



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: 14 April 2025

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

Mason N O v Mason and Another (1286/2023) [2025] ZASCA 44 (14 April 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, wherein the appeal and cross appeal were dismissed with costs, against an order of the Eastern Cape Division of the High Court, Gqeberha (the high court).

This matter concerned a dispute arising from allegations of misappropriation of funds from operations of a close corporation, L Mason Electrical CC (the second respondent and CC), in which the deceased, Ashley Mason, and his surviving brother, Graham Mason (Mr Mason), as the first respondent held an interest. The deceased held 60% interest in the CC and was responsible for the management and finances of the business while Mr Mason held the remaining 40% and played a hands-on role in its operational and technical side. On 5 May 1999, the Mason brothers entered into an agreement which provided that the surviving member would purchase the deceased member's interest using the proceeds from a life insurance policy taken out on each other's lives. Central to the dispute was clause 6.2 which stipulated that if the deceased owed any debt to the CC at the time of death, the survivor was entitled to withhold any amount equivalent to the debt due to the executor of the estate.

Following his death on 25 April 2016, the value of the policy on the deceased life was R4 779 372.00. This amount was paid to Mr Mason by the insurer. In her capacity as executrix, Mrs Mason, the wife of the deceased (the appellant), sought to enforce the terms of the agreement by tendering the interest of the deceased in the CC to Mr Mason, against payment. However, Mr Mason resisted the

demand for payment. In response, there were two separate actions instituted in the Eastern Cape Division of the High Court, Gqeberha (the high court): one by the executrix seeking the policy proceeds and another by Mr Mason and the CC asserting that the deceased's misappropriation of funds had created an indebtedness to the CC.

The high court heard evidence from one witness who was the forensic auditor for Mr Mason and the CC, Mr Pearton, who established that over a period between 2001 to 25 April 2016, the deceased had misappropriated funds from the close corporation. Mr Mason argued that the

misappropriation exceeded the insurance policy's value, and that under clause 6.2, he was not liable to pay the proceeds to the estate. The dispute was eventually narrowed down to the issue of whether the debt owed by the deceased had become prescribed under the Prescription Act 68 of 1969 (the Prescription Act). The high court dismissed the executrix's claim and directed the executrix to pay to the CC the amount of R7 406 139. 97 (being the total amount of the misappropriation by the deceased established on the evidence) to the CC. From this amount was to be deducted the amount paid to Mr Mason under the policy. Mr Mason was ordered separately to pay the amount of the policy to the CC. And that the executrix, in her representative capacity, bear the costs of the consolidated action. The high court granted the executrix leave to appeal to this Court and the CC was allowed to cross-appeal against the costs order.

The Court held that under s 12(1) of the Prescription Act, prescription commences to run as soon as a debt is due, with the exception in terms of s 12(3) that the debt would not be deemed due until the creditor had obtained knowledge of both the identity of the debtor and the facts giving rise to the debt. The Court found that the mere fact of Mr Mason's fiduciary relationship to the CC was insufficient to establish that he had either actual or constructive knowledge of the misappropriation of funds. The Court emphasised that there must be clear, unequivocal evidence showing that Mr Mason, by virtue of his fiduciary duty, should have known about the misappropriation if he had exercised reasonable care. As a result, the debt owed by the deceased to the CC was not prescribed.

Additionally, the Court dismissed the cross-appeal concerning the costs order. The Court reiterated that criticisms of case management or allegations of personal complicity in the misappropriation were not sufficient grounds to alter the high court's order regarding costs. It was emphasised that in her capacity as the executrix, Mrs Mason had acted in the interests of the estate and the order for her to bear the costs of the consolidated action was correct.

As a result, the SCA dismissed the appeal by the executrix with costs including the costs of two counsel where so employed. The cross-appeal concerning the costs order was also dismissed with costs.

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