



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 06 January 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Haitas Konstantinos v Froneman and Others (1158/2019) [2021] ZASCA 01 (06 January 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against an order of the Gauteng Local Division of the High Court, Johannesburg (Matojane J). The appeal involved an application to remove two trustees from office and turned mainly on the issue of whether a breakdown in the relationship between beneficiary and trustees justifies removing the trustees from office in terms of s 20(1) of Trust Property Control Act 57 of 1988 (the Act) or the common law

This matter began with an urgent application by the appellant in the high court on 16 April 2019 when he was 19 years old. The main relief sought was the removal of Mr Froneman and Ms Haitas as trustees and for the Master to urgently appoint two more trustees, one of whom should be independent. The high court dismissed the application and made no order as to costs.

The crux of the appeal involved three broad categories of complaints levelled against the trustees, which the appellant contended justified their removal from office in accordance with s 20(1) of the Act or the common law. These were, a lack of disclosure and transparency in regard to the financial statements of the Trust and the trust companies; the refusal of the trustees to maintain the appellant; and certain payments made to Ms Batista who had been the deceased's romantic partner since 2013.

On lack of disclosure and transparency, the court found that the trustees furnished the appellant with all audited financial statements, save for the 2010 financial statements. The court held that the trustees were, in some respects, negligent in their maintaining of proper accounting records. However, the information that is available was provided to the appellant once he was a trustee. The court held further that it was not necessary to apply for the removal of the trustees to acquire financial disclosure.

One of the appellant's grievances was the refusal by the trustees to maintain him, stating that the appellant was not entitled to any distribution from the Trust until he turned 23 years old. Although the Trust Deed gave the trustees a wide discretion regarding the allocation and distribution of trust income, the trustees were adamant that the appellant should make an application for maintenance to the Trust which they would consider accordingly. The court held that the appellant is entitled to an income from the Trust for his education and general well-being. The court cautioned that the trustees should carefully consider the appellant's needs to avoid further litigation.

While refusing the appellant maintenance, the trustees approved foreign exchange payment to Ms Batista's Panama based company for services rendered. The appellant argued that these payments were illegal and imperiled the Trust and that they resulted in a loss of R12 000 in respect of value added tax which would have been avoided had Ms Batista invoiced the Trust in her personal capacity. The court found that these payments were made at the instance and upon the instruction of the deceased, and for services rendered.

The core issue for determination, said the court, was whether the conduct of the trustees justified their removal in terms of s 20(1) of the Act, alternatively the common law. In general, the court will exercise its common law jurisdiction to remove a trustee if the continuance in office of the trustee will be detrimental to the beneficiary or will imperil trust assets. In certain circumstances it is not necessary for there to be a finding of dishonesty, gross inefficiency or untrustworthiness on the part of the trustee and a conflict of interest may be sufficient justification for the removal of a trustee. The appellant argued that even an innocent trustee can be removed for conflict of interest. The court found that, irrespective of whether the common law or s 20(1) is utilised, the courts have emphasised that when a deceased person deliberately elects specific persons to carry out his or her wishes, a court should be slow to interfere. The court held further that there is nothing to suggest any impropriety in the conduct of the trustees and that a breakdown of the relationship between a beneficiary and the trustees does not justify the removal of the trustees.

The appeal was dismissed with no order as to costs.
