IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 30836/2016

Date: 14/12/17

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

14/12/2017 (Pretorius)
DATE SIGNATURE

In the matter between:

N J VLOK N.O. — **FIRST APPLICANT**

D J J VLOK N.O. — **SECOND APPLICANT**

And

D C E BOTHA — **FIRST RESPONDENT**

C N KOCH — **SECOND RESPONDENT**

E BOTHA — **THIRD RESPONDENT**

D V PRETORIUS — **FOURTH RESPONDENT**

H L PRETORIUS

FIFTH RESPONDENT

A VLOK

SIXTH RESPONDENT

N J VLOK

SEVENTH RESPONDENT

S JANSE VAN RENSBURG

EIGHTH RESPONDENT

N GREEFF

NINTH RESPONDENT

DIE MEESTER VAN DIE HOOGGEREGSHOF, PRETORIA

TENTH RESPONDENT

JUDGMENT

PRETORIUS J,

(1) In this application the applicants seek declarators as follows:

> *"1. 'n verklarende bevel dat klousule 5 van wyle Dorothèa Cecelia Elizabeth Vlok se testament van 2 November 2009 geïnterpreteer en gerektifiseer word om as volg te lees:*
>
> > *"Kragtens die regte aan my toegeken in die trustakte van die Docebeth Trust, bepaal ek soos volg…";*
>
> *2. 'n verklarende bevel dat klousule 14.2.5 van die Docebeth Trustakte van 13 Maart 1996 (IT2287/96) aan Dorothèa Cecelia Elizabeth Vlok die testamentêre*

bevoegdheid verleen het om die wyse van verdeling van die trustgoed van die Docebeth Trust tussen haar kinders en kleinkinders te bepaal, by beëindiging van die Trust, op die basis dat 80% van die trustbates aan haar vier kinders in gelyke dele bemaak word en 20% daarvan aan haar sewe kleinkinders in gelyke dele;

Alternatiewelik tot paragraaf 2:

2.1 *'n bevel ingevolge waarvan klousule 14.2.5 van die Docebeth Trustakte van 13 Maart 1996 (IT2287/96) gerektifiseer word deur die invoeging van die woorde "en kleinkinders" in die eerste sin van klousule 14.2.5, om as volg te lees:*

"14.2.5 Die Trustees sal na afsterwe van DOROTHEA CECELIA ELIZABETH VLOK die begunstiging van haar kinders en kleinkinders, wie almal begunstigdes is van die Trust, deur verdeling van die Trustgoed ten opsigte van beide trust inkomste en kapitaal, doen ooreenkomstig die testament van DOROTHEA CECELIA ELIZABETH VLOK, wat, na haar afsterwe, deur die Meester van die Hooggeregshof erken en aanvaar word as haar wettige

testament waaraan deur die eksekuteur(s) gevolg gegee moet word, indien sodanige testament enige toepaslike uitdruklike bepalings in hierdie verband bevat.";

3. *'n verklarende bevel dat klousules 5.1 en 5.2 van Dorothèa Cecelia Elizabeth Vlok se testament van 2 November 2009 'n geldige uitoefening van haar testamentêre regte wat ingevolge klousule 14.2.4 en 14.2.5 van die Docebeth Trustakte aan haar verleen is, daarstel;"*

THE PARTIES:

(2) The first applicant is the fellow-trustee, *nomino officio*, of the Docebeth Trust ("the Trust"), which has been registered at the Master of the High Court ("the Master") with reference number IT2287/96. He is the brother of the second applicant and a son of the deceased.

(3) The second applicant is the fellow-trustee, *nomino officio*, of the Trust and the younger brother of the first applicant and thus a son of the deceased.

(4) The first respondent is DCE Botha, one of the children of the deceased

and a sister to the applicants and a beneficiary of the Trust.

(5) The second respondent is CN Koch, the second sister to the applicants and the first respondent and is the fourth beneficiary of the Trust.

(6) The third respondent is E Botha, the only daughter and child of the first respondent.

(7) The fourth and fifth respondents are the sons of the second respondent.

(8) The sixth and seventh respondents are the sons of the first applicant.

(9) The eighth and ninth respondents are the daughters of the second applicant.

(10) The tenth respondent is the Master of the High Court who exercised control over trusts and trust goods in terms of the provisions of the **Trust Property Control Act**[1]. No relief is sought against the tenth respondent.

[1] Act 57 of 1988

ISSUES:

(11) The issue between the parties is who the beneficiaries of the Docebeth Trust are. Both the applicants, as well as all the respondents, except the first and third respondents, are *ad idem* as to who the beneficiaries of the Trust are and that the grandchildren are included as beneficiaries. The first and third respondents ("the respondents") are of the opinion that the category mentioned in the Trust, should be to the exclusion of the grandchildren. The respondents raised the issue that the will of the deceased is not a valid will for the first time in the heads of argument.

(12) A further application by the applicants is an application in terms of Rule 6(15) of the Uniform Rules of Court, whereby the applicants seek an order to strike out the supplementary affidavit of the first and third respondents. The basis for the application is that the contents of the supplementary affidavit are vexatious, irrelevant and inadmissible and therefor the court should strike paragraphs 2, 3 and 5 of the supplementary affidavit.

(13) Paragraphs 2 and 3 deal with the minutes of a meeting between the heirs of the deceased, held on 3 September 2013. This meeting had nothing to do with the present dispute, but dealt with certain other parts of the deceased's will. These are collateral facts which have no

bearing on the present application.

(14) The email that the first respondent annexed to her supplementary founding affidavit, should also be struck out, according to the applicants. The email is dated 19 March 2014 and deals with the manner in which the first applicant tried to resolve the impasse regarding the Trust. It is irrelevant in the present application and should not be taken into consideration when dealing with this application.

(15) I have considered the arguments and find that these paragraphs 2, 3 and 5 of the supplementary replying affidavit should be struck out as being vexatious, irrelevant and inadmissible.

BACKGROUND:

(16) Clause 5 of the deceased's will provides as follows:

> *"Kragtens die regte aan my toegeken in klousule 27.1 van die gewysigde trustakte van die Docobeth Trust, bepaal ek soos volg:*
>
> *5.1 Ek bepaal dat die trust nie beëindig sal word voordat 'n periode van 5 (vyf) jaar, gereken vanaf datum van my afsterwe, verstryk het nie. Dit is my wens dat my aandeleportefeulje nie onmiddelik te gelde gemaak moet word nie maar, afhangende*

van die mark, indien dit geldig gemaak word, te gelde gemaak moet word wanneer die mark daarvoor gunstig is.

5.2 *Ek bepaal hiermee dat die trustbates, wat nie alreeds toegedeel is aan begunstigdes kragtens die bevoegdhede toegeken aan die trustees in gemelde trustakte nie, op datum van beëindiging van die trust as volg verdeel sal word:*

* *tagtig present (80%) aan my kinders in gelyke dele.*

Indien die trustees van die Docobeth Trust in hulle uitsluitlike diskresie so mag besluit kan hulle die erfenis wat aan enige van my kinders in terme hiervan toekom, toedeel aan enige trust wat ten behoewe van sodanige kind sy/haar afstammelinge opgerig is. Sodanige toedeling sal beskou word as 'n toedeling aan die spesifieke kind vir doeleindes vir verdeling van my boedel.

* *twintig persent (20%) in gelyke dele aan my kleinkinders in lewe op daardie stadium.*

Indien enige van my kleinkinders nog onder die ouderdom van 21 (een en twintig) jaar mag wees by beëindiging van die trust, sal die erfenis van sodanige kleinkind deur die trustees van die Docobeth Trust (IT2287/96) apart in trust geadministreer word tot tyd en wyl sodanige kleinkind die ouderdom van 21 (een en

twintig) jaar bereik."

(17) The applicants are applying to court to strike the words in clause 5 of the will by deleting the introductory section where it refers to clause 27.1 of the amended trust deed. This will cause that the provisions in clause 5 will refer to any valid trust deed of the Docebeth Trust at any time.

VALIDITY OF THE WILL:

(18) The first and third respondents submitted in their heads of argument that the will does not comply with the provisions of section 2(1)(a) and 2()(b) of the **Wills Act**[2], as amended.

(19) The deceased passed away on 4 May 2013 and her estate was dealt with after the Master had appointed her two sons, the applicants, as the executors, according to her will. The Master accepted her will and registered it as such. The estate had already been finalized in 2013. In the founding affidavit it was set out that the will had been accepted by the Master as her valid will and, furthermore, that the will stipulated that the Trust would be divided as follows:

"80% (tagtig persent) aan my kinders in gelyke dele"

"20% (twintig persent) in gelyke dele aan my kleinkinders in

[2] Act 7 of 1953

lewe op daardie stadium"[3]

The response in the answering affidavit was: *"Ek erken die inhoud van hierdie paragraaf"*[4].

(20) The first and third respondents at all times had access to the will which had been accepted by the Master and at no stage did they dispute the validity of the will. There was no indication in the answering affidavit that they disputed the validity of the will. The first time it is mentioned is in the heads of argument.

(21) The confirmatory affidavit by Mr Gert van der Berg, attached to the founding affidavit, is that he had drafted the will of 2 November 2009, according to the deceased's instructions and had also assisted her in the drafting of the trust deed. He amended the first page of the will, where different witnesses were present and she placed her signature on the will in their presence and they also signed on the first page of the will.

(22) The amendment deals with her house at Turf Street, Wingate Park. She, in the initial clause 1 of the will, afforded her son, the first applicant, the option to buy the house at *"geswore waardasie soos aanvaar vir boedel doeleindes, verminder met 60% (sestig present)"*.

[3] Paragraph 4.4 page 14
[4] Paragraph 10 page 201 and 202

(23) In the amended page 1 she determined: *"teen geswore waardasie, munisipale of ander waardasies soos aanvaar vir boedeldoeleindes, verminder met 80% (tagtig present)".*

(24) The first page of the will was substituted by the page setting out the clause of the 80%. The deceased has signed the substituted first page in the presence of two witnesses, who had also signed the page. Does it comply with the provisions of section 2(1)(a) of the **Wills Act**[5] as she had signed the will in the presence of two competent witnesses and all the pages had been signed by the deceased?

(25) Does it comply with the provisions of section 2(1)(b) of the **Wills Act**[6] as the substituted page had been signed by the deceased in the presence of two competent witnesses?

LEGAL POSITION AND LEGAL PRINCIPLES:

(26) In **Corbett, Hofmeyr and Kahn, The Law of Succession in South Africa**[7] the position is made clear:

> *"A will which is complete and regular on the face of it is presumed to be valid until its invalidity has been established*

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[5] *Supra*
[6] *Supra*
[7] 2nd Edition, page 89

and the onus is on the person alleging invalidity to prove such allegation….

Although the standard of proof is the same as in all civil cases, that is proof upon a balance of probabilities, the law is anxious to uphold an instrument which embodies the last wishes of a deceased and the court will not likely set aside a will but will require clear evidence of invalidity."

(27) In **Mdlula v Delarey and Others**[8] Satchwell J held:

"On the face of it the document, which I have already read out and which is identified as annexure A to the plaintiff's particulars of claim, is indeed complete and regular. Accordingly it is presumed in our law to be valid until the contrary is proved. The plaintiff bears an onus to prove the contrary. I refer in this regard to the case of Kunz v Swart and others 1924 AD 618, where Solomon and Kotze JJA said as follows:

"Where a will is regular on the face of it, it will be presumed to be valid unless the party alleging otherwise proves that it is not valid.""

(28) The statement by the learned authors, **Corbett, Hofmeyr and Kahn**[9], where they stated: *"The court will act with great caution and will not likely set aside a will which has been accepted by the Master and has*

[8] [1998] 1 All SA 434 (W) at 439 d-g
[9] *Supra* at page 90

been given effect to, especially where a considerable period of time has elapsed between the date of the testator's death and the date of the application to set the will aside" is apposite in these circumstances.

(29) The first and third respondents relied, when arguing, on the *dictum* of **The Leprosy Mission and Others v The Master of the Supreme Court and Another N.O.**[10]

CONCLUSION:

(30) The first and third respondents failed to make out a case in the answering affidavit, as it was never in dispute that the will was valid until the heads of argument were served and filed. I also take into consideration that the Master had accepted the will and given effect to it and it has been finalized in 2013.

(31) It is clear that the deceased had signed the will, both the original and the substituted first page, in the presence of two witnesses. The first and third respondents did not raise the invalidity of the will, did not present any evidence in the answering affidavit dealing with the so-called invalidity of the will, did not launch an application to have the will declared invalid and waited until the last minute to raise the issue in

[10] 1972(4) SA 173 CPD

the heads of argument. In the **Leprosy Mission case**[11] the applicants applied to have the will declared invalid and presented evidence. In the present instance no such evidence or application was forthcoming. In these circumstances I cannot find that the first and third respondents had rebutted the presumption that the will is valid, until proven to be invalid.

(32) I find that the will, including the substituted first page, is valid and complies with the formalities as provided for in sections 2(1)(a) and 2 (1)(b) of the **Wills Act**[12].

CLAUSES 5.1 AND 5.2 OF THE WILL:

(33) The question posed is whether the deceased had the authority to determine the division of the trust goods in her will, as well as the validity of the clause in the will, whereby she determined the division of the property of the trust fund.

(34) A dispute arose as to the division of the trust property should the trust be dissolved. On 11 December 2014 the applicants decided to request a declaratory order from court to deal with the dispute between the first and the third respondents and the other respondents and applicants.

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[11] *Supra*
[12] *Supra*

BACKGROUND:

(35) On 17 March 2015 the applicants, as trustees of the Trust, sent out a letter to all interested parties in the Trust and set out the reasons for the decision to obtain a declarator from court. All the children and grandchildren were urged to seek legal advice as to the contents of the Trust and the will. The applicants, the trustees, set out that, according to them, it was the intent and wishes of the deceased that her grandchildren should be regarded as beneficiaries in the Trust. In this regard clause 5.2 of the will has to be adhered to where the children will inherit 80% of the Trust property and the grandchildren 20%.

(36) Only the first and third respondents did not associate themselves with the opinion of the trustees. It needs to be mentioned that the first respondent is the only child of the deceased who has only one child, the third respondent. All the other children have two children. The first and third respondents had obtained a legal opinion by Professor HW Klopper, which they provided to the applicants on 12 July 2015.

(37) As a result of this the applicants decided to obtain a legal opinion from senior and junior counsel, which was provided on 22 October 2015. This legal opinion was sent to all the parties, with a request to indicate whether the dispute could be resolved by mediation, arbitration or a meeting of all the interested parties. All the parties, except the first

and third respondents, were *ad idem* that any of the suggested processes can be followed to solve the problem. The first and third respondents did not respond, which resulted in the applicants sending a further document to all the beneficiaries of the Trust indicating that, according to the applicants, the only way forward was to launch an application to court for a declarator.

(38) The dispute relates to an amended trust document, which has never been registered by the Master of the High Court, replacing the previous trust deed. All the parties, including the first and third respondents, are *ad idem* that the amended trust deed is not a legal trust deed which had replaced the previous trust deed and that the previous trust deed of 13 March 1996 is the relevant trust deed in this application.

(39) Does this have an impact on clause 5.2 of the will? The first and third respondents' argument is that clause 5.2 has no legal effect as the Docebeth Trust Deed did not grant the deceased the authority to determine that when the Trust is terminated, 80% of the trust property be distributed to her children, in equal parts, and 20%, similarly in equal parts, to her grandchildren. The main complaint is that the deceased did not have the authority to include her grandchildren as beneficiaries of the Trust in her will. According to the first and third respondents, the only beneficiaries should be the four children of the

deceased at the termination of the Trust.

(40) The Docebeth Trust was created on 13 March 1996. It is a family trust, which was created to benefit her children and grandchildren as capital and income beneficiaries. The deceased was 75 years old when she created the Trust. According to the Trust deed the first applicant is noted as the creator of the Trust and the deceased as the co-trustee. The deceased was, however, the actual creator of the Trust who increased the trust property over the years by transferring some of her property and capital to the Trust. She was the sole contributor to the Trust and the de facto founder of the Trust. She grew the Trust to an amount of approximately R22 million.

(41) Clause 5.1 provided that the deceased and the first applicant were the first trustees. The Trust granted certain testatory powers to the deceased in clause 5.3.3, *i.e.* to appoint the next trustees and failing to do so determining that the executor of her estate should do so. In clause 14.2.3 she determined that:

> *"Die Trustees sal, voor die aanbreek van die Vestigingsdatum, geregtig wees om te besluit aangaande die beëindiging van die Trust voor die Vestigingsdatum. Die Trustees se diskresie in hierdie verband bly onbelemmerd maar hulle sal hulle, na die afsterwe van DOROTHEA CECELIA ELIZABETH VLOK, in hulle besluitneming deur die bepalings van die testament van*

DOROTHEA CECELIA ELIZABETH VLOK laat lei en die verdeling en oormaking van die trustgoed aan die begunstigdes in ooreenstemming met die voorskrifte daarin vervat, laat geskied."

(42) She went further in clause 14.2.4 by determining certain testatory prescriptions in respect to continuation of the Trust. The problem clause is 14.2.5, according to the first and third respondents. Clause 14.2.5 provides:

"Die Trustees sal na afsterwe van DOROTHEA CECELIA ELIZABETH VLOK die begunstiging van haar kinders, wie almal begunstigdes is van die Trust, deur verdeling van die Trustgoed ten opsigte van beide trust inkomste en kapitaal, doen ooreenkomstig die testament van DOROTHEA CECELIA ELIZABETH VLOK, wat, na haar afsterwe, deur die Meester van die Hooggeregshof erken en aanvaar word as haar wettige testament waaraan deur die eksekuteur(s) gevolg gegee moet word, indien sodanige testament enige toepaslike uitdruklike bepalings in hierdie verband bevat."

(43) The deceased had executed her first will on 29 December 1988. This was followed by eight subsequent wills, dated 11 March 1989, 22 December 1991, 1 November 1994, 27 September 1996, 16 December 1996, 19 December 1996, 14 May 2003 and 2 November

2009. The last valid will is the will dated 2 November 2009 and is the will currently in issue.

(44) From the outset in all her wills, from 1988 to 1996 it can be seen that her intention had always been that her estate should form part of the Trust at her death and that the Trust had to be maintained for at least five years after her death. Her further intention had always been, as can be seen from the various wills, and at least from 13 March 1996, when the Trust was created, that the division of the Trust property had to be 80% to her children and 20% to her grandchildren.

(45) At the creation of the Trust, her and the first applicant's intention had always been that the Trust will exist for at least a further five years after her death. It was further always the intention that she would deal with the Trust property in her will, as confirmed by both the first applicant and Mr van der Berg, who executed the will.

(46) The introduction of Clause 5 of the will of 2 November 2009 provides:

> *"Kragtens die regte aan my toegeken in klousule 27.1 van die gewysigde trustakte van die Docebeth Trust, bepaal ek soos volg:..."*

(47) At the time that Mr van der Berg executed the will of 2 November

2009, on the instructions of the deceased, he was requested to execute an amended trust deed. It is common cause, as mentioned earlier, that the amended Trust deed is invalid. The problem is that the valid will still referred to clause 27.1 of the amended, invalid trust deed.

(48) Even if the amended Trust deed is invalid, it is important as it explains the reference to clause 27.1 of the amended Docebeth Trust in the will of 2 November 2009. This invalid trust deed further proved that the deceased's intention had been, at all times and continuously, that the Trust deed granted her the authority to deal with the trust property in her will.

(49) In **Potgieter and Another v Potgieter NO and Others**[13] the Supreme Court of Appeal held:

> *"[29] Arriving at the same conclusion, the court a quo held, rightly in my view, that it would normally lead to the finding that the variation agreement was invalid and that the provisions of the original trust deed must be applied in unamended form. But, as I have said, the court a quo found itself authorised to deviate from this usual outcome by granting an order which it regarded as equitable and fair. As the first basis for that authority the court a quo relied on the provisions of s 13 of the Trust Property Control Act 57 of 1988. This section provides in relevant part:*

[13] 2012(1) SA 637 (SCA) at paragraphs 29 and 37

'If a trust instrument contains any provision which brings about consequences which in the opinion of the court the founder of a trust did not contemplate or foresee and which —

(a) hampers the achievement of the objects of the founder; or

(b) prejudices the interests of beneficiaries; or

(c) is in conflict with the public interest,

the court may, on application of the trustee or any person who in the opinion of the court has a sufficient interest in the trust property, delete or vary any such provision or make in respect thereof any order which such court deems just, ...'

[37] As to the result dictated by the tenets of common law in this case, I can again only agree with what the court a quo itself said. Succinctly stated it is this: the variation of the trust deed was invalid for lack of consent by the beneficiaries who had previously accepted the benefits bestowed upon them in terms of the trust deed. Hence the original provisions of the trust deed, prior to the purported amendment, must prevail. Prima facie, the appellants were therefore entitled to a declarator confirming that conclusion, which was what they sought."

(50) At all times, and more specifically on 2 November 2009, when the deceased signed her will, she was under the impression that the amended trust deed was the relevant trust deed. The amended trust deed granted her the authority to deal with the trust property in her will,

the same provision that had been made in the original, valid trust deed.

(51) In these circumstances the original trust deed will be the applicable Trust deed when one considers the provisions of the will of 2 November 2009 and applies the principles as set out in the **Potgieter case**[14]. These facts were not disputed and I find that Clause 5 of the will should not refer to section 27.1 of the amended, invalid Trust deed. I find that the correct reading should be:

> *"Kragtens die regte aan my toegeken in die trustakte van die Docebeth Trust, bepaal ek soos volg:..."*

(52) Therefor Clause 5 of the will must be interpreted and construed in accordance with the original Trust deed, to decide whether it would be valid to implement Clause 5 of the will. Clause 14.2.5 of the Trust deed is of utmost importance to consider whether the original trust deed grants the deceased the right to deal with the trust property after her death and at the termination of the Trust.

(53) Clause 14.2.5, *inter alia*, provides:

> *"Indien DOROTHEA CECELIA ELIZABETH VLOK se testament nie sodanige bepalings bevat nie, sal die trustfonds by beëindiging van die Trust gelyk tussen al die kapitaalbegunstigdes verdeel word. Indien DOROTHEA*

[14] *Supra*

CECELIA ELIZABETH VLOK se testament wel sodanige bepaling bevat, sal daardie bepalings voorrang geniet bo enige bepalings in hierdie Trustakte vervat en sal die Trustees daardeur gebind wees. Die verdeling volgens DOROTHEA CECELIA ELIZABETH VLOK se testament hoef nie noodwendig gelyk in waarde of kwaliteit te wees nie."

(54) The trustees are thus entrusted to divide the trust property according to the provisions of the deceased's will. It is clear from the wording of Clause 14.2.5 that the provisions of the will, must take precedence over the provisions of the trust. Clause 14.2.5 provides that only the beneficiaries and their legal offspring may benefit by the division of the Trust fund. The only restriction, in this regard, is that nobody else, but the children and grandchildren of the deceased, may benefit from the division of the Trust.

(55) The authority to decide in her will as to how to deal with the trust property after her death has its origin in Clause 14.2.5 of the Trust deed as set out above.

(56) It is thus clear that the deceased's intention had always been that she would deal with the trust property in her will, which she ultimately did in the will of 2 November 2009. There can be no other interpretation to this section of Clause 14.2.5 as it is clear and unambiguous.

(57) Clause 5.2 of her will was executed in the manner contemplated in Clause 14.2.5 of the Trust deed, as only her children and grandchildren are the beneficiaries.

(58) I have considered the submission by counsel for the first and third respondents that should it be interpreted that she could deal with the trust property in the manner which she did, it would amend the Trust deed to include the grandchildren. The further argument is that Clause 14.2.5 did not grant her the authority to include her grandchildren as beneficiaries.

(59) According to Clause 14.2.5 the provisions of the will has precedence over the provisions of the Trust. Even if I take the provisions of the invalid amended Trust deed into consideration, it is clear that at the time she executed the will on 2 November 2009, she had the intention that both her children and grandchildren should inherit.

(60) Therefor I find that Clause 14.2.5 must be rectified to include the grandchildren and should read as follows:

> *"Die Trustees sal na afsterwe van DOROTHEA CECELIA ELIZABETH VLOK die begunstiging van haar kinders <u>en kleinkinders</u>, wie almal begunstigdes is van die Trust, deur*

verdeling van die Trustgoed ten opsigte van beide trust inkomste en kapitaal, doek ooreenkomstig die testament van DOROTHEA CECELIA ELIZABETH VLOK, wat, na haar afsterwe, deur die Meester van die Hooggeregshof erken en aanvaar word as haar wettige testament waaraan deur die eksekuteur(s) gevolg gegee moet word, indien sodanige testament enige toepaslike uitdruklike bepalings in hierdie verband bevat."

(61) The rectification has the result that Clause 5.1 and 5.2 of the deceased's will of 2 November 2009 had been executed in terms of the Trust deed. The four children will inherit 80% of the Trust property, and the grandchildren will inherit 20% of the Trust property.

(62) In the result I make the following order:

1. It is declared that Clause 5 of the deceased, DOROTHEA CECELIA ELIZABETH VLOK's will of 2 November 2009 must be interpreted and rectified as follows:

   "Kragtens die regte aan my toegeken in die trustakte van die Docebeth Trust, bepaal ek soos volg:..."

2. It is declared that Clause 14.2.5 of the Docebeth Trust Deed of 13 March 1996 (IT2287/96) is rectified by the addition of the words *"en kleinkinders"* in the first sentence of Clause 14.2.5 to read as follows:

"14.2.5 *Die Trustees sal na afsterwe van DOROTHEA CECELIA ELIZABETH VLOK die begunstiging van haar kinders en kleinkinders, wie almal begunstigdes is van die Trust, deur verdeling van die Trustgoed ten opsigte van beide trust inkomste en kapitaal, doen ooreenkomstig die testament van DOROTHEA CECELIA ELIZABETH VLOK, wat, na haar afsterwe, deur die Meester van die Hooggeregshof erken en aanvaar word as haar wettige testament waaraan deur die eksekuteur(s) gevolg gegee moet word, indien sodanige testament enige toepaslike uitdruklike bepalings in hierdie verband bevat.";*

3. It is declared that Clause 5.1 and 5.2 of the will of Dorothèa Cecelia Elizabeth Vlok, dated 2 November 2009, is a valid exercise of her testatory rights, which were granted to her in terms of Clause 14.2.4 and 14.2.5 of the Docebeth Trust Deed.
4. The cost of this application is to be paid by the Docebeth Trust on an attorney and client scale, including the costs of two counsel, where applicable.
5. Paragraphs 2, 3 and 5 of the supplementary answering affidavit of the first respondent are struck out in terms of Rule 6(15) of the Uniform Rules of Court.