

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 21 May 2018

Status: Immediate

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

Mostert and Others v Nash and Another [2018] ZASCA 62.

The SCA today upheld in part an appeal by Mr Antony Mostert against a high court judgment Dealing with the arrangements for his fees as curator of the Sable Industries Pension Fund. The high court held that the agreement concluded in respect of his fees was unlawful and contrary to public policy. The high court ordered him to render an account and repay all amounts received by him as fees, said to be some R23 million. The agreement in respect of his fees had been concluded with the Executive Officer of the Financial Services Board (FSB) and entitled him to be paid 16.66% of all amounts recovered by him on behalf of the fund. The agreement was concluded on a contingency basis and obliged Mr Mostert to bear the costs of recovering amounts due to the fund.

The SCA held that an agreement that a curator could recover fees on a contingency basis was not contrary to public policy or the provisions of the Contingency Fees Act 66 of 1997. However, it was a requirement of the court order appointing Mr Mostert as curator of the fund that he receive ‘periodic remuneration in accordance with the norms of the attorneys’ profession’. The evidence showed that this did not contemplate

an agreement to recover fees on a contingency basis as a percentage of the amounts recovered for the fund. Accordingly, the agreement was not in accordance with the court order and for that reason had to be set aside. Mr Mostert remained entitled to recover a reasonable remuneration for his services, but the amount would need to be determined by way of a fresh agreement with the FSB in accordance with the norms of the attorneys' profession, or another basis approved by the high court. The SCA accordingly set aside the orders that Mr Mostert render an account at this stage and repay what he had received.

As both parties had achieved substantial success the SCA held that they should each bear their own costs of the appeal.