

SOUTH AFRICA / JUDGMENT

Wren and Another v Master of the High Court Eastern Cape High Court, Port Elizabeth and Another (3727/12) [2015] ZAECPEHC 8 (19 February 2015)

[2015] ZAECPEHC 8

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

E Revelas, J W Eksteen

CASE / FILE NUMBER

3727/12

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION – PORT ELIZABETH

Case No: 3727/12

Date: 19 February 2015

In the matter between

SANDRA JANE WREN..... First Applicant

YOLANDI MYNHARDT.....Second Applicant

and

THE MASTER OF THE HIGH COURT

EASTERN CAPE HIGH COURT,

PORT ELIZABETH.....First Respondent

IAN DAVID MITCHELL N.O. Second Respondent

REASONS FOR GRANTING LEAVE TO APPEAL

TO THE SUPREME COURT OF APPEAL

REVELAS J

- [1] The father of the late Carolyn Ellen de Villiers, in his capacity as executor of her deceased estate (the second respondent), applies for leave to appeal to the Supreme Court of Appeal against the orders made on 11 December 2014 by this Court, declaring Annexure A to the applicant's notice of motion to be a codicil of the Will of the deceased, and directing the Master to accept it as such.
- [2] The deceased left two notes (Annexures A and B) each containing bequests, shortly before her death and it was held that read together, they were not irreconcilable.
- [3] In the one note the deceased bequeathed one million rand to the second respondent and in the other she made two bequests of one million rand each to the first and second respondents respectively. Neither of the two notes in question which were held to be codicils, contained revocation clauses and it was not possible to determine which one was written first. It was considered that the two notes were not contradictory in the sense that any particular asset was bequeathed to one person in the first note and to another in the second. In the event that the note with the single bequest was executed first then the subsequent note serves merely to add a further bequest. In the event that the note with the two bequests, made in unambiguous terms, was executed first, then, absent an equally clear and unambiguous revocation, the original bequest is deemed not to be revoked by the terms of the second note (see paragraph 15 of judgment). Thus it was held that the two notes, read together, were not irreconcilable.
- [4] The conclusion flows from the interpretation of the two notes and the application of points of common law in respect of which there is a dearth of authority. There is therefore a reasonable prospect of another court finding differently.
- [5] Section 16(1)(a)(ii) of the Superior Courts Act, 10 of 2013, provides that an appeal against any decision of a High Court, as a court of first instance and consisting of more than one judge, lies to the Supreme Court of Appeal.

E REVELAS

JUDGE OF THE HIGH COURT

EKSTEEN J

I agree.

J W EKSTEEN

Counsel for applicants: Adv A Beyleveld SC

Adv D Bands

Instructed by: BLC Attorneys

Port Elizabeth

Counsel for 2nd respondent: Adv A.M. Breitenbach (SC)

Instructed by: De Villiers & Partners

Date Heard: 19 February 2015

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