



## 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** 16 November 2022  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

*Kuttel v Master of the High Court and Others (819/2021) [2022] ZASCA 156  
(16 November 2022)*

### **MEDIA STATEMENT**

The Supreme Court of Appeal (SCA) today dismissed an application for leave to appeal, brought by Mr Peter John Kuttel against the trustees of the Padjoy Trust (the trust).

The trust was a family trust intended to provide for its founder, Mr Padda Kuttel, and his wife, Ms Joy Kuttel, after Padda Kuttel's retirement after a long and successful career as a businessman. On the death of the last dying of Padda and Joy, the capital of the trust vested in their sons, Peter, Francois and Adrian. The trustees were Padda Kuttel, until his death, Joy Kuttel, until her death a week before the application was heard, Francois, Adrian and two independent trustees, Mr John Levin and Mr Barry Adams. Peter was the only beneficiary who was not a trustee.

Peter had applied to the Western Cape Division of the High Court, Cape Town for an order, inter alia, setting aside the sale by the trust of its shares in a company called Southern Ropes (Pty) Ltd to Grace Investments Thirty-Two (Pty) Ltd, a company indirectly controlled by Francois and Adrian. His application was dismissed with costs, as was his application to the high court for leave to appeal. On petition to the SCA it was ordered that Peter's application for leave to appeal be referred for oral argument.

Three issues arose in order to determine whether Peter had reasonable prospects of success. They were: (a) whether the approval of the court was required for the validity of the sale of the shares; (b) whether the transaction was open and bona fide; and (c) whether Peter had been treated unfairly by not being given an opportunity to bid for the shares.

The majority of the SCA (Plasket JA, with Van der Merwe JA, Musi AJA and Kgoele AJA concurring) found that: (a) the court's approval of the sale of the shares

was not required because the rule relied upon by Peter applied only when a trustee bought immovable property from a trust; (b) in the light of the disclosures of their interest by Francois and Adrian, the fair way in which the purchase price was determined and the terms of the trust deed, the transaction was open and bona fide; and (c) to the extent that Peter was treated differently to his brothers, that differentiation was justified in the context of the powers of the trustees, the purpose of the transaction (which was a part of a bigger restructuring of the family business), the effect of the transaction (which simply converted the shares into capital at their fair value, which Peter, Francois and Adrian would share equally on vesting) and the fact that Peter as a beneficiary had no right to bid for the shares. The majority consequently dismissed Peter's application for leave to appeal with costs.

The minority (Molemela JA) held that the sale of the shares by the trust to Grace Investments, without affording Peter an opportunity to bid for them, was discriminatory and was not justified. She would have granted Peter leave to appeal, with costs.