



**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

Case no: 2145/2021

In the matter between:

**VAUGHN VICTOR**

First Applicant

**MARIA MAGDALENA CATHARINA VICTOR**

Second Applicant

and

**WONDERHOEK FARMS (PTY) LTD**

First Respondent

**THE MASTER OF THE HIGH COURT,**

**BLOEMFONTEIN**

Second Respondent

**THE REGISTRAR OF DEEDS, BLOEMFONTEIN**

Third Respondent

**THE REGISTRAR OF DEEDS, CAPE TOWN**

Fourth Respondent

**ANTON OTTLIE NOORDMAN N.O.**

Fifth Respondent

**CORNE VAN DEN HEEVER N.O.**

Sixth Respondent

**FIRST RAND BANK**

Seventh Respondent

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**JUDGMENT BY:**

REINDERS, ADJP

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**HEARD ON:**

29 JULY 2021

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**DELIVERED ON:**

7 SEPTEMBER 2021

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- [1] Mr Vaughn Victor (“first applicant”) and his spouse Mrs Maria Magdalena Catharina (“second applicant”) seek a declarator and interim interdictory relief pending the finalisation of an application brought in this court under civil case number 5049/2014. First applicant also prayed for an order that leave be granted to him to bring the application in his own name without the assistance of the trustees of his insolvent estate, as well as a declarator that he has the necessary *locus standi* to bring this application.
  
- [2] The notice of motion was duly served on the seven respondents as cited above, with relief claimed only against the first respondent (Wonderhoek Farms (Pty) Ltd, “Wonderhoek”), who opposed this application.
  
- [3] It is common cause that the applicants were sequestrated on 6 December 2018 and both are unrehabilitated insolvents. First applicant brought this application in his own name and served it on his trustees (fifth and sixth respondents). Wonderhoek in opposition disputes the *locus standi* of first applicant to have issued this application as well as the rest of the relief claimed.
  
- [4] The litigious history between the applicants and Wonderhoek farms is acrimonious as is evident from the papers before me with reference to proceedings under different case numbers in this court. I do not intend to deal with the said history, save for context of the present application. The first and second trustees, with one Mr Vermeulen, were the duly appointed trustees of two trusts, respectively the Vaughn Victor Ontwikkelings Trust 1 and 2 (VVOT 1 and 2). The afore mentioned trusts were sequestrated on 8 March 2018 and 25 April 2018 respectively, following the sequestration of the first applicant in his personal capacity on 6 December 2018.
  
- [5] The interim relief sought is in respect of certain specified immovable properties (“the farms”) pending the finalisation of an application brought by applicants for the setting aside of a Settlement Agreement entered into between Wonderhoek, First Rand Bank (the seventh respondent) and the trustees of VVOT 1 and 2

(the “Settlement Agreement”) which was made an order of court on 20 February 2020 by Molitsoane J.

- [6] The relief sought under prayer 2 entails that Wonderhoek be interdicted and restrained from alienating the farms as specified. Prayer 3 of the notice of motion reads as follow:

“3. That the First Respondent be interdicted and restrained from encumbering the properties as set out in prayer 1.1 *supra*.

Prayer 3 as worded is not sought pending finalization of Part B, and there is no prayer 1.1 as referred to.

- [7] Wonderhoek as a point *in limine* submitted that first applicant does not have *locus standi* to bring the present application on several grounds. Apart from these grounds, Wonderhoek contends that a ruling made by this court in an urgent application brought by first applicant against Wonderhoek (also cited in that application as the first respondent) under case number 5049/2014 held that first applicant did not have *locus standi* in bringing certain relief prayed for in respect of the Settlement Agreement.

- [8] The notice of motion under case number 5049/2014 was phrased in a Part A and Part B thereof. Part A called for interim relief pending the finalisation of the relief sought under Part B for the setting aside of the Settlement Agreement.

- [9] In the urgent application before Van Zyl J first applicant in his notice of motion sought interdictory relief in Part A under prayers 2.2 and 2.3 relating to certain purported unlawful conduct by Wonderhoek and those acting under its instruction.

- [9.1] Prayer 2.4 reads as follow:

“That the first to fifth respondents be interdicted from implementing the Settlement Agreement.”

[9.2] The relevant parts of the judgment of Van Zyl J for consideration of the aforementioned contention by Wonderhoek in respect of the issue of *locus standi* reads as follow:

“[3] ...On the said date I entertained extensive arguments on Part A in respect of urgency and the locus standi of the first applicant. I indicated that I needed time for considering the respective arguments and I subsequently made the following order on the morning of 26 March 2020:

- “ 1. ...
2. The first applicant's application against the first to eight respondents pertaining to the relief sought in prayer 2.4 of the Notice of Motion, is dismissed.
3. ...”

[4] The order in 2 above was made on the basis of the first applicant's lack of *locus standi* for purposes of prayer 2.4.”

[10] The relief sought *in casu*, seeks interdictory relief pending adjudication and finalisation of the same subject matter under Part B, to wit the setting aside of the Settlement Agreement.

[11] I have read the judgment of Van Zyl J. In my view she found that the first applicant had no *locus standi* whilst being an unrehabilitated insolvent. There was no leave sought by first applicant to institute the application as an unrehabilitated insolvent. Accordingly, without leave of court to institute the application, the first applicant *ex lege* had no *locus standi*. The court therefore in my view did not pronounce on the same relief as sought *in casu* namely that leave be granted to first applicant to bring the application in his own name without the assistance of the trustees of his insolvent estate, and further a declarator confirming his *locus standi* to bring this application. I am therefore not convinced that Van Zyl J adjudicated the relief sought herein and the proposition by Mr Kloek on behalf of Wonderhoek that the relief is *res judicata*, is dismissed.

[12] First applicant claims that he has a reversionary interest in his insolvent estate and the proper administration thereof, which entitles him to sue on his own behalf and, so the argument goes, by virtue hereof he is clothed with the necessary *locus standi*.

[13] Wonderhoek in principle does not take issue with the legal position of the reversionary interest that an insolvent has in his insolvent estate as laid down in **Voget and Others v Kleynhans 2003 (2) SA 148** at 153 par [22] where Van Reenen J held as follows:

...The deprivation of an insolvent's *locus standi* is a consequence of the fact that his/her estate vests in his/her trustee who exercises all rights in respect of the property comprising it...Where however an insolvent's trustee refuses to institute proceedings against a debtor of an insolvent estate **for the recovery of any benefit to which the insolvent estate is entitled**, the right of an insolvent, by virtue of his/her reversionary interest in the insolvent estate, is recognised by our Courts. "(with reference to *inter alia* **Nieuwoudt v The Master and Others NNO 1988 (4) SA 513 (A)** at 524H-525G)

(own emphasis)

[14] However, advancing the argument that first applicant did not succeed in proving such an interest, reference is made to the provisions of Sec 20(2)(a) of the Insolvency Act 24 of 1936 stipulates as follow:

(2) For the purposes of sub-section (1) **the estate of an insolvent shall include:**

(a) **All property of the insolvent at date of the sequestration, including property or the proceeds thereof, which are in the hands of a Sheriff or a messenger under writ of attachment."**

(own emphasis)

[15] Wonderhoek contends that all assets that were owned by first applicant on 6 December 2018 when he was sequestrated, thus formed part of his insolvent estate. Conversely, any assets not so owned by first applicant on the said date, did not form part of his insolvent estate. The assets defined in prayer 2 (the farms) were never owned by first applicant nor by his insolvent estate. I agree

with the submission of Mr Kloek, appearing for the first respondent, that it is not the case of first applicant, nor has he demonstrated or presented any evidence that the said properties formed part of his estate at the time of his sequestration. At best, the properties might have formed part of the estates of the VVOT 1 and VVOT 2 trusts of which the applicants and Mr Vermeulen were the trustees. Mr Janse van Rensburg, appearing on behalf of the applicants, submitted that the properties formed part of the assets of the trusts.

- [16] It is trite that a trust does not have legal personae but a legal institution *sui generis*. All rights and obligations comprised in the trust estate vests in the trustees and the trust can only act through the trustees specified in the trust instrument.

See: Land and Agricultural Development Bank of SA v Parker and Others [2004] (4) All SA 261 (SCA )

- [17] The assets and liabilities of a trust vest in the trustee(s). A trustee is the owner of the trust property for purposes of administration of the trust, but *qua* trustee has no beneficial interest in the trust assets. In legal proceedings trustees must act *nomine officii* and cannot act in their private capacities. All trustees must be joined both in suing and in the event that action is instituted against the trust, unless one of them is authorised by the remaining trustees to act on their behalf.

See: Mariola and Others v Kaye-Eddie NO and Others 1995 (2) SA 728 (W) at 731 C-F

- [18] The applicants did not join the third trustee, Mr Vermeulen, as a co-applicant in bringing the present application. Accordingly, even if I should have found (which I did not) that the applicants as trustees of the VVOT 1 and 2 trusts have a reversionary right in this respect, such a right cannot be enforced.

- [19] Based on the above I see no basis upon which leave should be granted to first applicant to bring the application in his own name without the assistance of the trustees of his insolvent estate, nor the granting of a declarator that he has the necessary *locus standi* to bring this application, wherefore prayer 1 should be dismissed. In the event of prayer 1 being dismissed it is not necessary to

adjudicate any of the further relief sought save to state that I would have in any event dismissed same.

[20] Wherefore I make the following order:

The application is dismissed with costs.

  
**C. REINDERS, ADJP**

On behalf of the Applicants

Adv F G Jansen van Rensburg  
Instructed by:  
Willers Attorneys  
BLOEMFONTEIN

On behalf of the First Respondent:

Adv J W Kloek  
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