



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

JUDGMENT

Not Reportable

Case no: 2025-249106

In the matter between:

ANNA SOPHIA BELLSTEDT

Applicant

And

**THE TRUSTEES FOR THE TIME BEING OF THE
BELLSTEDT FAMILY TRUST (I[...])**

First Respondent

ROLAND FREDRICH BELLSTEDT

Second Respondent

**MILLER BOSMAN LE ROUX HILL INC
(REG NO: 1993/004946/21)**

Third Respondent

ADAM GABRIEL BELLSTEDT

Fourth Respondent

RALPH THEO BELLSTEDT

Fifth Respondent

Coram: BARTHUS. AJ

Heard: 28 August 2026

Delivered Electronically: 8 September 2026

Summary: Trusts — Trustee conduct — Loan account — Absence of contemporaneous authority — Invalid resolution — Fiduciary duties — Trustees acting without joint participation and excluding co-trustee — Purported loan account unsupported by evidence — Resolution passed in conflicted and procedurally irregular meeting — Set aside — Condonation granted.

ORDER

1. Condonation for the late filing of the applicant's replying affidavit is granted.
 2. It is declared that the second respondent's purported loan account against the Bellstedt Family Trust is invalid and of no force or effect.
 3. The resolution purportedly passed on 19 December 2025 approving repayment of such loan account is reviewed and set aside.
 4. The third respondent shall continue to hold the proceeds of the farm sale pending lawful distribution to a valid Trust bank account.
 5. The second respondent shall pay the applicant's costs of Part A and Part B on the attorney and client scale.
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JUDGMENT

Barthus, AJ:

INTRODUCTION

[1] This matter concerns the proper administration of the Bellstedt Family Trust and the legality of a substantial financial claim asserted by the second respondent, Mr Roland Bellstedt, against the trust estate. The applicant, Mrs Anna Bellstedt, seeks declaratory and interdictory relief in Part B of her application, following the grant of urgent relief in Part A by Adams AJ on 24 December 2025. The core question is whether the second respondent has established any lawful basis for the loan account he claims, and whether the resolution purportedly passed on 19 December 2025 approving repayment of that claim is valid.

[2] The applicant alleges that the second respondent has attempted to divert trust assets for his personal benefit through an alleged loan account that is unsupported by contemporaneous proof and advanced in circumstances that, she contends, impaired her participation as co-trustee and were inconsistent with fiduciary obligations. The second respondent contends that his payments towards the acquisition and financing of the trust property were always treated as loan account

allocations and that the applicant is bound by the divorce settlement agreement to recognise them.

[3] The Court is required to determine whether the alleged loan account exists in law, whether the resolution of 19 December 2025 was validly adopted, and whether the applicant's late replying affidavit should be condoned. The matter raises serious concerns regarding trustee conduct, compliance with the Trust Property Control Act, and the protection of beneficiaries against improper depletion of trust assets. Before delving into the merits of the matter, I shall deal briefly with the issue raised of condonation for the late filing of the replying affidavit.

Condonation

[4] Although the delay in filing the replying affidavit was substantial, the Court is satisfied that condonation should be granted. The matter was set down for mid-August 2026, the respondents were aware of the issues raised in reply, and no material prejudice has been demonstrated. The respondents also elected not to supplement their answering affidavit, despite being afforded an opportunity to do so. The issues raised are important to the proper administration of the Trust and to the interests of the beneficiaries. The second respondent addressed the issues raised in reply on the papers before the Court. In all the circumstances, and having regard to the interests of justice, condonation is granted.

FACTUAL BACKGROUND

Establishment and operation of the Trust

[5] The Trust was established in 2008 by Mr and Mrs Bellstedt as a family trust for the benefit of their family, including their sons. This is common cause.

[6] The Trust purchased a farm in Paarl in 2009. The second respondent, a dentist experiencing financial difficulties, lived on the farm rent free for approximately sixteen years. The applicant's founding affidavit records that "*Mr Bellstedt has lived on the farm, rent free, since then.*"

[7] The trustees are the applicant, the second respondent, and Mr de Kock, who was appointed in 2018. The applicant alleges that Mr de Kock was not independent,

as he was the second respondent's personal accountant and consistently aligned himself with the second respondent in trust matters.

The proposed sale of the farm

[8] In June 2025, the second respondent indicated his intention to sell the farm due to financial difficulties. The applicant and the Trust beneficiaries opposed the sale.

[9] On 28 July 2025, a resolution was passed by the second respondent and Mr de Kock authorising signature of a sale agreement. The applicant was excluded from meaningful participation and was not provided with the offer to purchase.

[10] The applicant raised concerns regarding the absence of a Trust bank account, the absence of financial statements, and the second respondent's purported loan account.

[11] The second respondent admitted at a trustee meeting that the Trust had no bank account. The applicant asked where the sale proceeds would be paid. She was told they would be paid into an attorney's trust account.

[12] Despite assurances that the sale had been cancelled, the applicant later discovered through a Windeed search that transfer documents had been lodged on 10 December 2025.

[13] On 17 December 2025, the second respondent's attorney advised that the proceeds would be paid out in accordance with a trust resolution. The resolution was purportedly adopted on 19 December 2025 in circumstances where the second respondent was present but did not vote because of his conflict of interest, leaving Mr de Kock as the only trustee who voted in favour of it.

THE PURPORTED LOAN ACCOUNT

The applicant's position

[14] The applicant repeatedly requested evidence of any loan agreement or trust resolution authorising a loan account. She alleges that she never approved any loan agreement, never attended any meeting recognising a loan account, and was excluded from the 19 December 2025 meeting. These allegations are not disputed in the answering affidavit.

[15] The applicant's correspondence reveals that she consistently sought clarity on the nature, origin, and quantum of the alleged loan account. Her enquiries were met with silence, evasion, or contradictory explanations. She contends that the second respondent's claim is a fabrication designed to divert trust assets for his personal benefit.

[16] Draft financial statements provided by Mr de Kock on 25 November 2025 reflected a loan account of R4 105 372. He explained these comprised additions and improvements of R200 000 in 2011 and R1 166 000 in 2022, together with payments towards the purchase price and bond instalments. No documentary evidence supports these alleged advances. No loan agreement, no trustee resolution, and no contemporaneous records were produced.

[17] The applicant further submits that, insofar as the second respondent's case is properly characterised as one based on enrichment rather than contract, any such claim would face substantial difficulty in light of the age of the alleged payments, which were made between 2009 and 2022, and the circumstances in which the second respondent occupied the farm rent free for many years. It is unnecessary, however, for this Court to determine prescription finally. The second respondent does not plead or prove the essential elements of an enrichment claim, nor does he establish a valid loan agreement or trustee authority binding the Trust. The claim therefore fails at the anterior stage of proof and authority, quite apart from any prescription defence that may also arise.

[18] The second respondent himself wrote to the applicant on 24 November 2025 asking whether her payments were donations, adding: *"If you want these to be loans,*

remember, what is good for the goose is good for the gander." This statement demonstrates that he understood that payments made by trustees require a resolution to constitute loans.

[19] On 12 December 2025, the second respondent proposed a resolution claiming his loan account was R2 949 372, reducing his claim by R1.1 million without explanation. The applicant argues that this dramatic reduction demonstrates that the alleged loan account is arbitrary and contrived.

The second respondent's position

[20] The second respondent contends that the payments he made towards the acquisition and financing of the farm were always treated as loan account allocations. He argues that the Trust acquired the farm for R2 585 000, of which R1 300 000 was financed by an ABSA bond and the balance of R1 285 000 was paid by him personally. He submits that this payment constituted a deposit advanced on behalf of the Trust and that it was always understood to be recoverable from the Trust estate.

[21] The second respondent further contends that he paid all bond instalments up to 1 December 2019, amounting to R1 654 372.11, and that these payments were similarly treated as loan account allocations. He argues that the applicant was aware of these allocations and accepted them as such.

[22] The second respondent relies heavily on clause 10.2 of the divorce settlement agreement concluded between the parties in August 2021. That clause records that loan account allocations in favour of the second respondent would be reduced by the monthly bond instalments paid after 1 December 2019, which would be treated as rental. He contends that this clause constitutes an acknowledgment by both parties, in their capacities as trustees, that a loan account existed in his favour at least up to 1 December 2019.

[23] The second respondent submits that the applicant's present denial of the existence of a loan account is inconsistent with her obligations under the settlement agreement and amounts to an attempt to resile from a binding contractual and judicially sanctioned arrangement.

[24] The second respondent further argues that the Trust deed empowers trustees to accept interest free loans and to administer the Trust in accordance with procedures they consider advisable. He relies on clause 6.4.10 of the Trust deed, which permits trustees to borrow money for the purposes of the Trust, and clause 4.8, which permits trustees to follow administrative steps they deem appropriate.

[25] The second respondent contends that these provisions authorised him to advance funds to the Trust and that the absence of a formal resolution does not invalidate the loan account allocations.

[26] The second respondent also argues that the applicant's conduct during the administration of the Trust demonstrates that she accepted the existence of the loan account. He submits that her silence over many years constitutes tacit acceptance of the loan account and that she cannot now deny its existence.

[27] The second respondent further argues that the resolution passed on 19 December 2025 was validly adopted. He contends that the applicant was afforded an opportunity to attend the meeting electronically and that she failed to comply with the notice requirements. He submits that the meeting was quorate, that the trustees present were entitled to vote, and that the resolution merely authorised reimbursement of amounts previously advanced by him on behalf of the Trust.

[28] He argues that the applicant's challenge to the resolution is motivated by her opposition to the sale of the farm and the applicant's desire to prevent the second respondent from recovering funds he advanced over many years.

ANALYSIS

The loan account

[29] A party alleging a loan must prove the agreement relied upon, the advance made pursuant to it, and the basis on which repayment is due. That pleading and evidential requirement follows from the ordinary principles governing contractual claims. Where the alleged debtor is a trust, the inquiry also requires proof that the trustees authorised the transaction in accordance with the trust deed and the law governing trustee decision making.

[30] The second respondent's claim rests entirely on his own retrospective characterisation of payments made more than a decade ago. The absence of any contemporaneous documentation is striking. The Trust was established in 2008. The payments allegedly constituting the loan account were made between 2009 and 2022. Yet the second respondent has produced no loan agreement, no trustee resolution, no minutes, no correspondence, no bank records identifying the payments as loans, and no accounting records contemporaneously reflecting a loan account.

[31] The financial statements produced by Mr de Kock in November 2025 are not contemporaneous records. They are draft statements prepared after the dispute arose and based on information supplied by the second respondent. They cannot establish the existence of a loan. They merely reflect the second respondent's assertions.

[32] The second respondent's own conduct contradicts his claim. His email of 24 November 2025 demonstrates that he understood that payments made by trustees require a resolution to constitute loans. His statement that "*what is good for the goose is good for the gander*" reveals that he intended to treat his own payments as loans only if the applicant agreed to treat her payments as loans. This is inconsistent with any assertion that his payments were always treated as loans.

[33] The dramatic reduction of the alleged loan account from R4.1 million to R2.9 million within two weeks, without explanation, further undermines the credibility

of the claim. If the loan account were based on actual advances, its quantum would not fluctuate arbitrarily.

[34] The reliance placed on clause 10.2 of the divorce settlement agreement is misplaced. That clause does not create a loan account. At most, it records the manner in which the parties to the divorce settlement proposed to treat certain alleged loan account allocations as between themselves. It does not identify the underlying loan agreement, the date on which any loan was concluded, the amount advanced pursuant to such agreement, or any trustee resolution authorising the Trust to incur a debt to the second respondent. Nor does it constitute a decision of the trustees, taken in accordance with the Trust deed, to recognise or repay a debt owed by the Trust. A settlement agreement between spouses, even if made an order of court in matrimonial proceedings, cannot by agreement between those spouses bind the Trust to a liability unless the Trust, acting through its duly authorised trustees, validly assumed that liability.

[35] The Trust is a separate juristic arrangement administered by trustees for the benefit of beneficiaries, and its assets cannot be treated as an extension of the personal estate of either spouse. Clause 10.2 therefore presupposes, but does not prove, the existence of a loan account. It cannot be used to manufacture trustee authority, supply missing contemporaneous records, or convert disputed personal payments into an enforceable debt against the Trust where the necessary proof is absent.

[36] The second respondent lived rent free on the farm for sixteen years. If he had paid bond instalments during that period, those payments would likely constitute rental or occupation consideration rather than loans. The divorce settlement agreement confirms this by treating post 2019 payments as rental. There is no basis to treat earlier payments differently.

[37] The applicant's repeated requests for documentation were ignored. The second respondent and Mr de Kock failed to produce evidence supporting the alleged loan account. That failure is significant because trustees must administer trust property with the care, diligence and skill required by s 9(1) of the Trust Property Control Act 57 of 1988, must observe the provisions of the trust deed, and must keep identifiable trust property separate from personal interests. The importance of proper trustee authority, joint action and observance of the trust deed

is emphasised in *Nieuwoudt NO v Vrystaat Mielies (Edms) Bpk*¹ and *Land and Agricultural Bank of South Africa v Parker*².

[38] The Court is satisfied that the second respondent has failed to establish the existence of any loan account. His claim is unsupported by evidence, inconsistent in its quantification, and advanced in circumstances that raise serious concerns about transparency, accuracy, and good faith.

The 19 December 2025 resolution

[39] The resolution purportedly passed on 19 December 2025 lies at the heart of the second respondent's attempt to legitimise his alleged loan account. The circumstances surrounding this meeting disclose procedural irregularities and a failure to facilitate the applicant's participation in a decision affecting trust assets, which was inconsistent with the duties of trustees acting jointly and transparently.

[40] The operative notice of the meeting, dated 12 December 2025, expressly required trustees who wished to attend electronically to notify the convenor and request access via Zoom. The applicant attempted to join the meeting using Microsoft Teams, relying on an earlier notice that had not been withdrawn. The respondents made no effort to assist her, despite being aware of her repeated requests for information and her clear opposition to the alleged loan account. Their failure to facilitate her participation was not an oversight. It was a deliberate act of exclusion.

[41] The meeting proceeded with only two trustees present, namely the second respondent and Mr de Kock. The second respondent was present but did not vote because of his conflict of interest in the proposed repayment of his own alleged loan account. The applicant was absent, not through choice, but because she was effectively prevented from attending. The respondents knew that she had been querying the alleged loan account for months, that she had issued legal proceedings concerning it, and that she had expressly indicated her intention to participate in any meeting dealing with it. Proceeding in those circumstances disregarded her rights as a trustee.

¹ 2004 (3) SA 486 (SCA).

² 2005 (2) SA 77 (SCA).

[42] The respondents argue that the meeting was quorate and that the trustees present were entitled to vote. A quorum clause may permit trustees to take a majority decision where the trust deed so provides and where proper notice is given, as confirmed in *Shepstone and Wylie Attorneys v De Witt N.O. and Others*³. That principle does not assist trustees who rely on a meeting conducted in a manner that effectively excludes another trustee from participation, particularly where the resolution concerns a disputed personal claim by one of the trustees against the trust estate. On the facts of this matter, the Trust deed does not authorise the manipulation of procedural requirements to secure an outcome favourable to the conflicted trustee.

[43] The resolution itself purported to authorise repayment of the second respondent's alleged loan account. It was passed after the founding affidavit and notice of motion had been issued and served. The respondents were fully aware that the loan account was disputed and that the matter was *sub judice*. Their decision to proceed with the resolution in these circumstances was reckless, improper, and inconsistent with the fiduciary duty to act in the best interests of the beneficiaries.

[44] The second respondent's conduct in relation to the meeting was not merely irregular. It was inconsistent with the candour and transparency expected of a trustee. The applicant had been told that no further trustee meetings would be held. The applicant was also informed that the sale of the farm had been cancelled. These statements were false. The second respondent was actively proceeding with the sale and preparing to pass a resolution approving repayment of the alleged loan account. This conduct supports the inference that material information was withheld from the applicant in circumstances where the second respondent stood to obtain a financial benefit from the impugned resolution.

[45] Trustees are required to act with independence of judgment, transparency, and fidelity to the trust deed. They must ensure that co-trustees are afforded a fair opportunity to participate in decisions affecting the trust estate, and they may not prefer a personal interest over the interests of the trust and its beneficiaries. These duties are reinforced by *Parker* and by *Tijmstra NO v Blunt-Mackenzie NO and Others*⁴, which illustrates that trustee conduct falling below the required standard may justify judicial intervention. The respondents failed to meet those standards.

³ [2025] ZACC 14.

⁴ 2002 (1) SA 459 (T).

Their actions undermined the integrity of the trust's administration and prejudiced both the applicant and the beneficiaries.

[46] The resolution of 19 December 2025 was invalidly adopted. It is set aside.

CONCLUSION

[47] The evidence shows that the second respondent and Mr de Kock administered the disputed transaction in a manner that undermined transparency, joint decision making, and the applicant's ability to participate meaningfully in trust governance.

[48] The second respondent's claim to a loan account is unsupported by evidence and inconsistent in its quantification. The second respondent failed to allege or prove the existence of a loan agreement, and his reliance on the divorce settlement agreement does not cure that deficiency. His attempt to legitimise the alleged loan account through the resolution of 19 December 2025 was procedurally improper and cannot stand.

[49] Trustees must act jointly where the trust deed requires joint action, or in accordance with a valid majority decision mechanism where the deed permits it and the meeting is properly convened. They must also act independently, transparently, and in the best interests of beneficiaries, keep trust assets separate from personal assets, and maintain proper records. The conduct of the second respondent and Mr de Kock fell short of these standards. Their approach undermined the proper administration of the Trust, prejudiced the applicant and the beneficiaries, and sought to prefer the second respondent's personal financial interest over the interests of the Trust.

[50] The Court is satisfied that the second respondent has failed to establish any legal entitlement to the funds he claims. The purported loan account and the resolution of 19 December 2025 are invalid, and the applicant is entitled to the declaratory and interdictory relief sought. The question of costs must be approached in light of the seriousness of the second respondent's conduct. He advanced a substantial personal claim against the Trust without producing the basic documents that one would expect to exist if the claim were genuine, persisted in that claim

despite repeated requests for proof, and sought to procure payment from trust assets through a procedurally defective resolution adopted in circumstances that impaired the applicant's participation as co-trustee. The conduct was not merely unsuccessful litigation conduct. It concerned the administration of trust property, the protection of beneficiaries, and the fiduciary obligations of a trustee who stood to benefit personally from the impugned resolution. In these circumstances, an ordinary costs order would not adequately reflect the Court's disapproval of the manner in which the second respondent dealt with the Trust and the applicant as co-trustee. A punitive costs order on the attorney and client scale is therefore warranted.

[51] The administration of a Family Trust requires honesty, transparency, and fidelity to the trust deed. The Court cannot permit trust assets to be distributed on the basis of an unsubstantiated claim advanced through an invalid resolution. The integrity of the Trust must be restored, the beneficiaries must be protected, and trustees must act within the bounds of their authority. This judgment gives effect to those principles.

[52] Finally, and before concluding, it is necessary to emphasise that language used in affidavits and pleadings should remain measured, respectful, and directed to the issues requiring determination. Discourteous or inflammatory remarks do not assist the Court and risk distracting from the real dispute between the parties. Certain language used by the applicant was perceived by the second respondent as offensive. Counsel and litigants are reminded that allegations should be advanced firmly where the facts justify them, but without unnecessary personal invective.

ORDER

[53] In the result, the following order is made:

- 1. Condonation for the late filing of the applicant's replying affidavit is granted.**
- 2. It is declared that the second respondent's purported loan account against the Bellstedt Family Trust is invalid and of no force or effect.**
- 3. The resolution purportedly passed on 19 December 2025 approving repayment of such loan account is reviewed and set aside.**
- 4. The third respondent shall continue to hold the proceeds of the farm sale pending lawful distribution to a valid Trust bank account.**

5. The second respondent shall pay the applicant's costs of Part A and Part B on the attorney and client scale.

V BARTHUS
ACTING JUDGE OF THE HIGH COURT

Appearances

For applicant: ADV C FEHR
Instructed by: Van Wyk Van Heerden

For 2nd respondent: MR KULENKAMPF
Instructed by: Kulenkampf & Associates