



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

FROM The Registrar, Supreme Court of Appeal
DATE 07 December 2022
STATUS Immediate

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

Mellet N O and Others v Vermeulen and Another Blucher Hauman Mellet N O & Others v Marais Rocco Vermeulen & Another (1049/2021) [2022] ZASCA 176 (2022) (07 December 2022)

MEDIA STATEMENT

Today the Supreme Court of Appeal dismissed an appeal against an order of the Full Court of the Free State Division of the High Court, Bloemfontein. The appeal related to the application and interpretation of sections 29(1) and 29(1A) of the Close Corporation Act 69 of 1984 (the Act) in the event where a family trust, the Blucher Mellet Family Trust (the Trust), had acquired a 60 percent member's interest in a close corporation from one of its trustees and which it immediately sold to the respondents. The core issue for determination was whether the Trust was legally able to acquire the member's interest or not. The respondents brought a counter-application in which they attacked the validity of the agreement of sale on the basis that s 29(1) of the Act prohibited the Trust from holding a member's interest in the close corporation except under certain narrowly circumscribed circumstances.

The appellants instituted legal proceedings against the respondents in the Free State Division of the High Court, Bloemfontein seeking an order for specific performance against the respondents. They contended that it was common cause between the parties that the Trust would take transfer of the membership interest from the first appellant solely as a conduit to receive the purchase price that would ordinarily have been payable to the first appellant. It had never been the intention of the parties that the Trust itself should hold the membership interest. Thus, the Trust would merely have acted as a conduit to channel the funds. They contended

that ss 29(1) and 29(1A) made it apparent that an *inter vivos* trust, which was a juristic person, could have held or owned an interest in a close corporation. The respondents, in turn, pleaded that the agreement is in direct conflict with the aforementioned sections in that the Trust was not a natural person and could not have been a holder of a member's interest in a close corporation.

The SCA considered the sections and found that the Act specified the circumstances in which natural or juristic persons who are trustees of *inter vivos* Trusts may hold member's interests in a close corporation. Section 29 contemplates that only natural persons are capable of holding member's interests. However, s 29(1A) allowed an exception which provided that natural as well as juristic persons may hold member's interests as a trustee, but only in certain narrowly defined circumstances. Since the Trust here purported to hold the member's interest, rather than a trustee, the appellants did not get out of the starting blocks to bring themselves within the terms of the exception provided for in s 29(1A) of the Act. On the contrary, the respondents succeeded in establishing that the agreement of sale was in conflict with s 29(1), and therefore invalid.

In the result, the appeal was dismissed with costs.

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