

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



Case number: 2025-242657
Date of hearing: 14 January 2026
Date delivered: 2 February 2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) ~~REVISED~~

2/2/26
DATE

[Redacted Signature]
SIGNATURE

In the application between:

HESKIA DIKGANG MENTORO NO
MORGAN SONWABO NGUBANI NO
KEDINEETSE DORCAS MOTSHABI NO
NATIONAL AFRICAN FEDERATED
CHAMBERS OF COMMERCE AND
INDUSTRY, FREE STATE PROVINCE

and

EDWARD NATHAN SONNENBERGS
TSOGO INVESTMENT HOLDING

First Applicant
Second Applicant
Third Applicant

Fourth Applicant

First Respondent

COMPANY (PTY) LTD

Second Respondent

NATIONAL AFRICAN FEDERATED

CHAMBERS OF COMMERCE AND INDUSTRY

Third Respondent

MASTER OF THE HIGH COURT, PRETORIA

Fourth Respondent

JUDGMENT

SWANEPOEL J:

[1] The first to third applicants are the trustees of the Nafcoc Free State Investment Trust ("the trust"). The fourth applicant ("Nafcoc FS") is a voluntary association that was initially established under the auspices of the National African Federated Chambers of Commerce and Industry ("Nafcoc"), the third respondent. It is an autonomous voluntary association that is governed by its own constitution, and is controlled by an executive committee. Nafcoc has 18 affiliates. Nafcoc FS is allegedly one of the Nafcoc affiliates.

[2] The first respondent ("ENS") is a firm of attorneys that acts for Tsogo Investment Holding Co (Pty) Ltd ("Tsogo"). During 2010 Tsogo issued 830 cumulative redeemable non-participating preference shares in its share capital to various Nafcoc provincial affiliates, to be held in trust on each affiliate's behalf. Nafcoc demanded that the shares be transferred to it from the trusts, and when Nafcoc FS (and three other affiliates) refused, a war of attrition began between Nafcoc and Nafcoc FS that has wound its way through the Courts, and which ultimately reached the Constitutional Court.

[3] In order to circumvent Nafcoc FS, Nafcoc devised a scheme whereby it recognized an alternative affiliate for the Free State. It also took the stance that Nafcoc FS was no longer entitled to appoint the trustees of the trust. In the meantime, in 2016 Tsogo effected payment of dividends in respect of the shares. A dispute arose whether the monies were due to the trust, in light of Nafcoc's stance that Nafcoc FS was allegedly no longer an affiliate. The dispute was temporarily resolved when the Free State High Court (per Tsatsi AJ) granted an order that any dividends already declared, as well as all future dividends should be paid to ENS's trust account, pending the determination of who may appoint the trustees of the trust.

[4] On 13 May 2018 the Master appointed seven trustees at the instance of the alternative affiliate. That decision was taken on review to this court, and on 17 June 2022 the Court (per De Vos J) held that the trustees had been appointed unlawfully, as a result of fraud perpetrated by the alternative affiliate. The decision of the Master to appoint the trustees was reviewed and set aside, and the Nafcoc FS trustees were re-instated. That should have been the end of the matter. However, Nafcoc sought leave to appeal, which was refused by the High Court. The Supreme Court of Appeal granted leave to appeal, which appeal was dismissed by a Full Court of this Division. An application for special leave to appeal was dismissed by the Supreme Court of Appeal, as was an application for re-consideration to the President of the SCA and an application to the Constitutional Court for leave to appeal.

[5] That was, notwithstanding all the adverse findings made against Nafcoc, not the end of the saga. Within four days of the decision of the Constitutional Court being handed down, Nafcoc purported to terminate Nafcoc FS' affiliation on the basis that Nafcoc FS had allegedly refused to participate in the national organization's affairs. ENS continued to withhold payment of the funds in its account. On 30 October 2025 it wrote to Nafcoc FS' attorneys. It expressed its purported wish to comply with the order to effect payment once the dispute had been resolved, but it again withheld payment on the basis that it expected a further application from Nafcoc "*to determine which entity is entitled to receive payment*".

[6] Despite the clear findings made by De Vos J, which were upheld on appeal, ENS inexplicably sought "*confirmation that there has indeed been a final judicial determination of who is entitled to appoint trustees to the trust, and that valid letters of authority have been issued pursuant to such determination, as required...*". I find ENS' approach perplexing, considering that the De Vos J judgment could not have been any clearer.

[7] It is within that context that Nafcoc FS and the trustees of the trust have brought this application against ENS and Nafcoc to direct ENS to make payment of the monies to the trust. No relief is sought against Tsogo save in the event of opposition. Nafcoc has since launched an application in which it seeks (inter alia) an order that Nafcoc FS be declared not to be its affiliate, and that ENS may only effect payment to Nafcoc appointed trustees. That application has not been finalized, but I

do not believe that application should stand in the way of this application, nor has Nafcoc made that argument.

[8] Nafcoc has raised two issues in opposition to the application. Firstly, it says that the application is not urgent. Secondly, it says that the termination of Nafcoc FS' affiliation on 25 October 2025 has had the result that the appointment of the trustees has automatically lapsed. It says that only members of Nafcoc affiliates, which does not include Nafcoc FS, may be trustees of the trust.

[9] The applicant says that the matter is urgent in that the question that the Free State High Court posed, namely, who is entitled to appoint the trustees, has been finally determined. In view thereof, says the applicant, ENS' refusal to effect payment to the trust is self-help, and is contemptuous of the various court orders.

[10] The respondent says that the matter only concerns money, and that the applicant will receive substantial redress if the matter were to be heard in the normal course.

[11] In my view the urgency lies in the fact that Nafcoc has been delaying the payment of dividends to the trust for some 10 years. It has employed every possible strategy to avoid the monies being paid to the trust. Its alternative "affiliate" even resorted to fraud to have its own trustees appointed by the Master. ENS' ongoing refusal to effect payment to the trust is, in my view, a travesty of justice that must be brought to an end. I find that the matter is urgent.

[12] Can the trust deed be interpreted as Nafcoc contends it should? It must be borne in mind that Nafcoc FS is a voluntary association with its own constitution independent of Nafcoc. Similarly, the trust is an independent juristic person, which is governed by its deed of trust. The appointment and disqualification of trustees must occur in accordance with the provisions of the trust deed.

[13] The trust was established by Nafhold, a company established by Nafcoc, in terms of a trust deed dated February 2005 ("the first trust deed"). The trust deed was amended in 2007 ("the second trust deed"). The trust deed was again amended on 5 September 2025 ("the third trust deed"). In clause 1.1.2.2 of the initial deed of trust the beneficiaries of the trust were described as "the Nafcoc affiliate". In the third trust deed the reference to Nafcoc affiliate was amended to refer to Nafcoc Freestate. It is plain that the third trust deed was so worded in order to eliminate any reference to Nafcoc FS's affiliation to Nafcoc. The trustees were entitled to make such an amendment by virtue of the provisions of clause 23 of the trust deed.

[14] Clause 6 of all three trust deeds provide for the appointment of trustees by the executive committee of Nafcoc FS. In the first trust deed the 'executive committee' was defined as "the executive committee... of the Nafcoc Affiliate". In the third trust deed it was defined as the "decision-making body...of Nafcoc Free State"

[15] Nafcoc says that the repeated reference in the first and second trust deed to Nafcoc FS as being an affiliate of Nafcoc, and the fact that Nafcoc, through Nafhold, was the founder of the trust, and the fact that the shares were initially donated to the trust as a result of Nafcoc's decision to set up various trusts to administer the dividends, indicate an intention that only a Nafcoc affiliate may appoint trustees. Now that Nafcoc FS' affiliation has been terminated, says Nafcoc, the trustees' appointments have automatically lapsed.

[16] If one were to assume, in Nafcoc's favour, that the first trust deed applies to the matter and not the amended deed, one still has to consider whether it lends itself to the interpretation advanced by Nafcoc. The interpretation of documents was considered in *Natal Joint Municipal Pension Fund v Endumeni Municipality*¹ where the Court said²:

"Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax,; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all of these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to

insensible or unbusinesslike results or undermines the apparent purpose of the document.”

[17] Nafcoc relies extensively on the background to the creation of the trust, and on the relationship between Nafcoc and Nafcoc FS to justify its argument that the termination of the affiliate relationship automatically terminates the appointment of the trustees. There is no such language in the trust deed. The trustees are appointed by the executive committee for a period of five years. In terms of clause 6.4 a trustee remains in office, and may not be removed from office, until his term has expired.

[18] Clause 12 of the deed of trust provides that a trustee is disqualified as trustee, and that he/she shall automatically vacate his/her office:

“12.1 if he ceases for any reason to be qualified for appointment as a director of a company in accordance with the laws of the RSA from time to time; or

12.2 if he is found to be of unsound mind or is declared by any competent court to be incapable of managing his affairs, is placed under curatorship or otherwise becomes disentitled or disqualified in law to hold the office of trustee in accordance with the laws of the RSA from time to time; or

12.3 if he becomes insolvent or assigns his estate for the benefit of (or enters into a compromise with) his creditors generally; or

- 12.4 *if he is placed under sequestration, liquidation or judicial management (as applicable) (in any event whether provisionally or finally and whether voluntarily or compulsory) or any similar disability; or*
- 12.5 *if he is convicted of any criminal offence which has an element of dishonesty, bribery, corruption and/or the like; or*
- 12.6 *if he is convicted of any criminal offence and sentenced to serve a term of imprisonment without the option of a fine; or*
- 12.7 *if he is removed from office as a trustee of any other trust (or from any other office) as a result of misconduct; or*
- 12.8 *on his death; or*
- 12.9 *thirty days after the date upon which he gives written notice to the remaining trustees of his intention to resign; or*
- 12.10 *if he is required to resign in terms of a written resolution passed (unanimously in accordance with 1.2) by all the other trustees then in office; or*
- 12.11 *if he ceases to be a member of the Nafcoc affiliate for any reason whatever or if he fails to pay his membership fees and/or other amounts due, owing and payable to the Nafcoc affiliate within thirty days after receipt by him of a written demand therefor from the Nafcoc affiliate; provided that this*

*12.11 shall not apply to any trustee appointed in terms of
6.3"*

[19] "Nafcoc affiliate" is defined as "Nafcoc Free State, a provincial affiliate of Nafcoc". The deed of trust does not automatically disqualify a trustee if Nafcoc FS ceases to be an affiliate of Nafcoc. Consequently, a trustee is disqualified in terms of clause 12.11 if he does not pay the Nafcoc FS membership fees or other amounts due to the latter. A trustee's appointment is not dependent on the affiliate's affiliation to the national body.

[20] In order to find that Nafcoc's interpretation of the deed of trust is correct, one would have to read words into the deed of trust that simply do not exist. Had it been the intention of the parties that the trustees would automatically cease being trustees if Nafcoc FS' affiliation to Nafcoc ended, they would have said so plainly. It is the purpose of interpretation to give meaning to the wording of the document, seen in the context within which the text was written, but not to add words that are not there. The starting point of interpretation is always the text of the document read within the context in which it was created. A court is not entitled to add words to a document that are not reflected therein.

[21] Consequently, even if the decision of Nafcoc to terminate Nafcoc FS' affiliation is eventually upheld, that does not, in my view, affect the standing of the trustees, nor does it put an end to the trust itself. It follows

then that the trust's entitlement to receive the proceeds of the shares held by ENS remains.

[22] The applicants seek a costs order on the attorney/client scale. Punitive costs are exceptional in nature and are generally granted when there is dishonesty, malice, abuse of process or the like in a matter. That is not the case in this application. The respondents may have been unsuccessful, but that does not justify the granting of punitive costs, and I shall decline to make such an award.

[23] I make the following order:

[23.1] The first respondent is ordered to make payment to the first to third applicants, in their capacity as trustees of the Nafcoc Free State Investment Trust ("the trust") within 5 days of this order, of all dividends declared by the second respondent on 15 April 2016, in respect of 830 cumulative redeemable non-participating shares ("the shares") which were issued to and were held by the trustees from time to time of the trust, and as reflected in Annexure "HM 4" to the founding affidavit, as well as any monies (dividends or otherwise) which became due to the trustees of the trust and which monies were paid by the second respondent to the first respondent pursuant to an order of the Free State Division of the High Court of South Africa under case number 2658/2016 ("the Free State order") as well as all interest earned by the

first respondent on the said monies invested in its interest-bearing trust account.

[23.2] The first respondent shall provide the first to third applicants with an account, supported by documentary evidence in respect of all monies invested by it in its interest-bearing account pursuant to the Free State order, as well as all interest earned by the first respondent on the said monies, within 5 days of this order.

[23.3] The third respondent shall pay the costs of the application on Scale C.


SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

¹ Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)

² At para [18]