

REPUBLIC OF SOUTH AFRICA



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

Case Number: 88256/2019

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE 2026-01-22

SIGNATURE

In the matter between:

MARILIEZE ROELOFSZ

Applicant

and

JOHANNA BEKKER COETZEE

(ID NO: 7[...])

First Respondent

JOHANNES PETRUS VAN DER WALT

(ID NO: 7[...])

Second Respondent

KAREL IZAK VAN DER WALT

(ID NO: 7[...])

Third Respondent

THE MASTER OF THE HIGH COURT PRETORIA

Respondent

Fourth

**THE COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

Respondent

Fifth

MAWANA GAME RESERVE (PTY) LTD

(REG NR: 1960/004721/07)

Respondent

Sixth

JUDGMENT

POTTERILL J

[1] This matter has its genesis in a will and a trust and a family's battle royal pertaining thereto. The Applicant, Marilize Roelofs [Roelofs] brought an urgent application against her sister, the respondent, Johanna Bekker Coetzee [Coetzee], to stay the winding-up of the estate of their late father, seeking interim relief that the parties undergo mediation or arbitration and final relief that Coetzee and one of her brothers [second respondent] be removed as executors with Roelofs to be appointed as the executor of the deceased estate. Furthermore, Coetzee and the one brother [second respondent] be removed as delinquent directors from the company Mawana Game Reserve (Pty) (Ltd) [the Mawana Company]. The matter was found not to be urgent and pursuant thereto Roelofs amended the notice of motion and sought that a referee be appointed, the late retired Judge Van der Merwe.

[2] Bekker opposed the relief sought by the Roelofsz and brought a counter-application. This application seeks the termination of the Mawana Trust in terms of section 13(b) of the Trust Property Control Act 57 of 1988 [the Act]. The factual basis for the Trust to be terminated is the inability of the 4 siblings to work together and the argument thus was that s13 is applicable because it is not possible to achieve the goals set by the donor when the Trust was established.

Common cause facts

[3] Roelofsz, Bekker, and the two brothers are trustees and beneficiaries of the Mawana Family Trust [the Trust] and all four children are directors of the Mawana Company.

[4] The deceased bequeathed his entire estate to the Trust. This bequeathal includes the 4955 shares he had in the Company as well as six farms. The Company is the owner of 11 farms. The 6 farms registered in the name of the deceased and the 4 registered in the Mawana Company are subject to a Notice published in terms of section 11(1) of the restitution of Land Rights Act 22 of 1994 and the matter is pending in the Land Claims Court.

[5] The Trust is a discretionary Trust and a capital investment Trust. All four siblings are Trustees of the Trust and an independent trustee is to be appointed. A donation of R100 was the only asset in the Trust. Once the estate was finalized the Trust would serve as the vehicle to receive the inheritance.

[6] The two sisters have since childhood not got along, been at loggerheads and the relationship between them is extremely acrimonious. The deceased was aware of this unfortunate situation. There is a history of all the siblings at one stage or another being in a family feud and working together to achieve the same goal is a near impossibility.

The application before me

[7] Only the counter-application is before me as Roelofsz withdrew the main application on 17 February 2025. Coetzee persists with the counter-application. For

ease of reference, I will refer to the parties as in the counter-application, Coetzee [applicant] and Roelofs [respondent].

The facts relied upon in argument on behalf of Coetzee

[8] The argument went that due to the perpetual power struggle between the siblings a deadlock has been reached that, since the Trust came into being, has exacerbated. This is so because the board of trustees is rendered fatally dysfunctional because of the conflict between the siblings.

[9] Utilizing s13 of the Act to terminate and dissolve the Trust is the only conceivable way of ending the disputes in a manageable and dignified manner.

[10] The Court must consider what the purpose of the establishment of the Trust is and that is to be established from the Trust Deed. In terms of s13 the Court must find that the Trust Deed contained terms which brought about consequences that the founder of the Trust did not contemplate when the Trust came into being. These terms must hamper the achievement of the Trust or prejudice the interests of the beneficiaries or must conflict with the public interest.

[11] It was submitted that the founder could not have foreseen the two camps fighting each other resulting in a complete breakdown of trust between the parties. The objects of the Trust were hampered with irreconcilable differences pertaining to the fences around the property and the elephants roaming freely. The conduct of the general affairs of the Trust is suffering. The Trust Deed requires the parties to act jointly, and they cannot agree on anything so they cannot act jointly. The founder could not have foreseen this deadlock. A joint relationship to administer the Trust to the benefit of the beneficiaries was the bedrock of the Trust, but cannot be achieved. The trustees have not worked together in the day-to-day running of the Trust. Coetzee has withdrawn herself from the day-to-day running of the Trust and is not attending meetings. She has no information as to the finances of the Trust, but knows an attorney was paid an exorbitant amount. No beneficiary has received any benefit from the Trust despite its creation in 2016. No new independent trustee has been appointed since the resignation of the previous independent trustee.

The Legislative Framework

[12] Section 13 of the Act reads:

“Powers of court to vary trust provisions

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 interest 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, make in respect thereof any order which such court deems just, including an order terminating the trust.”

Analysis

[13] From a reading of the section a court does not have a wide discretion to vary or terminate a Trust. The jurisdictional requirements in s13 must be present: the founder must not have foreseen or contemplated the consequences of a provision in the Trust Deed and must result in one of the situations set out in (a), (b) or (c). This Court thus cannot in terms of s13 make an order that is pragmatic or just and equitable or may solve the family's deadlock. The Court can only apply s13 if the jurisdictional requirements have been complied with.¹

[14] S13 requires the Trust instrument itself to bring about a consequence the founder did not foresee or contemplate. I cannot find any provision in the Trust Deed that brings about consequences the founder did not foresee or contemplate. It is common cause that the founder was aware of the bad relationship between the sisters. I would dare to say that is why the Trust Deed provides for a beneficiary Trust, not requiring a quorum, but decisions to be taken by majority and not unanimous. Where the 4 siblings are trustees, as well as an independent trustee, a

¹ *J.S. N.O. and Another v P.J.N.S. Familie Trust and Others* [2020] ZAGPPHC 52 (20 February 2025) at para [15]; *Curators, Emma Smith Educational Fund v The University of KwaZulu-Natal and Others* 2010 (6) SA 518 (SCA) at para [48]

deadlock is not possible with a majority vote. I cannot find that any provision in the Trust Deed hampers the achievement of the objects of the Trust.

[15] The “anchor jurisdictional factor”² has thus not been proven and therefore no enquiry to s13(a)(b) or (c) is required; “In other words, the section requires a causal link between the anchor jurisdictional factor and the results referred to in s 13(a)-(c).”

[16] I do not address the many sticking points highlighted in the affidavits because it all just confirms the common cause fact that the siblings, especially the two sisters, cannot and will not get along.

[17] If the conduct of the Trustees is prejudicing Coetzee she should apply for the removal of the trustees, not the termination of the Trust. The complaint pertaining to the trustees paying the attorney R150 000 is negligible because there was a resolution by the Trustees to pay the attorney attending to the land claim lodged in the Land Claims Court. If Coetzee does not participate as a trustee, she cannot bemoan decisions taken. But I reiterate, if the conduct of the Trustees and their relationship with the beneficiaries are the gravamen then s20 of the Act is to be utilized not s13. This also relates to the issues pertaining to the fences and the elephants.

[18] The anchor requirement has also not been proven pertaining to the argument that Coetzee is prejudiced because she has received nothing from the Trust. But in any event, she has no vested right to a benefit as it is a discretionary Trust.

[19] The application must be dismissed.

Costs of this application

[20] As for the costs of this application it was argued on behalf of Coetzee the matter did not require a senior counsel to argue it. The reason for this was that in a letter of Roelofs’ attorney to Coetzee’s attorney it was submitted that a junior counsel can attend to an arbitration.

² *Snyman v De Kooker NO and Others* 2024 (6) SA 136 (SCA) at para [41]

[21] On behalf of Roelofsz it was submitted that it was a wise and reasonable precaution for the trustees to appoint senior counsel. But in any event, that letter referred not to the issues now raised, but to the simple issue of signatories of the bank account.

[22] I am satisfied that granting senior counsel costs in this matter is just and reasonable.

Costs of the main application

[23] On behalf of Roelofsz it was submitted that Coetzee should pay the costs of the main application pursuant to the main application being withdrawn on 17 February 2025 without tendering costs. The matter had already been set down and Coetzee had filed opposing papers. Roelofsz did not seek Coetzee's permission to withdraw the matter and accordingly Rule 41(1) is applicable. It was orally submitted that Coetzee was under the impression that the main application was still proceeding.

[24] On behalf of Coetzee it was argued that already in November 2022 in the answering affidavit it was highlighted that the main relief was abandoned. This was reiterated on 22 November 2022 wherein it was stated under oath that Roelofsz is not persisting with the main application. No further preparation was done and at best for the applicant costs can be granted up to 24 November 2022.

[25] The argument that Coetzee did not know that the main application was not proceeding is rejected. It would imply that the affidavits were never read. The joint practice note to Laka AJ does not further their case because it was not for a set down of the main application to be heard. However, this does not exempt Roelofsz from paying the costs. If there were no costs incurred after November 2022 then the taxing master will tax the bill accordingly. I am satisfied that Roelofsz had to tender the costs when she filed the notice of withdrawal.

[26] I make the following order:

[26.1] The counter-application is dismissed with costs. The costs to include the costs of senior counsel and two counsel where so employed, the second counsel on scale B.

[26.2] The costs of the main application on scale B are to be paid by the respondent herein.

S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NO: 88256/2019

HEARD ON: 30 October 2025

FOR THE APPLICANT: ADV. A.J. SCHOEMAN

INSTRUCTED BY: Strydom & Bredenkamp Inc

FOR THE THIRD RESPONDENT: ADV. N.G.D MARITZ SC
ADV. S.N. DAVIS

INSTRUCTED BY: Tintingers Inc.

DATE OF JUDGMENT: 22 January 2026