



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not reportable

Case no: 084/2021

In the matter between:

DE LA REY, PIETER JACOBUS

FIRST APPELLANT

and

PH DE LA REY FAMILY TRUST

FIRST RESPONDENT

CHRIS DE LA REY TRUST

SECOND RESPONDENT

KOOS DE LA REY TRUST

THIRD RESPONDENT

MARITA SCHOLTZ TRUST

FOURTH RESPONDENT

JACO DE LA REY KINDERTRUST

FIFTH RESPONDENT

MARIANNE HILL TRUST

SIXTH RESPONDENT

DE LA REY, CHRISTIAAN, N.O.

SEVENTH RESPONDENT

DE LA REY CHRISTIAAN

EIGHTH RESPONDENT

FERREIRA, DAWID, N.O. (in his representative

Capacities as trustee of the 1st, 2nd, 3rd and 5th

Respondents)

NINTH RESPONDENT

FERREIRA, DAWID

TENTH RESPONDENT

**DE LA REY, ANNA BOUWER, N.O. (in her
representative capacities as trustee**

of the 1st, 2nd, 3rd and 5th Respondents)

ELEVENTH RESPONDENT

DE LA REY, ANNA BOUWER

TWELFTH RESPONDENT

SCHOLTZ, MARITA

THIRTEENTH RESPONDENT

HILL, MARIANNE	FOURTEENTH RESPONDENT
VAN DEN BERG, GERT PETRUS JOHANNES	FIFTEENTH RESPONDENT
BOAKE INCORPORATED	SIXTEENTH RESPONDENT
BOAKE, BRUCE DENNIS	SEVENTEENTH RESPONDENT
MASTER OF THE HIGH COURT, PRETORIA	EIGHTEENTH RESPONDENT

Neutral citation: *De la Rey, Pieter Jacobus v PH de la Rey Family Trust and Others* (084/2021) [2023] ZASCA 48 (11 April 2023)

Coram: Ponnan ADP and Saldulker, Gorven, Mabindla-Boqwana and Matojane JJA

Heard: 9 March 2023

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives via e-mail, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down are deemed to be delivered on 11 April 2023.

Summary: Equality Legislation – whether the Equality Court had jurisdiction, complainant making out no case that he had been discriminated against as defined or intended in the Equality Act – Equality Court's conclusion that it lacked jurisdiction cannot be faulted.

ORDER

On appeal from: The Equality Court, Gauteng Division of the High Court, Pretoria (Van Nieuwenhuizen J, sitting as court of first instance).

The appeal is dismissed with costs, such costs to include those of two counsel where so employed.

JUDGMENT

Saldulker JA (Ponnan ADP and Gorven, Mabindla-Boqwana and Matojane JJA concurring):

[1] This appeal emanates from a complaint that was instituted before the Equality Court. The appellant's complaint or rather the most intelligible approximation thereof is one of 'discrimination' under the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the Equality Act). It arises from the manner in which he was allegedly treated differently when compared to his other family members in the process of the distribution of his grandfather's estate.

[2] The appellant, Mr Pieter Jacobus De la Rey, is the grandson of Mr P H de la Rey (the grandfather). In his lifetime, the grandfather, who passed away on 31 August 1997, concluded a last will and testament, in terms of which he, inter alia, caused the first respondent, the P H De la Rey Family trust (the family trust) to be created. The beneficiaries in equal shares were the grandfather's three children, one of whom was the appellant's father, Mr Jacobus (Koos) H De la Rey. The other two are Christiaan de la Rey (the eighth respondent) and Marita Scholtz (the thirteenth respondent). The appellant's father passed away on 28 July 1999, rendering the appellant and his sister, Marianne Hill (the fourteenth respondent) as substituting beneficiaries in terms of the trust deed. In 1999, the trustees of the family trust resolved to create further trusts, namely the Chris de la Rey trust, the Koos de la

Rey trust and the Marita Scholtz trust (the second, third and fourth respondents respectively). There were three different categories of respondents: (a) the members of the de la Rey family and their trusts - the first to fifteenth respondents fall into this category; (b) persons or entities merely involved as service providers with those in category (a) – the sixteenth and seventeenth respondents fall into that category; and, (c) the Master of the High Court, Pretoria, against whom no relief was sought. The proceedings were withdrawn against the sixteenth and seventeenth respondents.

[3] The appellant instituted proceedings against the respondents in the equality court under the Equality Act. The complaint was supported by an affidavit and annexures in excess of 200 pages. As best as one can discern from the complaint, it seems to be contended that the vesting date of the family trust should have been during 2001 and that the conduct of the trustees meant that the appellant did not receive the inheritance to which, in his view, he was entitled personally, to the exclusion, it must be said, of his children. Although several grounds were sought to be advanced, in the debate before this court the case came to be confined to one of discrimination. The appellant alleged that he had 'been discriminated against . . . against my rights by birth and my *de jure* and/or *de facto* full and equal and/or eventual full and equal enjoyment in terms of the outcome of my rights by birth and/or freedom to my inheritance(s) . . .'

Despite the voluminous complaint filed, the appellant did not properly substantiate the basis on which this ground was raised in the context of an equality court application.

[4] Accompanying the particulars of complaint in the equality court, was a draft order consisting of some 16 pages, almost all of which was plainly unintelligible. Unsurprisingly, the respondents denied that the equality court had jurisdiction to hear the matter or to grant any of the relief sought. Subsequently, the appellant also launched a virtually identical application for the same relief in the Gauteng High Court, Pretoria. The appellant attempted to have the proceedings consolidated. However, De Vos J ruled that the question of the jurisdiction of the equality court should be dealt with first. After several further procedural skirmishes that are not presently relevant, the matter came before Van Nieuwenhuizen J, in the equality court, who upheld the respondents' contentions that the equality court did not have

jurisdiction to deal with the appellant's complaint. This appeal is with the leave of that court.

[5] In terms of s 13 of the Equality Act, the appellant had the burden to make out a prima facie case of discrimination. In that, he failed. It is important to recognise that not all differentiation would constitute discrimination. Unlike mere differentiation, discrimination is differentiation on illegitimate grounds.¹ Discrimination is defined in s 1 of the Equality Act as:

'any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly–

(a) imposes burdens, obligations or disadvantage on; or

(b) withholds benefits, opportunities or advantages from any person on one or more of the prohibited grounds.'

'Prohibited grounds', is defined in s 1 of the Equality Act, as follows:

'(a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and hiv/aids status; or

(b) any other ground where discrimination based on that other ground-

(i) causes or perpetuates systemic disadvantage;

(ii) undermines human dignity; or

(iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a)'

[6] The appellant's complaint does not arise out of any 'wrong' that the Equality Act, and thus the equality court, was created to address. It is simply that he did not receive his due when entitled to same, because those in control wrongly chose not to distribute those benefits to him. His complaint is thus indistinguishable from a plethora of other civil cases that come before our high and magistrates' courts daily. The appellant is guilty of having cherry-picked certain words or phrases appearing in the Equality Act to support the argument that his complaint falls within the scope and ambit of the Equality Act. This, however, does not meet the criticism that the complaint is not one envisaged by the Equality Act and is not why the equality court was created.

¹ Currie and De Waal *Bill of Rights Handbook* 9.4(a).

[7] The appellant asserts that he has been discriminated against, firstly, when compared to his sister and secondly, when certain legal principles pertaining to the interpretation of his grandfather's trust deed is considered. But that ignores the fact that the types of discrimination at which the Equality Act is aimed must be discrimination on 'one or more of the prohibited grounds'. The prohibited grounds fall into two categories: (i) the specific grounds defined in subsection (a), none of which save for birth are relied on by the appellant; and (ii) the generic grounds defined in subsection (b). Before us, counsel was unable to point to any other ground contemplated in (b). The appellant's case thus came to rest on (a).

[8] The appellant made out no case that he was denied anything because of or arising from his birth. On the contrary, it is by virtue of his birth that he became entitled to benefit. It is really the manner in which he should receive those benefits that he complains. In the premises, the appellant has obviously not been discriminated against as defined or intended in the Equality Act. It follows that the equality court's conclusion that it lacked jurisdiction cannot be faulted.

[9] In the result, the following order is made:

The appeal is dismissed with costs, such costs to include those of two counsel where so employed.

H K SALDULKER
JUDGE OF APPEAL

Appearances

For appellant:

T J Botha

Instructed by:

Cilliers & Reynders Attorneys, Centurion

C/O Vanessa Graham Attorneys, Bloemfontein

For respondents

J Roux SC (with CL Markram-Jooste)

1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, 11th

and 12th

Instructed by:

Delpport Van Berg Inc, Pretoria

For 15th respondent:

T A LL Potgieter SC

Instructed by:

E Y Stuart Inc c/o, Pretoria

Mcintyre Van der Post INC, Bloemfontein