



## 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** 1 April 2016  
**STATUS** Immediate

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

#### ***Mitchell NO v Wren (153/2015) [2016] ZASCA 50 (1 April 2016)***

The Supreme Court of Appeal (SCA) today handed down judgment dismissing the appeal in the above matter.

The deceased, Carolyn De Villiers was in a same-sex life partnership with the first respondent, Sandra Wren. They lived together in the first respondent's house for almost a year before her death.

In the early hours of 9 June 2012 the deceased committed suicide and the first respondent discovered her body in the staircase of their home at approximately 09h20 when she woke up. Immediately before she committed suicide, the deceased had written two notes containing testamentary dispositions in terms of which she bestowed bequests on the first and second respondents, Yolandi Mynhardt. The latter was her long-time best friend.

The issue before the Eastern Cape Local Division of the High Court was whether the two notes were contradictory as there was no direct evidence as to which one was written last. In the one note the deceased bestowed a bequest of R1 million each on the respondents and also household goods on the first respondent. In the other note she bestowed a bequest of R1 million on the second respondent only and only household goods on the first respondent.

The high court found that the two notes were not contradictory and therefore one of them, being annexure A to the founding papers, should be accepted as a valid codicil. The appellant, who is the deceased's father, was appointed by the deceased as the executor of her estate and also nominated together with the deceased's brother, as heirs of the residue of her estate. He appealed against this finding of the high court.

Before she committed suicide, the deceased had exchanged several electronic messages by sms with the second respondent. In these messages she said that the first respondent was a good wife and that the second respondent was a good and dependable friend. She further stated that she loved them dearly more than they could ever imagine.

The deceased had also written two additional notes addressed to her father and brother. In these additional notes she implored them to give effect to her dying wishes and also said that there was enough for them to inherit from the residue of the estate.

After considering the evidence, the SCA concluded that having regard to the surrounding circumstances and inherent probabilities it could be inferred that the note bestowing R1 million each on the first and second respondents was written last and had to be accepted as a codicil to the deceased's will.

The appeal was accordingly dismissed and the SCA ordered that the costs of the appeal be paid out of the estate of the deceased.

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