IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

Reportable/ Not Reportable

Case no: 654/2023

In the matter between:

CECILIA NOMVULA MENDILE	1st Applicant
ROBERT KHUMOETSILE MEREETSILE	2nd Applicant
ERNEST SEGANENO	3rd Applicant
SIGNORIA GONGO	4th Applicant
KAGISHO OUPA GOROGANG	5th Applicant
JOSEPH LENTIKILE OBUKI	6th Applicant
NONCEDILE NOMPUMELELO PRINCESS SILANI	7th Applicant
LUCAS NTSHEKISANG	8th Applicant

and

THE MASTER OF THE HIGH COURT, NORTHERN CAPE KIMBERLEY	1st Respondent
NICO SNYMAN VAN NOORDWYK N.O.	2nd Respondent
PHENYO ANDREAS BOTLHAODI	3rd Respondent

MOEMEDI CRONJE LETOBANE	4th Respondent
WONDERFUL LUNKANI OOR	5th Respondent
OMPHENETSE EDWIN DITAKE	6th Respondent
LUCAS NTSHEKISANG	7th Respondent
REGINALD MATSIPANE	8th Respondent
MOSES MATLHOLE	9th Respondent
RAPELANG MOOKETSI	10th Respondent
SUSAN VAN WYK	11th Respondent
FRANS MMOLAWA	12th Respondent
JAFANE BOITHUTO	13th Respondent
FORCE DIPANE	14th Respondent
MOETI SUPING	15th Respondent
JOHN MOTINGWE	16th Respondent
DORA MOLANKANYANE	17th Respondent
BOTUMILE MORUTLWA	18th Respondent
JAMES SEGAMI	19th Respondent
LUCAS KIEWIET	20th Respondent
RUNBOY KGOSITIO	21st Respondent
ERNEST MADITO	22nd Respondent
THE MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT	23rd Respondent

Neutral citation: *Mendile and Others v The Master of the High Court and Others* (654/2023) 23 January 2026.

Coram: MAMOSEBO J *et* STANTON J.

Heard: 17 November 2025.

Delivered: 23 January 2026.

Summary: *Statutory review of the Master's decision to appoint further trustees – Review in terms of section 23 of the Trust Property Control Act 57 of 1988 ("the Act") – The denial of a right to be heard before the Master grants any order in terms of section 7(2) of the Act is not absolute – The applicants had a legitimate expectation of being heard – The Master's decision defies section 6(2)(e)(ii), 6(2)(e)(iv), 6(2)(f)(cc) and 6(2)(h) of the Promotion of Administrative Justice Act 3 of 2000 – The Master's decision is reviewed and set aside – The letters of authority appointing the second to the sixth respondents as trustees are set aside.*

ORDER

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1. The decision by the first respondent taken on 04 September 2019 to appoint the second to the sixth respondents as trustees of the Badirammogo Trust is reviewed and set aside.

2. The letters of authority issued by the first respondent on 04 September 2019, authorising the second to the sixth respondents to act as trustees of the Badirammogo Trust are set aside.

3. The first to the sixth respondents shall pay the applicants' costs, jointly and severally, the one paying, the other to be absolved, on a party and party scale C as set out in Rule 69(7), read with Rule 67A(3) of the Uniform Rules of Court.

JUDGMENT

Stanton J

Introduction:

[1] In this review application, the applicants seek an order that: *(a)* The decision taken by the Master of the High Court, Kimberley ("the Master") on 04 September 2019 to appoint the second to the sixth respondents as trustees of

the Badirammogo Trust ("the Trust") ("the decision"), be reviewed and set aside; and *(b)* The letters of authority issued by the Master on 04 September 2019, authorising the second to sixth respondents to act as trustees of the Trust be set aside.

[2] The first applicant was one of the initial trustees of the Trust, and she is still authorised to act in this capacity. The first to the eighth applicants are beneficiaries of the Trust.

[3] On 23 May 2025, the third to the twenty first respondents filed a notice of intention to oppose the application, but on 13 June 2025, a notice of withdrawal of their opposition to the application was filed and said to be on behalf of the second to the twenty second respondents. The twenty third respondent is cited merely as an interested party, there is no order sought against him/her.

[4] The Master did not oppose the application and did not file an answering affidavit. He, however, filed a report, not under oath, in which he *inter alia*:

4.1 Confirmed that he does not oppose the application, except for the cost order; and that he will abide with the decision of this Court;

4.2 Denied that the applicants' attorney of record did not have access to the Master's file;

4.3 Explained:

(a) Why he requested the Trust's financial statements from the Trust's auditors;

(b) That the section 16(2) investigation of the Trust Property Control Act 57 of 1988 ("the Act") was initiated and requested by the Department of Agriculture, Land Reform and Rural Development ("the Department") after a number of complaints were lodged with different government departments and at the Master's office;

(c) Mr. M Sebashe was appointed as the investigator and his section 16(2) report ("the report") indicates that malpractice took place on the farms and in the Trust;

(*d*) In view of the complaints lodged at his office, he had to intervene to restore order and stability on the farms and in the Trust, which he attempted to do by re-instating some of the trustees who were, according to him, forcefully and unprocedurally (*sic*) removed from the Trust.

[5] The applicants, in response to the Master's report, filed a supplementary founding affidavit, contending that the Master ought to have filed an answering affidavit instead of submitting a report had he wished to properly oppose the application. In addition, the applicants: *(a)* Deny that Mr. Steyn misled the court in any way whatsoever; *(b)* Introduced the Master's directive, that formed the basis of the review application in case number 61/2021 in this Court ("the directive"), into evidence. In case number 61/2021, the Department sought to review the Master's decision to order the Department to pay the costs of the section 16(1) investigation. According to the applicants, the directive clearly demonstrates how the applicants and other stakeholders' rights to fair and transparent administrative action, had been infringed.

[6] Finally, the applicants seek an order of costs only against the first to sixth respondents. The submission is that it is the aforementioned respondents' action or in action that necessitated these proceedings. This application stands to be adjudicated on an unopposed basis.

Relevant background:

[7] The Trust was created and registered in 2004 in terms of the Act as a vehicle for the economic empowerment of workers employed by Sonvrucht (Pty) Ltd ("Sonvrucht") and Chargo Trust. The Trust holds 45% of the issued shares in Sonvrucht. Subsequent to the registration of the Trust, a substantial number of its beneficiaries elected to sell their participation shares back to the Trust *in lieu* of receiving relatively small annual dividends. All the beneficiaries who sold their shares were remunerated in an agreed amount, after which they ceased to be beneficiaries ("the erstwhile beneficiaries").

[8] During 2014 it became apparent to the erstwhile beneficiaries that the empowerment venture financially benefitted the remaining beneficiaries of the Trust substantially, and the erstwhile beneficiaries accordingly wanted to be reinstated as beneficiaries.

[9] The erstwhile beneficiaries, however, did not pursue the matter until 2019 when the Master requested the Trust's accountants to provide him with all of the Trust's financial statements. It is apposite to mention that the Master did not request the trustees for the financial statements, and he gave no indication of the purpose of the request or the statutory authority to support such a request. This sparked a whole train of correspondence between various roleplayers.

[10] When the trustees requested the Master to inform them of the reason for this request, the Master divulged that new trustees were appointed by him and that the request is made at their behest.

[11] On 24 March 2021, after numerous enquiries spanning a period of two years, the Master informed the trustees that:

11.1 He at some stage ordered an investigation in terms of the provisions of section 16(2) of the Act; and

11.2 The section 16(2) investigation was apparently initiated at the request of the Department.

[12] On receipt of the documents, only provided by the Master to the Trust's attorneys during 2021, it transpired for the first time that:

12.1 Mr. Sebashe was appointed on 05 September 2016 by the Master to investigate the affairs of *inter alia* the Trust;

12.2 The Master was "tasked" by the Department "to investigate irregularities that might have occurred or are currently ongoing in the Trust";

12.3 Even before the section 16(2) investigation commenced, the purpose of the investigation was to give effect to the primary objective of a certain task team to have the participation shares of the erstwhile beneficiaries restored;

12.4 The scope of the section 16(2) investigation was to investigate possible irregularity in the administration of the Trust's financial affairs;

12.5 Mr. Sebashe allegedly conducted interviews with unidentified "beneficiaries" of the Trust as part of his investigation, and who appeared to be only the disgruntled erstwhile beneficiaries;

12.6 Mr. Sebashe allegedly made requests for documentation from the trustees, but he did not state when and to whom these requests were directed; and

12.7 Mr. Sebashe made certain damning findings in the section 16(2) report against the trustees of the Trust without interviewing any of them or any of the existing beneficiaries of the Trust, and without any real evidentiary substantiation for any of his findings.

[13] According to the applicants, during the whole protracted process, none of them were ever informed of the investigation, its purpose, its outcome or of the fact that consideration was being given to the possible appointment of further trustees.

Legal arguments:

[14] The gist of the applicants' grounds for the review is that the applicants:

14.1 Have the right to just administrative action in accordance with section 33 of the Constitution of the Republic of South Africa, 1996;

14.2 Have the legitimate expectation, and therefore the right, to be informed of any facts that might detrimentally affect their rights as trustees and beneficiaries of the Trust, and to be afforded the opportunity to address any adverse allegations or facts that might affect any of their rights; and

14.3 Have the right to transparent and procedurally fair administrative action.

[15] Mr. JG van Niekerk SC, on behalf of the applicants, argued that:

15.1 It is abundantly clear that the circumstances which led to the appointment of the second to the sixth respondents as trustees, had as its genesis the "primary objective" of the so-called task team and the Department, which "requested the Master to act in accordance with section 16(2) of the Act". The aforesaid action was based on the one sided and untested allegations of some of the erstwhile beneficiaries, and led to a shockingly biased investigation in terms of section 16(2); and a damning report, based on the mere say so of some individuals who were accepted to be beneficiaries of the Trust, but who in fact had divested themselves of any rights in that regard.

15.2 The Master, in his report, made quite an effort to paint the applicants (and even their attorney) with the proverbial brush of maladministration and fraud, without any specific substantiation of the said allegations. He dismally failed to provide any explanation as to why it would have been necessary to keep the said "facts" and allegations that came to his knowledge, hidden from the applicants for a period of almost five years.

[16] Mr. van Niekerk contended that the Master's decision is reviewable in terms of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") as: *(a)* The decision was taken for an ulterior purpose or motive, and because of the unauthorised or unwarranted dictates of another person or body(s); *(b)* the decision itself is not rationally connected to the information before the Master; and *(c)* the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action

was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function.

[17] In the final instance, Mr. van Niekerk argued that the Master, in failing to grant the applicants an opportunity to be heard, whilst he had the legal obligation to do so, did not comply with the *audi et alteram partem* principle.

Applicable law:

[18] Section 33(1) and (2) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair, and that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

[19] PAJA was promulgated to give effect to this constitutional right. The applicants rely on the following sections of PAJA:

'6. Judicial review of administrative action.

(1) Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.

(2) A court or tribunal has the power to judicially review an administrative action if-

(e) the action was taken-

(ii) for an ulterior purpose or motive;

(iv) because of the unauthorised or unwarranted dictates of another person or body;

(f) the action itself-

(ii) is not rationally connected to-

(*cc*) the information before the administrator; or

(h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or perform the function;'

[20] The following sections of the Act are relevant to the adjudication of this review application:

20.1 Section 6(1) of the Act provides:

'Any person whose appointment as trustee in terms of a trust instrument, section 7 or a court order comes into force after the commencement of this Act, shall act in that capacity only if authorized thereto in writing by the Master.'

20.2 Section 7 of the Act stipulates:

'(1) If the office of trustee cannot be filled or becomes vacant, the Master shall, in the absence of any provision in the trust instrument, after consultation with so many interested parties as he may deem necessary, appoint any person as trustee.

(2) When the Master considers it desirable, he may, notwithstanding the provisions of the trust instrument, appoint as co-trustee of any serving trustee any person whom he deems fit.'

20.3 Section 16 of the Act, in relevant part, states:

'(1) A trustee shall, at the written request of the Master, account to the Master to his satisfaction and in accordance with the Master's requirements for his administration and disposal of trust property and shall, at the written request of the Master, deliver to the Master any book, record, account or document relating to his administration or disposal of the trust property and shall to the best of his ability answer honestly and truthfully any question put to him by the Master in connection with the administration and disposal of the trust property.

(2) The Master may, if he deems it necessary, cause an investigation to be carried out by some fit and proper person appointed by him into the trustee's administration and disposal of trust property.'

20.4 Section 23 of the Act provides that:

'Any person who feels aggrieved by an authorization, appointment or removal of a trustee by the Master or by any decision, order or direction of the Master made or issued under this Act, may apply to the Court for relief, and the Court shall have the power to consider the merits of any such matter, to take evidence and to make any order it deems fit.'

[21] The present application is brought in terms of section 23 of the Act. The Supreme Court of Appeal in *Fesi v Ndabeni Communal Property Trust*,[1] squarely addressed the issue on whether section 23 is the correct procedure in *casu*, by stating:

'. . .They contended that the proper procedure would have been for the respondents to launch an application in terms of PAJA and in accordance with Rule 53 of the Uniform Rules, to review and set aside the decision by the Master to not issue the letters of authority. In this regard it was contended on behalf of the Master that the principle set out in the decision of this court in *Oudekraal Estates (Pty) Ltd v City of Cape Town and others* 2004 (6) SA 222 (SCA) should apply, namely, that the Master's decision remains valid until set aside by way of review.

Section 23 of the Act on which the respondents based their application in the court below provides as follows:

"Any person who feels aggrieved by an authorization, appointment or removal of a trustee by the Master or by any decision, order or direction of the Master made or issued under this Act, may apply to the court for relief, and the court shall have the power to consider the merits of any such matter, to take evidence and to make any order it deems fit."

This kind of review is dealt with by Professor Hoexter[2] under the heading "Special statutory review" (at 113) as distinct from a PAJA and other types of review. She points out that this is sometimes a wider power than ordinary review and thus more akin to an appeal but that it might well be narrower with the court being confined to particular grounds of review or particular remedies. It would, of course, depend on the relevant statutory provisions. In *Nel and another NNO v The Master (ABSA Bank Ltd and others intervening)* 2005 (1) SA 276 (SCA), paragraphs 22-23, this Court, with reference to *Johannesburg Consolidated Investment Co v Johannesburg Town Council* 1903 TS 111, discussed statutory reviews of the kind in question and endorsed Professor Hoexter's exposition. In Honoré at 191, paragraph 119, the authors, in dealing with the

[1] [2018] 2 All SA 617 (SCA) at para 53 – 54. See also *Mofokeng v Master of the North Gauteng High Court* 2014 JDR 0039 (GNP) para 13.
[2] C Hoexter *Administrative Law in South Africa* 2 ed (2012).

power of the court when there is a challenge in terms of the Act in relation to the Master's *appointment* of trustees point out, with reference to section 23, that the terminology of that section makes it plain that the court may consider that disputed issue anew. At paragraph 154 (page 251) of Honoré, the learned authors note that *all* the Master's decisions in terms of the Act are subject to reassessment by the court. They go on (page 252), to state that section 23 makes it plain that the substantive justification for any action by the Master may be scrutinised. They also state the following:

> "[T]he substantive justification for any action by the Master may be scrutinised. The applicant will in other words not have to establish that the Master committed a reviewable irregularity but only that there are grounds for the court to substitute a decision it considers better. The court is expressly empowered 'to consider the merits' of the matter, to take evidence 'and to make any order it deems fit'. This goes further than the entitlement to administrative justice now embodied in statute under the Constitution.'"

[22] I am accordingly satisfied that this application is properly before the Court as a statutory review in terms of section 23 of the Act.

Evaluation:

[23] The following evidence is undisputed:

23.1 The Master failed to afford the applicants the opportunity to be heard;

23.2 The decision by the Master to order a section 16(2)-investigation and to appoint further trustees was taken at the behest of the Department and the disgruntled erstwhile beneficiaries;

23.3 The reason advanced by the Master for taking the relevant decision was "to restore order and stability on these farms and in the Trust";

23.4 The Master, with the second respondent, failed to advise or inform the applicants, who had a direct and substantial interest in the decision, about the appointment of the second to the sixth respondents; and

23.5 The report of the appointed investigator states that he was appointed to investigate "possible" irregularities in respect of various "black empowerment schemes".

[24] The failure to have due regard to the *audi alteram partem* principle renders the decision procedurally unfair as contemplated in section 3(2)(*b*) and 6(2)(*c*) of PAJA. However, the Court in *Moore NO and Others v Du Toit and Others* ("*Moore*"),[3] distinguished between section 7(1) and (2) of the Act and held that:

'. . .[T]he Legislature intended in Section 7(2) of the Act, to impliedly exclude an obligation upon the first respondent, to afford a hearing to any interested parties, before acting in terms of the sub-section. Express provision was made in Section 7(1) for prior consultation with interested parties because when the first respondent acts in terms of this Section, he specifically does so in the absence of any provision in the Trust instrument, to fill the vacancy in the office of trustee. That in doing so, he should act with due regard to the views of interested parties is perfectly understandable. In acting in terms of Section 7(2) the objective is entirely different. F. du Toit in his work *South African Trust Law Principles and Procedure pg. 59*, citing the Law Commission Reports: Review of the Law of Trusts para 7.4 says the following:

"The Master will in all probability exercise the discretionary power bestowed by the above subsection if the appointment of a co-trustee will avail the trust administration of specialised knowledge or expertise not possessed by a serving trustee or when the intervention of a co-trustee is likely to diffuse any tension or friction between serving trustees *inter se* or between serving trustees and trust beneficiaries".

An obligation to consult before appointing a co-trustee to diffuse a situation of conflict, may unreasonably stultify a need for urgent intervention. Dealing with the situation where a statute authorises emergency, ex parte, action the learned author Baxter[4] states that it might be implicit in the statue that unless natural justice is excluded altogether, a hearing need only be given after the decision is taken. Section 7(2) clearly does not expressly authorise such urgent intervention, but if one of the objectives of the section was to diffuse a situation of conflict, this may be considered as support for my view that the intention of the Legislature was that a hearing is not to be afforded before a decision is made.' (My emphasis underlined.)

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[3] (6900/2009) [2009] ZAKZPHC 66 (30 November 2009); 2009 JDR 1311 (KZP) paras 10 and 11.
[4] Baxter *Administrative Law* at 587.

[25] The Court in *Moore*,[5] however, cautioned that:

'The denial of a right to be heard, before the first respondent grants any order in terms of Section 7(2), is therefore not absolute.

What has to be considered now is whether the applicants had a legitimate expectation of being heard before the first respondent appointed the second respondent as a co-trustee of the Trust, in terms of Section 7(2) of the Act. This issue was raised by Mr. Thatcher, who was appointed as a *curator-ad-litem* to those descendants yet to be born of Thorpe and his wife. Thorpe and his wife and his descendants are the income beneficiaries of the Trust. Mr. Thatcher, relying upon a passage in Honoré, *supra* at pg 198 Section 119, submitted that such a legitimate expectation existed on the part of the applicants. The passage relied upon in Honoré reads as follows:

"The Master's discretionary power is not attended by any express requirement of consultation. But in so far as the appointment of a co-trustee could affect the interests of beneficiaries or indeed constitute an adverse reflection upon the serving trustee, these parties may have a legitimate expectation of being heard before the appointment is made. It would in any event clearly be proper for the Master to consult interested parties before appointing a co-trustee. But no procedure is prescribed."' (My emphasis underlined.)

[26] Not only were the applicants not given the opportunity to dispute the fraudulent allegations contained in the report, but they were unaware of the decisions and events concerning their rights. There can be no doubt that the appointment of the second to the sixth respondents would affect the interests of beneficiaries; and constitute an adverse reflection upon the serving trustees. This is especially so given that these respondents sold their participation shares to Sonvrucht during 2007 for an amount of R20 000 each, and thereby agreeing that they would forfeit all interest, title and ownership to capital, income and voting rights. I am persuaded that the Master had the obligation to consult with the applicants before appointing the second to the sixth respondents as trustees to the Trust.

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[5] *Moore (Supra)* paras 15 and 16.

[27] In *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency, and Others* ("*Allpay*"),[6] the Constitutional Court confirmed that when one ground for review is established, it is not necessary to deal with the remaining grounds for review, and held that:

> 'Once a ground of review under PAJA has been established there is no room for shying away from it. Section 172(1)(*a*) of the Constitution requires the decision to be declared unlawful. The consequences of the declaration of unlawfulness must then be dealt with in a just and equitable order under s 172(1)(*b*). Section 8 of PAJA gives detailed legislative content to the Constitution's "just and equitable" remedy.'

[28] Despite *Allpay*, I deem it prudent to also deal with the applicants' remaining qualms.

[29] The decision by the Master to order a section 16(2)-investigation and to appoint further trustees was taken at the behest of the Department and the disgruntled erstwhile beneficiaries. The decision was thus taken for an ulterior purpose or motive and as a result of the unauthorised or unwarranted dictates of the disgruntled erstwhile beneficiaries, together with the second respondent, their attorney. This flouts the provisions of section 6(2)(*e*)(ii) and (iv) of PAJA.

[30] The Master's decision resulted in the appointment of two groups of people with conflicting views and interests. This would inevitably destabilise the Trust. To my mind, the decision bears no rational connection to the facts at hand and falls foul of the provisions of section 6(2)(*f*)(cc) of PAJA.

[31] In the final instance, the report is clearly characterised by a lack of any substantiated factual evidence and no reference is made in the report to the terms of the relevant trust instrument. It is also unclear to what "farms" the Master refers; and there is no evidence of any instability or a lack of order on the farm in which the Trust has an interest. The Master's decision is thus irrational as it defies section 6(2)(*f*)(cc) of PAJA.

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[6] [2013] ZACC 42; 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC) para 25.

[32] In as far as grounds for review have been established, the impugned decision must be declared unlawful and set aside, and the applicants are accordingly entitled to the relief sought.

[33] I find no reason why the costs should not follow the result. A cost order on a party and party scale, scale C, is appropriate in the circumstances.

[34] Wherefore the following order is made:

1. The decision by the first respondent taken on 04 September 2019 to appoint the second to the sixth respondents as trustees of the Badirammogo Trust is reviewed and set aside.

2. The letters of authority issued by the first respondent on 04 September 2019, authorising the second to the sixth respondents to act as trustees of the Badirammogo Trust are set aside.

3. The first to the sixth respondents shall pay the applicants' costs, jointly and severally, the one paying, the other to be absolved, on a party and party scale C as set out in Rule 69(7), read with Rule 67A(3) of the Uniform Rules of Court.

[redacted]

STANTON J
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

I concur

[redacted]

pp MAMOSEBO J
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

On behalf of the applicant:	Adv JG van Niekerk SC
On instructions of:	Duncan & Rothman Inc.
On behalf of the respondents:	No appearance.