IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 2025-197268

In the matter between:

SEBASTIAAN STEYN N.O.	**FIRST APPLICANT**
SEBASTIAAN STEYN	**SECOND APPLICANT**
ROZANNE STEYN	**THIRD APPLICANT**
JENNEKE STEYN	**FOURTH APPLICANT**
LOUWRI STEYN	**FIFTH APPLICANT**
ZANI STEYN	**SIXTH APPLICANT**

and

ANDRIES STEYN	**FIRST RESPONDENT**
LOUWRA MARIA STEYN	**SECOND RESPONDENT**
CATHARINA JACOMINA STEYN	**THIRD RESPONDENT**
ANDRIES STEYN N.O.	**FOURTH RESPONDENT**
LOUWRA MARIA STEYN N.O.	**FIFTH RESPONDENT**
CATHARINA JACOMINA STEYN N.O.	**SIXTH RESPONDENT**
SEBASTIAAN STEYN N.O.	**SEVENTH RESPONDENT**
CAREL VAN HEERDEN N.O.	**EIGHTH RESPONDENT**
MASTER OF THE HIGH COURT BLOEMFONTEIN	**NINTH RESPONDENT**
STEYN BOERDERY KROONSTAD (PTY) LTD	**TENTH RESPONDENT**
SEBASTIAAN STEYN BOERDERY (PTY) LTD	**ELEVENTH RESPONDENT**

Neutral citation: *Sebastiaan Steyn N.O. and Others v Steyn and Others* (2025-197268) [2026] ZAFSHC 500 (6 November 2026)

Coram: Grobler AJ

Heard: 29 October 2026

Delivered: 6 November 2026

Summary: Irresolvable dispute on material facts in motion proceedings. Matter referred to trial for airing of all live issues.

Keywords: Civil procedure – motion proceedings – rule 6(5)*(g)* – closely connected application and counterapplication – referral of both to trial rather than limited oral evidence – interrelated relief requiring disputed facts to be tested at trial – no final determination of the merits or admissibility of evidence at trial.

ORDER

1 The respondents' application for admission of further, new evidence and new matter in their replying affidavit in the counterapplication is granted.

2 The application to strike out is dismissed.

3 The main- and counterapplication are referred to trial.

4 The notice of motion in the main application shall stand as a simple summons.

5 The applicants shall, within 20 court days of this order, deliver a declaration setting out the claims advanced in the main application and the relief sought.

6 The first, second, fourth, fifth and tenth respondents shall file a plea to the main application within 20 days thereafter.

7 The Applicants may replicate within 10 days thereafter

8 The notice of motion in the counter application shall equally stand as a sui generis simple summons.

9 The first, second, fourth, fifth and tenth respondents, shall together with their plea to the main application, deliver a declaration setting out and identifying the relief sought in the counterapplication.

10 The applicants shall deliver their plea to the counterclaim and any replication, if necessary, within the periods prescribed by the Uniform Rules of Court.

11 The first, second, fourth, fifth and tenth respondents shall replicate , if so advised, within 10 days thereafter.

12 The ordinary rules governing action proceedings, including discovery and pre-trial procedures, shall apply thereafter.

13 The costs of the principal application, counterapplication and interlocutory proceedings, including the costs occasioned by the referral, are reserved for determination by the trial court.

JUDGMENT

Grobler AJ

[1] In the now often quoted judgment of Harms DP concerning the former president of this country, the Supreme Court of Appeal (SCA) described the purpose of an application in this way:[1]:

[2] 'Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities.' What ultimately served before me is more than 1000 pages of evidence on affidavit and appendices, containing accusations of misconduct, ill intent and breach of fiduciary duties on the part the opposing respondents. The respondents recriminate. I refer interchangeably to the parties by their first name.

[3] The litigation concerns the Goliatskraal Trust (TMP 2811) (the trust). The applicants seek the removal of Andries Steyn and Louwra Maria Steyn as trustees, variation of the trust deed and the setting aside of a lease of agricultural land concluded during 2024 between the trust and Steyn Boerdery Kroonstad (Pty) Ltd. The respondents oppose the application and seek, by counterapplication, the removal of Sebastiaan Steyn

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[1] *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA); [2009] ZASCA 1; 2009 (1) SACR 361 (SCA), para [26] .
As to the manner of approach to factual disputes on paper See *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C; *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) para 13. The ordinary rule is that final relief on motion is determined upon the facts stated by the respondent together with those admitted in the applicant's affidavits. A version that is bald, palpably implausible, far-fetched or clearly untenable may, in an appropriate case, be rejected on the papers. The rule does not permit a court to resolve a genuine contest of credibility merely by preferring one affidavit to another.

as trustee, alternatively the removal of trustees other than the independent trustee, together with amendments to the trust deed.

[4] Although there might, at first blush, appear to be commonality in the relief sought, at least to an extent, the competing claims are not mirror images of one another. In fact, they are vastly different. The parties agree on the need to amend the trust deed, but not the extent nor the appropriate wording. This means the agreement on this aspect amounts to truly no agreement at all.

[5] As Me Fourie SC, appearing for the applicants with Me van Antwerp, indicated in her opening address, what I am called upon to decide s not the main application but the interlocutory, preliminary skirmishes. She is correct, although I am to consider the merits of the matter in deciding at least one of these applications.

[6] There thus serves before me an application to strike out material in the respondents' replying affidavit in the counterapplication, on the basis that it constitutes new matter or is scandalous, vexatious and irrelevant. Also, an interlocutory application for the conversion of the proceedings to action, discovery and related relief; and a contested application for *condonation*. The procedural history has added considerably to the size of the record.

[7] Me Fourie submitted that I must deal with the striking out application and condonation application first, irrespective of whether I intend to refer the matter for viva voce evidence in any form. I agree and I do so below.

The condonation application and striking out:

[8] I asked Mr Du Plessis SC, appearing for the opposing respondents together with Boonzaaier, if the application on the admission of new evidence is truly a proper condonation application. That is because there is no rule governing when such an application must be made, meaning that procedural requirements are only that an application be made when or before, the matter is heard. There can thus be no noncompliance with a rule of court. Quintessentially then and to my mind, issues of delay in launching the application and other considerations usually applicable in applications of that ilk are irrelevant in context. Mr Du Plessis agreed, and me Fourie was unable to truly

advance any argument to the contrary.

[9] The question is and concerning this only if the evidence in reply should be allowed, with reference to usual considerations. Me Fourie says that the attempt at a case in the reply is incomplete because the respondents seek further documents to study these and thus make a case. I do not agree with her submission, to the extent that the evidence suggests (unanswered at this stage) some skullduggery in dealing with trust assets on the part of Sebastiaan. Conclusive and further proof has not been put up in the form of documentary evidence, but that does not make the case one of conjecture. It is also not a new cause of action. It is evidence tendered late and out of sequence, to underscore relief that has already been asked when the initial 'founding affidavit' in the counter application was filed.[2]

[10] The explanation for why the evidence was not tendered earlier is beyond doubt. The events spoken of postdate the filing of the affidavit mentioned earlier, and I cannot discard it as irrelevant. Whether the respondents will ultimately be able to convince the court of the need to have Sebastiaan removed as a trustee is not something I deal with now, although I have my reservations.

[11] I take guidance from the law as it stands on rules applicable to the ordinary sequence of affidavits, and that it is not an inflexible rule. It is not a new affidavit that is introduced in the present matter, but the principles applicable to my mind apply as well. The court retains a discretion to receive additional material where the interests of justice so require, having regard to its relevance, the explanation for its introduction, prejudice and the opportunity to answer it.[3] When I order as I do below, I do not believe that the

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[2] See *Mostert and Others v FirstRand Bank Ltd t/a RMB Private Bank* [2018] ZASCA 54; 2018 (4) SA 443 (SCA) para 13 where Van der Merwe JA held: 'A court may in the exercise of its discretion in exceptional cases allow new matter in a replying affidavit.our general considerations apply, (1) completeness of the evidence; (ii) remediable prejudice; (iii) whether the matter was known at inception; and (iv) unnecessary costs if excluded. See also *Botha v Smuts and Another* [2024] ZACC 22; 2025 (1) SA 581 (CC) paras 58-63:

[3] In *Hano Trading CC v J R 209 Investments (Pty) Ltd* [2012] ZASCA 127; 2013 (1) SA 161 (SCA) paras 10–14, the SCA emphasised that the ordinary sequence of affidavits serves the efficient administration of justice. Further affidavits are not admitted as of right: leave is an indulgence, to be granted for good reason, with due regard to explanation and prejudice. See also *Sealed Africa (Pty) Ltd v Kelly and Another* 2006 (3) SA 65 (W) para 4. It likewise addresses the court's discretion concerning affidavits filed after the replying affidavit and the requirement of leave for their admission. It is not authority for automatic admission of disputed material. The present condonation controversy reinforces the undesirability of deciding the substantive disputes by piecemeal rulings on successive affidavits.

applicants are prejudiced. It means that the evidence should be allowed, and the application to strike out on that basis must be refused.

[12] The applicants also seek to strike out portions of that affidavit as scandalous, vexatious or irrelevant. Under rule 6(15), striking out on those grounds requires both that the impugned matter fall within the prohibited category and that the applicant for striking out be prejudiced if it remains. The allegations concern matters material to the parties' competing claims about the trust. Some are undoubtedly expressed in forceful, even accusatory, terms. I believe however that strong language does not, without more, render evidence scandalous or vexatious. In their context, the passages are not gratuitous abuse. Although overzealous use of adjectives and belittling descriptions raises the temperature of the litigation in and out of court, they do not ordinarily constitute offence contemplated by the rule. I discard extremity when saying this. Nor has prejudice of the kind contemplated by the rule been demonstrated that cannot be met in the ensuing trial I order below. The application to strike out on this basis accordingly also fails

The conversion application

[13] The material facts may be winnowed from the chaff. Indeed, they must.

[14]

[15] I said to me Fourie, I have no doubt that should the evidence of the respondents' doings apropos the trust be viewed vacuously, I would have had no hesitation in ordering as the applicants ask in prayers 1 and 2. That is because – for all the reasons stated in the founding and further affidavits – there is enough uncontested evidence as to primary factual doings on their part to justify their kicking out.

[16] But I cannot view the doings in a vacuum. That is because the respondents say the 2011 amendments to the trust deed, which concerning trust income to a very large extent explains why the respondents have done what they have done, all happened with the agreement of the founder of the trust, and indeed all applicable parties concerned, including Sebastiaan.

[17] If this is so, I do not believe that a case is made, conclusively, for the respondents removal on the grounds of contended misconduct. An agreement to the extent suggested would put the present trust beyond what is ordinarily considered to be a discretionary

trust, or at least to a great extent. Me Fourie submitted that the simple inclusion of the offending parts of the trust deed means that those are inimical to trite principles of law *apropos* discretionary trusts. I agree but that is – to my mind – not the point. Neither party was able to point me to any authority which indicates that such provisions, notionally and without more, offend against public policy or as an absolute and outright requirement, may not be included in a trust deed or have the consequences for which the Respondents contend.

[18] It might validly be contended that the respondents must be removed in any event, given the overriding consideration under s 20 of the Trust Property Control Act 57 of 1988 is what is in the best interest of the trust.[4] And it seems to me rather clear that future governance by all *qua* trustees would not be in the trusts' interest. But the removal relief cannot be removed from the amendment relief, because if the 2011 agreement is proved and found to be valid, the trust deed should reflect the income rights of the respondents to the extent agreed. If the deed is amended to simply bring it in line with more usual terms of a discretionary trust, it may very well be that the rights agreed upon for the respondents are thwarted.

[19] The existence and wording of the trust instruments are substantially documentary matters. The interpretation exercise requires a contextual approach, with the written word only used as the starting point. There is no longer a starting point and structured sequence of consideration. As surrounding, factual matrix evidence, the purpose of the amendments, the circumstances of their adoption and the practical consequences of their operation are not to be gleaned simply with reference to the documents. And the evidence tendered on this is disputed by the applicants.

[20] I cannot discard the respondents' evidence out of hand, because the simple fact that the amendments have stood and have apparently been acted upon for almost 16 years now,[5] means that the version is not untenable or farfetched. This is – to my mind

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[4] The removal of a trustee under s 20(1) of the Trust Property Control Act requires an assessment of whether removal is in the interests of the trust and its beneficiaries. The enquiry is not a contest over which branch of the family is more persuasive. It requires an objective assessment of the administration of the trust and the effect of continued office. See *Land and Agricultural Bank of South Africa v Parker and Others* 2005 (2) SA 77 (SCA), concerning the duties and institutional character of trusteeship.

[5] *Comwezi Security Services (Pty) Ltd and Another v Cape Empowerment Trust Ltd* (759/2011) [2012] ZASCA 126 (21 September 2012).

– reason enough to refer the matter to trail. Indeed, and to a very large extent, this seems to me as the crux of the dispute. But I do not wish to bind any later court to my view on this, because there are other disputes. That is also why I do not believe the issue I have identified on this needs to be referred for the hearing of oral evidence. That would restrict rather than allow for proper ventilation

[21] Quite beyond the respondents asking for it, rule 6(5)*(g)* permits a court, where an application cannot properly be decided on affidavit, to direct oral evidence on specified issues or to refer the matter to trial with such directions as are appropriate. The discretion must be exercised judicially. The nature and materiality of the disputed facts, the suitability of limited oral evidence, prejudice, delay and the foreseeable use of motion proceedings must all be considered.[6]

[22] I mention as well that allowing the new matter as I have, creates the serious reciprocal dispute about the conduct of Sebastiaan himself. The respondents' counterapplication seeks his removal and relies, among other matters, on documents concerning purported trust resolutions, transfers of shares in associated companies and alleged transactions undertaken without the authority of co-trustees. They say those documents demonstrate delinquency. The applicants contest the accusations. The reference to trail obviates the need to file a further affidavit concerning this.

[23] Me Fourie relies on paragraph 26 of Theron NO[7] for the proposition that it is desirable to dispose of the entire application at a single hearing and that all should be dealt with on paper. That is principally correct, but to my mind it all the more means that a referral is justified. The application and counterapplication are closely connected. A referral of both to trial will enable the contested facts to be tested through evidence and the disputes to be determined together, rather than fragmented into successive motion hearings. The course I adopt is therefore consistent with the objective underlying the applicants' reliance on Theron.

[24] I may add as well that I believe justice militates against outright dismissal of the

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[6] See *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1162–1165; *Lombaard v Droprop CC and Others* [2010] ZASCA 86; 2010 (5) SA 1 (SCA), particularly paras 26 and 29.
[7] *Theron NO and Another v Loubser NO and Others* [2013] ZASCA 195; 2014 (3) SA 323 (SCA).

application.

[25] I enquired from Mr du Plessis if the notices of motion should stand as simple summonses as they are, or if I should grant leave to amend. His answer was the former option. Me Fourie - as I understood her – agreed. So be it. But the affidavits are not to stand as pleadings. They are lengthy and contain material not properly suited to defining the issues for trial. Fresh pleadings will provide clarity. The parties should be permitted to plead their respective causes of action and defenses within the bounds of the existing proceedings and the relief pursued, subject to the ordinary rules governing amendment and joinder.

[26] I stress that I make no finding on the merits, nor finally on the admissibility (otherwise) of any evidence. The trial court can decide those questions as and when they arise.

[27] I believe all issues of costs should be reserved. Me Fourie has convinced me of that.

[26] In the result, I make the following order:

1 The respondents' application for admission of further, new evidence and new matter in their replying affidavit in the counterapplication is granted.

2 The application to strike out is dismissed.

3 The main- and counterapplication are referred to trial.

4 The notice of motion in the main application shall stand as a simple summons.

5 The applicants shall, within 20 court days of this order, deliver a declaration setting out the claims advanced in the main application and the relief sought.

6 The first, second, fourth, fifth and tenth respondents shall file a plea to the main application within 20 days thereafter.

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11 The first, second, fourth, fifth and tenth respondents shall replicate , if so advised , within 10 days thereafter.

12 The ordinary rules governing action proceedings, including discovery and pre-trial procedures, shall apply thereafter.

13 The costs of the principal application, counterapplication and interlocutory proceedings, including the costs occasioned by the referral, are reserved for determination by the trial court.

[redacted]

S GROBLER

ACTING JUDGE OF THE HIGH COURT

Appearances

For the applicants:	H R Fourie SC with A R van Antwerpen
Instructed by:	Van Staden, Vorster & Nysschen Attorneys c/o Stander & Associates, Bloemfontein
For the respondents:	R du Plessis SC with M Boonzaaier
Instructed by:	HSL Du Plessis Attorneys c/o Blair Attorneys