

7865/05-YH

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JUDGMENT

Sneller Verbatim/YH

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 7865/05

2005-08-19

DELETE WHERE NOT APPLICABLE	
FILED	YES/NO
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DATE 6/10/2005	SIGNATURE

In the matter between

YARAM TRADING CC

Plaintiff

and

ABSA BANK

Respondent

J U D G M E N T

WILLIS J: The applicant has applied to court for the eviction of the respondent from a certain premises in a shopping centre. It is common cause that the applicant is a trustee in respect of the property in question with the rights, powers, duties and obligations which have been set out for such trustees in the Collective Investments Schemes Control Act No. 45 of 2002.

The respondent has taken the point that the applicant does not have *locus standi* to bring the particular application. Mr Hoffmann who appears for the respondent, concedes self-evidently that it is

necessary that somebody should have a *locus standi* in a matter such as this. Obviously, it cannot be that no person has the power or capacity to bring the application for eviction.

Mr Hoffmann submitted that the person who had *locus standi* in this particular case, was the manager who has duties and powers as set out in terms of the aforesaid Act. I gave counsel the assurance that I would give judgment immediately on this issue and not reserve it. Accordingly it is not possible for me to give as vigorous a judgment as I would have preferred. Nevertheless it is clear from section 70 of the Act that trustees act on the instructions of managers, unless there is something irregular or improper in the instructions of the manager.

The architecture of the Act, it seems to me, clearly separates the functions of the manager from the functions of the trustee. The manager is the person who makes the entrepreneurial and investment decisions on behalf of numerous different investors who are participating in a collective investment scheme. The actual administration of the finances, the accounting and "regs-tegniese" aspects, are there for the trustee to implement.

I shall not go so far as to find that a manager in a scheme such as this, could not bring the application for eviction. Nevertheless I see nothing whatsoever that is offensive to the Act in the trustee doing so and in deed it would seem to me that the trustee is the proper person who should ordinarily bring an application of this nature.

Accordingly my ruling is that there is no merit in the point *in limine* raised by Mr Hoffmann.
