



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION)**

Reportable

Case No: 2026/143013

In the matter between:

KAREN TANYA BERKOWITZ

First Applicant

CRAIG ANTON ZIMAN

Second Applicant

SARA SASHA BERKOWITZ

Third Applicant

PENINA TZIPPORA BERKOWITZ

Fourth Applicant

RACHEL CHAVA TEEGER

Fifth Applicant

ARYEH LEIB BERKOWITZ

Sixth Applicant

and

DANETTE KOTZE NO

First Respondent

In her capacity as trustee for the time being of
The Douglas Ziman Trust (I[...])

WILHELM KRUGER

Second Respondent

LOURÉZ SWART

Third Respondent

JACO PIETER ODENDAAL
ANTHONY BRUCE ZIMAN
THE MASTER OF THE HIGH COURT

Fourth Respondent
Fifth Respondent
Sixth Respondent

Coram: Norton AJ

Heard: 30 July 2026

Order granted: 6 August 2026

Delivered: 21 August 2026 (electronically)

ORDER

- 1 The applicants' non-compliance with the forms, time periods and service requirements in the Uniform Rules of Court is condoned and the matter is heard as one of urgency.
- 2 The application under Part A of the applicants' notice of motion is dismissed.
- 3 The costs of the application under Part A are to be paid by the applicants, jointly and severally, the one paying the other to be absolved, such costs to include the costs of one counsel on scale C.

REASONS

Norton AJ

[1] The applicants are beneficiaries of the Douglas Ziman Trust (the Trust). On 22 June 2026 they instituted an application for an interim interdict restraining the Master of this Court from authorising the second, third and fourth respondents to act as trustees of the Trust pending the final determination of a separate application for an order appointing the first and second applicants as trustees of the Trust in the place of the second, third and fourth respondents.

[2] The application was opposed by the first respondent, Ms Danette Kotze, who was cited in her capacity as the ‘sole trustee’ of the Trust. The second, third, fourth and sixth respondents gave notice that they would abide the decision of the Court.

[3] The matter came before me on the urgent roll on 30 July 2026. On 6 August 2026 I handed down an order dismissing the application and indicated that my reasons would follow. These are my reasons.

Background

[4] The founder of the Trust, Mr Douglas Ziman, died on 11 February 2026. At that time, there were three trustees of the Trust: Mr Ziman himself, Ms Danette Kotze, and Cluver Markotter Inc, a firm of attorneys represented by Ms Sistein Geyser. Mr Ziman, Ms Kotze and Ms Geyser had been the trustees of the Trust since 19 June 2017, with independent trustees (Ms Kotze and Ms Geyser) being in the majority.

[5] The Trust Deed contains the following key provisions.

[6] Clause 5.2 provides:

- (a) There shall at all times be a minimum of three trustees in office, of which one shall be an independent trustee, with 'independent trustee' defined in clause 2.5 of the Trust Deed as 'a person who is not a relative of any of the trustees or any of the beneficiaries as defined in the trust deed' and 'relative' defined in clause 2.6 as 'the spouse of such person or anybody related to him or his spouse within the third degree of consanguinity, or any spouse of anybody so related.'
- (b) If there are fewer than two trustees as a result of the death or termination of office of a co-trustee, 'the remaining trustee(s) will be authorised to exercise all the powers of trustees for the maintenance and administration of the trust property until such time as another trustee(s) has been appointed, which appointment the trustee(s) so in office shall make within ninety (90) days of the death or termination of office of his co-trustee'.
- (c) While fewer than two trustees are in office 'he/they shall not be entitled to pass a valid resolution for the distribution and allocation of income or capital or for the variation of the trust deed'.

[7] Clause 5.3 empowered Mr Ziman, in his will, to appoint a trustee or trustees of his choice to succeed him on his death.

[8] Clause 5.4 provides that ‘the trustees shall be entitled under a written instrument to appoint a new trustee or trustees, and such power shall extend to the appointment of one or more additional trustee or trustees, and also the appointment of a new trustee or trustees in the place of any trustee or trustees dying or vacating office in terms of this paragraph’ and goes on to provide that ‘[i]n the absence of any powers of appointment being exercised in terms of this paragraph, the beneficiaries assisted by their guardians if necessary, shall be entitled to appoint the substitution trustee’.

[9] Clause 6.41 of the Trust Deed provides for the exercise of a trustee’s powers and discretion in matters where the trustee may have a personal interest:

‘Any trustee hereof may exercise or concur in exercising all power and discretions hereby or by law given to him notwithstanding that he may have a direct or other personal interest in the mode or result of exercising any such powers or discretion, but any trustee may nevertheless if he so wishes, but shall be under no obligation to do so, abstain from acting, except as a merely formal party in any matter in which he may be so personally interested, and may allow his co-trustees or co-trustee to act alone in the exercise of the powers and discretion aforesaid in relation to such matter. Each trustee shall however be obliged to disclose beforehand the nature and extent of his interest when exercising any power or discretion in such a matter.’

[10] Shortly after the death of Mr Ziman, and in circumstances where Mr Ziman had not in his will nominated anyone to succeed him as trustee, a dispute arose between the applicants and the remaining trustees regarding

the appointment of a successor. The key protagonists among the applicants were the first applicant, Ms Karen Berkowitz, and the second applicant, Mr Craig Ziman, the children of the deceased. I shall refer to them as ‘the main applicants’.

[11] On 25 February 2026 Ms Geyser wrote to the main applicants advising them that the Trust Deed required a minimum number of three trustees and that the remaining trustees – she and Ms Kotze – were considering the appointment of an independent trustee to fill the position vacated by the deceased.

[12] The main applicants responded to Ms Geyser the next day, stating that they saw no basis for the appointment of a further independent trustee while Ms Geyser remained as a trustee, and considered it appropriate that they be appointed as trustees in the place of their late father. They requested Ms Geyser to initiate the necessary steps without delay.

[13] On 12 March 2026 Ms Geyser advised the main applicants that the remaining trustees had considered their request to be appointed as trustees and intended to appoint them in addition to a suitably qualified independent trustee. The remaining trustees were of the view that the Trust would benefit from a trustee with professional experience in the administration of property-holding trusts and commercial property transactions. They would accordingly appoint Mr Wilhelm Kruger, an independent attorney with the necessary local and commercial background, as a trustee. Ms Geyser requested the main applicants to provide specific documents and information

that were required to prepare the necessary documents for their appointment as trustees.

[14] Ms Geyser's letter elicited two notable communications from the main applicants on 16 March 2026.

[15] In a letter to Ms Geyser and Ms Kotze, the main applicants made far-reaching accusations against them, casting aspersions on their characters and, in the case of Ms Geyser, her professional ethics. Ms Geyser and Ms Kotze were accused of attempting to restructure the governance of the Trust for their own gain, and of giving advice to the deceased on the restructuring of his affairs which now empowered them to derive ongoing professional and financial benefit from the continued administration of the trust.

[16] The main applicants raised a particular concern in respect of a provision in the deceased's will in terms of which the bulk of the deceased's estate was bequeathed to the Trust on the condition, among others, that if the Trust's immovable properties were sold, Ms Kotze was to receive a cash amount of either R7 million or R10 million, depending on the proceeds of the sales. This bequest, the main applicants said, created a substantial personal financial interest for Ms Kotze in decisions taken by the Trust in respect of the Trust's property.

[17] The main applicants demanded, within five days, a significant volume of information and documents relating to the Trust's business going back ten years. They concluded by requiring written confirmation, within 24 hours, that, first, they would be appointed as additional trustees, and second, that no further trustee would be appointed without their agreement.

[18] This demand was buttressed with a threat that if the confirmation they sought was not provided, the main applicants reserved their rights not only to institute urgent High Court proceedings relating to the administration of the Trust (and to seek costs on a punitive scale against the ‘responsible trustees’ personally) but also to lodge complaints (evidently in relation to Ms Geyser) with the Legal Practice Council.

[19] On the same date, the main applicants wrote an email to Mr Kruger under the subject heading ‘Urgent – Warning regarding proposed appointment as trustee of the Douglas Ziman Trust’. They advised Mr Kruger to decline his appointment as a trustee of the Trust and demanded that he confirm in writing within 24 hours that he would not accept any appointment. Among other derogatory comments about Ms Kotze and Ms Geyser, Mr Kruger was ‘warned’ that he ‘was being invited to join a cabal of two trustees who are in clear conflict of interest and who are attempting to hijack a family trust for their personal enrichment’.

[20] Mr Kruger was warned that if he accepted appointment as a trustee the applicants would ‘immediately refer the entire matter, including your involvement, to the Legal Practice Council (Western Cape) for investigation of professional misconduct and breach of fiduciary duty by all three of you’ and would also bring urgent High Court proceedings seeking his removal and punitive costs against him.

[21] On 18 March 2026 Ms Geyser wrote to the main applicants responding in detail to their various concerns and allegations. She confirmed that she and Ms Kotze had decided to appoint them, as well as an

independent professionally experienced person, as trustees. However, she advised that in order for new trustees to be appointed, a resolution by the trustees, a certified copy of the death certificate and the appointment documents for the new trustees had to be submitted to the Master's office. In order to appoint the main applicants, the trustees still needed their information to be able to finalise the appointment documents for submission to the Master.

[22] On the same day Ms Geyser tendered her resignation as a trustee of the Trust. In her letter of resignation she advised that the firm of attorneys that she represented would not be nominating another person to serve as trustee in her stead.

[23] On 24 March 2026 Mr Kruger wrote to the main applicants placing on record that he denied all their ‘unfounded and unsubstantiated allegations’ and confirming that he had accepted appointment as a trustee of the Trust.

[24] On 17 April 2026 Ms Kotze appointed the third and fourth respondents (an attorney and a chartered accountant, respectively) as trustees and submitted the necessary documentation for their authorization, along with that of Mr Kruger, to the Master. This included ‘Acceptance of Trusteeship by Trustee’ forms completed and signed by the second, third and fourth respondents.

[25] On 7 May 2026 the applicants’ attorneys sent a letter to Ms Kotze’s attorney requiring, somewhat contradictorily, (i) Ms Kotze’s resignation as a trustee on the ground that the bequest made to her by the deceased resulted in a conflict between her personal interests and the interests of the

beneficiaries; and (ii) that Ms Kotze advance the appointment of the main applicants as trustees. An undertaking was given to provide Ms Kotze with the name and contact details of a proposed independent trustee in due course.

[26] This letter too concluded with a threat: if agreement was not reached regarding the appointment of new trustees and the timing of Ms Kotze's resignation as a trustee, the applicants would approach the High Court to obtain an order for Ms Kotze's removal as a trustee and the appointment of the main applicants and a further independent trustee. Ms Kotze was warned that her legal fees in proceedings for her removal could not be paid from the Trust's assets.

[27] In a response dated 13 May 2026 Ms Kotze's attorney advised, among other things, that Ms Kotze had obtained legal advice regarding the provisions of the deceased's will and undertook to recuse herself from any future decision of the Trust relating to the acceptance or repudiation of the bequest made to the Trust.

[28] In a letter dated 3 June 2026 the applicants' attorneys advised the Master that they held instructions to approach the High Court to seek an order appointing the main applicants as trustees, together with an independent trustee to be nominated by the Master, and intended to seek urgent interdictory relief in respect of the authorisation of the second to fourth respondents if the Master did not provide an undertaking not to proceed with such authorisation.

[29] On 22 June 2026 the applicants instituted an application in two parts. Under Part A they sought, as a matter of urgency, an order interdicting the Master from authorising the second to fourth respondents to act as trustees pending the final determination of the relief sought under Part B. Under Part B the applicants sought an order that the main applicants be appointed as trustees of the Trust ‘in the stead of’ the second to fourth respondents. They subsequently amended Part B to add a prayer for an order setting aside the first respondent’s appointment of the second to fourth respondents as trustees of the Trust.

Urgency

[30] I accepted that the matter was urgent in circumstances where the Master might imminently authorise the second to fourth respondents to act as trustees of the Trust.

Interim interdict

[31] An applicant for an interim interdict must show the following:

- (a) that the right that is the subject matter of the main action and which they seek to protect by means of interim relief is clear or, if not clear, is prima facie established, though open to some doubt;
- (b) that, if the right is only prima facie established, there is a well-grounded apprehension of irreparable harm to the applicant if the

interim relief is not granted and they ultimately succeed in establishing their right;

- (c) that the balance of convenience favours the granting of interim relief; and
- (d) that the applicant has no other satisfactory remedy.

(LF Boshoff Investments (Pty) Ltd v Cape Town Municipality; Cape Town Municipality v LF Boshoff Investments (Pty) Ltd 1969 (2) SA 256 (C) at 267A-F).

[32] An applicant relying on a prima facie right must show prospects of success in the main proceedings. The strength or weakness of those prospects will be pertinent in the court's holistic consideration of all the requirements, where strong prospects of success may compensate for a less favourable balance of convenience, and vice versa. Holmes J, as he then was, explained this approach in *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) at 383D-G:

‘It thus appears that where the applicant's right is clear, and the other requisites are present, no difficulty presents itself about granting an interdict. At the other end of the scale, where his prospects of ultimate success are nil, obviously the Court will refuse an interdict. Between those two extremes fall the intermediate cases in which, on the papers as a whole, the applicants' prospects of ultimate success may range all the way from strong to weak. The expression "prima facie established though open to some doubt" seems to be a brilliantly apt classification of these cases. In

such cases, upon proof of a well-grounded apprehension of irreparable harm, and there being no adequate ordinary remedy, the Court may grant an interdict - it has a discretion, to be exercised judicially upon a consideration of all the facts. Usually this will resolve itself into a nice consideration of the prospects of success and the balance of convenience - the stronger the prospects of success, the less need for such balance to favour the applicant: the weaker the prospects of success, the greater the need for the balance of convenience to favour him. I need hardly add that by a balance of convenience is meant the prejudice to the applicant if the interdict be refused, weighed against the prejudice to the respondent if it be granted.'

[33] This dictum was cited with approval by Holmes JA (as he had then become) in *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton and Another* 1973 (3) SA 685 (A) at 691D-G and thereafter followed in *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1995 (2) SA 813 (W) and approved by the Constitutional Court in *South African Informal Traders Forum and Others v City of Johannesburg and Others* 2014 (4) SA 371 (CC) para 25 footnote 24.

[34] In *Ferreira* Heher J held for the majority that *Eriksen*, read with its approval of *Olympic*, authoritatively established the following approach to the requirements for an interim interdict:

‘1. A *prima facie* right though open to some doubt exists when there is a prospect of success in the claim for the principal relief albeit that such prospect may be assessed as weak by the Judge hearing the interim application.

2. Provided that there is a prospect of success, there is no further threshold which must be crossed before proceeding to a consideration of the other elements of an interim interdict.

3. The strength of one element may make up for the frailty of another.

4. The process of measuring each element requires a holistic approach to the affidavits in the case, examining and balancing the facts and coming to such conclusion as one may as to the probabilities where disputes exist.’ (*Ferreira* at 832D – 833C).

The right relied on by the applicants

[35] The applicants assert a ‘clear right’ to the relief that they seek in Part B of their notice of motion.

[36] They do so on the ground that a decision has already been made to appoint the main applicants as trustees. Ms Berkowitz says in the founding affidavit: ‘As the then trustees have already made the decision to appoint us, we therefore state that we have a clear right to the ultimate relief we seek’.

[37] The assertion is flawed in several key respects.

[38] The right that the applicants must establish is not only that the main applicants should be appointed as trustees, but that they should be appointed *in the place of* the second to fourth respondents. The applicants will ask the Court, in Part B of their application, to *advance* the applicants’ accession to trusteeship and to *thwart* the accession of the second to fourth respondents

by setting aside their appointment. They must establish their entitlement to both aspects of that relief.

[39] In respect of each aspect the case that the applicants have advanced fails to take account of the legal nature of, and the requirements for, accession to trusteeship.

[40] The conditions that must be fulfilled for ‘proper accession to the office of trustee’, as set out in *Fesi v Ndabeni Communal Property Trust* [2018] 2 All SA 617 (SCA) para 56, are as follows:

- ‘(i) appointment in a lawful manner;
- (ii) proper qualification on the part of the trustee;
- (iii) acceptance of the office; and
- (iv) written authorization by the Master.’

[41] If the first three conditions are met, the appointee *becomes* a trustee but requires the authorisation of the Master in order to *act* as a trustee. The distinction is delineated in Cameron et al *Honore’s South African Law of Trusts* 6th Ed § 131 at 249:

‘A trustee who is properly designated, qualified and has accepted office thereby becomes a trustee. Subject to the statutory requirement of authorisation, the trustee requires no further official authority in order to perform the duties and exercise the powers of office.’

[42] This is the case notwithstanding the definition of a ‘trustee’ in the Trust Property Control Act 57 of 1998 (the Act) as ‘any person ... who acts

as trustee by virtue of an authorisation under section 6'. As explained in *Honore's South African Law of Trusts* § 110 at 206:

'Despite the statutory formulation, it is clear that a trustee's appointment derives from the trust instrument itself, and not from the Master's authorisation, and that the authority of the trustees derives from the terms of the trust deed ... This is because the office of trustee is created by the trust instrument and not by the Master or even the court in filling it.'

[43] In *Metequity Ltd and Another v NWN Properties Ltd and Others* 1998 (2) SA 554 (T) at 557H Van Dijkhorst J explained the relationship between the Trust Deed, as the source of a trustee's appointment, and section 6(1) of the Act, as the source of a trustee's authorisation to act:

'The office of trustee is ... created by the trust instrument and filled thereby or by the Master or by the court. The Trust Property Control Act, however, as a regulatory and control measure, provides in s 6 that such *existing trustee* shall not act without authorisation by the Master'. (Emphasis added.) (See also *Lupacchini NO and Another v Minister of Safety and Security* 2010 (6) SA 457 (SCA) para 3)

[44] On the papers before me, the second to fourth respondents have been appointed in accordance with the Trust Deed. The second respondent was appointed by Ms Geyser and Ms Kotze to fill the position vacated by Mr Ziman in accordance with the powers conferred on them by clause 5.4 of the Trust Deed. The third and fourth respondents were appointed by Ms Kotze in accordance with the same powers. It appears that one of them must have been appointed to fill the position vacated by Ms Geyser and the other as an

‘additional trustee’. The second to fourth respondents have, in their completed ‘Acceptance of Trusteeship by Trustee’ forms, accepted the office of trustee and provided the information that confirms that they are qualified to act as trustees. They have become trustees and require only the Master’s authorization to carry out their duties as trustees.

[45] The applicants, on the other hand, have not even satisfied the prerequisites for authorisation by the Master. Even if it is accepted that they were lawfully appointed by Ms Geyser and Ms Kotze (in accordance with the intention conveyed by Ms Geyser in her letters of 12 March 2026 and 18 March 2026), there is no evidence on the papers that they accepted that appointment. On the contrary, they communicated a clear intention *not* to accept appointment unless the remaining trustees undertook not to appoint any further trustees. Even on the papers in this application the applicants premise the appointment of the main applicants on the setting aside of the appointment of the second to fourth respondents. The main applicants have also not provided the information and documents repeatedly requested of them to confirm that they are qualified to act as trustees.

[46] The courts have a wide common law jurisdiction to intervene in trusts and to appoint trustees, notwithstanding the prominence that the Act accords the Master in the appointment of trustees ‘if the office of trustee cannot be filled or becomes vacant’ (section 7(1) of the Act). Courts will exercise this jurisdiction to ensure that the objects of the trust may be fulfilled (*Honore’s South African Law of Trusts* § 122 at 233).

[47] That will usually be the case where the trust's appointment mechanism has failed, as when the trust instrument fails to provide for the appointment of substituting trustees or the existing trustees do not agree on the person to be appointed in terms of the trust instrument. A court will step in to ensure that the trust does not 'fail for want of a trustee' (*Honore's South African Law of Trusts*, § 122 at 232-233; *Land and Agricultural Bank of South Africa v Parker and Others* 2005 (2) SA 77 (SCA) para 12).

[48] That is not the case here. The Trust Deed makes careful provision for the mechanisms by which trustees are to be appointed. The second to fourth respondents have been appointed in accordance with the Trust Deed, have become trustees, and are awaiting authorisation by the Master. There is no suggestion that they would not comply with their duties as trustees. The applicants have laid no basis for any right to the setting aside of the valid appointments of the second to fourth respondents.

[49] In my view the applicants have, at best for them, a weak prospect of succeeding on the main ground that they have advanced, that is, that the main applicants have already been appointed as trustees.

[50] The applicants put up an alternative ground for the right that they must establish: that the trustee/s *failed* to appoint substituting trustees (i) within ninety days of the death of Mr Ziman and (ii) within ninety days of the resignation of Ms Geyser, as they were required to do under clause 5.2 of the Trust Deed, and that the beneficiaries are now entitled to make those appointments in terms of clause 5.4 of the Trust Deed.

[51] The applicants in my view have no prospect of succeeding on this ground. Clause 5.2 of the Trust Deed required an appointment to be made in respect of the position vacated by Mr Ziman by no later than 11 May 2026 and in respect of the position vacated by Ms Geyser by no later than 18 June 2026. Appointments in respect of both vacancies were made, at the latest, by 17 April 2026, when the second to fourth respondents' 'Acceptance of Trusteeship by Trustee' forms were completed, signed, and submitted to the Master.

The other requirements

[52] On the view that I have taken, that the applicants on the papers before me have at best a weak prospect of succeeding in the main application, that prospect must be considered in relation to a balance of convenience that in my view clearly favours the first respondent.

[53] The applicants identify two kinds of irreparable harm that they apprehend they will suffer if the interim interdict is not granted.

[54] The first is the harm that they say will be suffered by the beneficiaries if they are not represented on the Trust, specifically when the trustees take material decisions such as whether to accept or repudiate the bequest that Mr Ziman made to the Trust conditional upon a cash payment being made to Ms Kotze upon sale of the Trust's immovable properties.

[55] However, Ms Kotze has undertaken not to participate in decisions of the Trust in respect of the bequest (albeit that clause 6.42 of the Trust Deed permits her to do so) and the applicants advance no reason why the second

to fourth respondents, all independent professional trustees, would not decide such issues with the care, diligence and skill that section 9(1) of the Act requires of them, in the best interests of the Trust and the beneficiaries. There is no evident advantage that would result from having beneficiaries, rather than the second to fourth respondents, acting as trustees. Cameron JA, as he then was, observed in *Land and Agricultural Bank of South Africa v Parker and Others* 2005 (2) SA 77 (SCA) para 19:

‘The core idea of the trust is the separation of ownership (or control) from enjoyment. Though a trustee can also be a beneficiary, the central notion is that the person entrusted with control exercises it on behalf of and in the interests of another.’

[56] The second category of harm identified by the applicants is the financial impact on the Trust if the second to fourth respondents are authorised to act as trustees. The applicants contend that the Trust will have to bear the expense of ‘three professionals getting to grips with the business of the Trust’ and this is an ‘unnecessary and unjustifiable expense’ that will be to the prejudice of the Trust and the beneficiaries. In their replying affidavit the applicants speculate that the annual cost of three professional trustees could amount to R504 000, based on each professional trustee devoting four hours a month to Trust affairs at a rate of R3 500 per hour. The impact that the additional cost will have on the financial position of the Trust is not however addressed in the papers.

[57] It is so that with the appointment of the second to fourth respondents the Trust will bear the cost of three professional trustees, whereas the

position before 11 February 2026 was that it bore the cost of only one professional trustee.

[58] However, if the additional cost to be borne by the Trust is set against the harm to the Trust if the second to fourth respondents are not authorised to act as trustees until the final determination of the application under Part A, the balance of convenience strongly favours the first respondent.

[59] The final determination of the application under Part B could be a long way off. Even if the application is heard expeditiously, an appeal against the outcome could result in the status quo being extended for months or even years. In the meanwhile, if the interim interdict were granted, the Trust would continue to operate (as it has since 18 March 2026) with only one trustee authorised to act as a trustee, in circumstances where the Trust Deed requires a minimum of three trustees in office *at all times* and envisages a maximum 90-day interval between the death or termination of office of a trustee and the appointment of a new trustee.

[60] Most importantly, the Trust Deed limits the powers that a single trustee can exercise. Clause 5.2 provides that while there are less than two trustees in office (which in its context must be construed as meaning less than two trustees authorised to act as such), the trustee ‘shall not be entitled to pass a valid resolution for the distribution and allocation of income or capital or for the variation of the trust deed’. The applicants themselves, in contending for an urgent hearing of this application, acknowledged the harm to the Trust in their founding affidavit:

‘The Trust is in effect, currently handicapped by the fact that it has only one authorised trustee and lacks the capacity to act (save in very narrow circumstances). Not only does this have a material impact on the day to day running of the Trust and its business, but also the interests of the beneficiaries who cannot receive any income while the Trust is so impeded.’

[61] I accept that there were no alternative means by which the applicants could have sought an urgent intervention to prevent the Master from authorising the second to fourth respondents to act as trustees. However, I find that on a conspectus of all the considerations, the applicants’ weak prospects of success and the balance of convenience that is strongly against them warrant the refusal of an interim interdict.

Conclusion and costs

[62] I concluded that the application under Part A should be dismissed and that it was appropriate that the applicants should be ordered to pay the costs of the application.

ML NORTON
ACTING JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

Appearances

For the applicant: BC Wharton
Instructed by: Greenberg & Associates
Cape Town

For the respondent: HN De Wet
Instructed by: Marieke van Rooyen Attorneys
Stellenbosch
c/o Chris Fick & Associates Inc.
Cape Town