

SOUTH AFRICA / JUDGMENT

Visser N.O and Others v Van Niekerk and Others (5937/2016) [2021] ZAFSHC 187 (5 August 2021) [2021] ZAFSHC 187

COURT

Free State High Court, Bloemfontein

BEFORE

Wright AJ

CASE / FILE NUMBER

5937/2016

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case no: 5937/2016

In the matter between:

MARTIN VISSER N.O. 1st Applicant

CARL FRANCOIS VAN DER LINDE N.O. 2nd Applicant

ROLENE KOLVER N.O. 3rd Applicant

RENIER OOSTHUIZEN N.O. 4th Applicant

(In their capacity as trustees of the

ALETTE BLIGNAUT TRUST – IT 938/2009)

and

JOHAN ALTUS VAN NIEKERK 1st Respondent

HERMANUS CHRISTOFFEL PRETORUIS 2nd Respondent

ANNA ALETTA ROBERTS N.O. 3rd Respondent

(In her capacity as executrix in the Estate

of the late DANIEL GERHARDUS ROBERTS)

THE MASTER OF THE HIGH COURT, 4th Respondent

BLOEMFONTEIN

CORAM: WRIGHT AJ

HEARD ON: 29 JULY 2021

DELIVERED ON: 05 AUGUST 2021

INTRODUCTION

- [1] During the pre-trial stage litigants are often spoiled for choice, presented with a wide range of procedures to choose from to ensure that they are ready for trial (or at least as ready as reasonably can be expected). Unfortunately, the various pre-trial procedures are not always utilised for the intended and/or correct purposes. And even seasoned attorneys and counsel occasionally confuse the nature and purpose of the respective rules and procedures. Where litigants had already established battle lines, often over years, their respective legal teams often join the fray, eager to advance their respective clients' interests, in the process losing sight of established practices and legal principles, as well as common sense.
- [2] In this application it is a request for further particulars that presents as an additional source of conflict between parties that had been at each other's throats for a number of years.
- [3] In the main action between the parties the Applicants are cited in their representative capacities as the current trustees of the Alette Blignaut Trust, claiming damages on behalf of the Trust. I will refer to the four Applicants herein further as "the Plaintiffs" for the sake of convenience. Two of the four defendants in the main action are relevant in this interlocutory application to compel, namely the First and the Second Defendant (cited as First and Second Respondents in the application). Both are erstwhile trustees of the Trust. For purposes of this application and for ease of reference I will herein refer to them simply as "the Respondents".
- [4] As long ago as December 2016 the Plaintiffs issued summons against the Defendants,[1] alleging inter alia that the Respondents acted unlawfully and ultra vires, causing damages to the Trust's estate. Pleas were filed during March 2017. A Request for Further Particulars dated 27 June 2018 was delivered by the Plaintiffs, directed at only two of the defendants, namely the two Respondents. The First Respondent's response was delivered on 23 July 2018 and the Second Respondent's two days later. After considerable time the Plaintiffs decided that they are not satisfied with the responses received and that the Respondents should furnish better particulars, thus the application to compel. The interlocutory application to compel was issued on 18 May 2021, almost three years after the Respondents delivered their responses to the Request for Further Particulars.

RESPONSES TO REQUEST FOR FURTHER PARTICULARS

- [5] The First Respondent's reply to the Plaintiff's request contains a simple "Yes" answer to several questions. Most of the questions were however responded to by stating that the particulars constitute evidence and/or are not strictly necessary to prepare for trial. The Second Respondent's reply follows the line taken by the First Respondent namely that the particulars are a matter of evidence or not strictly necessary. These lines of opposition were followed in the application to compel.

INTERLOCUTORY APPLICATION TO COMPEL

- [6] In a judicial pre-trial conference[2] held on 6 August 2018 counsel for the Plaintiff indicated that his instructions were that the matter was ready for trial.[3] No prejudice was recorded. Reference was made to the Further Particulars requested and the responses received. No indication was

given at the time that the Plaintiffs were dissatisfied with the responses.

- [7] During oral argument before me, counsel for the Plaintiffs indicated that it was only during more recent consultations with experts that the Plaintiffs and their legal team came to realise that they need more and/or further particulars in order to prepare for trial. The consultations allegedly revealed a dilemma, worded by counsel as: "How are we going to prove to what extent the Respondents acted unlawfully?"[4] The submissions in this regard are similar to averments made in the Replying Affidavit.[5]
- [8] It is the case for the Plaintiffs that they are (i) "severely prejudiced and impaired" by the "unreasonable manner" in which the Respondents expect them to "come to Court"[6] and (ii) that the Respondents are "obliged to answer to defences not disclosed or known" to the Plaintiffs. This theme was further expounded on during the oral arguments and it was submitted that the Plaintiffs should not have to wait for the opportunity to cross-examine the Respondents at trial to then receive responses to the enquiries contained in the Request for Further Particulars. According to counsel this will result in delays as a postponement will then become necessary to allow the Plaintiffs an opportunity to investigate information provided during cross-examination.
- [9] The application to compel is opposed by the Respondents on the basis that
- (i) the parties have since agreed to curtail the issues in dispute between them by means of the exchange of a list of admissions, (ii) the Plaintiffs request particularities which they are not entitled to in terms of the mechanism of Rule 21, (iii) copies of all the documents discovered by the Plaintiffs have been requested by the Respondents. The Plaintiffs, so the argument goes, are abusing the Rule 21(4) process. Counsel for the Respondents were at pains to stress that the Respondents are eager to curtail the disputes between

the parties but need the discovered documents and list of required admissions to do so.[7] Further submissions related to the inordinate delay in launching the application to compel.

DELAY IN LAUNCHING APPLICATION TO COMPEL

[10] The application to compel the delivery of further and/or better particulars were launched almost three years after the Respondents replied to the initial request. Rule 21(4) does not prescribe any time limit for an application to compel the delivery of further particulars. It would be fair to assume that such an application should be brought within a reasonable time. Rule 21(2) requires that a request for further particulars should be responded to within ten days. This is in itself a relatively short time period, an indication of the speed expected with this particular pre-trial procedure. This is further brought to the fore by the wording of subrule (4) which provides that an application to compel may be brought *inter alia* should the requested particulars not be delivered “timeously”. It then stands to reason that, in as far as the party obliged to deliver further particulars is expected to reply within a relatively short time, any reaction to a failure to respond (an application to compel) should also follow speedily.

[11] Mr Heymans on behalf of the Plaintiffs explained that the delay was caused by the adjudication of the Special Plea relating to jurisdiction[8], which resulted in protracted appeal proceedings. He conceded that the application could have been brought earlier. Mr Joubert, representing both Respondents for purposes of the oral arguments, acknowledged the reason for the delay, but pointed out that the appeal proceedings concluded with the order by the Constitutional Court on 5 February 2020, more than a year prior to the launch of the application to compel.

[12] A court has a discretion to grant or refuse an order for the delivery of further particulars.[9] A court will be entitled to consider any delay in launching an application. In *casu* the delay is not fully explained. The situation is aggravated when consideration is given to other pre-trial procedures embarked upon by the parties but not properly utilized by the Plaintiffs. I proceed to deal with these.

PRE-TRIAL CONFERENCES

[13] I already pointed out how the Plaintiffs had an opportunity to record prejudice allegedly suffered due to the insufficient particulars delivered by the Respondents.[10] The Respondents further reveal that on 14 September 2020 the parties held a virtual pre-trial meeting. During this meeting it was

specifically discussed how the multitude of factual disputes existing on the pleadings could be curtailed. It was then agreed, so the Respondents aver, that the Plaintiffs would within 14 days provide a list of admissions sought by them. The Respondents fully intended to reply to the request.

[14] In response, the Plaintiffs allege that the Respondents’ legal representatives had indicated that the pre-trial meeting of 14 September 2020 referred to above did not serve any purpose and that “in effect there was no pre-trial conference held”.[11] This allegation is of course non-sensical: legal representatives of the various parties did meet, albeit on a virtual platform, and certain discussions were held. It may be that not all anticipated issues were

fully discussed. However, the Plaintiffs do not allege that they did not agree to furnish a list of the admissions they request. The list of requested admissions was only supplied recently. [12] Plaintiffs' counsel made it clear that he does not foresee that the Respondents would respond favourably to the request for

admissions – he is namely of the view that the Respondents will continue with their refusal to comply as they cannot afford to make any admissions as it will reveal their prior unlawful conduct.

[15] Of course, the meeting of 14 September 2020 would have been another ideal opportunity for the Plaintiffs to raise the alleged insufficient responses received in answer to their request for further particulars as well as prejudice suffered. They did not so use that opportunity. It is still open to the Plaintiffs to insist on a further pre-trial conference where any prejudice they may suffer flowing from the responses received to the Request for Further Particulars can be addressed.

[16] I have not seen the list of admissions sought and can thus not consider whether it would address any of the issues raised by the Request for Further Particulars. In as far as the Plaintiffs are of the opinion that the Respondents will not respond favourably to the list of admissions requested, I find no basis for such speculation.

DISCOVERY

[17] Both parties field discovery affidavits, with the Plaintiffs filing an additional supplementary discovery affidavit. It has not been argued that the Plaintiffs cannot obtain at least some of the information they require by means of a further request for discovery. More than one of the paragraphs in the Request for Further Particulars requests documentation. Those requests would have been more appropriate if included in a request for additional discovery.

[18] The procedures provided for in rules 21 and 35 are distinct and should not be confused. Just as a party cannot claim discovery under the guise of a request for further particulars, another party should not be allowed to refuse further particulars simply because it mirrors a possible request for further discovery.

APPLICATION TO REMOVE RESPONDENTS AS TRUSTEES

[19] Prior to the issuing of summons there was another battle between the parties. It comprised of an application to have the Respondents removed as trustees. Affidavits were exchanged, dealing with several issues similar to the enquiries directed in the Plaintiffs' Request for Further Particulars.[13] Due to circumstances which are not relevant here, the matter was not argued.

[20] The First Respondent states that the application papers in the removal application covered in excess of 1 200 pages[14] and included allegations relating to the Respondents' alleged unlawful and ultra vires conduct (as also alleged in the Particulars of Claim). The Respondents allegedly dealt with the various issues in opposition to

the removal application, effectively providing the information / particulars now insisted upon, at least to an extent. The Plaintiffs

are not denying this but states that the “explanations by Respondents in the application to remove them as Trustees, will provide grounds for cross-examination, which results in Respondents avoiding to commit themselves to true answers by furnishing the requested particulars”.[15] During argument, counsel for the Plaintiffs labelled the information provided in the removal application as “excuses for their conduct”. I fail to see how the Respondents then, should they be ordered to provided better answers to the Request for Further Particulars, will give the Plaintiffs anything more.

[21] It appears to me that the Plaintiffs essentially expects the Respondents to, prior to the trial, roll over and admit all alleged wrongdoing, thereby negating the necessity of a trial entirely. The Plaintiffs and their legal team are so convinced of their own case that they cannot comprehend why the Respondents do not simply throw in the towel. And it irks the Plaintiffs that, in their minds, the Respondents continue to dance around, using pre-trial procedures to avoid judgment day.

FURTHER PARTICULARS REQUESTED

[22] The Plaintiffs needed to convince me that the further particulars requested fall within the prescribed parameters of Rule 21. Rule 21(2) is clear and unambiguous. Only such further particulars as are strictly necessary to enable a party to prepare for trial may be requested.

[23] The purpose of allowing a request for further particulars is (i) to prevent surprise, (ii) to tell a party with greater precision what the other party is going to prove in order to enable an opponent to prepare his or her case and (c) not to tie another party down and limit his case unfairly at the trial.[16] It should not be allowed to become a so-called fishing expedition whereby a party attempts to obtain all that he can from his opponent

prior to the trial and so force his opponent to play all his or her cards beforehand. Trials are adversarial by nature and no party is entitled to every piece of evidentiary information which his opponent intends to utilise at trial. This is especially true of a plaintiff that, as in this case, carries the onus to prove the allegations made in its particulars of claim.

[24] It was submitted on behalf of the Plaintiffs that the requested further particulars were not refused on the basis that it does not fall within the knowledge of the Respondents. Thus, so the submission continued, there can be no acceptable reason why the Respondents do not simply provide the information. Plaintiffs’ counsel submitted that the particulars are refused because the Respondents know that, as soon as they provide the requested information, they “are in trouble” and that the refusal to answer is already an admission of guilt. The Plaintiffs incorrectly expect of the Respondents to prove that they did not act unlawfully, ultra vires or contrary to the terms and provisions of the trust deed. The Respondents do have such an onus. And the Plaintiffs may be entitled to argue during the trial that the Respondents’ failure to provide information present as proof of their “guilt”. This is not a

reason to compel the Respondents now to provide further particulars.

- [25] It is so that the Respondents are not denying that the requested particulars fall within their knowledge. It was further submitted on behalf of the Plaintiffs that the information requested fall within the parameters of information which the Respondents should have disclosed already during the time when they were still trustees of the Trust and that their refusal to do so now is unlawful and further indicative of their dishonesty and inappropriate conduct as trustees. The Plaintiffs conclude that the “refusal by Respondents to furnish the particulars as requested is therefore legally wrong since they should have disclosed it out of their own accord during their administration, which they also unlawfully did not do.”[17]
- [26] In response it was submitted on behalf of the Respondents that the Plaintiffs confuse different processes:
- (i) the provisions of Rule 21 strictly applied, (ii) issues to be determined at trial, and (iii) steps to be taken during the administration of a trust. Counsel for the Respondents correctly pointed out that a party requesting more and better particulars are not entitled to go beyond the applicable principles and expect a court to rule on the merits of the main action. Contrary to what the Plaintiffs expected me to do, I cannot in this application interpret the trust deed, consider the Respondents’ actions as trustees and rule whether it was unlawful or not. Likewise, I cannot make findings as to whether the refusal to give further particulars constitute proof that the Respondents have no case (or did in fact act in the manner alleged in the Particulars of Claim).
- [27] The Plaintiffs’ Particulars of Claim contain a multitude of allegations relating to incidents when the Respondents allegedly acted unlawful and/or ultra vires and failed to comply with their fiduciary duties as trustees. The Plaintiffs will carry the burden to prove those allegations. In their respective pleas the Respondents denied the allegations. Some allegations were responded to in detail, others were met with a simple denial. The trial court will adjudicate those disputes. It is improper to expect a court in an application to compel further particulars to do so.
- [28] The pleas filed by the Respondents in the main action raised prescription and lack of jurisdiction as special pleas. The issues relating to jurisdiction have already been adjudicated. Prescription still needs to be considered, together with the merits and quantum of the Plaintiffs’ claims. One of the main issues between the parties centres around interpretation of the trust deed. The Respondents set out their views in this regard in their respective pleas, presenting it as a defence to at least some of the claims. Other allegations in the Particulars of Claim were responded to, either in full or by means of a denial. It cannot be said that the Respondents’ defences to the claims have not been disclosed. The Plaintiffs do not need further particulars to figure out what defences they are confronted with.

- [29] It is trite that a party cannot be required to give particulars in relation to a mere denial.[18] In as far as the Respondents deny the allegations of unlawful and/or ultra vires conduct and decisions in their pleas and in as far as the denials constitute bare denials, they need then not provide further particulars.
- [30] The question whether the Respondents breached any legal duty during their tenure as trustees of the Trust falls within the parameters of the disputes which will be adjudicated at the trial of the action. In fact, that is exactly what the Plaintiffs complain about in the Particulars of Claim, namely that the Respondents made decisions and took certain steps in breach of their fiduciary duty to the trust beneficiaries, thereby causing damages and/or financial losses to the trust property. Any legal duty to disclose information during their tenure as trustees differed from what was expected of them in response to the Request for Further Particulars. This must be so regardless whether the two situations relate to the same information or not. The Plaintiffs cannot be allowed to use the Rule 21 Request as a tool for forcing the Respondents to disclose information they should or should

not have as trustees earlier.

- [31] In as far as the Plaintiffs view the request for further particulars and the subsequent application to compel as a way of wrangling information from the Respondents which they had to (or maybe not) disclose during their tenure as trustees, that view is wrong. That is what the anticipated trial will be all about. The duty of trustees to disclose information does not equate to an obligation to respond in full to a request for further particulars.
- [32] It is further the Plaintiffs' case that the particulars requested are necessary in order to put them in a position to "decide what evidence need not be led due to admissions further particulars provided or documents disclosed and the pleadings" (sic)[19]. This convoluted paragraph in the Replying Affidavit effectively highlights the various other available pre-trial procedures such as providing the list of admissions requested during the virtual pre-trial meeting of 14 September 2021 or requesting additional

discovery. During oral argument the Plaintiffs' counsel shied away from conceding that there are other and/or more appropriate

pre-trial procedures still available to the Plaintiffs. He insisted that regardless of that, the Respondents have to disclose their conduct on behalf of the Trust (again confusing the duty to disclose information during the administration of the trust and an obligation to respond to a request for further particulars).

PREJUDICE

- [33] The Plaintiffs assert that the Respondents' "repeated refusal" to answer the questions listed in the Request for Further Particulars "is unlawful, obstructive and not in the interests of justice".[20] Unlawful it is definitely not, unless the Plaintiffs here again refers to duties the Respondents had as trustees and their alleged

failure to comply with those duties. The lawfulness of the Respondents' actions or omissions is the essential question which the trial court will be adjudicating.

[34] It was argued that it is in the interests of justice that possible delays in the trial should be avoided and that the court will be prejudiced should unnecessary time be wasted as a result of postponements. The argument was further stretched to include the submission that it is also in the court's interests to compel the Respondents to provide more details of their defences to the Plaintiffs' allegations. The Plaintiffs insist that the questions contained in the Request for Further Particulars, "if asked for the first time in cross-examination may illicit (sic) answers that will result in a further remand of the case".[21] This was repeatedly submitted during oral argument. I have not been convinced that this presents as prejudice, or at least as so

prejudicial that the Respondents should be ordered to supply further and better particulars. Should that situation arise during the trial, the judicial officer presiding over the trial will deal with it. No adjudication of the present application to compel can circumvent situations arising during a trial. Considering the considerable delay since the issuing of summons until now,[22] with the action still not enrolled for trial, any possible postponement during the trial itself will pale into insignificance.

[35] The argument that the Respondents' failure to provide full responses to the request is against the interests of justice, does not convince me. The Plaintiff decided to take to Respondents to court following alleged breaches in their duties as trustees.[23] The Plaintiffs carry the burden to prove their allegations. They cannot complain should the Respondents fail to assist in proving the allegations against them. Clearly the Plaintiffs had information in their possession prior to issuing summons leading them to believe that the Respondents are liable to the Trust for specific breaches in their fiduciary duties. The request for further particulars attempted to elicit proof of the allegations, or at least information from which unlawful and unbecoming conduct may then be inferred (from the Plaintiffs' point of view). As such, the particulars requested are not strictly necessary to prepare for trial but amount to an attempt to obtain evidence; alternatively put, an improper attempt to obtain information from the Respondents which they then want to use as proof of their own averments as set out in the Particulars of Claim.

[36] The Plaintiff should do its own preparation for the trial and search for its own evidence, without expecting other parties to assist. In fact, it may be argued that in as far as such preparation relate to fact finding, it should have been done prior to issuing summons. Surely the Plaintiffs did not issue summons on a whim but based on information / evidence indicating that there is a case for the Respondents to answer. It appears non-sensical to still be looking for proof five years after the claim was instituted. The Plaintiffs even went so far as to request particulars relating to a person named Johan Du Preez who is not referred to in the pleadings in the main action. During oral argument it became evident that Du Preez featured in the earlier removal application.

[37] In its application papers the Plaintiffs proceeded to argue its case as if I am to adjudicate the disputes between the parties now.[24] A similar attempt was made during oral argumenta before me. That is an improper approach. The Founding Affidavit is worded in a manner that may have enticed the Respondents into responses on the merits of the claim. The Respondents were alive to this and correctly, in my view, did not respond on the merits. In an application to compel the issues germane to the trial action are not decided or ruled on. To reiterate: that is what the trial is ear-marked for.

DISCRETION

[38] I have a discretion whether to order the Respondents to furnish further particulars.[25] Considering all the aspects dealt with above, there are sufficient indicators that it would be just and proper to exercise that

discretion against the Plaintiffs. In the premises, the application stands to be dismissed as the particulars insisted upon do not fall within the parameters of Rule 21 and are not strictly necessary to prepare for trial.[26]

[39] In my view the Plaintiffs are not unduly prejudiced or hampered in their trial preparation through the Respondents' failure to respond more fully to the Request for Further Particulars. The particulars requested may be relevant to the disputes between the parties but are not strictly necessary for trial preparation.

COSTS

[40] There is no reason why costs should not follow success. The Plaintiffs are to pay the costs of the application.

[41] The Respondents request a punitive cost order based on the Trusts' alleged abuse of the relevant pre-trial procedures. It is specifically averred that the failure to abide by the agreement relating to admissions concluded at the virtual pre-trial meeting of September 2020, justifies such an order. The parties did not keep minutes of the virtual meeting. The parties' affidavits reveal slight and/or nuanced differences regarding the exact nature and extent of the agreement reached. A list of required admissions has since been delivered (as agreed upon), albeit late.

[42] The issue of costs always falls within the discretion of the Court. The Plaintiffs' belated compliance with the pre-trial agreement does not present sufficient reason for a punitive cost order.

[43] The contents of the Founding and Replying Affidavits do however raise a question whether a punitive cost order may not be appropriate in any event. It firstly contains paragraphs dealing with issues not relevant to the present application to compel. Secondly, a large number of paragraphs, especially in the Replying Affidavit, contain allegations that present as scandalous and/or vexatious.[27] To use the phrasing in the Second Respondent's Heads of Argument, the Plaintiffs "bad-mouthed" the Respondents

throughout the application papers.

[44] The Plaintiffs make no secret of their contempt for the Respondents. This coloured the application papers but, unfortunately, also the submissions presented in the Heads of Argument as well as during oral argument. It is common knowledge that affidavits and heads of argument are not drafted by the litigants themselves but by their legal representatives on their behalf. I will accept here that the tone of the application papers and submissions were not necessarily chosen by the Plaintiffs themselves. In the premises, I am not convinced that the Plaintiffs should be ordered to pay costs on a punitive scale.

ORDER

[45] In the premises, the following order is made:

The application is dismissed with costs.

G.J.M. WRIGHT, AJ

On behalf of the Applicants: Adv. P.J. Heymans

Instructed by: E G COOPER MAJIEDT INC

On behalf of the Respondents: Adv. L.J. Joubert

Instructed by: HONEY ATTORNEYS

[1] The Third Defendant as cited in the summons, Daniël Gerhardus Roberts, passed away and has since been substituted by the executrix in his estate. The Third Defendant, although cited as Third Respondent, plays no part in this application. The Fourth Defendant, the Master of the High Court, Bloemfontein, was joined later. He also plays no part in this application, although cited as Fourth Respondent.

[2] In terms of Rule 37(8).

[3] This is evident from handwritten notes on a pro forma pre-trial minutes, signed by Naidoo J. It is accepted that the notes were made by Naidoo J.

[4] I have paraphrased counsel's full response for purposes of this judgment.

[5] This line of argument was not set out in the Founding Affidavit. It is of course trite that an applicant should make out his or her case in the founding papers.

[6] The Trust clearly meant to refer to the trial proceedings in the main action, although the matter has to my understanding not yet been set down for trial.

- [7] If I understood the argument correctly, the Respondents are willing to in some way or form provide further particulars in the way of admissions or otherwise as soon as the Plaintiffs cooperate from their side in a positive manner in response to discussions held during pre-trial meetings.
- [8] Opperman J dismissed the Special Plea on 9 November 2018.
- [9] Van der Walt v Van der Walt 2000 (4) SA 147 (E) at 150 E – F.
- [10] I refer of course here to the pre-trial conference held before Naidoo J on 6 August 2018.
- [11] Paragraph 12.3 of the Replying Affidavit.
- [12] It appears that the list was only provided after the current application had been launched.
- [13] Paragraph 25 of the First Respondent’s Answering Affidavit. These averments are not denied by the Plaintiffs.
- [14] Paragraph 12 of the Founding Affidavit.
- [15] Paragraph 33.4 of the Replying Affidavit.
- [16] Samuels v William Dunn & Company South Africa (Pty) Ltd 1949
(1) SA 1149 (T) at 1158.
- [17] Paragraph 7 of the Replying Affidavit.
- [18] Kliptown Clothing Industries (Pty) Ltd v Marine and Trade Insurance Co of SA Ltd 1960 (1) SA 446 (W) at 448; Hardy v Hardy 1961 (1) SA 643 (W) at 646; Swart v De Beer 1989 (3) SA 622 (E) at 625.
- [19] Paragraph 9 of the Replying Affidavit.
- [20] Paragraph 5 of the Founding Affidavit.
- [21] Paragraph 36 of the Founding Affidavit.
- [22] I again point out that, as far back as September 2018 during a judicial pre-trial conference, the Plaintiffs were of the view that the matter is trial-ready. I fail to see how a matter can become “less trial-ready” (for lack of a more elegant phrase) over time.
- [23] Detailed allegations of unlawful and improper conduct were made.
- [24] Counsel for the Plaintiffs went as far as to submitted that I may easily interpret the trust deed and rule that the Respondents’
defences and contentions are wrong.
- [25] Szedlacsek v Szedlacsek 2000 (4) SA 147 (ECD) at 150 A – B.
- [26] That is of course not to say that it is not relevant to disputes to be adjudicated at trial.

[27] The Respondents did not apply for the striking out of these paragraphs.

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