

SOUTH AFRICA / JUDGMENT

R.R and Others v J.R and Others (16015/2022P) [2024]

ZAKZPHC 39 (22 April 2024)

[2024] ZAKZPHC 39

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Sibisi AJ

CASE / FILE NUMBER

16015/2022P

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Policy

IN THE HIGH COURT OF

SOUTH AFRICA

KWAZULU-NATAL

DIVISION, PIETERMARITZBURG

CASE

NO: 16015/2022P

In

the matter between:

R[...]

R[...]

FIRST APPLICANT

NIMLA

PILLAY

SECOND APPLICANT

R[...]

R[...]

N.O.

THIRD APPLICANT

NIMLA

PILLAY

N.O.

FOURTH APPLICANT
and
J[...]
R[...]
FIRST RESPONDENT
B[...]
R[...]
SECOND RESPONDENT
MASTER

OF THE HIGH COURT: PIETERMARITZBURG
THIRD RESPONDENT
ORDER
The

following order is granted: 1.
The application is dismissed with no order as to costs.

JUDGMENT

Delivered on 22 April 2024

Sibisi AJ

Introduction

[1] This dispute revolves around the termination of the T[...] and J[...] R[...] Family Trust ('the trust') which was created on 27 March 1996. The late Mr T[...] R[...] ('the deceased') was married to the first respondent. Their children are the first applicant, the second applicant and the second respondent. The trust deed provides for the first applicant, the second applicant, the first respondent, and the second respondent to be the beneficiaries. The deceased and the first respondent were the initial trustees. The trust was to terminate on 13 May 2008 but it was extended for a further 20 years. On 26 August 2020, the third respondent issued letters of authority confirming the appointment of the current trustees, namely the first applicant, the second applicant, the first respondent, and the second respondent. The trustees have equal votes and the first respondent has the casting vote. The donor of the trust was the deceased and the trust was formed for the benefit of his wife (the first respondent), the first applicant, the second applicant, and the second respondent.

[2] It is common cause that the trust owns the following immovable properties:

- (a) 5[...] E[...] Drive, Verulam;
- (b) 6[...] E[...] Drive, Verulam;
- (c) [...] L[...] Place, Verulam;
- (d) [...] H[...] Drive, Umhlanga Rocks, Durban;

- (e) 4[...] G[...] Crescent, Verulam;
 - (f) 4[...] G[...] Crescent, Verulam;
 - (g) Buffelsdraai Farm, Roode Krans; and
 - (h) Cotton Lands, Verulam.
- [3] The deceased and the first respondent divorced during 1998 and Mr R[...] died on 24 November 2014.
- [4] The first applicant is the sole shareholder of JR and Sand Plant (Pty) Ltd ('JR Plant') and JR Plastics (Pty) Ltd. The first respondent is a shareholder and director of Pearl Star (Pty) Ltd ('Pearl Star') and TJ Plastics (Pty) Ltd ('TJ Plastics'). The entities occupy the buildings constructed upon 6[...] E[...] Drive, Verulam and [...] L[...] Place, Verulam which belong to the trust. The first and second respondents currently reside at [...] H[...] Drive, Umhlanga Rocks since January 2020.
- [5] At the centre of the disputes amongst the trustees is the control of the properties and the funds of the trust.
- [6] The trustees have levelled criticisms against each other. The applicants seek an order for the removal of the trustees and/or the winding-up of the trust. It is clear that the trustees do not get along.
- [7] The first and second respondents seek that the application be dismissed with costs and that the trustees be allowed to continue to wind-up the trust in terms of a resolution taken on 21 September 2022. The third respondent does not oppose the application.

Submissions

by parties

Applicants' case

- [8] According to the notice of motion dated 17 November 2022, the applicants seek relief in the following terms:

'1.

That the Third Respondent is hereby directed to appoint a fifth independent trustee to the T[...] and J[...] R[...] Family Trust, with reference number IT:8[...] ("the trust"), to administer the affairs of the trust jointly with the First and Second

Applicants and the First and Second Respondents.

Alternatively

2.

That:

- (a) the First and Second Respondents are hereby removed as trustees of the T[...] and J[...] R[...] Family Trust, with reference to number IT:8[...] (“the trust”);
- (b) the First and Second Applicants are directed to resign as trustees of the trust;
- (c) the Third Respondent is directed to appoint three independent trustees to jointly administer the affairs of the trust;
- (d) the following procedure is to be followed in the appointment of the three independent trustees, namely:
 - (i) that the Third Respondent nominate five potential independent trustees;
 - (ii) that the First and Second Applicants, on the one hand, and the First and Second Respondents on the other, each nominate one of the trustees from that list respectively; and
 - (iii) that the Third Respondent then nominate the third trustee from that list at his discretion.

3.

That the First and Second Respondents are directed to pay the costs of this application.

4.

Further and/or alternative relief:

[9] During argument, the applicants’ counsel referred to three alternative draft orders for consideration.

[10] The first version of the draft order reads as follows:

‘1. R[...] R[...], Nimla Pillay, J[...] R[...], B[...] R[...] who are currently the trustees to the T[...] and J[...] R[...] Family Trust, with reference number IT: 8[...] (“the trust”) are in terms of the Section 20(1) of the Trust Property Control Act, 1988 remove (sic) as trustees (and shall be referred to below as the “former trustees”).

2. The third respondent is directed, within one month of the granting of this order, to appoint a new independent trustee (“the new trustee”).

3. The new trustee shall:

3.1 within two weeks of his/her appointment call upon the former trustees to account to him/her, within one month, for their respective dealings with the income, expenditure, use of assets and disposal of the assets of the trust since 2018 and in doing so provide vouchers all supporting documentation in respect thereof;

3.2 within one month of receipt of the accounts from the former trustees as contemplated in paragraph 3.1 call upon the former trustees to debate such accounts;

3.3 within 2 weeks of the debatement contemplated in paragraph 3.2 above, determine the respective trustees net claims against the trust alternatively their respective liabilities to the trust.

4. Upon appointment collect rentals or other income due to the trust

pending the final winding up and distribution of the trust.

5. Proceed to immediately place all the immovable properties which belong to the trust on the open market with a view to selling of same within six months of the new trustee's appointment.

6. In the event that in the opinion of the new trustee it is not in the

interests of the beneficiaries of the trust to sell any particular property within six months, the new trustee is authorised to approach this Court for an extension of the time period contemplated in paragraph 5 of this order.

7. The new trustee shall be obliged to give the former trustees a first

right, for a period of 10 days, to purchase any assets of the trust on the same terms and at the same price, as the new trustee is able to obtain from any bona fide third party.

8. The costs of this application are ordered to be included in the costs

of the winding up of the trust and shall be payable as between attorney and own client.

9. The costs of the new trustee shall similarly be included in the winding up of the trust.

10. The new trustee shall, having discharged its obligations to all of its creditors, draft a final account and pay the proceeds of the trust to the beneficiaries.'

[11] The second version of the draft order reads as follows:

'1. R[...] R[...], Nimla Pillay, J[...] R[...], B[...] R[...] who are currently the trustees of the T[...] and J[...] R[...] Family Trust, with reference number IT: 8[...] ("the trust") are in terms of s20(1) of the Trust Property Control Act, 1988 removed as trustees (and shall be referred to below as the "former trustees").

2. A person to be agreed upon by the parties in writing within 14 days of this order, or failing such agreement, a practising chartered accountant to be nominated by the chairperson for the time being of the South African Institute of Chartered Accountants (SAICA) (which person is hereinafter referred to as "the new trustee") be and is hereby appointed to sell and/or redistribute the assets of the trust or pay to the former trustees such money as may be necessary so that each former trustee is possessed of assets and/or money equal in value to his/her share in the trust proceeds, due regard having been had to such amounts or benefits as such former trustee has had from the trust since 2018 and any monies owed by such

former trustee to the trust be such monies owed in the form of loans or rental unpaid or rental not paid by any company in which the former trustee is a shareholder and/or director.

3. For the purposes of giving effect to paragraph 2 hereof the new trustee shall be entitled:

3.1 to call upon any former trustee to produce any books or documents which the new trustee may require; and

3.2 to engage the services of any suitable qualified person or persons to assist him/her in determining the proper value of any of the trust assets and to pay such person the reasonable fees which may be charged;

3.3 to afford former trustees personally the opportunity to make representations to him/her about any matter relevant to his/her duties and to this order and to the identity of any purchaser, as well as the purchase price of any assets, including but not limited to:

3.3.1 the time and/or manner in which the assets should be realised;

3.3.2 the price for which any asset should be realised;

3.3.3 the sequence in which assets should be realised;

3.4 to give due consideration to the wishes of the former trustees pursuant to representations made by them and make such decision in respect thereof as he/she may deem fit;

3.5 to prepare such interim and/or final accounts for the trust as he/she may deem fit;

3.6 to realise any asset of the trust either by public auction or private treaty and on such terms and conditions as may seem to him/her most beneficial;

3.7 to sell any asset to any of the former trustees hereto for a price that he/she deems to be the true market price of such asset;

3.8 to postpone the realisation of any asset for a period not exceeding six months from the date when his/her appointment commenced provided that he/she shall be entitled to postpone it for a period exceeding six months with the written consent of all the former trustees, failing which by order of this court;

3.9 to sign any documents as may be necessary to effect transfer of any trust asset sold;

3.10 to apply to this court for any further directions that he/she shall or may consider necessary;

3.11 to collect debts due to the trust;

3.12 to pay the liabilities of the trust;

3.13 to be paid the reasonable fees of the new trustee and to apportion such fees between the parties in the same proportion as they are entitled to the profits of the proceeds of the trust;

4. The new trustee shall be obliged to give to the former trustee a first right, for a period of 10 days, to purchase any assets of the trust on the same terms and at the same price, as the new trustee is able to obtain from any bona fide third party.

5. The attorney and own client costs incurred by any of the former trustees in this application shall be costs of the winding up of the trust.'

[12] Finally, the third version of the draft order reads as follows:

'1. R[...] R[...], Nimla Pillay, J[...] R[...], Bimla who are currently the trustees to the T[...] and J[...] R[...] Family Trust with reference number IT: 8[...] ("the trust") are in terms of

Section 20(1) of the Trust Property Control Act, 1988 removed as trustees (and shall be referred to below as the "former trustees").

2. A person to be agreed upon by the parties in writing within 14 days

of this order, or failing such agreement, a practising chartered accountant to be nominated by the chairperson for the time being of the South African Institute of Chartered Accountants (SAICA) (which person is hereinafter referred to as "the new trustee")

be and is hereby appointed to sell and/or redistribute the assets of the trust or pay to the former trustees such money as may be necessary so that each former trustee is possessed of assets and/or money equal in value to his/her share in the trust proceeds, due regard having been had to such amounts or benefits as such former trustee has had from the trust since 2018 and any monies owed by such former trustee to the trust be such monies owed in the form of loans or rental unpaid or rental not paid by any company in which the former trustee is a shareholder and/or director.

3. Such new trustee when appointed shall realise the whole of the trusts' assets, movable or immovable, and for that purpose to sell them or any part of them, by public auction or by private agreement as may seem most beneficial, with leave to the former trustees to bid.

4. Where the new trustee is of the view that any of the assets be sold by private treaty, he/she shall be obliged to give to the former trustees a first right, for a period of seven days, to purchase such asset of the trust on the same terms and at the same price, as the new trustee is able to obtain from a bona fide third party.

5. The attorney and own clients incurred by any of the former trustees in this application shall be costs in the winding up of the trust.'

[13] The applicants point out that the trust deed provides for:

- (a) the first and second applicants and the first and second respondents to be the beneficiaries;
- (b) the deceased and the first respondent to be the trustees;

- (c) the trustees to have the power of assumption;
- (d) the trust to terminate on 13 November

2014. The trustees, however, were entitled through a unanimous resolution to extend the period of the trust for such further period or periods as they would decide from time to time; and

- (e) the nomination of the first and second applicants and the second respondent as beneficiaries.

[14] The applicants point out that the first and second respondents have made vicious personal attacks on them, which included:

- (a) twice calling the first applicant a trust fund baby;
- (b) saying that the applicants make no contributions to the buildings they occupy;
- (c) alleging that it is inequitable that only two of the trustees (namely the first and second respondents) carried the burden of the trust themselves and subsidise the applicants;
- (d) alleging that the applicants were only employees on paper and did no work;
- (e) alleging that the applicants were merely on the payroll to receive a salary;
- (f) alleging that the applicants were not involved in the business and did not understand the rationale behind decisions taken;
- (g) alleging that the first applicant ran up debts by starting a Zimbabwean company, which he just left;
- (h) alleging that the first applicant was using the trust's funds and was being subsidised by the respondents;
- (i) alleging that the first applicant mismanaged the Zimbabwean company;
- (j) alleging that the first applicant siphoned funds from the trust;
- (k) alleging that the first applicant left employees to run the company;
- (l) alleging that the first applicant has the mind-set for personal gain; and
- (m) alleging that the first applicant took funds which needed to go to the trust and instead raised fictitious expenses.

[15] The applicants also criticised the first and second respondents on the bases that:

- (a) the first respondent bought an expensive motor vehicle when the company could not afford it;
- (b) Pearl Star was in dire financial straits, being R7 978 917 in arrears with its rental and was not receiving an income;

- (c) Pearl Star stopped paying the applicants their salaries;
 - (d) it was established in July 2020 that shares in Pearl Star and TJ Plastics were held by the first respondent and not the trust;
 - (e) the first respondent disconnected JR Plant's electricity supply out of malice;
 - (f) the first respondent (through Pearl Star) reneged on a settlement agreement with the municipality for outstanding electricity accounts;
 - (g) the applicants feared that monies would be paid by the first and second respondents for purposes other than reducing trust debts;
 - (h) the first respondent was selling off Pearl Star's moveable assets; and
 - (i) the first and second respondents selectively delivered bank statements to prevent the applicants from determining present cash reserves.
- [16] The applicants mentioned that the total outstanding rates on the properties is an amount of R2 036 022.49 and that Pearl Star is indebted to the trust in the amount of R7 978 917.
- [17] It is the contention of the applicants that the trust cannot function, as the trustees are at war with each other, that it is not in the interest of the trust that this situation be allowed to continue, and that it was time to wind-up the trust and to distribute the proceeds between the beneficiaries.

Respondents' case

- [18] The first and second respondents ('the respondents') identified the following material disputes of facts in the papers:
- (a) the operation of Pearl Star,
 - (b) that the shareholding of Pearl Star was to be transferred to a trust to be formed by the applicants;
 - (c) the applicants' involvement in Pearl Star, where the respondents contended that the applicants were mere employees on paper;
 - (d) the termination of the electricity supply to TJ Plastics as being the fault of the first applicant and not the first respondent;
 - (e) the applicants' conclusion of lease agreements with a sub-tenant without the trustees' consent, where the property sub-let belonged to the trust;
 - (f) the applicants' failure to pay over to the trust the rental obtained from the sub-tenant and the applicants' retention of such rentals based on fictitious expenses; and

(g) that in September 2022, the trustees (the applicants and the respondents) resolved to terminate the trust, sell the assets and liquidate the trust in terms of clause 30 of the trust deed.

[19] The respondents acknowledge that there may be rates owed on some of the properties. Further, they mention that the applicants have been trustees since August 2020 and have consequently since that date been involved in the day-to-day running of the trust. According to the respondents, the applicants ignore the fact that the resolution

signed in September 2022 amounts to a settlement of all the disagreements between the trustees, and demonstrates the fact that

the trustees had decided to terminate the trust and all that remains is the winding-up of the trust in terms of clause 30 of the trust deed. The respondents point out that the first respondent's casting vote means that the first and second respondents can outvote the applicants at a meeting of the trustees because the trust deed gives the first respondent the casting vote. The respondents argue that there is no suggestion on the applicants' version that the winding-up of the trust cannot occur.

[20] It was contended on behalf of the respondents that because there is a dispute of fact, the version of the respondents ought to be

accepted.[1] According to the respondents, the application has to be dismissed with costs and that the trustees be allowed to continue to wind-up the trust in terms of the trust deed.

[21] It is the contention of the respondents that the power of the court to remove trustees is constrained by s 20 of the Trust Property Control Act 57 of 1988 ('the Act') and that such power must be exercised with circumspection. It is further contended that 'mere friction or enmity' between trustees and 'mere conflict amongst trustees themselves is not a sufficient reason for the removal of a trustee' and that 'incorrect decisions and non-observance of the strict requirements of the law, do not of themselves, warrant the removal of a trustee'.[2]

[22] According to the respondents, the applicants bear the onus to demonstrate on the common cause facts that the respondents' actions imperil the assets of the trust to the prejudice of the beneficiaries. Furthermore, the respondents point out that there are disputes of facts and that in the absence of a referral to oral evidence, the version of the respondents ought to be accepted in respect of those material disputes of fact.

Legal principles

[23] Section 13 of the Act provides as follows:

'13. Power of court to vary trust provisions.—

If a trust instrument contains any provision which brings about consequences which in the opinion of the court the founder of a trust did not contemplate or foresee and which—

- (a) hampers the achievement of the objects of the founder; or
- (b) prejudices the interests of beneficiaries; or
- (c) is in conflict with the public interest,

the court may, on application of the trustee or any person who in the opinion of the court has a sufficient interest in the trust property, delete or vary any such provision or make in respect thereof any order which such court deems just, including an order whereby particular trust property is substituted for particular other property, or an order terminating the trust.’

[24] According to s 20(1) of the Act:

‘A trustee may, on the application of the Master or any person having an interest in the trust property, at any time be removed from his office by the court if the court is satisfied that such removal will be in the interests of the trust and its beneficiaries.’

[25] It was held in *Gowar and another v Gowar and others*,^[3] that the court’s power to remove a trustee must be exercised with caution. A court should consider whether the trustee’s conduct jeopardised the trust assets or its proper administration.

[26] Conflict between the trustees and/or beneficiary is therefore not a sufficient reason for a court to remove a trustee. The overriding factor is the protection of the beneficiaries and the proper administration of the trust and its assets.

[27] The following was said in *Fletcher v McNair*:^[4]

‘(a) the court may order the removal of a trustee only if such removal will, as required by s 20(1) of the Act, be in the interests of the Trust and its beneficiaries;

- (b) the power of the court to remove a trustee must be exercised with circumspection;
- (c) the sufficiency of the cause for removal is to be tested by a consideration of the interests of the estate;
- (d) . . .
- (e) where there is disharmony, the essential test is whether it imperils the Trust estate or its proper administration...’

[28] It was held in *Fletcher v McNair*^[5] that the breakdown of a relationship between co-trustees, resulting from outside the trust, is not a sufficient reason to remove a trustee. The test is whether the trust’s assets and its affairs are placed at risk. It cannot be assumed that as a result of ‘a lack of trust, respect or compatibility amongst trustees’, the trust assets are placed at risk and therefore the trustee has to be removed.

[29] In *Wightman t/a JW Construction v Headfour (Pty) Ltd*,^[6] the court stated that the party raising a dispute of fact in motion proceedings must 'seriously and unambiguously' address that fact. The court further found that this will indicate that the dispute is real, genuine or bona fide and that if the disputing party necessarily possesses the knowledge and ability to show the facts in question to be untrue or inaccurate, but nonetheless fails to do so, instead relying on a bare or ambiguous denial, then there is no bona fide dispute of fact.

Trust deed provisions

[30] According to clause 17 of the trust deed, the quorum necessary for the transaction of the business of the trust shall be two trustees. The clause also provides that questions arising at any meetings of the trustees shall be decided by a majority of votes. In the case of any equality of votes, the chairperson shall have a second or casting vote.

[31] No trustee is to be disqualified by his or her office from contracting with the trust or with any contract entered into by or on behalf of the trust in which any trustee had an interest. The trustees are obliged to apply as much of the income and revenue derived from the trust fund as they, in their sole discretion, decide to and for the benefit, credit, maintenance support, education, and advancement in life of the beneficiaries and would accumulate the balance of any income not so used and add some to the capital of the trust fund.

[32] In terms of clause 29 of the trust deed, the date of termination of the trust is 13 November 2014 but it allows for a unanimous resolution to be taken to extend the period of the trust for such a further period. It also provides that if circumstances have arisen to warrant their doing so, the trustees are empowered in their sole,

absolute, and unfettered discretion to either terminate the trust in whole or in part at such time or times prior to the aforementioned

date of termination.

Analysis

[33] At the hearing of this matter, counsel for the applicants indicated that the applicants were not seeking relief in terms of the motion dated 17 November 2022 but in accordance with the draft orders referred to above in the alternative.

[34] The administration of trusts is governed by the provisions of the Act. The Act does not make provision for the termination of a trust but common law does

'by operation of law, for example by statute, fulfilment of the object of the trust, failure of the beneficiary, renunciation or repudiation by a beneficiary, destruction of the trust property without fault on the part of the trustee, or the operation of a resolute condition.'^[7] (Footnotes omitted.)

[35] The trustees are empowered in terms of clause 29(b) of the trust deed to terminate the trust.

[36] A resolution was taken after the parties reached an agreement to terminate the trust. However, a dispute arose relating to the manner in which the assets of the trust were to be divided. The stance of the first and second respondents is that:

‘We are of the opinion that the assets should be collated on a schedule and split all at once and not in a piecemeal fashion...There is no dispute regarding the termination of the Trust, just the basis on which the assets need to be distributed.’

According to the respondents, the allegations that the first respondent recanted on her stance regarding the division are immaterial to the termination because it was a majority decision and the resolution to terminate the trust still exists.

[37] Paragraph 1 of the resolution taken on 21 September 2022 states:

‘1] The trust hereby authorizes the sale of Portion 178 of ERF 8[...] of ROODE KRANS NO. 8[...] to be sold to Mr R[...] R[...] as part of the first stage of splitting and dissolving of the T[...] and J[...] R[...] Family Trust.’

[38] Four resolutions taken on the same date confirm that the sales were the first stage of splitting and dissolving the trust. However, there is an email dated 3 October 2022 which was addressed to Michael

Govindasamy and Company Attorneys by Atkinson Attorneys, who were acting on behalf of the first respondent, which reads as follows:

‘...

1. We refer to the two Resolutions signed by J[...] R[...] dated 21st September 2022.
2. Our client withdraws her signature of such documents with immediate effect.
3. Our client was placed under extreme duress by R[...] R[...] at the time and her consent to the Resolutions is unenforceable.
4. We do remind you that earlier in the matter...we pointed out to our opposing attorneys that R[...] R[...] is an ill-tempered, explosive personality and prone to violence.
5. Indeed, we recorded in earlier correspondence that he threatened to cut of (sic) his mother’s hands if she came to his home...’

[39] According to the answering affidavit:

- (a) the termination of the trust occurred by majority decision;
- (b) even if the first respondent recanted, the two remaining trustees’

votes served as the majority vote for the purpose of terminating the trust;

- (c) the trust has already been terminated; and
- (d) the relief sought in this application cannot be granted.

- [40] The first respondent committed her signature, authorising the termination of the trust, which was to be done in phases. On the other hand, the first respondent distanced herself, in writing and through her attorneys, from the same resolution by alleging duress. According to the answering affidavit, the resolution stands.
- [41] A resolution to terminate the trust suffices because it is provided for in the trust deed and it reflects the intention of the trustees.
- [42] The failure of the trustees to reach a consensus on the distribution of assets does not warrant the court's intervention. The trust deed provides for a deadlock mechanism. If the matter is put to a vote, and there is no consensus, the deadlock mechanism is put into effect and the person who has the casting vote resolves the deadlock. Nothing was brought to my attention suggesting that the first respondent has an unfair advantage which is detrimental to the trust because she has a casting vote.
- [43] As demonstrated above, there are a number of disputes of facts herein and there is no reason to deviate from the approach adopted by the courts insofar as the disputes of facts are concerned. I cannot find in favour of the applicants.

Costs

- [44] The general rule is that the successful party is entitled to costs.
- [45] The basis upon which the applicants approached this court was wrong. However, the conduct of the first respondent cannot be ignored. The first respondent agreed to the termination of trust, only to recant a few days later. I doubt that the applicants would have approached this court but for the conduct of the first respondent. Accordingly, there is reason to depart from the general rule of awarding costs to a successful litigant.

Order

- [46] In the circumstances, the following order is made:

Sibisi AJ

Appearances:

Counsel for the first, second third and fourth applicants: Mr A. Collingwood Attorney for the applicants: R.K. Nathalal and Company Suite 1, Nathco Centre, 99 Wick Street, Verulam c/o Charmane Pillay and Company 431 Jabu Ndlovu Street, Pietermaritzburg Ref: Mrs Pillay/PZ/R609
Counsel for the first and second respondents: Mr J.P. Broster Attorney for the respondents: Pather and Pather Attorneys 3 Nollsworth Crescent La Lucia, Umhlanga Ref: E.A./CR/R1237 c/o Botha and Oliver Inc, 239 Peter Kerchoff Street, Pietermaritzburg Ref: P1153 Dates of hearing: 22 November 2023 Date of judgment: 22 April 2024

- [1] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984

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- [3] SA 623 (A) at 634E–635C.
- [2] Fletcher v McNair [2020] ZASCA 135 para 19; Gowa and another v Gowa and others [2016] ZASCA 101; 2016 (5) SA 225 (SCA) paras 31-32.
- [3] Gowa and another v Gowa and others [2016] ZASCA 101; 2016 (5) SA 225 (SCA) paras 30-32.
- [4] Fletcher v McNair [2020] ZASCA 135 para 19.
- [5] Fletcher v McNair [2020] ZASCA 135 para 26.
- [6] Wightman t/a JW Construction v Headfour (Pty) Ltd and another [2008] ZASCA 6; 2008 (3) SA 371 (SCA) para 13.
- [7] E Cameron et al Honoré's South African Law of Trusts 6 ed (2018) at 564-565.
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