IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Case No: 3793/2020

In the matter between:

BRITTANY VAN HEERDEN	**APPLICANT**
and	
BRIDGET ALEXA PICTON	**FIRST RESPONDENT**
BARRY MARK PICTON N.O.	**SECOND RESPONDENT**
(in his capacity as executor of the late estate LEONARD ERNEST VAN HEERDEN)	
GARETH JOSEPH VAN HEERDEN	**THIRD RESPONDENT**
THE MASTER OF THE HIGH COURT PIETERMARITZBURG	**FOURTH RESPONDENT**

ORDER

(a) It is declared that:

(i) the first respondent is a person who would have been entitled to inherit from the late Leonard Ernest van Heerden had he died intestate;

(ii) the first respondent is only entitled to receive a benefit from the estate of the late Leonard Ernest van Heerden that does not exceed the value of the share to which she would have been entitled in terms of the law relating to intestate succession;

(iii) the second respondent may not receive a benefit from the will of the late Leonard Ernest van Heerden; and

(b) The first and second respondents are directed to pay the costs of the application jointly and severally, the one paying the other to be absolved.

JUDGMENT

MOSSOP AJ:

[1] Mr Leonard Ernest van Heerden (the deceased) was married on three occasions during his lifetime. From his first marriage, the first and third respondents were born. From his second marriage, the applicant was born. The applicant is accordingly the first and third respondent's half-sister. From the third marriage, no children were born. That marriage was still extant when the deceased died, but he and his third wife were no longer living together as she had left South Africa amid allegations of fraud perpetrated by her on the deceased.

[2] Prior to his passing, the deceased had been in poor physical health. He did not have a will but recognised that he needed one. He ultimately called upon a friend of his, Mr Nathaniel Tarr (Mr Tarr), to draw his will. Mr Tarr was not ordinarily a person who would be called upon to draw a will but, remarkably, it appears that he had some experience in doing so. The will that he drew was typed and fills five pages. It is slightly unusual in that it contains a narration of the difficulties that the deceased experienced with his third wife, and it details the deceased's view of the circumstances under which she left South Africa. Other than that, the will contained clauses that would be expected to be found in a document of that nature.

[3] In terms of the will, the second respondent, who is the husband of the first respondent, was appointed as the deceased's executor, failing whom, the first respondent was to be so appointed. The deceased stipulated that upon his death, his estate was to be equally divided between his three children. The will also contained the following clause:

‘I attach hereto a schedule of various items of my belongings on which schedule I have recorded the names of parties to whom the items specified in the Schedule will be distributed upon my death and I authorise and direct my EXECUTOR to do all such things as may be necessary to give effect to the distribution of such items.’

[4] A schedule was attached to the will (the final schedule). Despite what the deceased stated in his will, he did not personally record the names of the beneficiaries to inherit the assets described in the final schedule, nor did the drafter of the will, Mr Tarr do so. The final schedule, like the will, was typed by Mr Tarr. It was four pages long and it grouped the deceased’s moveable assets into categories based on where in his house they were to be located, for example, ‘Garden/Other’, ‘Garage’, ‘House/Lounge’, ‘Guest Bedroom 1 (next to lounge)’ etc. In all, there were nine such categories that dealt with 69 moveable assets of the deceased. Each asset was numbered in the category in which it was placed and had a line next to the description of each asset. The line was intended to receive the name of the beneficiary who was to acquire the specific asset. When the final schedule was typed, the lines did not bear the names of any beneficiaries.

[5] The will and final schedule was signed by the deceased on 9 March 2018. Each page of the will, including the final schedule, recorded the name and signature of the witnesses to the will and also bore the signature of the deceased. The deceased died five days later, on 14 March 2018. The will, including the final schedule, was lodged with, and accepted by, the fourth respondent, the Master of the High Court.

[6] The focal point of this matter is not the will or the manner of its drafting, but the final schedule. The initials and full surnames of the beneficiaries who were to receive the assets described therein were inserted on the first page of the final schedule. On the other pages, only the initials of the beneficiaries were inserted. All of the insertions were in manuscript. Of the 69 identified moveable assets, the final schedule provided that 36 assets were awarded to the applicant, 31 assets were awarded to the first respondent and 2 were awarded to the third respondent.

[7] The applicant asserts that the manuscript insertion of the identity of each beneficiary appearing on the final schedule is the handwriting of the first respondent. She contends therefore that the provisions of section 4A of the Wills Act 7 of 1953 (the 'Act') are of application. The notice of motion consequently claims the following relief

'1. The First Respondent and the Second Respondent be disqualified from receiving any benefit from the will of the late LEONARD ERNEST VAN HEERDEN;

2. Cost of the application against First Respondent and the Second Respondent, jointly and severally, the one paying, the other to be absolved;

3. In the alternative to Prayer 1 above, that the First Respondent and the Second Respondent be limited to inheriting their intestate portion of the Estate of the Late LEONARD ERNEST VAN HEERDEN only.'

[8] Section 4A of the Act provides as follows

'(1) Any person who attests and signs a will as a witness, or who signs a will in the presence and by direction of the testator, or who writes out the will or any part thereof in his own handwriting, and the person who is the spouse of such person at the time of the execution of the will, shall be disqualified from receiving any benefit from that will.

(2) Notwithstanding the provisions of subsection (1)—

(*a*) a court may declare a person or his spouse referred to in subsection (1) to be competent to receive a benefit from a will if the court is satisfied that that person or his spouse did not defraud or unduly influence the testator in the execution of the will;

(*b*) a person or his spouse who in terms of the law relating to intestate succession would have been entitled to inherit from the testator if that testator has died intestate shall not be thus disqualified to receive a benefit from that will: Provided that the value of the benefit which the person concerned or his spouse receives, shall not exceed the value of the share to which that person or his spouse would have been entitled in terms of the law relating to intestate succession;

(*c*) a person or his spouse who attested and signed a will as a witness shall not be thus disqualified from receiving a benefit from that will if the will concerned has been attested and signed by at least two other competent witnesses who will not receive any benefit from the will concerned.

(3) For the purposes of subsections (1), and (2) (*a*) and (*c*), the nomination in a will of a person as executor, trustee or guardian shall be regarded as a benefit to be received by such person from that will.'

[9] Section 4A(1) of the Act sets out the general rule and disqualifies a particular class of persons, namely those who attest, sign (as a witness or in the presence of and by the direction of the testator) or write the will, from benefitting under that will, unless they are exempted by either section 4A(2)*(a)* or *(b)*. This disqualification exists in order to prevent falsity and fraud, and to prevent 'the exertion of undue influence over people in bad health or in feeble state of mind'.[1] This is because the fact that someone who stands to benefit from the death of a testator in terms of a will, and who is involved in the drawing of the very will in which that benefit is declared, ineluctably invites speculation that he or she may have improperly influenced the testator in the framing of his final testament, more particularly so where the will is executed at a moment of crisis in the testator's life.

[10] In *Blom v Brown*,[2] the Supreme Court of Appeal stated the following:

'That general principle set out in subsection 1 is subject to the qualification and exceptions set out in subsection 2. To answer the question posed by counsel: Section 4A(1), which encapsulates the general rule, operates without more to disqualify a particular class of persons, namely those who attest, sign (as a witness or in the presence of and by the direction of the testator) or write the will, from benefitting under that will, unless they are exempted by either subsections (*a*) or (*b*) of section 4A(2). Subsection 2(*a*) empowers a court to declare any such person who may be disqualified by the operation of subsection 1 to be competent to receive a benefit from the will if it is satisfied that such person (or such person's spouse) did not defraud or unduly influence the testator in the execution of the will. Unlike subsection 2(*a*), subsection 2(*b*) applies automatically – that is without the necessity for an order of court to be obtained. But like subsection 2(*a*), it too serves to exempt those who fall within the ambit of its scope from the operation of the general rule envisaged in subsection 1.'

[11] What section 4A(2) of the Act

'seeks to achieve, consistent with the common law, however, is to permit a beneficiary, who would otherwise be disqualified from inheriting, [the opportunity] to satisfy the court that he or she (or his or her spouse) did not defraud or unduly influence the testator in the execution of the will.'[3]

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[1] *In Re Estate Barrable* 1913 CPD 364 at 368.
[2] *Blom and another v Brown and others* [2011] ZASCA 54; [2011] 3 All SA 223 (SCA) para 19.
[3] Ibid para 22.

[12] The first issue to be determined is whether the provisions of section 4A of the Act apply to the facts of this matter. This is not the subject of any controversy. The first respondent does not deny that the manuscript insertions on the final schedule are hers. She claims to have completed the final schedule on the instructions of the deceased. The completion of the final schedule by the first respondent is sufficient to allow the provisions of section 4A to apply. See for example in *Ex Parte Searle*[4] where an heir was requested by the testator to insert his own name into a pre-printed will. As a consequence, he was prevented from inheriting. The involvement of the first respondent in populating the final schedule with names goes beyond the single act of insertion in *Searle*. The disqualification imposed by the Act consequently applies.

[13] The provisions of section 4A(2)*(a)* of the Act countenances a court permitting a disqualified beneficiary from being able to inherit if it is satisfied that there is no evidence of fraud or undue influence. Ms Coetzee, who appeared for the applicant, submitted that the onus of establishing that there was no fraud or undue influence rested on the first and second respondents. I think that she is correct in that submission. Section 103(1) of the Firearms Control Act 60 of 2000 (the 'FCA') utilises similar wording to that employed in the Act. In the FCA and in the Act, the default position is a disqualification, in the former of the right to possess a firearm and in the latter of the right to inherit. In the FCA that disqualification applies unless a court determined otherwise. In *S v Mkhonza*,[5] which dealt with the FCA, Wallis J held that the onus of satisfying the court on a balance of probabilities that it should determine otherwise rests on the accused person.[6] I can discern no reason why the same approach should not apply in this matter. It is therefore for the first and second respondents to place sufficient information before the court to satisfy the court on a balance of probabilities that they did not defraud or unduly influence the deceased. If this is not done, the disqualification must stand.

[14] The applicant alleges that before the final schedule was signed, there was an earlier schedule (the 'original schedule'). This was completed in manuscript by the

[4] *Ex Parte Searle* 1941 SR 92.
[5] *S v Mkhonza* 2010 (1) SACR 602 (KZP).
[6] Ibid para 35.

second respondent, apparently at the behest of the deceased. The layout of the original schedule was similar, if not identical, to the layout of the final schedule. Upon the original schedule being drawn up, the first respondent invited the applicant and the third respondent to indicate on it which particular assets they would like to inherit on the passing of the deceased. A copy of the original schedule is attached to the applicant's founding affidavit. It is a poor-quality photocopy but it is capable of being read. None of these allegations made by the applicant are disputed.

[15] When the original schedule was exhibited to the applicant, she noted that some of the assets identified therein were marked with an asterisk. This was apparently done, so she was told by the first respondent, to identify the asset so marked as being a high value asset. The applicant was also informed by the first respondent that these high value assets would be sold to pay for the deceased's medical expenses upon his passing and that, as a consequence, those assets could not be selected by the applicant as she would not receive them. Included in the original schedule, and marked with an asterisk, was a Peugeot motor vehicle (the 'Peugeot'). Apart from the allegation that the applicant was told that she could not select an asset marked with an asterisk, none of these allegations are in dispute either.

[16] The applicant made her election first. Included in her selection of assets was the Peugeot, which she selected, notwithstanding that it was marked with an asterisk. She inserted her name next to the vehicle, together with a question mark. Her explanation for adding the question mark is that she was querying why the Peugeot was even mentioned in the original schedule as she believed that the deceased had given her the vehicle during his lifetime. The third respondent, who had lived in the United Kingdom for a number of years, showed no interest in acquiring any of the moveable assets as transporting them to the United Kingdom would be impractical and costly.

[17] Ultimately, not all of the assets identified in the original schedule had a claimant. The assets with asterisks had no takers, save for the Peugeot. In addition, according to the applicant, the original schedule was incomplete in that it did not contain all the

moveable assets owned by the deceased: for example, certain kitchen equipment was not included. The original schedule also included items that had already been given away by the deceased. The applicant refers in this regard to a drum kit which she believed had already been given by the deceased to her sister. None of these allegations by the applicant are disputed either.

[18] The complaint of the applicant is that the final schedule did not reflect what was contained in the original schedule. All the assets that no-one had staked a claim to were awarded to the first arespondent. The assets marked with an asterisk were, likewise, all awarded to the first respondent, save for a bicycle that was awarded to the applicant. This included the Peugeot. An asset described as a Ducati motorbike, which was included in the original schedule was no longer included in the final schedule. These facts, too, are common cause.

[19] The applicant contends that the final schedule represents the wishes of the first and second respondents and not those of the deceased. This, so she submits, arises through either a fraud being perpetrated on the deceased or by virtue of the fact that he was unduly influenced by the first respondent. By making reference to the final liquidation and distribution account, the applicant in her heads of argument demonstrates that the moveable assets had a combined value of R323 800. Of those assets, the first respondent was awarded assets to the value of R266 413, which equates to 82 percent of the total value of all the moveable assets.

[20] The first respondent was intimately involved with the care of the deceased in the final days of his life. As regards the issue of the original schedule, the first respondent admits that her husband, the second respondent, drew it up at the request of the deceased. The first respondent admits that certain assets were marked with asterisks. The second respondent, who drew the original schedule, denied marking any assets with an asterisk. That they were marked is not in doubt: the markings may be observed on the poor-quality photocopy of the original schedule that is attached to the founding affidavit. The only person who could conceivably have marked the assets in that fashion, if it was not the second respondent, was the first respondent: the

applicant did not have the original schedule, the third respondent was in the United Kingdom and the deceased was not involved in the process of identifying his own assets.

[21] Once everyone had signified their preferences on the original schedule, images of the original schedule with the selections indicated thereon were sent by the first respondent, utilising the social media platform WhatsApp, to Ms Heather Tarr (Ms Tarr), the daughter of Mr Tarr, for her father to prepare the final schedule for attachment to the will. Once the will had been typed, the first respondent uplifted it from Mr Tarr and proceeded to the deceased's home. Concerning the manuscript insertions to the final schedule, the first respondent states that

'At his home on that day the Deceased asked me to write the names/identity of the respective beneficiaries alongside the items listed in the Schedule as per his instructions.'

She did so. She denies ever attempting to defraud or unduly influence the deceased or any of the other beneficiaries for that matter.

[22] The first respondent further submits that the deceased wanted her, and not the applicant, to have the Peugeot because the applicant allegedly failed to maintain the vehicle when it was in her custody. Where no interest was shown in respect of certain of the deceased's assets, the first respondent explains that she indicated her interest in them

'. . . by virtue of the omission of interest by Applicant and 3rd respondent and further to prevent the Deceased's third wife from stating an interest therein if she should have appeared on the scene.'

[23] It is apparent that the first respondent was the only person with the deceased when the final schedule was completed. The Tarrs, ultimately, were the witnesses to signing of the will by the deceased, which occurred at Mr Tarr's residence. However, the final schedule was not completed there. Ms Tarr states that the first respondent went to her father's residence on the morning of the signature of the will and uplifted the unsigned will from Mr Tarr. She and her father were informed by the first respondent that

'. . . the items on the schedule would be finalized that afternoon by writing the names of intended recipients onto the schedule with "LVH" [the deceased] present and that "LVH" would return to sign the finalized Will with the schedule appended, later that afternoon.'

[24] The second respondent confirms that the deceased requested him to compile the original schedule. He did so in manuscript. He has no idea what became of the original schedule (neither does the first respondent). He has no recollection of marking any of the assets with an asterisk but confirms that the assets so marked seem to carry a higher value. He confirms informing the intended beneficiaries that if the estate of the deceased was burdened with medical expenses, some of the assets would have to be sold and that the items sold would therefore not be capable of being inherited. He did not inform the proposed beneficiaries that they could not select certain of the assets and he does not believe the first respondent did so either. He, however, indicates that if the applicant was told this, he does not comprehend why she nonetheless selected the Peugeot but not any of the other asterisked items. He confirmed that the deceased was allegedly dissatisfied with the fact that the applicant did not maintain the Peugeot when the vehicle was in her possession. Generally, the answering affidavit of the second respondent conforms with the views of his wife, the first respondent, expressed in her answering affidavit. The third respondent's affidavit supports the first respondent's averments.

[25] There are aspects of the first and second respondent's version that need to be considered. Before doing so, it is worthwhile reiterating that virtually everything stated by the applicant is not disputed by the first and second respondents. I am inclined therefore to consider the applicant to be correct and truthful in what she has claimed and narrated. I turn now to consider those aspects that necessitate consideration:

(a) A significant consideration is that neither the first nor the second respondent state that the original schedule, with the preferences inserted, was ever exhibited to the deceased or was ever seen by him. It would have been expected that mention of this would have been made by one or both of them but this was not done. All that is stated by the first respondent is that the original schedule was sent electronically to Ms Tarr. If the deceased did see the original schedule, why did he not simply instruct Mr Tarr to type up the original schedule with the names of the beneficiaries as set out

therein? If he did not agree with the expressions of interest by his beneficiaries, why did he then not make the changes that he desired and then instruct Mr Tarr to type up the amended original schedule? When the final schedule was filled in by the first respondent, she makes no mention of the deceased referencing the original schedule. It seems probable, especially from the silence of the first and second respondents on this issue, that the deceased did not see the original schedule;

(b) The next consideration is why could the names of the beneficiaries not have been inserted in the presence of Mr and Ms Tarr when the will was signed? If the deceased had the original schedule with the preferences expressed thereon, he could have instructed the first respondent to insert the names in the presence of the witnesses which would have rendered it certain that there was no undue influence being applied. Instead, the secrecy of the completion of the final schedule raises the very spectre of undue influence;

(c) The first respondent's explanation that she claimed certain unclaimed assets to prevent the deceased's third wife from stating an interest in those asset is a troubling statement. The will, including the final schedule, has to be the expression of the deceased's wishes and not those of the first respondent. At no stage does the first respondent indicate that she disclosed her reasoning to the deceased or that the deceased instructed her to claim those assets. That creates the impression that she was able to claim them independently of whether the deceased desired this or not. Furthermore, it is not clear how the deceased's third wife could have participated in a will in which she was not named as a beneficiary. This is even more so given the introductory narration contained in the will that set out why the deceased believed she had left South Africa. Thirdly, even if the deceased's third wife had arrived on the scene and somehow demanded a share of his estate, of what concern was that to the first respondent? The assets were not hers;

(d) The applicant was instructed not to claim those assets marked with an asterisk as they were to be sold to cover the deceased's medical expenses. As a matter of fact, none of those assets were sold as the deceased's employers paid some of the deceased's medical expenses. All the assets marked with an asterisk, being 17 in all, were awarded to the first respondent, bar one, the bicycle;

(e) The applicant selected the Peugeot despite it being marked with an asterisk. It was, however, awarded to the first respondent. The first respondent asserts that this was the wish of the deceased, who complained that the applicant did not maintain the Peugeot when she had the use of it. I have serious misgivings over whether this was, indeed, the deceased's complaint. The applicant was at the relevant time a student and dependent upon her parents for her maintenance. The deceased paid maintenance to the applicant's mother at the rate of R4 000 per month. He could hardly have expected her to clothe, feed, educate herself and repair the motor vehicle on this amount. The deceased appears to have had a close bond with the applicant and his alleged views on the maintenance of the Peugeot by her seem unlikely;

(f) By virtue of the fact that the applicant used the Peugeot, the deceased must have been aware that she had a need for a motor vehicle. Notwithstanding this knowledge, the first respondent was also awarded a Nissan Qashqai motor vehicle. She thus received two motor vehicles and the applicant none. I do not suggest thereby that the applicant has been unfairly treated, but the award of the two motor vehicles to the first respondent seems contrary to the deceased's expressed intention that his children were to benefit from his will in equal shares;

(g) After the death of the deceased, the first respondent sent the applicant a WhatsApp voice note. A transcript of the voice note has been put up. In that voice note the following is stated:

'Just because I put my name next to the stuff, you were right my name is next to the Peugeot I didn't realise I had done that, I thought you had put your name next to it, but I don't want the Peugeot, so we need to sit down and we are happy for you to take whatever you want…'

The applicant had put her name next to the Peugeot. However, that was on the original schedule. The first respondent has never stated that she also put her name next to that vehicle on the original schedule. The only place where the first respondent and the Peugeot were linked was in the final schedule. The words, 'I didn't realise I had done that' therefore seems to indicate that the first respondent had unwittingly made an error. Of course, the error could not have been hers, it could only have been the deceased's because he, on the first respondent's version, determined who was allocated each asset. This would tend to indicate that the first respondent, and not the deceased, allocated the assets to the beneficiaries;

(h) The first respondent's generosity of spirit as reflected in the voice note was short-lived because she retracted her offer to give the Peugeot to the applicant, ostensibly because the applicant brought this application. The deceased died on 14 March 2018 and this application was only brought on 18 June 2020. Had the first respondent sincerely wished the applicant to have the vehicle, she had ample opportunity to formally indicate this fact. She did not do so. The reason behind the change of heart appears to be contrived.

[26] Allied to these facts is a further complaint of the applicant that the first and second respondents improperly utilised estate funds to modify the deceased's home after his death, ostensibly to make it capable of receiving tenants for the benefit of the estate. After a single tenant had been in occupation, the first and second respondents then purchased the home without having to pay for the modifications. I acknowledge that this conduct does not relate to the execution of the will but it shows a course of conduct that commenced with the original schedule.

[27] In *Spies v Smith*,[7] undue influence in a testamentary context was considered:

'A last will can be declared invalid where the testator is moved by artifices of a nature such as to justify their being equated, by reason of their effect, to the exercise of coercion or fraud, to make a bequest which he would otherwise not have made and which, therefore, would express another person's will rather than his own. In such a case we are dealing, not with the genuine wishes of the testator, but with the substitution of the wishes of another person, and the will is not maintainable.'

[28] In my view, the explanations proffered by the first respondent are not satisfactory. By conducting herself as she did, she gained an unfair advantage over the other beneficiaries. If the deceased was given the original schedule, which I have already found to be improbable, then it was falsely represented to him that the original schedule exhibited the true interests of the beneficiaries in his moveable assets. In truth it did not, because the applicant was told that the assets marked with an asterisk could not be claimed. Those assets were all subsequently awarded to the first

[7] *Spies, NO v Smith en andere* 1957 (1) SA 539 (A) at 539 (as per the English translation in the headnote).

respondent and were not later sold to defray the deceased's medical expenses. This gave the first respondent an unfair advantage. If the first respondent did not give the original schedule to the deceased, then based on what was previously stated in this judgment, it appears that the first respondent played a determinative role in concluding which beneficiary received which asset. The applicant in such circumstances would be correct in asserting that the final schedule reflected more the wishes of the first respondent than those of the deceased.

[29] There is no counter application to the applicant's application. There are, however, supplementary affidavits in the court file by the first and second respondents. Both are dated 28 October 2021. There was no application for a fourth set of affidavits to be delivered by the first and second respondents. Both affidavits are virtually identical in content and seek an order that the first and second respondents be declared competent to receive benefits under the deceased's will. No reference was made to these affidavits at the hearing and no application for their reception by the court was made. In the circumstances, I am not disposed to receive or consider them.

[30] After careful consideration, I am not persuaded that the applicant's allegations are without merit or that the first respondent and second respondents have demonstrated that there was no fraud on, or undue influence of, the deceased in the execution of his will. It follows that but for the provisions of section 4A(2)*(b)* of the Act, the first and second respondents would be disqualified from benefitting under the deceased's will. However, the first respondent would on the intestacy of the deceased have been an intestate heir of his, being the child of the deceased. The second respondent would not. By virtue of the provisions of section 4A(2)*(b)* and the judgment of the Supreme Court of Appeal in *Blom*, I am bound to find that section of the Act automatically exempts the first respondent from the operation of the general rule articulated in section 4A(1) of the Act. The first respondent is thus entitled to receive a benefit from the estate of the late Leonard Ernest van Heerden that does not exceed the value of the share to which she would have been entitled in terms of the law relating to intestate succession. The second respondent, who is not an intestate heir of the deceased may not benefit from the deceased's will given the finding of fraud or undue

influence. Section 4A(3) decrees that appointment as an executor constitutes a benefit.

[31] I accordingly make the following order:

(a) It is declared that:

(i) the first respondent is a person who would have been entitled to inherit from the late Leonard Ernest van Heerden had he died intestate;

(ii) the first respondent is only entitled to receive a benefit from the estate of the late Leonard Ernest van Heerden that does not exceed the value of the share to which she would have been entitled in terms of the law relating to intestate succession;

(iii) the second respondent may not receive a benefit from the will of the late Leonard Ernest van Heerden; and

(b) The first and second respondents are directed to pay the costs of the application jointly and severally, the one paying the other to be absolved.

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MOSSOP AJ

APPEARANCES

Counsel for the appellant	:	Ms A. R. Coetsee Instructed by: Desmond Mayne and Company 56 Kitchener Road Pietermaritzburg
Counsel for the respondent	:	Mr R. S. Frost SC Instructed by: MacArthur and Venniker Incorporated 25B Old Main Road Gillits
Date of Hearing	:	9 November 2021
Date of Judgment	:	19 November 2021