REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, PRETORIA

Case No: 2025 - 027650

Reportable: No

Of interest to other Judges: No

Revised: No

SIGNATURE

Date: 24 March 2026

In the matter between:

TRIOTRADE GAUTENG (PTY) LTD Applicant

and

ANGELENE POOLE N.O Respondent

(In her capacity as executrix of the estate

Manuel Duarte Carvalho, Estate No.: 015078/2024)

JUDGEMENT

MOOKI J

1 The applicant claims payment in the amount of R 3 329 698.80, together with interest. The applicant also seeks an order that Erf 1[...] T[...] D[...]

Extension 8 Township Registration Division I.Q. Province of Gauteng Measuring 616 (six hundred and sixteen) square metres and held by Deed of Transfer T20862/2021 (the Property) be declared specifically executable, and that a warrant of execution be issued against the Property.

2 The claim is based on the following contention. The applicant advanced credit facilities to Carvalho Food Distributors CC, registration 2010/097600/23 (Carvalho) in terms of a written credit application. Mr Manuel Duarte Carvalho (the deceased), the sole member of Carvalho, bound himself as surety and co-principal debtor with Carvalho.

3 The deceased registered a covering mortgage bond in favour of the applicant, in respect of the deceased's liability and indebtedness to the applicant. Such indebtedness included liability arising from the credit application. The covering bond encumbered the Property.

4 The applicant referenced a certificate of indebtedness, as provided for in the covering mortgage bond, as proof of the claimed indebtedness. The applicant avers that neither Carvalho nor the deceased ever disputed the indebtedness to the applicant and that the applicant routinely furnished calculations of the outstanding balance. The deceased died on 5 January 2024. The respondent was appointed Executrix on 11 July 2024.

5 The applicant made a demand on the respondent. The respondent admits the making of the demand. The applicant avers that the indebtedness to the applicant is common cause, that its security in respect of the indebtedness is common cause, and that the applicant is entitled to the foreclosure of the Property.

6 The applicant denied that the Administration of Estates Act 66 of 1965 (the Act) deprived a creditor of the common law right to sue a deceased estate. The applicant also took issue with the way the respondent carried

out her office, contending that the respondent disregarded her obligations under the Act, warranting a punitive order for costs.

7 The respondent raised non-joinder. She contended that the following ought to have been joined, namely liquidators of the close corporation, the Master of the High Court, other creditors of the deceased estate, and heirs to the deceased estate.

8 The respondent acknowledged receipt of the applicant's claim on 19 November 2024, and that the claim was in terms of both the acknowledgement of debt and the covering mortgage bond. The respondent advised the applicant's attorneys of the status of the Property, including that the Property had been leased. The respondent advised that she hoped to file her final Liquidation and Distribution Account with the Master, and that the applicant, like other creditors, will have its claim recorded in that account. That was the case because the applicant "seeks only to 'steal a march' on the other proved creditors of the CC, the general body of creditors of the deceased's estate and the deceased's heir, in respect of the winding-up of the CC and the winding-up of the deceased's estate".

9 The respondent pleaded that she had no knowledge of the credit application referenced by the applicant; that she did not accept that the credit application was the basis for the estate's indebtedness. She denied too that there was a valid deed of suretyship. The respondent did not take issue with the demand made by the applicant on 4 November 2024 but pointed out that the debt referred to was the same debt owed to the applicant by the close corporation and the deceased.

10 The respondent took issue with the relief sought by the applicant. She contended that granting relief will remove the principal asset of the deceased estate from her control as executrix and that the motive behind the application is for the applicant to steal a march on the general body of creditors of both the close corporation and the deceased estate.

She further contended that the application was an abuse of process because the respondent was dealing with the “debt” owed by the deceased estate as an executrix of that estate.

11 The respondent contended that she was at a loss to determine the precise calculation of the amount claimed against the estate, and that the amount claimed differed from the amount proved against the close corporation.

Analysis

12 The respondent contends that the Master of the High Court, the liquidators of the close corporation, creditors of the deceased’s estate, and heirs of the deceased, should have been joined; as required in Rule 10. The respondent does not say why any of the mentioned persons is to be joined “as a matter of necessity”. The Respondent recorded in her written submissions that she would seek a stay of the application to allow her to join the mentioned persons.

13 The respondent raised the issue of “non-joinder” in her answering affidavit, deposed to on 16 May 2025. The applicant filed its replying affidavit on 4 June 2025, recording, among others, that the respondent was at liberty to join the mentioned persons. The respondent filed her written submissions on 7 July 2025. The matter came before court for argument on 10 November 2025. The respondent had not brought an application for joinder by then. This demonstrates that there was never substance to the respondent’s contention that the various persons whom she mentioned had to have been joined. There is no substance to this point.

14 The applicant claims the amount of R3, 131, 735.26 from the deceased estate, of which the respondent is the appointed executrix. The deceased bound himself in terms of an application for credit facilities by the close corporation on 19 October 2022. The deceased bound himself as surety and co-principal debtor with the close corporation.

15 The applicant obtained security for advancing credit facilities by way of a covering mortgage bond, registered in favour of the applicant by the deceased over the Property. The covering bond was security for the deceased's liability and indebtedness to the applicant. The covering bond stipulated that a certificate of indebtedness would constitute *prima facie* proof of the deceased's indebtedness. The amount of amount of R3, 131, 735.26 is stipulated in the certificate.

16 The applicant proved a claim against the close corporation in the amount of R2,6 million.

17 The respondent admits that the claim is a proper demand against the deceased estate. The respondent also admits that the demand is made pursuant to a covering mortgage bond. The respondent's opposition to the claim is premised on the view that the applicant is one of a number creditors in the deceased estate, and that the applicant's claim must be processed pursuant to the procedure set out in section 35 of the Act.

18 The respondent says that the applicant, in bringing the present proceedings, seeks to steal a march on other creditors of the deceased estate, which is why the applicant is required to follow the claims procedure in section 35 of the Act. The respondent essentially says that it is not competent of the applicant to claim against the insolvent estate outside of the mechanism provided for in the Act. The applicant, according to the respondent, must for example await the finalisation of the liquidation and distribution account in relation to the deceased estate.

19 The respondent accepts that the Supreme Court of Appeal[1] dealt with the question of whether the Act deprived a creditor the common law right to sue a deceased estate. It was submitted for the respondent that the

[1] Nedbank Limited v Steyn and Others 2016 (2) SA 416 (SCA)

facts in this matter differ from those considered in the Nedbank matter; such as the proceedings in the Nedbank matter being undefended and bank being said to have relied on a single cause of action in each of the matters.

20 The respondent contends that the applicant in the present proceedings relies on a cause of action (a suretyship) which the applicant never raised against the deceased estate because the claim against the deceased estate is based on an acknowledgement of debt. The respondent thus contends that the applicant's claim may only be considered in terms of the mechanism provided for in section 35 the Act, meaning that having submitted a claim based on an acknowledgement of debt, it is not competent for the applicant to seek recourse against the estate on the basis of a cause of action premised on a suretyship.

21 It was submitted for the respondent that it is only in exceptional circumstances that a court would grant leave for the sale of an asset in the deceased estate through the process of execution, and that such leave will not be granted before the Master had approved the first liquidation and distribution account that had laid open for inspection without objection. It was further submitted for the respondent that the applicant had not made-out a case for leave as contemplated in section 30 of the Act.

22 The respondent disputes that there was, in any event, a valid suretyship agreement. That is because there is no reference to a suretyship by the deceased in the terms and condition section of the credit application contended for by the applicant. The respondent also says that it is not possible to determine how the amount of R3, 329,698.80 is made-up, notwithstanding the certificate of balance relied upon by the applicant.

23 The respondent also submitted that there are material dispute of fact on the papers and that these disputes were foreseeable. The result,

according to the respondent, is that these disputes are to be decided in favour of the respondent.

24 Clause 21 of the credit application contended for by the applicant states that the signatory, if “the sole director or member and/or shareholder of the Applicant, … binds himself as co-principal Applicant, jointly and severally, for any compliance with the terms … repayment of any debt that may arise as a result of these terms and conditions;” The deceased had a 100% interest in the close corporation.

25 There is no serious dispute that the deceased signed the credit application for the close corporation. The deceased bound himself for the indebtedness of the close corporation. The respondent does not address the fact of the deceased having bound himself as a co-principal applicant. I do not accept the respondent’s denial of indebtedness on the stated non-compliance with the requirements for a suretyship. The founding affidavit is explicit that the applicant relies on the credit application and the content of the claim of 4 November 2024 as a basis for relief.

26 The certificate of balance in terms of the covering bond specifies the outstanding balance as at 31 January 2025 to be in the amount of R3 329 698.80, being the joint and several indebtedness of the close corporation and the deceased as “co-principal debtors.” The respondent has not furnished evidence to disturb the certificate of indebtedness being *prima facie* evidence in support of the quantum of the indebtedness.

27 The respondent’s substantive opposition to the relief sought is premised not on disputing that the deceased estate is indebted to the applicant. The essence of the opposition is that the law does not permit the applicant from claiming against the deceased estate by way of legal proceedings, as opposed to a claim that is informed by following the procedure in section 35 of the Act. There is no bar to the applicant

invoking its common law right to sue a deceased estate. The decision in Nedbank Limited v Steyn and Others settled the question, in that “the procedure laid down in the Act does not preclude the plaintiff from instituting an action in common law against the estate.”[2]

28 The deceased is a co-principal debtor with the close corporation, pursuant to facilities advanced by the applicant to the close corporation. The applicant is also secured creditor in the estate of the deceased, in the amount of R3 329 698.80. The indebtedness is secured by a covering mortgage bond over the Property. The quantum of the indebtedness is as reflected in the certificate produced by the applicant. There is no bar to the applicant instituting proceedings against a deceased estate. The applicant succeeds in its claim.

29 The parties raised several skirmishes arising from whether the parties settled their dispute. This was not the formal dispute that was submitted for adjudication by the court. I do not express a view on the issue.

30 I make the following order:

(1) It is declared that the respondent is liable to pay to the applicant the capital amount of R3 329 698.80 (three million and twenty nine thousand and ninety eight rand and eighty cents), due owing and payable as at 31 January 2025, together with interest accruing on the outstanding balance owed by the respondent to the applicant at the prime interest rate of 11.25% plus 7% thereon, per annum, calculated and capitalised monthly in arrears.

(2) It is declared that the immovable property, registered in the name of the deceased and falling within the said deceased estate administered by the second respondent and described as:

ERF 1[...] T[...] D[...] EXTENSION 8 TOWNSHIP
REGISTRATION DIVISION I.Q.
PROVINCE OF GAUTENG

[2] Nedbank, para 11

MEASURING 616 (SIX HUNDRED AND SIXTENN) Square metres
HELD BY Deed of Transfer T20862/2021 (the Property)

is specifically executable

(3) The Registrar is authorised to issue a warrant of execution against the Property.

(4) The respondent is ordered to pay the costs of the application, including the costs of Senior Counsel, on Scale C.

(5) Attorneys for each of the applicant and the respondent are ordered to cap their fees at 80%, for their failure to comply with item 7 of the Consolidated Practice Directive 1 of 2024.

O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the applicant:	E J Ferreira SC
Instructed by:	Thompson Attorneys
Counsel for the respondent:	E R Venter
Instructed by:	JHS Attorneys
Date heard:	10 November 2025
Date of judgment:	24 March 2026