



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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Lenette Janse De Wit & Others v Toerien De Wit N O & Others (607/2024) [2026] ZASCA 23 (06 March 2026)

Today, the Supreme Court of Appeal (SCA) handed down judgment in which it dismissed the appellants' appeal with costs.

This appeal concerned the interpretation and application of section 13 of the Trust Property Control Act 57 of 1988 (TPCA). The dispute arose within the De Wit family after the death of the founder of the De Wit Family Trust, Elbert De Wit Snr, and centered on disagreements among family members regarding the management and future of the trust and its assets.

The De Wit Family Trust (the trust) was established in 1995 as a discretionary trust. At the time litigation commenced, there were three trustees, namely Mr Philip Rall (Philip), Toerien De Wit (Toerien), and Elbert De Wit Snr's wife, Lenette. Elbert De Wit Snr and Lenette, together with their children (Toerien, Maryke, Karmien, and Elbert Jnr), were income beneficiaries of the trust. The trust held all the shares in a group of companies known collectively as the De Wit Group, which included several subsidiary companies whose assets consisted largely of immovable property and business operations. Although the value of the group was substantial, most of the wealth was tied up in immovable property and businesses, meaning that the trust had limited liquid funds.

Before his death in 2019, Elbert De Wit Snr had discussions with family members about the future of the trust and expressed a desire that the trust capital should eventually be distributed equally among the beneficiaries. However, he indicated that he did not want a liquidation of assets to achieve this purpose and he wanted the businesses to continue to operate. The trust

deed itself granted the trustees broad discretionary powers, including the authority to determine a vesting date and to continue the trust indefinitely.

After the founder's death, conflict developed between members of the family regarding the future of the trust. Maryke and Karmien, with whom Lenette is aligned, wanted the trustees to declare a vesting date and distribute the capital assets of the trust among the beneficiaries. However, the majority trustees, Toerien and Philip, refused to do so. In terms of the trust deed, decisions of the trustees are decided by a majority vote in the event of a disagreement, and as a result of this impasse between the trustees, Lenette and Maryke applied to the Western Cape Division of the High Court (the high court) for relief under section 13 of the Trust Property Control Act. They argued that certain clauses in the trust deed, which allowed the trustees to determine the vesting date and to continue the trust indefinitely, had led to consequences that the founder did not foresee. According to the appellants, the majority trustees were relying on these provisions to delay distribution indefinitely, thereby frustrating the founder's intentions and causing serious conflict within the family. They sought an order terminating the trust and appointing a receiver to take control of the trust assets and giving the receiver specified powers, including the power to liquidate and distribute trust assets.

The high court dismissed the application. Although the high court accepted that there had been a breakdown in the relationship between family members which was not foreseen or contemplated by Elbert Snr, it found that the appellants had failed to satisfy the jurisdictional requirements for relief under section 13(a) or (b), and the court's discretionary power was not triggered. The high court further found that it would not be appropriate, in the exercise of its discretion, to terminate the trust. It held that termination of a trust was an extraordinary remedy which should only be invoked as a last resort. Aggrieved by this decision, the appellants then appealed to the SCA.

The SCA, per Keightley JA and Modiba AJA, focused on the question of whether the high court erred in its interpretation and application of section 13 of the TPCA. In addressing this issue, this Court identified the first criterion as the "anchor jurisdictional factor." This means that the inquiry into the three requisites under subparagraphs (a), (b), or (c) of section 13 can only ensue if the court is satisfied that the impugned provisions have unforeseen consequences.

The SCA held that the high court's conclusion that the cause of the family breakdown was the majority trustees' reliance on the impugned provisions was based on the incorrect premise. The high court focused its inquiry on Elbert Snr's wishes as expressed between January 2017 and February 2019, and the SCA found that this was erroneous. The founder's intention must be determined primarily from the trust deed itself, rather than from informal discussions or statements made later in his life. The trust deed clearly provided that the trustees had wide discretionary powers and that the trust could continue indefinitely unless the trustees decided otherwise. By granting such discretion, the founder had contemplated that the trustees would determine the appropriate time for distributing trust assets. Consequently, the majority trustees were acting within the powers conferred on them by the trust deed when they declined to fix a vesting date. The SCA further found that the high court erred in its assumption that Elbert Snr's wishes, as discussed with his family, were determinative. The high court assumed that these prevailed over the trust deed. This resulted in it reaching the erroneous conclusion that the

majority trustees had used their powers under the impugned provisions in a manner that Elbert Snr had not contemplated or foreseen.

This Court further found that the appellants had not demonstrated that the relevant provisions hampered the achievement of the trust's objectives or prejudiced the beneficiaries. The trust's purpose, as set out in the deed, was to expand trust benefits and create sources of income for beneficiaries rather than to immediately distribute capital assets. The majority trustees' decision to delay distribution was consistent with these objectives, as selling the businesses or property at that stage would not be financially prudent, as their optimal value will only be achieved later. In addition, the evidence showed that the trust was not in a financial position to meet the competing demands of the beneficiaries. Consequently, the SCA found that the appellants failed to establish that the impugned provisions have brought about consequences which Elbert Snr did not contemplate or foresee.

This Court also rejected the appellants' contention that it is the majority trustees' conduct, using their powers under the impugned provisions, that is causing the breakdown in family relations. It held that it is the current financial position of the trust, which makes it impossible, at this stage, to effect the distribution that the appellants are seeking, that has given rise to the breakdown in relations. Put differently, it is the appellants' response to the decision of the trustees, and not any provision in the trust deed, that is causing the family dispute and litigation.

Ultimately, the SCA concluded that the appellants had failed to satisfy the anchor jurisdictional factor, and they failed to establish that the impugned provisions had brought about consequences which Elbert Snr did not contemplate or foresee. Because the statutory requirements were not met, this Court had no basis to vary or terminate the trust. The appeal was therefore dismissed, and the appellants were ordered to pay the respondents' legal costs.

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