IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GQEBERHA)

CASE NO: 18825/2025

REPORTABLE

In the matter between:

CORNELIUS FREDERICK FERREIRA	**First Applicant**
CORNELIUS FREDERICK FERREIRA N.O.	**Second Applicant**

And

PIETER VAN AARDE FERREIRA	**First Respondent**
ROB WIJNANTS	**Second Respondent**
PIETER VAN AARDE FERREIRA N. O.	**Third Respondent**
ROB WIJNANTS N. O.	**Fourth Respondent**
CORNELIUS FREDERICK FERREIRA N.O.	**Fifth Respondent**
MASTER OF THE HIGH COURT GRAHAMSTOWN	**Sixth Respondent**
ROODEWAL TRUST	**Seventh Respondent**

JUDGMENT

Noncembu J

[1] This is an application in which the applicants seek the removal of the third and fourth respondents as trustees of the family trust known as Roodewal Family Trust. The trust owns farms from which the supply of packaging and cooling facilities is conducted. The first applicant, together with the first and second respondents, are the current trustees of the trust. The main relief that was sought in the original Notice of Motion, which has since been abandoned, was the reinstatement of the first applicant as a beneficiary of the Roodewal Trust.

[2] The applicant lodged the application in his personal capacity, as well as in his professional capacity as a co-trustee of the Roodewal Family Trust. The first and second respondents are cited in their personal capacities and in their capacities as co-trustees of the Roodewal Family Trust (as the third and fourth respondents, respectively).

[3] The fifth respondent is Cornelius Frederick Ferreira (also the first applicant), cited in his capacity as co-trustee of the Roodewal Family Trust. The sixth respondent is the Master of the High Court, Makhanda, and the seventh respondent is the Roodewal Family Trust, a trust registered in terms of the laws of the Republic of South Africa (I[...]), and central to the current application.

[4] For convenience, the following parties who are central to the current application shall be referred to as follows in this judgment: the first applicant - Freddie; the first respondent – Pietie; and the third respondent - Rob.

Factual Background

[5] It is necessary to give an outline of the background facts which serves as the backdrop to the relief sought in the Notice of Motion.[1]

[6] Essentially, the application concerns part of what was the estate of the late father of the Ferreira family (referred to as 'SP Snr' in the papers and in this judgment). SP Snr passed away in 2021. He had six (6) children: Freddie (the first applicant), Pietie (the first respondent), the late Eppie (his deceased son), and three daughters.

[7] SP Snr conducted a farming business and had substantial other assets. As previously indicated, the application concerns only what was his farming business. All of the entities dealt with in this application, including the Roodewal Trust (the trust with which this application is concerned), are part of the said farming business. I unpack these as I traverse the facts below.

[8] The following material facts are relevant to the matter. SP Snr began farming in 1953. He passed away during the Covid pandemic in 2021, leaving behind his wife, who also passed away shortly after him, and his five children (with Eppie having predeceased him).

[9] For most of the period in question, SP Snr was the controlling mind of his own estate, which included both the farming operation as well as the assets not forming part of the farming operation. On advice received, he created trusts

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[1] It should be noted in this regard that although the bulk of the facts contained herein were drawn mainly from the answering affidavit, they are, for the most part, either common cause or not in dispute.

which, for most of the period, included him as a trustee and both him and his wife as beneficiaries. He controlled certain appointments through his Wills.

[10] In due course, it became apparent that his three daughters and Freddie were not interested in farming, whereas Pietie and Eppie were. The latter two were thus appointed and worked as farm managers in the farming operation. They, however, did not have ultimate control as that remained vested in SP Snr.

[11] In 1991 SP Snr called a meeting with his three sons to discuss succession planning for the farming business. At that meeting Freddie made it clear that he was not interested in farming. It is also at the same meeting that SP Snr made it clear that his other businesses and investments (other than farming) were earmarked for his daughters, none of whom were interested in farming.

[12] It is significant to note that as early as 1986, substantial assets were settled on Freddie, when the Wildevy farm was registered in his name without paying for it. Other financial benefits were later conferred on him, including a loan from the Cousins Trust (of which Freddie is a trustee and beneficiary) to purchase commercial property in Cape Town.

[13] In 1995 SP Snr established three trusts: the Roodewal Trust, the Tossie Trust and the SP Ferreira Trust. The income beneficiaries of the three trusts were him and his wife, their six children and their grandchildren. The capital beneficiaries were only their children and grandchildren. The trusts remained under the control of SP Snr, who alone established the trusts, and included in the trust deeds of all three trusts a clause in terms of which he reserved the right to determine, by his Will, a formula for the distribution of trust income and capital. Furthermore, he alone could appoint the trustees for the trusts.

[14] Pursuant to those powers, SP Snr provided in successive Wills, starting on 3 March 1998, that the beneficiaries of the Roodewal Trust would be Pietie and Eppie and their children; and for the Tossie Trust to be Eppie and his children. Because Freddie had received a benefit and was a beneficiary of the Cousins Trust, which had been the recipient of the aforementioned loan, he was not intended to benefit from the Roodewal Trust. Freddie was to later receive other assets. He was aware of this broad distribution as it had been discussed at the 1991 meeting and on various other occasions between the family members.

[15] The actual farming operation was conducted under the name of SP Ferreira Boerdery. Certain properties on which the farming operation was conducted were transferred to or purchased in the name of the Tossie Trust or the Roodewal Trust. These properties were let to SP Snr personally, who was farming for his own account. In 2002 the farming operation was transferred from SP Snr to Endulini Business Trust (more accurately, its wholly owned company, Endulini Fruit (Pty) Ltd, of which Pietie and Eppie were directors).

[16] Thereby, the Endulini Business Trust became the owner of the farming operation, and the lessee under the leases concluded with the property-owning trusts, which include Wildevy, owned by Freddie. This was all part of SP Snr's estate planning.

[17] In 1996 and 2001, two trusts were established for Pietie and Eppie, respectively. The farming at that stage was modest, with only 100 hectares of citrus having been established on the farms. An existing store on the farm owned by Roodewal Trust was modified and extended. Significantly, despite working as farm managers, neither Pietie nor Eppie had personally or via their trusts received any assets to the extent of the value that had been conferred on Freddie, who, by contrast, had received very generous settlements.

[18] The trust deed of Endulini Business Trust (established in 2002) created two groups of beneficiaries in equal proportions, these being the Pietie Trust (category A) and the Eppie Trust (category B). Endulini Fruit, thereafter, continued to farm under the leases, and specifically to develop the properties that were subject to the leases, including the farm Wildevy (owned by Freddie). Endulini paid the installments owing on the loan to purchase Freddie's farm and also paid rent. After full repayment of the loan, Freddie owned the unencumbered farm and continued to receive the rental paid thereon. The farm has an estimated value of R15 million.

[19] The Pietie and the Eppie Trusts, which were beneficiaries of the Endulini Trust (which owns the farming operations), acquired no assets themselves. As indicated earlier, these two trusts were also beneficiaries of the Roodewal Trust (both trusts), and the Eppie Trust was the beneficiary of the Tossie Trust.

[20] What is apparent from the above is that SP Snr created a structure, holding in essence what was his farming operation, under which neither of the farming brothers (Pietie and Eppie) either personally or via their trusts acquired assets, and in which both were trustees of the property-owning trusts, and directors of the farming company. It is evident from the above structure that it was intended that they be part of the governance both of the landlords (the property-owning trusts) and the tenant (Endulini Fruit).

[21] There were subsequent property acquisitions and improvements to the farms owned by the property-owning trusts, including Freddie's property, Wildevy. These were, for the most part, financed by loans taken by Endulini entities, resulting in enormous debt to the said entities. On the other hand, these held substantial benefits for the property-owning trusts, in the form of newly

established citrus orchards. Freddie also benefitted on the basis that the export of fruit needed an agent, which since 2000 (for 26 years), has been Southern Fruit Growers (SFG), an entity in which he has an interest.

[22] In 2013, a cooperation agreement was entered into, the purpose of which was to decide on options in the event that one of the farming brothers should pass away. Eppie had been diagnosed with cancer in 2008. The option agreed upon by all in attendance, including Eppie, who was in his sound mind and managing the cancer well at that stage, was that the survivor would have an option to buy out the interest of the deceased brother. This was subject to a condition that the children of the deceased would have an option to repurchase 50% of the interest in the farming operation. A valuation was prepared in this regard, and Freddie was made aware of the said valuation.

[23] Pietie's trust exercised the said option after the passing of Eppie. Pursuant thereto, Freddie was appointed as a trustee of the Eppie Trust. By virtue of such appointment, he had access to all of the information and records of that trust.

[24] SP Snr gave instructions to his professional advisors to amend the trust deed of the Roodewal and the Tossie Trusts in various respects which included:

(a) the removal of the daughters as beneficiaries, on the basis that they be paid R12 million by the remaining beneficiaries in the Roodewal Trust (effectively Pietie and Eppie); and

(b) the removal of Fredie's name as a beneficiary of both trusts.

[25] In essence, the said amendments merely reflected what was provided for in SP Snr's will. Freddie, of course, was not required to pay anything to the sisters, given that he was not meant to be a beneficiary of the Roodewal Trust. The amendments to the trust deed were prepared, and Freddie signed his consent thereto (even though his consent was not needed given that he had never accepted any benefit under that trust)[2].

[26] The Eppie Trust was also paid out more than R18 million from a life insurance policy after the passing of SP Snr.

[27] In June 2017 Freddie was appointed as a trustee of the Endulini Business Trust. He thereby acquired knowledge and access to all of the business of the farming operation as well. During the same month, the amendment to the trust deed of the Roodewal Trust was given effect to.

[28] A further amendment was made to the Roodewal Trust deed to create three categories of beneficiaries. Categories A and B were the same as those of the Endulini Trust, being the Pietie and the Eppie Trusts, and category C was the parents (SP Snr and his wife).

The Applicants' case

[29] As far as can be gleaned from the papers, Freddie asserts in the founding affidavit that Pietie and Melville were hopelessly conflicted in supporting his (Freddie's) removal as a beneficiary of the Roodewal Trust. Regarding the second prayer of the Notice of Motion, he asserts that there was a conflict of interest in Pietie being 'the owner' of the farming enterprise (Endulini Fruit) as lessee of the farming properties, while at the same time being a trustee of the

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[2] *Potgieter v Potgieter NO* 2012 (1) SA 637 (SCA) para 18.

lessor (the Roodewal Trust). In the case of Rob, Freddie alleges that he is compromised as the financial director of the farming company, Endulini Fruit.

[30] According to Freddie, the conflict is manifest in the rent paid to the Roodewal Trust, which he alleges is a fraction of what it should be, in comparison to the charges levied by Endulini Cooling on SFG. He therefore asserts that the rental charged under the leases is unreasonable and unduly favourable to the farming enterprises, thus pointing to a lack of bona fides on the part of Pietie and Rob and confirming their conflict of interest.

[31] Freddie also alleges that Pietie and Rob refuse to provide him, as a co-trustee, with highly relevant information regarding how the rental is computed. He surmises that this casts serious doubt on their functioning as trustees and the reasonableness of rental payable in terms of the leases.

[32] As indicated elsewhere in this judgment, Freddie has, however, abandoned the relief sought in prayer 1 of the original Notice of Motion (where he sought his reinstatement as a beneficiary of the Roodewal Trust). This was after it was raised in the answering affidavit that he had, in fact, consented to his removal as a beneficiary of the said trust. In explaining the sudden turnaround in his replying affidavit, he stated that he had forgotten that he had consented to the removal.

Locus Standi

[33] The respondents contended that the first applicant (Fredie) has no *locus standi* in the matter, given that he is not a beneficiary of the Roodewal Trust and in light of the abandonment of his claim for reinstatement. I agree. In his

personal capacity, Freddy has no interest in the matter. Furthermore, he did not dispute the applicants' legal point raised in this regard. He therefore failed to establish that, in his personal capacity, he has *locus standi* to pursue the current proceedings.

The Issue

[34] The question to be answered in this matter is whether it has been established that Pietie and Rob, in the exercise of their powers as trustees of the Roodewal Trust, were conflicted, which conflict rendered them unable to exercise their powers with care, diligence and skill reasonably expected of a person who manages the affairs of another. Whether, in their management of the affairs of the Roodewal Trust, specifically in concluding the lease agreements at issue in the matter, they acted to the detriment of the beneficiaries of the said trust. And whether or not such conduct warrants their removal as trustees of the Roodewal Trust.

The Applicable Legal Principles

[35] It is trite that under common law, a trustee can be removed if he is endangering the trust property or its administration,[3] or under section 20 (1)) of the Trust Property Control Act,[4]if it is in the interests of the trust and the beneficiaries that the trustee be so removed.

[36] In contending that the above requirements were not established in the present matter, the third and fourth respondents have referred this court to the case ,[5] where the following was stated:

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[3] *Gowar and Another v Gowar and Others* 2016 (5) SA 225 (SCA) paras 27, 31-32 and 37.
[4] Trust Property Control Act (Act 57 of 1988).
[5] *Volkwyn NO v Clarke and Damant* 1946 WLD 456 at 464, cited with approval by the SCA in *Gower v Gower* 2016 (5) SA 225 (SCA)

'…[I]t is a matter not only of delicacy . . . but of seriousness to interfere with the management of the estate of a deceased person by removing from the control thereof persons who, in reliance upon their ability and character, the deceased has deliberately selected to carry out his wishes. Even if the . . . administrator has acted incorrectly in his duties, and has not observed the strict requirements of the law, something more is required before his removal is warranted. Both the statute and the case cited indicate that the sufficiency of the cause for removal is to be tested by a consideration of the interests of the estate . . ..'

[37] The Supreme Court of Appeal in *Gowar*[6]added the following:

'. . . the power of the court to remove a trustee must be exercised with circumspection. Consequently, mere friction or enmity between the trustee and the beneficiaries will not in itself be adequate reason for the removal of the trustee from office. Nor, in my view, would mere conflict amongst trustees themselves be a sufficient reason for the removal of a trustee at the suit of another.'[7]

Discussion

[38] The third and fourth respondents contended that the applicant has failed to make out a case for the relief he seeks. They base this assertion on various reasons, including the claim that the application was brought in bad faith. This claim emanates from the now abandoned prayer 1 of the notice of motion, where Freddie sought reinstatement as a beneficiary of the Roodewal Trust.

[39] The third and fourth respondents allege in this regard that this prayer depended on the omission of material facts which must have been known to Freddie, *ie*.: (a) that he was never intended to be an actual beneficiary of the trust; and (b) that he expressly agreed to the removal of his name from the list of beneficiaries. They allege that it is implausible that Freddie had forgotten that he had agreed to the removal of his name, and that he attempted to enlist this

[6] *Supra.*
[7] See also in this regard: *Tijmstra NO v Blunt-Mackenzie NO* 2002 (1) SA 459 (T) at 473E – G.

court in a disingenuous attempt to become a beneficiary of the Roodewal Trust and thereby misappropriate benefits properly due to other beneficiaries.

[40] They further allege that when his case in the founding affidavit was found to be bad, he impermissibly pivoted to an entirely new case in his replying affidavit.

[41] It is a trite principle of our law that a party stands or falls by the case pleaded in the founding papers and cannot make a new case in reply.

[42] The applicant bears the onus of showing that the removal of Pietie and Rob as trustees is in the interests of the Roodewal Trust and its beneficiaries in the present matter. The question, therefore, is whether the applicant has discharged the said onus.

[43] The respondents contend that he has not, and that if anything, the papers show that it is manifestly in the interests of the Roodewal Trust and its beneficiaries that the two remain trustees of the trust. They place the following facts as demonstrating the above contention:

(a) The Roodewal Trust is a part of the Endulini farming business and benefits from its success. As Pietie and Rob know the business very well, the trust benefits from having them as trustees.

(b) Secondly, Pietie is indirectly a beneficiary of the Roodewal Trust through the Pietie Trust, and as such, his interests are in alignment with those of the Roodewal Trust.

[44] Regarding the claim of failure to provide information as a second ground for the removal of Pietie and Rob as Trustees of Roodewal Trust, this is refuted in the answering affidavit. To that end, the respondents refer to a meeting which

was held on 5 December 2022, where Rob had again explained the structures, lease agreements and calculation of rent to Freddie. It is averred in this regard that Freddie was satisfied with the explanations and even stated that he could explain to the children (the beneficiaries of the Eppie Trust).

[45] It is further averred that Freddie had asked for and was shown all the documents he had requested, which included originals he wanted to examine at the aforementioned meeting. These included copies of all financial statements of the Roodewas Trust, the Tossie Trust and the Endulini Landgoed Besigheidstrust for the years following Eppie's passing. The contention is that these were provided to the applicant on more than one occasion as he requested them more than once.

[46] The answering affidavit further avers that a further meeting of the trustees was called on 20 November 2024, the purpose of which was to again explain the situation to Freddie. Freddie sent an email excusing himself from attending the said meeting, stating that it was futile for him to attend. Nonetheless, a further email was sent to him, and he was again provided with financial statements for 2022 and 2023.

[47] I find it significant that none of the above was disputed in the replying affidavit. It is also concerning that Freddie made some serious allegations against Pietie and Melville in the founding affidavit, and yet when the two placed certain material facts in their answering affidavits, Freddie fails to dispute these in his replaying affidavit. He alleged that when Pietie voted in favour of his removal as a beneficiary of the Roodewal Trust, this was intended for his (Pietie's) own financial benefit.

[48] When facts are stated in reply, that not only was this the intended wishes of their father, which he was not only aware of, but also consented thereto in writing. All that he states in reply is that he forgot that he had so consented, but he does not dispute that this was in fact their father's longstanding intentions, which he was aware of. He does not dispute the averments made by Mellville in his answering affidavit that he had been working with their father (SP Snr) for a very long time, and that the various amendments to the Trust Deeds were at his instruction, and that he was the controlling mind behind the various decisions.

[49] The impression he created throughout the founding affidavit was that he had been treated unfairly by Piettie and Melville, and later Rob, throughout the various changes and the management of the farming activities and business entities concerned. He however, does not dispute that his father was actively involved in all the decisions and activities taking place, and that he was in fact the controlling mind as the founder of the trusts. His father was one of the trustees when the lease agreements were first concluded in 2013, which it is common cause in the papers, were not market related at the time. He never challenged his father's motives in this regard.

[50] His father was one of the trustees that gave Piettie the mandate to conclude the lease agreements on behalf of the Trust, and yet he does not challenge his fairness or the integrity of his decision in this regard. He does not allege that his father was in any way influenced or that his faculties were impaired in any manner when he made these decisions, as he alleged in respect of Eppie. Most significantly, he does not dispute that Piettie, though the Piettie Trust, is also a beneficiary of the Roodewal Trust, which he himself is not.

[51] His only basis for the allegation of a conflict of interest in the founding affidavit is the rental paid by the Endulini Cooling and Endulini fruit, vis a vi

the value of the fruit processed by these entities during the same period, and the amounts levied by Endulini Cooling for the said facilities to SFG since 2017. He, however, does not dispute Pietie's averments in reply, to the effect that the entities developed orchards which increased the value of the farms, to the benefit of the farms, and the structures constructed therein. Instead, he brings a new case in reply, where he seeks *inter alia*, that the respondents disclose all facts and circumstances relevant to the determination of rental for the farming properties. That was not his case in the notice of motion or his founding affidavit, and therefore it is impermissible.

[52] To that end, this court therefore, will disregard any new matter raised in these circumstances, including the various further affidavits filed by both parties in that regard.

[53] The legal position is very clear, the power of a court to remove a trustee needs to be exercised with circumspection[8], and that even in circumstances where a trustee failed to observe the strict requirements of the law, such does not warrant a removal without more.[9] Furthermore, courts have been cautioned about the seriousness of interfering with the management of the estate of a deceased person by removing from the control thereof persons who, in reliance upon their ability and character, the deceased has deliberately selected to carry out his wishes.[10]

[54] Freddie did not challenge the expertise and experience of Pietie in the farming industry, and the fact that he was entrusted in the various positions by their father because he himself had indicated a lack of interest in farming. In fact, what is apparent from his own papers is that the farming business is doing

[8] *Gowar v Gowar supra*.
[9] *Volkwyn NO v Clarke and Damant supra*.
[10] Ibid.

very well under the management and trusteeship of Pietie and Rob. He also did not dispute that he was allocated valuable assets in various other forms in leu of the fact that he had indicated no interest in farming.

[55] Furthermore, he did not dispute that the placement of Pietie as a trustee of Roodewal Trust was part of the estate planning of their late father, the founder of all the trusts in question. Contrary to the allegations made by Freddie, what seems to be apparent from the papers is that this application, if anything, was brought solely for the purpose of serving his own personal interests.

[56] Given that he is not a beneficiary in the Roodewal Trust and therefore has no personal interest therein, his initial prayer in the notice of motion, and the spurious allegations he made against Pietie and Melville regarding his removal, and later recanting when the true facts are brought to the fore, lead one to the irresistible conclusion that he is in fact the one who brought the application purely for personal gain. He left out a number of substantial facts in his founding affidavit, which he did not dispute when raised in the respondents' answering affidavits. Instead, he brought an entirely new case in reply, which, absent any exceptional circumstances, is impermissible.

[57] That there is friction between him and his co-trustees qua trusteeship of the Roodewal Trust is apparent in the papers. Such friction, however, is not sufficient for the removal of the third and fourth respondents as trustees of the Roodewal Trust. I am not persuaded that the second applicant has made out sufficient cause that the removal of Piettie and Rob as trustees would serve the interests of the Roodewal Trust. Under those circumstances, his application must fail.

Application to strike-out

[58] This application was withdrawn by the respondents pursuant to the amendment of the notice of motion and the abandonment of the relief sought therein pertaining to the reinstatement of the first applicant as a beneficiary of the Roodewal Trust. Nothing more needs to be said in this regard therefore.

Costs

[59] I find no reasons to deviate from the general rule that the costs follow the result in the present matter. That is therefore the order I propose to make in the circumstances.

[60] Accordingly, the following order shall issue:

(a) The application is dismissed with costs, including the costs of two counsel, under scale B, where so employed.

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V P NONCEMBU

JUDGE OF THE HIGH COURT

APPEARANCES

Counsel for the Applicants	:*R S Van Riet SC* with *W J Pretorius*
Instructed by	: Hannes Pretorius Bock & Bryant C/O Rushmere Noach Attorneys Gqeberha
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Date of hearing	: 07 May 2026
Date judgment delivered	: 06 August 2026