



## 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:** 19 October 2023

**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***

*Bouwer and Another NNO v Master of the High Court, Pretoria (916/2022) [2023] ZASCA 135 (19 October 2023)*

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Today, the Supreme Court of Appeal (SCA) upheld an appeal with costs, including the costs of two counsel, against the decision of the Gauteng Division of the High Court, Pretoria, per Skosana AJ (the high court). The high court had dismissed an application for declaratory orders by the appellants, the curators *bonis* of Ms Johanna Helena Josina van Dyk (the patient), against the respondent, the Master of the High Court, Pretoria. The declaratory orders involved the consideration of ss 83 and 84 of the Administration of Estates Act 66 of 1965 (the Act), read with regulations 7 and 8 thereto (the Estates Regulations).

The issues in the appeal were the following. The first was whether the proceeds of capital assets that have been realised should be reflected in the income and expenditure section in the first curator's account, or reflected as a capital asset instead. Pertinently, the crux of the matter was whether the moment an investment was collected and deposited into the patient's estate's bank account, the assets changed in nature and identity from a capital asset to income received. The second, which was inter-related to the first issue, was whether the proceeds of the realised assets would attract the 6% tariff, or whether the curator was only entitled to 6% remuneration on the interest collected from the realised capital assets, when invested.

The SCA found that on a close scrutiny of regulations 7 and 8 of the Estates Regulations read with ss 83 and 84 of the Act, it was apparent that these provisions were clear and express. In regard to the first issue, the SCA found that regulation 7 was mandatory and expressly provided for two accounts: 'income and expenditure account' and 'capital account'. Once capital assets were realised, it changed in nature and identity. Thus, realised capital assets reflected as income, not capital assets in the patient's estate.

In regard to the second issue, the SCA found that the applicable tariff that a curator was entitled to was set out in regulation 8(3). A curator was entitled to the 6% fee on all funds reflected in the income account of the annual curators' account as collected, regardless of origin. Accordingly, the appellants were entitled to 6% of the income received from the realised capital assets.

In regard to costs, the SCA found that this was an extraordinary case where a costs order had to be made against the respondent. The conduct of the respondent in respect of the proceedings was worthy of the SCA's rebuke.

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