

NOT QUITE A BENEFICIARY OF A TRUST: NO *LOCUS STANDI* FOR ORDER TO SEE ACCOUNTS

N and Others v Maluleke N.O and Others (5983/2021) [2022] ZAGPPHC 911 (25 November 2022)

There are many permutations in trust deeds regarding the way in which the beneficiaries shall be identified. In the trust deed relevant to this matter, the trustees were given an absolute discretion to choose beneficiaries from a certain list.

If you are on this list and not identified by trustee resolution as a beneficiary, would you nonetheless have a right to ask that the bank accounts of the trust had to be frozen and the trust accounting records provided to you? No, said the Court here, as the applicant had no locus standi in this event. (The judgment is a good reminder too of how powerful a tool a trust deed is. Trust founders should ensure that their legitimate wishes are correctly recorded therein and a court will give effect thereto.)

The Judgment can be viewed [here](#).

FACTS

In this matter, Selina N and Mpho N sought orders against the current trustees of the Nkoanyana Trading Trust (“the Trading Trust”) and the TS N Legacy Trust (“the Legacy Trust”) to, amongst others: (i) freeze the accounts of the trusts; and (ii) to receive the accounting and financial management reports for a stipulated period.

Selina and Mpho were previously trustees of the trusts but were removed from that office by an order of court some time ago. (*The present application is interlocutory to the main application in which Selina and Mpho sought the removal of the trustees of both Trusts.*)

Both Trusts were established by the late Tsakane Stanley. The Trusts were interlinked, the Legacy Trust being the sole beneficiary of the Trading Trust. Clause 1.1.2 of the Legacy Trust defined “the beneficiaries” as “that person or other persons who may from time to time be selected by the Trustees in their entire and absolute discretion to be a beneficiary in respect of the income or capital profits or capital gains or capital or either under the Trust, from amongst the members of the classes consisting of ...” and this is then followed by a list of names, including the “biological descendants of the beneficiaries” included in the list.

This application turned on whether Selina and Mpho had *locus standi* (loosely interpreted, this refers to the right to bring an action, to be heard in court, or to address the court on a matter before it) to seek the orders that they did against the Trusts.

Selina and Mpho were reflected in the list of persons that were potential beneficiaries of the Legacy Trust. This, they argued, combined with the fact that they previously were trustees of the trusts, meant that they had a “vested” or “contingent” interest in the affairs of the trusts. In other words, because they were named as *potential* beneficiaries of the Legacy Trust (and previously were trustees), their *interest* in this matter was established by their “vested” or “contingent” interest in the Legacy Trust which, in turn, was the sole beneficiary of the Trading Trust.

It was common cause that the current trustees of the Legacy Trust did not until February 2022 exercise their discretion (in terms of the Trust Deed) to make a selection from the list of potential beneficiaries. When the selection was made, neither Selina and Mpho nor any of their biological descendants were included as beneficiaries of the Legacy Trust.

HELD

- Inasmuch as Selina and Mpho were listed as potential beneficiaries, the Legacy Trust specifically provided that the actual beneficiaries would only be those selected from the list and who the trustees in their “entire and absolute discretion” selected. Absent a selection by the trustees, none of the persons in the list contained in the Trust Deed could claim any right to any benefit from the Legacy Trust.
- As such, they had no right, interest or *locus standi* herein.
- In addition, even though the current trustees (as did the ex-trustees) took a while to eventually appoint beneficiaries of the Legacy Trust, this did not transmute potential beneficiaries named in the list into beneficiaries.
- The fact that Selina and Mpho previously were trustees could not change this position, as they had tried to argue. The office of trustee is a fiduciary one which is separate and distinct from being a beneficiary and the holding of such office similarly does not transmute the trustee into becoming a beneficiary.
- Accordingly, since Mpho and Selina could not be regarded as beneficiaries of the Legacy Trust, they had no legal interest in the affairs of the Legacy Trust and had none of the rights (contingent, vested or otherwise) conferred upon either beneficiaries or trustees in terms of the Trust Property Control Act to demand freezing of the accounts or access to accounting records.

CONCLUSION

The application accordingly did not succeed.