

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

DATE 08 November 2022

J. Erasm
SIGNATURE

Appeal case number : A85/19

In the matter between:

JACOB ERASMUS COETZER

FIRST APPELLANT

JACON ERASMUNS COETZER N.O.

SECOND APPELLANT

ANNEKE COETZER N.O.

THIRD APPELLANT

and

ANNEKE COETZER

RESPONDENT

**REASONS FOR VARIATION OF ORDER IN TERMS OF RULE 42(1)(b) OF THE
RULES OF COURT**

MADIBA AJ

[1] The court delivered judgment on 19 August 2022 in the above appeal. The appeal was upheld. Subsequently a letter was addressed by attorneys of the appellant to the judges who sat in the appeal, drawing their attention to an error in the order that was finally granted. The appeal order upheld the appeal with costs without pronouncing on the order of the court *a quo* in case 57431/2011, by setting such order aside and substituting it with an order of the appeal court. A patent error was therefore committed which in our view can be corrected without the necessity of the parties engaging further costly processes.

[2] Rule 42 of the Rules of Court provides:

“[1] The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected rescind or vary:

- (a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
- (b) An order or judgment in which there is an ambiguity or a patent error or omission, but only to the extent of such ambiguity, error or omission;
- (c) An order or judgment granted as a result of a mistake common to the parties;

[3] While it is trite that the court is now *functus officio*, no prejudice will befall the respondent in that the patent error or omission does not go into the merits of the case. Exceptional circumstances prevail, why a route which will obviate costs to the litigants is preferred and is in the interests of justice. The correction in no manner interferes with or detracts from the findings of this court. Rule 42 (1)(b) is in the circumstance most appropriate.

[4] It was common cause that the respondent amended certain prayers in her declaration and that the claims adjudicated upon are such as appears in paragraph [3] of the judgement of the court *a quo*. As stated in the heads of argument of counsel for the appellant:

“The Court *a quo* dismissed most of the relief sought by the respondent, it held that the trust is not the *alter ego* of the first appellant but granted an order setting aside a part of the settlement agreement relating to the trust and ordered the first respondent to make payment to the respondent of an accrual claim based on the equity in the trust.”

Counsel for the Respondent also stated:

“The Court *a quo* ordered that the respondent is entitled to share in the accrual of the estate of the first appellant only in respect of the equity of the JAC Family Trust that excludes the loan account of the appellant”

[5] Leave was granted by the Court *a quo* to appeal the whole judgment in case 57431/2011. The Order appealed against appears at Volume 9 of the record pages 848 and 849.

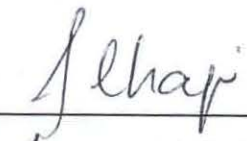
[6] The following order is granted:

1. The Order made in this appeal on 19 August 2022 is varied and is substituted by the following order:

- 1.1. The appeal is upheld with costs;

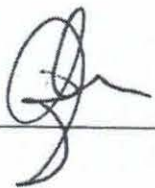
- 1.2 The order of the court *a quo* is set aside and is substituted with the following:

- ‘All the plaintiff’s claims are dismissed with costs


MADIBA S S

(ACTING JUDGE OF THE HIGH COURT)

I agree,



NDLOKOVANE N

(ACTING JUDGE OF THE HIGH COURT)

I agree and, it is so ordered


TLHAPI V V

(JUDGE OF THE HIGH COURT)