



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: 13 June 2023

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

Legal Practitioners' Fidelity Fund v Guilherme (702/2022) [2023] ZASCA 96 (13 June 2023)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal against the decision of the full bench of the Western Cape Division of the High Court (high court) with costs.

The facts of the matter were as follows:

- a. the successful applicant in the high court, Ms Guilherme, was the only beneficiary of a life policy with a death benefit of R5 million payable upon the death of her husband at the time, Mr Bartie (the deceased) who experienced financial difficulties and committed suicide;
- b. Mr Spencer, the deceased's attorney who was appointed as the executor of the insolvent deceased estate, advised Ms Guilherme that the proceeds should be paid into his trust account on her behalf as these might be in danger as a result of the liabilities of her late husband's insolvent estate;
- c. Ms Guilherme accepted Mr Spencer's advice as she trusted him and believed that he was acting in her best interests, whereupon she transferred the amount of R4 950 000 (R5 million less a cash payment of R50 000 which was paid out to her) into Mr Spencer's trust account on 1 June 2012 in the belief that the money would be safe and maintained for her in trust until she was required to withdraw money or when the estate was finalised;
- d. Ms Guilherme withdrew a total amount of R1.4 million from the trust account over a period of time and on 1 December 2016 Mr Spencer transferred R2 750 032.76 into her personal account after having advised her that he was starting to wind down his practice;

e. Mr Spencer never finalised the deceased's estate and Ms Guilherme became concerned about the ineffective manner in which he handled matters whereupon she approached a new attorney who established that Mr Spencer had been struck from the roll of attorneys in 2017, that he failed to fully account to her and still owed her an amount of R799 967.74;

f. Ms Guilherme claimed that Mr Spencer misappropriated her money – which was common cause in the litigation - and filed a claim with the appellant, the Legal Practitioners' Fidelity Fund. It dismissed the claim, the reason being that no entrustment had taken place as contemplated in s 26 of the Attorneys Act 53 of 1979 which Act still applied then.

The appellant submitted that the payment into the trust account was a deposit for safe-keeping which could not be equated with an entrustment of funds for purposes of s 26. It submitted that the facts did not justify a finding that there was compliance with the second element of entrustment in that the money was not paid with instructions to (a) be held for the benefit of others, (b) the accomplishment of some special purpose or (c) the happening of some known future event. The SCA did not agree with the appellant's definition of deposit, but also held that the concepts of deposit (depositum) and entrustment are not necessary separate and distinct from one another and that Ms Guilherme's payment of her money into the attorney's trust account, based on the facts in the case, amounted to an entrustment. The purpose of s 26 is to inter alia protect the person by whom money was entrusted, that person being the one that stands to suffer pecuniary loss in the case of misappropriation.

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