



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 12 December 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Sabdia N O and Another v Soma and Another (845/2023) [2024] ZASCA 174 (12 December 2024).

Today, the Supreme Court of Appeal (SCA) handed down judgment, where the appeal was upheld with costs, including the cost of two counsel, against an order of the Gauteng Division of the High Court, Pretoria (the high court).

This matter concerned the estate of the late Dr Mahamed Faruk Sabdia (Dr Sabdia) who had instituted review proceedings against Mr Aniel Kanjee Soma (Mr Soma) in the Land Claims Court, relating to immovable property in Marabastad, Pretoria. His sons, Messrs Riaz and Shiraz Sabdia were appointed as executors of Dr Sabdia's estate (the executors) and substituted as the litigants in the Land Claims Court matter. In December 2013, Mr Soma brought an eviction application against the estate, which was successfully opposed by the executors, represented by Mothle Jooma Sabdia Incorporated (MJS). The court had dismissed the eviction application with costs on a punitive scale (as between attorney and client). In September 2019, when the executors sought taxation of their legal fees, the Taxing Master of the High Court found that the executor's remuneration, in terms of the Administration of Estates Act 66 of 1965 (the Estates Act), covered all the work done on behalf of the estate, and that neither Mr Shiraz Sabdia nor MJS was entitled to recover legal costs for work done in their professional capacity.

The executors instituted review proceedings challenging the decision of the Taxing Master and argued that Dr Sabdia's Last Will and Testament explicitly made provision for the executors to recover professional fees for services rendered (the remuneration clause). The Taxing Master filed a report in terms of rule 48 of the Uniform Rules of Court, in which he sought the dismissal of the review with costs. Mr Soma sought the same relief.

In December 2022, the high court dismissed the executors review application with costs, on the basis that s 51(1)(b) of the Estates Act, the executors were only entitled to their executor's remuneration and thus were not entitled to the punitive costs awarded in their favour. The executors petitioned this Court for leave to appeal, with leave being granted.

The SCA found that the high court overlooked the remuneration clause to ascertain the primary objective, as the testator directed that the attorneys, even though they were executors, should be compensated for their professional services. The SCA held that s 51(1) of the Estates Act permits a testator to determine remuneration of an executor, including the remuneration that may be earned by an executor who renders professional services to the estate. The Court emphasised that the legislative scheme clearly envisages two fee payment regimes, namely, the one determined by the testator or the one prescribed by the statute. The Court concluded that the Will sanctioned the payment of professional fees due to the executors and MJS.

As a result, the SCA upheld the appeal with costs, including the cost of two counsel.

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