

# 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** 25 March 2020  
**STATUS** Immediate

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

*Marais N.O. and Another v Maposa and Others (642/2018) [2020] ZASCA 23 (25 March 2020)*

### **MEDIA STATEMENT**

The Supreme Court of Appeal (SCA) today allowed the appeal of Mr J Marais and Mr S Shongwe, in their capacities as joint executors of the estate of the late Mr Samuel Broodie, against Ms K C Maposa, Mr K T Ledwaba and Ms M M Ledwaba. Mr Broodie, at the time of his death, had been married in community of property to Ms E M Broodie for close to 50 years. He had also been involved in a long-standing personal relationship with Ms Ledwaba. Ms Maposa and Mr Ledwaba were the children born of this relationship. Shortly before Mr Broodie's death, 75 percent of the members' interest in a close corporation owned by Mr and Ms Broodie's joint estate was transferred to Ms Maposa, Mr Ledwaba and Ms Ledwaba. The close corporation owned a building in Sea Point, Cape Town worth approximately R20 million. Ms Broodie had never consented to the transfer. Prior to her death, Ms Broodie had, in her capacity as executor of Mr Broodie's estate, launched an application in the Western Cape Division of the High Court, Cape Town to set aside the transfer. She had been unsuccessful. She was substituted as an appellant by the joint executors of Mr Broodie's estate.

In terms of s 15(3) of the Matrimonial Property Act 88 of 1984, Ms Broodie's consent was required for the transaction to be valid. Section 15(9)(a) of the Act provides, however, that a spouse will be deemed to have consented if the third party with whom the other spouse had transacted 'does not know and cannot reasonably know' of the lack of consent. On appeal, the only issue was whether Ms Maposa and her children could not reasonably have known of Ms Broodie's lack of consent. They were under a duty to make enquiries. As Ms Ledwaba knew that Mr and Ms Broodie were married but never even enquired of Mr Broodie whether Ms Broodie's consent was required, Ms Broodie could not be deemed to have consented. The result was that the transaction was void.