Editorial note: Certain information has been redacted from this judgment in compliance with the law.

HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 030447/2022

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 14 JUNE 2024

SIGNATURE [redacted]

In the matter between:

GEORGE ANTON HARROP-ALLIN	First Applicant
GEORGE ANTON HARROP-ALLIN N. O	Second Applicant

and

ANTON HARROP-ALLIN	First Respondent
ANTON HARROP-ALLIN N. O	Second Respondent
DESMOND STANDER N. O	Third Respondent
MASTER OF GAUTENG DIVISION, PRETORIA	Fourth Respondent

Summary: *Trustee – removal of – conflict of interest between personal and fiduciary interests sufficient – hampering of administration of trust also a contribution factor – removal justified without resolution of factual disputes regarding competing businesses.*

ORDER

---

1. The first respondent is removed as trustee from The Harrop-Allin Investment Trust (IT 5975/04).

2. No order as to costs.

J U D G M E N T

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically with the effective date of judgment being 14 June 2024.

DAVIS, J

Introduction

[1] The unfortunate nature of the dispute in this matter is that it involves distrust and disagreement between family members which could not be resolved outside the doors of the court despite the court having delayed handing down of judgment in this matter in order to afford the family members a last opportunity to resolve their differences.

[2] The dispute centres around the continued trusteeship of the first respondent, Mr Anton Harrop-Allin (Anton) in The Harrop-Allin Investment Trust (IT 5975/04) ("the Trust"). The first applicant is the George Anton Harrop-Allin. He is Anton's son and co-trustee. Due to the similarity in names and in order to avoid confusion, he shall be referred to both in his personal capacity and as a co-trustee as the first applicant. The third trustee, an accountant who is apparently unable to break the deadlock between father and son is the third respondent. The Master of this court, has been cited as the fourth respondent.

The Trust

[3] In 1947 a business for the sale and installation of fencing was opened in Pretoria by the late George Harrop-Allin (George senior).

[4] George senior has three sons, Anton, George junior and Ian Harrop-Allin. The sons joined George senior in the business and each had responsibility of a division of the business which had been converted into a trading company in 1950 being G Harrop-Allin & Sons (Pty) Ltd (Reg No 1950/037758/07) (GHA Pretoria).

[5] Over the years and during the growth of the business, a number of corporate entities were created. These included G Harrop-Allin & Sons Pietersburg (Pty) Ltd (Reg no 1967/011142/07) (GHA Pietersburg), Harrop-Allin Nelspruit Property (Pty) Ltd (Reg No 1982/01027/07), G Harrop-Allin & Sons Mpumalanga (Pty) Ltd (Reg No 1982/010243/07) (GHA Mpumalanga), Harrop-Allin Industrial Properties (Pty) Ltd (Reg No 1947/027754/07) (HAIP) and G Harrop-Allin & Sons Nelspruit (Pty) Ltd (Reg No 1982/01027/07).

[6] Some of the businesses have since been sold upon the retirement of the sons George Jnr and Ian Harrop-Allin. By this time, the first applicant (being Goerge senior's grandson) had since joined the family business in 1996, after

having studied industrial engineering and having completed his Master's degree in Holland.

[7] The remaining of George senior's sons, Anton, created the Trust by Notarial Deed on 7 July 2004. The first applicant was (then) the sole income and capital beneficiary of the Trust.

[8] Upon the creation of the Trust, it acquired the shareholding and businesses, including stock, plant and equipment of GHA Pretoria, GHA Pietersburg and GHA Mpumalanga.

[9] Apart from appointing the first applicant as the sole beneficiary of the Trust, the terms of the Trust Deed provide that its purpose is "... *to use, pay or apply the whole or a portion of the Net income of the Trust, in such portions and at such time or times as they [the trustees] in their sole and absolute discretion determine, for the welfare of all or any one or more of the beneficiaries* ...".

[10] Over the years and as a result of financial pressures and constraints and in order to adopt to a constantly changing marketplace, the assets of the Trust, in particular the shareholding it held in GHA Pretoria underwent changes. These changes were too numerous to mention but the most significant were a sale of shareholding to a preferred supplier of wire, Allens Meshco (Pty) Ltd, (Meshco), the creation of a B-BBEE company Harrop-Allin Mahala Fence & Steel (Pty Ltd (Mahala) and the creation of an entity called Bricks 2 Lay (Pty) Ltd (BTL).

[11] From 2011 to 2021 the business relationship with Meshco underwent further changes particularly regarding ownership of GHA Pretoria. Anton was also retrenched from GHA Pretoria but continued to run GHA Pietersburg. As a result of Anton's participation in the business dealings of GHA Pretoria and GHA Pietersburg, and the manner in which it had been done, he became indebted to

these companies, to the extent that action has even been instituted against him for the recovery of some of these debts.

[12] Over the years the relationship between father and son had deteriorated to the point where the first applicant now holds the directorship positions previously held by his father, particularly in GHA Pretoria and GHA Pietersburg and where Anton is being accused of having conspired to establish competing businesses, despite restraint of trade agreements.

[13] The principal current assets of the Trust are: the shareholding in GHA Pretoria, GHA Pietersburg and GHA Mpumalanga (no longer trading), 43% shareholding in Mahala and 33⅓% shareholding in HAIP.

The disputes between the Trustees

[14] It is clear from the above brief summary and the large volume of documents filed by the first applicant and by Anton, that there are numerous instances where they no longer see eye to eye.

[15] The principal of these disputes, labelled by Anton as the "real raison d'être" for the application, concerns his wish to appoint himself and the first applicant's sister as additional beneficiaries.[1]

[16] This dispute has been raging since 2019 and while the first applicant does not detail the reasons why his sister (who resides in Australia) should not be added as a beneficiary, the reasons why Anton should not be added have even been listed in a report by BDO Wealth Advisors (Pty) Ltd (BDO) whose Mr Heynen had been an erstwhile professional trustee of the Trust between 2010 to 2017.

---

[1] Clause 1.1.2.2. of the Trust Deed provides that, in addition to the first applicant, additional beneficiaries may include *"any other natural person as the Founder in his sole and absolute discretion may unilaterally nominate from time to time"*. Anton was the Founder of the Trust as indicated by paragraph [7[above.

[17] The disputes between the trustees germane to this application, apart from Anton's claim to be appointed as a beneficiary, are the allegations of conflicts of interest between Anton's personal interests and his fiduciary obligations.

[18] The allegations made by the first applicant in this regard largely centres around a written agreement reached at his instance in an attempt to settle the disputes. This agreement was concluded in May 2019 between the Trust, GHA Pietersburg, GHA Pretoria, BTL and Anton. The material terms were explained by the first applicant to be the following:

> *"90.1 GHA Pietersburg acknowledged that it was indebted to Anton in respect of loan/s made to it by Anton in the sum of R991 058.00 (nine hundred and ninety one thousand and fifty eight rand) ("Loan one");*
>
> *90.2 The Trust acknowledged that it was indebted to Anton in the sum of R1 708 221.00 (one million, seven hundred and eight thousand, two hundred and twenty one rand) ("Loan two);*
>
> *90.3 GHA Pietersburg purchased machinery from Anton and/or BTL for the sum of R 1 450 000.00 (one million, four hundred and fifty thousand rand);*
>
> *90.4 It was agreed that GHA Pietersburg and the Trust would make payment to Anton monthly of the minimum sum of R30 000.00 (thirty thousand rand) ("the monthly payment"), in payment of the aforesaid sums and in respect of the purchase of the machinery, monthly on or before the last day of the month, with the first payment to be made on or before 30 April 2019;*

90.5 The monthly payment was to increase annually, in the month subsequent to the twelfth month after signature of the agreement, by the average Consumer Price Index of the preceding year, but which would be limited to a maximum of 15% per annum, irrespective of whether the Consumer Price Index were to exceed such percentage;

90.6 Loan one and Loan two would accrue interest at the rate of the average Consumer Price Index of the preceding year from time to time, which would be limited to a maximum of 15% per annum, irrespective of whether the Consumer Price Index exceeded such percentage, or not;

90.7 No interest would be payable in respect of the purchase of the machinery;

90.8 Anton would resign as a director of GHA Pietersburg upon signature of the agreement and would no longer be involved in the day to day running of GHA Pietersburg".

[19] In addition, Anton was bound by extensive and detailed restraints of trade agreements, not only with the parties to the agreement but, in terms of a separate instrument, with Mahala as well, not to compete with any of their respective businesses or entice or solicit their clients.

[20] The allegation is further that, despite the restraints of trade and despite the agreement having been an attempt to bury the hatchett, Anton started competing with GHA Pretoria during 2020, via a company started by an employee of GHA Pietersburg at the time in 2016, Megamor (Pty) Ltd. Anton's response to a letter of breach addressed to him in 2021 is telling in this regard. He wrote: "*If you*

want to take me to court for breach of the agreement, No Court will grant you a restraining order against me as I have only worked in this industry for the past 55 years and know no other profession". Sentiments in similar vein, although not denying the breach, followed in subsequent correspondence. In fact, the allegations were that Anton was, beyond Megamor, supplying GHA Pretoria's competitors, notably Quality Fencing, with confidential information such as methodologies and customer lists.

[21] Another substantive area of dispute pertains to the administration of the Trust. Since October 2020 Anton refused to approve the Trust's annual financial statements, voicing his disagreement therewith but without explaining the cause of his dissatisfaction.

[22] In similar vein, Anton refuses to sign minutes of shareholders meetings in respect of companies in which the Trust owns shares, despite his attendance of such meetings.

[23] The dispute about adding Anton and his daughter as beneficiaries has been answered by him stating that, as founder, he retained the right to unilaterally do so. He explained further that, when the Trust had been erected, the first applicant was the only family member involved in the companies in which the Trust owned shares but that Anton had foreseen the possibility "... *that over time other members of the Harrop-Allin family might develop a need to be supported*" (his words).

[24] On Anton's version, now that the has nominated himself and his daughter as beneficiaries, is that this "... *does not equate to any control over the affairs of the trust. What it means is that when income and capital of the trust is used, paid or applied, it should be done not only for George-Anton's benefit, as he had become accustomed to, but also for the benefit of my daughter and me*".

[25] The allegations of breach of the contracts of restraint of trade and the unlawful competition with the Trust or the companies in which it holds shares were all denied by Anton. In particular, he explained that Megamor, of which he was a director and his daughter the sole shareholder, had owned a property which had been purchased from the proceeds of a sale of a property in Mbombela which was owned by Harrop-Allin Nelspruit Properties (Pty) Ltd. He then furnished his reasons why Megamor leased the newly acquired property to Quality Fencing. He denied being involved in its business by stating: "*It is merely a tenant of Megamor and the company would from time to time request me, as a middleman, to procure certain goods from GHA & S or if GHA & S is unable to supply the goods, other companies*". He also added: "*From time to time I would purchase fencing material from GHA & S which I would then sell to other companies such as Raubex. To suggest that I am competing with GHA & S in doing so is patently absurd. After all, I bought the material from GHA & S and not from one of its competitors. I was given a discount by GHA & S of 20%. I did not ask for the discount* ...". GHA & S is a reference to GHA Pretoria.

[26] There are also various and extensive explanations tendered covering the suspicions of unlawful competition raised by the first applicant. In doing so, Anton referred to sales of fencing by him to Quality Fencing, the importation of tubing from China, goods bought from Techni Paints (a supplier of GHA Pretoria) by Anton which had been delivered and invoiced to Quality Fencing and tubing ordered by him from Pro Roof (another of GHA Pretoria's suppliers) and the like. I shall revert to these issues again later.

[27] Anton averred that the Trust and the entities it controlled owes him R5, 3 million, that he is 77 years old and wanted to retire "a very long time ago". He expected the monies due to hi to constitute his pension and he accused the first

applicant from refusing to have those funds paid "... *on frivolous and contrived grounds*".

[28] Anton's principal motivation for his actions appear to be this statement of his: "*When the agreement of 25 May 2019 [was reached] the trustees of HAIT [the Trust] impliedly bound themselves not to remove me as a trustee of the trust until such time as its indebtedness towards me and/or the AHAT had been discharged*" (AHAT is a reference to a separate trust previously created by Anton, being the Anton Harrop-Allin Trust (IT 1544/85(T)).

[29] What is of concern though, is a statement made by Anton to a Ms Tracy Chown, a former director of Mahala and a subsequent employee of Quality Fencing, to the effect that he would do everything in his power to "*ruin, sink, bankrupt or put out of business*" GHA Pretoria. This statement caused Ms Chown such concern that she had reduced it to writing which form an annexure to the founding affidavit. These allegations were met with a bald denial from Anton.

Evaluation

[30] Before turning to the applicable legal principles, an evaluation needs to be made of the evidentiary material placed before the court,

[31] Various and extensive allegations have been made by the first applicant which his counsel argued were so insufficiently countered by Anton, that there should be no doubt that Anton has acted in breach of his restraint of trade agreements and were (or still is) trading in unlawful competition with the companies in which the Trust holds shares and which were parties to the May 2019 agreement. These allegations specifically relate to Quality Fencing, Pro-Roof, Raubex and Techni Paint.

[32] The principles applicable to the determination of the relevant facts when final relief is sought in motion proceedings involve the application of the Plascon-Evans principle.[2] Despite having some misgivings about Anton's explanations, they cannot be rejected "out of hand"[3]. I am of the view that sufficient "real" disputes[4] have been raised so that the first applicant cannot succeed with the actually claimed relief based on the allegations of a breach of the restraint of trade agreements and unlawful competition. These aspects would have been better canvased by way of oral evidence[5]. There is a similar dispute about Anton's status as a beneficiary which has not yet been resolved (as well as that of his daughter).

[33] However, what must be clear, even on Anton's own version, is that he had dealings with companies in which the Trust had an interest without prior disclosure to his co-trustees of the nature and extent of these dealings. That evidence must therefore be accepted. I shall return to this aspect later.

[34] What is also undisputed, is the deadlock created by Anton regarding the running of the Trust and the companies in which it holds shares. What is also undisputed, is Anton's attitude towards this deadlock and his attitude towards his current trusteeship as evinced in the concluding paragraphs of his answering affidavit:

> *"18.4 It is clear from the agreement and the correspondence that the preceded the conclusion of the agreement that the AHAT,*

---

[2] *After Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E – 635D.
[3] See *Trust Bank van Africa Bpk v Western Bank Bpk* 1978 (4) SA 821 (A) at 294A – E (Trust Bank).
[4] *Soffiantini v Mould* 1956 (4) SA 150 (E) at 154E – H.
[5] "Indeed it is usually undesirable to decide a real and deep-rooted dispute only on the probabilities revealed in the papers without the additional and usually valuable assistance of supplementary oral evidence" – Trust Bank, relying on *Da Mata v Otto NO* 1972 (3) SA 858 (A) at 882D.

B2L, and I, hold no security for the debt owed to us by the HAIT, and the companies controlled by it.

18.5 The only security is the modicum of control I exercise over the activities of the HAIT and its associated business through my involvement in the HAIT as a trustee.

18.6 If it was known at the time that attempt would be made to remove me as a trustee of the HAIT before the money owed to me and the AHAT was paid, I would not have agreed to structured payments and would have demanded immediate payment as I was entitled to do.

18.7 I am prepared to step down as a trustee of the HAIT if the trust, and the companies controlled by it, agree to first pay me, the AHAT, and B2L everything that is due to us". (B2L is a reference to BTL).

The applicable principles

[35] The Trust Property Control Act[6] (the Act) provides that a trustee may at any time be removed by a court on the application by any person having an interest in the trust property if the court is satisfied that such removal will be in the interest of the trust and its beneficiaries.[7]

[36] A trustee may be removed even if his or her conduct was *bona fide*, since neither *mala fides* nor even misconduct are necessary requirements for removal.[8]

---

[6] 57 of 1988.
[7] See section 20(1).
[8] *Tijmstra v Blunt-Mc Kenzie* 2002 (1) SA 459 (T) at 473B – C.

[37] Due to the fiduciary nature of trusteeship, and the obligation to act with care, diligence and skill, removal of a trustee by a court can take place where a trustee fails to perform any duty imposed by the relevant trust deed or the Act. The ratio in dismissal is both the protection of the welfare of the beneficiaries and the proper administration of the trust.[9]

[38] It follows from the above that a trustee must avoid any conflict of interest between his duties and obligations as a trustee and his (or her) personal interests.[10] Failure to do so, might justify removal.[11]

[39] A dispute between co-trustees is not in itself sufficient to warrant removal of one of the trustees and the determinative test is always whether trust property or affairs are imperiled.[12] However, where the relationship between co-trustees has broken down to the extent where they no longer have any mutual respect and trust for each other, a full court has found that the determinative test may have been satisfied.[13]

Conclusion

[40] Even if the allegations of a breach of the restraints of trade contracts and the acts of alleged unlawful conduct have not been resolved "on paper", Anton's dealings with clients or suppliers of companies in which the Trust owns shares, fell foul of the terms of the Trust Deed regarding prior disclosure of such dealings. In this regard clause 24 of the Trust Deed provided as follows: "*No trustee shall be disqualified from his office from contracting with the Trust or any company or firm in which the company has an asset ... provided that he shall disclose to the other trustees the nature of his interest before the making of the contract if is shall*

---

[9] See the approach adopted in *Hopper v Shrub* 1987 (3) SA 201 (C) and the duties set out in section 9 of the Act.
[10] See *Phillips v Fieldstone Africa (Pty) Ltd* 2004 (3) 465 (SCA).
[11] *Kidbrooke Place Management Association v Walton & Others NNO* 2015 (4) SA 112 (WCC).
[12] *Fletcher v Mc Nair* (1350/2019) [2020] ZASCA 135 (23 October 2020).
[13] *Mc Nair v Crossman* 2020 (1) SA 192 (GJ) at 200H-201A.

not already have been known to them". There was no prior disclosure of Anton's discounted purchasing of goods from GHA Pretoria and the on-selling to either Quality Fencing or Raubex. A term of the Trust Deed requiring care and the honoring of fiduciary obligations had therefore, on Anton's own version, not been complied with.

[41] The failure and, in fact, refusal to co-operate in the signing and finalization of company statements and minutes of the Trust's primary assets, being the companies it owns, amounts to a failure by Anton to assist in the administration of the Trust. This conduct also imperils the proper protection or maintenance of trust assets.

[42] It is also clear that there is not only a conflict or dispute between father and son, regarding the running of the trust or its businesses, but it has escalated to the extent that neither trusts the other.

[43] In addition, Anton's own intentions voiced in his answering affidavit amounts to him conceding holding the Trust ransom until his own interests have been satisfied, notably not as a beneficiary, but as a creditor in disputed and litigious circumstances. This is a fundamental conflict of interest making his continued trusteeship untenable.

[44] On a conspectus of all the circumstances I am, in the words of the Act, "satisfied" that Anton's removal as a trustee would be in the interest of the trust and its administration.

[45] In reaching the above conclusion I express no final view or finding as to the status or appointment of Anton or his daughter as beneficiaries of the trust, nor has any relief been claimed in this regard.

[46] Although the first applicant has been substantially successful in this application, having regard to the nature of the disputes and the identity of the parties, including their familial relationship, I, in the exercise of the court's discretion, determine that each party should pay its own costs and therefore there shall be no costs order.

Order

[47] The order is then as follows:

1. The first respondent is removed as trustee from The Harrop-Allin Investment Trust (IT 5957/04).

2. No order as to costs.

N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 20 February 2024

Judgment delivered: 14 June 2024

APPEARANCES:

For the Applicants:	Adv M Kritzinger
Attorney for the Applicants:	Stock Attorneys Incorporated, Randburg c/o Hack, Stupel & Ross Attorneys, Pretoria

For the Respondent:	Adv A Voster
Attorney for the Respondent:	Strydom & Bredenkamp Incorporated, Pretoria