence of McCormick that the shares of the Company held no value at the time – evidence which I regard *prima facie* as plausible and reliable – I doubt that it could be established at trial that the share transfer prejudiced Roblau.
- [67] I am fortified in that view by the evidence regarding the purpose for the share transfer.
- [68] A[...] explains that, at the time of the share transfer, the Company was insolvent. She could no longer continue funding the operations of the Company in the light of the amendment to section 7C of the Income Tax Act, the effect whereof was that she would have been required to pay donations tax on monies loaned to the Company. On the strength of expert tax and accounting advice from well-recognized professionals, shareholder loans were subordinated in order to restore solvency, and there was a restructuring of the debt and shareholding in the Company in order to enable A[...] to continue funding the operations of the Company. Significantly, the restructuring was approved by R[...] at the time.
- [69] Had it not been for the restructuring which enabled A[...] to continue funding the operations of the Company, the Company would have been insolvent, and the Farm would have had to be sold, in 2019 already. It is difficult, therefore, to see how the applicants can complain that the share transfer was prejudicial to Roblau.

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<sup>22</sup> The total loan claims against the Company exceeded R 48 million, whereas the land was valued between R 40 and R 45 million at the time.

## **Irreparable harm**

- [70] It is common cause that A[...], in her capacity as majority shareholder and director of the Company, has decided to sell the Farm. The prospective purchaser has conducted a due diligence, and has put forward a term sheet with proposed terms and conditions for the sale.
- [71] E[...] alleges that the Roblau beneficiaries will suffer irreparable harm if the Farm is sold before the relief in the main proceedings is determined, as the restoration of the Farm will not be possible. The clear purpose of the interdict application, and the main proceedings, is to preserve the Farm itself for the benefit of the Roblau beneficiaries by preserving it as an asset within the Company.
- [72] The difficulty with this argument is that the Farm is an asset of the Company, not Roblau. Roblau's asset is its shareholding in the Company – whether it be 1% or 51% – not the Farm. The applicants, as beneficiaries of Roblau, have no entitlement to the Farm as such. Any entitlement to trust income is purely discretionary, and the entitlement of J[...] and I[...], as capital beneficiaries of Roblau, is only to a share in the distribution of the trust capital on the distribution event. It is purely a monetary entitlement.
- [73] Whether Roblau's shareholding in the Company is 1% or 51%, the value of the shareholding, and hence the extent of the trust capital, is inextricably linked to the fortunes of the Company. The Company is insolvent, and the shares are therefore worthless.

[74] Even if I assume, for purposes of argument, that the main action will be successful, so that Roblau will hold 51% of the shares in the Company and the current Roblau Trustees will be removed and replaced with new trustees, that does not change the fact that the Company is insolvent and the shares are worthless. The new trustees of Roblau would still have to decide on behalf of Roblau, *qua* shareholder, whether or not to agree to the sale of the Farm. And in exercising that discretion, they could not wish away the fact that the Company is insolvent, and that its business operations cannot be turned around without ‘*considerable capital investment and expertise*’ – the wording used in E[...]’s own business plan.

[75] In my view the glaring flaw in E[...]’s proposed business plan would not be lost on any new Roblau Trustees worth their salt. The glaring flaw is this: that it would take 5 years for the Farm merely to break even (*‘to become viable as a boutique wine estate’*), during which time the shareholder loans would not earn interest, let alone be repaid. The unstated – but obvious – assumption underlying E[...]’s business plan is that A[...], having pumped millions of rands into the Company over the years – would wait for repayment of her loan account. The expectation speaks to a staggering sense of entitlement on E[...]’s part.

[76] Any new Roblau Trustees exercising proper judgment would have to take into account the fact that, if they do not agree to the sale of the Farm, A[...] will doubtless bring an application for the liquidation of the Company in order to recover her shareholder’s loan account claims. She has made her intentions clear. It is her right to do so – she cannot be compelled to wait for

payment of her loan account. Faced with the choice between a sale of the Farm for market value, which at least preserves a *spes* that there could be something in it for the Roblau and Elemental beneficiaries (if only by way of negotiation and compromise), and a forced sale of the Farm in the context of a liquidation (which would likely yield insufficient proceeds to cover all the shareholder loans and other debts of the Company), the sensible choice is clear. It is, to use common parlance, a ‘*no-brainer*’.

[77] And even if, for purposes of argument, I assume a best case scenario for the applicants, namely that they succeed in establishing that the entire extent of the Roblau and Elemental loan accounts are to be restored to Roblau and Elemental – a total of some R 27 million odd – all that means is that the capital beneficiaries of Roblau and Elemental (A[...], J[...] and I[...]) would potentially be entitled to a greater distribution of the loan amounts to be paid to the two trusts by the Company on the sale of the Farm. It goes to monetary entitlement, not to the preservation of the Farm as an asset of the Company.

[78] I therefore do not accept the argument that the applicants, as Roblau beneficiaries, will suffer irreparable harm if the Farm is sold before the main proceedings are determined, because it will no longer be able to obtain restoration of the Farm. In short, success in the main action would not bring about an entitlement to the Farm as such, but only a potential entitlement to a greater share of the loan amounts to be paid by the Company to Roblau and Elemental on the sale of the Farm.

[79] E[...] also alleges that, if the sale of the Farm or the sale of the shares in the Company is allowed to proceed before the main action is determined, the sale proceeds will be distributed to A[...] to do with as she pleases, instead of being paid in accordance with the correct loan account position. On this basis she contends that the applicants would suffer irreparable harm if the interdict sought is not granted.

[80] The difficulty with this argument is two-fold.

[81] Firstly, no case is made out that A[...] would dispose of the proceeds and would not have the means to repay amounts wrongly paid to her instead of to Roblau and/or Elemental if ordered to do so in the main proceedings.

[82] Secondly, there is a disconnect between the prejudice alleged – that A[...] will be free to deal with the sale proceeds as she sees fit – and the relief sought, which is to prevent the sale of the Farm or the sale of the shares in the Company. Had the applicants sought an interdict to preserve that portion of the sale proceeds which they could show *prima facie* prospects of success in recovering in the main proceedings, they might have been eligible for such relief - all things being equal. But that is not what the applicants are asking for. Instead, they want to put a stop to the sale of the Farm, or the shares in the Company, for a period of years pending the determination of the main proceedings.<sup>23</sup> That, in my view, is a bridge too far.

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<sup>23</sup> If action proceedings are brought, it would likely take approximately five years for the matter to be brought to trial.

[83] For all the reasons set out above, I am of the view that the applicants have failed to show that they will suffer irreparable harm if interdictory relief in the form sought is not granted.

[84] I should mention that, before the commencement of the hearing, I informed counsel in chambers of my difficulty that the interdictory relief sought appeared to be too widely formulated. I afforded the parties an opportunity to consider their position, and to attempt to reach a resolution of the matter. The matter stood down for an hour to allow for discussions. Regrettably, the applicants elected to press ahead in seeking to interdict the sale of the Farm and/or the shares in the Company. In my view, their decision to do so was ill-advised.

### **Balance of convenience**

[85] The applicants contend that the balance of convenience favours the granting of the relief sought, as the interdictory relief ‘*imposes minimal, temporary constraints compared to the irreversible prejudice the beneficiaries will suffer if the Farm is sold before the main application is determined.*’

[86] The respondents contend that the balance of convenience overwhelmingly favours the refusal of the relief. They point out that the granting of an interdict will likely cause the prospective purchaser to walk away from the proposed sale. The value of the Farm will continue to deteriorate without further funding from A[...], which she is no longer willing to provide. A liquidation will likely ensue, with the sale of the Farm at a distressed value, which will be prejudicial to the beneficiaries.

- [87] I have already explained, in the context of dealing with irreparable harm, why I consider that the applicants will not suffer irreparable harm if the interdict sought is refused. This militates against any notion that the balance of convenience favours the granting of the interdict.
- [88] On the other hand, I agree that the respondents, and indeed also the beneficiaries of Roblau, stand to be prejudiced by the granting of the interdict sought, for all the reasons put forward by the respondents.
- [89] I am also mindful of the fact that A[...] has made an offer on the record to pay J[...] and I[...] R 5 million each from the proceeds of the sale of the Farm, which is apparently some R 3 million more than they would be entitled to in the ordinary course of a capital distribution from Roblau and Elemental, with the additional amount coming out of A[...]’s share of the sale proceeds. The open offer is predicated on favourable assumptions *vis a vis* J[...] and I[...] which equate to success in the contemplated main proceedings. In other words, J[...] and I[...] could not hope to achieve a better result in the main proceedings. That notwithstanding, the open offer has not been accepted.
- [90] E[...]’s rejection of this offer reveals very clearly that the real dispute in this matter is not about money: it is about trying to preserve the Farm as an asset of the Company, and, indirectly, as an asset of Roblau through its shareholding in the Company. E[...]’s hopes and endeavours are misguided, however, as the Farm is an asset of the Company, not the Trust, and the

Company's debts cannot simply be wished away. The only way for the Company's debts to be repaid is through the sale of the Farm.

[91] In the circumstances, I am of the view that the balance of convenience favours the refusal, not the granting, of the interdict sought.

### **Alternative remedy**

[92] I accept that the interdictory relief sought by the applicants was the only way to prevent the disposal of the Farm, either by way of a sale of the land itself or a sale of the shares in the Company. However, for all the reasons set out above, I consider that the applicants are not entitled to prevent the disposal of the Farm.

[93] In my view, the applicants have remedies in terms of the TPC Act to address their complaints with regard to the share transfer and the loan account transfers. They could request the Master to call upon the Roblau Trustees to provide an accounting for these transactions, in terms of s 16(1) of the TPC Act, and, if necessary, to appoint someone to carry out an investigation into the Roblau Trustees' administration and disposal of the trust property.

[94] In addition, if the applicants are concerned that A[...] has a conflict of interest by virtue of the fact that she is a creditor of the Company – something which has not been expressly articulated in the papers, but which is hinted at – the obvious remedy is to request the Master, in terms of s 7(2) of the TPC Act, to appoint an additional independent trustee to serve as co-trustee with the current Roblau trustees. In that way, A[...] could recuse

herself in the decision regarding the sale of the Farm, and there would still be three independent trustees who could make up the requisite minimum number of 3 trustees, as required in the Trust Deed.

[95] I am therefore of the view that the applicants do have adequate alternative remedies at their disposal, other than the extraordinary remedy of an interdict.

### **Conclusion with regard to interdictory relief**

[96] I have assessed the applicants' prospects of success in the main proceedings as weak. I have found that the applicants will not suffer irreparable harm if the interdict sought is refused, that the balance of convenience does not favour the granting of the relief, and that the applicants do have alternative legal remedies at their disposal.

[97] It follows that the interdict sought cannot be granted.

### **Relief relating to documents**

[98] In addition to the interdict to prevent the disposal of the Farm, the applicants also sought orders:

- a) directing A[...] and the Roblau Trustees to provide the Roblau annual financial statements for the years 2007 to date, and all written minutes and resolutions of Roblau for the years 2007 to date, within 5 (five) court days;

- b) directing A[...] and the Company to provide the annual financial statements of the Company for the years 2004 to date, and all written minutes and resolutions of the Company for the years 2004 to date, within 5 (five) court days.

[99] This relief was sought as a measure of urgency, together with the other interdictory relief pertaining to the disposal of the Farm. While the parties ultimately agreed, albeit for different reasons, that the relief pertaining to the disposal of the farm was urgent, there was no agreement that the relief pertaining to the documents was urgent.

[100] No case whatsoever was made out as to why the relief pertaining to the documents was urgent, and I see no good reason why the relief should be urgently entertained. In the circumstances, the relief sought in prayers 3 and 4 of the notice of motion was not properly before the court, and falls to be struck from the roll for lack of urgency (see *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd*; *Commissioner, South African Revenue Service v Hawker Aviation Partnership* 2006 (4) SA 292 (SCA) at 299H–300A).

### **The respondents' counterapplication**

[101] The respondents brought a counterapplication for an order interdicting and restraining the applicants from denying the respondents, or their agents, access to the Farm, and directing the applicants to provide unimpeded access to the Farm. An order was also sought directing E[...], who did the

bookkeeping for the Company, to deliver up any documentation relating to the Company which is presently in her possession or under her control.

[102] Mr Van der Merwe, who appeared for the applicants together with Mr De Wet, conceded that, if the interdictory relief sought by the applicants were to be refused, the respondents would be entitled to the relief sought in the counterapplication.

[103] I am satisfied that the respondents have made out a proper case for the relief sought in the counterapplication, and an order as prayed will therefore be granted.

### **Costs**

[104] As regards the costs of the interdict application, it is clear that the costs must follow the result on ordinary principles. The only question is whether a costs order should be made against E[...] only, or whether J[...] and I[...] ought to be held jointly and severally liable with E[...] for the respondents' costs.

[105] Having given anxious consideration to this question, I have reached the conclusion that it would not be fair to make J[...] and I[...] pay for their mother's lack of judgment. J[...] and I[...] were both minors when the application was launched. They are under their mother's influence, and they look to her for guidance. E[...] has shown ingratitude, unbridled entitlement and a total disregard for A[...]’s needs and interests. E[...] has literally bitten the hand that has fed her and her family for all the years. She has led her children astray, filling them with false hope of a life on the Farm, and setting

them on a collision course with their grandmother. Her conduct is regrettable, but it should not be laid at the children's door. In my view it would not be just to mulct the children in costs.

[106] Turning to the costs of the counterapplication, the respondents sought costs on the attorney and client scale against E[...] only.

[107] In her answering affidavit in response to the counterapplication, E[...] stated that, *'[i]n the event that the interim interdict is not granted, I tender reasonable access, on reasonable advance written notice (being not less than 24 hours) to out home, for purposes of conducting the due diligence and the necessary inspections.'*

[108] The respondents' attorneys, in their letter of 18 September 2025, sought an undertaking from E[...] that she would allow unimpeded access to the farm for purposes of the due diligence. A[...] contends that, had E[...] given the above-quoted undertaking at the time, the counterapplication would not have been necessary.

[109] In the case of *Re Alluvial Creek* 1929 CPD 532 at 535, Gardiner JP held as follows:

'An order is asked for that he pay the costs as between attorney and client. Now sometimes such an order is given because of something in the conduct of a party which the Court considers should be punished, malice, misleading the Court and things like that, but I think the order may also be granted without any reflection upon the party where the proceedings are vexatious, and by vexatious I mean

where they have the effect of being vexatious, although the intent may not have been that they should be vexatious. There are people who enter into litigation with the most upright purpose and a most firm belief in the justice of their cause, and yet whose proceedings may be regarded as vexatious when they put the other side to unnecessary trouble and expense which the other side ought not to bear. That I think is the position in the present case.'

[Emphasis added]

[110] In my view, the respondents were put to unnecessary trouble and expense in bringing the counterapplication. Those costs could, and should, have been avoided by the simple expedient of E[...] providing the necessary undertaking. In the circumstances, I consider it appropriate to award the costs of the counterapplication on the attorney and client scale, in order to afford the respondents a fuller indemnity for the costs which they should not have had to incur in the first place.

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**D M DAVIS**

**ACTING JUDGE OF THE HIGH COURT**

Appearances:

For the applicants: J A van der Merwe SC, with M B de Wet  
Instructed by Mr P A Le Roux, Herold Gie Attorneys

For the respondents: G Walter SC

Instructed by Mr P Rodgers, Norton Rose Fulbright Inc