



**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** 29 September 2020

**STATUS** Immediate

***Jones v Pretorius NO (281/2019) [2020] ZASCA 113 (29 September 2020)***

*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.*

Today the Supreme Court of Appeal (the SCA) dismissed the appeal of the appellant, Mr Barend Petrus Jones, against the decision of the Gauteng Division of the High Court, Pretoria. The High Court ordered the appellant to pay the amount of R1.1m to the respondent.

The respondent is Ms Christina Helena Pretorius NO, in her capacity as the executor of his deceased estate of Mr Wilhelm Petrus Meyer. Mr Meyer was survived by his spouse, Mrs Cornelia Wilhelmina Gertruida Meyer. In their joint will, Mrs Meyer was nominated as the executor of the estate, on condition that the appellant was to act as the agent of the executor. Mrs Meyer mandated the appellant to administer the estate on her behalf and agreed that he would be entitled to the executor's fee. After her appointment, Mrs Meyer passed away. The appellant continued to administer the estate and caused it to pay to him the total amount of R1.1m. The respondent was subsequently appointed as the executor. By then the Master had approved a liquidation and distribution account that the appellant had drawn. He did not, however, give proper notice in terms of s 35(5) of Administration of Estates Act 66 of 1965 (the Act). Upon her appointment, the respondent demanded repayment of the said amount from the appellant and his failure to do so led to the present litigation.

The SCA held that as a general rule, a contract of agency is terminated by the death of the principal or the agent. After the death of Mrs Meyer, the appellant had no authority to act for the estate or to deal with its property nor to lawfully make any payment from estate funds. The appellant conceded that these payments constituted unlawful appropriations of estate funds.

The respondent relied on s 50(b) of the Act, which provide that an executor who makes a distribution otherwise than in accordance with the Act shall be entitled to recover from any person any such amount paid. The SCA held that the unlawful appropriation of estate funds by a person who has no authority to deal with the estate, falls outside the scope of s 50. Therefore, the respondent's claim did not fall within the ambit of s 50(b).

Nonetheless, the SCA held that only the executor had powers and duties to deal with the estate. One of the main obligations of an executor was to recover what was due to the estate. In the result, the respondent was entitled and obliged to recover the funds that had unlawfully been appropriated by the appellant. The appeal was accordingly dismissed.