



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

CASE NO:33603/2008

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
DATE	SIGNATURE
28/11/2025	KHUMALO J

In the matter between:

EDZANI PRECIOUS NEMUKULA

APPLICANT

and

ABSA BANK LIMITED

FIRST RESPONDENT

**THE TRUSTEES FOR THE TIME BEING
FOR ABSA TRUST LIMITED**

SECOND RESPONDENT

MASTER OF THE HIGH COURT

THIRD RESPONDENT

'This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 28 November 2025.

JUDGMENT

N V KHUMALO J

Introduction

[1] This is an Application for the immediate revocation and termination of the P E Nemukula Trust (the “Nemukula Trust”) and for an order directing the 3rd Respondent, the Master of the High Court, to expunge the Nemukula Trust from the list of the Trust Registrar and any letters of authority that were issued in favour of any of the nominees of Absa Trust Limited, as the trustees’ of the Nemukula Trust, the 2nd Respondent.

Factual Background

[2] The Applicant, Ms Precious Edzani Nemukula, is the beneficiary of the Nemukula Trust. She seeks, in addition to the above relief, an order directing the Trustees to take all the necessary administrative steps to ensure that the proceeds of the Road Accident Fund’s settlement of her claim that was in terms of the court order dated 31 August 2010 is finalised and together with all the interest that has accrued from the capital amount invested, paid to her. The amount is to be paid within 10 days of the granting and service of the order on the Trustees.

[3] In 2008, the Applicant was involved in a motor vehicle accident. She was 8 years old at the time. An action instituted on her behalf by her father against the Road Accident Fund (RAF) in terms of s 2 of the Road Accident Fund Act 56 of 1996 (RAF Act) for compensation for the loss she suffered as a result of the injuries she sustained resulted/culminated in a payment by the RAF of a settlement amount of R2 000 000. The Applicant was still a minor, 10 years old when the payment was made. As a result, her erstwhile attorneys, namely, E R Marivate, as the Founder created the Nemukula Trust . He nominated Absa Trust Limited as represented by its nominees from time to time as its Trustees, the 2nd Respondent, to administer the funds in the Nemukula Trust.

[4] The Trustees are therefore cited in their nominee officio as trustees for the time being for Absa Trust Limited of Absa Trust Administrators. The Master of the High court oversees the registration and administration of Trusts and is consequently cited in that capacity as the 3rd Respondent. The Road Accident Fund is also joined in the proceedings as the 4th Respondent, only as a party with an interest in the matter.

[5] During the period 2011 to 2016 the Trustees made monthly payments of R1 900 to the Applicant's father as her legal guardian. The figure was increased to R2 500 from 2016 after the Applicant turned 16 until 2021. In 2022, after she turned 21 the payments were made directly to her and increased to R3 800.

[6] The Applicant believes her turning 21 years old on 17 October 2021 was the sole reason why the Trustees were now paying the money directly to her. She was regarded to be able to handle her own affairs. She alleges to have confirmed that fact with Elsie Monkwe one of the Absa Trust Limited's employees and to have thereafter approached the legal department at the Trustees offices to release a higher amount to cover the costs of her studies, laptop router, cellphone, accommodation and travelling allowance. The request was refused.

[7] According to the statement of account sent to her in February 2021, for the February 2021 financial year, the amount in the account together with the accumulated interest was R1 883 140.33 (One Million Eight Hundred and Eighty-Three Thousand Eight Hundred and Forty Rand Thirty-Three Cents).

[8] She then instructed her attorneys to terminate the Trust and claim all the money to be paid to her. Her attorneys agreed with her that the money was placed in a Trust because at the time of the payment she was a minor. The Trust was supposed to have been terminated when she attained the age of majority, that is, at the age of 18 which was previously 21. The Trustees' response to her attorney's letter of termination was that the Trust Deed was silent on the aspect of its termination on her attainment of majority. It therefore cannot be terminated unless by an order of court instructing such termination.

[9] The Applicant on that contention points to clause 5.3 of the Trust Deed. The clause states that "the Trust shall terminate on depletion of the Trust funds" which her erstwhile attorneys should have realized and exercising a degree of care as a reasonable man acting carefully would have done, cancelled the Trust when she turned a major.

[10] Whilst the Trustees remained steadfast on an order of court for such termination, the Applicant persists that the Trust automatically terminated when she turned 21 and the Trustees should have released the monies to her without her having to get the intervention of the court. By their failure to do so, they did not apply their minds to the facts properly and as a result neglected the duty of care vested on them. She argued that due to the Trustees insistence on a court order and refusal of any attempts to settle the matter, she stands to suffer irreparable harm if the Trust is not terminated. She will not have access to the study materials for her studies. She, however, concedes that the Court Order itself is silent on the termination of the Trust and argue that the Trustees should have applied to amend the terms of the Court order for purpose of certainty.

[11] In their answering Affidavit the Trustees dispute the citing of Absa Bank Limited in the matter. Further that it can be concluded that since the Applicant has turned 21 she is now capable of managing her own affairs without her being assessed by the relevant medical professionals with the sole objective of determining if indeed she is capable. They argue that, that avenue could have sorted out the issue without any court proceedings.

[12] They concede to have a fiduciary duty in terms of which they are accountable to the Applicant as a sole beneficiary, the Master and the court. However, argue that as trustees they are not medical professionals and cannot make a conclusion on Applicant's capability to manage her own affairs, but can only act in accordance with the recommendations made in an expert report following due diligence. The report could have provided clarity and circumvented the opposition and the filing of an Answering affidavit.

[13] They accordingly allege to oppose the Application as it does not comply with s 13 of the Trust Property Control Act 57 of 1988 ("TPCA"), the provision of which the Applicant has not adequately addressed and is trying to circumvent by not giving any evidence dealing with the question of her ability to manage her own affairs. She is also unemployed and depended on the proceeds of the Trust being her only source of income.

[14] The Applicant is also alleged to have failed to indicate what prejudice she suffers as a result of the Trustees continuing to act as trustees. The integrity of the capital balance has been retained, the trust preserved and no maladministration reported, save for the issue that she wants an increase. She has confirmed that she receives her monthly statements. She has failed to set out any conduct of the 1st Respondent and or the Trustees that hampers the achievements of the objects of the Founder, being to protect and preserve the funds, which cannot be confused with dissatisfaction.

[15] Furthermore they argue that there is no evidence that indicates that the Trust must be dissolved at the Applicant's age of majority. Therefore, without addressing the requirements of Act 57 of 1988, the court may not dissolve the trust, delete or vary the provisions of the Trust Deed or make any order which the court deems just, unless the court has considered the facts under s 13.

[16] The Trustees argue that awards of claims of such a nature are to ensure that the victim is well compensated for the loss suffered and such funds protected for the benefit and future livelihood of the victim. Considering that the Applicant was seriously injured during the motor vehicle accident and that the reports from various experts relied upon to determine the ultimate amount awarded to the Applicant as compensation of the injuries sustained included Dr Lekgwara's report whom they're advised is a neuro surgeon, therefore it can be assumed that the Applicant suffered a head injury. They allege that Applicant's attorneys failed to make available the medico legal reports by the various experts.

[17] They point out that the Applicant failed and repeated Grade 11 and 12, each grade on two occasions, as well as various of her matric subjects in order to obtain a pass. The Trust paid for Grade 11 in 2018 and 2019 and for Grade 12 in 2020 and the rewrite of Grade 12 in 2021 and 2022. Various ad hoc payments are alleged to have been made to the Applicant at her request. She seems to utilize as pocket money the requested amounts paid into her account and sometimes tries transactions when sufficient funds were unavailable for which she is then penalized by added bank costs. This they argue does not indicate a maturity and understanding by the Applicant in handling her finances responsibly.

[18] The Trustees also find it important to again mention that the Applicant is unemployed. She receives an amount of R3 800 per month, plus R2 000 for rental. The amount awarded to her was to compensate her in relation to the injuries she suffered. They argue that the compensation is intended to last her for a lifetime and that conclusion to be supported by the wording of the Trust Deed which confirms it not to be a minority trust as alleged. Further that, there is no evidence to support the notion that the purpose of the creation of the Trust was solely due to the Applicant being a minor at the time the award was made. However that the age of majority is one of the factors to be considered but not the only one.

[19] They point out that the Applicant has admitted that she sustained serious injuries which is an important aspect that needs clarification and to be taken into consideration by the court. She has not given sufficient evidence as to her capability in regard to handling her own affairs. She declined a request to subject herself to the necessary assessments by the experts for an updated report so it can further be ascertained whether to persists with opposition. This is despite choosing the most cost effective professionals to do the assessment. When she finally acquiesced, her attorneys required an exorbitant amount of R90 000 for the costs of the assessment compared to their experts, bearing in mind that the cost will be payable from the Trust funds. The request was refused in order to curb the unnecessary depletion of the Funds.

[20] They, in addition, point out that payments to the Applicant was on her instruction, not because she attained the age of majority or can handle her own affairs. It was therefore not a decision taken without her involvement. The court may in terms of s 13 order any relief it deems appropriate. Notwithstanding the Applicant's recently instructed attorneys serving a notice of substitution, they still insist that the Trust Fund amount be paid to the Applicant's erstwhile attorneys, which is concerning.

[21] The Trustees state that they are bound by the court order dated 31 August 2010 and oppose the relief sought as a direct result thereof.

[22] In her Replying affidavit the Applicant brands the Trustees' opposition as flimsy and frivolous and to dismally fail to put the court in their confidence as they have not indicated that she has agreed to the assessment and submitted the expense quotation from the relevant specialist. The Trustees neglected to pay the expenses and had turned around to now wanting a court order on the assessment.

[23] She alleges that the Trustees' response to her wanting the Trust to be terminated and all the money to be paid to her undermines her constitutional right to dispose her money or assets in any manner that she deems fit and her human dignity. She argues that when the order was made for the formation of a Trust she was not declared to be of unsound mind under Uniform Rule 57 (1) or (13) which would suggest her not to be able to manage her own affairs. She therefore should not be deprived of the free administration of her rights without legal authority.¹ As the very essence of one's freedom is the ability to run one's own affairs even to one's detriment.

[24] She argued that on turning 18 she acquired rights to determine how she wishes to manage her own affairs and where adults are concerned, without a finding of an inability to manage own affairs, funds can only be protected with the adult's express concern. The court is therefore not endowed with the authority to deprive her of her future rights of disposal of her assets as she deems fit.

[25] She further insists that this is a minority trust as it appears from paragraphs 2.1 to 2.13 of Annexure P.E2. of the court order. She argues that a Trust that is established in terms of a court order automatically terminates when the minor attains majority, the purpose of its establishment terminated automatically as well and as such has no force or effect. As a result the 1st and 2nd Respondents were supposed to have released the money forthwith as there was nothing obliging them to continue administering her assets contrary to the spirit since she has become a major.

[26] In relation to the injuries sustained, the Applicant states that she only suffered a leg fracture which resulted in the claim against the RAF. She had no neuro cognitive deficits or behavioral changes. None of the experts in the main case gave indication

¹ Referenced by the Replying Affidavit, at paragraph 5.7.8. as a fundamental rule of Roman Dutch Law.

as to her legal capacity or her ability to manage her own affairs. She argues that the question of further assessment after attaining the age of majority was not part of the court order but an opinion of the 1st and 2nd Respondent. It is therefore not binding and not in line with any legal provision in the Act and or the Trust deed.

The issues in dispute

[27] The issues that arise are whether:

- (a) the Applicant's mere attainment of the age of majority automatically brought the Trust to its end, that is cessation of the purpose of its establishment, entitling Applicant its termination without further ado, as demanded by the Applicant, notwithstanding its provisions,
- (b) the Trust's termination/cessation still has to be sanctioned by the court; (if s 13 is applicable) therefore Applicant required to comply with s 13; notwithstanding the above, if so
 - (i) Should or must the capacity to manage one's own affairs (including finances) be a factor to be considered by the court? be determinative of the court's decision, if so, is assessment necessary without a declaratory order ever made by the court in terms of Rule 57.
 - (ii) Is the Applicant as a beneficiary of such a minor Trust, on attainment of majority, obliged on application for its cessation to prove a capacity to manage her own affairs;

Legal framework

On termination of Trusts

[28] The termination of a Trust brings the affairs of the Trust to an end. It can happen in two ways, either in terms of the provisions of the Trust Deed (when a Trust Deed's

lifespan or purpose is explicitly defined) or on a beneficiary's consent where the Trust Deed is silent, or as per applicable law².

[29] The termination also depends on the type of Trust, which is usually related to the purpose for which it was formed. The terms outlined in the Trust Deed are paramount in determining when and how a Trust Deed ends, which should be in line with the purpose for which it was formed. A Trust will, in terms of the common law automatically come to an end once the purpose for which it was formed is fulfilled or comes to bear.

[30] The original intended purpose of the Trust is therefore key in its termination. Unless the purpose for which the Trust was established becomes impossible to achieve or the termination is sanctioned by the court. Circumstances may require the Trust to terminate sooner or continue longer than what is stated in the trust deed.

Duties of a Trustee

[31] A trustee is expected to manage the trust's assets responsibly and in the best interest of the beneficiaries. He has a fiduciary duty to uphold and fulfil the purpose of the Trust. Failure to uphold these responsibilities, breaching their fiduciary duty may result in the beneficiaries taking legal action, including petitioning the court to terminate the trust and distribute the assets. The court will do so if it finds that a trustee has indeed acted improperly.

Termination other than by fulfillment of the purpose

[32] Courts indeed have in certain circumstances the power to intervene in the operation of a trust, If the purpose of the trust is deemed to have become illegal, unfeasible (trust property depleted), or contrary to public policy (violation), due to impossibility, a court may interfere and or order the termination of the trust, on a disagreement whether or not its purpose has been fulfilled.

² By common law or Section 13 of the Trust Property Control Act 57 of 1988

[33] The intervention by the court is provided for in s 13 of the TPCA that deals with the power of the courts to vary the provisions of or terminate the trust deed and reads:

“If a trust instrument contains any provision which brings about consequences which in the opinion of the court, the founder of a trust did not contemplate or foresee and which-

(a) hampers the achievement of the objects of the founder; or

(b) prejudices the interests of beneficiaries; or

(c) is in conflict with the public interest, the court may, on application of the trustee or any person who in the opinion of the court has a sufficient interest in the trust property, delete or vary any such provision or make in respect thereof any order which such court deems just, including an order whereby particular trust property is substituted for particular other property, or an order terminating the trust.

[34] In *Snyman vs De Kooker N.O & Others*³ Makgoka AJ highlights the jurisdictional factor that should exist for the section to be applicable and states that:

“[40] In the main, s 13 of the Act provides for variation of trust provisions by a court, and in certain instances, for termination of a Trust. For a court to exercise its powers provided in s 13, a trust deed must contain a provision ‘which brings about consequences which in the opinion of the court the founder of a trust did not contemplate or foresee’ and which: (a) hampers the achievement of the objects of the founder; or (b) prejudices the interests of beneficiaries; or (c) is in conflict with the public interest”.

“[41] The provision has thus two components. The first requires the presence of a provision which results in unforeseen or unanticipated consequences. I

³ (400/2023) [2024] ZASCA 119; [2024] 4 All SA 47 (SCA); 2024 (6) SA 136 (SCA) (2 August 2024)

refer to this as the anchor jurisdictional factor. The second requires, in addition, that such a provision must have any of the results contemplated in s 13(a) – (c). Thus, an applicant who relies on this provision must satisfy the court of the presence of the anchor jurisdictional factor *and* any of the requisites of s 13(a) – (c). Logically, it is only if the anchor jurisdictional factor is established, that an enquiry into any of the three requisites would ensue. In other words, the section requires a causal link between the anchor jurisdictional factor and the results referred to in s 13(a) – (c).”

Analysis

[35] The Applicant is seeking the termination of the Nemukula Trust on the basis that her attainment of the age of majority, resulted in the automatic termination of the Trust Deed. It is common cause that when the Trust was formed, the Applicant was 10 years old and *de facto* not able to manage her own affairs and still under the guardianship of her parents. The litigation against the RAF was hence in the name of her father. The intended purpose for the formation of the Nemukula Trust is clearly outlined in the court order granted on 31 August 2010 in terms of which it was formed.

[36] The principles applicable to the interpretation of Court orders are as it was noted in *R.S v ABSA Trust Limited and Others*⁴ to be well established in *Firestone South Africa (PTY) Ltd*⁵, that the Court’s intention should be ascertained from the language of the judgment or order as construed according to the usual, well-known principles of construction of documents. Thus, as in the case of a document, the order and the Court’s reasons for granting the order requires that it should be read as a whole.

[37] As noted by the Applicant, the court order, refers to the minor, that is the Applicant, and indisputably provides for the establishment of a Trust for a minor. The court order further designates the appointment of the named nominee of the 2nd Respondent to be appointed as a Trustee to administer the funds of the minor. Whereafter, on the powers granted to the Trustees for the sake of clarity, the order

⁴ 515/2021) [2022] ZAFSHC 5 (6 January 2022)

⁵ 1977 (4) SA 298 (A)

makes reference to the minor, as quoted verbatim by the Applicant, that “the Trustee is to receive, take care of and administer all the assets of the minor including the amount, paid in this matter by the Defendant to the minor and of Plaintiff’s legal costs.”

[38] As a result there cannot be confusion that what was intended by the court order was to create a Trust for the Applicant as a minor to preserve and administer the minor’s funds. The fact that when the Trust Deed was eventually registered it was not mentioned or indicated in the Deed itself that the Trust was being registered for a minor, and the mentioning of only her name does not take away that it was indeed created for the purpose of administering the funds of a minor. The denial by the Trustees that it was a minor’s Trust is ill advised. The Court Order lays bare the purpose for the formation of the Trust in its instruction for the administration of the settlement amount payable to the minor.

[39] The implication of a minor’s Trust Deed is that as and when the beneficiary ceases to be a minor, that is on attainment of majority the purpose for the Trust Deed terminates. This is what was supposed to have been contemplated by the Founder and accommodated in the Trust Deed on its registration.

[40] As a matter of fact, not only did the Trust Deed only make mention of the Applicant’s name and of her being the beneficiary of the Trust with no reference to her being a minor, the purpose for which the Trust Deed was formed, that is, placing under administration funds belonging to a minor is not apparent from the Trust Deed. Hence both parties have pointed out that the Trust Deed is silent on its fate and Applicant’s attainment of majority and regrettably also on the beneficiary being a minor. The Trustees have interpreted the shortcoming to indicate that it was not a minor Trust and therefore Applicant’s attainment of the age of majority of no consequence. They have also pointed out that the Trust Deed in fact provides otherwise, which is for its existence beyond the age of majority rather than termination.

[41] However the Trust Deed is not only silent about the beneficiary being a minor, it also does not mention the purpose of the Trust Deed, the most important aspect of the creation of the Trust Deed. It resulted in a situation that was lamented in *Dube NO*

v Road Accident Fund,⁶ that elicited a comment by the court that “*when a court orders the creation of a Trust, it is inadvisable for an order to be made in the absence of a proposed trust deed. If the final terms of the trust deed are not circumscribed by a court order, a possibility exists that the object of the court order could be defeated.*” In *Snyman*⁷ the court bemoaned such a situation whereupon it stated that “*In the present case, had the court seen the draft trust deed prior to its registration, it would unlikely have given its imprimatur to it in its current form.*”

[42] The same is applicable in this matter. The intended purpose for the creation of the Trust Deed, which is the administration of a minor’s award is not discernable from the reading of the Trust Deed on its own. The Trust Deed bears the resemblance of a commercial deed far detached from the founder’s objectives as reflected in the court order. The Founder’s objectives were to preserve and protect a minor’s award under administration by the Trustees, whose appointment and exercise of the powers as set out in clauses under 2 of the court order was to be subject to the control of the Master of the High Court. In its place, the Trustees are, for the purpose of administering the Trust, contrariwise given unlimited and absolute power, to be exercised in their sole and absolute discretion. They are even bestowed with the power to amalgamate with any other Trust with the same or similar aims as the Nemukula Trust. Furthermore, even though the court order explicitly required the Trustees to pay security, the Trust Deed exempts the Trustees from furnishing any security to the Master, it even adds the Master of the Supreme Court of appeal. Finally there is a prohibition against the encumbrance of a beneficiary’s interest and should such event occur the encumbrance of benefits of those beneficiaries are not to be recorded against the Trust Fund. The Trust Deed meanwhile gives the Trustees wide powers to do so.

[43] The registered Trust Deed was obviously not meant for the circumstances of the Applicant and clearly by an extension of its existence beyond the minority of the Applicant, has resulted in a situation which was not only not envisaged by the Founder but prejudicial to the Applicant’s interest. A termination is therefore justifiable.

⁶ *Dube NO v Road Accident Fund* 2014 (1) SA 577 (GSJ)

⁷ *Supra* at para 38 *Ibid* para 25.

[44] Accordingly the provision of clause 5.3 of the Trust Deed, in relation to the Trust's duration and cessation is likewise, not in line with the purpose for which the Trust was created. The clause reads:

5.3 The Trust shall terminate when the Trust Funds have been paid out. In the event of the beneficiary dying before the termination of her Trust its portion shall devolve upon her estate.

[45] Although the Trust Deed was formed for the benefit of a minor, it is silent on what point a payout would be considered. Also bearing in mind the intended purpose being to place the minor's funds under administration, nothing is said on the occasion of the minor attaining the age of majority. It instead provides for termination only when the funds are depleted, without appreciating the effect and vagueness thereof. Its implication of a reinforcement/continuance beyond the age of majority is in stark contradiction to the court order. That scenario could not have been contemplated by the Founder and therefore clearly hampers the achievement of his objectives, whilst jeopardizing the Applicant's interest. What is trite is the manifest purpose of the order.⁸ It is therefore bound to be terminated by the court. and others of the judgement, is.

[46] The matter of the Applicant falls squarely under the provisions of s 13. She is an interested party and the jurisdictional factor envisaged by the section is present, since the Trust is in terms of the Trust Deed to continue beyond Applicant's minority, contrary to its purpose. The funds according to the Trust Deed are to remain under administration of the Trustees even after Applicant has attained the age of majority, a situation which was not contemplated by its Founder and prejudicial to the Applicant's interest. The ensued status quo is in terms of the court order in conflict with the purpose for which the Trust Deed was created and under the circumstances the court may interfere and order the termination of the Trust when there is a disagreement whether or not its purpose has been fulfilled.

[47] The termination of the Nemakula Trust is also inevitable as its intended purpose has been fulfilled, and its de facto lifeline having come to an end.

⁸ *Finishing Touch 163 (PTY)Ltd v BHP Billiton Energy Coal South Africa Ltd* 2013(2) SA 204 (SCA) at paragraph 13

[48] It is the Trustees' contention that with the Application of s 13, in considering whether to terminate the Trust Deed, that is if the purpose thereof has been fulfilled, the ability of the Applicant to manage her own affairs should be assessed. The argument is said to be motivated by the fact that the Applicant did not pass her Grade 11 and 12 in first sittings but had to repeat each of the Grades and also thereafter improve her Grade 12 subjects. She was using her account without appreciating the consequences of operating the account with insufficient funds, which indicates a lack of maturity. She was also unemployed. Her assessment therefore crucial to determine the issues under s 13, that is the termination of the Trust Deed.

[49] The reason the Trust was created for the Applicant was not because she was assessed and found unable to manage her finances or affairs. It is also not the basis upon which the Court order was obtained to create the Trust for her. It was because as a minor, she was presumed legally incapable of managing her own affairs, and under the guardianship of her unemployed parents at the time. The award was therefore placed under administration of the Trustees due to the Applicant being a minor. As a major she is legally presumed to be capable of managing her own affairs until proven otherwise. She also was at the date of the affidavit unemployed as she was pursuing further studies post Grade 12 at a College, which she did after improving her matric results.

[50] When the parties appeared before the court for the first time, it became evident that even though initially the Applicant was not agreeing with the Trustees' contention that she has to undergo a neurological assessment to establish if she was capable of managing her own affairs, she later agreed so as to facilitate a speedy and an amicable resolution of the matter. The Trustees had indicated that they will reassess their opposition on receipt of reports, probably withdraw their opposition and file a notice to abide if Applicant is proven capable of managing her own affairs. The only obstacle was a squabble about the money to be paid for the expert reports, the experts' location and relationship with Absa Limited Trust.

[51] The Trustees also alleged that the Applicant's attorneys refused them access to the medical legal reports on the basis of which the settlement was made. They were

of the view that the Applicant must have suffered a neurological injury since a neuro surgeon was named as one of the medical experts that submitted a report on the Applicant's injuries. This was just speculation and of no value to the issue to be determined by the court. I made an order that the parties proceed with their amicable arrangements for the assessment of the Applicant, obtaining the medico-legal reports from the relevant experts in an attempt at amicable solution, the costs of which was to be payable from the Trust funds.

[52] Following the assessment still there was no consensus on the matter. The Trustees remained steadfastly opposed to the termination of the Trust whilst the Applicant was keen for its termination. The parties proceeded to file Supplementary Affidavits in consideration of the medico-legal reports.

[53] It should be pointed out that notwithstanding the medico legal reports having been obtained and filed of record, there is no formal counter-application before court for consideration anew if the Applicant is capable of managing her own affairs. Nevertheless on termination of the Trust the Trustees have no locus standi to interfere in her affairs. Their contention on her ability to manage her affairs was intended also to counter the termination of the Trust.

[54] In motivation of that outcome they have also indicated that there will be no prejudice suffered by the Applicant as a result of the Trustees continuing to act as trustees since the integrity of the capital balance has been retained, the Trust preserved and no maladministration reported, save for the issue that the Applicant wants an increase. She has failed to set out any conduct of the Trustees that hampers the achievements of the objects of the Founder, being to protect and preserve the funds, which should not be confused with "dissatisfaction." Furthermore, the Applicant has confirmed that she receives her monthly statements.

[55] The Trustees conflate two issues. If the Trust has reached the end of its lifespan, the Trustees' role is also ended with no Trust to administer. This is not an application for their removal⁹ whereupon they could have argued for their retention. I

⁹ See s 20 of the ATPA

had therefore to be careful not to consider the contentions raised as if what is to be adjudicated upon is an Application for their removal.

[56] Neither is before me an application to extend the lifespan of the Trust, although the dismissal of the Application would have had that outcome. It cannot be extended, due to its purpose. The Applicant has passed the age of minority.

[57] The court notwithstanding has noted that both the experts in clinical and neuro psychology confirm that the Applicant's IQ is cognitively appropriate for her age and that she is able to handle her affairs. She will however need assistance with big purchases like a residential property. She has matured and has a sense of accountability towards her parents who have remained a source of support and guidance to her. She has lived within the small means afforded to her and continued to try and improve her qualifications so as to further study even though she has the money that is to be available to her. She has good judgment and the cognitive ability to can handle a huge amount due to her sense of accountability and responsibility. They both in their Confirmatory Affidavits supported the granting of the prayers as sought by the Applicant.

[58] Under the circumstances the following order is made:

1. The Trust known as the P E Nemukula Trust created in favour of the Applicant herein on 9 December 2010 is hereby forthwith terminated;
2. The 3rd Respondent is hereby directed to expunge from the list of the Trust Registrar "if any" the P E Nemukula Trust together with any letters of authority issued in favour of Martha Magdeline Prinsloo of Absa Trust (the 2nd Respondent herein) and or any other party who might have been issued with such letters of authority in this matter or any other party who might have been appointed as such on their behalf as the Trustees of P E Nemukula Trust;

3. The 2nd Respondent is to take all the necessary steps to ensure that the Applicant's claim arising from the proceeds of the settlement of her claim by the 4th Respondent in terms of the Draft Order dated 31 August 2010 is finalized and together with all the interest accrued from the Capital amount invested is paid, which payment shall be made within 20 days from the date of the granting and service of this order;
4. The 1st and 2nd Respondents to pay the costs of this application..
5. The Applicant is to pay the wasted costs reserved on 16 June 2023, to be payable as per provisions of the Court Order dated 31 August 2010.



N.V. Khumalo
Judge of the High Court
Gauteng Division, Pretoria

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