



SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY – JUDGEMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 30 March 2021

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgement of the Supreme Court of Appeal.

THETELE JOSEPH MALATJI v MAPONYA LAZARUS LEDWABA NO AND OTHERS (Case no 1136/19) [2021] ZASCA 29

The Supreme Court of Appeal (SCA) today upheld the appeal of the appellant, Mr Thetele Joseph Malatji, against a decision of the Limpopo Division of the High Court, Polokwane (high court) which had dismissed his application to declare the election and appointment of a Board of Trustees of the Mamphoku Makgoba Community Trust (the trust) unlawful and to set it aside.

On 4 December 2018 the SCA had made an order directing that the first and second respondents, Mr Maponya Lazarus Ledwaba and Ms Gisela Stols, the trustees of the trust at the time (the trustees), convene and hold a general meeting of the trust for the purpose of nominating and appointing a new Board of Trustees, in terms of the trust deed. The SCA had directed that only the 603 beneficiaries whose names appear on the list of beneficiaries were entitled to attend and vote at the meeting.

A general meeting was held accordingly and a new Board of Trustees was appointed. However, the trustees invited families of beneficiaries who had died to send a representative to the meeting to vote as a proxy on behalf of the deceased beneficiary. The trustees further resolved at the meeting that persons who had arrived at the meeting claiming to be representatives of absent beneficiaries could vote, as proxies on behalf of the absent beneficiaries, without any written mandate from the absent beneficiary.

The SCA held that the procedure was in breach of its order and the trust deed, which did not provide for voting by proxy.

At the meeting, attended by 344 persons, an agreement was reached between competing factions in the meeting that 15 new trustees would be elected and that each person present would be entitled to cast only one vote. In the result no candidate secured a majority of votes and in some instances candidates who had secured less than 10 votes were declared to have been elected. The SCA held that in terms of the trust deed a candidate was required to secure a majority of votes to be validly elected.

The SCA therefor declared the election unlawful and set it aside. The SCA ordered the trustees to convene and hold a fresh general meeting which may be attended only by the 603 listed beneficiaries or their successors, determined as prescribed in the trust deed and listed in the trust register. It further directed that no-one may be permitted to vote by proxy and that each beneficiary shall be entitled to cast one vote in respect of each appointment which will be made.