

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



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

Reportable: YES/NO
Of Interest to other Judges: YES/NO
Circulate to Magistrates: YES/NO

Application no: 3484/2022

In the matter between:

ANNA NUNWANA (MABIZELA)
(ID. no: [...])

1st Applicant

MATTHEWS MABIZELA
(ID. no: [...])

2nd Applicant

BELLINAH MABIZELA
(ID. no: [...])

3rd Applicant

EMILY MABIZELA
(ID. no: [...])

4th Applicant

MOSEKA LUCAS MABIZELA
(ID. no: [...])

5th Applicant

ALLTA MABIZELA
(ID. no: [...])

6th Applicant

and

MARA TRUST

1st Respondent

(Reg. no: IT 810/2009)

MAMOYA ELMA MABIZELA N.O.

(ID. no: [...])
(IN HIS CAPACITY AS TRUSTEE
OF MARA TRUST)

2nd Respondent

THABISO PETRUS MABIZELA N.O.

(ID. no: [...])
(IN HIS CAPACITY AS TRUSTEE
OF MARA TRUST)

3rd Respondent

TEBOGO LORRAINE MOKGAKANE N.O.

(ID. no: [...])
(IN HIS CAPACITY AS TRUSTEE
OF MARA TRUST)

4th Respondent

CORAM: VAN ZYL, J

HEARD ON: 12 OCTOBER 2023

DELIVERED ON: 17 APRIL 2024

[1] The applicants are seeking an order for the removal of the second to fourth respondents as Trustees of the Trust known as Mara Trust (IT 810/2009) (“the Trust”). The applicants are beneficiaries in terms of the Trust. The applicants are relying on the provisions of section 20(1) of the Trust Property Control Act, 57 of 1988 (“the Act”). The applicants are also seeking an order appointing two new Trustees, nominated by the applicants, in the stead of the second to fourth respondents. I will refer to this application as the main application.

[2] The second to fourth respondents are opposing the main application and they also instituted a counter-application in which they are seeking an order in the following terms:

- “1. An order whereby the 1st to the 6th Applicants are interdicted from concluding Lease Agreements with third parties or renting out arable land on the farm MARA ... (hereinafter referred to as “the farm”) and all from instructing, authorising or obtaining the services of any third party or person to conclude any lease agreement in respect of the farm or arable land on the farm;
2. An order whereby the 1st to the 6th Applicants are interdicted and prohibited from interfering with the farming activities, the equipment, the crops planted and the labourers or threatening, intimidating, insulting or assaulting the member or the labourers of Monte Carlo Boerdery CC or any other tenant that leases arable land on the farm in terms of a lease agreement signed or concluded with the trustees of the first Respondent;
3. An order whereby the 1st to the 6th Applicants are ordered to disclose in writing to the trustees of the First respondent all amounts collected and received by them in respect of rental of the farm and to give an account of how the rental money was appropriated or divided amongst beneficiaries or third parties and to account such funds still in their possession by way of payment to the bank account of Human Le Roux and Meyerowitz Attorneys ...;
4. An order that the 1st to the 6th Applicants pay the costs of this counter-application, the one to pay the other to absolved.”

[3] There are multiple disputes between the parties and there are several legal principles applicable to the main application and the counter-application, respectively. However, for the reasons stated hereunder, I do not deem it appropriate to deal with the

merits of either the application or the counter-application at this stage.

The Master of the High Court, Bloemfontein:

- [4] In the heads of argument filed on behalf of the second to fourth respondents, Ms Boonzaaier, *inter alia*, raised the point that the applicants should have cited the Master as a party to the main application since the Master has a direct interest in the subject matter of the main application.
- [5] In terms of section 20(1) of the Trust Property Control Act, 57 of 1988 (“the Act”) a trustee may, on the application of any person having an interest in the trust property, at any time be removed from his/her office by the court if the court is satisfied that such removal will be in the interests of the Trust and its beneficiaries.
- [6] The essence of the dispute between the parties in the main application involves the administration of the Trust, the respondents’ duties and obligations in respect thereof and whether they are complying with their said duties in the interests of the Trust and its beneficiaries. In my view, the merits of the main application and the counter-application are intertwined and should therefore not be separated and heard in a piecemeal fashion.
- [7] Due to the provisions of the Act, I have to agree with the contention of Ms Boonzaaier that the Master has a direct and substantial interest in the main application. The Master should

indeed have been cited as a party to the main application or the main application (and the counter-application) should at least have been served on the Master.

[8] In my view it would be improper to adjudicate this application without it having been served upon the Master. In addition, considering the nature and facts of the present disputes between the parties, it will be incumbent upon the Master to file a report in this application.

[9] It is evident from the papers that Mr F. Jansen from the Master`s office has previously been involved in respect of potential problems within the Trust.

Additional relief and costs:

[10] In my view it may become necessary for the parties to file supplementary affidavits and/or supplementary heads of argument after having obtained the Master`s report. I consequently deem it apposite that leave be granted to the parties to do so, should one or both of them deem it necessary.

[11] Since it is presently uncertain when the Master`s report will be filed and whether the parties will be filing supplementary papers, I consider it apt that the application (the main application and the counter-application) in the meantime be removed from the roll instead of it being postponed. Either of the parties will then be entitled to re-enrol the application (the main application and the counter-application) for hearing once same are ripe for hearing.

[12] With regard to the wasted costs of 12 October 2023, in respect of both the main application and the counter-application, I deem it fair and reasonable that the said costs should stand over for later adjudication, since the contents of the Master's report may influence the eventual consideration of an appropriate costs order.

Order:

[13] I consequently make the following order:

1. The main application and the counter application are removed from the roll.
2. The applicants are ordered to serve a copy of the main application and the counter-application and the parties' respective heads of argument, as well as a copy of this judgment, on the Master.
3. The Master is requested to take such steps within his power as he may deem fit, if any, and to file a report in respect of the main application and the counter-application.
4. Leave is granted to the parties to file supplementary affidavits and/or supplementary heads of argument in the main application and/or the counter-application after receipt of the Master's report, should one or both of the parties deem it necessary.

5. Leave is granted for either party to re-enrol the main application and the counter-application as soon as same are ripe for hearing.
6. The wasted costs of 12 October 2023 with regard to both the main application and the counter-application, stand over for later adjudication.

C. VAN ZYL, J

On behalf of the applicants: Adv. M.B. Mojaki
Instructed by:
Thulo Attorneys
BLOEMFONTEIN

On behalf of the respondents: Adv. A.S. Boonzaaier
Instructed by:
Callis Attorneys Inc
BLOEMFONTEIN