IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED:

Date: ***14th DECEMBER 2016*** Signature:

APPEAL CASE NO: A258/2015

COURT *A QUO* CASE NO: 2013/51034

DATE: 14TH DECEMBER 2016

In the matter between:

SALZWEDEL: GREGORY ANDREW N O	Applicant
and	
ROSSOUW: SARINA N O	First Respondent
BOTES – SCHOEMAN: NERINE N O	Second Respondent
THE MASTER OF THE HIGH COURT	Third Respondent
ROSSOUW: SARINA	Fourth Respondent
ROSSOUW: SAMUEL N O	Fifth Respondent
REDINER: FRIEDERICH WILHELM N O	Sixth Respondent

In re: **ESTATE LATE CATHARINA MARGARETHA SALSWEDEL**

JUDGMENT

ADAMS AJ:

[1]. This is an appeal against the judgment and order, excluding the costs orders, of Prinsloo J in terms of which the appellant's application for a declaratory order was dismissed, with the costs of the application to be paid by the deceased estate of the late Catharina Margaretha Salzwedel. The appellant also appeals against the judgment and the order, again excluding the cost order, of the court *a quo* in the counter – application in terms of which the appellant was removed from his office as the executor of the deceased estate of the late Catharina Margaretha Salzwedel, with the costs of the counter – application to be paid by the deceased estate. This appeal is with the leave of the court *a quo*.

[2]. The case turned mainly on the interpretation of certain clauses in the will of the late testatrix, Ms Salzwedel *('the deceased')*.

[3]. The background facts found by the court *a quo* were in the main common cause.

[4]. The deceased was an active and successful businesswoman, having won during her lifetime some awards for her enterprising work. She was evidently involved in pursuits such as insurance brokerage, advising on finances and risk management. In the process she floated a number of companies of which she was, for the most part, the sole director.

[5]. The deceased used to be married to the fifth respondent, Mr Samuel Rossouw. From this marriage two daughters were born, the first respondent (also the fourth respondent), evidently also a business woman in her own right and 28 years old at the time of the hearing of the application in the court *a quo*, and a younger daughter, Rhode Rossouw *('Rhode')*, who was represented in the motion proceedings by the fifth respondent, as she was a minor at the time of the commencement of the proceedings. Shortly after the hearing of the application and before the court *a quo* handed down its judgment, Rhode had become a major.

[6]. During February 2002 the deceased founded the *Karien Rossouw Familie Trust ('the Trust')*. One of the original trustees of the Trust was the deceased. At the time of the hearing of the applications in the court *a quo* the trustees were the appellant, the first respondent (who was also cited in her personal capacity as the fourth respondent), the second respondent and the sixth respondent.

[7]. In terms of the Trust Deed of the Trust the beneficiaries are the deceased and her two daughters (the fourth respondent and Rhode). In terms of clause 6.1 of the Trust Deed the trust shall become dissolved upon the death of the deceased on condition that the trustees, in the exercise of their discretion, may dissolve the trust either before or after such demise. The trustees decided not to dissolve the trust upon the death of the deceased on the 13th September 2012.

[8]. The deceased and the fifth respondent were divorced during 2001. On the 20th September 2003 the deceased and the applicant got married to each other out of community of property. At the time of their marriage, the deceased was 42 years old and the appellant 35.

[9]. On the 12th December 2007, the deceased signed her last will and testament *('the will')*, which forms the subject of this dispute. In terms of the will, the appellant was appointed as the executor. The deceased passed away on the 13th September 2012.

[10]. After the death of the deceased, and while the estate was being administered and finalised, a number of disputes emerged, and were identified between the appellant, on the one side, and the first, fourth and fifth respondents *('the opposing respondents')*, on the other side.

[11]. The main dispute, which forms the subject of this case, involves the question whether the will should be interpreted in such a way that all shares owned by the deceased at the date of her death, including 58 very valuable shares held in Gulfstream Energy (Pty) Ltd, is to be included in the legacy of the appellant personally or in the legacy of the trust beneficiaries, that is the two daughters of the deceased.

[12]. In an effort to resolve the aforegoing dispute, the appellant, in his capacity as executor of the deceased estate, launched the application in the court *a quo* for a declaratory order to the effect that the mentioned shares and loan accounts are to be included in his personal legacy. This application was opposed by the opposing respondents, who also brought a counter – application seeking orders for the removal of the appellant from his office as the executor of the estate in terms of section 54(1)(a)(v) of the Administration of Estates Act no 66 of 1965 and for the appellant to be directed to return the Letters of Executorship issued to him by the Master of the High Court.

[13]. In his amended Notice of Motion the appellant had asked for an order in the following terms:

> *'1. That it is declared that the correct interpretation of paragraph 5.1 of the last will and testament of the late Catharina Margaretha Salzwedel executed on 12 December 2007 at Centurion is that all shares owned by the testatrix on the date of her death on 13 September 2012, including specifically (but not limited to) the 58 shares held in Gulfstream Energy (Pty) Ltd, with registration number: 2006/031199/07, is to be included in the legacy of her husband, Gregory Andrew Salzwedel;*
>
> *2. That it is declared that the correct interpretation of paragraph 5.1 of the last will and testament of the late Catharina Margaretha Salzwedel executed on 12 December 2007 at Centurion is that all loan account(s) listed in favour of the testatrix on the date of her death on 13 September 2012, including specifically in (but not limited to) Gulfstream Energy (Pty) Ltd, with registration number: 2006/031199/07, is to be included in the legacy of her husband, Gregory Andrew Salzwedel.'*

[14]. The order that the appellant seeks in this appeal, which is at variance with the order (as per the amended Notice of Motion) sought at the hearing of the application in the court *a quo*, is:

> *'1. That it is declared that the correct interpretation of paragraph 5.1 of the last will and testament of the Late Catharina Margaretha Salzwedel executed at Centurion on 12 December 2007 is that all shares owned by the testatrix on the date of her death on 13 September 2012, including specifically (but not limited to) the 58 shares held in Gulfstream Energy (Pty) Ltd with registration number 2006/031199/07, is to be included in the legacy to her husband, the applicant;*

2. *That it is declared that the correct interpretation of paragraph 5.1 of the last will and testament of the Late Catharina Margaretha Salzwedel executed on 12 December 2007 at Centurion is that all credit loan accounts listed in favour of the testatrix on the date of her death, namely 13 September 2012 in Intra Financial Advisors Holdings (Pty) Ltd, Intra Financial Advisors (Pty) Ltd, Horus Management CC, Intra Sure Insurance Brokers (Pty) Ltd and Alexander Hutchinson (Pty) Ltd is to be included in the legacy to her husband, the applicant;*

3. *That any credit loan account that might be listed in favour of the testatrix on the date of her death, namely 13 September 2012, in Gulfstream Energy (Pty) Ltd with registration number 2006/031199/07 is to be included in the residue of the estate of the Late Catharina Margaretha Salzwedel';*

4. That the counter application be dismissed;

5. The costs order sought by the Appellant is that the costs of the appeal, including the costs of the application for leave to appeal, be paid by the estate of the Late Catharina Margaretha Salzwedel, if the appeal is unopposed.

[15]. The clauses of the will which the appellant sought to have interpreted in his favour in his personal capacity are clauses 5 and 6 of the will, which reads as follows:-

'5. LEGACIES:

I bequeath my estate as follows:

5.1 To my husband, GREGORY ANDREW SALZWEDEL, all my shares, and any credit loan account in INTRA FINANCIAL ADVISERS HOLDINGS (PTY) LTD, INTRA FINANCIAL ADVISERS

(PTY) LTD, HORUS MANAGEMENT CC, INTRASURE INSURANCE BROKERS (PTY) LTD and ALEXANDER HUTCHINSON (PTY) LTD.

5.2 To the Trustees of the KARIEN ROSSOUW FAMILIE TRUST (No IT 1800/02), a cash amount equal to the amount due to me by the said trust as at date of my death, to be administered for the benefit of the trust beneficiaries in terms of such Trust Deed.

6. HEIRS:

6.1 The residue of my estate to the Trustees of the KARIEN ROSSOUW FAMILIE TRUST (No. It 1800/02), to be administered for the benefit of the trust beneficiaries in terms of such Trust Deed.

[16]. During 1998 the deceased started the business Intra Financial Advisors (Pty) Ltd (mentioned in clause 5.1 of the Will) as a marketing and management company. During 2003 she moved to Pretoria to expand the Intra Financial Advisors business and also established a holding company, Intra Financial Advisors Holdings (Pty) Ltd (also mentioned in clause 5.1 of the will) and another property holding company, Horus Management Services (also mentioned in the will). She also established another short – term insurance brokerage, Intra – Sure Insurance Brokers (Pty) Ltd (also mentioned in the will) and during 2006 the deceased purchased another brokerage, Alexander Hutchinson Brokers (Pty) Ltd. All of the aforementioned businesses are specifically mentioned by name in the will of the deceased.

[17]. Gulfstream Energy (Pty) Ltd *('Gulfstream Energy')* and the shares and the loan account of the deceased in that company are not mentioned in the will. The deceased had started the business of Gulfstream Energy, which had a company name change from Intra Credit Risk Management (Pty) Ltd on the 2nd October 2009.

[18]. Unlike the other businesses of the deceased, Gulfstream Energy was not mentioned in the will, although it came into existence about a year before the will was signed in December 2007 and three years after the deceased married the appellant, therefore approximately four years after the date of marriage. Gulfstream Energy conducted very little or no business from its registration during 2006 until the latter part of 2009. In the financial statements of the said business the deceased is listed as the sole director. In terms of the Shareholders' Agreement entered into during November 2009 between the deceased and Ms Jegels, the remaining shareholders *'shall be obliged to purchase the shares'* upon the demise of one of the shareholders. Ms Jegels was the only other shareholder. The shares are to be valued and then sold to the remaining shareholders. The shares had since been valued at some R5.2 million and Ms Jegels had offered to purchase them

[19]. The court *a quo* came to the conclusion that the appellant failed to make out a case which supports his proposed interpretation of the will. The court *a quo* was of the view that the failure by the testatrix to mention Gulfstream Energy with the other businesses in the will (or to introduce a reference to the said business by way of a later amendment to the will), inevitably points to the inclusion of the Gulfstream shares as part of the residue of the estate of the deceased, which has to be administered for the benefit of the trust beneficiaries as specified in clause 5.2 of the will.

[20]. The appellant's appeal is based on three main grounds. I deal therewith in turn.

[21]. The appellant argues that the court *a quo* failed to correctly approach the interpretation of the deceased's will in that it failed to consider the language, the wording and the punctuation as used in the will.

Consequently, so it was submitted on behalf of the appellant, the court *a quo* erred in not finding that the wording of the will, in particular the wording of clause 5.1, is clear and unequivocal, and that no further interpretative measures needed to have been considered.

[22]. It was furthermore argued before us that when considering in detail the contents of clause 5.1 of the will, as the court *a quo* ought to have done, specifically considering the use of punctuation, the significance of the comma between the words *'all my shares'* and *'and any credit loan account'*, should be recognised. The court *a quo* erred in not giving any consideration or assigning any importance to the explicit placing of the comma by the testatrix, so it was submitted. The court *a quo* ought to have found that the normal or neutral use of the comma after the words *'all my shares'* in paragraph 5.1 separates the classes of assets, namely on the one hand *'shares'* and on the other hand *'loan accounts'* in specified entities that include a close corporation.

[23]. If the court *a quo* had given to the use of the comma the due consideration it ought to have given, it would have come to the conclusion that two separate and distinct bequests were made by the testatrix in clause 5.1 of the will. Firstly any and / or all shares and shareholdings the deceased had at the time of her death in any and / or all companies and other corporate entities and secondly the credit loan accounts listed in her favour in the named entities. Both of these bequests, so it was argued, were in favour of the appellant in his personal capacity.

[24]. In sum, it was argued on behalf of the appellant that the court *a quo* had erred in that it ignored the comma between the words *'all my shares'* and *'and all loan accounts'*.

[25]. It was also submitted on behalf of the appellant that the Court *a quo* had incorrectly applied the *expressio unius est exclusion alterius* maxim referred to in *Dison N O and Others v Hoffman and others NNO,* 1979(4) SA 1004 (AD). The facts in that matter, so it was submitted, differ totally from the present matter and also because *in casu* there is no ambiguity in the wording of the will as was the case in the *Dison* matter. In the present matter, the two totally different legacies dealt with in clause 5.1 of the will of the deceased, are clear as daylight, so it was submitted.

[26]. When interpreting the provisions of a will, the approach should be to ascertain the intention of the testator from the language used in the will. In that regard see: *Estate Maree v Redelinghuis*, 1943 AD 547 at 551. Ordinary words must be understood in their natural and ordinary meaning, technical words in their technical meaning; general words following upon specific words of one genus have to be read *eiusdem generis* with the words proceeding them and *inclusio unius exclusio alterius*.

[27]. In *Dison N O v Hoffmann N O*, 1979 (4) SA 1004 (AD) the court commented on its duty to interpret the provisions of a will at page 1028H as follows.

> *'In view of the linguistic imperfections of this will which I have pointed out, it seems to me that it would be dangerous to construe this will by a process of painstakingly endeavouring to assign a meaning to every word or of attaching special significance to the use of the plural or singular number or to a particular expression used in the will. From a linguistic point of view the proper approach to adopt in the present case would be, in my view, to take a broad view of all the provisions in the will, to eschew a meticulously literal approach to every word or expression used and to determine the general scheme of the will. After all, the cardinal rule of construction is to ascertain the intention of the testator. It is true that, basically, the duty of the Court is to ascertain, not what the testator meant to do when he made his will, but*

what his intention was as expressed in his will. See: Robertson v Robertson's Executor, *1914 AD 503 at 507;* Cuming v Cuming and Others, *1945 AD 201 at 206;* Ex parte Froy: In re Estate Brodie, *1954 (2) SA 366 (C) at 370A - C.*

[28]. In construing the contents of a will, and only in the event when difficulty exists to ascertain the wishes of the testator from the plain interpretation of the language used in the document, the court must place itself in the position of the testatrix. The court will do so by applying the *'armchair rule'* and place itself in the position of the testatrix to consider surrounding circumstances and extrinsic evidence available. The court will then determine and consider facts which are likely to have motivated the testatrix in her dispositions.

[29]. In my view clause 5.1 of the will is capable of at least two interpretations. The argument by Mr Louw, Counsel for the appellant, that the clause 5.1 is clear, unambiguous and does not require the application of any assistive rules of interpretation, is unsustainable. In that regard, I am in agreement with the submissions made on behalf of the opposing respondents that even in the presentation of his own case the appellant applied different interpretations of the said paragraph. In his Notice of Motion as well as in his founding affidavit, the appellant initially requested a declaratory order to read that the credit loan account in Gulfstream Energy (Pty) Ltd to be included in the legacy to her husband. However the appellant adopted a different stance in the Notice of Appeal, in that the relief now requested seems to be that the credit loan account in Gulfstream Energy (Pty) Ltd is to be included in the residue of the estate of the deceased.

[30]. On a proper reading of the relevant clauses, and applying the aforegoing principles, I am of the view that the deceased expressly referred to the

loan accounts and the shares in the specified companies, and that her intention was not to include the shares and loan accounts in Gulfstream Energy.

[31]. I agree with the Court *a quo* that there is no apparent or conceivable reason why the deceased would have divorced the shares from the credit loan accounts in the specified entities. Both shares and loan accounts are assets in such companies. The deceased had intended to bequeath those assets to her husband. Furthermore, as held by the court a quo, there is no conceivable reason why the deceased would have embarked upon such a complicated and cryptic exercise to separate the destiny of the shares from the credit loan accounts and only specify the entities relating to the latter. To find otherwise would, in my view, amount to adopting an artificial and an unnatural approach. It would also disregard and violate the cardinal rule of construction to ascertain the intention of the testator.

[32]. An aspect which also weighs heavily on my mind is the fact that the Gulfstream Energy Shareholders' Agreement concluded between the deceased and the other shareholder on the 19th November 2009 specifically provided that, upon her death, the co-shareholder had the option to purchase such shares. The shareholders' agreement was signed by the deceased on the 19th November 2009, that is approximately 2 (two) years after the deceased executed her last will and testament and approximately 2 (two) years before the date of death of the deceased. In that regard, I am in agreement with the court *a quo* that the deceased's intention not to bequeath her Gulfstream shares to her husband can be clearly deduced from the aforegoing fact. She expressly agreed in the shareholders' agreement that, upon her death, her co-shareholder would have the option to purchase such shares. If such shares were bequeathed to her husband, why agree to such an option as and at the time of her death? Also, there was nothing stopping the deceased from amending her

will to that effect if she intended for husband to inherit the shares in Gulfstream Energy.

[33]. In the circumstances, I am of the view that the appeal against the order of the court *a quo* in the main application should be dismissed.

[34]. As regards the appellant's appeal against the judgment and the order of the court *a quo* in relation to the counter – application, it is premised in the main on the grounds that the court *a quo* erred in its factual finding that there were several instances of a conflict of interest which warranted the removal of the appellant from his office as executor of the deceased's estate.

[35]. It is submitted on behalf of the appellant that most, if not all, of the issues relevant to the counter application became academic or never were proper grounds of dispute. Firstly: the erstwhile common home of the deceased and the appellant should be transferred to the Karien Rossouw Familie Trust. This issue, according to the appellant, is not a point of dispute. The appellant is the lessee of the erstwhile joint home and is responsible for the upkeep thereof, and he is paying a market related rental.

[36]. There is a boat that must devolve to the Karien Rossouw Familie Trust. Again, so it was submitted on behalf of the appellant, there is no dispute in that regard.

[37]. The shares in Gulfstream Energy were taken up by Mr or Mrs Jegels after the death of the testatrix in terms of the shareholders' agreement. In the premises the price of R5.2 million transferred by Mr or Mrs Jegels to the attorney appointed to assist with the administration of the estate as

referred to in the papers, are held in an interest bearing account. The amount held in trust and its eventual destiny is dependent on the outcome of this case. It was therefore argued on behalf of the appellant that the devolvement of this amount of money, the amount transferred by Mr or Mrs Jegels, will be determined in this appeal. It is therefore not in itself a proper ground for the removal of the appellant as the executor appointed in the will of the testatrix.

[38]. There were two *Discovery* policies that in total paid approximately R2.1 million as a result of the death of the testatrix. Appellant submits that it is common cause between the parties that the eventual beneficiary thereof will be the husband of the deceased, the appellant.

[39]. There was also an issue relating to the claim of the appellant arising from the improvements to a property jointly owned, during her lifetime, by the deceased and the appellant.

[40]. The opposing respondents made allegations of a conflict of interest between the appellant, as executor, and in his personal capacity. It was also contended on behalf of the opposing respondents, that there is a conflict of interest between the appellant personally and in his official capacities as executor and Trustee in the Trust. The appellant submits that no such conflict of interest was proven, and that no proper ground existed for the exercise of the court *a quo's* discretion to remove the appellant as executor testamentary.

[41]. The only real issue, so it was argued on behalf of the appellant, that ought to have played a role in the court exercising its discretion to remove him as executor is the dispute relating to the interpretation of clause 5.1 of the

will. This issue is the subject of the present case, and once resolved the process of the finalisation of the liquidation and distribution account of the estate of the deceased can be proceeded with.

[42]. A removal of the appellant as the executor fails to take proper cognisance of the fact that the deceased at all times intended him to indeed be the executor. His removal in these circumstances, so it is submitted, is not in conformance with the wishes of the deceased, but is indeed clearly contrary to her wishes as expressed in the will. Added to that is the fact that the deceased clearly held the appellant in high esteem if regard is had to the fact that the deceased specifically provided in the will that the appellant would not be required to provide security for his administration of her estate.

[43]. Section 54(1)(a) of the Administration of Estates Act 66 of 1965, as amended *('the Administration of Estates Act')*, provides as follows:

'Removal from office of executor

(1) An executor may at any time be removed from his office —

(a) by the Court —

(i). . . .

(ii). if he has at any time been a party to an agreement or arrangement whereby he has undertaken that he will, in his capacity as executor, grant or endeavour to grant to, or obtain or endeavour to obtain for any heir, debtor or creditor of the estate, any benefit to which he is not entitled; or

(iii). if he has by means of any misrepresentation or any reward or offer of any reward, whether direct or indirect, induced or attempted to induce any person to vote for his recommendation to the Master as executor or to effect or to assist in effecting such recommendation; or

(iv). if he has accepted or expressed his willingness to accept from any person any benefit whatsoever in consideration of such person being engaged to perform any work on behalf of the estate; or

(v). if for any other reason the Court is satisfied that it is undesirable that he should act as executor of the estate concerned; and'.

[44]. A review of the authorities, as was done by the court in *Reichman v Reichman & Others,* 2012(4) SA 432 (GSJ), shows that the court may exercise this power where there is a conflict of interest between the executor in his capacity as executor and the executor in his personal capacity, such as where he is a beneficiary in the estate and there is a dispute between the executor and other beneficiaries concerning their entitlement to benefit from the estate.

[45]. The sum total of the grounds on which the court *a quo* concluded and was satisfied that there are reasons that *'it is undesirable that (the appellant) should act as the executor in the estate concerned'* was a combination of the fact that the appellant had claims against the estate, which were allegedly disputed by the opposing respondents and the fact that the appellant subscribed to an interpretation of clauses 5.1 and 5.2 of the will which favoured him in his personal capacity. There were also other issues, such as the fact that appellant, in his capacity as a Trustee of the Trust, seemingly did not act in the best interest of the Trust from time to time. As

submitted on behalf of the appellant, rightly so in my view, a proper reading of the appeal record contradicts this finding.

[46]. In coming to the conclusion reached, the court a quo seems to have attached undue weight to the *'high level of aggression between the two camps'*. The court *a quo* also found that there were areas of deep conflict between the parties as evidenced by lengthy and acrimonious correspondence between the legal representatives of the parties.

[47]. As regards the claim which the appellant has against the estate in his personal capacity, it is so that the opposing respondents allege that those claims are disputed by them. Again, a thorough reading of the record confirms that these claims are not really disputed by the respondents, who were given full and precise details and particulars of the claims. The opposing respondents at no stage took issue with the details furnished by the appellant relative to the claims. I am therefore of the view that the said claims were not adequate reason for the appellant to be removed from his office as executor. In any event, there are other remedies available to the respondents should they be unhappy with a claim by the appellant, such as raising an objection to the Liquidation and Distribution Account.

[48]. As for the fact that the appellant, in the motion court proceedings in the court *a quo*, sought a declaratory order which *ex facie* favoured him personally and was to the detriment of the estate, I am of the view that, in the circumstances of the matter, the appellant did not act inappropriately. I do not agree with the submission on behalf of the opposing respondents that the appellant had no business applying to court for the declarator. On the contrary, he, in my view, acted in a manner which would expedite the finalisation of the estate. Once this court rules on the correct interpretation

of the clause, that, in my view, would be the end of that issue as the appellant would then be bound by the court's ruling.

[49]. Even more importantly is the fact that the court *a quo* appears to have under emphasised the fact that the appellant is the executor testamentary.

[50]. In *Port Elizabeth Assurance Agency & Trust Co Ltd v Estate Richardson*, 1965 (2) SA 936 (K), Van Winsen J at pg 940 has this to say:

> *'I have no doubt that in the exercise of its power to appoint or remove an administrator the Court will pay close attention to the wishes of the testator as expressed in or implied from the terms of the will. The Court cannot, however, necessarily be bound by these wishes even to the detriment of the beneficiaries to whose interest it must equally clearly have regard.*

[51]. In cases of positive misconduct a Court should have no difficulty in interposing to remove an executor who has abused his trust. However not every mistake or neglect of duty or inaccuracy of conduct should induce a court to adopt such a course. However, the acts or omissions must be such as to endanger the trust property, or to show a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity. In the exercising it discretion to remove an executor, its main guide must be the welfare of the heirs and the estate.

[52]. On pg 528 in the matter of *Sackville West v Nourse and Another.* 1925 AD 516, Solomon ACJ had this to say: *'Blote wrywing of 'n vyandige verhouding tussen die administrateur en die begunstigde is nie per se 'n genoegsame rede is vir die verwydering van die administrateur uit sy amp nie tensy dit waarskynlik is dat dit die bereddering van die trust sou verhoed'*. Also, as was said by Murray J in *Volkwyn NO v Clarke &*

Damant, 1946 WCD 456 on pg 474: *'the essential test is whether such disharmony as exists imperils the trust estate and its proper administration'.*

[53]. Also in the Volkwyn judgment the following comments are made:

> *'Both the statute and the case cited (Letterstedt v Broers) indicate that the sufficiency of the cause for removal is to be tested by a consideration of the interests of the estate. It must therefore appear, I think, that the particular circumstances of the acts complained of are such as to stamp the executor or administrator as a dishonest, grossly inefficient or untrustworthy person, whose future conduct can be expected to be such as to expose the estate to risk of actual loss or of administration in a way not contemplated by the trust instrument.*

[54]. In the circumstances and applying the above principles to the present case, I am not satisfied that it is undesirable that the appellant should continue acting as executor of the estate concerned. In my view, it has not been demonstrated by the opposing respondents that the appellant has not acted in the interest of the estate and its assets and to the detriment of the heirs.

[55]. In the circumstances the counter application should have been dismissed. Therefor the appeal stands to be upheld.

[56]. Before us Mr Louw, on behalf of the appellant, has submitted that an appropriate cost order relative to the appeal, including the cost of the application for leave to appeal, should be paid by the estate late Catharina Margaretha Salzwedel. Mr Van Ryneveld, who appeared on behalf of the

opposing respondents, asked that the appellant's appeal be dismissed with costs.

[57]. The appellant has been unsuccessful with this appeal against the order in the main application, but he has succeeded with the appeal relative to the counter – application.

[58]. Therefore, in the exercise of my discretion I intend ordering the deceased estate late: Catharina Margaretha Salzwedel to pay the cost of the appeal, including the cost of the application for leave to appeal.

ORDER

In the result, I would make the following order:-

1. The appeal against the order of the court *a quo* in the main application is dismissed.

2. The appeal against the order of the court *a quo* in the counter – application is upheld.

3. The order of the court *a quo* is set aside and is replaced with the following:

   'The counter – application is dismissed, and the costs of the counter – application are to be paid by the deceased estate late Catharina Margaretha Salzwedel'.

4. The costs of this appeal, including the cost of the application for leave to appeal, shall be paid by the deceased estate late: Catharina Margaretha Salzwedel.

ADAMS AJ
Acting Judge of the High Court
Gauteng Division, Pretoria

I agree, and it is so ordered

TOLMAY J
Judge of the High Court
Gauteng Division, Pretoria

I agree,

RANCHOD J
Judge of the High Court
Gauteng Division, Pretoria