

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO



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

CASE NUMBER:M270/23

In the matter between:

LESSY TRUST

FIRSTAPPLICANT

MARIA MARGARET HARRIS
in her capacity as trustee of the
LESSY TRUST

SECOND APPLICANT

and

FORUM SA TRADING 129
(PTY) LTD

FIRST RESPONDENT

JOHANNES GROBBELAAR

SECOND RESPONDENT

**JOHANNES GORBBELAAR in
his capacity as trustee of the J
GROBBELAAR TRUST**

THIRD RESPONDENT

**GESINA ADRIANA
WILHELMINA GROBBELAAR
in her capacity as trustee of the J
GROBBELAAR TRUST**

FOURTH RESPONDENT

**WILFRED FREDERICK
VORBECK in his capacity as
trustee of the J GROBBELAAR
TRUST**

FIFTH RESPONDENT

REGISTRAR OF DEEDS

SIXTH RESPONDENT

Coram: WESSELS AJ

Date of hearing

:19 September 2025

Court file reconstructed

:23 January 2026

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 16:00 on 23 January 2026.

Summary: Trusts – Locus standi – Authority to institute proceedings – Income beneficiary purporting to act on behalf of trust without proper authorisation – Power of attorney not authorising institution of proceedings. Civil procedure – Non-joinder – Current registered owner of immovable property not joined – Trustee in personal capacity, being a party to impugned addendum, not joined – Parties having direct and substantial interest – Application fatally defective.

Contract – Sale of immovable property – Addendum to sale agreement – Applicant seeking to set aside addendum while simultaneously seeking enforcement of original agreement – Allegation of fraud vague and unexplained – Inconsistent relief – Relief incompetent. Application dismissed with costs.

ORDER

- i. The application is dismissed with costs on a party and party Scale C.

JUDGMENT

Wessels AJ

Introduction

[1] In this application, the applicants apply for an addendum to a written sale agreement ('the sale agreement') for the sale of immovable properties to be set aside, and that the immovable properties, consisting of two farms, be transferred to the Lessy Trust (cited as the first applicant) in terms of the provisions of the sale agreement.

[2] The first to fifth respondents opposed the application, to whom I will refer collectively as 'the respondents'.

[3] The separate citation of the Lessy Trust as the first applicant assumes it possesses a separate legal personality from that of its trustee, the second applicant. Trustees of a trust institute legal proceedings in their representative capacities. The citation of the Lessy Trust in its own name is procedurally improper, however, given that the second applicant has been correctly cited in her capacity as trustee of the Lessy Trust, I will permit the citation of the first applicant as a procedural indulgence. For clarity, I will refer to the Lessy Trust as 'the Trust'.

Facts

[4] The deponent to the founding affidavit is Martha Sophia du Toit ('Mrs du Toit'). The Trust had two immovable properties ('the farms') registered in its name. As a result of what is described by Mrs. du Toit as '*financial difficulties*' experienced by the second applicant and her now deceased husband, a sale agreement ('the sale agreement') was concluded between the second applicant and the first respondent for the sale of the farms to the first respondent. A consequence of the sale agreement was that the farms would be consolidated, after which a 52-hectare portion would be subdivided and transferred back to the Trust.

[5] Mrs du Toit states that, to appease the financiers of the first respondent, the applicant entered into an addendum to the sale agreement ('the addendum'). The addendum described the second respondent and her late husband, who were parties to the addendum, as usufructuaries of the 52-hectare portion. This addendum appears to create a suspensive condition regarding the subdivision of the 52-hectare portion, subject to subdivision approval. It further provided that if the subdivision did not occur within 5 years of the date of signature, the first respondent would pay the Trust the market value of the farms, less R500,000, being the value of the 52-hectare portion.

[6] The farms were transferred to the first respondent. According to the founding affidavit, the 52-hectare portion was never re-transferred to the first applicant.

[7] It is common cause that the first respondent later sold and transferred the farms to a private company, namely Sterkrivier Boerdery (Pty) Ltd ('Sterkrivier'). The applicants erroneously refer to Sterkrivier as Sterkfontein Boerdery CC.

[8] In the answering affidavit, the respondents take several points in limine, all of which I am enjoined to consider. If I uphold these points, it would be dispositive of the application, and the merits need not be considered.

No locus standi

[9] Mrs du Toit is an income beneficiary of the first applicant. In the founding affidavit, she alleges that her status as an income beneficiary of the Trust gives her a substantial interest in the application, which provides her

with the required locus standi. Mrs du Toit's authorisation to institute the application on behalf of the Trust does not emanate from the founding affidavit at all.

[10] The respondents filed a notice under Rule 7, assailing the applicants' failure to act. The second applicant understood the notice differently and answered this notice by filing a power of attorney of the second respondent, wherein the applicant's attorneys of record are authorised to act on behalf of the applicants. The true intention of the Rule 7 notice was not to dispute the authority of the applicants' attorneys, but rather to dispute the authority of Mrs du Toit to institute the application on behalf of the Trust.

[11] The procedure for establishing authority to institute legal proceedings, in this context, involves a factual inquiry, a principle that was affirmed in *Eskom v Soweto City Council*¹. In this judgment, which has been followed in numerous subsequent judgments on the issue of a Rule 7 challenge, the court stated the following²:

'However, even if the authority of Rossouw is to be assessed, respondent is on safe ground. In the absence of a prescribed mode of proof, it is a factual question whether a particular person holds a specific authority. It may be proved in the same way as any other fact. Adjudication involves consideration of what the credible evidence means and the extent of, quality of and sometimes the absence of contradiction or other reason to remain unconvinced.'

[12] The respondents repeated their concern raised in their Rule 7 notice in the answering affidavit. Although the application was issued on 18 May 2023, the second applicant reacted to the Rule 7 notice by producing a power of attorney dated 9 February 2024, executed by the second applicant in her

¹ *Eskom v Soweto City Council* 1992 (2) SA 703 (W).

² *Idem* at 706 C-E.

capacity as the sole trustee of the first applicant. Mrs du Toit relies solely on the power of attorney to prove that she was authorised to institute the application.

[13] The challenge of Mrs du Toit's authority to institute these proceedings on behalf of the Trust invokes the normal onus of proof, which the second applicant has to discharge on a balance of probabilities. On any reading of the power of attorney, it does not authorise the institution of this application. The power of attorney confers general powers which authorise Mrs du Toit to do all lawful acts which the second respondent could do personally in her capacity as a trustee of the Trust. Consequently, I conclude that Mrs. du Toit was not properly authorised to institute this application.

Non-joinder

[14] The respondents also take the point of non-joinder. This objection is two-fold in that it is taken on the non-joinder of Sterkrivier as the current owners of the farms and the second applicant in her personal capacity as a party to the addendum.

[15] The test for non-joinder had aptly been described by the Supreme Court of Appeal in *Absa Bank Limited v Naude N.O and Others*³ as follows:

'The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined. In *Gordon v Department of Health, Kwazulu-Natal* it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that had not been joined, then those third parties have a legal interest.'

³ *Absa Bank Limited v Naude N.O and Others* (20264/2014) [2015] ZASCA 97; 2016 (6) SA 540 (SCA) (1 June 2015) para 10.

[16] The farms have been sold to Sterkrivier, which has become their registered owner. Sterkrivier has not been joined as a party to this application. It is an unassailable fact that Sterkrivier has a direct and substantial interest in this matter, as the relief claimed (the transfer of the farms) directly affects Sterkrivier's rights.

[17] The other part of this point is that the founding affidavit states that the second applicant, in her personal capacity, was a party to the addendum that the applicants seek to set aside.

[18] The second applicant, in her personal capacity (not only in her capacity as trustee of the Trust), has a direct and substantial interest in the subject matter of the application and ought to have been joined as such. Consequently, this point is upheld.

Incompetent relief

[19] The following relief is claimed in the notice of motion:

‘The Court make an order whereby the respondents are ordered to set aside an addendum **which was concluded in terms of a written sale agreement** of the properties situated at:...

1.1...

1.2...

2. That the respondents be ordered to comply with the provisions of the original sale agreement signed by the relevant parties, and in terms whereof the portion of the

immovable property as described within the sale agreement be transferred to the applicants as agreed upon on conclusion of the aforesaid agreement.’

[20] The respondents rely on the following statement contained in the founding affidavit, wherein Mrs du Toit states:

‘I submit that the initial sale agreement for the immovable property from Lessy Trust to Forum SA 129 (Pty) Ltd was facilitated in a fraudulent manner, and it is therefore requested that the sale be set aside and that the Court make a declaratory order for the immovable property to be re-transferred back to the rightful owner being the Lessy Trust’

[21] The second applicant seeks to enforce the original sale agreement, yet alleges it was entered into fraudulently. An agreement induced by fraud may be voidable or void ab initio. If the alleged fraud rendered the agreement void ab initio, the applicant would not be able to rely on it. It is important to note that the second applicant does not indicate who fraudulently induced the conclusion of the sale agreement. Furthermore, the second applicant does not address the effect of the fraudulent agreement at all.

[22] The limited facts in the founding affidavit regarding the basis and origin of the alleged fraud further intensify the confusion caused by the evident tension between the evidence and the relief sought in the notice of motion. This point has been well taken by the respondents and should be upheld.

Conclusion

[23] Whether viewed conjunctively or disjunctively considered, upon the consideration of the above-mentioned points, I conclude that the application stands to be dismissed with costs.

Order

[24] Resultantly, the following order is made:

- i. The application is dismissed with costs on a party and party Scale C.




M WESSELS
 ACTING JUDGE OF THE HIGH COURT
 NORTH WEST DIVISION, MAHIKENG

APPEARANCES

Counsel for applicants

:Adv HJ Scholtz

Instructed by

:Theron Jordaan & Smit Inc

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