IN THE HIGH COURT OF SOUTH AFRICA,
KWA-ZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: 12501/2008

In the matter between:

CHANDRA-KANT VALLABHJEE N.O. Applicant

and

AROON-KUMAR VALLABHHJEE N.O. First Respondent

THE MASTER OF THE HIGH COURT, DURBAN Second Respondent

JUDGMENT

Date of judgment delivered: November 2014

CHETTY, J:

1. This matter relates to a dispute which has arisen between two brothers who were appointed co-executors of the estate of their late father, Mr Nealchund Hurkchand, who died on 13 December 2006. The one brother has instituted action against his sibling seeking his removal from office. The deceased was survived by his spouse, Narabdah Hurkchand, his two sons, being the applicant and the first respondent, their sister Hansa Devi Parek, and another brother, Krishna who is not involved in the present dispute. The surviving spouse and Hansa Devi Parek, while being heirs in terms of the deceased's will, elected not to participate in the proceedings. In the case of Hansa Devi Parek, her non-participation was due to the estate being

unable to commit to paying for her legal costs. In the case of her mother, she died prior to the hearing of the matter, but she too did not seek to be joined in the litigation between her two sons.

2. The dispute between the applicant and the first respondent centres around the insistence of the first respondent that his late father's estate be dealt with in accordance with a will, dated 15 September 2006, and executed by the deceased and his mother, but subject to the contents of a letter written by the deceased on 18 June 2004, in terms whereof the latter purported to divest his estate of the proceeds of an insurance policy and certain items of jewellery. Inasmuch as the contents of the letter written by the deceased are at variance with the terms of the will; the first respondent's association with and insistence on observance of its terms, have placed him at odds with the approach of the applicant, who contends that the letter cannot override the terms of the will. As such and despite the first respondent and the applicant having been issued with letters of executorship on 14 November 2007, and the liquidation and distribution account having been submitted to the first respondent for his signature on 30 October 2009, the estate of the deceased has still not been finalised because of the first respondent's refusal to sign the liquidation and distribution account.

3. The legislative provision which governs such a dispute is section 54 of the Administration of Estates Act 66 of 1965 (the Act) which provides the following:

'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;' (my underlining)

4. The primary duties of an executor are succinctly set out in Meyerowitz, *Administration of Estates and Estate Duty,* 2004 edition, para 12.20 which states that:

> 'The executor acts upon his own responsibility, but he is not free to deal with the assets of the estate in any manner he pleases. His position is a fiduciary one and therefore he must act not only in good faith but also legally. He must act in terms of the will and in terms of the law, which prescribes his duties and the method of his administration and makes him subject to the supervision of the Master in regard to a number of matters'.

5. The learned author also states at para 12.20 that an executor is 'not a mere procurator or agent for the heirs but is legally vested with the administration of the estate. He adds that…"*Immediately after Letters of Executorship have been issued to him, the executor must take into his custody or under his control all the property in the estate which are not in the possession of any person who claims to be entitled to retain them under any contract, rights of retention or attachment."*

6. The often quoted decision in *Lockhat's Estate v North British and Mercantile Insurance Co Ltd* 1959 (3) SA 295 (A) at 302 is authority for the proposition that the duty of an executor is to obtain possession of the assets of the deceased and to realise such of the assets as may be necessary to pay off the debts of the deceased, but also to distribute the assets and the money that remains after expenses have been paid, among the heirs. Where there are co-executors, Meyerowitz at para 12.20 points out that "*all of the executors must exercise their functions and duties jointly, and or share equal responsibility for the administration of the estate and are liable for one and other's acts. If one of the executors refuses to join in the administration of the estate … The remaining executors must seek relief from the court by obtaining an order compelling the co-executor to do the spec*ific required, *or dispensing with his concurrence, or removing him from office*…"

7. The will executed by the deceased and his wife, who were married in community of property, provided for the massing of their respective estates. In terms of the will, whose validity is not disputed or challenged by any party, the applicant was bequeathed a half share in the immovable property situated at 338 Main Road, Tongaat, KwaZulu-Natal, subject to a life usufruct in favour of his mother. Hansa Devi Parek, was bequeathed an amount of R250 000 together with certain items of jewellery. Both the deceased and his spouse nominated attorney S R Sivi Pather who had drafted the will, to attend to the administration of their estate.

8. After the death of the deceased, a dispute emerged as to who was entrusted with the winding up of the estate. Eventually, on 2 April 2007 attorney S R Pather was replaced by attorney S R Naidoo of S R Naidoo and Company as the practitioner chosen by both the applicant and the first respondent to attend to the winding up of the estate. Letters of executorship were subsequently issued to both the applicant and the first respondent on 14 November 2007, in accordance with the wishes expressed by the deceased in his will. As stated above, the validity of the will has not been challenged by any party, and was accepted by the Master as such. The surviving spouse adiated under the will on 28 February 2008, and although she sought to later change that election, the Master ruled that her first election to adiate was binding. She therefore was vested with the ownership of fifty percent of the assets in the joint estate of the deceased and herself. By the time the matter was eventually heard, the surviving spouse had also died.

9. Although this matter came before me as a stated case in terms of Rule 33(1), it had its origins in an application instituted by the applicant in September 2008 in which he sought the removal of the first respondent by the Master. That application was opposed and the matter eventually came before Gorven J on 27 October 2009, on which date the learned Judge declined to hear the matter and instead referred the matter for trial. The matter proceeded in the normal course with the parties eventually agreeing that the issues in dispute between them could be resolved through the provisions of Rule 33, with the relief being sought by the applicant being the removal of the first respondent as co-executor and a further order directing the first respondent to render an account,

with supporting vouchers, in respect of rentals collected by him due to the deceased estate up to 31 May 2010, as well as any disbursements made by him on behalf of the deceased estate. While counsel for both parties were responsible for the drawing up of the terms of the stated case, there was some debate that ensued at the hearing as to whether I could have regard to the affidavits which had been deposed to earlier by the parties. Mr *Dayal*, who appeared for the first respondent, submitted that I should confine myself to the ambit of what is contained in the provisions of the stated case. On the other hand, Ms *Law* who appeared for the applicant submitted that I should have wider regard to the totality of the 'evidence' before me. In this respect, she contended that while I was not dealing with the matter on the basis of an opposed application, I was obliged to take into account the statements made by the applicant and the first respondent under oath, and especially the extent to which the first respondent's version in terms of the stated case seeks to depart or differ from his version on affidavit. This becomes particularly relevant when dealing with the first respondent's response, on affidavit, to the receipt of a letter written to him by the applicant's attorney dated 4 June 2008 which sets out in great detail the extent to which the first respondent had allegedly failed to discharge his fiduciary duties as a co-executor, and which called upon him to step aside as co-executor and hand over the keys in respect of a safety deposit box containing certain items of jewellery belonging to the deceased estate.

10. In my view, it would be entirely superficial to disregard any admissions or common cause factors which emerge from the affidavits deposed to by the present disputing litigants. These are not affidavits deposed to in other

litigation between the parties but affidavits which formed the basis of the matter presently before me. I do not suggest for one minute that the stated case may be adjudicated on a basis akin to the *Plascon-Evans* rule (see 1984 (3) SA 623 (A)). In *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 26 the court said:

> 'Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the *Plascon-Evans* rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.'

In *Rail Commuters Action Group & others v Transnet Ltd t/a Metrorail & others* 2005 (2) SA 359 (CC) para 53 the Constitutional Court described the *Plascon-Evans* rule thus:

> 'In assessing a dispute of fact on motion proceedings, the rules developed by our courts to address such disputes will be applied by this Court in constitutional matters. Ordinarily, the Court will consider those facts alleged by the applicant and admitted by the respondent together with the facts as stated by the respondent to consider whether relief should be granted. Where however a denial by a respondent is not real, genuine or in good faith, the respondent has not sought that the dispute be referred to evidence, and the Court is persuaded of the inherent credibility of the facts asserted by an applicant, the Court may adjudicate the matter on the basis of the facts asserted by the applicant. Given that it is the applicant who institutes proceedings, and who can therefore choose whether to proceed on motion or

> by way of summons, this rule restated and refined as it was in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* is a fair and equitable one.'

11. Returning to the matter before me, I do consider that it is proper for me to take into account the averments either admitted to by the parties, or those facts which, on the papers, are not in dispute. To do otherwise would be to disregard the evidential basis on which Gorven J decided to refer the matter to trial. I should add that Ms *Law* respectfully contended that the decision to refer the matter for trial was wrong, while Mr *Dayal* supported the referral of the matter for trial, contending that Gorven J was clearly of the view that there was a serious dispute of fact on the papers that could not be resolved on application of the *Plascon-Evans* rule. Counsel for the applicant however contended that the eventual decision between the parties that the matter could be argued on the basis of a stated case vindicated her submission that the decision to refer the matter to trial was incorrect. It is not necessary for me to make any finding in regard to the decision to refer the matter to trial. I am however of the view that regard may be had to the contents not only of the affidavits deposed to by the parties, but also to the pleadings, including any admissions made by the parties pursuant to a pre-trial conference, where this is necessary to arrive at a proper decision. As will become apparent from what is set out below, a number of issues which emerged from the pre-trial conference, as a precursor to the stated case, were relied upon by both parties in furtherance of their arguments before me.

12. Subsequent to the issuing of the letters of executorship, a dispute arose between the applicant and the first respondent regarding items of jewellery

which formed part of the deceased estate. It would appear that the deceased had certain items of jewellery kept in a steel cabinet and in a wooden cabinet, customarily referred to as a “pottak”. These items were kept at the deceased’s residence in Tongaat, KwaZulu-Natal, and shortly prior to his death he handed the keys to the cabinet to the first respondent. According to the first respondent it was the deceased’s instructions that upon his death, the jewellery should be divided between himself, the applicant and his other brother, Krishna.

13. A dispute then emerged between the surviving spouse and Hansa Devi Parek on the one hand, and the first respondent in which the surviving spouse contended that the jewellery belonged exclusively to her and that she wished to distribute it among her grandchildren. The first respondent further admits in his replying affidavit that it is his contention that none of the items of jewellery in the steel cabinet or the *pottak* formed part of the joint estate. The first respondent concedes that after the death of the deceased, the cabinet was opened and the jewellery was distributed in equal portions amongst the three brothers while the applicant contends that the first respondent has refused to give him access, as a co-executor, to the keys for the steel cabinet and the *pottak*. The first respondent takes the view that they are welcome to inspect the cabinet which was long emptied out when the jewellery was distributed. Although the jewellery in the cabinet are not directly relevant to the dispute before me, it does however indicate that very shortly after the death of the deceased, the first respondent knowing of his position as a co-executor, placed himself in a position of conflict with the surviving spouse and his sister, Hansa Devi Parek, who is a beneficiary. It is clear from correspondence between

attorney S R Naidoo and attorneys M A Singh and Associates dated 11 September 2008 that the latter were instructed to institute action against the first respondent concerning the items of jewellery in the *pottak* which were distributed without reference to Hansa Devi Parek. Counsel for the first respondent pointed out during argument that no adverse inference could be drawn from the non-participation of the surviving spouse and Hansa Devi Parek in the present litigation as neither had elected to become parties thereto, despite their initial willingness to join in the matter.

14. Notwithstanding their omission as parties to the proceedings, the objective fact must remain that the first respondent was at odds with his mother and sister over items which he contends were part of the estate and to which they were entitled. The first respondent on the other hand admits to having taken part possession of the jewellery, and in that sense clearly put himself in a position of conflict with heirs under the will. It is also evident from attorney S R Naidoo's letter of 25 September 2007 that the surviving spouse and her daughter continue to maintain that the jewellery has not been distributed and remains under the control of the first respondent. It would have been prudent conduct for him to have allowed this matter to be resolved by the attorney who was at that stage duly instructed to attend to the distribution of the estate.

15. The abovementioned letter is also important for the fact that in its concluding paragraph it records the following:

> 'Aroon-Kumar handed to me at the meeting a copy of the letter dated 18 June 2004 drafted and signed by the late Mr N Hurkchand and confirmed that the

> items of jewellery referred to therein are kept in a safety deposit box at Standard Bank, Musgrave, Durban branch the keys to which are in his possession. Aroon-Kumar also confirmed that subsequent to Mr N Hurkchand's death he advised that he has had access to the safety deposit box. Mrs N Hurkchand advised that in addition to the aforesaid jewellery certain other jewellery belonging to her is also kept in the safety deposit box.'

In his replying affidavit, the first respondent while admitting to a meeting having taken place at his mother's home on 16 September 2007 denied allegations levelled against him in the founding papers regarding the distribution of the jewellery. He makes no attempt to deal with the contents of the letter addressed to him by attorney S R Naidoo. Later in his affidavit the first respondent states that the jewellery located in the safety deposit box was handed down by his grandfather to his father. The latter, according to the first respondent's affidavit, asked his son (the first respondent) to keep the jewellery in his care. He contends therefore that he is not claiming ownership over the jewellery and as set out below, wishes to deal with it in a manner other than provided for in the will of the deceased. As such, the first respondent maintains that these items of jewellery are heirlooms and do not devolve upon the deceased's death to his dependants.

16. Before dealing with the letter written by the deceased and its status in so far as the distribution of the assets of the deceased are concerned, it is pertinent to deal with an ancillary issue, one that is directed at the relief that is sought by the applicant which requires that the first respondent render an account, duly vouched, of the expenses incurred by him up to 31 May 2010 for the deceased

estate. In addition, the applicant seeks an order directing the first respondent to account, duly vouched, of all monies received by him on behalf of the estate for the period 1 June 2010 up to the last day of the month preceding the grant of such order, and a debatement of the account.

17. During the course of the hearing, counsel for the applicant placed particular emphasis on the conduct of the first respondent in his dealings with the property forming part of the deceased estate, especially rentals collected from property owned by the deceased. In this regard, it was common cause that prior to the death of the deceased, the first respondent was responsible for the collection of rentals from certain flats and shops situated at 338 Main Road, Tongaat, which are owned by the joint estate. After the death of the deceased, the first respondent continued with the collection of these rentals. He was the only person entrusted with the collection of these monies. In light of a delay in the issuing of letters of executorship, the rentals collected by the first respondent were paid into an account held in his name. Despite letters of executorship being issued on 14 November 2007 and an estate account opened in April 2008, the only income and expenditure which has been provided by the first respondent in the papers before me is a statement of 10 March 2008. No explanation is provided for the delay in the rendering of this account, or of when any other statements were transmitted to the applicant's attorney, despite the first respondents contention in his plea that at the end of every financial year he accounted to the applicant and his attorney in respect of the rental income from December 2006 to May 2010. It is noteworthy that section 28 (1) of the Act provides that:

'(1) An executor-

(a) shall, unless the Master otherwise directs, as soon as he or she has in hand moneys in the estate in excess of R1 000, open a cheque account in the name of the estate with a bank in the Republic and shall deposit therein the moneys which he or she has in hand and such other moneys as he or she may from time to time receive for the estate;

(b) may open a savings account in the name of the estate with a bank and may transfer thereto so much of the moneys deposited in the account referred to in paragraph *(a)* as is not immediately required for the payment of any claim against the estate;' (my underlining)

18. In his accounting for the rentals, the first respondent acknowledges that during the period 1 January 2007 to 28 February 2008 he collected an amount of R171 188, 87 in rental income on behalf the estate. His expenses deducted from that income were an amount of R67 218, 81 together with collection commission at 10%, totalling R17 117, 88. In total, the amount which the first respondent contends is due to the estate is R86 851, 18. In so far as payment for collection commission, it was submitted by the applicant that these payments to himself were unlawful, as the remuneration paid to an executor is strictly regulated in terms of the Act.

19. In his response to the applicant's notice in terms of Rule 37 (4) the first respondent was requested to specify the nature of each disbursement made by him from the rental income, the dates on which each disbursement was made and the amount thereof. In response the first respondent recorded that he made disbursements to his mother, the surviving spouse, as she did not receive "sufficient monies" from the deceased's estate. He adds that he was

therefore compelled to make disbursements to maintain the flat in which the surviving spouse lived, owing to the fact that while the property was owned by the family trust, the latter had allegedly failed to maintain it. Ms *Law* submitted that there could be no justification for this payment as the building in which the surviving spouse lived was owned by an entity independent of the deceased estate. In any event, in the absence of a claim by the surviving spouse against the estate in terms of the Maintenance of Surviving Spouses Act 27 of 1990, it was submitted that any payments by the first respondent to his mother were unlawful, alternatively contrary to the provisions of section 26 (1A) of the Act which reads as follows:

> '26. Executor charged with custody and control of property in estate
> (1) Immediately after letters of executorship have been granted to him an executor shall take into his custody or under his control all the property, books and documents in the estate and not in the possession of any person who claims to be entitled to retain it under any contract, right of retention or attachment.
> (1A) The executor may before the account has lain open for inspection in terms of section 35 (4), with the consent of the Master release such amount of money and such property out of the estate as in the executor's opinion are sufficient to provide for the subsistence of the deceased's family or household.' (my underlining)

There is no evidence whatsoever of the first respondent obtaining the Master's approval in order to effect these payments referred to above.

20. In addition, the first respondent made disbursements for the maintenance of a Passat motor vehicle, which he contends was used to transport the surviving spouse. He also states that he made disbursements to charitable institutions in the name of the deceased, which he contends were done on the instructions of

the surviving spouse. These allegations are unsubstantiated, and are not verified by the surviving spouse. The first respondent further contends that disbursements were made for various ceremonies and rituals that were held for the deceased. In response to the query from the applicant as to the date and the amounts of each disbursement, the first respondent records a payment of R12, 000 to the surviving spouse between January 2007 and February 2008. There is no supporting documentation in respect of these payments, or of the amounts paid for the maintenance of the motor vehicle used by the first respondent, and allegedly used to transport his mother between 2007 and 2009. As part of the documentation forming the stated case, the first respondent submitted a schedule of various expenses paid in respect of a prayer ceremony between March and April 2007, held in respect of the deceased. There are no vouchers supporting any of the payments, which total R19 716, 91. As such there is nothing before me from which I can ascertain whether the payments were actually made as contended by the first respondent. The applicant conceded, for the purposes of the stated case, that the allegations made by the first respondent are accepted without prejudice, but subject to an accounting and the debatement process to be undertaken at a later stage.

21. During the course of argument Ms *Law* was highly critical of the first respondent's conduct, in particular that he had elected to make payments out of funds due to the estate, without first obtaining the authorisation of the Master. In light thereof, it was submitted that his conduct constituted an offence, as provided for in section 102 (1)(f) which states that any person:

> 'being an executor, wilfully distributes any estate otherwise than in accordance with the provisions of section 35 (12), or of the relevant will.'

22. In light of the first respondent acting in breach of his fiduciary duty to the estate and acting unlawfully, the applicant submits that he has imperilled and damaged the estate, and on this basis alone he should be removed from office.

23. The first respondent responded to this attack contending that the issue of the rentals and payments by the first respondent are not contained in the pleadings and do not constitute a ground on which the applicant relied on for the institution of the action against the first respondent. A perusal of the founding affidavit and the prayers contained in the Notice of Motion lends support to the first respondent's contention. The amended declaration subsequently filed after the matter was referred to trial obliquely refers to the issues of the first respondent's collection of rentals. It makes no reference of payments by him without the consent of the Master. The first respondent further contends that the issue of the rental collection and payments made therefrom can only be determined after evidence has been led. In this regard, the first respondent (for the first time in his response to the applicant's Rule 37(4) notice) contends that these payments were made with the knowledge of Hansa Devi Parek and his mother, and that they raised no objection thereto, particularly as part of these payments were necessary for the maintenance of the surviving spouse. Part of this argument has already been dealt with by way of reference to the surviving spouse not having filed any claim against the estate in terms of the

Maintenance of Surviving Spouses Act. Apart from this, the objective fact arrived at on the first respondent's version alone, is that he made payments to various persons and to various entities in circumstances that were not prescribed in the will of the deceased. In so doing, there can be no doubt on the version of the first respondent alone, that he has acted in breach of the Act and that his conduct is criminally actionable in terms of section 102(1) of the Act.

24. I am accordingly inclined to agree with the applicant's counsel that even though this ground (being the rental collection and payments made by the first respondent) was not relied on by the applicant as a basis for the removal of the first respondent as co-executor, the first respondent's version of events cannot be simply ignored. His admission of the payments and the identities (in some cases) of persons to whom he made payment are for all intents and purposes, tantamount to an admission. That being the case, this Court is entitled to make a finding on this aspect on the papers as they stand, without the need for a referral to oral evidence. It must also be borne in mind that the admission of the use of rentals collected on behalf of the deceased estate only became apparent after the receipt of the income and expenditure statement supplied by the first respondent, and the contents of his response to the questions posed in terms of Rule 37(4). It bears noting that the application for the first respondent's removal from office was framed within the ambit of section 54(1)(a)(v) of the Act, which refers to "any other reason the Court is satisfied that it is undesirable that he should act as

executor of the estate concerned". Wallis J (as he then was) noted in *Van Niekerk v Van Niekerk & another* 2011 (2) SA 145 (KZP) para 4:

> 'In considering an application under this section the court is vested with a discretion, and in the exercise of that discretion the predominant consideration will be the interests of the estate and those of the beneficiaries'.

25. I am of the view that the discretion contemplated in section 54 should be exercised widely. The language used in the sub-section is cast in fairly expansive terms – *"if for any other reason*". This must be distinguished from the test to justify the removal of an executor, which our Courts have consistently held, is not one that is lightly exercised. I am satisfied however that it is in the interests of the beneficiaries in this case that the Court should have overall regard to the conduct of the first respondent in making payments to various persons and entities, without authority of the Master, and that this Court is entitled to consider this as a ground for his removal as co-executor.

26. It is common cause that the first respondent was presented on 30 October 2009 with the liquidation and distribution account, prepared by attorney S R Naidoo, for signature in his capacity as the duly appointed co-executor of the deceased estate. The first respondent has steadfastly refused to sign the account on the basis that a letter, written in manuscript by the deceased on 18 June 2004, should take precedence over the will in so far as the proceeds of a life insurance policy and certain specific items of jewellery located in a safety deposit box. The contents of the letter record the following:

> 'I, Nealchand instruct Aroon Kumar to utilise the money received from the African Life Insurance amounts also the money received from the sale of 1

> diamond necklace, ½ sovereign necklace with all gold mounting and also another gold mounted sovereign necklace. All the money acquired will be one million Rand. If shortfall and money from my other insurance policy. This money should be invested and the income from this money must be utilised on charity or any assistance to deserving people. This jewellery should remain a family property to use on occasion. But if family members wishes to sell than money must be utilised as above.
> Signed by Nealchand Vallaghjee'

27. In light of this document, the first respondent contends that the proceeds of the African Life policy and specific items of jewellery which are held in a safety deposit box at the Standard Bank must be divested from the estate. The first respondent contends that the proceeds of the African Life policy (which was paid to the surviving spouse on the basis that she was the nominated beneficiary in terms of the policy) should be divested to the estate. In regard to the jewellery, the first respondent's stance is that they do not belong to the estate as they were specifically excluded by the deceased during his lifetime. As such, the first respondent contends that these items constitute heirlooms having been passed on from his grandfather to his father, and thereafter on his father's instructions to be utilised in accordance with the letter of 18 June 2004. It is also common cause that as at March 2008, the position of the first respondent was that the jewellery in the safety deposit box did not belong to the estate. In response to the concerns expressed by the applicant's attorney on this point, the first respondent's attorney noted the following in a letter of 28 March 2008

> 'This is an issue that obviously cannot be resolved at this stage. May we suggest that you prepare the liquidation and distribution account and our

client will in due course object to and the matter can then take its normal course.'

28. Ms *Law* submitted that the statement that the matter "*can then take its normal course*" clearly indicated an intention on the part of the first respondent to litigate against the estate, notwithstanding his capacity as a co-executor. To this extent, it was submitted that the first respondent clearly placed himself in a position of conflict with the estate and the beneficiaries. When faced with this contention, Mr *Dayal* submitted firstly that the first respondent seeks no personal claim against the deceased estate as a creditor. The intention of the first respondent, in plain language, it was contended, was to give effect to the deceased's wishes and have the proceeds of the African Life policy and the three items of jewellery mentioned in his letter, divested from the estate. It was further submitted that if it were to be found that the first respondent's reliance on the letter was misplaced, the first respondent would agree to sign the liquidation and distribution accounts. Ms *Law* contended that this concession comes far too late, and too long after the first respondent has placed himself at odds with and in conflict with the estate.

29. Insofar as the exercise of the discretion by the court to remove an executor from office, counsel for the first respondent correctly submitted that this is a decision which should not be taken because of a mere conflict between the executors, or between an executor and heirs to the estate. In the case of an executor testamentary, the removal of an executor involves an interference with the testator's decision as to who should be responsible for the winding up of his estate. In the present matter, the deceased was clear in his will that his estate

should be wound up by his two sons, being the applicant and the first respondent. An application for the removal of an executor under section 54(1)(a)(v) of the Act was dealt with in the matter of *Die Meester v Meyer en Andere* 1975 (2) SA 1(T) at 16, where the Court held approved of the views expressed in *Sackville-West v Nourse & another* 1925 AD 516 where Solomon ACJ at 527, referring to the judgment of Lord Blackburn in *Letterstedt v Broers*, 9 A. C. 371:

> 'He then quotes a passage from Story, *Equitable Jurisprudence*... as follows:
>
> > "But in cases of positive misconduct Courts of Equity have no difficulty in interposing to remove trustees who have abused their trust; it is not indeed every mistake or neglect of duty or inaccuracy of conduct of trustees, which will induce Courts of Equity to adopt such a course. But the acts or omissions must be such as 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."
>
> 'He then proceeds to lay down the broad principle that:
>
> > "In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated that their main guide must be the welfare of the beneficiaries."

30. Ms *Law* placed much emphasis on the test set out by Wallis J in *Van Niekerk* and particularly para 9 where the Court held that:

> 'There the court asked whether the continuance in office of the trustee would prevent the trusts being properly executed. In the context of the administration of an estate that translates into the question whether the court

> is satisfied that the continuance in office of the executor would detrimentally affect the proper administration and winding up of the estate.' (my underling)

The above statement was made in the context of the Court discussing the position of professional persons appointed to the position of executor, and in the context of Murray J's judgment in *Volkwyn NO v Clarke and Damant* 1946 WLD 456 at 464 which could be interpreted as a 'relaxation' of the general principles for the removal of trustees or executors set out in *Sackville West* (supra). In this context, Murray J held the following:

> 'To my mind it is a matter not only of delicacy …but of seriousness to interfere with the management of the estate of a deceased person by removing from the control thereof persons who, in reliance upon their ability and character, the deceased has deliberately selected to carry out his wishes. Even if the executor or administrator has acted incorrectly in his duties, and has not observed the strict requirements of the law, something more is required before his removal is warranted. Both the statute and the case cited indicates 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.' (my underlining)

31. There has been no evidence on the papers before me that the first respondent acted in a dishonest or untrustworthy manner. However, counsel for the applicant did to some extent question the contents of the items in the safety

deposit box, in as much as the first respondent has refused to part with the keys to the box, that he accessed the safety deposit box shortly after the death of the deceased, without the knowledge of the other executor and cast some doubt on his credibility from the manner in which he has dealt with the collection of rentals from properties belonging to the deceased. It was pointed out to the first respondent by the applicant's attorney that in the event of any person alleging to have a claim of ownership of any of the assets in the safety deposit box, the proper course would be to lay a claim with the executors of reconsideration. On this basis, it was argued that the first respondent could not be said to have acted without knowledge of the consequences of his conduct. In addition, his conduct was based largely on the grounds that the advice from the attorney conflicted with *his views* – not that of the estate and the beneficiaries. The applicant relies on this as an example of the manner in which the first respondent has placed himself at odds with the proper administration of the estate.

32. Although not dissimilar to the test in *Van Niekerk,* in *Oberholster NO & others v Richter* [2013] 3 All SA 205 (GNP) the Court was clear that there must be a substantial basis to seek the removal of an executor and that a mere disagreement with heirs, and I would submit a co-executor as in the present case, is not enough. The Court stated at para 17:

> 'The aforesaid authorities confirm that mere disagreement between an heir and the executor of a deceased estate, or a breakdown in the relationship between one of the heirs and the executor, is insufficient for the discharge of the executor in terms of section 54(1)(a)(v) of the Act. In order to achieve that result, it must be shown that the executor conducted himself in such a manner that it actually

imperilled his proper administration of the estate. Bad relations between an executor and an heir cannot lead to the removal of the executor unless it is probable that the administration of the estate would be prevented as a result. But, in my view, even in such event, the respective actions of the heir and the executor must be considered, for an heir cannot be allowed to frustrate, through unreasonable and wrong conduct, the actions of an executor which is beyond reproach. A disgruntled heir cannot be allowed to circumvent the administration process by improperly pressurizing the executor to accede to his demands. To remove an executor in such circumstances would not serve any purpose for the same lot would befall the next executor as well. It is not necessary to discuss this issue any further since in the present matter I hold the view that the relationship between the respondent and the appellant is not such that it would prevent the administration of the estate.' (my underlining)

33. In *Gory v Kolver NO & others (Starke and Others Intervening)* 2007 (4) SA 97 (CC) the Constitutional Court appears to have preferred a test rooted in whether it would be just and equitable to remove an executor. The Court approached the matter in the following manner:

'[57] It seems clear that there has been a complete breakdown of trust between Mr Gory and Mr Kolver and that the former has lost all faith in the latter as executor. On the other hand, as will be discussed in greater detail below, it cannot in my view be said that Mr Kolver has been guilty of any maladministration or any other form of misconduct in respect of Mr Brooks' deceased estate. The question whether it is just and equitable that Mr Kolver be removed from his office as executor is thus a difficult one. The discretion vested in the High Court by section 54(1)(a)(v) is a discretion in the strict sense and an appellate court will ordinarily only interfere with the exercise of that

> discretion in limited circumstances; for example if it is shown that the High Court did not act judicially in exercising its discretion, or based the exercise of that discretion on a misdirection on the material facts or on wrong principles of law. Following this approach, I am of the view that this Court should not interfere with the exercise by the High Court of its discretion in this regard. The estate is a small one and much of the work of administration has already been done by Mr Kolver and will not have to be repeated. It is also quite possible that Mr Gory himself may be appointed as executor, thereby keeping the additional costs to a minimum. On balance, therefore, it would seem that the interests of the estate and the beneficiaries will be served by the removal of Mr Kolver as executor.'

34. In deciding whether there are grounds to remove the first respondent, the first enquiry is to ascertain the status of the letter of 18 June 2004. In interpreting the letter, Mr *Dayal* submitted that this must be done having regard to the language employed in the letter. As a general rule, the document must be interpreted having regard to ordinary grammatical meaning of the language, unless they lead to absurdity. Wallis JA in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18 framed the following approach towards the interpretation of documents:

> 'The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and

> syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.'

35. Applying a 'sensible meaning' approach to the letter, it was submitted by counsel for the first respondent that the following can be discerned:

    a. that the deceased intended to divest his estate of the three items of jewellery on the basis that these are to be sold;
    b. that the deceased instructed the first respondent to invest the proceeds of the sale of the jewellery together with the proceeds from the African life policy, and utilise the income derived therefrom for a charitable trust; and
    c. that the deceased stipulated that the jewellery should remain family property to be used on locations. If it were to be sold, the money should be utilised for charity.

36. During the course of the hearing, I raised with counsel for the first respondent whether the intention of the deceased could be as easily ascertained from the language used in the document, even if one gave the document a sensible meaning. In this regard the deceased, it would appear to me, in one breath expresses a wish for the items of jewellery not to be sold, yet in another suggests the opposite. If they are sold, those proceeds together with the

amount obtained from a life insurance policy, should be used towards a charitable purpose. Counsel for the first respondent submitted that the letter constituted a *fideicommissum* created by an act *inter vivos*. Ms *Law* strenuously resisted any suggestion that the letter be regarded as an act *inter vivos*. In this regard she relied on the following extract from *LAWSA*, Vol 31, 2nd ed, Wills and Succession, para 348 which states the following:

> 'It is generally recognised that bequests should, if possible, be construed in a manner that leaves the property in question as unburdened as possible. Because a fideicommissum is regarded as being "odious" in so far as it burdens the property affected by it, there is a general presumption against the creation of fideicommissa. Consequently, the rule is that, before a testamentary disposition can be construed as a fideicommissum, the court must be satisfied beyond reasonable doubt that the testator intended to burden the bequest in this way. Care must be taken not to misapply this presumption. It can only be used if reasonable doubt as to the testator's intention does in fact exist and not if it is merely difficult to establish that intention. As it was put by Centlivres CJ in *Van Zyl v Van Zyl* 1951 (3) SA 288 (A) 291–292:
>
> > "The correct approach is first to enquire from the language used what did the testators intend and, if it appears that it is impossible to say with reasonable certainty what the intention was, then and only then can it be said that a doubt exists."'

37. Counsel for the applicant further contended that the letter fell short of constituting a *fideicommissum* as it was not registered. In this regard see *British South Africa Company v Bulawayo Municipality* 1919 AD 84 at 96–97. More importantly, as the general intention of a *fideicommissum* is to preserve the property for the use of the ultimate beneficiary, it is necessary that the

identity of the beneficiary be clear. See L*AWSA*, Vol 31, para 355 where it is stated that:

> 'If the testator has not adequately identified the fideicommissary, the fideicommissum is *nudum* and inoperative and the bequest to the intended fiduciary is therefore unfettered. The fideicommissary may be indicated expressly or by implication.'

See too *Ex Parte Estate Davies* 1957 (3) SA 471 (N) where Broome JP held that the *fideicommissum* failed for want of one of the essential requisites of a valid *fideicommissum*, being the identification of the fiduciary.

38. If one has regard to the letter, it does not name an ultimate beneficiary and merely refers to a charitable institution. In such circumstances, counsel for the applicant suggested that the first respondent could even take it upon himself to decide who or what would constitute a charity and deserving of the funds of the deceased.

39. In so far as the contention of the first respondent that these items of jewellery constitute heirloom, the traditional definition accorded to the term 'heirloom' is a piece of property received as part of an inheritance. The definition contained in *Webster's* Third New International Dictionary describes it as a "1: piece of property that is viewed by law or special custom or wiIl or settlement as an inseparable part of an inheritance and it is so inherited with the inheritance, 2: something having special monetary or sentimental value or significance that is handed on either by or apart from formal inheritance from one generation to another". Counsel for the applicant submitted that it could never have been the

intention of the deceased to have the jewellery constitute an heirloom, in as much as his letter of 18 June 2004 contemplates the selling of the jewellery outside of the family, and for the proceeds therefrom to be used for a charitable purpose. The applicant further contends that the deceased's letter did not constitute a juristic act with the necessary legal consequences which the first respondent seeks to accord it. I am inclined to agree with the arguments by counsel for the applicant, and I cannot find any basis in law, after having given careful attention to the authorities, for the letter to constitute a *fideicommissum* or a donation *inter vivos*.

40. Lastly, in so far as the contention of the deceased that the proceeds of the African Life policy be used for charitable purposes, it is common cause between the parties that upon the death of the deceased, the proceeds of the policy were paid out to the surviving spouse. Mr *Dayal* submitted that no purpose would be served by attempting to pursue this aspect referred to in the deceased's letter, and considered this "*water under the bridge*". After the institution of this action on 26 September 2008, the first respondent on the eve of the hearing of this matter on 1 August 2014, made the following concession in his heads of argument:

> 'It is conceded that any dispute regarding the proceeds of the African Life Policy may now be academic. The proceeds from that policy were paid to the deceased's spouse Narabdah Hurkchand Vallabhjee who has subsequently died. Although there is no evidence of what has become of those proceeds after payment was made, it can reasonably be assumed that the money has fallen into the estate of the deceased's spouse to be administered in

accordance with her will, or it was disposed of during the course of her lifetime.'

41. As an aside, it had been contended by the first respondent that he paid an amount of R12 000 to his mother after the death of his father. He contended that such payments were necessary for her maintenance. These payments, according to the schedule put up by the first respondent, were made in monthly instalments of R1000, 00 from December 2006 to November 2007. In terms of a certificate issued from African Life Insurance dated 26 September 2007, the surviving spouse was paid R559 605,16 as the nominated beneficiary under the policy. This information is contained in the liquidation and distribution account prepared by attorney S R Naidoo and this aspect of the account was not disputed by the first respondent. These documents are part of the annexures to the stated case. It could hardly be said in these circumstances that the surviving spouse was impecunious and in need of maintenance of R1000, 00 per month from the estate. Even prior to this, in March 2007 the surviving spouse was paid R31 226, 65 being her share of the proceeds of an Old Mutual Insurance Policy. This entry appears from the liquidation and distribution account.

42. Counsel for the applicant contended that the first respondent could not simply choose at this late stage to wish away his insistence that the proceeds of the African Life policy be excluded from the estate, after he was pertinently advised of the proper approach to take by attorney S R Naidoo. Despite such advices the first respondent remained rooted to his views, only to retract from that

position shortly before the hearing. It is this type of conduct which the applicant contends has placed the first respondent in a position of conflict with the estate, and its beneficiaries. Counsel for the applicant stressed that the insistence of the first respondent that the proceeds from the deceased estate be distributed subject to the letter of 18 June 2004, has caused a delay in the signing of the liquidation and distribution accounts for over six years. This has significantly prejudiced the finalisation of the estate.

43. In light of the above, I am satisfied that the first respondent had no basis in law for adopting the position he took with regard to the status of the letter written by the deceased. That being the case, the applicant contends that the first respondent should be removed as a co-executor. Mr *Dayal* on the other hand urged me to adopt a more benevolent approach towards the first respondent, submitting that as executor, he had not sought to use his office for the purpose and intent of resisting claims from a particular source and that he had not sought to secure any personal financial benefit for himself. Accordingly, it was submitted that there is no good cause for his removal as an executor.

44. While I agree with counsel for the first respondent that there is no evidence of maladministration on his part or that by adopting the position that he did, he intended to secure a personal benefit. I am not in agreement however that his actions did not prejudice the estate. It is clear that he disregarded sound legal advice given to him on the matter. The applicant and the first respondent were initially represented by the same attorney who was mandated to wind up the estate. The attorney issued advice to the first respondent who elected to ignore

it and sought independent advice. His attorneys also conveyed the impression that he would litigate against the estate if necessary over his insistence that the estate be distributed taking into account the provisions of his late father's letter. Despite the assurances given by counsel on behalf of the first respondent, the statement for the "*matter to take its normal course*" cannot be easily dispelled.

45. Despite the express wish of the deceased that his will be administered by both his sons, it seems to me that this has been a recipe for delay and prejudice to the beneficiaries and in the finalisation of the estate. There can be no doubt that the first respondent has been the chief architect in this regard, despite his contention that he was merely attempting to carry out the wishes of the deceased. In *Ex Parte Hills* 1959 (4) SA 644 (E) the Court affirmed that the main principle on which the Court's jurisdiction to remove and substitute an executor, administrator or trustee should be exercised, is the welfare of the beneficiaries and of the trust estate.

46. There was much debate at the hearing as to whether I could have any regard to a letter written by attorney S R Naidoo dated 4 June 2008 to the first respondent, and which formed part of the application papers. In his replying affidavit, the first respondent merely admits that the letter was received and chose not to deal with the contents of the letter, which spans eight (8) pages in which the attorney, writing at the time on behalf of the applicant, the surviving spouse and Hansa Devi Parek, set out at length the difficulties that were being experienced with the first respondent in his capacity as executor. The letter deals in detail with the first respondent's dealing with the rental collection, the

jewellery which the deceased kept at his flat in Tongaat and the contents of the safety deposit box. Mr *Dayal* submitted that other than admitting that the letter was received, nothing more could be inferred from the failure to deal with the contents of this letter. He submitted further that the first respondent's response "*I admit the contents of this paragraph*" should not be interpreted as an admission of the contents of the letter dated 4 June 2008, which was specifically referred and annexed as part of the founding affidavit.

47. Ms *Law* argued that the first respondent was bound by his admission and indeed that he had also admitted to the contents of the letter itself. In this regard, it was argued that the first respondent was obliged to deal with the specific allegations levelled against him. The averment of the applicant in his founding affidavit specifically incorporated the letter of 4 June 2008. It was drawn to my attention that elsewhere in his replying affidavit, the first respondent, when confronted with an annexure in relation to the collection of rentals, dealt specifically with the contents of the annexure

48. I am of the view that the first respondent, if he wished to have denied the contents of the letter dated 4 June 2008, he was obliged to have said so. I have no doubt in concluding that his admission of the contents of the paragraph must be interpreted as an admission of the contents of the letter, alternatively that the contents of the letter are not disputed. The letter is important in the context in that it chronicles the difficulties and experiences encountered by the co-executor and beneficiaries of the estate, with the first respondent. The letter called upon the first respondent to allow access to the contents of the safety deposit box. The purpose of the request was to allow for an inventory of the

jewellery to be made, as there had been the allegation that a week after the death of the deceased, the first respondent accessed the safety deposit box without informing the co-executor or the attorney who had been nominated with the winding up of the estate. The letter points to conduct and circumstances which clearly do the first respondent's case no good.

49. In the circumstances and having regard to the totality of the facts before me, I conclude that the continuance of the first respondent as a co-executor prejudicially affects the finalising of the estate, particularly in light of the breakdown of trust and communication between him and his co-executor. Despite the assurances of his counsel, there is no certainty that the first respondent, unless he is removed, may not place himself in a position of conflict or litigate against the estate of some or other issue. See *Ex Parte Suleman* 1950 (2) SA 373 (C) where Van Zyl AJ was faced with an application to removal an executor, where he found that the executor had displayed a *"want of reasonable fidelity in the exercise of his duties as executor*". The Court went on to say at 377:

> 'I am also of opinion that his conduct has been such that he definitely endangered the property entrusted to his care. I am not satisfied that his conduct, if he were left as executor, would in the future be otherwise than it has been in the past. This is not a case of an isolated instance of neglect of his duty, but neglect over a period of some six months or more. Consequently, I have come to the conclusion that he should be removed as co-executor in the estate of the late Abdul Gunny Suleman, and an order is made accordingly.'

50. I accordingly find that the applicant has made out of a proper case for the removal of the first respondent as an executor of the estate. In arriving at this decision I have considered the full extent of the first respondent's conduct in the context of the discretion given to the Court in terms of section 54 of the Act.

51. In regard to costs, the applicant seeks that his costs be borne by the estate on an attorney-client scale, to be paid *de bonis propriis*, and that he should not be out of pocket in light of the application instituted in his capacity as co-executor. The applicant as stated above, has not sought to secure any personal or financial gain as a result of the removal of the first respondent. This argument was also made by counsel for the first respondent who submitted that in the event of the first respondent being removed as an executor, he should not be mulcted with having to pay the costs of the application and certainly not on the scale *de bonis propriis*. There is some merit in this argument, in that while the first respondent's reliance on the letter from his father has been found to be misplaced, and that his conduct in the collection of rentals has been found wanting, there is no evidence before me that he resisted the relief sought by the applicant in order to defend or secure a personal gain from the estate. It is equally correct that the action has been brought by the applicant in his capacity as executor, and the first respondent has been sued in his capacity as such. I see no reason why the first respondent should be directed to pay the applicants costs *de bonis propriis*. This dispute has been eminently about a disagreement between two executors as to the manner in which the estate of their deceased father should be distributed. I see no reason why the costs of both parties should not be borne by the estate. In this regard see *Bonsma, NO v Meaker,*

NO & others 1973 (4) SA 526 (R) at 531C-D where Goldin J made the following observation regarding costs related to a deceased estate:

> 'While normally in legal proceedings instituted by or against a deceased estate the ordinary rule that costs follow the event applies, there are circumstances under which a person who is instituting proceedings against a deceased estate will, whether he is successful or not, be entitled to have the costs made payable out of the estate. This can be the position not only where the validity or the construction of a will is in dispute but also in matters arising from or concerning the administration of an estate. (See Rubin on *Costs*, pp. 141 - 144, and Cilliers on *Costs*, p.191).'

I decline to make any order in respect of the debatement of accounts, as suggested by counsel for the applicant. These were not part of the relief framed in the initial application or in the amended declaration and I see no reason why they should form part of the order I make below:

52. In the result I make the following order:

1. The Master is hereby directed to remove the first respondent as a co-executor in the estate of the late Nealchand Hurkchand: Master's Reference No. 7114/2007/DBN;
2. The costs of the applicant are to be paid out of the estate of the late Nealchand Hurkchand: Master's Reference No. 7114/2007/DBN, on an attorney client scale;
3. The costs of the first respondent are to be paid out of the estate of the late Nealchand Hurkchand: Master's Reference No. 7114/2007/DBN, on an attorney client scale;

4. In respect of the rental and related income of R789 215.98 (seven hundred and eighty nine thousand two hundred and fifteen rand and ninety eight cents) which the first respondent received and / or collected on behalf of the estate of the late Nealchund Hurkchand: Master's reference No. 7114/2007/DBN for the period 1 December 2006 to 31 May 2010, the first respondent is directed:

4.1 to deliver to the applicant's attorneys an account, supported by vouchers (which account and vouchers shall be delivered in an indexed and paginated bundle):

4.1.1 of all monies actually collected and / or received by him on behalf of the estate for the aforesaid period;

4.1.2 of all expenses paid and disbursements made by him from the monies so received and / or collected; for the aforesaid period;

4.2 to account for any shortfall between the aforesaid sum of R789 215.98 (seven hundred and eighty nine thousand two hundred and fifteen rand and ninety eight cents) and the amounts actually collected and / or received by him.

5. In respect of the rental and related income which the first respondent collected and / or received on behalf of the estate for the period 1 June 2010 to 1 March 2011, the first respondent is directed:

5.1 to deliver to the applicant's attorneys an account, supported by vouchers (which account and vouchers shall be delivered in an indexed and paginated bundle);

5.1.1 of all monies actually collected and / or received by him on behalf of the estate for the aforesaid period, supported by any agreements reflecting the particulars of the tenants from whom rentals were collected and for what periods;

5.1.2 of all expenses paid and disbursements made by him from the monies so received and / or collected;

5.2 to account for any shortfall between the amount of rental he ought to have collected and / or received, and that actually collected and / or received by him.

6. The accounts referred to in paragraphs 4 and 5 above are to be delivered to the applicant's attorney and to the Master within two months of the date of this order.

7. That the reasonable costs associated with the preparation of the accounts referred to in paragraphs 4 and 5 are to be paid by the estate.

M R CHETTY
JUDGE OF THE HIGH COURT
DURBAN

Appearances:

For the Plaintiff:	Adv. E S Law Instructed by Anand Jayrajh & Associates, Durban Ph: 031 306 0264
For the Defendant:	Adv. S K Dayal Instructed by Anand-Nepaul Attorneys, Durban
Date of hearing:	1 August 2014
Date of judgment:	25 November 2014