



## 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** 9 March 2017  
**STATUS** Immediate

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

*M v M* (332/2015) [2016] ZASCA 5 (9 March 2017)

#### Media Statement

The SCA upheld an appeal against a finding by the High Court that the appellant had treated two trusts as his alter ego, with the result that the property held by these trusts formed part of his personal estate and were therefore subject to the accrual claim of the respondent, on their divorce. It held, overruling a previous decision of the SCA, that a wife in the position of the respondent who was neither a beneficiary of the trusts, nor a third party transacting with the trusts and to whom her husband, in his capacity as the trustee of the trusts, did not owe a fiduciary duty, had locus standi to advance a claim that the trust veneer be pierced. The claim was an equitable remedy that lay against the trust, or the errant trustee on the basis that there was an unconscionable abuse of the trust form by the trustee, in his or her administration of the trust through fraud or dishonesty with the improper purpose of evading a liability, or avoiding an obligation. The respondent had to prove that the appellant transferred personal assets to the trusts and dealt with them as if they were assets of the trusts, with the fraudulent or dishonest purpose of avoiding his obligation to properly account to the respondent for the accrual of his estate and thereby evade payment of what was due to the respondent, in accordance with her accrual claim. If established the trust assets in question could be used to calculate the accrual of the appellant's estate and satisfy any personal liability of the appellant to make payment of any amount owed to the respondent. It was held that although the appellant administered the trusts with very little regard for his duties as a trustee, the evidence did not prove that he transferred personal assets to these trusts and dealt with them as if they were assets of these trusts, with the fraudulent or dishonest purpose of avoiding his obligation to properly account to the respondent for the accrual of his estate. Accordingly, the assets held by these trusts did not form part of the appellant's personal estate and were not subject to the accrual claim of the respondent.

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