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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

**Not Reportable
Case No: 3944/2024**

In the application to intervene by:

ATLANTIC OIL (PTY) LTD

INTERVENING PARTY

(Registration Number: 2001/018421/07)

In re:

In the matter of:

A[...] C[...]2

APPLICANT

(Identity Number: 8[...])

In re:

J[...] J[...] M[...] C[...]

(Identity Number: 0[...])

F[...] S[...] M[...] C[...]

(Identity Number: 1[...])

A[...] C[...]

(Identity Number: 1[...])

Coram: Petersen ADJP

Date enrolled: 18 September 2025

Further Oral submissions delivered: 20 and 24 October 2025

Judgment deemed reserved: 24 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 14h00 on 19 January 2026.

Summary: Practice — Applications — Intervention — Application for leave to intervene in terms of Rule 12 — Direct and substantial interest — Judgment creditor's right to execute against property of a Trust prejudicially affected by an *ex parte* order obtained by the Trust's representative.

Practice — Urgent Applications — *Ex parte* orders — Duty of disclosure — *Uberrima fides* (utmost good faith) — Applicant failing to disclose extensive litigation history and existence of a final judgment and writ of execution — Failure to disclose material facts justifying the discharge of the order.

Practice — Reconsideration of urgent order — Uniform Rule 6(12)(c) — Court's power to reconsider an order granted in the absence of an aggrieved party — Nature of the hearing is *de novo*.

Constitutional Law — Rights of children — Section 28(2) of the Constitution — Best interests of the child — Children as beneficiaries of a Family Trust — Whether the interests of children can be used to stay execution of a valid debt where the debt was properly incurred by the Trust — Interests of children not serving as an absolute shield against creditors where alternative remedies against trustees exist.

ORDER

1. The points *in limine* raised by the Applicant (C[...]2) in the application to intervene, save for the striking out of the paragraphs relevant to the *curatrix ad litem* in the founding affidavit, are dismissed.
2. Leave is granted to the Intervening Party (Atlantic Oil (Pty) Ltd) to intervene in the application under case number 3944/2024 as a respondent.

3. The points *in limine* raised by the Intervening Party (Atlantic Oil (Pty) Ltd) in the curator application are upheld.

4. The order granted on an *ex parte* basis on 01 August 2024 is hereby reconsidered and set aside in its entirety.

5. The stay of execution against the immovable property of the Anja Family Trust is lifted.

6. The costs of this application, including the costs of the intervention and the reconsideration, are to be paid by the Applicant, A[...] C[...]2, on the scale as between attorney and client.

JUDGMENT

Petersen ADJP

Introduction

[1] On 01 August 2024, the applicant ('C[...]2'), on an urgent *ex parte* basis obtained an order (per Makoti AJ) in terms of Rule 6(12) of the Uniform Rules of Court.

[2] The relief sought and granted on 01 August 2024, culminated in the appointment of a *curatrix ad litem* Adv Sunette Lötter for three minor children, J[...] J[...] M[...] C[...], F[...] S[...] M[...] C[...], and A[...] C[...], beneficiaries of the Anja Family Trust ('the Trust'). Adv Lötter was instructed to investigate whether the children require protection following a legal action instituted by Atlantic Oil Inland (Pty) Ltd ('Atlantic Oil') under case number 596/2020 in this Division. The investigation by Adv Lötter was to cover the current status of the main legal action and any existing judgments; the potential financial and legal implications for the children; whether the children should join the action, defend it, or seek to rescind a

default judgment granted on 23 June 2023; the actions of the Trust's attorneys (TF Kruger Inc) and the potential liability or conflicts of interest involving current or previous trustees; and potential settlements that would serve the children's best interests.

[3] Adv Lötter in terms of the order of court was required to submit a report to the court within thirty (30) days. She was further authorized to obtain documentation from the applicant (C[...]2), TF Kruger Inc, and other relevant parties. The order extended her powers beyond reporting by allowing her to represent the children in the main action and appoint legal counsel and attorneys on their behalf.

[4] The order further provided for the stay of execution of the warrant in favour of Atlantic Oil under case number 596/2020, until Part B of the application *in casu* was finalised. The order was also to be served on the Master of the High Court (Pretoria) who was ordered to comment on the validity of Letters of Authority issued on 21 June 2012. A copy of the order was to be delivered to Atlantic Oil) Ltd via their attorneys, Lezanne Swanepoel Attorneys. Costs of the application in Part A were reserved pending finalisation of Part B of the application.

[5] Atlantic Oil seeks to intervene in the application, following the order as aforesaid. On 14 October 2024, it launched the intervention application, which is opposed by C[...]2, seeking leave to intervene in the application under case number 3944/2024 as a respondent; that the order granted on an *ex parte* basis on 01 August 2024 be reconsidered; and that the application be dismissed. In the alternative, it seeks an order that any order granted against Atlantic Oil be dismissed. And finally, that the costs of this application including the costs in the main application be paid by attorney H Lamprecht *de bonis propriis*, alternatively by C[...]2 on an attorney and client scale.

[6] The application could not be argued on 18 September 2025, as a result of my caseload. A proposal was put forward to counsel that the application be considered on the papers, with an opportunity to file further arguments, predicated on oral submissions counsel would have made, if the matter were argued in open court on

the day. The proposal was agreed to, with further oral submissions received, on 20 and 24 October 2025 respectively.

Background

[7] The matter has a protracted history, at least relevant to Atlantic Oil and C[...]2 (formerly C[...]). It is therefore opportune to sketch this litigious history to appreciate the present application by Atlantic Oil and the order obtained on an *ex parte* basis by C[...]2. Notably C[...]2 skirts the history of the litigation involving Atlantic Oil, herself in her personal capacity and as a trustee of the Trust. Acting on legal advice as she asserts, she dismisses the litigation history as being irrelevant to the relief sought and granted *ex parte* on 01 August 2024. For reasons adumbrated below, C[...]2's approach cannot be countenanced.

[8] The chronology sketched by Atlantic Oil provides a succinct overview of the history of the litigation. The original trustees of the Trust, Mr Vorster and the late husband of C[...]2, Mr C[...], served as trustees until June 2012. Mr C[...] and C[...]2 then served as trustees until the death of Mr C[...] on 01 May 2020. Mr C[...] and C[...]2, on 20 July 2012, in their capacity as trustees of the Trust signed an acknowledgment of debt, in terms of which the Trust bound itself as principal debtor and guaranteed to pay Atlantic Oil R1, 200 000.00.

[9] On 24 July 2012, Mr C[...] and C[...]2 in their personal capacity executed a suretyship agreement in terms of which they bound themselves jointly and severally as surety and co-principal debtor in solidum with the Trust in favour of Atlantic Oil.

[10] On 25 July 2012, Rich Rewards 440 (Pty) Ltd ('Rich Rewards'), applied for a credit facility from Atlantic Oil. The deed of suretyship was incorporated in the application for the credit facility. C[...]2 executed a suretyship agreement with Atlantic Oil binding herself as surety and co-principal debtor in solidum with Rich Rewards in favour of Atlantic Oil. On 13 August 2012, pursuant to and in execution of the terms of the guarantee, the Registrar of Deeds Pretoria registered a bond under number: B[...] over the immoveable property of the Trust in favour of Atlantic Oil. C[...]2 was

instrumental in all these actions. On 12 November 2019, Rich Rewards acknowledged its indebtedness in writing and made an offer to pay its debt.

[11] On 10 March 2020, Atlantic Oil issued combined summons. The defendants were required to serve and file their notice of intention to defend by 01 April 2020. On 14 May 2020, Atlantic Oil delivered a notice of bar on the defendants to deliver their plea. The defendants, rather than delivering their plea, delivered a notice of exception to the particulars of claim of Atlantic Oil, on 27 May 2020. Atlantic Oil consequently delivered a Rule 30 notice since the service and filing of the exception constituted an irregular step, as the defendants were under bar.

[12] The defendants retorted and on 23 June 2020, launched an application for upliftment of bar ('the first application'). Atlantic Oil noted its intention to oppose the first application on 30 June 2020; and on 17 July 2020, filed its answering affidavit and counter application to the first application. On 28 July 2020, the first and second defendants delivered a notice of withdrawal of the notice of exception to the particulars of claim of Atlantic Oil.

[13] The defendants relentlessly pursued the first application by delivering a notice of set down on 28 September 2021, for the opposed roll of 21 January 2022. However, on 12 January 2022, a notice of withdrawal of the first application was delivered; followed on 14 January 2022 with a notice of removal of the first application.

[14] In the ordinary course of the litigation process, Atlantic Oil delivered an application for default judgment on 24 January 2022, which was subsequently set down for the adjudication on 17 February 2022. On 10 February 2022, a mere seven days before the date set for the adjudication of the default judgment application, C[...]² and the second defendant delivered a new application for upliftment of bar ('the second application') and had it set down on the unopposed roll of 22 February 2022. Atlantic Oil opposed the second application by delivering its notice of opposition on 17 February 2022 and duly delivered its opposing papers, to which the defendants replicated. The second application was set down on the opposed roll of 25 November 2022.

[15] The second application was heard by Reddy AJ (as he then was), who on 09 June 2023, dismissed the second application with costs. The second application as dismissed on a point *in limine* that C[...]2 did not have the requisite *locus standi* to institute the application. The judgment, constituting a final order, precluding the defendants from further participation in the litigation, was not appealed.

[16] On 20 June 2023, Atlantic Oil delivered an application for default judgment. On 13 July 2023, default judgment was granted in favour of Atlantic Oil under case number 596/2020, with a writ of execution against immovable property consequently issued on 30 July 2023. Atlantic Oil proceeded with steps to execute on its order, during which period C[...]2 unsuccessfully sought to engage Atlantic Oil on staying execution.

[17] It must follow axiomatically that when C[...]2 realised that Atlantic Oil would not engage her further on the matter, that she approached this court on a *ex parte* basis on 01 August 2024, securing the order under hand of Makoti AJ. Following the order of 01 August 2024, the Master of the High Court appointed J[...] C[...] C[...]2 and Lize Daly as additional trustees on 07 August 2024. A month later, on 12 September 2024, Andreas Petrus Du Preez was appointed as an additional trustee following the removal of C[...]2. On even date, the *curatrix ad litem* delivered her report; and on 31 October 2024 delivered a further report followed by subsequent reports.

Points *in limine* raised by C[...]2

[18] C[...]2 assails the relief sought by Atlantic Oil mainly through points *in limine*, including (1) lack of *locus standi* of Atlantic Oil; (2) an application to strike out in terms of Rule 6(15) on the basis of alleged scandalous, vexatious and irrelevant matter in the founding affidavit; (3) the failure to properly reference annexures; and (4) non-joinder of the *curatrix ad litem*.

The first point in limine: lack of locus standi of Atlantic Oil

The submissions of C[...]²

[19] C[...]² contends that Atlantic Oil was provided a safeguard in paragraph 9.1 of Part A of the order of 01 August 2024, to return to court for reconsideration of the Part A order, which avenue she contends remains open. She further posits that Rule 6(12)(c) of the Uniform Rules which provides for reconsideration of the order creates a narrow, procedural remedy by permitting a party against whom an order was granted in its absence to set the matter down for reconsideration; and does not confer standing to intervene in separate proceedings.

[20] C[...]² further maintains that the subject matter of the curatorship application is not the enforcement of the judgment in favour of Atlantic Oil, but the protection of the minor children as beneficiaries of the Trust through the appointment of a *curatrix ad litem*. Thus, contends C[...]², relying on *United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd*¹, that Atlantic Oil has no direct and substantial interest in the curatorship application.

[21] C[...]² further asserts that the rights of Atlantic Oil as judgment creditor in case number 596/2020 remain intact and enforceable in that action. The only temporary limitation in Part A is the stay of execution, which is designed to preserve the investigative mandate of the *curatrix ad litem*. C[...]² thus concludes that the proper mechanism for addressing the stay of execution was a Rule 6(12)(c) reconsideration, and not an application for intervention. She posits that allowing intervention conflates two distinct remedies. A Rule 6(12)(c) reconsideration, which is a procedural safeguard for affected parties; and intervention under Rule 12, which requires a direct and substantial interest in the subject matter of the application.

[22] C[...]² therefore seeks an order dismissing the application on this point *in limine*, as being misconceived, overbroad, and abusive.

The submissions of Atlantic Oil

¹ *United Watch & Diamond Co (Pty) Ltd v Disa Hotels Ltd* 1972 (4) SA 409 (C).

[23] Atlantic Oil counters that the contention by C[...]2 that it does not need to be granted leave to intervene is misplaced. Atlantic Oil maintains that Rule 6(12)(c) provides a procedural mechanism for a party affected by an *ex parte* order to approach the court for reconsideration of such order, but that such an application does not in itself confer *locus standi*. It argues that an applicant must first establish a direct and substantial interest in the subject matter and must be recognised as a party to the proceedings before it can invoke Rule 6(12)(c). Failing intervention being granted, the affected party remains a legal stranger to the proceedings and cannot rely on Rule 6(12)(c) to participate meaningfully.

[24] Atlantic Oil differs with C[...]2 that Rule 6(12)(c) offers sufficient procedural protection to it. The contention by C[...]2 it charges, is both contradictory and legally unsustainable, since the argument simultaneously concedes that the intervening party is affected and may seek reconsideration, yet denies the intervening party standing to intervene and oppose the appointment or conduct of the *curatrix ad litem*.

[25] With reference to *United Watch and Diamond Company (Pty) Ltd supra*, Atlantic Oil points out that Corbett J highlighted the fact that the test of a direct and substantial interest in the subject-matter of the action is the decisive criterion in applications for intervention. Atlantic Oil further relies on *SA Riding for the Disabled Association v Regional Land Claims Commissioner*² where the Constitutional Court held that:

‘[10] If the applicant shows that it has some right which is affected by the order issued, permission to intervene must be granted. For it is a basic principle of our law that no order should be granted against a party without affording such party a pre-decision hearing. This is so fundamental that an order is generally taken to be binding only on parties to the litigation.

[11] Once the applicant for intervention shows a direct and substantial interest in the subject matter of the case, the court ought to grant leave to intervene.”

² *SA Riding for the Disabled Association v Regional Land Claims Commissioner* 2017(5) SA 1 (CC) at paras 10 and 11.

[26] Atlantic Oil opposes the position taken by C[...]2 regarding its right to intervene in the legal proceedings involving the Trust and minor children. Atlantic Oil asserts it has a “direct and substantial interest” in the matter, satisfying the legal test for intervention. This interest is based on the fact that there is an existing judgment in its favour against C[...]2 and the Trust; with a writ of execution against the property of C[...]2; and that the *ex parte* order has stayed execution of that judgment.

[27] Atlantic Oil argues that Rule 6(12)(c) does not provide sufficient protection and that the current proceedings violate the *audi alteram partem* principle. Further its rights under a valid court order have been suspended without giving them an opportunity to be heard. This has resulted in ongoing prejudice since Atlantic Oil, without intervention, cannot challenge the grounds of the stay or protect its vested financial interests. Atlantic Oil further submits that C[...]2 failed to provide the court with a full factual matrix, depriving the court of a proper assessment of the case.

The best interest of the minor children under the lack of *locus standi* point in *limine*

[28] C[...]2 argues that Atlantic Oil has no *locus standi* to bring these proceedings, as the sole purpose of the curatorship application is to focus on the best interest of the children, and does not concern Atlantic Oil or affect the rights of Atlantic Oil in the main action.

[29] While acknowledging that a child’s best interests are of paramount importance under s 28(2) of the Constitution of the Republic of South Africa, 1996, Atlantic Oil argues this right is not absolute. Citing, *S v M*³ it argues that child interests do not automatically override all other legitimate third-party interests:

‘[11] The wide formulation of section 28(2) is ostensibly so all-embracing that the interests of the child would override all other legitimate interests of parents, siblings, and third parties... That clearly could not have been intended. In my view, this provision is intended as a general guideline and not a rule of law of

³ *S v M* 2008 (3) SA 232 (CC) at para 11.

horizontal application. That is left to the positive law and any amendments it may undergo.' (emphasis added)

[30] The fact that the best interests of the child are paramount argues Atlantic Oil does not mean that they are absolute. Like all rights in the Bill of Rights, the operation of the right must consider its relationship to other rights, which might require that the ambit of the right be limited.

[31] When contextualising the factual matrix of the present matter, Atlantic Oil highlights that the children are beneficiaries of a Trust, and the Trust deed contractually determines their rights. If a trustee commits a breach of trust when they act outside their powers provided in the Trust deed; fail to act in the best interest of the beneficiaries; mismanage, misuse or misappropriate trust assets; and fail to comply with their fiduciary duties envisaged in the Trust Property Control Act 57 of 1988; and the beneficiaries are able a breach of the aforesaid, the remedy available to the beneficiaries is to institute an action against the trustees or apply for the trustees to be removed. Atlantic Oil notes that the *curatrix ad litem* does not address this in her report.

[32] Resultantly, if the trustees have failed in their duties, the appropriate remedy is to sue the trustees or seek their removal, rather than disrupting the lawful judgment in favour of Atlantic Oil.

[33] Atlantic Oil therefore asserts that it does have *locus standi* even on this score.

Finding on *locus standi* of Atlantic Oil

[34] When broken down to the basic legal principles adumbrated in the authorities referred to by C[...]² and Atlantic Oil, C[...]²'s contention that Atlantic Oil lacks *locus standi* because it could simply use Rule 6(12)(c) is legally circular. Rule 6(12)(c) is a procedural tool for reconsideration, but to participate in the broader litigation that directly affects its rights, a party must be formally joined; or seek intervention.

[35] The procedural mechanism for reconsideration cannot trump the fact that Atlantic Oil has to demonstrate that it has a direct and substantial interest in the subject matter of the present application. C[...]2 essentially argues against herself in this regard by contending that Atlantic Oil has no direct and substantial interest in the appointment of the *curatrix ad litem*. Atlantic Oil holds a final judgment and a writ of execution that were stayed by the *ex parte* order. This constitutes a direct and substantial interest in the subject matter, as the order interferes with its vested legal rights.

[36] The best interests of the minor children relied on by C[...]2 is not an immutable right to prevent Atlantic Oil having a vested interest in the application. When properly contextualised, the minor children as beneficiaries of the Trust have alternative remedies to pursue against the trustees rather than seek through C[...]2, who asserts acting in their interest, to circumvent a final order in favour of Atlantic Oil.

[37] The point *in limine* on lack of *locus standi* on the part of Atlantic Oil accordingly stands to be dismissed.

The second and third points in limine: the application to strike out alleged scandalous, vexatious and irrelevant evidence in terms of Rule 6(15); and the failure to properly reference annexures

The submissions of C[...]2

[38] C[...]2 seeks to strike out paragraphs 19, 21-28, 65, 66, 68, 80-81, 84, 88, and 130 of the founding affidavit. C[...]2 argues that paragraphs 19-23 impugn her character (e.g., that it she “economical with the truth”) and are irrelevant to her intervention. Paragraphs 24-28, 65, and 68 relate to the liquidation of Rich Rewards and is irrelevant to the curatorship application and burdens the record. Paragraphs 80-84, 88, and 130 criticize the court-appointed *curatrix ad litem*. C[...]2 argues these are scandalous and vexatious attacks on an officer of the court without factual basis.

[39] C[...]2 argues that these paragraphs prejudice the proceedings by attacking character rather than addressing the legal intervention. She further posits that, save

for a bare reference to the company search and a prior affidavit in other litigation, the founding affidavit fails to indicate which portions are relied upon or how they are relevant to the intervention application.

[40] Citing, *Transnet Ltd v Rubenstein*⁴, relevant to motion proceedings, C[...]² argues that the case to be met must appear from the affidavits themselves, rather than being left for the Court or the opponent to infer from the annexures. She further relies on the dictum in *Genesis Medical Aid Scheme v Registrar, Medical Schemes* citing *Minister of Land Affairs and Agriculture v D &F Wevell Trust*⁵, where it was stated:

‘It is not proper for a party in motion proceedings to base an argument on passages in documents which have been annexed to the papers when the conclusions sought to be drawn from such passages have not been canvassed in the affidavits. ... A party cannot be expected to trawl through lengthy annexures to speculate on their possible relevance. Trial by ambush cannot be permitted.’

[41] Ultimately, with reliance on trite principles emerging from case law, to bolster the case for striking out, C[...]² cites *Helen Suzman Foundation v President of the Republic of South Africa*⁶, where the Constitutional Court defined the core concepts of Rule 6(15). Scandalous allegations were defined as being those that may be abusive or defamatory; vexatious allegations as those worded with an intention to harass or annoy; and irrelevant allegations as those that do not contribute to the decision of the matter.

The submissions of Atlantic Oil

[42] Atlantic Oil argues the point taken by C[...]² is ill-conceived and that the impugned paragraphs are substantive responses to the curator’s report and the

⁴ *Transnet Ltd v Rubenstein* 2006 (1) SA 591 (SCA) at para 28.

⁵ *Genesis Medical Aid Scheme v Registrar, Medical Schemes* 2017 (6) SA 1 (CC) citing *Minister of Land Affairs and Agriculture v D &F Wevell Trust* 2008 (2) SA 184 (SCA). *TJ v TA* (GJ) Case 2019/22224 (31 March 2021); *Kalisa v Chairperson, Refugee Appeal Board* 2020 (4) SA 256 (WCC).

⁶ *Helen Suzman Foundation v President of the Republic of South Africa* 2015 (2) SA 1 (CC). *Jones v John Barr & Co (Pty) Ltd* 1967 (3) SA 292 (W); *Gordhan v Public Protector* [2021] 1 ALL SA 428 (GP)

application itself. Rule 6(1) of the Uniform Rules of Court it posits requires that any application must be brought on notice of motion, supported by an affidavit setting out the facts upon which the applicant relies. This does not preclude annexures from forming part of the affidavit record, provided the affidavit identifies the portions of the annexures that are material to the case.

[43] On the contention by C[...]2 that Atlantic Oil is abusing the process of court by burdening it with voluminous annexures, Atlantic Oil counters that our courts have consistently held that an abuse of process entails conduct that is oppressive, vexatious, or amounts to manipulation of procedure.⁷

[44] In a nutshell, Atlantic Oil argues that the founding affidavit with all the annexures serves as an answering affidavit to the curator application and that the targeted paragraphs are contextually relevant to the reports of the *curatrix ad litem* and the history of the matter. As to the criticism of C[...]2's litigation conduct and the *curatrix ad litem*, Atlantic Oil maintains that this is directly linked to its *locus standi* and the relief sought. As to the allegations regarding the trustees' conduct and omissions, it is argued that it is relevant to determining if the curator application was competent and *bona fide*, particularly regarding *ex parte* disclosures.

[45] Atlantic Oil emphasizes that relevance is the primary test, arguing that even critical facts are permitted if they relate to the issues. It places reliance on three seminal cases. In *Vaats v Law Society of Namibia*⁸ where the point was made that the test for striking out is relevance, and that if material is relevant to an issue, it must not be struck out, even if it is prejudicial, accusatory, or strongly worded. In *S v Suliman* and *Baxter v Minister of Justice*⁹, the principle that even if material is scandalous or vexatious, it will not be struck out unless it is also irrelevant, was highlighted.

[46] Atlantic Oil argues that the caution extended by our courts against overly technical objections to form and annexures that detract from adjudication on the

⁷ *Beinash and Another v Ernst & Young and Others* 1999 (2) SA 116 (CC) at para 17.

⁸ *Vaats v Law Society of Namibia* 1991 (3) SA 563 (NmHC).

⁹ *S v Suliman* 1969 (2) SA 385 (A) and *Baxter v Minister of Justice* 1962 (3) SA 457 (C).

merits should not be countenanced, where there is no prejudice to the opposing party and where the substantive issues remain clear.¹⁰

[47] Atlantic Oil ultimately argues that C[...]2 has failed to demonstrate that the annexures are irrelevant or that they prejudice her ability to meet the case. Most of the annexures are documents authored by or addressed to the very parties before the Court; and the prejudice argument is artificial and unsustainable. It seeks dismissal of the objection and the adjudication of the application on its merits.

Finding on the alleged failure to properly reference annexures; and scandalous, vexatious and irrelevant evidence

[48] The high watermark of C[...]2's arguments under this rubric is alleged impropriety on the part of Atlantic Oil which is prejudicial to the fair adjudication of the matter. On the contrary, the case for Atlantic Oil hinges on basic tenet of the law of evidence, predicated on relevance. While the language used by Atlantic Oil is indeed robust, the test for striking out matter is whether it is both offensive and irrelevant. In this instance, the allegations concerning the applicant's litigation history and the report of the *curatrix ad litem* are relevant to determining whether the *ex parte* relief was obtained through a full and honest disclosure of facts.

[49] On the authorities cited by Atlantic Oil, it makes a stronger technical argument than C[...]2, primarily because the legal threshold for striking out is extremely high. C[...]2 was required to prove that the matter she seeks to strike out is irrelevant, not just that it is offensive. The relevance principle which has served the purpose in our courts through the ages, as evidenced in *Vaats* and *S v Suliman*, establishes a protective hierarchy for affidavit content. The basic rule evolved from these authorities is that even if material is "scandalous or vexatious" it cannot be struck out unless it is also irrelevant.

[50] The implication of the aforesaid authorities is that C[...]2 effectively has to win two arguments: she must prove the content is offensive and that it has absolutely no

¹⁰ *Transvaal Racing Club v Jockey Club of South Africa* 1958 (3) SA 599 (W) at 604G-H.

bearing on the case. Atlantic Oil only needs to win one: that the content is relevant. The weakness in C[...]2's argument is her attempt to narrow the scope of the affidavit to a "narrow intervention question". She argues that historical liquidation issues and *curatrix* criticisms do not decide whether Atlantic Oil has a "direct and substantial interest" in intervening.

[51] Atlantic Oil have framed the founding affidavit in the intervention application affidavit as a "composite response" that simultaneously serves as an answering affidavit to the main curator application. I accept this pragmatic approach by Atlantic Oil to be correct, particularly when regard is had to the *bona fides* of the initial *ex parte* order. Resultantly, the history of the Trust and the conduct of the *curatrix* become substantively relevant. Under *Vaats*, a party is entitled to allege all facts relevant to the relief claimed, even if unflattering.

[52] The only possible exception in the present matter, leaving the conduct of C[...]2 aside, is the attack on the *curatrix ad litem* in paras 80-84, 88, 130. The sentiments expressed in *Gordhan*, where terms like "corrupt, rogue and incompetent" were struck out, resonate with this Court. Courts are generally protective of their officers. If this court finds the attacks on the *curatrix* are "unfounded" and lack factual basis, they may be struck out regardless of the broader relevance argument because they would constitute abuse rather than argument.

[53] Atlantic Oil argues that the criticism levelled against the *curatrix ad litem* relate to "competence". However, if the language mirrors the "abusive" nature described in *Helen Suzman Foundation* without hard evidence, the *Vaats* defence might fail to assist Atlantic Oil in relation to these specific paragraphs.

[54] The answer on this score is by no means an easy one. The allegations levelled against the *curatrix ad litem* might at first blush appear to be merely critical, but upon a careful reading, borders on being abusive. On the authority of *Gordhan*, paragraphs 80-84, 88 and 130 stand to be struck out.

[55] The objection by C[...]2 in respect of the remainder of the paragraphs complained about stands to be dismissed.

The fourth point in limine: non-joinder of the curatrix ad litem

The submissions of C[...]²

[56] C[...]² argues that the failure to join the *curatrix ad litem* is a fatal defect that should result in the dismissal of the intervention application. The core of this argument is that the *curatrix* was appointed on 01 August 2024 to represent the minor children who are beneficiaries of the Trust. She has produced three reports (the latest on 31 July 2025) detailing trust non-compliance, potential maladministration, and recommendations for the rescission of the default judgment.

[57] C[...]² consequently argues that the *curatrix ad litem* is a party with a direct and substantial interest in the subject matter, who had to be joined; that the *curatrix* is the officer through whom the minors participate; excluding her effectively excludes the children, violating the *audi alteram partem* principle; and that relief sought by Atlantic Oil would undermine the *curatrix*'s reports and curtail her mandate. On this ground alone, C[...]² submits the intervention application should be dismissed.

The submissions of Atlantic Oil

[58] Atlantic Oil contends that the point *in limine* is misplaced and should be dismissed. Its argument is that the *curatrix* was appointed solely for "Part A" of the court order and is not a party to the main action or the intervention application. She lacks *locus standi* regarding the legal rights of the judgment and writs of execution.

[59] C[...]² argues that Atlantic Oil attempts to elevate the investigative and settlement efforts of the *curatrix ad litem*, as documented in her reports, into a legal interest justifying joinder which conflates fact-finding or advocacy roles with legal standing. Citing, *Ex Parte Campher*¹¹, Atlantic Oil submits that the authority confirms that the authority of a *curator ad litem* is limited solely to the scope of the court order; and that it is not that of a litigant or party. Further, that *Ex Parte Campher* and *Ex*

¹¹ *Ex Parte Campher* 1951 (3) SA 248 (C).

*Parte Glendale Sugar Millers (Pty) Ltd*¹² makes it plain that the role of a curator is to investigate and inform the court, not to act as a litigant or substitute party.

[60] Atlantic Oil points out that C[...]2 in any event, admitted in her answering affidavit, that the actions of the curatrix are irrelevant to the intervention application, which focuses on the enforcement of judgments. It posits that this point *in limine* should be dismissed.

Finding on the non-joinder of the *curatrix ad litem*

[61] On the authorities cited by Atlantic Oil; and considering the very nature of the appointment of the *curatrix ad litem*, relevant to Part A of the order, it is clear that the terms of the order of 01 August 2024 placed the *curatrix ad litem* appointed by the Court, in an investigative role to represent the interests of minors. She is not a litigant with a personal interest in the *lis*. Her role is to investigate and report, not to be a necessary party to every application that might affect her mandate. The failure to join her in my view is not a fatal defect.

[62] The point *in limine* on non-joinder of the *curatrix ad litem* accordingly stands to be dismissed.

Conclusion on the application for leave to intervene by Atlantic OIL

[63] By way of summary and having considered the papers filed of record and the arguments of counsel, the points *in limine* raised by C[...]2, save for finding in respect of the striking out of the paragraphs relevant to the *curatrix ad litem*, are dismissed. I am satisfied that Atlantic Oil has made a case for leave to be granted to intervene in the application as a respondent and is Atlantic Oil is accordingly joined as respondent.

[64] I now turn to the curator application of 01 August 2024.

¹² *Ex Parte Glendale Sugar Millers (Pty) Ltd* 1973 (2) SA 653 (N).

The points *in limine* raised by Atlantic Oil in respect of the curator application of 01 August 2024

[65] Atlantic Oil, in turn, raises points *in limine* predicated on (1) non-joinder of the intervening party; (2) *res judicata*; and (3) that the appointment of the trustees stands until set aside and ostensible authority.

The first point in limine: non-joinder of the intervening party

[66] Atlantic Oil deals with its argument on this point extensively under the issues of *locus standi* raised as a point in limine by C[...]2. It merits no further attention in light of this Court's finding in joining Atlantic Oil as respondent in the application.

The second point in limine: res judicata

The submissions of Atlantic Oil

[67] Atlantic Oil posits that this Court is *functus officio* in respect of the judgment against the Trust and C[...]2.¹³ It contends that the beneficiaries of the Trust are faced with a multitude of unassailable problems.

[68] These include, *inter alia*, lacking *locus standi* to act on behalf of the Trust, which includes the *curatrix ad litem*. They have no *locus standi* as beneficiaries to bring an application for rescission since the judgment was not given in the absence of the Trust which was a party to the main action. That as a general rule, a person who was not a party to the original proceedings, has no standing to ask the court to rescind or vary an order, and that this court has already granted a judgment and writ of execution against the Trust, rendering this court *functus officio* to reconsider the order.

¹³ *Firestone SA (Pty) Ltd v Gentrucro AG* 1977 (4) SA 298 (A).

[69] Atlantic Oil further submits that only an affected party can rely on Rule 42 to rescind a judgment and does not extend to third parties. The only party vested with *locus standi* relevant to Rule 42 is the Trust.

[70] The judgment granted on 23 June 2023 finally resolved the rights and obligations of the parties in the main action. C[...]2, who was a party to that action both in her capacity as a trustee and co-principal debtor, through the curator application now seeks indirectly to challenge the judgment, framed as protective of the best interests of the children who are beneficiaries of the Trust. This submits Atlantic Oil necessarily calls into question the legitimacy and consequences of the main judgment.

[71] The *curatrix ad litem*, who acts as an officer of the court, has been instructed to investigate the impact of the judgment on the beneficiaries of the trust. This includes considering rescission or alternative settlements. Such a mandate impermissibly assumes the authority of a review body, which neither the curator nor the applicant possesses. A *curatrix ad litem* may not reopen litigation that has been finally decided, nor act as a vehicle for impermissible collateral review.

[72] Atlantic Oil concludes that the curator application is an impermissible collateral attack on a final judgment under the guise of a protective mechanism. It seeks, either directly or indirectly, to revisit issues that have been adjudicated, and for which the appropriate remedy would have been an appeal against the order dismissing the application to uplift the bar by Reddy AJ (as he then was).

The submissions by C[...]2

[73] C[...]2 contends that the plea of *res judicata* cannot be sustained. The curatorship application she posits is *sui generis* and protective, making it distinct from the enforcement proceedings in the main action under case number 596/2020. Further, that there was no identity of cause or relief between the two matters, and the minors' interests were never ventilated in the prior proceedings.

Finding on the *res judicata* point

[74] The core of this point *in limine* rests on whether the curator application seeks to relitigate the same “thing” (*res*) already decided. For *res judicata* to apply, the previous proceedings must have involved the same parties, the same cause of action, and the same relief.

[75] I agree with Atlantic Oil that the “ultimate object” of C[...]2’s current move is to set aside the consequences of the judgment of Reddy AJ (as he then was). Even if framed as a “procedural appointment”, the real issue remains the enforcement of the default judgment granted in favour of Atlantic Oil conjunctively with the June 2023 judgment.

[76] It is common cause that the Trust was a party to the main action; therefore, the judgment was not given in its absence.

[77] The *curatrix ad litem* is an officer of the court. Her mandate cannot exceed the law. As argued by Atlantic Oil, a curator cannot be used as a vehicle for “impermissible collateral review” of a final order. To allow a third party to reopen a final judgment under the guise of “investigating impacts” would undermine the finality of litigation.

[78] I conclude that the curator application is inherently linked to the judgment granted in the main action. The issues C[...]2 seeks to raise are matters that have already been adjudicated. Consequently, this Court remains *functus officio*.

[79] I would dismiss the curator application on this point alone. However, out of an abundance of caution, I traverse the remainder of the points *in limine* raised by Atlantic Oil.

The third point in limine: the appointment of trustees stands until set aside and ostensible authority

[80] The law regarding the appointment of trustees is trite and non-contentious. C[...]2 as Atlantic Oil argues has not sought the setting aside of the appointment of

the erstwhile trustees who were responsible for the conduct in the main action. Consequently, the trustees' authority remains intact and their conduct, including the conclusion of the credit facility with Atlantic Oil on behalf of the trust, was legally permissible.

[81] It cannot be gainsaid that the legal consequences of the trustees' conduct, in binding the trust in their capacity as duly authorised representatives, cannot be undone through collateral argument in an application brought ostensibly for the protection of the beneficiaries. To permit otherwise would circumvent principles established of administrative and trust law and invite legal uncertainty.

[82] As Atlantic Oil posits, in the absence of any formal challenge to the trustees' authority, the agreements concluded with the intervening party must be recognised as valid and enforceable.

The *Beningfield Exception*

[83] The parties in their additional heads of argument, in the main focus on what has come to be known as the *Beningfield Exception*. This principle of law was first articulated by the Privy Council in the 1886 case of *Beningfield v Baxter*. The exception is formulated as follows:

'When an executor cannot sue, because his own acts or conduct, with reference to the testator's estate, are impeached, relief, which (as against a stranger) could be sought by the executor alone, may be obtained at the suit of a party beneficially interested in the proper performance of his duty.'

[84] According to Honorés South African Law of Trusts:

'The rationale for the rule is the impossibility of the delinquent trustee being both plaintiff and defendant.'

[85] Atlantic Oil argues that what the Beningfield Exception does not allow is where a judgment has already been granted, to allow the beneficiaries, a right to

institute a derivative action or representative action against the third party on the same trust cause. It posits that the Trust opposed the main action and the *Beningfield Exception* is confined to the impossibility of a delinquent trustee suing himself.

[86] It further argues that the relief C[...]2 intends to obtain via the backdoor is representative relief as the relief flows from the Trust; and the *Beningfield Exception* is not a backdoor to a do-over of a case already decided. Atlantic Oil maintains that to do so would open Pandora's box and create uncertainty in the commercial sphere when contracting with trusts, as it would entail (on the proposition of C[...]2), that minor children or for that fact, any beneficiaries may at any time launch proceedings to nullify judgments where the matter has already been decided based on the ostensible infringement of the beneficiaries' rights.

[87] Atlantic posits that the litmus test is that C[...]2 had to prove that she was the wrongdoer or that the trust had no office bearer. This is what she failed to do. It was never her case that she was a wrongdoer. At best, C[...]2 contended that the Trust may have been incapable of concluding an agreement with the intervening party, as one of the trustees was not an accountant as required by the trust deed. This does not avail her, as the Master duly appointed the two trustees, there can and is accordingly no question that the trust had office bearers.

[88] It further argues that the Trust defended the action brought by Atlantic Oil; and the beneficiaries cannot relitigate the matter on behalf of the Trust, where the Trust already took part in the litigation. A further problem for C[...]2 or the Trust or the beneficiaries of the Trust (of which C[...]2 is part) is that on 07 August 2024, there were three trustees appointed by the Master, one of whom was an accountant. During September 2024, the applicant was removed as a trustee. On the improbable construction that the Trust could not have acted (which it did), then the Trust could have acted from August 2024 onwards. The impediment, if any, thus fell away from 07 August 2024.

[89] Atlantic Oil highlights that C[...]2, as the mother of the minor children, who brought this application, was a trustee of the Trust until September 2024 and

remains a beneficiary; this the exception was never intended to benefit an ostensible errant trustee.

[90] C[...]2's argument on the *Beningfield Exception* is essentially grounded on the same argument posited on s28 of the Constitution, in that the intervention of the minor children, via the *curatrix ad litem*, is grounded in the Court's inherent protective jurisdiction and the paramountcy of the child's best interests. C[...]2 argues that the *Beningfield Exception* is not a rigid procedural hurdle confined to pre-litigation scenarios. Insofar as the purpose of the curatorship is said to be protective: to address the consequences flowing from the Trust's alleged past delinquency namely, operating in breach of its trust deed (fewer trustees than required, absence of a mandatory professional trustee) and alleged conflicts of interest, C[...]2 argues that the fact that the Trust opposed the action is immaterial, as the opposition occurred during a period when the Trust was allegedly improperly constituted and compromised, failing to adequately safeguard the minor beneficiaries' interests.

[91] C[...]2 refutes mootness due to the appointment of new trustees, by asserting that the *curatrix ad litem*'s role is precisely to ensure that the minors' rights were not irrevocably compromised by that prior, potentially flawed, litigation process. The appointment of new trustees during August and September 2024 she argues does not apply where the prejudice (the final judgment) flows directly from the antecedent alleged breaches of fiduciary duty; and the need for curatorial protection did not dissipate merely because new trustees were appointed.

Finding on the *Beningfield Exception*

[92] The *Beningfield Exception*, allows beneficiaries to sue a third party when a trustee cannot do so because their own conduct is impeached. To summarise the core arguments by the parties. Atlantic Oil posits that the exception is inapplicable because the Trust actually defended the original action; that the exception is not a "backdoor" to relitigate a decided case; and that the impediment to the Trust acting fell away on 07 August 2024, when new trustees (including an accountant) were appointed. C[...]2 argues that the Trust's prior opposition was immaterial because the Trust was "improperly constituted and compromised" at the time.

[93] The *Beningfield Exception* is confined to the impossibility of a delinquent trustee suing themselves. In this matter, the Trust was a party to the main action and actively participated. Furthermore, the appointment of three trustees by the Master on 07 August 2024, one of whom is an accountant, addressed the alleged constitutional defects of the Trust.

[94] In my view, the attempt to use a curator application to revisit the consequences of a final judgment, rather than appealing the original order of Reddy AJ, constitutes an impermissible collateral attack. Legal certainty in commercial dealings with trusts would be severely undermined if beneficiaries could nullify judgments through procedural means after the matter has been adjudicated.

[95] The *Beningfield Exception* does not avail C[...]2.

Conclusion

[96] The application for the appointment of a *curatrix ad litem* on an *ex parte* basis, should not have been granted. Atlantic Oil, having been allowed to intervene as a respondent in the application, has successfully opposed the relief sought by C[...]2 on an *ex parte* basis. The application for the appointment of the curatrix as litem accordingly stands to be dismissed.

Costs

[97] C[...]2 in my view has not litigated with 'clean hands'. That she has in acquiescing with her legal representatives engaged in legal gymnastics through complex legal manoeuvres and strategies, to avoid liability for the judgment granted in the main action is beyond dispute. The issues this Court has had to engage in, brought about by her actions is demonstrated in the length of the judgment itself, which could not be skirted through a redaction of the issues. An order as to costs of a punitive scale is undoubtedly merited.

Order

[98] I accordingly make the following order:

1. The points *in limine* raised by the Applicant (C[...]2) in the application to intervene, save for the striking out of the paragraphs relevant to the curatrix ad litem in the founding affidavit, are dismissed.
2. Leave is granted to the Intervening Party (Atlantic Oil (Pty) Ltd) to intervene in the application under case number 3944/2024 as a respondent.
3. The points *in limine* raised by the Intervening Party (Atlantic Oil (Pty) Ltd) in the curator application are upheld.
4. The order granted on an *ex parte* basis on 01 August 2024 is hereby reconsidered and set aside in its entirety.
5. The stay of execution against the immovable property of the Anja Family Trust is lifted.
6. The costs of this application, including the costs of the intervention and the reconsideration, are to be paid by the Applicant, A[...] C[...]2, on the scale as between attorney and client.

A H PETERSEN
ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG

Appearances

For the intervening party: Adv JD Matthee

Instructed by: Lezanne Swanepoel Attorneys
c/o Maree & Maree Attorneys
Mahikeng

For the applicant: Adv JAH May

Instructed by: Huibré Lamprecht Attorneys

c/o CJP Oelofse Attorneys
Mahikeng