



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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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.

BoE Trust Limited & others

Today the Supreme Court of Appeal (SCA) dismissed an appeal by the first, second and third appellants and upheld an order of the Western Cape High Court, Cape Town.

The main issue on appeal was whether the SCA should uphold the appeal and allow for the deletion of the word 'White', in the last will and testament of the testatrix.

The appellants are the trustees of the Jean Pierre De Villiers Trust (the Trust), a trust created by the testatrix, in terms of her will. The testatrix bequeathed some of her assets to her siblings, her nephews, her nieces and her godchild. The residue of her estate was left to the Trust.

The clause pertaining to the residue of her estate gave rise to the dispute before the SCA. The clause essentially stated that the remaining income of the estate of the testatrix was to be used towards the provision of bursaries to assist 'white' South African students in the furtherance of their postgraduate academic careers abroad, in the field of Organic Chemistry. The testatrix provided that should the trustees be unable to carry out the terms

of the trust , then the remaining income was to be divided equally between the charitable organizations listed in her will.

Despite being advised that her bequest to 'White' students only; would in all probability not be given effect to, the testatrix nonetheless chose to retain this word.

In order to give effect to the bequest of bursaries for 'White South African students' the trustees, through their legal representatives, contacted the universities concerned. The universities responded negatively as a result of the racial selection criterion attached to the bursary. The rejection of the bursaries, by the universities concerned prompted the appellants to approach the high court for a rule nisi calling upon all interested parties to show cause why the word 'White' should not be deleted from the will. The trustees contended that the word 'White' fell to be deleted as it was discriminatory against 'potential beneficiaries' of the bursaries contemplated in the will, on the basis of race.

The SCA confirmed the finding of the high court that the bursary bequest was rendered impossible as a result of the universities' stance. The SCA went further to find that this eventuality was foreseen by the testatrix who expressly and in terms provided that the trust income would then go to the charitable organisations.

The SCA held that the attitude of the trustees and the purpose of the bursaries were noble and commendable, but neither, unfortunately, could be decisive in giving effect to the terms of the will.

The SCA in arriving at its decision emphasised that s 25(1) of the Constitution provides that no one may be deprived of property; unless such deprivation is in terms of a law of general application. This entails that a persons right to dispose of their assets as they deem fit, must be protected. The SCA, in this regard, went further to state that the primary function of a court, in interpreting a will, is to ascertain the intention of the testator. And therefore held that it was clear that the testatrix intended that, quite simply, should it prove impossible, for whatever reason, to give effect to the provisions of the educational bequest that the money should go to the charitable organizations.

