



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 31 March 2011
STATUS Immediate

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

Blom v Brown
345/10 [2011] ZASCA 54 (31 March 2011)

Media Statement

Today the Supreme Court of Appeal (SCA) dismissed an appeal by Nadine Blom (Born Brown) and her sister Elmari Brown the children of Alfred Samuel Brown (the deceased) against a judgment of the North Gauteng High Court (Ismail AJ) that the first respondent, Cecilia Brown, who the deceased had married after his divorce from the mother of the appellants, was entitled to receive the benefits reserved to her by the will of the deceased.

Prior to travelling on a work related assignment, the deceased asked to see his first will, in terms of which he had left to the first respondent his entire estate. As this will could not be located he decided to dictate a second will, in the presence of witnesses, which the first respondent wrote out in her own handwriting. He read through the will, which revoked all his previous wills and signed it. Whilst away on that assignment the deceased met his death. When the second handwritten will was lodged with the Master, the first respondent was informed that in terms of s 4A of the Wills Act 7 of 1953 she was disqualified from benefitting under the will.

Section 4A(1) disqualifies, amongst others, a person who writes out the will of another in his or her own handwriting from receiving any benefit under the will. The first respondent applied, without notice to the appellants, to the Johannesburg High Court for an order that she was entitled to benefit from the will. The high court (Pretorius AJ) agreed and granted her the relief

that she had sought. Once the appellants came to learn of that order they applied for a rescission of that order. Ismail AJ, who heard the rescission application, dismissed it with costs essentially because he was satisfied that Pretorius AJ was correct.

According to the SCA the general principle encapsulated in s 4A(1) is subject to the qualification and exceptions set out in s 4A(2)(a) which empowers a court to declare any such person competent to receive a benefit under the will if it is satisfied that such a person did not defraud or unduly influence the testator. On behalf of the appellants it was argued that the qualification and exception in s 4A(2)(a) did not apply to persons who are family members of the testator. Rather, so the argument went, section 4A(2)(b), which makes provision for a person, who in terms of the law relating to intestate succession would have been entitled to benefit from the testator if that testator had died intestate, applied. As subsection 2(b) restricted the benefit of such a beneficiary to the value of the share such a person would have received in terms of the law relating to intestate succession, it was contended that being the spouse of the deceased the first respondent's benefit should not exceed a child's share being what she would have been entitled to inherit had the deceased died intestate.

The SCA held that on the plain language of the section there was nothing to suggest that the application of s 4A(2)(a) was dependent on the inapplicability of s 4A(2)(b). If it had been the intention of the legislature that family members should be excluded from the ambit of subsec 2(a) one would have expected the relevant section to contain clear wording to that effect. The court thus rejected this argument. The court held that, as was the position under the common law, s 4A(2)(a) seeks to permit a beneficiary who would otherwise be disqualified from inheriting, to satisfy the court that he or she did not defraud or unduly influence the testator in the execution of the will. The court held that as the first respondent had not, by way of the second will, gained any advantage over anyone nor had her bona fides been questioned, that she should receive the benefits reserved to her by the will.

The SCA consequently dismissed the appeal with costs.

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