



## THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

### **MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

#### ***Joan Cynthia Griessel N.O. & others v De Kock (334/18) [2019] ZASCA 95 (6 June 2019)***

**From:** The Registrar, Supreme Court of Appeal

**Date:** 6 June 2019

**Status:** Immediate

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

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Today the Supreme Court of Appeal (SCA) upheld the appeal by the Appellant to a limited extent.

Arathusa Family Trust (the trust) was created by two sisters in 1999. The trust was a 100% shareholder in a company called Manyeleti (Pty) Ltd (the company), which owned a farm that was part of a game reserve. The three trustees appointed in terms of the trust deed were the two sisters (first and second applicant) and the third applicant, a chartered accountant. The trust deed gave the trustees the power to, within their discretion, select beneficiaries from time to time from amongst those described as 'potential beneficiaries'. The potential beneficiaries were the first and second applicant and the second applicant's three children. All the potential beneficiaries had been afforded the right to visit the farm with their families on vacation on a rotational basis.

During 2015, there was a difference of opinion over the proposed development of the farm for commercial use. The first respondent was opposed to the idea, while the rest of the family supported it. The disagreement culminated in the trust deed being amended so as to exclude the first respondent as a potential beneficiary. Aggrieved by that decision, the first respondent approached the Gauteng Division of the High Court, Pretoria seeking an order of reinstatement as a potential beneficiary. That litigation was subsequently settled on the basis that the purported amendment of the trust deed was of no force and effect. Despite this, the trustees refused to allow the first respondent to continue visiting the farm. The parties could not agree on the import of their settlement agreement. This prompted the first respondent to institute fresh litigation in the Gauteng Division of the High Court, Pretoria (court a quo), seeking an order reinstating his rights as a beneficiary under the trust and (ii) removing the trustees from office as trustees of the trust. That application was opposed by the

trustees and the company. The basis of the trustees' opposition of the matter was that the first respondent was only a 'potential beneficiary' in the trust, had no vested right in the trust property and, accordingly, had no rights that he could protect. They contended that notwithstanding the fact that the first respondent and other potential beneficiaries had previously been allowed to occasionally occupy the farm, no vesting of rights was consequent upon that occupation, as the farm in question was owned by the company and not the trust. The company made common cause with the trustee's opposition of the matter. The court a quo reasoned that the law did not allow the trustees to withhold the benefit enjoyed by the other potential beneficiaries from the first respondent simply because the rest of the family had issues with him. It accordingly found that the trustees had unlawfully discriminated against the first respondent. It ordered the trustees and the company to reinstate the first respondent's rights as a beneficiary under the trust. Although it did not terminate the trusteeship of the three trustees, it directed the Master of the High Court to appoint an additional independent trustee. It further ordered the trustees and the company to pay the costs of the application on a punitive scale.

In this court, the appeal was against the order the court a quo. The issues for determination were (i) whether leave to appeal should be granted and, in the event that leave is granted; (ii) whether the first respondent, as a beneficiary of a discretionary trust, acquired rights as against the trust which were capable of protection; (iii) and if so, whether the court a quo was correct in granting an order reinstating the first respondent's access to the farm, directing the Master to appoint an additional trustee, and issuing a punitive costs order. The court emphasised that trustees have an obligation to treat all the beneficiaries even-handedly. It stated that as a beneficiary, the first respondent had a right to be protected against arbitrary and discriminatory treatment. It pointed out that the fact that the trustees regarded the first respondent as obstructive and contrarian did not suffice as justification for treating him less favourably. It found that the trustees unfairly discriminated against the first respondent.

The application for leave to appeal was granted and the appeal succeeded only to a limited extent. The order of the court a quo was set aside and replaced with one ordering the trustees to reinstate the applicant's rights a beneficiary under the trust and holding the trustees and the company jointly and severally liable for payment of the costs of the application heard by the court a quo. The court further ordered each party to pay its own costs of the appeal.