THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: Yes☐/ No ☒
(2)	OF INTEREST TO OTHER JUDGES: Yes☐ / No ☒
(3)	REVISED: Yes ☒ / No ☐

Date: 25 June 2026 [redacted]

Case no 2023/002101

RUAN SWANEPOEL Applicant

and

WERNER BOTHA N.O. First Respondent

THE UBERRIMA TRUST (PTY) LTD Second Respondent

CORNÈ VAN DER VENTER Third Respondent

MASTER OF THE SOUTH GAUTENG HIGH COURT Fourth Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] The applicant, Mr Swanepoel, brings this application for the termination of the Ruan Swanepoel Inter Vivos Trust ("the Trust"), in terms of section 13 of the Trust

Property Control Act.[1] The question to be answered is, if a trust was created for a specific purpose, and the purpose for which it was created no longer exists, may a court intervene to bring the trust to an end, even where its own deed contemplates termination only upon the death of the beneficiary? The answer depends on the facts.

Background facts

[2] On 14 August 2010, the applicant, then 18, sustained serious injuries in a motor vehicle accident. He suffered from, amongst other injuries, a mild to moderate traumatic brain injury. Action was instituted against the Road Accident Fund ("the RAF"). On 19 November 2013, the action was settled, and a court order confirming the settlement was granted. In terms of the settlement agreement, the RAF undertook to pay a capital sum of R3 133 920, together with a contribution towards future medical expenses.

[3] In terms of the court order, the third respondent was directed to cause a special trust to be established in accordance with the Act, it being a trust created for the benefit of a person who suffers from any serious physical disability, where such a disability incapacitates such a person from earning sufficient income for the maintenance of such a person or from managing his own affairs. All settlement proceeds were to be paid into the trust for the applicant's benefit. The Trust was established, with the applicant as the sole beneficiary.

[4] The Deed of Trust provides that the Trust terminates upon the applicant's death.

[5] At the time of the settlement and the creation of the Trust, the applicant was battling with alcohol and drug addiction. He dropped out of school, attempted suicide on various occasions, and had been admitted to various psychiatric facilities. His family and his then attorney were concerned that he would squander the award on substances.

[1] 57 of 1988.

[6] In the decade following the settlement, the applicant cleaned up his act. He has been sober for over a decade. He has had stable employment at his father-in-law's construction company, where he earned a steady salary and was promoted. He got married, and he and his wife bought a home without the assistance of the trustees. He became a father. He has independently managed his finances, obtained and maintained long-term insurance policies, and appointed a financial advisor to assist with his financial and investment decisions. He later negotiated and concluded the sale of his home and emigrated with his family to New Zealand.

[7] The Trust currently holds capital from which substantial trustee and administration fees are deducted. According to the applicant, the Trust is depleting its capital, which is why the applicant would like to terminate the Trust: to enable him to make his own financial and investment decisions regarding the capital.

[8] As mentioned, the Trust was established for the benefit of the applicant, based on the injuries sustained and the concerns surrounding his addiction. At the time of settlement, the medical evidence did not exclude the possibility that the applicant could make his own decisions. For instance, the Clinical Psychologist and Neuropsychologist stated that the applicant is capable of making decisions regarding his financial affairs, but recommended appointing a financial advisor if significant sums are awarded. The occupational therapist likewise suggested a financial advisor and foresaw the need for protection to be temporary. Some of the assessments indicated prior cognitive and other difficulties (such as ADHD and a history of learning difficulties), which underscored the suggestions made.

[9] The assessments were updated around 2023. The psychiatrist noted that he has made a good recovery, even if there are still some minor deficits, and concluded that he has only minimal residual difficulties secondary to the minor head injury he sustained, and that he is able to manage his own financial affairs and that the Trusteeship can be lifted. The Clinical Psychologist noted that his test performance was similar but somewhat stronger than during the assessment a decade earlier. The improvement was attributed to reduced pain and post-traumatic anxiety, improved mood and emotional maturity, reduced and better-managed ADHD symptoms, and the absence of substance abuse. He concluded that in the absence of substance abuse,

the applicant remains capable of managing his financial affairs. He also indicated that at the time of his initial assessment, the substance abuse had not been disclosed to him and would have affected his opinion. In that regard, he states that creating the Trust was a good decision to preserve the funds during the period of addiction.

Legal framework

[10] Section 13 of the Act provides:

> 13. Power of court to vary trust provisions.
>
> If a trust instrument contains any provision which brings about consequences which in the opinion of the court the founder of a trust did not contemplate or foresee and which—
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> (a) hampers the achievement of the objects of the founder; or
>
> (b) prejudices the interests of beneficiaries; or
>
> (c) is in conflict with the public interest,
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> the court may, on application of the trustee or any person who in the opinion of the court has a sufficient interest in the trust property, delete or vary any such provision or make in respect thereof any order which such court deems just, including an order whereby particular trust property is substituted for particular other property, or an order terminating the trust.

[11] Section 13 thus confers a broad discretionary power on the court to vary a trust instrument in a manner as it deems fit. The Supreme Court of Appeal in *Snyman v De Kooker N O*[2] explained the working of the section as follows:

> [40] In the main, s 13 of the Act provides for variation of trust provisions by a court, and in certain instances, for termination of a Trust. For a court to exercise its powers provided in s 13, a trust deed must contain a provision 'which brings about consequences which in the opinion of the court the founder of a trust did not contemplate or foresee' and which: (a) hampers the achievement of the objects of the founder; or (b) prejudices the interests of beneficiaries; or (c) is in conflict with the public interest.

[2] [2024] ZASCA 119.

> [41] The provision has thus two components. The first requires the presence of a provision which results in unforeseen or contemplated consequences. I refer to this as the anchor jurisdictional factor. The second requires, in addition, that such a provision must have any of the results contemplated in s 13(a) – (c). Thus, an applicant who relies on this provision must satisfy the court of the presence of the anchor jurisdictional factor and any of the requisites of s 13(a) – (c). Logically, it is only if the anchor jurisdictional factor is established, that an enquiry into any of the three requisites would ensue. In other words, the section requires a causal link between the anchor jurisdictional factor and the results referred to in s 13(a) – (c).
>
> [42] The enquiry in terms of s 13 of the Act is a factual one, in which relevant factors will include the background to the creation of the Trust, the intention of its founder, its purpose, and the relevant provisions of the trust deed. Although s 13 has two components, the enquiry into the presence of the anchor jurisdictional factor is intertwined with the requisites in s 13(a) – (c). In other words, it could well be that a finding on the anchor jurisdictional factor indicates the presence of one or more of the requisites in s 13(a) – (c). Even among the requisites in s 13(a) – (c), there might be factors which satisfy one or more of the requisites. For example, a provision might prejudice the interests of the beneficiary such that it also offends public interest. As a result, it might not always be practical, nor desirable, to have a discrete and isolated enquiry into each factor.

[12] In other words, section 13 requires an applicant to satisfy two components. Firstly, the "anchor jurisdictional factor", namely that the trust deed contains a provision that produces a consequence the founder did not foresee. This is a factual enquiry (what did the founder contemplate?), informed by the background to the creation of the trust. In the *Snyman* case, the court found that although the trust was created pursuant to a court order, the founder for purposes of section 13 is the person who executed the deed and formally constituted the trust (in this case, the third respondent).

[13] The second component is that this unforeseen consequence must at least have one of three results, namely: 1) it hampers the achievement of the founder's objects; 2) it prejudices the interest of the beneficiaries, or 3) it conflicts with the public interest. This requires a causal link between the anchor factor and whichever of the three

results is relied upon. Sometimes the finding of the anchor factor will simultaneously establish one of the results in 13(a) – (c).

[14] *Snyman* also clarified the relationship between section 13 (termination or variation of a trust) and section 20 (removal of trustees). The court cautioned that the two provisions are distinct, serve unrelated purposes, and must not be conflated. Termination of a trust under section 13 is premised on the provisions of the trust deed itself, thereby bringing about unforeseen consequences; removal of trustees under section 20 is informed by the trustees' conduct and their relationship with beneficiaries. The loss of office by a trustee upon termination of a trust under section 13 is a natural consequence of that order, but it does not amount to a removal as envisaged in section 20.[3]

Application

[15] The first and second respondents contend that section 13 does not apply because the Trust was created pursuant to a court order, and any variation or termination must be done by varying the underlying consent order in the RAF litigation. On a reading of section 13, this cannot be the case. Section 13 expressly refers to a "trust instrument", which includes a court order that ordered the creation of the trust. Section 13, therefore, applies to the order. But this does not mean the order is what must be varied. The provisions being challenged are not the provisions of the court order but rather those of the Trust Deed itself, created pursuant to the court order.

[16] If one follows *Snyman's* logic, the third respondent, as founder, in her affidavit in support of the applicant's application, clarified that the purpose of the Trust was to protect the settlement proceeds from dissipation by the applicant through drug and alcohol use. She did not foresee, at the time of the trust's creation, that he would rehabilitate to the extent he has. She clarified that the intention was not for the trust to endure indefinitely, should the applicant be able to manage his own affairs. This information is important, as it indicates that the founder did not foresee that what happened would happen.

[3] At para 21.

[17] Even if the court itself is regarded as the founder of the trust, the conclusion will be the same. The consent order was made based on the expert reports before the court. The reports did not find that the applicant is wholly incapable of managing his own affairs. What the court could not foresee was the full extent of the applicant’s substance dependency that was, at the same time, wreaking havoc in the applicant’s life. The updated medical experts' reports indicate that the applicant’s situation as far as the injury has improved, that he has been sober for over a decade, and that he remains capable of managing his own affairs, now without qualification.

[18] On any view of who the founder was, the termination-on-death clause produces consequences not foreseen when the trust was constituted. That is the first component.

[19] The second component is also satisfied. The applicant is the sole beneficiary of the Trust. The continuation of the Trust prejudices his interest in various respects. For one, the Trust is depleting its capital by paying trustee and administrative fees, without any real benefit to the applicant. But perhaps more importantly, the applicant is deprived of his autonomy and his right to make his own financial decisions until his death. The Trust ties him to a finding of perpetual incapacity in relation to those funds, while outside this tie, he is making his own financial decisions, such as negotiating the sale of his home, managing long-term investments through a financial advisor, planning emigration, and maintaining what seems to be a stable family life. The incongruity speaks for itself. His interests are clearly prejudiced.

[20] The first and second respondents submit that the relief in paragraph 2 of the Notice of Motion, directing the first respondent to deliver his Letters of Authority to the Master, is interdictory and requires the applicant to meet the criteria for a final interdict. I respectfully disagree. The transfer of Letters of Authority after a trust's termination is a consequence of the order ending the trust. Once the trust is terminated, those Letters of Authority no longer have effect and must be returned to the Master. This is thus not the enforcement of a separate right via interdict but rather a natural outcome of the primary order being sought.

[21] The first and second respondents also submit that the Applicant failed to provide the Court with evidence of mismanagement or maladministration. However, this overlooks the type of relief being sought. Termination under section 13 does not depend on proving trustee misconduct. The Act provides an alternative, separate basis for variation or termination once the criteria in section 13 are satisfied. Misconduct is not necessary for this application to succeed.

The order

[22] The applicant uploaded a fairly extensive order that mimics the order in *Snyman*. Much of the relief sought in the order was not set out in the notice of motion. I am confined to the relief sought. The order I make is limited to what was properly before me, and that flows from the relief granted.

[23] The applicant seeks a punitive costs order against the first and second respondents on the basis that their opposition was unreasonable and vexatious, and further seeks that any costs order be borne personally by the trustees rather than paid from the trust capital.

[24] The applicant is the only beneficiary of the Trust. This application was necessitated by the Trust Deed's termination-on-death clause, which I have found leads to unintended consequences not foreseen when the trust was established and that prejudice the applicant's interests. The trustees opposed the application. I do not find that their opposition was so unreasonable or vexatious as to warrant a personal costs order against them. The appropriate order is that the costs of this application be paid from the trust estate.

Order

[25] The following order is made:

1. The Ruan Swanepoel Inter Vivos Trust (IT 205/2014 G) ("the Trust") is terminated in terms of section 13 of the Trust Property Control Act 57 of 1988.
2. Within 15 (fifteen) court days of the date of this order, the First and Second Respondents shall transfer and pay over the full net capital

of the Trust, together with all accrued interest, to the Applicant or his nominated financial advisor, on such banking or investment account details as the Applicant's attorneys shall furnish to the First and Second Respondents' attorneys in writing within 5 (five) court days of the date of this order. Such transfer shall include:

2.1. All capital held in the name of the Trust;

2.2. All funds held in any trust banking accounts; and

2.3. All accrued interest, investment growth and any other amounts receivable by the Trust up to the date of transfer.

3. Within 10 (ten) court days after the transfer contemplated in paragraph 2, the First Respondent is directed to:

3.1. deliver the original Letters of Authority issued by the Fourth Respondent to the Master of the South Gauteng High Court; and

3.2. take all steps and sign all documents reasonably required by the Fourth Respondent to give effect to the termination of the Trust and the cancellation of the Letters of Authority.

4. The costs of this application shall be paid from the Trust estate prior to the transfer contemplated in paragraph 2, on scale A.

[redacted]

WJ du Plessis
Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing:	13 April 2026
Date of judgment:	25 June 2026
For the applicant:	K Hennessy-Davis instructed by Van Wyk Law Inc
For the respondent:	G Y Benson instructed by Michael Herbst Attorneys