



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

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Status: Immediate

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Batteson N O and Others v Joubert N O and Another (42/2024) [2025] ZASCA 129 (11 September 2025)

The Supreme Court of Appeal (SCA) in a unanimous judgment delivered today, dismissed an application by the trustees of the Batfarm Trust (the trust) for special leave to appeal against a decision of the full court of the Eastern Cape Division of the High Court, Makhanda.

The issue at the heart of the application was whether a cession of a Sanlam Life Insurance Policy held by the policy holder, the late Jan Hendrik Abraham Bezuidenhout (the deceased), to the trust, was a cession *in securitatem debiti* (in security of a debt) or an outright cession permanently divesting the deceased of all rights to the policy. The SCA concluded that the issue for determination was primarily one of a proper interpretation of the underlying agreement which gave rise to the cession. The relevant part of this agreement provided that the deceased would:

‘. . . cede as an absolute Cession, an existing Life Assurance Policy of R4 000 000 (FOUR MILLION RAND) on his life to and in favour of the [the trust], so as to safeguard the [trust] against payment of its rental and outstanding balance due by the [trust] under its Mortgage Bond with a Financial Institution, in the event of the death of the Sole Member of the [CC, the deceased].

Subsequent to the conclusion of the cession, the deceased signed a written notification of cession form with Sanlam on which he indicated that the cession was totally/out and out and that the rights had transferred. He also addressed an email to his accountant in which he recorded that there was this policy on his life of which the trust was presently the owner but that the trust had agreed that the policy could again become his property, provided he complied with certain requirements including that the policy had to be ceded laterally as security for the trust and that its debt first had to be paid before the rest of the money was paid to his estate. The policy proceeds were to be applied for outstanding rental money, electricity supply and basic feed purchases.

On the death of the deceased Sanlam paid the proceeds of the policy to the trust. The trust submitted a written claim against the CC which included amounts for rental and the Standard bank mortgage liability, against which the proceeds of the policy were set off. The trust pleaded that the deceased had ceded the policy as an absolute cession and that it had become the owner of the total proceeds of the policy.

The trial court separated the issues whether the cession was *in securitatem debiti* and whether the trust had become the owner of the policy, for determination before all other issues. The SCA emphasized that in interpreting the cession, form should not be placed above substance. As regards the interpretation of the cession, it concluded that oral evidence may be of some assistance, insofar as such evidence is legally admissible, for example, as to the context and purpose of the cession, or how the terms thereof were implemented by the parties. It viewed it as significant that the deceased implemented the policy as having been ceded to the trust as security and that the liabilities of the trust had to be paid first before the remainder of the proceeds would be paid to his estate.

The determining factor, as to whether a cession is one *in securitatem debiti*, is to be gathered from the intention of the parties. Describing a cession as an out and out cession, is not of itself decisive. Nor is a statement that ownership was transferred, conclusive of the cession being an outright cession, if the transfer of ownership, properly construed, was subject to a *pactum fideiucie*, even if implied, that the subject matter of the cession, or what remains thereof, would revert to the cedent once it has served its purpose.

The SCA concluded that the cession was made “with the avowed object” of only securing the debts, that it would be impossible to hold that *dominium* had passed to the cessionary, and that the trust had accordingly not established that there were special circumstances dictating that special leave to appeal should be granted. The application for special leave to appeal was refused with costs.

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