

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

CASE NO: 118576/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED

In the matter between:

MABOA, HENNRJ JOLA

First Applicant

BENEFICIARIES OF SANDFORD COMMUNITY TRUST

Second Applicant

and

SANDFORD COMMUNITY TRUST

First Respondent

ANY INTERESTED PERSON

Second Respondent

MASTER OF THE HIGH COURT

Third Respondent

JUDGMENT

NGALWANA AJ

[1] This is an application, in essence, for an order directing the Master of the High Court to appoint five named persons as trustees of the Sandford Community Trust (*“the trust”*) in accordance with a trustees’ resolution of 7 October 2023 and issue letter of authority to them within five days of the order being granted. The named persons are:

(a) Henry Jola Maboja, who is the deponent to the affidavit supporting this

application and describes himself as one of the founder trustees of the trust.;

(b) McDonald Cyril Mogane;

(c) Patrick Shane Mogane; and

(d) Boitumelo Mawela.

[2] The application is brought on an urgent basis essentially on the ground that the current trustees are “*wreaking havoc at the Trust Property*” and that this interim structure of trustees was dissolved by an order of court dated 28 October 2022.

[3] That order, in material terms, declared the election of the current trustees unlawful; directed that the applicants in that case (Maboa and trust beneficiaries) must select persons who are to assume the office of trustees and convene an annual general meeting for the election of new and/or additional trustees within 6 months of the order; directing that notice of the annual general meeting must be advertised to all beneficiaries in a national newspaper within 2 months of the order; directing that the elections must be held in accordance with clause 13 of the Trust Deed.

[4] Election was held and new trustees elected. But when attempts were made to enforce the order, the Master balked following objection by the current trustees in November 2022.

[5] Counsel for the applicants made a valiant effort to press their clients’ case. I have no difficulty accepting that there appears to be much that needs probing in the affairs of the trust. The factual allegations made in the replying affidavit are in my view enough to trigger a closer inquiry into the affairs of the trust. But a case must be made out in the founding papers. I am not persuaded that a case for urgency has been made out in the applicants’ founding affidavit. An allegation, without more, in the founding papers that the trustees are “*wreaking havoc at the Trust Property*” is not enough to found urgency.

[6] Objection by the current trustees to the appointment of new trustees pursuant to the order of 28 October 2022 is said to have been raised with the Master in November 2022. There is no sufficient explanation for the delay in launching these

proceedings, which were launched only an entire year later.

[7] One of the bases advanced for urgency is that the current trustees are failing to account to the beneficiaries for the finances of the trust. An example is what happened to R10.3 million of the trust funds. But this was an event that occurred in 2012 and cannot found a case for urgency in 2023.

[8] I am not persuaded that the applicants cannot obtain substantial relief in due course.

[9] Lack of urgency is not the only difficulty facing the applicants. Questions have been raised about non-joinder of all the trustees and verified beneficiaries, the authority and *locus standi* of the first applicant to bring this application on behalf of the beneficiaries, and the proper service of the papers in this application on the trustees. To these questions, no satisfactory answer has been provided. Nevertheless, it is not necessary to deal with these questions as I have already found that the applicants' case founders at the urgency hurdle.

[10] The first respondent wants costs on a punitive scale against the first applicant and Mawela. While there is no reason why costs should not follow the cause, I am not inclined to grant costs on a punitive scale. I could detect no bad faith, abuse of court process, vexation or dishonesty on the part of the applicants.

[11] There is no reason why the trust should bear the costs of this application. The first applicant appears to be driver behind it. There is no indication that he has the backing of the current trustees. No facts have been put forward to mulct Mawela in costs too.

Order

In the result, I make the following order:

1. The application is struck off the roll for lack of urgency.
2. The first applicant is to pay the costs of this application on a party and party scale.

V NGALWANA

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: This judgement 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 hand-down is deemed to be 29 November 2023.

Date of hearing: 28 November 2023

Date of judgment: 29 November 2023

Appearances:

Attorneys for the Applicants:

KN Maleka Attorneys Inc

Counsel for the Applicants:

M Rasesemola (068 141 5553)

M de Jager (071 361 8066)

Attorneys for First Respondent:

MacRobert Inc

Counsel for First Respondent:

Z Schoeman (072 123 2614)