IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CIRCUIT LOCAL DIVISION, THEMBALETHU)

JUDGMENT

Case number: 312/2026

In the matter between:

C. H. PIETERS N.O. Applicant

and

THE MASTER OF THE HIGH COURT, CAPE TOWN First respondent
THE JOINT CURATORS OF THE INSOLVENT TRUST,

PIETERS FAMILY TRUST Second respondent

ABSA BANK LTD Third respondent

Coram: Van Zyl, J
Heard on: 29 July 2026
Judgment: : 6 November 2026

Summary: Application for wide-ranging relief in relation to trust whose estate that has been finally sequestrated – - no proper service - no urgency - disputes of fact – no *locus standi* – remedies provided by Insolvency Act 24 of 1936 not invoked for reopening of account – proceedings pending in relation to the same issues as those raised in application - application dismissed

ORDER

1. The application is dismissed.

2. The applicant shall pay the third respondent's costs, including the costs of two counsel where employed. Counsel's fees are to be taxed on Scale C.

JUDGMENT

VAN ZYL, J:

Introduction

1. This is one of those revolving-door matters that never seem to reach their destination. The applicant, in his capacity as "*former trustee and interested party*", seeks wide-ranging relief in relation to the now defunct Pieters Family Trust. In essence, the applicant seeks declaratory relief and an order directing the respondents to render a full reconciliation and accounting in respect of the claim proved by the third respondent ("ABSA") against the insolvent estate of the Trust. ABSA was a proved creditor in the Trust's insolvent estate.

2. The notice of motion deserves quoting in full to illustrate the breadth of the relief sought:

> "*1. That the forms, service and time periods prescribed by the Uniform Rules of Court be dispensed with to the extent necessary and that this application be heard as a semi-urgent application.*

2. Declaring that substantial disputes and unresolved reconciliation issues continue to exist concerning the proved claims submitted by ABSA against the insolvent estate of the Pieters Family Trust.

3. Declaring that the proved claims require proper reconciliation and reconsideration within the context of the 2016 settlement structure, Court order, arbitration proceedings, alleged mortgage bond documentation, alleged suretyship obligations, prescription issues, post-liquidation interest and treatment of repossessed assets.

4. Directing the Respondents to provide a full reconciliation and accounting concerning the proved claims, interest calculations, disputed amounts, repossessed assets, alleged mortgage bond exposure and related matters.

4.7 (sic) The dates upon which the relevant accounts were allegedly closed or terminated, including commercial asset finance facilities.

4.8 Copies of all summonses and related process allegedly served upon or issued against the Pieters Family Trust in its alleged capacity as surety for Edie Pieters Eiendomme BK.

4.9 The dates upon which the Pieters Family Trust was allegedly pursued, sued or called upon as surety.

4.10 A full accounting reflecting the basis upon which post-liquidation interest was allegedly calculated and capitalised.

4.11 Copies of reconciliations, ledger balances and statements relied upon in calculating post-liquidation escalation.

4.12 The dates upon which the relevant commercial asset finance agreements were allegedly cancelled, terminated or closed.

4.13 Particulars of repossessions, disposals and sales of assets including proceeds realised and allocation thereof.

5. Directing that pending final reconciliation and determination of the disputes, no further reliance be placed upon disputed portions of the proved claims without proper disclosure.

6. Granting the Applicant leave, if necessary, to approach the Court for further or alternative relief.

7. Directing that the costs stand over for later determination alternatively be costs in the cause.

8. Granting further and/or alternative relief."

3. Only ABSA opposes the application which is, at the heart of it, an oblique attack on a liquidation and distribution account that the Master confirmed on

29 September 2021 in respect of the Trust's estate. The confirmation of the account is common cause between the parties.

4. On the applicant's own version, the matter has run its course, or the issues raised by the applicant are already being dealt with elsewhere. The applicant used to be a trustee of the Trust. The underlying dealings by and activities of the Trust span the period 2005 to 2016, and the Trust's estate was finally sequestrated on 26 August 2019 under the provisions of the Insolvency Act 24 of 1936. The second respondent (the joint curators), were appointed on 4 November 2019, and the administration of the estate vested in them. ABSA's claim in the insolvent estate of the Trust was proved on 2 October 2020, and the account was confirmed on 29 September 2021.

5. The applicant lodged an objection under section 111[1] of the Insolvency Act on 6 December 2022, which claim was rejected. The Trust was terminated in due course, and the applicant's attempts to reinstate were unsuccessful. The applicant thereafter claimed damages arising from the sequestration of the estate. He has also instituted a High Court action in which the underlying validity of ABSA's claim is, amongst other aspects, questioned. Those proceedings are pending.

6. What, then, remains?

Preliminary issues

7. There are four preliminary issues that require brief consideration.

8. The first is that the founding affidavit is a sparse document without elaboration in support of the relief sought. Some twenty-four annexures are annexed. These run to more than one hundred pages. The applicant does not identify the relevant extracts from the annexures, but invites the court and

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[1] Section 111(1): "*The insolvent or any person interested in the estate may, at any time before the confirmation of the trustee's account, in terms of section 112, lay before the Master in writing any objection, with the reasons therefor, to that account*."

the respondents to trawl through it to find the applicant's case. It is trite that this approach is frowned upon. The issue was dealt with as follows in *Swissborough Diamond Mines (Pty) Ltd and others v Government of the Republic of South Africa and others*:[2]

"*Regard being had to the function of affidavits, it is not open to an applicant or a respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed. A party would not know what case must be met….*"

9. Documents annexed to an affidavit are confirmatory of facts averred in the affidavit. They are not a substitute for those averments. The applicant explains that he is a lay person, that he was concerned that historical records might not remain available, and that the annexures were attached to assist the court. I accept the applicant's professed motive, but the consequence of the manner in which the case is presented cannot avoided. The respondents were left unable to know what case they had to meet. The court was, until the applicant could be questioned at the hearing, unsure of the exact nature of the dispute. The prejudice is real, and it is the direct product of the manner in which the papers were prepared.

10. The second issue is that the papers display material disputes of fact. Final relief may be granted on motion only on the facts admitted by the applicant together with those averred by ABSA, unless the latter's version is bald, far-fetched, or untenable on the papers.[3] On that approach no relief is competent in the present matter.

11. ABSA argues, thirdly, that the matter is not urgent and that it should be struck

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2 1999 (2) SA 279 (T) at 324F-G:

3 *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C.

from the roll.[4] I agree, but am nevertheless inclined to consider the other issues raised in an attempt to lay the matter to rest.

12. Finally, the application was never formally served on ABSA. The applicant does not dispute this, but argues that because he is a lay person, he did what he thought best to bring the matter to ABSA's attention. This answer is not acceptable. Service is not a formality. It is the mechanism through which a court acquires the entitlement to adjudicate against a party, and by which the *audi alteram partem* principle is given effect. Rule 4 of the Uniform Rules prescribes the manner of service. Lay status does not exempt a litigant from compliance with the Rules. A party who elects to litigate in this court is bound by its Rules, and the court's indulgence towards an unrepresented litigant does not extend to dispensing with jurisdictional requirements. Absent proper service there is, as against ABSA at least, no application before this court, and no relief may competently be granted against it.

13. These are all serious issues, and the application is upon each one of them deserving of being struck from the roll, or dismissed. ABSA nevertheless delivered an answering affidavit despite the lack of service, albeit under protest and without conceding any preliminary objections. It was represented by counsel. As with the issue of urgency, therefore, I intend discussing the remaining issues that inform the fate of this application.

Evaluation of the relief sought

14. Three difficulties, apart from the preliminary issues identified earlier, bedevil this application. I address them in turn.

The applicant lacks locus standi

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4 On trite principles. See, for example, *East Rock Trading 7 (Pty) Ltd and another v Eagle Valley Granite (Pty) Ltd and others* [2011] ZAGPJHC 196 paras 6–9.

15. The applicant was once a trustee of the Trust, an office governed by the provisions of the Trust Property Control Act 57 of 1988. As indicated, the Trust's estate has been finally sequestrated.

16. The applicant nevertheless sues as a "former trustee" of the Trust. This is not an official capacity recognised in our law. The abbreviation "N.O." denotes that a litigant acts in the name of an office, or position held. A person acts in the name of an office only for so long as he holds that office. Once the office is vacated, there is no office in the name of which to act.

17. In terms of section 20(1)(a) of the Insolvency Act, sequestration divests the insolvent of the estate and vests it in the Master, and thereafter in the trustee. Whatever right of action the Trust may once have had in respect of ABSA's claim vested, on 26 August 2019, in the joint curators. It did not remain with the applicant. The estate continued to vest in the office-holder, who were obliged to collect debts and recover property.[5] The Trust has not been rehabilitated, and there has been no composition in terms of section 119 of the Insolvency Act. If any person was or is competent to interrogate ABSA's proved claim on behalf of the estate, it is the second respondent, that is, the joint curators who became the office-holders on sequestration.

18. The trustee of a trust derives the authority to act from section 6(1) of the Trust Property Control Act, which provides that a trustee shall act in that capacity only if authorised thereto in writing by the Master. A person who acts without such authorisation acts without capacity, and the proceedings he institutes are a nullity.[6] The applicant does not, and cannot, allege that he holds any letters of authority. On his own version the Trust no longer exists.

19. The applicant argues, however, that he has for many years been cited as "N.O." and treated as a trustee in earlier litigation. *Locus standi* is, however, a

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5 *Cook NO v SJ Coetzee Inc.* 2012 (2) SA 616 (GNP) paras 10-12.

6 *Lupacchini NO and another v Minister of Safety and Security* 2010 (6) SA 457 (SCA) paras 1–11.

matter of substantive law.[7] It cannot be conferred by consent, acquiescence, estoppel, or the historical conduct of an opposing litigant. That a party may formerly have held an office does not clothe him with that office once it has been lost.

20. The applicant submits, in the alternative, that his description as "former trustee" should be condoned. I cannot accede to the request. Condonation is a procedural indulgence directed at non-compliance with rules and time limits. It cannot bestow a capacity that a litigant does not possess.

21. As a last resort, the applicant claims to be acting as a beneficiary of the Trust, and as a person directly and substantially affected by the sequestration of its estate. The relief sought, however, squarely concerns the administration of the insolvent estate of the Trust, and the reconciliation of a creditor's proved claim. Those aspects were given over to the joint curators and the Master, and the Insolvency Act provides its own remedies, in sections 111, 112, and 151 (as well as powers to the Master under section 152[8]), to an aggrieved person. The applicant's interest, such as it may be, entitles him to invoke those remedies. It does not entitle him to bring a free-standing application for declaratory and other relief against a proved creditor of the estate.

22. The applicant accordingly lacks the requisite *locus standi* to seek the relief set out in the notice of motion. This is a fundamental defect in the application, and renders it a nullity.

The liquidation and distribution account was duly confirmed, and the applicant has failed to exercise his remedies under the Insolvency Act

23. The claim under attack is embodied in an account confirmed by the Master. Such confirmation is final in terms of section 112 of the Insolvency Act. This court is barred by section 151 of the Insolvency Act from reopening the

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7 *Gross and others v Pentz* 1996 (2) SA 617 (A) at 632C-F.

8 Section 152(2) of the Insolvency Act empowers the Master, at any time before rehabilitation, to summon any person to furnish information concerning the estate, the administration of the estate, or any claim or demand made against the estate.

matter other than in a way provided by section 112. I revert to this aspect below.

24. It is common cause on the papers that ABSA proved a claim of approximately R11 million against the insolvent estate of the Trust at the second meeting of creditors on 2 October 2020. The claim was admitted, and included into the first liquidation and distribution account. The account duly lay open for inspection. No objection was lodged during the inspection period provided for under the Insolvency Act. The Master accordingly confirmed the account on 29 September 2021.

25. The Insolvency Act prescribes an exhaustive scheme for challenging a trustee's account.[9] The applicant did not adhere to the legislated scheme. Section 111(1) permits the insolvent or any person interested in the estate to lodge a written objection with the Master "*at any time before the confirmation of the trustee's account*". The applicant lodged an objection on 6 December 2022, more than fourteen months after confirmation of the account on 29 September 2021. The objection was refused. Section 111(2)(a) provides that a person aggrieved by the Master's refusal to sustain an objection may apply to the court within fourteen days for an order setting aside that decision. The applicant brought no such application.

26. Section 112[10] provides that the Master's "*confirmation shall be final save as against a person who may have been permitted by the Court before any dividend has been paid under the account, to reopen it*". Leave to reopen

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9 See *Cools v The Master and others* 1998 (4) SA 212 (C) paras 21, and 47–53.

10 Section 112: "*When a trustee's account has been open to inspection by creditors as When a trustee's account has been open to inspection by creditors as hereinbefore prescribed and—*

(a) no objection has been lodged; or

(b) an objection has been lodged and the account has been amended in accordance with the direction of the Master and has again been open for inspection if necessary as in paragraph (b) of subsection (2) of section 111 prescribed and no application has been made to the Court in terms of paragraph (a) of the said subsection (2) to set aside the Master's decision; or

(c) an objection has been lodged but withdrawn or has not been sustained and the objector has not applied to the Court in terms of the said paragraph (a),

the Master shall confirm the account and his confirmation shall be final save as against a person who may have been permitted by the Court before any dividend has been paid under the account, to reopen it."

must accordingly be sought and obtained from a court. The applicant did not seek such relief.

27. The meaning of finality as contemplated in section 112 is settled. In providing that confirmation "*shall be final*", section 112 means that the matters dealt with in the account, being purely estate matters, are finally disposed of and cannot be reopened.[11] It has been held that confirmation under section 112 is conclusive even as against the creditor whose claim is embodied in the account.[12] If the confirmation binds the proved creditor, it must equally bind a person who was neither a creditor nor an office-holder.

28. ABSA's proved claim is thus, on the authorities, finally disposed of. In *Cools v The Master*[13] it was held that an account is a final account only in respect of the assets dealt with in it, and that there may be more than one plan of distribution and more than one account. This does not assist the applicant. The qualification in *Cools* is directed at assets which come to light after confirmation, whether through investigation or fortuitously. The applicant makes no case that assets in the Trust's estate have come to light since the confirmation of the account. His complaint is directed at the *quantum* of a claim which was properly dealt with in the confirmed account.

29. Section 151[14] of the Insolvency Act, which confers a general and wide power of review over decisions of the Master, contains an express proviso that "*the Court shall not re-open any duly confirmed trustee's account otherwise than as is provided in section 112*". This places the confirmed account beyond the reach of the court's general review power.

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11 *Gilbey Distillers & Vintners (Pty) Ltd and others v Morris NO and another* 1991 (1) SA 648 (A) at 657D–658G.

12 *Absa Bank Bpk v De Villiers* 2001 (1) SA 481 (SCA) at 487H-J.

13 *Cools v The Master and others supra* para 27.

14 Section 151: "*Subject to the provisions of section 57 any person aggrieved by any decision, ruling, order or taxation of the Master or by a decision, ruling or order of an officer presiding at a meeting of creditors may bring it under review by the Court and to that end may apply to the Court by motion, after notice to the Master or to the presiding officer, as the case may be, and to any person whose interests are affected: Provided that if all or most of the creditors are affected, notice to the trustee shall be deemed to be notice to all such creditors; and provided further that the Court shall not re-open any duly confirmed trustee's account otherwise than as is provided in section 112*."

30. In terms of section 75(2) of the Insolvency Act, after confirmation of an account "*no person shall institute legal proceedings against the estate in respect of a pre-sequestration liability, save with the leave of the court in which the proceedings are sought to be instituted"*. No such leave has been sought in the present matter.

31. The present application is neither an application under section 112 for leave to reopen the account, nor a review under section 151 brought after such leave, nor an application under the proviso to section 111(2)(a). It is a separate application for declarators and an accounting, and is not competent in the face of the express provisions of the Insolvency Act. In any event, paragraphs 2 and 3 of the notice of motion seek declarations that "substantial disputes" exist and that the proved claims "require proper reconciliation and reconsideration". A declaratory order under section 21(1)(c) of the Superior Courts Act 10 of 2013 must relate to an existing, future or contingent right or obligation.[15] A declaration that a dispute exists declares nothing about any right, and would be of no practical effect. It does not assist the applicant in furthering a case under the Insolvency Act.

32. I agree with the applicant that confirmation does not render a claim immune from challenge where fraud, material error, or misrepresentation is alleged, as appears to be the case in the present matter. The appropriate remedy nevertheless remains an application to reopen under section 112 of the Insolvency Act.

33. The applicant argues further that he does not seek to reopen the confirmed account, but merely seeks an explanation of how the proved claim was calculated. As ABSA points out, that is a distinction without a difference. Paragraphs 2, 3, and 5 of the notice of motion seek declarations that the proved claims are subject to substantial unresolved disputes and require reconsideration, and that no further reliance should be placed upon the

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15 *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 (6) SA 205 (SCA) para 16.

disputed portions of such claims. Relief in those terms would, if granted, deprive the confirmed account of its finality.

34. The applicant is not without a remedy, but he is in the wrong forum, via the wrong procedure, and against the wrong party. A creditor who has proved a claim – such as ABSA - is not the custodian of the estate's records, and owes no duty to account to a former trustee of the insolvent Trust. Paragraph 4 of the notice of motion, with its sub-paragraphs demanding ledger balances, reconciliations, account statements, copies of summonses and particulars of repossessions, amounts to discovery sought from ABSA. Discovery is obtained under Rule 35 in pending action proceedings, not by way of motion against a creditor of an insolvent estate. The Insolvency Act imposes the duty to account upon the trustee or curator, not upon a creditor.

Pending proceedings

35. Finally, and in any event, every substantive dispute raised in the present application is already pending in the High Court, as well as in an agreed arbitration.

36. The applicant raises the validity and enforceability of the covering bonds upon which ABSA's claim rested, the alleged forgery of a co-trustee's signature, the validity of suretyship obligations, and prescription. These are all in issue in an action pending in the Western Cape Division of the High Court.[16] That action is actively litigated, with amended pleadings, requests for further particulars, expert notices under Rule 36(9), and a joint expert minute. The joint curators of the Trust's estate have intervened and are taking part in the action, with the consent of the applicant and of ABSA.

37. The applicant's alleged damages claim arising from the repossession and disposal of the Trust's movables, quantified by the applicant in an amount of

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16 Under case number 5123/2017.

approximately R38 million, is the subject of a written arbitration agreement concluded between the applicant and ABSA on 3 July 2025.

38. A litigant who has submitted a dispute to a chosen forum may not, while that forum remains seized of it, invite a second tribunal to pronounce upon the same subject matter.[17]

39. Paragraph 5 of the notice of motion seeks to restrain reliance upon the disputed portions of the proved claims pending final reconciliation. That is a request for interdictory relief, for which none of the requisites is pleaded. Be that as it may, the applicant suffers no harm pending the determination of the action and arbitration proceedings. The joint curators have undertaken not to pay any dividend to ABSA until those proceedings have been finalised. Nothing will therefore be distributed to ABSA in the interim, and the applicant's position will not deteriorate pending an ordinary hearing.

Conclusion and costs

40. This application is brought by an applicant who no longer holds office as trustee, in proceedings that were never properly served on the respondents, on an urgent basis that is entirely of the applicant's own making, and in respect of disputes that are already pending in two other *fora*. In these circumstances, there is no point in dragging the matter out for consideration by yet another court. It falls to be dismissed.

41. ABSA sought attorney and client costs. I have considered granting the request: the application is patently without merit, and ABSA has had to employ counsel to protect its interests. I nevertheless refrain from awarding punitive costs. The applicant is earnest in his endeavours, and clearly in financial dire straits. Costs will therefore follow the event in accordance with the general rule. Counsel's fees will be taxed on Scale C in light of counsel's seniority, as contemplated in Rule 67A, read with Rule 69.

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17 *Nestlé (South Africa) (Pty) Ltd v Mars Inc.* 2001 (4) SA 542 (SCA) paras 16–17.

Order

42. It is therefore ordered as follows:

1. **The application is dismissed.**

2. **The applicant shall pay the third respondent's costs, including the costs of two counsel where employed. Counsel's fees are to be taxed on Scale C.**

P. S. VAN ZYL
Judge of the High Court

Appearances:

For the applicant:	In person
For the third respondent:	J. D. Maritz SC and D. B. Maritz
Instructed by:	Gildenhuys Malatji Inc,