THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 804/2022

In the matter between:

ESTATE LATE GOOLAM MURTUZA HAFIZ	**First Appellant**
MOHAMED IQBAL ESSOP	**Second Appellant**
SAYED HOOSEN AHMED	**Third Appellant**
and	
AHMED ZAKIR HAFIZ	**First Respondent**
AKHMED RAZA WAHAB	**Second Respondent**
SAYED MUKTHAR MOHAMMED	**Third Respondent**
SHAKEEEL AHMED HAFIZ	**Fourth Respondent**
ANEEZ AHMED HAFIZ	**Fifth Respondent**
MASTER OF THE HIGH COURT, PIETERMARITZBURG	**Sixth Respondent**
REGISTRAR OF DEEDS, KWAZULU-NATAL	**Seventh Respondent**
eTHEKWINI METROPOLITAN MUNICIPALITY	**Eighth Respondent**

Neutral citation: *Estate late Hafiz and Others v Hafiz and Others* (804/2022) [2023] ZASCA 114 (27 July 2023)

Coram: DAMBUZA ADP and GOOSEN JA and MALI, SIWENDU and UNTERHALTER AJJA

Heard: Appeal disposed of without the hearing of oral argument in terms of s 19*(a)* of the Superior Courts Act 10 of 2013.

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email, publication on the Supreme Court of Appeal website and release to SAFLII. The date and time for hand-down is deemed to be 11h00 on 27 July 2023.

Summary: Trust – validity of deed of trust – requirements for valid trust established – ambiguity in clause relating to succession of trustees – interpretation of trust deed – appeal dismissed.

ORDER

On appeal from: KwaZulu-Natal Division of the High Court, Pietermaritzburg (Madondo AJP, Seegobin J and Ntshulana AJ, sitting as court of appeal):

1 Save to the extent set out in paragraph 2 below, the appeal is dismissed.

2 Paragraph 2 of the order of the full court is varied so that the order reads as follows:

'1. The appeal is upheld.

2. The order of the court a quo is set aside and is substituted by the following:

2.1 It is declared that the Goolam Murtuza Hafiz Trust is valid and the said Trust shall be administered in accordance with the terms of the Memorandum of Trust Agreement dated 6 September 1994.

2.2 It is declared that the Trustee for the time being of the Goolam Murtuza Hafiz Trust shall be Ahmed Zakir Hafiz (Identity no. 620928625089).

3. The first respondent, the fifth respondent and the sixth respondent together with the Goolam Murtuza Hafiz Trust, are directed to pay the first and second applicants' costs in respect of the application and counter application in the court a quo and the appeal costs, jointly and severally the one paying the other to be absolved.'

3 The appellants are ordered to pay the first and second respondents' costs of appeal.

JUDGMENT

Goosen JA (Dambuza ADP and Mali and Siwendu and Unterhalter AJJA concuring):

[1] This appeal concerns the validity of the Goolam Murtuza Hafiz Trust (the Hafiz Trust) created in 1994. The order challenged on appeal is that of the full court of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the full court). It upheld an appeal against an order of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court). Special leave to appeal was granted by this Court on 3 December 2020.[1]

The parties

[2] The first appellant is the executor of the estate of the late Goolam Murtuza Hafiz, who was the settlor and founder of the Hafiz Trust. The second and third appellants, Mohamed Iqbal Essop and Sayed Hoosen Ahmed respectively, were declared to be trustees of the Hafiz Trust by the high court.

[3] The first, second and third respondents were declared to be trustees by the full court. Only the first and second respondents participated in the appeal. The first, fourth and fifth respondents are the sons of Goolam Hafiz.[2] The sixth respondent is the Master of the High Court, Pietermaritzburg (the Master). The seventh and eighth respondents, namely the Registrar of Deeds and the eThekwini Municipality, took no part in the proceedings.

Background

[4] Goolam Hafiz was a prominent member of a Suni Islamic community in Sherwood, Durban. In 1904, his grandfather, Hajee Shah Goolam Mohammed (Hajee Mohammed), took ownership, in trust, of a property on which was erected the Sherwood Mosque. The deed of transfer provided that, on the death of Hajee

[1] The application was commenced before the high court in 2013. It was heard in February 2018 and judgment was delivered on 23 August 2018. The appeal was heard by the full court on 27 January 2020 and judgment was delivered on 12 May 2020.
[2] I shall refer to these parties by name.

Mohammed, trusteeship would pass to his eldest male descendant and thereafter to the eldest male descendant, in turn.[3]

[5] Hajee Mohammed handed over control of the mosque to his son, Goolam Hafiz Soofi (Goolam Soofi), who held office until his death in 1953. Goolam Soofi's eldest son, Goolam Hafiz, then took up office as trustee of the Sherwood mosque (the Mosque Trust).[4]

[6] In 1983, Goolam Hafiz's eldest son, Ahmed Hafiz (the first respondent), took up the running of the affairs of the mosque on a full-time basis. In 1991, Goolam Hafiz purchased Sub 174 (of 136) of the Farm Riding 15152 (Property 1), situated alongside the mosque. Ahmed Hafiz raised a loan to purchase the property. The loan was settled from donations by members of the Suni community. On 6 September 1994, Goolam Hafiz (as settlor) and Ahmed Hafiz (as First Trustee) entered into a written agreement (the 1994 deed of trust), in which Goolam Hafiz undertook to donate Property 1 in trust to the Hafiz Trust. Ahmed Hafiz was named as First Trustee and undertook to administer the trust for the purposes set out in the agreement.

[7] The Hafiz Trust was registered and the Master issued letters of authority to Ahmed Hafiz on 21 September 1994. Property 1 was donated to the Hafiz Trust on 30 September 1995 and was transferred to the trust on 16 February 1996. During 1996, a second property, Portion 177 (of 135) of the Farm Riding 15152 (Property 2), also alongside the mosque, was acquired. Goolam Hafiz transferred it to the Hafiz Trust in May 2000.

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[3] In the event of a failure of progeniture trusteeship would vest in a person elected by the Suni community.
[4] The 1904 deed of transfer of the property on which the Sherwood mosque is situated does not name the trust. In the papers reference was made to the Suni Mohamedan Faith Trust.

[8] In August 2004, Property 1 and Property 2 were linked by a notarial tie agreement concluded between the Mosque Trust and the Hafiz Trust, represented by Goolam Hafiz and Ahmed Hafiz respectively. This was to enable the properties to be developed by the construction of a hall, residential buildings and an office complex. The Hafiz Trust was advised to register as a public benefit organisation in terms of the Nonprofit Organisations Act 71 of 1997. This required an amendment of the 1994 deed of trust.

[9] Goolam Hafiz and his three sons met on 14 December 2004 to amend the deed of trust. The 2004 deed of amendment was approved by resolution and signed by each of the participants. At a subsequent meeting held on 3 January 2005, the assumption of two further trustees was approved, namely Akhmed Wahab and Sayed Mohamed.

[10] On 31 January 2005, the 2004 deed of amendment and resolution approving the assumption of additional trustees, was lodged with the Master. On 4 February 2005, the Master advised that Shakeel and Aneez Hafiz had not been appointed as trustees of the Hafiz Trust. The Master was nevertheless requested to proceed with the appointment of Akhmed Wahab and Sayed Mohamed as trustees. The Master issued letters of authority to them on 26 August 2005.

[11] The Hafiz Trust was registered as a non profit organisation and managed by the three appointed trustees, without demure, for a period of six years. In 2011, Goolam Hafiz decided that his two younger sons, Shakeel and Aneez Hafiz, should also be appointed as trustees. The Master was requested to appoint them and did so. In June 2011, Goolam Hafiz convened a meeting where it was decided to appoint two further trustees, namely the Mohamed Essop and Sayed Ahmed.

[12] In response to the request for appointment of these additional trustees, the Master convened a meeting of the trustees of the Hafiz Trust. The Master informed the trustees that she had formed the view that all of the trustee appointments ought to be withdrawn and that the deed of trust required amendment. Pending the amendment of the deed the Hafiz Trust was to be administered by Ahmed Hafiz and Goolam Hafiz.

[13] Ahmed Hafiz and Akhmed Wahab indicated that they intended to challenge the Master's decision to withdraw the letters of authority issued in 2005. In the meantime, an agreement of trust was concluded between Goolam Hafiz and Sayed Mohamed, Shakeel Hafiz, Aneez Hafiz, Mohamed Essop and Sayed Ahmed (the 2011 deed of trust), on 14 December 2011 which purported to amend the 1994 trust deed. Ahmed Hafiz and Akhmed Wakab were not involved. On 22 December 2011, the Master issued letters of authority appointing the five persons involved as trustees of the Hafiz Trust. Following objections and representations the Master issued a ruling, on 27 July 2012, which: (a) withdrew all letters of authority issued after 21 September 1994;(b) withdrew acceptance of any amendments to the trust deed effected after that date; and (c) expressed the opinion that the 1994 deed of trust only provided for the appointment of the first trustee upon the death of the settlor.

The litigation

[14] Goolam Hafiz brought an application before the high court to declare that the Hafiz Trust was not a valid trust (the main application). He sought the transfer of the donated property, Property 1, back into his name.[5] Ahmed Hafiz and Akhmed Wahab launched a counter-application, in which they sought a declaration that the Hafiz Trust was validly founded and that it be administered

[5] The notice of motion made no reference to Property 2 which was also donated to the Hafiz Trust.

in terms of the 2004 deed of amendment. They also sought confirmation that they, together with Sayed Mohamed, were the trustees of the Hafiz Trust. During the course of the litigation Goolam Hafiz was substituted by the executor of his estate.

[15] The high court found that a valid trust was not established. It held that the 1994 deed of trust was amended by the 2011 deed of trust, and that this latter deed established a valid trust. It ordered that the parties to the 2011 agreement, together with Ahmed Hafiz and Akhmed Wahab, were the trustees of the Hafiz Trust.[6]

[16] The full court set aside the high court's order. It declared that the Hafiz Trust was validly created and that it was to be administered in accordance with the 1994 deed as amended by the 2004 deed of amendment. It declared that Ahmed Hafiz, Akmed Wahab and Sayed Mohamed were the trustees of the Hafiz Trust. In addition, it varied clause 4.1 of the 1994 deed of trust to read that the First Trustee was Ahmed Hafiz and upon his death, the office of trustee would descend to his eldest male issue.

The issues

[17] Three issues arise for decision. The first is whether the Hafiz Trust was validly created in 1994. The second is whether the 1994 trust deed was amended, and if so, by what instrument. The third concerns the identity of the trustees of the Hafiz Trust.

Was a trust validly established?

[18] The validity of the Hafiz Trust depends upon whether:

(a) Goolam Hafiz intended to create a trust in his life time;

[6] These orders were not sought in the notice of motion. They were raised in answer to the counter-application.

(b) his intention was expressed in a manner that created an obligation upon the trustee or trustees and whether such obligation was accepted;
(c) whether the trust property was defined with reasonable certainty;
(d) whether the objects of the trust were set out with reasonable certainty and whether they are lawful.[7]

[19] The lawfulness of the objects of the Hafiz Trust and the definition of the trust property were not in issue. The controversy centered on the expressed intention of the settlor and whether the 1994 trust deed envisaged the appointment of a trustee in the life time of the settlor.

[20] Whether a trust was validly established depends on the evidence. An *inter vivos* trust is created by a bilateral agreement between its founder and the prospective trustee or trustees.[8] The agreement may be oral or in written form. The document alleged to be the trust deed serves as evidence of the creation of the trust along with other relevant evidence.[9] This may concern the declared intention of the settlor determined at the time that a trust instrument is executed[10]; the assumption of the obligations of trusteeship by an intended trustee; the formal appointment of such trustee; and the transfer of ownership and control of the trust property into the hands of the person said to be the trustee.

[21] To the extent that a document alleged to be a trust instrument or clause thereof is equivocal, it will be read in the context of the evidence to determine

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[7] *Administrator, Estate Richards v Nichol and Another* 1996 (4) SA 253 (C) at 258D-F; Cameron et al *Honorés South African Law of Trusts* 6 ed (2018) at 136-137.
[8] *Crookes NO v Watson* 1956 (1) SA 277 (A) at 298B-C.
[9] The intention to create a trust must be expressed in a form that is apt for the creation of an obligation. Where it is expressed in written form by way of testament, transfer, treaty or contract such formalities as are prescribed for the written form apply. A trust may also be constituted orally. The written form, where it exists, is evidence of the requirements for constitution of the trust. See Cameron et al *Honorés South African Law of Trusts* 6 ed (2018) at 160 -162.
[10] *Moosa and Another v Jhavery* 1958 (4) SA 165 (N) at 169D-F; *Mohamed NO and Others v Ally* 1999 (2) SA 42 (SCA); [1999] 1 All SA 419 (A) at 424.

whether it supports the conclusion that a valid trust was created thereby. Interpretation to determine the meaning and effect of the instrument, found to create a valid trust, would involve the unitary exercise of considering of the text, context, and purpose of the instrument.[11]

[22] The 1994 trust deed states that it is an agreement entered into between Goolam Hafiz, as settlor, and Ahmed Hafiz as First Trustee. It was signed by them in their respective capacities. The preamble reads:

'Whereas it has been agreed between the parties that it is the intention and desire of the SETTLOR that he shall donate sub 174 of 136 of the Farm Riding No 15152 in extent of One thousand and eighty square metres (1080), to be administered by the Trustee or Trustees to operate a Trust for the objects set out more fully hereunder and whereas the First Trustee has agreed to accept ownership of the Trust and to undertake the obligations of the Trust according to the terms set out in this agreement.'

[23] The expressed purpose was to transfer ownership of Property 1 into a trust. Ahmed Hafiz was appointed as trustee upon registration of the Hafiz Trust. Thereafter Property 1 was donated to the Hafiz Trust and was transferred into the name of the Hafiz Trust. The evidence establishes that a second property was donated to the Hafiz Trust; that a notarial tie agreement was concluded with the Mosque Trust; and that the properties were extensively developed.

[24] The only question is whether clause 4 of the 1994 deed of trust was intended to mean that the First Trustee would only be appointed upon the death of the settlor. If that is so, then the control of the trust property would remain in the hands of the settlor until his death and could only then pass to the First

[11] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18. *Chisuse v Director-General, Department of Home Affairs* [2020] ZACC 20; 2020 (10) BCLR 1173 (CC); 2020 (6) SA 14 (CC) para 52*; University of Johannesburg v Auckland Park Theological Seminary and Another* [2021] ZACC 13; 2021 (8) BCLR 807 (CC); 2021 (6) SA 1 (CC) para 65. *Capitec Bank Holdings Limited and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA) para 25.

Trustee. The envisaged trust would therefore be constituted on the death of the settlor.

[25] Clause 4 reads as follows:

'There shall be perpetual succession as follows:

4.1 On the death of the settlor the office of Trustee shall descend to the First Trustee and thereafter to the eldest male issue of the first Trustee, if any.

4.2 Failing succession as envisaged in Clause 4.1 the office of the Trustee shall descend to the second trustee and thereafter to the eldest male of the second trustee, if any.

4.3 Failing succession as envisaged in Clause 4.1 and 4.2 above the office of Trustee shall descend to the third trustee and thereafter to the eldest male issue of the third trustee, if any.

4.4 Failing succession as envisaged in clause 4.1, 4.2 and 4.3 the office of Trustee shall pass to the male descendants from the female issue of the settlor in the same manner as envisaged in clause 4.1 and 4.2 and 4.3 above.[12]

[26] The phrase 'office of trustee' ordinarily refers to the position of trusteeship and the rights and obligations conferred by law on the occupant of that office.[13] In its ordinary meaning, it refers to a specific office occupied in relation to a specified trust.[14] At face value the clause suggests that the office of trusteeship would 'descend' or pass to the First Trustee upon the death of the settlor. There is, however, no other text in the 1994 deed which confers upon the settlor any responsibilities or duties as trustee. The settlor was not appointed as trustee. There is no evidence that he, at any stage, regarded himself as a trustee of the Hafiz Trust. The evidence is to the contrary, as demonstrated by the notarial tie agreement. The 1994 deed of trust instead points to Ahmed Hafiz as First Trustee of the Hafiz Trust, his acceptance of the office and the Master's acceptance of his

[12] Clause 1 states that the 'second trustee' shall refer to Shakeel Hafiz and the 'third trustee' shall refer to Aneez Hafiz.
[13] See the explanation on Trusteeship as a public office in Cameron et al *Honorés South African Law of Trusts* 6 ed (2018) at 69 and the trustee's acceptance of office at 247.
[14] Ibid at 248.

appointment. It was not intended that the settlor should hold the‘office of trustee’ in the Hafiz Trust.

[27] The expressed purpose of clause 4 was to provide for perpetual succession of the Hafiz Trust. It is with this in mind that it must be interpreted. The clause deals with the continued existence of the trust upon the occurrence of the death of the settlor. The First Trustee was named as trustee elsewhere in the deed of trust and was appointed on that basis. Clause 4 therefore provides for the continued existence of the office of trusteeship after the death of the settlor. Read in the context of the deed of trust as a whole, it does not mean that the First Trustee would only be appointed once the settlor had died. Upon the occurrence of the death of the settlor the office of trusteeship would continue to be held by the First Trustee as incumbent and thereafter be occupied as envisaged by clause 4. Seen in this light, clause 4 merely reflects an expression of an intention on the part of the settlor to ensure that control of the Hafiz Trust would remain with his descendants. It can thus be read in a manner that is consistent with the overriding intention expressed in the deed of trust.

[28] The evidence as a whole, overwhelmingly establishes that a trust was in fact constituted by the deed of trust and that ownership and control of the trust property passed into the hands of the nominated First Trustee during the lifetime of the settlor. The full court therefore correctly found that the trust was validly established.

[29] The full court varied clause 4.1 to read that upon the death of the first trustee, the office of trustee shall descend to his male descendant. It left clauses 4.2 and 4.3 in their original form. In doing so, it brought clause 4.1 in line with what had already occurred. It exercised the discretion conferred upon it by s 13 of the Trust Property Control Act, 57 of 1988 (the TPCA).

[30] There was, however, no application made to vary clause 4.1 of the 1994 deed of trust. No case was made out to suggest that the clause served to hamper the achievement of the objects of the founder, or was prejudicial to the interests of beneficiaries, or was in conflict with the public interest. Section 13 does not confer upon a court a general power to vary a deed of trust. A court's power is confined to the circumstances which are set out in the section.[15] Once the full court had determined that the Hafiz Trust was validly established, any obstacle that clause 4.1 might have posed to the achievement of the objects of the trust was negated. It was not open to the court, *mero motu*, to vary clause 4.1. The full court's order of variation cannot stand.

The amendment of the deed of trust

[31] The second question is whether the 1994 trust deed was amended by the 2004 deed of amendment as sought in the counter-application. The facts giving rise to the 2004 deed of amendment were common ground. Shakeel and Aneez Hafiz were not trustees of the Hafiz Trust when they agreed to the amendment of the 1994 deed of trust at the meeting held in December 2004. Goolam Hafiz had contended that it was always his intention that his two younger sons also be appointed as trustees of the trust. Ahmed Hafiz disputed this version.[16] He stated that it was always known that they were not trustees. They were not required to agree to an amendment of the trust deed in their capacity as trustees. All that was

[15] *Gowar and Another v Gowar and Others* [2016] ZASCA 101; [2016] 3 All SA 382 (SCA); 2016 (5) SA 225 (SCA) para 34.

[16] No finding was made by the full court on this aspect, and it is not necessary that such finding be made. The 1994 deed of trust does not appoint them as trustees. If clause 4 is taken to relate to the appointment of trustees to the 'office of trustee' created by the 1994 deed, then on the plain meaning of the language used, they would only be appointed as trustees in the event of the failure of appointment of a trustee in terms of clause 4.1. It is therefore difficult to reconcile this with the donor's assertion that it was always intended that they should be appointed as trustees. The only indication that they were required to be appointed as trustees appears from clause 7, which deals with the variation of the trust.

required was that they agree, as 'potential' trustees, who may succeed to trusteeship as provided by clause 4 of the deed of trust.

[32] Clause 7.1 provides that the trust deed may be varied by agreement in writing between the first, second and third trustees. Clause 7.2 states that any such agreement shall be binding 'on any person appointed as Trustee and on any beneficiaries of [the] Trust, whether majors or minors, born or unborn, at the date at which such agreement is concluded'.

[33] The question that arises is whether clause 7.1 means that an amendment can only be effected by the named trustees acting in their capacity as trustees. If that is so, then the amendment of the trust deed in 2004 (as also in 2011), was not validly effected. Counsel for the first respondent argued that the clause does not require that the second and third trustees act as trustees. All that was required was that the persons named as trustees should agree to the variation of the deed of trust. The original trust deed did not envisage that the second and third trustees be appointed as trustees from the outset. They agreed as a matter of fact to the amendment of the trust deed.

[34] Such construction would give rise to absurdity. It would mean that a trustee could enter into an agreement with other persons who were not required to act in a fiduciary capacity to amend a deed of trust. It would offend the essential principles upon which a trustee assumes the obligations imposed by the trust. The language of clause 7.1 is clear. It means that a variation of the trust deed may only be effected by the named trustees acting in their capacity as trustees. Accordingly, the agreement to vary the original deed by the deed of amendment of 2004, could not and did not validly vary the original deed of trust. Therefore, the 1994 trust deed remains extant.

The appointed trustees

[35] The final question concerns the order declaring Ahmed Hafiz, Akhmed Wahab and Sayed Mohamed to be the trustees for the time being of the Hafiz Trust. There was no controversy concerning the appointment of Ahmed Hafiz, who was designated by the trust deed to be the First Trustee. Letters of authority were issued to him on 21 September 1994.

[36] The 1994 trust deed is, apart from clause 4, silent about the appointment of other trustees. It says nothing about the number of trustees to be appointed. The language employed in clauses 5, 6 and 7 of the deed suggests that more than one trustee may be appointed. Where a trust deed is silent as to the appointment of additional trustees, the Master may appoint any person to act as trustee of the trust.[17]

[37] The affidavits say very little about the appointment of additional trustees in 2005. The affidavits merely state that they were asked to serve as trustees in order to ensure that 'un-related' persons were appointed to secure registration as a non-profit organistion. The request emanated from a 'meeting of trustees' involving Shakeel and Aneez Hafiz, and took the form of a resolution adopted by the 'trustees'. They had no authority to act in that capacity. Nothing is known about the basis upon which the Master then exercised the discretion to appoint the additional trustees. The counter application did not seek an order setting aside the decision of the Master to withdraw the letters of authority. It sought their appointment by order of court. For such order to be made the court would have to be placed in the same position as the Master would be to enable it to exercise

[17] Section 7 of the Trust Property Control Act 57 of 1988 provides that:
'(1) If the office of trustee cannot be filled or becomes vacant, the Master shall, in the absence of any provision in the trust instrument, after consultation with so many interested parties as he may deem necessary, appoint any person as trustee.
(2) When the Master considers it desirable, he may, notwithstanding the provisions of the trust instrument, appoint as co-trustee of any serving trustee any person whom he deems fit.'

the discretion. There is, however, no factual basis upon which the court could do so. In these circumstances, the full court erred in its declaration since there was insufficient basis in the evidence to support the order.

[38] The position of Ahmed Hafiz is different. He was nominated as a trustee by the settlor. He accepted his nomination and was duly appointed by the Master on 21 September 1994. The Master's subsequent concerns relating to the appointment of trustees did not relate to the appointment of Ahmed Hafiz as trustee.[18]

[39] In relation to costs, it was submitted that the full court ought to have ordered that the costs be borne by the Hafiz Trust. This was premised on the contention that the litigation arose because of the actions of the settlor and the disputed appointment of trustees by the Master. The litigation was said to have been conducted in the interest of the Hafiz Trust. However, what is plain from the record is that the real dispute relates to the position of trusteeship of the Hafiz Trust. There is, therefore, no basis to interfere with the full court's costs order. As regards the costs on appeal, the appellants unsuccessfully persisted in supporting the high court order. The fact that the full court's order must be varied does not warrant a departure from the ordinary rule regarding costs. There is also no reason why the costs should be borne by the Hafiz Trust.

[40] In the result, the following order will issue:

1 Save to the extent set out in paragraph 2 below, the appeal is dismissed.

2 Paragraph 2 of the order of the full court is varied so that the order reads as follows:

'1. The appeal is upheld.

[18] The Master's ruling related to appointments made after 21 September 1994. See para 17 above.

2. The order of the court a quo is set aside and is substituted by the following:

2.1 It is declared that the Goolam Murtuza Hafiz Trust is valid and the said Trust shall be administered in accordance with the terms of the Memorandum of Trust Agreement dated 6 September 1994.

2.2 It is declared that the Trustee for the time being of the Goolam Murtuza Hafiz Trust shall be Ahmed Zakir Hafiz (Identity no. 620928625089).

3. The first respondent, the fifth respondent and the sixth respondent together with the Goolam Murtuza Hafiz Trust, are directed to pay the first and second applicants' costs in respect of the application and counter application in the court a quo and the appeal costs, jointly and severally the one paying the other to be absolved.'

3 The appellants are ordered to pay the first and second respondents' costs of appeal.

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G G GOOSEN

JUDGE OF APPEAL

Appearances

For the appellants:	V I Gajoo SC
Instructed by:	Harkoo Brijlal & Reddy Inc, Durban H Bekker Attorneys Inc, Bloemfontein
For the first and second respondents:	F M Moola SC
Instructed by:	Larson Falconer Hassan Parsee Inc, Umhlanga Rocks Phatshoane Henney Inc, Bloemfontein.