THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 1543/2024

In the matter between:

TRISTAN HARTMANN	**FIRST APPELLANT**
JEAN-GABRIEL HARTMANN	**SECOND APPELLANT**
MARK KEISER HARTMANN	**THIRD APPELLANT**

and

INGE JOANNE HACKER N O	**FIRST RESPONDENT**
TIMOTHY JAMES HACKER N O	**SECOND RESPONDENT**
WENDY FIONA HAY N O	**THIRD RESPONDENT**
THE MASTER OF THE HIGH COURT: BLOEMFONTEIN	**FOURTH RESPONDENT**

Neutral citation: *Hartmann and Others v Hacker N O and Others* (1543/2024) [2026] ZASCA 46 (8 April 2026)

Coram: UNTERHALTER and BAARTMAN JJA and KGANYAGO AJA

Heard: 27 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 8 April 2026.

Summary: Law of Trusts – Distribution of Trust Assets – whether the appellants established locus standi – beneficiary's standing – mootness – interpretation of the Trust Deed – whether a distribution event occurred – whether the authorised trustee took a decision to extend the distribution event.

ORDER

On appeal from: The Free State Division of the High Court, Bloemfontein (Mgudlwa AJ sitting as court of first instance):

1 The appeal is upheld with costs, the costs to be paid from the Trust estate.

2 The order of the high court is set aside and replaced with the following:

'(i) It is declared that the "distribution event" contemplated in clause 12.1 of the Hartmann Family Trust Deed (Reg No. TMP 679/1984) occurred on 22 January 2022.

(ii) The costs of suit are to be paid from the Trust estate.'

JUDGMENT

Baartman JA (Unterhalter JA and Kganyago AJA concurring)

Introduction

[1] On 22 February 2024, the Bloemfontein Division of the High Court, *per* Mgudlwa AJ (the high court) dismissed an application for a declarator to the effect that a 'distribution event', as contemplated in clause 12.1 of the Hartmann Family Trust (the Trust) had occurred on 22 January 2022, and consequential relief directing the trustees to act in accordance with the declarator sought. The high court held that the applicants lacked locus standi and dismissed the application. Daffue J, in the absence of Mgudlwa AJ, granted leave to appeal to this Court.

[2] The background facts are the following. I refer to the parties by their names so as to make it easier to follow the family relationships, no disrespect is thereby intended. In 1983, the late Mr and Ms Hartmann (the founders 'Faith and Johan') established the Trust. Faith and Johan are the parents of Mark Keiser Hartmann,

the third appellant, (Mark) and Inge Joanne Hacker, the first respondent, (Inge). The siblings are the Trust's capital beneficiaries. On 21 February 2020, Mark was removed as a trustee. The reasons for his removal are irrelevant to this judgment.

[3] Mark is the father of Tristan and Jean-Gabriel Hartmann the first and second appellants, (Tristan and Jean-Gabriel). When the application was launched Tristan and Jean-Gabriel were discretionary income and contingent capital beneficiaries of the Trust. Inge and her husband Timothy are also beneficiaries under the Trust. At all relevant times, Inge, Timothy and Wendy Fiona Hay, the third respondent, (Wendy) were the Trust's trustees (the trustees).

[4] In terms of clause 12.1 of the Trust Deed, the Trust capital is to be finally distributed to the capital beneficiaries six months after the death of the surviving, founder unless the trustees determined a later date.[1] Faith, the last surviving founder, died on 22 July 2021. Clause 6.1 of the Trust Deed disqualified Inge and Timothy from taking a decision in relation to the distribution event. Only Wendy could do so. Clause 6.1 provides that:

'Proceedings of Trustees

6.1. Notwithstanding anything to the contrary herein contained, no power or discretion vested in or granted to the trustees to pay any income or capital of the trust to any beneficiary who is a trustee may be exercised unless a majority of the trustees, excluding the trustee who is a beneficiary, vote in favour of that exercise. The same provisions shall apply in respect of benefits to the spouse of a trustee.'

[5] On 26 September 2022, Tristan and Jean-Gabriel sought of the trustees 'confirmation . . . when the final distribution of the trust capital per clause 12.1 of the Trust Deed would take place'. In correspondence, dated 15 November 2022, Inge replied as follows:

[1] Clause 12.1 is quoted in para 15 below.

'. . . In accordance with clause 12.1 of the Deed of Trust, the trustees have decided that there are good and sufficient reasons to determine a later date for the final distribution of the trust capital. The decision to postpone the distribution date was made in the best interests of all the beneficiaries.'

[6] Tristan, Jean-Gabriel and Mark disputed that a valid decision to extend the distribution date had been taken. It appeared to them that Inge and Timothy had taken part in the decision, despite being disqualified to do so by the provisions of the Trust Deed, and further, that the decision had been taken after the six months within which it could be taken. Despite the extensive exchange of correspondence, the parties could not resolve their differences. Tristan, Jean-Gabriel and Mark brought an application seeking the following order:

'1 It is declared that the "distribution event" contemplated in clause 12.1 . . . occurred on 22 January 2022.

2. The respondents are directed forthwith to pay the Trust's trust income and capital in accordance with clause 12.3 of the Trust Deed.'

[7] As indicated above, the high court dismissed the application on the basis that Tristan, Jean-Gabriel and Mark lacked locus standi and therefore it did not pronounce on the merits. The central issues on appeal are as follows:

a. Whether Tristan, Jean-Gabriel and Mark had locus standi, and if so,

b. Whether declaratory relief should have been granted by the high court.

The merits turn on the following issue: whether a distribution event occurred on 22 January 2022 or whether a valid decision to extend the distribution event was taken.

Standing

[8] The high court held that only Mark and Inge were beneficiaries in terms of clause 12.3.2 of the Trust Deed. Further, that as Tristan and Jean -Gabriel were only per stirpes 'descendants of Mark …they can only qualify as descendants per

stirpes in the context of the Distribution Event upon the death of [Mark] or once [Mark] renounces his right as a beneficiary in accordance with clause 16 of the Trust Deed.' In respect of Mark, the high court held that he was not properly before the court as he had not attested to a confirmatory affidavit in the founding papers and that his attempt to remedy the defect in reply was futile.

[9] The issue of locus standi is resolved with reference to each of Tristan's, Jean-Gabriel's and Mark's status in relation to the Trust, at the institution of the proceedings. Clause 2.4 of the Trust Deed defines beneficiary as '. . . any person who may benefit under the deed'. It is common cause that Tristan and Jean-Gabriel were discretionary income beneficiaries under the Trust and had accepted and received benefits from the Trust. The trustees acknowledged this position, but sought to minimise the effect of it by alleging that Tristan's and Jean–Gabriel's 'right to benefit has always been subject to the absolute discretion of the Trustees'.

[10] In terms of clause 12.3.2, Tristan and Jean-Gabriel were also contingent capital beneficiaries. The clause provides as follows:

'12.3.2 the balance of the trust capital shall be paid to the descendants of JOHAN and FAITH per stirpes but no descendant whose parent, being a descendant of JOHAN and FAITH, is alive shall receive any payment except to the extent that that parent declines or refuses to accept payment from the trust '

[11] Mark was a capital beneficiary when the proceedings were instituted, although during this litigation, he renounced his benefits as a capital beneficiary in favour of Tristan and Jean-Gabriel who stepped into his shoes and became capital beneficiaries as contemplated in clause 12.3.2.

[12] In *Potgieter and Another v Potgieter NO and Others* (*Potgieter*),[2] this Court held that upon acceptance of a benefit under a Trust, the beneficiary acquires rights under the Trust and he/she have standing to institute proceedings relating to the administration of the trust. The high court's finding that Tristan, Jean-Gabriel and Mark lacked locus standi is contrary to the legal position explained in *Potgieter*, where this Court clarified the position as follows:

'I do not think it can be gainsaid that at the time of the variation agreement on 21 February 2006, the appellants enjoyed no vested rights to either the income or the capital of the trust. They were clearly contingent beneficiaries only. But that does not render their acceptance of these contingent benefits irrelevant. The respondents referred to no authority that supports any proposition to that effect and I cannot think of a reason why that would be so. The import of acceptance by the beneficiary is that it creates a right for the beneficiary pursuant to the trust deed, while no such right existed before. The reason why, after that acceptance, the trust deed cannot be varied without the beneficiary's consent, is that the law seeks to protect the right thus created for the first time. In this light, the question whether the right thus created is enforceable, conditional or contingent should make no difference. The only relevant consideration is whether the right is worthy of protection, and I have no doubt that it is. Hence, for example, our law affords the contingent beneficiary the right to protect his or her interest against mal-administration by the trustee.'[3]

[13] The trustees' reliance on the fact that the income that accrued to Tristan and Jean-Gabriel as income beneficiaries was subject to the Trustees' absolute discretion is irrelevant to their standing in these proceedings. Tristan and Jean-Gabriel enjoyed rights as income beneficiaries and contingent capital beneficiaries. Whether the trustees chose to make distribution to them as income beneficiaries matters not. Following *Potgieter*, it is their rights as beneficiaries that secure their locus standi. I conclude that Tristan, Jean-Gabriel and Mark had standing to institute these proceedings either individually or jointly, or in some

[2] *Potgieter and Another v Potgieter NO and Other* [2011] ZASCA 181; 2012 (1) SA 637 (SCA) para 18.
[3] Ibid para 28.

combination, that suffices for the purposes of seeking the declaratory relief that they have.[4]

Mootness

[14] In the high court, the trustees alleged that the appeal was moot. There is no merit in this submission. There is a live dispute between the parties as to whether a lawful decision was taken to postpone the distribution date. An authoritative resolution of this dispute will have practical effect. Therefore, the defence of mootness cannot be upheld.

The merits

[15] This brings me to the merits of the application. It is in issue whether a 'distribution event' occurred on 22 January 2022 or was postponed. Clause 12.1 provides for a 'distribution event' as follows:

'THE TRUST CAPITAL

12.1. The trust capital shall be distributable 6 months after the death of the survivor of JOHAN and FAITH (the date on which the period of 6 months expires being "the distribution event") – provided that if the trustees in their absolute discretion consider that there are good and sufficient reasons for an earlier or later date being regarded as the distribution event they may in their discretion determine an earlier date or (before the expiry of the said period of 6 month) a later date which is not later than 50 years after the date of the death of the survivor of JOHAN and FAITH and the date so determined shall then be deemed to be the distribution event.'

[16] The principles governing the interpretation of legal instruments and statutes are now firmly established.[5] In *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others*,[6] this Court cautioned that

[4] *Gross and Others v Pentz* 1996 (4) SA 617 (A); [1996] 4 All SA 63 (A).
[5] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18; *Airports Company South Africa v Big Five Duty Free (Pty) Ltd and Others* [2018] ZACC 33; 2019 (2) BCLR 165 (CC); 2019 (5) SA 1 (CC) para 29.
[6] *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA) para 25.

‘. . . the triad of text, context and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitutes the enterprise by recourse to which a coherent and salient interpretation is determined’.

[17] The trustees relied on the bracket insets ‘(the date on which the period of 6 months expires being “the distribution event”)’ to contend that clause 12.1 ‘. . . does not impose, as a material limitation on [their absolute discretion] that both the decision to postpone the date, and the actual date be determined before the expiry of the six-month period.’ Further that ‘there is no provision in the Trust Deed which expressly requires the determination of a later date to be regarded as the “Distribution Event”, to be fixed before the period of 6 months as contended for by the appellants.’

[18] I disagree. The principles of interpretation require that the words of the text, even those in brackets, must be given meaning. Applying the above principles to clause 12.1, I am persuaded that a composite decision: (1) to extend the distribution date and (2) to set a new date for distribution of the trust capital, is envisaged. Contrary to the trustees’ contention, that decision must be taken within six months of the death of the last surviving founder. It is instructive that clause 12 is introduced with the words ‘[t]he trust capital *shall* be distributable 6 months . . .’ (own emphasis). It is inconceivable that the founders would thereafter introduce an open-ended discretion to be exercised up to 50 years hence. The interpretation that within the 6-month period, the trustees must make a decision as to whether a shorter or a longer period will apply and, if so, to fix the distribution date, in addition to being sensible, does no violence to the trustees’ discretion; it only compels them to take the decision within the stipulated period.

[19] Clause 6.1 of the Trust Deed is an example of the founders' intention to create certainty. The clause in unambiguous terms excludes certain trustees from taking the decision under discussion. Only Wendy was authorised to take the decision. That was common cause between the parties. The circumstances surrounding the apparent decision to extend the distribution event appear from the answering affidavit, attested to by Inge, to be as follows:

'36.3. On 23 July 2021, the day after my mother died, the Trustees discussed the circumstances surrounding the occurrence of the Distribution Event. At this time, the precarious financial circumstances of the Third Applicant which had been caused by the agreements which he had personally concluded on 27 September 2017 in favour of New Dawn Investments (Pty) Ltd were of notable concern to the Trustees, as the extent of the Third Applicant's liabilities which had since arisen would unquestionably damage the degree to which he and the First and Second Applicants would be able to benefit from the Trust upon the occurrence of the Distribution Event.

36.4. Over and above the challenges posed by the Third Applicant's financial position, the structural matrix of the Trust's capital asset base, consisting of Bex Hotel (Pty) Ltd (at that point in Final Liquidation), John Michael (Pty) Ltd, and Mandalay Investments (Pty) Ltd, would require the Trustees to take further legal and professional advice in order to determine the most efficient and cost effective methods of distributing the Trust Capital that would be to the best benefit of the Trust beneficiaries, and accordingly fulfil the statutory duty imposed on the Trustees by Section 9(1) of the Trust Act.

36.5. As such, and in accordance with Clause 6.1 and Clause 12.1 of the Trust Deed, the decision of the Third Respondent was to postpone the occurrence of the Distribution Event. This decision of the Third Respondent was later ratified in accordance with Clause 6.4 of the Trust Deed on 31 October 2022.'

[20] Wendy filed a formulaic confirmatory affidavit. More was needed. This is so as she was the only trustee authorised to take the decision. It is unclear when she took the decision, assuming she did. Clause 6.2 read with clauses 6.3.1, 6.3.3 and 6.4, provides that the trustees may make decisions for the Trust either at a

meeting of trustees duly called at which decision-making is by majority vote, or by taking a decision by resolution in writing signed by all the trustees.

[21] The 23 July 2021 meeting does not meet any of these requirements. It is of no assistance that Inge alleges that Wendy took the decision in accordance with clauses 6.1 and 12.1. The decision-making authority was time-bound. Wendy had to indicate when and in what circumstances she took the decision. She did not; there is therefore no evidence that a valid decision was taken to postpone the distribution event.

[22] In the exchange of correspondence preceding litigation, the trustees annexed a list of trustees' decisions taken from which it appeared that the trustees had on 31 October 2022: '. . . resolved to ratify [their] decision taken on 23 July 2021 to postpone for the time being the final distribution date of the HFT'. In addition, in correspondence dated 2 June 2023, Inge indicated that '[t]he trustees had resolved that the distribution of the trust capital will take place on 29 February 2024'. The explanation given in the answering affidavit that Wendy took the decision to postpone the final distribution date is also at odds with the 31 October 2022 decision, which indicates that the trustees had taken a decision on 23 July 2021 to postpone the final distribution date.

[23] As indicated above, a composite decision is envisaged in the Trust Deed. Consequently, only Wendy could decide to postpone the distribution event and only she could determine a new date. Absent evidence that Wendy took a decision to postpone the distribution and fixed a date within the prescribed six months, the decision envisaged in clause 12.1, no decision to extend the distribution event took place in terms of the Trust. Inge's version of events suggests that she and Timothy were involved in the decision to set a date for the distribution event. If they did, that would have been irregular, as neither was authorised to take that decision.

[24] At the hearing, the trustees wisely abandoned reliance on ratification. Therefore, Inge and Timothy's possible involvement does not arise, and it is unnecessary to deal with ratification. However, I observe that a principal can only ratify an act of his or her agent within the time that the act can lawfully be performed. Wendy's decision could therefore not have been ratified after the prescribed six-month period as the answering affidavit suggests. In addition, Inge and Thimothy had no authority to take the decision, and so had no power to ratify it.

[25] It follows that in the absence of a valid decision by Wendy to extend the final distribution event to a specified date, no decision to extend was taken. Therefore, the distribution event occurred on 22 January 2022.

[26] As indicated above, Tristan, Jean-Gabriel and Mark sought declaratory relief. In terms of s 21(1)*(c)* of the Superior Courts Act, 10 of 2013, high courts have jurisdiction to grant declaratory relief. The section provides as follows:

'(1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power –

. . .

(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding, that such person cannot claim any relief consequential upon the determination.'

[27] To succeed, an applicant must satisfy two requirements: (a) the applicant has an interest in an existing, future or contingent right; (b) once a court is so satisfied, it must consider whether to grant the relief. In the exercise of the court's discretion, it is permissible to consider whether other remedies are available to

the applicant. However, the availability of other remedies is not a bar to granting declaratory relief.[7]

[28] In the circumstances of this matter, it is obvious that Tristan and Jean-Gabriel have an interest in the relief sought. Whether Mark renounced his rights under the Trust in favour of Tristan and Jean-Gabriel before or after the initiation of proceedings makes no difference. It is plain that the appellants, whether individually or jointly have a clear interest in securing an authoritative ruling as to whether and when the distribution event took place. As a result, I am persuaded that these are appropriate circumstances in which to grant the declarator sought.

[29] Tristan, Jean-Gabriel and Mark sought costs against the trustees in their personal capacity. In the absence of *mala fides*, trustees should not readily be saddled with costs orders. In the circumstances of this matter, there is no suggestion that the trustees acted mala fide. Although they were mistaken in their interpretation of the Trust Deed, their opposition to the relief sought was not *mala fide*. Accordingly, although the costs must follow the result of this appeal, those costs should be paid from the Trust estate.

[30] I, for the reasons stated above, make the following order:

1 The appeal is upheld with costs, the costs to be paid from the Trust estate.

2 The order of the high court is set aside and replaced with the following:

‘(i) It is declared that the “distribution event” contemplated in clause 12.1 of the Hartmann Family Trust Deed (Reg No. TMP 679/1984) occurred on 22 January 2022.

(ii) The costs of suit are to be paid from the Trust estate.’

[7] *Trinity Asset Management (Pty) Ltd and Others v Investec Bank Ltd and Others* [2008] ZASCA 158; 2009 (4) SA 89 (SCA); [2009] 2 All SA 449 (SCA).

E BAARTMAN
JUDGE OF APPEAL

Appearances:

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Instructed by: Kaplan Blumberg Attorneys, Gqeberha
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