

SOUTH AFRICA / JUDGMENT

Carstens NO and Others v Carstens (409/11) [2012] ZASCA 62 (10 May 2012)

[2012] ZASCA 62

COURT

Supreme Court of Appeal

BEFORE

Brand, Cloete, Heher

CASE / FILE NUMBER

409/11

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 409/11

Not reportable

In the matter between:

CHRISTIAAN LOUIS CARSTENS NOFIRST APPELLANT

ANDRIES JOHANNES DANIEL BESTER NOSECOND APPELLANT

ARNO STRYDOM NOTHIRD APPELLANT

VINCENT CYRIL TEE NOFOURTH APPELLANT

CHRISTIAAN LOUIS CARSTENSFIFTH APPELLANT

and

BRIGID MARY CARSTENSRESPONDENT

Neutral citation: Carstens NO v Carstens (409/11) [2012] ZASCA 62

(10 May 2012).

Coram: Brand, Cloete and Heher JJA

Heard: 10 May 2012

Delivered: 10 May 2012

Summary:

ORDER

On appeal from: Eastern Cape High Court, Port Elizabeth (Dambuza J
sitting as court of first instance):

The appeal is struck off the roll. The Trust (represented by the first to fourth appellants) and the fifth appellant, are ordered to pay the respondent's costs of appeal jointly and severally.

CLOETE JA (BRAND AND HEHER JJA CONCURRING):

[1] The court a quo dismissed the 'point in law' raised by the appellants and granted leave to appeal to this court.

But the order amounts to the dismissal of an exception, which is interlocutory and therefore not appealable. There is the specific

authority of *Maize Board v Tiger Oats Ltd* 2002 (5) SA 365 (SCA) and the general authority of *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) at 532I-533B.

[2] The appeal must accordingly be struck off the roll.

[3] The following order is made:

T D CLOETE

JUDGE OF APPEAL

APPEARANCES:

First to Fourth Appellant: P A van Niekerk SC (with him Ms A Venter)

Instructed by:

Van Niekerk, Huisamen & Van Wyk, Uitenhage

Honey Attorneys, Bloemfontein

Fifth Appellant: J D Huisamen SC

Kaplan Blumberg Attorneys, Port Elizabeth

For Respondent: R G Buchanan SC

G P van Rhyn Minnaar & Co, Uitenhage

Symington & De Kok, Bloemfontein

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