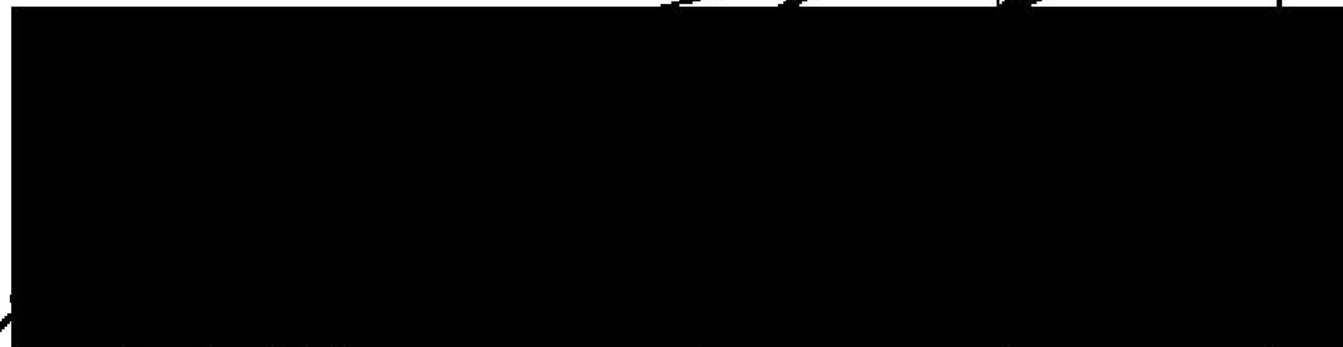




IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case number: 33884/2021

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHERS JUDGES: NO	
(3) REVISED	
28 JANUARY 2026	
DATE	
	SIGNATURE

In the matter between:

ELDRID EMILYN HARRIS
RUZANNE LE ROUX (née HARRIS)
COENRAAD BOTHA HARRIS
FRACOIS DANIEL HARRIS

First Applicant
Second Applicant
Third Applicant
Fourth Applicant

and

VERITAS BOARD OF EXECUTORS SA (PTY) LTD N.O.
HENDRIK JOHANNES STEPHANUS BEKKER N.O.
CAROLINE NAUDE
THE MASTER OF THE HIGH COURT, PRETORIA

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

JUDGMENT

MINNAAR AJ.

Introduction:

- [1] In this judgment, dealing with a lineage of family members, reference will be made to the individual family members' first names. This should not be construed as a sign of disrespect. The reference to the first names is intended solely to facilitate a clear understanding of the chain of events.
- [2] As a further point of departure, the subject immovable property is the farm Hessiedeel 140 in the Reddersburg district ('Hessiedeel').
- [3] Rudolf Johannes Pretorius ('Rudolf Senior') and Carolina Susanna Pretorius ('Carolina Senior') were married, and they were the parents of Johannes Lourens Pretorius ('Lourens') and Jacoba Wilhelmina Harris ('Jacoba').
- [4] Lourens was married more than once, but he had no children. Jacoba was married and blessed with two children: Carolina Naude ('the third respondent') and Rudolf Johannes Harris ('Rudolf Junior').
- [5] The applicants are the four children of Rudolf Junior. They are the grandchildren of Jacoba. The third respondent is their paternal aunt.
- [6] Rudolf Senior and Carolina Senior signed a combined will on 23 May 1970 ('the will'). In relation to Hessiedeel, clause 2 of the will determined:
- "Indien die Testatrise die Langslewende van ons is dan bemaak ons hiermee ons gesamentlike boedel as volg:*

(i) *Alle onroerende eiendomme in gelyke dele aan ons seun JOHANNES LOURENS PRETORIUS en ons dogter, JACOB A WILHELMINA HARRIS (gebore PRETORIUS) onderworpe aan die volgende voorwaardes:*

(a) *Dat ons genoemde kinders die gemelde eiendomme tussen hulle sal verdeel van Noord na Suid en dat die gedeelte waarop die geboue geleë is dan toegeken moet word aan ons genoemde seun en die ander gedeelte aan ons genoemde dogter.*

(b) *Die gemelde eiendomme sal onderhewig wees aan die lewenslange vruggebruik van die Testatrise.*

(c) *Die gemelde eiendomme word aan ons genoemde kinders bemaak vry van alle verbandskuld, welke verbandskuld betaal moet word uit die opbrengs van die lewensassuransies op die lewe van die Testateur.*

(d) *Ons genoemde kinders sal nie geregtig wees om die gemelde eiendomme te verpand, verbind, te vervreem of te verkoop nie, maar sodra hulle te sterwe kom sal hulle dele oorgaan na hulle wettige afstammeling by wyse van plaasvervulling staksgewys en by gebreke van sodanige afstammeling sal sy of haar deel oorgaan na ons oorblywende erfgenaam van die vaste eiendomme of sy of haar wettige afstammeling."*

[7] Upon the deaths of Rudolf Senior and Carolina Senior, Hessiedeel was inherited by Lourens and Jacoba, who each became 50% owners.

[8] When Jacoba passed away, her 50% portion in Hessiedeel had to be inherited by her lawful descendants ('wettige afstammelinge') as stipulated in clause 2(i)(d) of the will.

[9] Relevant is the passing of Rudolf Junior on 30 November 2007. Rudolf Junior passed away before his mother, Jacoba, who passed away on 10 May 2019.

[10] The fourth respondent appointed the first respondent as executor of the estate of the late Jacoba and nominated the second respondent as the first respondent's nominated representative. The first and second respondents are jointly referred to as 'the executor'.

[11] In terms of the L & D Account in the estate of the late Jacoba ('the L & D account'), the executor determined that the third respondent is the sole heir of Jacoba's 50% portion of Hessiedeel.

[12] On 4 June 2020, the applicants' legal representatives officially objected to the fourth respondent against the L & D account prepared by the executor. The objection conveyed to the fourth respondent was that the interpretation given to paragraph 2(i)(d) of the will was disputed and

that the applicants were entitled to inherit the 50% portion of Hessiedeel in equal proportions to that inherited by the third respondent.

[13] On 20 April 2021, the fourth respondent's Assistant Master considered the applicants' objection to the L & D account. The objection was overruled, as the fourth respondent lacks the authority to interpret Wills. The applicants were directed to prove their claim/objection in the High Court.

[14] Following correspondence between the applicants' legal representative and the executor, the applicants lodged this application. The applicants are seeking the following relief:

1. *It is declared that, on a proper interpretation of the will of the late RUDOLF JOHANNES PRETORIUS and CAROLINA SUSANNA PRETORIUS, signed on 23 May 1970 at Reddersburg, the applicants are the lawful descendants ('wettige afstammelinge') of the Testators.*
2. *The Applicants, through representation, are entitled to inherit the portion of the immovable property with the third respondent that their pre-deceased father, the late Rudolf Johannes Harris, would have inherited, had he survived his late mother, Jacoba Wilhelmina Harris.*
3. *The cost of the application is to be paid by the estate of the late Jacoba Wilhelmina Claasen.*

[15] Only the third respondent is opposing the application.

[16] The issue in dispute is whether the applicants, through representation, are entitled to inherit that portion of Hessesideel that their father, Rudolf Junior, as fideicommissarius, would have inherited had he survived his mother, the late Jacoba, who was the fiduciary under the fideicommissum created by the will.

Condonation:

[17] In terms of section 35(10) of the Administration of Estates Act, 66 of 1965 ('the Estates Act'), any person aggrieved by any direction of the Master or by a refusal of the Master to sustain an objection lodged against an L & D account, may apply by motion to the Court within thirty days after the date of such direction or refusal or within such further period as the Court may allow, for an order to set aside the Master's decision and the Court may make such order as it may think fit.

[18] The applicants' objection to the L & D account in the estate of the late Jacoba was overruled on 20 April 2021. The applicants' main application was delivered about 19 days after the expiry of the 30 days prescribed in section 35(10) of the Estates Act.

[19] The third respondent, in her answering affidavit, took the applicants to task for the lateness of the application and for failing to bring a condonation application.

[20] The applicants subsequently, on 18 August 2022, delivered an application to condone the lateness of this application, which the third respondent opposes.

[21] The applicants explain the late submission of the main application and tender the costs of the condonation application. The applicants' explanation is accepted, and I agree with them that the third respondent will not be prejudiced if the condonation is granted. An order for costs will address any such prejudice.

[22] The events leading up to the main application have a long, protracted history, and they involve direct family members. The interest of justice dictates that condonation be granted and that the dispute over the interpretation of the will be addressed for legal clarity, finality and closure.

[23] In the premises, condonation for the late delivery of the main application is granted, and the applicants will be liable for the costs of the condonation application.

Legal position:

[24] The issue for determination is whether the applicants could inherit, as fideicommissaries, when their father (Rudolf Junior) had predeceased their grandmother (Jacoba).

[25] On a reading of paragraph 2(i)(d) of the will, the following provisions should be highlighted (I provide my translation in English):

- a. ***Sodra ons kinders te sterwe kom*** (When our children pass away)
- b. ***sal hulle dele oorgaan na hulle wettige afstammeling by wyse van plaasvervulling staksgewys*** (their portions will transfer to their lawful descendants by way of representation per stirpes)
- c. ***en by gebreke van sodanige afstammeling sal sy of haar deel oorgaan na ons oorblywende erfgenaam van die vaste eiendomme of sy of haar wettige afstammeling.*** (and absent such lawful descendants, his or her portion will transfer to our remaining heir of the immovable properties or his or her lawful descendants.)

[26] Ex facie the will, Rudolf Senior and Carolina Senior left Hessiedeel to their two children. Still, they provided that, upon the death of their children, that child's relevant portion of Hessiedeel would devolve on that child's lawful descendants.

[27] The will does not explicitly provide for a situation where one of Jacoba's children predeceases her. There is no explicit provision in the will that should one of Jacoba's children predecease her, that child's lawful descendants would not be entitled to inherit in terms of the will.

[28] My reading of the will and the applicable legal principles is contrary to any interpretation that the applicants, because their father (Rudolf Junior) predeceased their grandmother (Jacoba), would not be entitled to inherit under the will.

[29] As stated in *Erasmus NO v Estate Late Booysen* 2014 (4) SA 1 (SCA), at par 8:

'The provision in the will, stipulating the succession of the ownership of the farm over several generations, is known in our law as a fideicommissum. In Corbett et al's The Law of Succession in South Africa, it is said that:

'A testamentary fideicommissum is a disposition of property by will to a beneficiary (known as the fiduciary) subject to a provision requiring the fiduciary, either absolutely or upon the fulfilment of a condition, to pass on the property either wholly or in part, to another beneficiary (known as the fideicommissary).'

[30] Where a fideicommissum provides for the fideicommissary property to be passed on to successive fideicommissaries, as in this case, the fideicommissum is termed a fideicommissum multiplex.¹ This contrasts with the situation where the fideicommissum provides for the property to be passed on only once, which is known as a fideicommissum unicum (or simplex).²

¹ See *Mahomed's Estate v Moosa* 1946 NPD 516 at 518; MM Corbett, G Hofmeyr & E Kahn *The Law of Succession in South Africa* 2 ed (2001) at 260

² See, for example, J Voet (1723) *Commentarius Ad Pandectas* 36.1.17 and 28; *Ex Parte Dell* 1957 (3) SA 416 (C); *Erasmus* (supra)

[31] In *Erasmus* (supra), the following was stated in respect of fideicommissum multiplex:

'[19] The high court lost sight of the following qualification to that which has been quoted earlier from Jewish Colonial Trust, viz:

'In the ordinary form of fideicommissum, created by will where the fiduciary is a human being taking a beneficial interest and the fideicommissary is a human being, there is implied in the bequest to the fideicommissary a condition of survivorship (viz that his institution as heir is conditional on his surviving the fiduciary . . .). But this implication does not exist in every form of fideicommissum'

[20] In Corbett et al's The Law of Succession in South Africa it is said that a fideicommissum multiplex constitutes an exception to the general rule stated in the aforesaid passage in Jewish Colonial Trust and, referring with approval to Ex parte Swanepoel, the learned authors say that where a fideicommissum is multiplex, the death of the fideicommissary prior to vesting does not result in the termination of the fideicommissum but brings about the acceleration of the interest of the substitute. Effect has to be given to the intention of a testator expressed by creating a fideicommissum multiplex.

[21] Johannes Voet, in his Commentarius Ad Pandectas, says: 'Ac proinde cum in Hollandia unius fratris filii et alterius fratris nepotes simul ad intestato ad patrum defuncti hereditatem non in

capita, sed in stirpes veniant, etiam voluntas haec testatoris eam recepit interpretationem, ut in stirpes potius, quam in capita, hereditas fratrum liberis ac nepotibus delata intelligatur.'

[22] Sir Percival Gane's translation of this passage by Voet is the following:

'Since therefore in Holland the sons of one brother and the grandsons of another brother come together in intestacy into the inheritance from a deceased uncle not by heads, but by stocks, this wish of the testator has also received the interpretation that the inheritance is understood to have been conferred on the children and grandchildren of brothers by stocks rather than by heads.'

Voet also records that, in a context such as this, where a clear intention to the contrary is absent in a will, it is presumed that the direction is that the succession of descendants follows the order upon intestacy (ie *per stirpes* rather than *per capita*). The relevant portions of the original text read as follows: *'in dubio . . . potius successive secundum ordinem dilectionis et successionis ab intestato.'*

[23] The principle of representation in our law of succession entails that, where an ancestor leaves descendants, a presumption arises that the descendants should inherit *per stirpes* (each stem of the family taking the same share). This principle has the natural consequence that, in our law, in circumstances where a grandchild's parents predeceased that

grandchild's grandparents, the grandchild will ordinarily inherit from his or her grandparents. A grandchild is not disqualified from inheritance merely as a result of the fact that one or both of the grandchild's parents predeceased his or her grandparents.

[24] The strength of Jonique's claim to inheritance is compounded by the presumption in our law against a testator having the intention to disinherit descendants.'

[32] In my view, *Erasmus* is definitive and on point with respect to the case before me. The fact that Rudolf Junior predeceased his mother, Jacoba, was not a bar to his children inheriting under the will. On the contrary, the will expressly provided that upon the death of any child, his or her share will transfer to that child's lawful descendants by way of representation per stirpes.

[33] Upon Rudolf Junior's passing, his right to inherit under the will vested in the applicants. The fideicommissum did not come to an end on the death of Rudolf Junior (the first fideicommissary). The first fideicommissary's children, being the applicants herein (the second fideicommissaries), could indeed inherit as his substitute.

Costs:

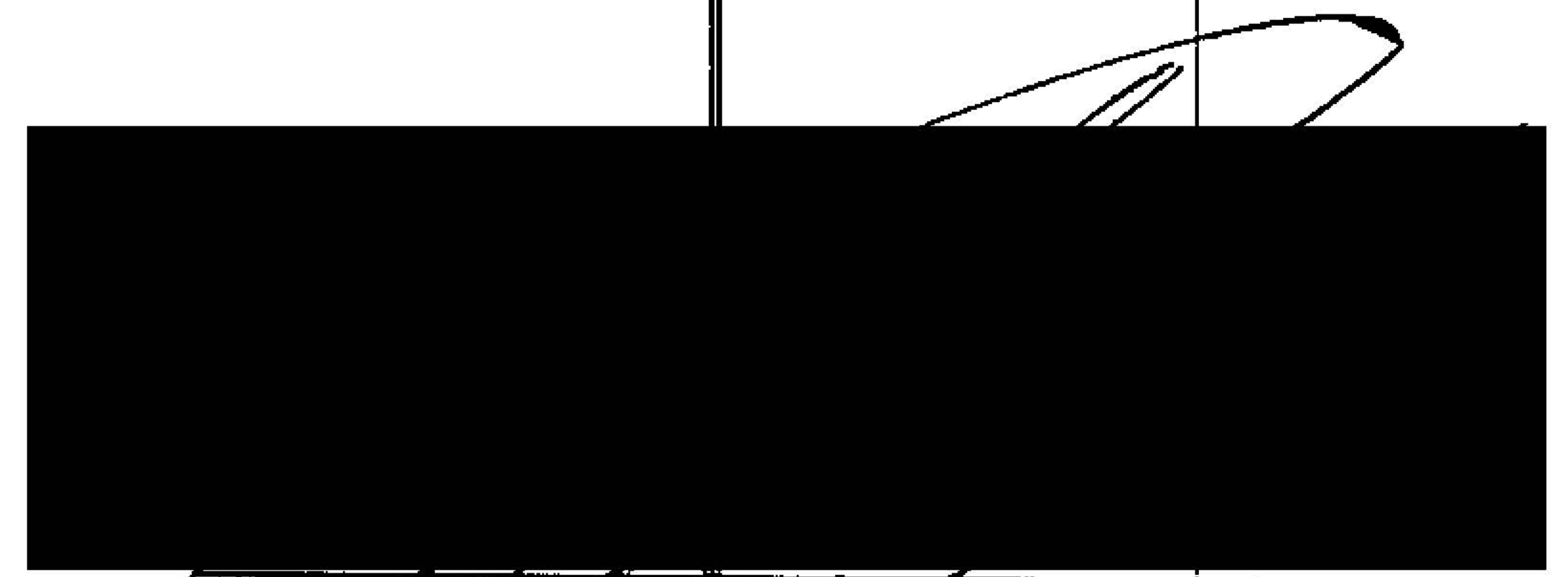
[34] Neither the applicants nor the third respondent was the author of confusion on the interpretation of clause 2(i)(d) of the will. The

application, and the third respondent's opposition to the application, are bona fide.

[35] Under the circumstances, it would be appropriate for the costs of this application (excluding the costs occasioned by the application for condonation) to be paid from the estate of the Late Jacoba Wilhelmina Harris.

Consequently, I make the following order:

1. The applicants' non-compliance with the 30 days prescribed by the provisions of section 35(10) of the Administration of Estates Act, 66 of 1965, is condoned.
2. The applicants, jointly and severally the one paying the other to be absolved to pay the costs of the condonation application.
3. It is declared that, on a proper interpretation of the will of the late Rudolf Johannes Pretorius and Carolina Susanna Pretorius ('the Testators'), signed on 23 May 1970 at Reddersburg, the applicants are the lawful descendants ('wettige afstammeling') of the Testators.
4. The Applicants, through representation, are entitled to inherit the portion of the immovable property with the third respondent that their pre-deceased father, the late Rudolf Johannes Harris, would have inherited, had he survived his late mother, Jacoba Wilhelmina Harris.
5. The cost of the application is to be paid by the estate of the late Jacoba Wilhelmina Claasen.



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

Heard on : 24 October 2025

For the Applicant : Adv. M Leathern SC with Adv J S
Rautenbach

Instructed by : Bekker, Bergh & Moré Attorneys

For the Third Respondent : Adv. R van Schalkwyk

Instructed by : Naude and Naude Attorneys

Date of Judgment : 28 January 2026