



## 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** 28 March 2014  
**STATUS** Immediate

***Nicolette Erasmus NO v Estate Late Booysen*** (192/13) [2014] ZASCA 27 (28 March 2014)

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

Today the Supreme Court of Appeal (SCA) upheld an appeal by the mother of a minor who had been disqualified by the high court from inheritance in terms of the child's great-great-grandmother and great-grandfather respectively on account of the fact that her father had predeceased her grandfather.

An application had been brought before the North Gauteng High Court (De Vos J) by the mother of the child for an order that the child could inherit rights to three separate portions of the farm Grootpan in Mpumalanga by reason of fideicommissa established in terms of the wills of the child's great-great-grandmother and great-grandfather respectively.

The relevant portion of both wills stipulated that the farms would be inherited by all of the children of Barend Christiaan Booysen and that, upon the death of these children, the farms would pass to the grandchildren of Barend Christiaan Booysen's Barend Christiaan Booysen, the grandfather of the child, had died subsequently to his son, who was the father of the child. The point in issue was whether the fact that her father had predeceased her grandfather operated to prevent the child from inheriting in terms of the fideicommissa.

The high court found that no vesting of the fideicommissary dispensation had taken place because the fideicommissary (the father of the child) had died before the fiduciary (her grandfather). The high court found that it was clear from the wills that vesting takes place upon the death of the fiduciary and that because her father had predeceased her grandfather, there had been nonfulfillment of the condition necessary to pass ownership to the child. The high court granted leave to appeal to this court.

The SCA found that where, as in this case, there was a *fideicommissum multiplex*, the death of the fideicommissary prior to vesting does not result in the termination of the fideicommissum but merely brings about the acceleration of the interest of the substitute, unless there was a clear intention to the contrary.

The SCA confirmed the principle of representation in our law of succession which entails that, where an ancestor leaves descendants, a presumption arises that the descendants should inherit *per stirpes* (each stem of the family taking the same share). This principle in our law has the natural consequence that where a grandchild's parent had predeceased that grandchild's grandparents, the grandchild will ordinarily inherit from his or her grandparents. A grandchild is not disqualified from inheritance merely as a result of the fact that one or both of the grandchild's parents predeceased his or her grandparents.

The SCA reaffirmed the presumption in our law against a testator having the intention to disinherit descendants. The court held that the clear intention of both the child's great-great-grandmother and great-grandfather had been that that the

grandchildren of the deceased should inherit under the respective fideicommissa, without distinction among them.

The SCA held that the child was entitled to inherit thereunder. It upheld the appeal and substituted a comprehensive order making provision for the child's inheritance.