

## Court case on the court's power w.r.t. trust provisions

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### [Makgoba & others v Ledwaba NO & others \[2018\] ZASCA 181](#)

As a result of a number of successful land claims, the Makgoba community was awarded several farms in the Magoebaskloof area in Limpopo province. A trust was created to hold these farms on behalf of the community. A property company (of which all the shares are held by the trust) was set up to lease the farms from the trust and then sub-lease them. All profits of the company are paid to the trust as dividends. The trust deed makes provision for trustees to be elected by the beneficiaries for a term of three years. Annual general meetings of beneficiaries must be held and at these meetings replacement trustees are elected when necessary.

The term of office of the appellants expired on 26 June 2013, but they remained in office and, according to the seventh respondent (the Makgoba community steering committee) did not hold the required annual meetings and in general did not fulfil their fiduciary duty properly. Consequently, the seventh respondent obtained a court order in November 2015 declaring that the term of office of the appellants as trustees expired on 26 June 2013. Despite this, the appellants remained in office until removed by the Master of the High Court in February 2017, acting under section 20(2) of the Trust Property Control Act, 57 of 1988 (the TPCA). This after the Master demanded an account from the trustees under section 16 of the TPCA. The appellants took this decision on review under section 23 of the TPCA and the Pretoria High Court set the decision aside, but ordered the appellants to resign as trustees, which order is the subject of this appeal to the Supreme Court of Appeal (SCA).

The SCA (Mocumie JA, with Seriti, Wallis, Swain JJA and Rogers AJA concurring) dismissed the appeal on the basis that the administration of the trust under the stewardship of the appellants was dysfunctional for many years and was contrary to the provisions of the trust deed and the declaratory order of November 2015 (see par 16 of the judgement).