

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

Case Number: 2024/083818

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: YES

In the interpleader of:

SHERIFF KRUGERSDORP

Applicant

and

MARK VAN HOUTEN

First Claimant

and

DEON GROENEWALD N.O

Second Claimant

in his capacity as trustee of the Groenewald
Trust IT 5497/05

In re:

Case no. 2015/11512

MARK VAN HOUTEN

Plaintiff

and

DEON GROENEWALD PLAINTIFF

Defendant

JUDGMENT

WENTZEL AJ

Introduction

- [1] These are interpleader proceedings brought in terms of Uniform Rule 58. 2. The interpleader concerns claims made by the first and second claimants to certain

movable property attached by the Sheriff of Krugersdorp (*"the Sheriff"*) pursuant to a writ of execution issued against the property of Deon Groenewald (*"Groenewald"*) in execution of a judgment obtained against Groenewald by the first claimant, Mark Van Houten (*"Van Houten"*) in the amount of R1 812 449.80 (*"the judgment debt"*). The property attached includes various species of game, farm equipment, farm vehicles and miscellaneous farm items and furniture itemised in the Rule 58 notice (*"the attached property"*).

- [2] The second claimant is Deon Groenewald N.O, who is cited in his capacity as the trustee of the Deon Groenewald Trust IT 5497/05 (*"the Trust"*). The reason for this is that, following of the attachment of the property in satisfaction of the judgment debt, Groenewald claimed that the attached property did not belong to him but was owned by the Trust.
- [3] This prompted the Sheriff to bring the current interpleader proceedings who has requested the Court to determine the true ownership of the attached property. The Sheriff has filed a notice to abide and did not participate further in the proceedings.

The issues before the Court

- [4] The matter came before me in the unopposed motion court.
- [5] The issue before me is whether the matter should properly be decided on the papers before me or whether it should be referred to oral evidence in terms of Rule 58(6)(c).
- [6] Van Houten seeks that the matter be adjudicated by me in the unopposed motion court on the papers filed, without referring the matter to oral evidence, or directing that affidavits be filed to introduce the discovered documents filed as evidence.
- [7] The Trust, however, seeks that the matter be referred to an oral hearing in terms of Uniform Rule 58(6)(c).

Background

- [8] On 21 January 2016, the Van Houten obtained summary judgment against the Groenewald under case number 2015/11512 (*“the judgment”*).
- [9] Pursuant to the judgment, a writ of execution was issued by the Registrar on 20 April 2023.
- [10] On 19 July 2024, the Sheriff attended at Portion 17 of the Farm Weltevreden No. 517 and Portion 123 (A Portion of Portion 4) of the Farm, Hekpoort (*“the farm”*), where the Sheriff executed the writ and attached various items of movable property, referred to above as *“the attached property”*.
- [11] Following the attachment, Groenewald, in his capacity as the trustee of the Trust, provided a sworn affidavit dated 22 July 2024 alleging that the attached property belonged to the Trust..
- [12] On the same date, Groenewald also provided a sworn affidavit as the sole director of Netrac Investments 88 (Pty) Ltd (*“Netrac Investments”*) claiming that the game attached on portion 123 (a portion of Portion 4) of the Farm Hekpoort 504 JQ belongs to belonged to Netrac Investments and 33% of the accrual/offspring belongs to Mr. Chris Van Blommestein (*“Van Blommestein”*). It was alleged that Van Blommestein’s entitlement to 33% of the offspring flows from an agreement concluded between Netrac and Van Blommestein on 7 July 2007. Groenewald states that the game referred to is included in the list of the attached property, to wit, 1 nyala bull and 2 calves; 5 giraffe; 7 blue wildebeest; 1 blesbok; 2 female kudu's 3 female impala's; 5 warthogs; 10 kudu bulls and 4 female kudu's.
- [13] Neither Netrac Investments nor Van Blommestein are cited as claimants in this matter or have sought to intervene in these proceedings.
- [14] On 25 July 2024, the Sheriff issued notice in terms of Rule 58 of the Uniform Rules of Court. The said notice was served on Van Houten on 6 August 2024 and was served on the Trust on 7 of August 2024 and 23 August 2024.
- [15] The Trust served its particulars of claim on 16 of August 2024. Van Houten served his particulars of claim on 9 September 2024.

- [16] On the 15 October 2024 the Sheriff filed a Notice to Abide by any decision of the court.
- [17] The matter was first enrolled on 24 October 2024. On that occasion, the matter was removed from the roll after the presiding Judge directed that the application be dealt with in the special trial interlocutory.
- [18] Accordingly, the matter was set down for on 23 April 2025. At the hearing of the matter, Madam Justice Van De Venter indicated that the matter could not be heard as a special trial interlocutory as the matter is was an interpleader proceeding.
- [19] Subsequently, Van Houten's attorneys addressed a letter dated 3 June 2025 to the Deputy Judge President of this division requesting a directive as to which roll the matter should be placed on, alternatively, it was sought that the matter be referred to case management.
- [20] By letter dated 3 June 2025, Sutherland DJP clarified that the Special Interlocutory Court is reserved exclusively for cases where a party is aggrieved by a culpable failure of the other party to comply with a procedural obligation; all other interlocutory applications, including interpleader proceedings, must be enrolled in the ordinary unopposed motion court roll, unless the evidence is of such a substantial scale as to require a special directive from the Deputy Judge President ("*the directive*")
- [21] Acting pursuant to this directive, Van Houten's attorneys enrolled this matter in the unopposed motion court. The Trust denies having had sight of the directive. Van Houten's attorneys state that they uploaded the notice onto caselines; the Trust insists that this was uploaded to a duplicate file opened under a different case number to which it was not granted access. The Trust questions whether this was done by design and questions Van Houten's attorneys' motives.
- [22] I asked the parties to file heads of argument dealing with my discretion to regulate the further conduct of the matter in light of the directive issued by the Deputy Judge President.

The arguments raised by the Trust

[23] The first argument raised by the Trust is prefaced upon Rule 58(5).

[24] Rule 58(5) provides:

"If a claimant to whom an interpleader notice and affidavit have been duly delivered fails to deliver particulars of his claim within the time stated or, having delivered such particulars, fails to appear in court in support of his claim, the court may make an order declaring him and all persons claiming under him barred as against the applicant from making any claim on the subject-matter of the dispute."

[25] Van Houten did not file his particulars of claim within the stated period, nor sought condonation for their late filing - which is acknowledged in Van Houten's practice note. The Trust maintains the effect of Rule 58(5) is that I "*may make an order declaring him and all persons claiming under him barred as against the applicant from making any claim on the subject-matter of the dispute.*"

[26] Van Houten refers to Erasmus, Superior Court Practice, where it is stated with regard to Rule 58(5):

"Subrule (5): 'Declaring . . . him barred from making any claim.' A barring order in terms of this subrule may be made without such pronouncement in any way necessarily involving the judicial determination of the ownership of the property in question. Such barring order does not, therefore, have the legal consequence of vesting the ownership of the property in the judgment debtor. The order must be made at the instance of the applicant. There is nothing in the subrule that suggests that the court is at liberty to make such an order mero motu. " (emphasis added)

[27] In support hereof, Erasmus makes reference to two cases, namely **C P Smaller (Pty) Ltd v The Master** 1977 (3) SA 159 (T) at 166D and **Standard Bank of South Africa v Mpofo** (unreported, GP case no 83867/2015 dated 15 March 2022] at paragraph [32].

[28] Van Houten submits that “*Rule 58(5) of the Uniform Rules of Court makes clear that only the applicant may move the court to declare a claimant barred for late delivery of particulars. The second claimant has no independent standing to seek such a bar*”. It is further submitted that “*a barring order under Rule 58(5) is procedural in nature. It precludes the first claimant from pressing its claim against the applicant.*” Van Houten also argued that barring does not transfer ownership to the judgment debtor. Ownership remains a substantive issue to be determined by the Court.

[29] In any event, Van Houten points out that his particulars of claim were delivered only delivered eight days late. Although there was no application for condonation before me, Van Houten made reference to ***Pangbourne Properties Ltd v Pulse Moving CC and Another*** 2013 (3) SA 140 (GSJ) Paragraphs [18] - [19] at 147G - 1481, where Wepener J held that it was unnecessary for either of the parties to have brought a substantive application for condonation. The court took a pragmatic approach and stated that all the papers were before court and the matter was ready to be dealt with. It was found that to uphold the argument that the replying affidavit fell to be disregarded because it was filed out of time, was too formalistic and an exercise in futility, requiring the parties to commence the same proceedings on the same facts *de novo*. There was no allegation of prejudice to any party nor was the Court referred to any such prejudice were the matter to be disposed of on its merits, despite the late filing of the replying affidavit. It was found that it was in the interests of justice that the affidavits be taken into account and that the matter be finalised. (Wepener J also made mention that the respondents own answering affidavit was also filed late and thus would have also fallen to be disregarded).

[30] Relying on this authority, Van Houten submits that “*to disregard the First Claimant's particulars for a short delay would be unduly formalistic, an exercise in futility, and contrary to the interests of justice.*” Further it was submitted that only “*the Applicant may move for a bar and that the Second Claimant has no standing to do so. The true and central issue for determination remains the*

substantive one: whether the Second Claimant has discharged the onus of proving ownership of the attached movables”.

[31] Van Houten thus submits that *“in the absence of a formal application under Rule 30, and given the advanced procedural stage of these proceedings, the invocation of Rule 58(5) by the Second Claimant is procedurally irregular and substantively immaterial”.*

[32] I agree with Van Houten.

[33] The second argument raised by the trust is based upon the provisions of Rule 58(6) which it was argued prescribes that before interpleader proceedings are brought the court must determine how the matter should proceed.

[34] Rule 58(6) provides:

"If a claimant delivers particulars of his claim and appears before it, the court may-

(a) then and there adjudicate upon such claim after hearing such evidence as it deems fit;

(b) order that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant;

(c) order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be plaintiff and which shall be defendant;

(d) if it considers that the matter is not a proper matter for relief by way of interpleader notice dismiss the application;

(e) make such order as to costs, and the expenses (if any) incurred by the applicant under paragraph (b) of subrule (2), as to it may seem meet."

[35] The Trust points out that unlike in the lower courts where interpleaders are dealt with as a special interpleader trial as set out in Magistrate's Court Rule

45(4)(b), “in terms of Uniform Rule 58, upon the parties delivering their respective particulars of claim, the matter is to be placed before court, where the presiding Judge is empowered to deal with the matter in any number of ways, as highlighted in Rule 58(6)”. In support of this proposition, reliance is placed on **Acting Sheriff of the High Court Mahikeng v Dada Motors Mahikeng CC** and Others (43929.2015) [2024] ZAGPJHC 333 (27 March 2024) (“**Dada Motors**”) at para 3. There Vally J states:

“[3] Upon filing their respective particulars, the matter should have been placed before a court. This did not occur. Had it occurred, the two claimants would have been required to appear before the court. The court is empowered to ‘then and there adjudicate’ over their respective claims after hearing ‘such evidence as it deems fit.’ This procedure favoured by sub-rule 58(6) is clearly designed to ensure expeditious finalisation of matters. The parties’ respective evidences are to be presented to the court and the court ought to ‘there and then’ make its decision. This is so, because, amongst others, competing claims made on goods, money or immovable property attached by a Sheriff interfere with the Sheriff’s ability to discharge his duties. Thus, the procedure does not envisage or expect the lengthy drawn-out process that is normally pursued in a trial action, involving all the accompaniments of the pre-trial processes - such as discovery and request for further particulars for purposes of trial preparation and pre-trial conferences – necessary to get the matter to be trial ready. (emphasis added)

[4] Once the matter is presented before a judge the judge may:

a. ‘order that any claimant be made a defendant in any action already commenced ...’

b. ‘order that any issue between the claimants be stated by way of a special case or otherwise and tried, and for that purpose order which claimant shall be the plaintiff and which shall be the defendant.’”

[36] The Trust’s argument is that “despite the First Claimant placing the matter on the unopposed motions roll, it is not a motion proceeding, and no order has been made directing the matter to proceed on affidavit. Similarly, despite the

First Claimant's discovery notices being filed, it is not an action proceeding at this stage in which discovery can, or should properly take place.

What is however clear, is that the First Claimant's approach that the matter simply be determined on the papers as filed, without affidavit nor oral evidence, is not sustainable as the documents themselves, without more, do not constitute admissible evidence.

In fact, documents, neither presented through a witness, nor presented through affidavit (after directed that the matter proceed on affidavit), does not constitute evidence at all. Evidence is what the process is concerned with.

Whilst situations may exist where ownership can be established with reference to a formal document, such as a title deed, certificate or registration papers, it does not lend itself to a situation where there are such varying types of property attached, from animals, to wooden poles, to unlicensed motor vehicles, together with other factual disputes.”

[37] In support of this argument the Trust referred to **Dada Motors** at paragraphs [9]-[10]. Referring to the fact that the first claimant had filed two affidavits, Vally J stated:

“[9] More importantly, the second claimant takes umbrage at the filing of the two affidavits. It says:

‘Uniform Rule 58 does not provide for the filing of affidavits in the interpleader process prior to the Court making a determination concerning how the matter shall proceed in terms of subsection (6). Notwithstanding the aforesaid, the first claimant has already filed two affidavits in this action.’

[10] The second claimant is correct. Once the respective particulars have been filed it is for the judge, and not the parties, to determine how the matter shall proceed. But this is not what happened, and to the extent that there can be any blameworthiness for this it would have to lie with both claimants’ legal representatives. The second claimant’s position is that the matter should proceed to trial. While the first claimant has filed two affidavits, it does not

explicitly aver in any of its affidavits that the matter should be determined by way of application proceedings. Nevertheless, that it adopted this view becomes clearer in time. Its position is recorded in the next paragraph in the second claimant's affidavit:

'The second claimant has indicated to the first claimant that its position is that the interpleader summons must proceed to trial so that the issues can be properly ventilated and the various witnesses evidence tested by way of cross-examination and that it objects to the matter being determined on the affidavits.'

[38] At the end of the day, this issue was not decided by the Court as by agreement, the further point taken by the second claimant, which was whether the writ of execution was valid in that it had not been executed pursuant to a money judgment (*ad pecunium solvendum*), and had instead been issued pursuant to a judgment to perform or desist from performing a deed (*ad factum praestandum*). The comments made by Vally J were thus obiter and were not the *ratio descendi* of the judgment.

[39] The Trust argues further that there are irresolvable disputes of fact on the papers before the court requiring that the matter be referred to oral evidence. In this respect, the Trust makes reference to the comments of Harms JA 33 in ***National Director of Public Prosecutions v Zuma*** (573/08) [2009] ZASCA 1 (12 Jan 2009), in which the then Deputy President of the Supreme Court of Appeal stated at para 26:

"Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities ..."

[40] Reference was also made to the dictum of Adams J sitting in this division *in* ***Sheriff of the High Court, Westonaria v Business Partners Limited and Another; In re: Business Partners Limited v Vision Tissue CC and Others*** (2016/25862) [2017] ZAGPJHC 423 (14 December 2017) in which the court was faced with a factual dispute regarding ownership of goods and required that oral evidence be tendered before him (relying on ***Stellenbosch Farmers'***

Winery Group and Another v Martell and Others 2003 (1) SA 11 (SCA))

That case stipulated that when faced with conflicting factual assertions, the court is required to make findings on:

(a) the credibility of the various factual witnesses;

(b) their reliability; and

(c) the probability or improbability of each party's version on each of the disputed issues.

[41] The trust argues that such an approach cannot be followed without hearing evidence through the witnesses.

[42] The Trust also maintains that its possession of the attached property creates a rebuttable presumption that Groenewald was not the owner of the attached property as he was not in possession of the property as he had been evicted from the property where the attachment took place (Zandberg v Van Zyl 1910 AD at page 308).

[43] The Trust argues that *"the disputed facts highlighted [presumably who was in possession of the property at the time of the attachment] are material in that they go to the root of the matter. They are critical facts to be established when embarking on interpleader proceedings, as it dramatically alters the onus of proof resting upon parties, which in turn has a great bearing on the outcome."*

[44] In support of this proposition, the Trust made reference to **Dhlamini v Toms** (1929) 50 NPD 154 where it was stated:

"What then is our position? We are compelled to apply the well settled rule of law that possession raises a rebuttable presumption of ownership in the absence of proof to the contrary. The longer the possession, the stronger the presumption of ownership becomes, until, after the lapse of the period of prescription, the presumption becomes absolute, if it is adverse to a theory of ownership by any person other than the possessor. The magistrate lost sight of that important rule of law. It is clear that he approached the case from the point of view that the onus lay upon the plaintiff to prove his ownership,

notwithstanding his possession, for he says so in terms...Where a messenger attaches a chattel which is not in the possession of the judgment debtor at the date of attachment, he accepts the onus of proving that that chattel is the property of the judgment debtor. It would be dangerous to countenance any other rule."

[45] On the basis of this old authority, the Trust claims that as Groenewald was evicted from the farm where the attachment took place prior to the attachment Van Houten bears the onus of proving that Groenewald was the owner of the attached goods.

[46] The Trust claims that at the time of the attachment, everything on what was referred to as "*the top farm*" (Ptn 17 of the Farm Weltevrede) was possessed by Johan Homan. To support this claim, the Trust refers to the Order and judgment of Bester AJ in case no. 2024-069930 in the matter between Groenewald and another v Galloptic Trade and Investments 15 (Pty) Ltd and others which was delivered on 4 October 2024, in which Homan was joined as a third respondent. In terms of the Order it was, *inter alia*, ordered that:

"3. The questions of whether the third respondent is in occupation of the Farm Weltevrede No 517, JQ, (the property) and whether it is possible to restore possession of the property to the applicants [Groenewald and Koos Groenewald], are referred to oral evidence."

[47] It was explained in Bester AJ's judgment that:

"[1] The first respondent, Galloptic Trade 8 Investments 15 (Pty) Ltd, owns the immovable property known as Portion 17 of the Farm Weltevrede 517, JQ (the property). The first respondent obtained an order for the eviction of the applicants from the property on 20 April 2022, under case number 9333/2020 in this Division of the High Court. On 4 October 2022, the applicants were granted leave to appeal the order to the Full Court.

[2] On 21 June 2024, the second respondent, the Sheriff of this Court for the district of Krugersdorp, evicted the applicants from the property on the strength

of a warrant of ejectment issued upon the first respondent's statement that the appeal had lapsed.

[3] The applicants deny that the appeal had lapsed and urgently apply to have their possession of the property restored pending the outcome of the appeal."

[48] In terms of paragraph 2 of the Order, Bester AJ found that the appeal had not lapsed.

[49] The Sheriff contended that it was not possible to restore possession of the property to the applicants. This is so, the first respondent contended, was because the third respondent, Mr Homan, has taken occupation of the property. What is relevant from the judgment is it was stated that:

"[8] Of immediate concern to the applicants was that some of the first applicant's animals remained on the property and were not taken care of."

[50] This would suggest that Groenewald claimed ownership of the animals attached on the so-called " *top farm*".

[51] Regarding the bottom farm (Ptn 123 (a portion of portion 4) of the farm Hekpoort), the Trust maintains that this is possessed by the lessor of that farm, Netrac Investments in terms of a lease agreement concluded between Van Blommestein (as lessor) and Netrac Investments (as lessee), represented by Groenewald and apportions the game on the property between that entity and one Van Blommestein. The lease was.

[52] Clause 7.7 of the lease agreement which translated into English provides:

"7.7 The lessor shall be entitled annually to the value of 33% of the stock of game as estimated on the natural increase based on the carrying capacity of the property."

[53] The Trust argues that this evidences that at least 33% of the game on this portion of the farm remained the property of Van Bloemmestein.

The shares attached

[54] Before dealing with the arguments raised by Van Houten, I pause to mention that the Trust argues that Houten's particulars of claim "*do not purport to make a claim to the attached goods.*" As such, it is argued that the Trust's claim is the only claim to the attached goods before me.

[55] There may be some merit to this argument. What I do find odd is that in Van Houten's particulars of claim, reference is only made to the attachment of Groenewald's right title and interest in and to certain shares in Netrac Investments ("*the shares*") which were attached on the farm pursuant to the writ of execution. The attachment of shares (being incorporeal property) requires that the Sheriff take possession and control of the share certificates pertaining to the shares.

[56] The notice of attachment annexed to Van Houten's particulars of claim as "**MVH4**", however, only makes reference to the movables and game attached on the farm and no mention is made of the shares. In this respect the Trust may be correct that Van Houten does not purport to make a claim to the attached movable goods set out in annex "**MVH4**".

[57] I quote from the notice of attachment:

"By affixing a copy of the abovementioned process (and annexures, if applicable) to the main entrance at BOTH of the abovementioned address' as no other means of service was possible after a diligent search. As the EXECUTION DEBTOR was not present and the judgement debt and costs were not paid in part or in full, the following inventory of moveable items was placed under judicial attachment: INVENTORY: 1X LISTOR MOTOR 2X STEEL STABLES 1X ICE MACHINE (NOT WORKING) 1X WOODEN SHELF 1X BLACK LEATHER COUCH 1X CUPBOARD, 2X CHAIRS, 1X CHEST OF DRAWERS, 2X KHAKI COUCHES, 1X WHITE CUPBOARD, 1X DESK, 1X SIDE TABLE, 2X DESKS, 1X LEOPARD TAXIDERMIE, 2X FEMALE KUDU'S, 1X ALL VARIOUS SLEEPER WOOD BARS, 1X NYALA BULL, 2X NYALA CALVES, 5X WARTHOGS 3X FEMALE IMPALA 5X 7X BLUE WILDEBEES 1X BLESSBOK 5X GIRAFFES 1X BALLER MACHINE 12X SLASHERS 1X ROAD SCRATCHER, 1X FIRE FIGHTER MACHINE WITH 3030 TANK, 2X RIGHT

TITLE INTEREST IN AND TO TRAILERS, IX ALL ASSORTED TAR ROAD ROAD POLES, 1X RIGHT TITLE INTEREST IN AND TO CARAVAN, IX TRO3AN GYM MACHINE, 1X CANDLE HOLDER, 2X DONKEY, 90X BLESSBUCKS 3X TRACTOR TYRES 1X LOADING CATTLE BARS 7X OSTRICHES 10X KUDU BULLSx4X KUDU COWS(1X RIGHT TITLE INTEREST IN AND TO RANGE ROVER (NO REGISTRATION), 1X ENGINE JACK, 1X TROLLEY JACK, 1X ROOF RACK, 3X GOLF BAGS WITH GOLF STICKS, 1X HOSEPIPE WITH SPRAYER, IX WHEEL BARROW, 1X CHAIN BLOCK, 1X RIGHT TITLE INTEREST IN AND TO PIGEON TRAP, IX RIGHT TITLE INTEREST IN AND TO FORD TRACTOR. 000.00"

[58] After referring to the attachment of the shares and attaching the return of service (annex "MVH3") and the notice of attachment (annex "MVH4") quoted above, no mention at all is made by Van Houten to the farm equipment, furniture and game listed in annex "MH4" and instead, Van Houten makes it plain that his emphasis is solely on the shares.

[59] Van Houten states in paragraphs 10-12 of the particulars of claim:

"10. The shares so attached were attached at Groenewald's purported residential address by service of the writ personally on Groenewald. As such, the shares were found in his possession.

11. Accordingly, it is presumed that the shares so attached are the property of Groenewald.

12. Accordingly, the claim that the shares are owned by the second claimant is denied.

13. As the shares are owned by Groenewald, the first claimant, as execution creditor, has a claim to the shares."

[60] Thus it would appear that the shares allegedly attached form the sole basis of Van Houten's claim to the attached property. Indeed, Van Houten sole claim is to the shares. In his prayers, he prays that his claim to shares be upheld, that

the Trust's claim to the shares be dismissed and that the Sheriff be permitted to sell the shares in satisfaction of her claim against Groenewald.

[61] It is trite that a company is a separate corporate entity to that of its shareholders. Thus if Netrac Investments were to own the attached property and game, it would belong to Netrac Investments and not Groenewald through his shareholding in Netrac Investments.

[62] In my notes on the arguments presented before me I have recorded that Groenewald denies that he is the owner of the shares attached. There is thus a material dispute of fact as to the nature of the goods attached and regarding the ownership of the shares allegedly attached. It is moreover unclear what the relevance of the shares attached are to the current proceedings, particularly as they are not dealt with at all Van Houten's Heads of Argument.

The arguments raised by Van Houten

[63] Van Houten refers to several inconsistencies in Groenewald's sworn affidavit as to who in fact is the owner of the attached property.

[64] The first inconsistency referred to is that in Groenewald's affidavit dated 11 August 2023 deposed to on behalf of Netrac Investments in a summary judgment application brought by van Blommestein against Netrac Investments pursuant to the lease agreement (**Christiaan Albrecht Van Blommestein v Netrac Investments No. 88** Case No. 2023-032415).

[65] Groenewald confirmed that a variety of game species were introduced by Van Blommestein onto the farm during the period of occupation. Groenewald argued that although Blommestein had introduced substantial game species onto the farm, Netrac Investments, as the possessor, acquired ownership of the game that had multiplied on the farm. He also questioned Bloemestein's authority to enter into the lease and sale and to introduce the game onto the farm. He argued that should Netrac Investments be summarily evicted from the farm, Bloemmestein would be unjustly enriched as relocation or removal of the game would be an onerous and costly exercise. Netrac Investments accordingly, asserted a claim for compensation, alternatively contended that it

had an agricultural lien over the game pending such compensation, and submitted that these issues could not be resolved on the papers and required proper ventilation at trial.

[66] In the current proceedings, Groenewald contends that the game belongs to the Trust which is a material contradiction.

[67] In the second place, Van Houten makes reference to correspondence dated 24 June 2024 sent by Groenewald's attorney's email address, m[...], Groenewald's attorney. In this email Groenewald's attorney refers to the forceful eviction of his client and states that:

"Further to this, our clients' tractors and farm equipment situated on Ptn 123 was vandalised by way of nuts being loosened, oil filters being removed and tyres being slashed with sharp objects. There were furthermore a number of bakkies which entered Ptn 123, with the suspicion of poaching activities taking place with the aim of killing our and your client's game, respectively".

[68] Third, Van Houten referred to the urgent application brought by Deon and Koos Groenewald and the unlawful occupiers of portion 17 of the farm against Galloptic Trade Investments and the Sheriff.

[69] In paragraph 27 of the founding affidavit, Groenewald stated:

"I am also a game farmer and my animals remained behind on the farms, being 5 dogs, 96 Blesboks, 2 donkeys, 7 ostriches, chickens and geese and I do not know who is looking after it".

[70] In his replying affidavit, Groenewald further stated:

"31. The First Applicant also leases the neighbouring farm, Portion 123, as mentioned in the founding papers, on which the First Applicant and Mr Van Blommenstein own other game. This game includes inter alia:

31.1 Giraffe;

31.2 Hyena;

31.3 Kudu;

31.4 Warthog;

31.5 Zebra;

31.6 Impala

...

32. *The animals relevant to this application being the donkeys, ostriches, blesbok and dogs, clearly not being the same species as the neighbouring farm and having nothing to do with Mr Van Blommenstein, belong to the First Applicant.*

...

82. *To put the situation and risk to my belongings into context as the Respondent attempts to paint a false narrative, I annex as annexure "R5" some pictures of our belongings which are outside of the neighbour's fence, in the open.*³⁴ "83. *I admit that, through great difficulty I had summoned help to protect my belongings as best I could in a desperate situation.*

83. *I admit that, through great difficulty I had summoned help to protect my belongings as best I could in a desperate situation.*

...

88. *There were then also various hunting vehicles that had entered upon the farm, one such vehicle got stuck in a small stream as it was leaving the property, and the Police were called on suspicion of illegal poaching activities as the only reasonable conclusion was that these armed men were trying to shoot my animals without permission. Annexed annexure "R6" are pictures of this*

...

92. *The donkeys, ostriches and blesbuck remain on the farm and are at grave risk to predators, starvation and illegal poaching as they are not being protected.*

...

104. *The matter is urgent, not only for myself and my family, but also for the animals and all of our earthly belongings."*

[71] Finally, Van Houten disputes the validity of the Trust and argues that the founding requirements were never complied with.

[72] It is argued that in terms of clause 2.1.3 of the Trust Deed, the founder was required to donate R100 to establish the trust. There is no evidence that the required donation was made or deposited into the nominated trust account.

[73] Van Houten points out that:

- a. Although Flexible Savings Account at Capitec in the name of D Groenewald Trust Savings Account reflected an amount of R100.00 in the bank statement dated 31 of July 2019, it is not apparent when the initial donation was deposited. This bank statement is dated fourteen years after the alleged creation of the Trust and significantly, three years after judgment was granted against Groenewald in favour of Van Houten.
- b. Moreover, Van Houten points out that the Trust was only registered with SARS on 27 January 2020 and no SARS acknowledgments (IT144 forms) have been produced to confirm that donations were declared as required by the Income Tax Act 58 of 1962 (ss 54-64).

[74] Van Houten submits that the lack of evidence as to when the required donation was made *"undermines the legitimacy of the Trust's establishment and compliance with the trust deed, which is essential."*

[75] Although the Trust had produced various deeds of donation and SARS declaration forms dated before 2020, it is pointed out by Van Houten that there is no proof of the donation made at Absa Horizon as stipulated in the trust

deed. The only evidence available is that an amount of R100 was deposited at Capitec in 2019.

[76] Van Houten argues that:

“52. ... later deeds of donation, even if accepted, cannot retrospectively validate the defective formation of the Trust. The existence of trust property at inception is a constitutive requirement for the validity of an inter vivos trust. A trust that lacked initial property is void ab initio, and later additions cannot cure that fundamental defect.

53. Accordingly, while subsequent deeds of donation may be relied on to suggest later additions of property, they cannot:

53.1. Establish the validity of the Trust's creation;

53.2. Confirm if the actual donation took place.”

[77] Finally Van Houten argues that:

“55. The Trust Deed stipulates that a quorum of trustees (a majority of two) is required for valid resolutions. However, the available minutes show that most decisions and approvals were signed off by only one trustee, usually Mr Groenewald himself.

56. There is a current resolution dated 14 June 2005 providing Deon Groenewald with the power to make decisions in his sole discretion

57. The quorum clause makes it clear that decisions require at least two trustees. The resolution empowering Groenewald to act alone is inconsistent with the deed, invalid, and of no force or effect.

57.1. A trust derives its powers exclusively from its trust deed (subject to the Trust Property Control Act 57 of 1988).

57.2. Trustees have no inherent powers.

57.3. Any decision or resolution inconsistent with the deed is invalid and unenforceable. The Trust Deed clearly states there needs to be a quorum and

in the event of a trustee resigning, the remaining trustees will not be able to act without appointing a new trustee. 58. Taken cumulatively, it is submitted that these facts demonstrate that the Trust was not properly established or maintained in accordance with its deed and statutory requirements. Instead, based on the affidavits and lack of evidence it has been used as an "alter ego" of the judgment debtor, Mr Deon Groenewald, in an attempt to shield his personal property from execution.

58. Taken cumulatively, it is submitted that these facts demonstrate that the Trust was not properly established or maintained in accordance with its deed and statutory requirements. Instead, based on the affidavits and lack of evidence it has been used as an "alter ego" of the judgment debtor, Mr Deon Groenewald, in an attempt to shield his personal property from execution.

[78] I again, tend to agree with Van Houten that Groenewald's claim that the Trust is the owner of the attached assets and that Netrac Investments (of which he is the sole shareholder is the owner of the game together with Van Bloemestein.

[79] Despite this, do not feel that I am in position to make a definitive finding as to the ownership of the attached assets without the hearing of oral evidence and having Groenewald's version tested in cross-examination. I am also particularly concerned as there is no explanation before me as to why Van Houten has relied solely on the attachment of the shares in Netrac Investments in his particulars of claim and not upon the attached assets.

[80] I am alive to the fact that interpleader proceedings should proceed as expeditiously as possible.

[81] I thus make an order in the following terms:

Order

- (1) The matter is referred to hearing of evidence under rule 58(6)(c);
- (2) The First Claimant shall be the Plaintiff and the Second Claimant shall be the Defendant;

- (3) The First Claimant shall file particulars of claim setting out its entitlement to the proceeds of the attached property including the shares in Netrac Investments 88 (Pty) Ltd within 15 days of the uploading of this judgment.
- (4) The Second Claimant shall file its plea to the First Claimant's particulars of claim within 15 days of receipt of the First Claimant's particulars of claim.
- (5) The Second Claimant is directed to file its discovery affidavit in terms of Rule 35 within 10 days of the filing of its plea.

- (5) The parties are directed to jointly approach the Office of the Deputy Judge President, alternatively the Acting Deputy Judge President for allocation of a hearing date for the hearing of oral evidence.

WENTZEL AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the First Claimant:
Instructed by:

D Steenekamp
Swanepoel van Zyl Attorneys

For the Second Claimant

Michael Scott Crawford (attorney)
Crawford Harris Inc.

