



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: 1 October 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

Jooste NO and Another v Pretorius and Others (Case no 695/2023) [2024] ZASCA 130
(1 October 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment setting aside an order by the Gauteng Division of the High Court, Pretoria (the High Court), which granted an interim interdict against the appellants, the trustees of the Rhino Pride Foundation Trust (the Trust). In terms of the interdict the appellants were prohibited from enforcing a resolution that required the respondent, the founder and trustee of the Trust, to resign, in terms of the relevant trust deed. The SCA upheld the appeal and ordered the respondent to pay costs in her personal capacity.

The Trust was established in 2014 by the respondent, a wildlife veterinarian, with the primary objective of combating rhino poaching and providing medical care for rhinos in South Africa. The appellants were subsequently appointed as trustees. The Trust receives significant funding from an anonymous foreign donor, which constitutes approximately 90% of its income, which it utilised to purchase a farm in Limpopo, on which a rhino sanctuary was established. In late 2021 tensions arose between the appellants and the respondent concerning the respondent's management of the Trust, which included mismanagement of funds, inhuman working conditions for staff members, and inappropriate involvement of the respondent's fiancé in the operations of the Trust.

A meeting was held on 18 January 2022, at which the respondent agreed to take a leave of absence for one month, during which the appellants would run the rhino sanctuary. However, two days later, on 20 January 2022, without notice to the appellants, the respondent obtained an urgent spoliation order and an interim interdict to prevent her removal as trustee (the *ex parte* order). On 4 February 2022, the *ex parte* order was set aside upon reconsideration by another judge, who held that the respondent failed dismally in observing the upmost good faith and that there were numerous allegations in her affidavit which were 'blatantly untrue'.

On 3 March 2022, the trustees passed resolutions by majority vote: (i) requiring the respondent to resign; and (ii) replacing her with the donor's representative as trustee. The main reasons for

calling for her resignation were that she had made false statements in the *ex parte* application, which irreparably harmed relationship between the trustees, imperilled the administration of the Trust, jeopardised the financial support by the donor, and was detrimental to the welfare of the beneficiaries. The respondent then applied to the High Court for an interdict to prevent the appellant from enforcing the resolutions, pending finalisation of an action to be instituted to set the resolutions aside. The appellants filed a counter-application for the enforcement of the resolutions.

The High Court granted the interdict and dismissed the appellants' counter-application. It held that there were factual disputes that required oral evidence; that the respondent had not been given a fair hearing; and that her right of access to court to have a dispute resolved, contained in s 34 of the Constitution, was not infringed.

The SCA held that the High Court was wrong. There were no factual disputes concerning the reasons for the adoption of the resolutions, nor in relation to the interdict obtained by the respondent. No amount of oral evidence could change the facts. The SCA also held that the resolution to remove the respondent as trustee was authorised in terms of the trust deed and that it was not necessary in the circumstances, to approach a court for the removal of the respondent in terms of s 20(1) of the Trust Property Control Act 57 of 1988, that the resolution was valid; that it was not taken arbitrarily; and that there were compelling reasons for the respondent's removal. The SCA concluded that the respondent was treated fairly, and that she failed to establish a *prima facie* right for the grant of the interdict. For these reasons, the SCA set aside the interdict and granted the counter-application for the respondent's removal as trustee. The respondent was ordered to pay the costs in her personal capacity because she had acted *male fide* and recklessly.

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