

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

DATE: 1 OCTOBER 2010

STATUS: Immediate

*Curators ad litem to certain potential beneficiaries of the Emma Smith Educational Fund v The University of Kwazulu-Natal & 28 other applicants*

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

The Supreme Court of Appeal today dismissed an appeal against a judgment and order by the high court that set aside a racially restrictive clause limiting the beneficiaries of the Emma Smith Educational Fund to white women; and overturned an amendment granted by the high court to a clause that potential bursars must have lived in 'Durban' for three years to qualify as such, by substituting 'the Ethikwini Municipality' for 'Durban'. The fund was established by a bequest to the then Natal University College in the will of Sir Charles George Smith, a prominent industrialist and politician, who passed away in 1941. Three-tenths of the residue of his estate – amounting to 42 000 pounds sterling - was bequeathed to the College, which accepted the bequest and established the Fund. The Fund is now administered by the University of Kwazulu-Natal, the eventual successor in title of the Natal University College. The University applied successfully to the high court to have the racially restrictive clause removed and the residential qualification amended. The curators ad litem for potential beneficiaries of the Fund appealed. The Supreme Court of Appeal held that there is a constitutional imperative to remove racially restrictive clauses that conflict with public policy from the conditions of an educational trust intended to benefit prospective students in

need, administered by a publicly funded educational institution such as the University, particularly given the fundamental values of our Constitution, of which the right to equality in particular was offended by this condition. The appeal against this part of the order was dismissed.

Sir Charles' will determined that beneficiaries of the Fund should have lived in 'Durban' for at least three years. The high court deleted this description and substituted 'the Ethekewini Municipality' in its stead. This part of the order was set aside on appeal as there was no evidence supporting the finding that the fact that a potential bursar had to live in 'Durban' would hamper the achievement of the Fund's objectives.