

REPUBLIC OF SOUTH AFRICA



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

CASE NO.: 2023-079315

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 1 June 2026

E van der Schyff

In the matter between:

JOAN CYNTHIA GRIESSEL

FIRST PLAINTIFF

HAROLD LEE DE KOCK

SECOND PLAINTIFF

and

DE VILLEBOIS ETTIENNE DE KOCK N.O.

FIRST DEFENDANT

SHIRLEY ANN VAN WYK N.O.

SECOND DEFENDANT

CELESTE MARI DOVEY N.O.

THIRD DEFENDANT

FREDERIK FRANS VAN NIEKERK N.O.

FOURTH DEFENDANT

JOHANNES JURGENS POTGIETER N.O.

FIFTH DEFENDANT

DE VILLEBOIS ETTIENNE DE KOCK

SIXTH DEFENDANT

SHIRLEY ANN VAN WYK

SEVENTH DEFENDANT

CELESTE MARI DOVEY

EIGHTH DEFENDANT

MASTER OF THE HIGH COURT, PRETORIA

NINTH DEFENDANT

MANYELETI (PTY) LTD

TENTH DEFENDANT

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

JUDGMENT

VAN DER SCHYFF J

Introduction

[1] This matter concerns a protracted family dispute relating to the administration of the Arathusa Family Trust (“the Trust”) and the affairs of its wholly-owned operating company, Manyeleti (Pty) Ltd (“Manyeleti”). Manyeleti is the owner of the farm Arathusa. The plaintiffs seek, *inter alia*, the removal of the current trustees, the reinstatement of monthly maintenance payments to the first plaintiff, Ms. Griessel, and ancillary relief.

[2] Although the issues requiring determination arise in the context of trust administration, corporate governance, and the parties' respective rights and obligations, the litigation is, at its core, a family dispute of considerable depth. The evidence reveals how disagreements over the management of trust assets and the administration of structures established for the benefit of family members have escalated into protracted, bitter litigation. It is a matter of genuine regret that persons who have demonstrated the ability to discharge significant professional, commercial, and societal responsibilities have been unable to resolve their differences outside the courtroom. While this court is required to determine the legal issues presented to it, no judgment can restore the trust, goodwill, and familial harmony that appear to have been lost in the process. That is perhaps the most unfortunate feature of this case.

The claims

[3] In claim 1, the first plaintiff, Ms. Griessel, seeks an order against the Trust, alternatively Manyeleti, for the payment of a monthly amount of R36 981.75.

[4] In claim 2, Ms. Griessel seeks an order against the Trust, alternatively Manyeleti, for the payment of R1 627 197.00, representing the amount she would have received but for the termination of payments.

[5] In claim 3, the plaintiffs seek an order for the removal of the present trustees of the Trust, namely Mr. Ettienne de Kock, Mrs. Shirley van Wyk, and Mrs. Celeste Dovey.

Common cause facts

[6] Much of the factual background was common cause or not seriously disputed. The Trust was established by the first plaintiff, Ms. Joan Griessel, and the seventh defendant, Mrs. Shirley van Wyk, in 1999. The Trust subsequently acquired the sisters' shares in Manyeleti, which became its principal asset. The Trust is the sole shareholder of Manyeleti. Manyeleti owns the farm, Arathusa.

[7] Ms. Griessel and Mrs. Van Wyk are sisters. The second plaintiff, Mr. Harold de Kock, is Mrs. Van Wyk's eldest son and Ms. Griessel's nephew. The sixth and eighth defendants, Mr. Ettiene de Kock and Ms. Celeste Dovey, are Mr. Harold de Kock's siblings. Mrs. Van Wyk, Mr. Ettienne de Kock and Ms. Dovey currently serve as trustees of the Trust and directors of Manyeleti.

[8] It is common cause that Ms. Griessel received monthly payments from Manyeleti from approximately 2016 to July 2022. Those payments ceased in July 2022 and were not resumed. When the decision was taken to make the monthly payments to Ms. Griessel, the trustees of the Trust were simultaneously directors of Manyeleti. The decision to cease making payments was made by Mrs. Van Wyk.

[9] It is also common cause that litigation between Mr. Harold De Kock, the Trust, Manyeleti and related parties has persisted for many years. The litigation concerned, *inter alia*, amendments to the Trust Deed, Mr. De Kock's position as a beneficiary, and disputes concerning access to Arathusa. The significance and legal consequences of that litigation remain disputed.

Issues arising from the pleadings

[10] The issues requiring determination must be identified from the pleadings before regard is had to the evidence. Although the evidence traversed a lengthy history of family disputes and litigation, the court's task is ultimately to determine the disputes raised on the pleadings as amplified by the evidence properly admitted at trial.

[11] The first plaintiff's case is founded upon the allegation that one of the principal objects of the Trust was to provide for her security, maintenance, and welfare. She pleads that, following her resignation and removal as a director of Manyeleti and as a trustee of the Trust, it was agreed that she would receive maintenance payments. Although those payments were recorded in Manyeleti's records as consultancy fees, she alleges that they were, in fact, maintenance payments made on behalf of the Trust. She further alleges that the trustees unlawfully ceased those payments in July 2022 and thereafter failed to properly consider requests for financial assistance.

[12] The defendants deny that the payments constituted maintenance payments or that the first plaintiff acquired any vested entitlement thereto. While admitting that payments were made by Manyeleti and recorded as consultancy fees in the company's financial statements, they deny that the payments were made by the Trust as maintenance and deny any obligation to continue making such payments.

[13] The second plaintiff's case is that the trustees failed to administer the Trust impartially and in the interests of all beneficiaries. He relies on a series of events extending over many years, including his removal as a beneficiary, the litigation which resulted in his reinstatement, disputes concerning access to Arathusa, the alleged withholding of information concerning the Trust and conduct which, according to him, demonstrates ongoing discrimination between beneficiaries.

[14] The defendants deny that they acted unlawfully, discriminatorily or in breach of their fiduciary obligations. They admit certain aspects of the historical litigation but deny that the conduct complained of justifies the relief sought. They further contend that earlier

proceedings concerning the removal of trustees give rise to principles of res judicata and/or issue estoppel.

[15] The plaintiffs ultimately contend that the cumulative conduct of the sixth, seventh and eighth defendants demonstrates breaches of fiduciary duty, unequal treatment of beneficiaries, and conduct detrimental to the welfare of the Trust and its beneficiaries, thereby justifying their removal as trustees.

[16] Against this background, the principal questions requiring determination are:

- (a) Whether the payments made to the first plaintiff, Ms. Griessel, between 2016 and July 2022 were in substance, maintenance payments or consultancy remuneration;
- (b) whether the first plaintiff acquired any enforceable right to the continuation of those payments;
- (c) whether the trustees properly considered and exercised their discretion in relation to requests made for financial assistance after July 2022;
- (d) to what extent the historical events relied upon by the second plaintiff may properly be considered in light of the defendants' pleas of res judicata and issue estoppel;
- (e) whether the conduct of the trustees towards the plaintiffs, viewed individually or cumulatively, constituted a breach of their fiduciary obligations and duties towards the beneficiaries of the Trust; and
- (f) whether grounds have been established for the removal of the sixth, seventh and eighth defendants as trustees.

[17] The evidence must therefore be evaluated against those pleaded issues and not against the broader family grievances that have accumulated over many years.

Summary of the evidence

[18] The evidence was principally concerned with three related themes: the true nature of the payments to Ms. Griessel; the trustees' response after those payments ceased; and

the treatment of Mr. Harold De Kock as a beneficiary. The witnesses were Mr. Harold de Kock, Ms. Griessel, and Mrs. Van Wyk.

[19] Mr. Harold De Kock testified that the Trust and Manyeleti had, over many years, been administered in a manner that excluded him and Ms. Griessel from meaningful participation and benefit. He relied on the history of litigation concerning his removal as a beneficiary, his subsequent reinstatement, and disputes about access to Arathusa. His evidence was that, when these events are viewed together, they reveal a pattern of unequal treatment.

[20] Mr. Harold De Kock further testified that the payments made to Ms. Griessel were intended to provide financial support. After they ceased, he advanced substantial amounts to or on behalf of Ms. Griessel. He also contended that the Trust and Manyeleti possessed the practical ability to make funds available to her if the trustees and directors resolved to do so.

[21] Ms. Griessel testified that she is elderly, financially dependent, and no longer involved in the affairs of either the Trust or Manyeleti. Even when she was a trustee and director, she trusted Mrs. Van Wyk to manage the affairs of the structures and played little practical role in their administration.

[22] Ms. Griessel accepted that her memory of historical events was limited. She was, however, clear about her understanding of the payments she received. She testified that they were not remuneration for defined services and that no duties or responsibilities were explained to her. She regarded the payments as financial support after she had exhausted her personal resources.

[23] Ms. Griessel also explained the role she had played at Arathusa, particularly in relation to the gardens. Her evidence did not establish a conventional employment relationship. Rather, it showed that she had contributed to Arathusa because of her affection for the property and the family enterprise.

[24] Mrs. Van Wyk's evidence was directed principally at the historical development of the Trust and Manyeleti, the financial structure of both entities, and the circumstances in

which payments were made to Ms. Griessel. She denied that the payments were Trust maintenance payments. She maintained that they were made by Manyeleti and were reflected in its records as consultancy remuneration. Mrs. Van Wyk nevertheless accepted that the arrangement arose against the background of Ms. Griessel's deteriorating financial position and that steps were taken to generate an income for her.

[25] Mrs. Van Wyk also denied that the trustees acted from malice or partiality. She emphasised the financial and administrative responsibilities that had over many years fallen mainly on her shoulders. Her evidence was that she carried the practical burden of managing the family structures while others, including Ms. Griessel, benefited from arrangements she administered.

[26] Mrs. Van Wyk accepted, however, that the payments to Ms. Griessel ceased after the Kaizer incident and that requests for assistance were made thereafter. She also accepted that the requests were ignored and that no positive relief was provided in response to them. Her explanation was that the Trust had no independent income and that any financial benefit depended on decisions concerning dividends, loan accounts, and the affairs of Manyeleti.

Analyses of the evidence

The payments made to Ms. Griessel

[27] The parties agree that payments were made to Ms. Griessel for about six years and that they ceased in July 2022. They disagree as to their true character.

[28] The plaintiffs' case is that the payments were maintenance or support payments. They rely on Ms. Griessel's financial position in 2016, the absence of any defined duties, the fact that she was not required to account for work performed, and the fact that the payments continued monthly irrespective of whether she rendered any identifiable services. Mr. Harold de Kock claimed that the payments defrauded SARS.

[29] The defendants submit that this overstates the evidence and the pleaded case. They rely on the 18 February 2016 meeting, the presence of professional advisers, the recording

of the payments as consultancy remuneration, the payment of PAYE, and the fact that Ms. Griessel had historically contributed to Arathusa.

[30] I do not accept that the evidence establishes an intention to defraud SARS. That allegation is serious and requires clear proof. The evidence does not justify such a finding. The presence of professional advisers at the 2016 meeting, the recording of the payments in Manyeleti's financial records, and the payment of tax are inconsistent with a finding of deliberate tax fraud.

[31] At the same time, the evidence does not support the defendants' characterisation of the payments as ordinary remuneration for defined consultancy services. Ms. Griessel was not given written duties. There was no job description, no measurable deliverables, no invoices, no performance assessment, and no ordinary termination process. Mrs. Van Wyk accepted that Ms. Griessel was not working in any conventional sense throughout the year.

[32] The more probable conclusion is that the parties adopted a practical structure through which Ms. Griessel could receive regular financial support, with the payments recorded and administered as consultancy fees by Manyeleti. That conclusion recognises both sides of the evidence: Ms. Griessel had made valuable contributions to Arathusa, but the payments were not truly remuneration for defined consultancy services. They were support payments clothed in the form of consultancy remuneration. The consultancy remuneration through Manyeleti was the mechanism, or source, through which Ms. Griessel was maintained.

[33] The evidence further proves on a balance of probabilities that either the Trust was the controlling mind behind Manyeleti, or that Manyeleti was the alter ego of the Trust. It must be emphasised that the finding does not constitute a piercing of the corporate veil. The Supreme Court of Appeal,¹ in the earlier litigation between these parties, observed that there was no need for the court *a quo* to have pierced the corporate veil as it purported to do, given that the voting rights in Manyeleti were exercised by the trustees *qua* trustees in their capacity as the sole shareholder of the Trust:

¹ *Joan Cynthia Griessel NO & others v De Kock* (334/18) [2019] ZASCA 95 (6 June 2019) at para 14..

“It is common cause that the trust is the sole shareholder of the company, which is a registered private company. Given that scenario, the trust *qua* shareholder, has voting rights in the company. It is trite that a trustee is the owner of the trust property for purposes of the administration of the trust. Equally trite is that where more than one trustee have been specified in the trust deed, they must act jointly in the fulfilment of the objects of a trust, Given all these well-established principles, it cannot be gainsaid that the first, second and third applicants, as trustees, jointly exercise the voting rights in the company, which have been conferred by the shares owned by the trust. They therefore make decisions pertaining to the farm, including granting access rights. The upshot of this finding is that there was no need for the court *a quo* to pierce the corporate veil as it purported to do.”

[34] The present finding proceeds on the same basis. It is not the separate legal personality of Manyeleti that is disregarded. Rather, it is the practical and operational reality that the persons who controlled the Trust were simultaneously those who controlled Manyeleti that is relevant to the assessment of fiduciary conduct. The legal distinction between the entities is maintained, it is the practical interrelationship that is material to the inquiry

The termination of payments and the requests for assistance

[35] The termination of the payments must be considered in its factual context. The evidence established that the payments ceased following an incident in which Ms. Griessel, upon being informed by Mrs. Van Wyk of damage concerning a game viewing vehicle, responded dismissively, stating words to the effect that Mrs. van Wyk should “tell somebody who cares” (the Kaizer incident). Mrs. Van Wyk regarded Ms. Griessel’s response as demonstrating a lack of respect for the Arathusa enterprise, and against the background of a deteriorating personal relationship, she decided that the payment arrangement should end. That reaction might be understandable on a human level.

[36] The difficulty is that a humanly understandable decision is not necessarily a proper fiduciary response. Once the payments ceased and requests for support were made, the

trustees were required to consider those requests properly, in their capacity as trustees, and with regard to the interests of the Trust and all beneficiaries.

[37] The evidence establishes that several requests for assistance were made after July 2022. Mrs. Van Wyk accepted that such requests had been made and that she did not respond to them in substance. The defendants' answer is that the Trust had no legal obligation to maintain Ms. Griessel and no independent income from which to do so. That answer addresses the alleged obligation to pay; it does not fully answer whether the trustees properly considered the request.

[38] The factual significance of the non-response lies not in proving an automatic entitlement to payment, but in what it reveals about how the trustees approached the interests of a beneficiary in financial distress.

The financial position of the Trust and Manyeleti

[39] The Trust and Manyeleti are legally distinct. That distinction cannot be ignored. The defendants are correct that Manyeleti's directors, not the trustees *qua* trustees, decide whether dividends are declared.

[40] The evidence, nevertheless, shows a close practical relationship between the Trust and Manyeleti. The Trust is Manyeleti's sole shareholder. The same family members occupied key positions as trustees, directors and beneficiaries. Decisions concerning dividends, loan accounts, access to Arathusa and financial benefits were therefore not made in entirely separate practical spheres.

[41] The plaintiffs' contention that the structures were closely intertwined is therefore not without force. But it does not follow that the Court may disregard the separate existence of Manyeleti for all purposes. The proper approach is to recognise the formal distinction while assessing whether those who controlled both structures exercised their powers in a manner consistent with their fiduciary obligations.

[42] The financial enquiry is therefore not simply whether the Trust had cash on hand at any particular moment. The more relevant question is whether the trustees gave proper consideration to the request for assistance, having regard to the Trust's assets, its

shareholding in Manyeleti, the interests of all beneficiaries, and the practical ability of the relevant decision-makers to influence the flow of funds.

Mr. Harold de Kock's complaints concerning the administration of the Trust

[43] A substantial portion of the evidence concerned Mr. Harold de Kock's longstanding complaints regarding his treatment as a beneficiary. Those complaints cannot be assessed by isolating each incident from the broader history. At the same time, this Court must avoid relitigating matters finally determined in earlier proceedings.

[44] The evidence revealed a series of disputes extending over many years. They included the amendment of the Trust Deed, Mr. Harold de Kock's removal as a beneficiary and his reinstatement, disputes over access to Arathusa, and the allocation of access periods following the earlier litigation.

[45] Viewed individually, a number of the trustees' decisions are capable of explanation. The trustees advanced legal, practical, and administrative reasons for the steps they took. The access roster, for example, was defended as formally equal and consistent with previous court orders. The defendants also submitted that Mr. Harold de Kock could approach individual beneficiaries to exchange allocated periods.

[46] Those explanations cannot be dismissed out of hand. But they are also not conclusive. Mr. Harold de Kock's case is cumulative. He contends that the trustees repeatedly adopted technically defensible positions which, in practical effect, operated to his disadvantage and reflected little willingness to accommodate him as a beneficiary.

[47] The probabilities do not justify a finding that every decision taken by the trustees was motivated by hostility towards Mr. Harold de Kock. Nor is it necessary to make such a finding. What emerges is a pattern in which his requests and concerns often received a technical response rather than a constructive fiduciary response.

[48] That distinction matters. Trustees are not required to accede to every request made by a beneficiary. They are, however, required to consider requests properly, impartially and in good faith. Formal compliance with a roster or previous order does not, without more,

answer whether the trustees administered the Trust in a manner that promoted the interests of all beneficiaries.

[49] The cumulative effect of the evidence is therefore more important than any single event. The evidence reveals a longstanding relationship marked by distrust, repeated litigation and an inability to accommodate Mr. Harold de Kock's interests within the administration of the Trust. Whether that state of affairs justifies removal is a question for the legal analysis that follows.

Overall factual assessment

[50] The evidence does not support the extremes advanced by either side. I do not accept that the consultancy structure was proven to be a fraudulent device to defraud SARS. I also do not accept that the payments to Ms. Griessel were ordinary remuneration for defined consultancy services.

[51] Similarly, I do not accept that every historical complaint raised by Mr. Harold de Kock may simply be relitigated. But neither can the history be ignored. It forms part of the factual matrix against which this court must determine whether the present trustees can continue to administer the Trust impartially and in the interests of all beneficiaries.

[52] The legal analysis must therefore proceed from the following factual conclusions: first, the payments to Ms. Griessel were support payments administered through Manyeleti as consultancy remuneration; second, the trustees did not meaningfully engage with the requests made on her behalf after those payments ceased; third, the Trust and Manyeleti, though legally separate, operated in a closely interconnected practical setting; and fourth, Mr. Harold de Kock's complaints, viewed cumulatively, reveal a persistent failure to accommodate his interests constructively as a beneficiary.

[53] The Trust Deed concluded between Ms. Joan Griessel and Ms. Shirley van Wyk contains the following important clauses:

- (a) The purpose for which the Trust was created – "... ('the Settlers') out of the affection they bear for their family, wishes to create a trust to enable them to

arrange their personal affairs in such a way as to provide for their security, maintenance, education and welfare.”

- (b) “‘Beneficiary’ shall mean that person or those persons who may from time to time be selected by the Trustees in their entire and absolute discretion to be a beneficiary in respect of the income or capital or both under this trust, from among the following potential beneficiaries - ...”
- (c) “The Trustees shall have the power, in their entire discretion, from time to time and at any time to pay to, or to apply the whole or any part of the income of the trust fund for the general advantage of any one or more of the beneficiaries as the Trustees may decide, and in such proportions and from such source as the Trustees may determine, and any income so paid or applied shall accrue to the beneficiary”
- (d) The right of a beneficiary to payment of any income or capital under this trust shall, unless the Trustee otherwise determines, vest in such beneficiary only on the date of such payment or transfer.
- (e) It is the express wish of the Settlers that all decisions of the Trustees shall be by consensus among the Trustees. If any difference or dispute shall at any time arise in regard to the interpretation of this Trust Deed or the respective rights of any person hereunder, or should any dispute at any time arise between the Trustees, then and in such event, the matter in dispute may be referred to arbitration in accordance with the succeeding provisions:...

The legal consequences of the 2016 support arrangement

[54] The evidence establishes that by 2016, the trustees had resolved that Ms. Griessel should receive ongoing financial support. The decision was implemented through Manyeleti and the payments were recorded as consultancy remuneration. I have already found, however, that the payments were not ordinary remuneration for consultancy services. Their true purpose was to provide Ms. Griessel with a regular source of financial support after she had exhausted her personal resources.

[55] The defendants contend that Ms. Griessel acquired no enforceable rights because the payments were discretionary in nature and were made by Manyeleti rather than the Trust. The submission cannot be accepted without qualification.

[56] The defendants also rely upon the Trust Deed provision that the right to payment vests in a beneficiary only on the date of payment, unless the trustees determine otherwise. That provision correctly reflects the discretionary nature of the trustees' powers and confirms that no beneficiary acquires a vested right to future payment by reason of past payments alone. That proposition is accepted. The present conclusion does not rest upon the creation of a vested right in Ms. Griessel to future maintenance. It rests upon the existence of an operative decision, made by the trustees in 2016, which had been continuously implemented for approximately six years and which had never been lawfully reconsidered or withdrawn. The vesting clause does not address the obligations that attach to trustees when they seek to resile from an existing decision made in the exercise of their powers. It governs the beneficiary's right, it does not govern the manner in which trustees must conduct themselves when they seek to alter or terminate a course of dealing they have themselves established.

[57] The same individuals who controlled the Trust controlled Manyeleti. The arrangement was devised by those persons acting simultaneously as trustees and directors. The decision was implemented continuously for approximately six years. It was not presented as a temporary act of benevolence revocable at whim. It was adopted because the trustees considered it necessary to provide for Ms. Griessel's welfare and maintenance.

[58] The significance of the arrangement does not lie in the creation of a perpetual and immutable right to maintenance. The trustees retained fiduciary powers and discretions under the Trust Deed. What the arrangement did create, however, was an existing and operative decision in favour of Ms. Griessel.

[59] A discretionary power, once exercised by a trustee in a particular manner, gives rise to consequences that cannot be undone by mere inaction or unilateral reversal. The principle that trustees who have settled upon a course of conduct in the exercise of their powers are required to act consistently with that course until they have properly reconsidered it is consonant with the broader fiduciary obligation of good faith and even-handedness towards beneficiaries. While trustees are not permanently bound by prior exercises of discretion and may legitimately reconsider and change course, such

reconsideration must itself constitute a genuine exercise of fiduciary judgment, directed at the interests of the Trust and all beneficiaries, and not merely a response to personal grievance or a change in personal relations. The operative decision could not lawfully be terminated without proper consideration by the trustees acting in the discharge of their fiduciary obligations.

[60] The evidence does not establish that such a reconsideration occurred. The payments ceased because Mrs. Van Wyk concluded, after the Kaizer incident and the deterioration of her relationship with Ms. Griessel, that the arrangement should end. While that reaction may have been understandable on a personal level, the evidence does not establish that the trustees collectively reconsidered the existing support arrangement with due regard to the interests of the Trust, Ms. Griessel and the other beneficiaries.

[61] The failure lies not merely in the termination of the payments, but in the absence of a proper trustee decision directed at whether the support arrangement should continue, be amended or be terminated.

Relief consequent upon the termination

[62] The conclusion that the financial support arrangement was improperly terminated does not mean that the first plaintiff acquired a perpetual and immutable entitlement to maintenance. The Trust Deed confers discretionary powers upon the trustees and the court must be slow to substitute its own decision for that of fiduciaries entrusted with the administration of the Trust.

[63] The present case is, however, unusual. The trustees exercised their discretion in favour of the first plaintiff during 2016. That decision was implemented continuously for approximately six years. The arrangement remained operative until it was terminated. For the reasons already explained, the evidence does not establish that the termination followed a proper trustee reconsideration of the arrangement.

[64] In those circumstances, the support arrangement remained operative until lawfully reconsidered by trustees acting in accordance with their fiduciary obligations. The first

plaintiff is accordingly entitled to the payments that would have accrued to her from the date upon which the payments ceased until the date of this judgment.

[65] The consequence of this conclusion is not merely that the first plaintiff is entitled to payment of the arrears that accrued after July 2022. The support arrangement established during 2016 remains operative. It was never lawfully reconsidered or terminated by the trustees acting in accordance with their fiduciary obligations. The purported termination was therefore ineffective. Unless and until the arrangement is lawfully amended or terminated by the trustees acting properly in the exercise of their powers, the first plaintiff remains entitled to receive the support provided pursuant to that arrangement.

[66] The fact that the arrangement was implemented through Manyeleti does not detract from that conclusion. The evidence establishes that Manyeleti was the mechanism through which the trustees elected to give effect to their decision to provide support to the first plaintiff. The arrangement must therefore continue to be implemented through Manyeleti unless and until a properly constituted body of trustees determines otherwise.

[67] It is unnecessary for present purposes to determine the precise tax consequences of the arrangement or whether the payments might more appropriately have been structured in a different manner. Those issues do not affect the validity of the support arrangement itself. The issue before this Court is whether the arrangement lawfully existed and whether it was lawfully terminated. For the reasons already given, I conclude that it existed and that it was not lawfully terminated.

The removal of trustees

[68] Before proceeding to consider the position of the sixth, seventh and eighth defendants, it is necessary to address briefly the position of the fourth and fifth defendants, Mr. Frederik Frans van Niekerk and Mr. Johannes Jurgens Potgieter, who were appointed as independent trustees pursuant to the orders made in the earlier proceedings.

[69] During the course of the trial, a dispute arose as to whether the purported resignations of these two trustees were effective. The defendants contended that the resignations were procured by a settlement agreement, did not comply with the formalities

required by the Trust Property Control Act, and were accordingly of no force or effect. A conditional further resignation, with notice to the beneficiaries and the Master, was tendered during the proceedings. In the circumstances, and having regard to the relief now granted, it is unnecessary to determine whether the earlier resignations were effective. The order directs the Master to appoint two suitably qualified independent trustees. The fourth and fifth defendants, having in substance indicated their intention to resign, are directed to take all steps necessary to give formal effect to their resignation in compliance with section 21 of the Trust Property Control Act within 30 days of this order, so as to regularise the composition of the board of trustees in accordance with the order granted herein.

[70] The evidence does not establish that Mrs. Van Wyk abandoned her responsibilities as trustee. To the contrary, it demonstrates that she carried the primary responsibility for the affairs of the Trust and Manyeleti for many years. The difficulty is not inactivity but rather that personal conflict appears increasingly to have influenced the manner in which she exercised her judgment.

[71] The position of the sixth and eighth defendants is materially different. The evidence contains little indication that either trustee independently engaged with the affairs of the Trust in any meaningful manner. No evidence was presented of trustee deliberations initiated by them, attempts to address the concerns raised by the plaintiffs, or interventions directed at ensuring that beneficiary interests were considered impartially.

[72] Trustees occupy a fiduciary office. They are required to exercise independent judgment and may not simply defer to the views of a co-trustee, however capable or experienced that trustee may be. The evidence demonstrates a substantial failure by the sixth and eighth defendants to discharge those obligations.

[73] In the circumstances, the continued participation of the sixth and eighth defendants as trustees is not conducive to the proper administration of the Trust. Their removal is justified.

[74] The same conclusion does not presently follow in relation to Mrs. Van Wyk. The evidence does not establish dishonesty, bad faith or incapacity. Her continued participation, however, requires the introduction of meaningful independent oversight.

Res judicata, issue estoppel and the significance of recurring conduct

[75] The defendants raised pleas of *res judicata* and issue estoppel in respect of a substantial portion of the conduct relied upon by the plaintiffs in support of the removal of the trustees. It is necessary to address those defences, if briefly, before proceeding to the merits of the removal claim.

[76] It is accepted that certain of the events relied upon by the second plaintiff were the subject of earlier proceedings before this court and the Supreme Court of Appeal. To the extent that those proceedings resulted in final determinations on identified issues between these parties, the principle of *res judicata* properly prevents those same issues from being relitigated. This court does not revisit matters thus finally disposed of, and nothing in this judgment is intended to do so.

[77] The position is, however, more nuanced than a categorical exclusion of all historical conduct. Several of the earlier proceedings were resolved on grounds that did not constitute a final finding on the merits of the removal question now before this court. Where a matter was disposed of by reason of an insufficiency of evidence on motion papers, or where no order was granted, the *res judicata* principle does not operate to extinguish the underlying factual circumstances. Those circumstances remain part of the evidential record.

[78] More importantly, the plaintiffs' case in respect of trustee removal does not rest upon any single incident or any single event that was the subject of prior adjudication. The case is, at its core, a cumulative one. Conduct which, viewed in isolation, may not have warranted removal and may indeed have been considered by an earlier court without justifying intervention, does not lose its relevance merely because it has previously been examined. Where incidents of the same character recur over a prolonged period — and where each recurrence confirms and reinforces a pattern — the cumulative weight of that conduct may justify a conclusion that would not have been warranted on any individual event considered alone.

[79] The proper approach is therefore not to exclude the historical events but to assess whether the evidence as a whole, including events that post-date the earlier proceedings and events whose significance only emerges in the context of a broader pattern, establishes the grounds for removal. It is on that basis that the present inquiry proceeds

Applicable legal principles and appropriate relief

[80] The removal of a trustee is not a punitive measure. The court's primary concern is whether the continued office of the trustee will be detrimental to the welfare of the beneficiaries or the proper administration of the trust. The enquiry is directed to the future administration of the trust rather than the punishment of past conduct.

[81] Trustees occupy a fiduciary office. They are required to exercise independent judgment, to participate actively in the administration of the trust, and to consider the interests of all beneficiaries. A trustee who merely acquiesces in the views of a co-trustee fails to discharge the obligations attaching to the office. Equally, a trustee who allows personal considerations to influence the exercise of fiduciary powers acts inconsistently with the obligations imposed by the office.

[82] Family trusts present particular challenges. As was recognised in *Land and Agricultural Development Bank of SA v Parker*² there is a danger that the trust form may continue to exist formally while the administration of the trust becomes concentrated in the hands of a single dominant individual. The law therefore requires genuine trustee participation and independent judgment.

[83] Applying these principles to the facts of the present matter, the position of Mrs. Van Wyk differs materially from that of the sixth and eighth defendants. The evidence establishes that Mrs. Van Wyk remained actively involved in the administration of both the Trust and Manyeleti. She carried the primary responsibility for the management of the family structures and possesses extensive institutional knowledge regarding their affairs.

² 2005 (2) SA 77 (SCA).

[84] At the same time, the evidence demonstrates that personal conflict increasingly influenced the manner in which Mrs. Van Wyk exercised her judgment. The termination of the support arrangement after the Kaizer incident and the failure meaningfully to engage with subsequent requests for assistance illustrate the extent to which personal considerations became intertwined with fiduciary decision-making. Those findings warrant criticism but do not, in themselves, justify her removal as trustee.

[85] The position of the sixth and eighth defendants is materially different. They placed virtually no evidence before the Court demonstrating meaningful participation in the affairs of the Trust. There was no evidence of independent initiatives undertaken by them as trustees, no evidence that they sought to resolve disputes affecting beneficiaries, no evidence that they independently considered requests for support made on behalf of Ms. Griessel, and no evidence that they attempted to address Mr. De Kock's concerns regarding his position as a beneficiary.

[86] The practical result was that the administration of the Trust became concentrated in the hands of Mrs. Van Wyk. Whatever the reasons for that state of affairs, it is inconsistent with the requirement that trustees jointly and independently exercise the powers entrusted to them.

[87] In my view, the principal governance deficiency revealed by the evidence is therefore not the active involvement of Mrs. Van Wyk but the absence of meaningful independent participation by the sixth and eighth defendants. Their continued office is not conducive to the proper administration of the Trust and their removal is accordingly justified.

[88] The evidence nevertheless demonstrates a need for independent oversight. The history of litigation, the breakdown in family relationships, the disputes concerning access to Arathusa, and the dispute concerning the support arrangement all indicate that confidence in the administration of the Trust has been seriously undermined.

[89] The appropriate remedy is therefore not the wholesale removal of all trustees. Such a remedy would deprive the Trust of the knowledge and experience accumulated by Mrs. Van Wyk over many years. The more proportionate course is to retain Mrs. Van Wyk as

trustee while introducing meaningful independent oversight through the appointment of two suitably qualified and independent trustees.

[90] The appointment of independent trustees will not resolve the underlying family conflict. It will, however, provide an administration structure more consistent with the fiduciary obligations imposed by the Trust Deed and trust law generally and better safeguard the interests of all beneficiaries going forward. The Trust Deed provides for arbitration as a dispute resolution mechanism should any dispute arise between the trustees.

ORDER

In the result the following order is granted:

- 1. The sixth defendant, Mr. De Villebois Etienne de Kock N.O., is removed as trustee of the Arathusa Family Trust.**
- 2. The eighth defendant, Ms. Celeste Mari Dovey N.O. is removed as trustee of the Arathusa Family Trust.**
- 3. The fourth defendant, Mr. Frederik Frans van Niekerk N.O., and the fifth defendant, Mr. Johannes Jurgens Potgieter N.O., are directed within 30 days of this order, to take all steps necessary to give formal effect to their resignation as trustees of the Arathusa Family Trust in accordance with the provisions of section 21 of the Trust Property Control Act 57 of 1988.**
- 4. The Master of the High Court, Pretoria, is directed, within 60 days of this order, to appoint two suitably qualified independent trustees to the Arathusa Family Trust.**
- 5. The independent trustees shall:**
 - 5.1. Not be beneficiaries of the Trust;**
 - 5.2. Not be related to beneficiaries of the Trust;**
 - 5.3. Possess suitable qualifications or experience in trust administration, fiduciary governance, accounting, law or a related field.**
- 6. Within 30 days of this order:**
 - 6.1. The plaintiffs may submit nominations to the Master for consideration.**
 - 6.2. The remaining trustee may submit nominations to the Master for consideration.**

- 7. The Master shall not be bound by any nomination but shall appoint only persons satisfying the requirements set out in paragraph 5.**
- 8. The trustees shall take all lawful steps necessary to give effect to the support arrangement referred to in this judgment.**
- 9. The Arathusa Family Trust shall pay the first plaintiff the amount of R1 627 197.00, being the arrear financial support that accrued since July 2022.**
- 10. Unless and until the financial support arrangement is lawfully amended by the trustees acting in accordance with their fiduciary obligations, the first plaintiff shall continue to receive monthly financial support in the amount of R36 981.75.**
- 11. Before making any decision concerning the financial support arrangement, the trustees shall consider:**
 - 11.1. the financial circumstances and needs of the first plaintiff;**
 - 11.2. the interests of all beneficiaries of the Trust;**
 - 11.3. the financial position of the Trust;**
 - 11.4. the financial position of Manyeleti (Pty) Ltd; and**
 - 11.5. any other factor they consider relevant to the proper administration of the Trust.**
- 12. Any decision contemplated in paragraph 11 shall:**
 - 12.1. be reduced to writing;**
 - 12.2. contain written reasons; and**
 - 12.3. be furnished to the first plaintiff within 14 days of being taken.**
- 13. The trustees shall furnish annual financial statements of the Trust and annual financial statements of Manyeleti (Pty) Ltd to all beneficiaries within 30 days after approval thereof.**
- 14. The ninth defendant is directed to issue amended letters of authority reflecting the composition of the board of trustees as contemplated in this order.**
- 15. The sixth, seventh and eighth defendants, in their representative capacities as trustees, shall pay the plaintiffs' costs, including the costs consequent upon the employment of senior counsel where so employed on scale C.**
- 16. Any wasted costs incurred as a result of the plaintiff's abandoned amendment application are to be borne by the respective parties, save for the costs tendered by the plaintiffs.**



**E VAN DER SCHYFF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

For the plaintiffs:	Adv. SG Maritz SC
With:	Adv. R de Leeuw
Instructed by:	Jarvis Jacobs Raubenheimer Inc.
For the first to eighth and tenth respondents:	Adv. S.D. Wagenaar SC
With:	Adv. J.C. Van Eeden
Instructed by:	Gildenhuys Malatji Inc.
Date of the hearing:	25-27 February 2026, 2-5 March 2026
Date of oral argument:	15 April 2026
Date of judgment:	1 June 2026