

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA**  
**(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

2024-03-12

DATE

SIGNATURE

Case Number: 54318/2021

In the matter between:

**AFRIFORUM NPC**

First Applicant

**SOLIDARITY TRADE UNION**

Second Applicant

**JOYCE KATHRYN JANSEN VAN RENSBURG**

Third Applicant

(ID: [...])

**IJAY VAN DER WALT**

Fourth Applicant

(ID: [...])

**BABSIE SHARON KRUGER**

Fifth Applicant

(ID: [...])

**IGNATIUS JOHANNES DU PREEZ N.O.**

(ID: [...])

Sixth Applicant

**MARIUS WYNAND SCHOEMAN N.O.**

(ID: [...])

Seventh Applicant

and

**FREDERICK JOHANNES VAN DER WALT**

(ID: [...])

First Respondent

**IGNATIUS JOHANNES VAN DER WALT**

Second Respondent

(ID: [...])

**ENGELA CAROLINA NEL**

Third Respondent

(ID: [...])

**THE MASTER OF THE HIGH COURT, PRETORIA**

Fourth Respondent

**WILLEM FRANCOIS BOUWER**

Fifth Respondent

(ID: [...])

**WILLEM ANDRIES FILMALTER**

Sixth Respondent

(ID: [...])

*This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 12 March 2024.*

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**JUDGMENT: APPLICATION FOR LEAVE TO APPEAL**

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**POTTERILL J**

[1] The sixth and seventh applicants, two of the trustees of the Trust, are seeking leave to appeal against only the granting of prayers 4 and 5 of the judgment as well as the costs order of the judgment dated 16 January 2024. Prayers 4 and 5 related to declaratory relief to the effect that the removal of the first respondent as a trustee is in the best interests of the Trust and consequently the first respondent is to be removed as trustee.

[2] The first respondent opposes this application and raised two points *in limine*.

The sixth and seventh applicants are cited in their capacity as co-trustees of the Trust. Counsel for these applicants submitted that indeed they are not acting on behalf of the Trust. As it is common cause that they are not beneficiaries to the Trust they do not have *locus standi*.<sup>1</sup>

[3] On this basis alone the application for leave to appeal must be dismissed.

[4] I do however feel compelled to address some of the other appeal grounds. It was conceded that paragraph 4 of the grounds of appeal incorrectly use the word “ulterior” as there was no recording of such word in my judgment. The ground is that I blemished the two applicants by finding that they interrogated the first respondent pertaining to the administration of the estate. This finding was based on issues ventilated in the papers; i.e. the minute of the meeting reflecting that one of the two agenda items was to obtain feedback from the first respondent in his capacity as executor. On this common cause fact the purpose of the meeting was not Trust business, but the administration of the estate business.

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<sup>1</sup> *Ras NO and Others v Van der Meulen and Another* (635/09) [2010] ZASCA 163; 2011 (4) SA 17 (SCA) (1 December 2010)

[5] A ground of appeal is against the finding that at “this juncture a trustee’s powers cannot be executed.” It is common cause that the trustees have been appointed, but there are no trust assets yet transferred to the Trust. The seventh applicant himself opined that a Trust meeting will only be convened “as soon as there is a decision on the settlement of the estate as the Trust could not function until the assets has been transferred to the Trust.”

[6] For the other grounds of appeal the findings and ratio for the findings are deferred to as in my judgment.

[7] The application for leave to appeal is dismissed. The sixth and seventh applicants are to carry the costs, in their personal capacity as they are not acting on behalf of the Trust.

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**S. POTTERILL**  
**JUDGE OF THE HIGH COURT**

CASE NO: 54318/2021

HEARD ON: 8 March 2024

FOR THE 6<sup>th</sup> and 7<sup>th</sup> APPLICANTS: ADV. Q. PELSER SC

INSTRUCTED BY: Hurter Spies Incorporated

FOR THE 1<sup>ST</sup> RESPONDENT: ADV. A. COERTZE

INSTRUCTED BY: WF Bouwer Attorneys

DATE OF JUDGMENT: 12 March 2024