

# Court removes executors due to conflict of interest – Brimble-Hannath v Hannath and Others [2021] ZAWCHC 102

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[Brimble-Hannath v Hannath and Others \[2021\] ZAWCHC 102](#)

The applicant (S) brought an application for the removal of the first (E) and second (C) respondents as executors in their late father's deceased estate. S is the deceased's surviving spouse. The practical administration of the estate is done by an employee of the third respondent.

S submitted a claim under the Maintenance of Surviving Spouses Act, 27 of 1990 (MSSA), amounting to more than R6m. Despite requests by E and C, no substantiating information was supplied as envisaged by the provisions of section 3 of the MSSA. In terms of the deceased's will, S receives a lifelong right to inhabit and use the residence where she lived with the deceased, while the residue of the estate was bequeathed to a trust of which E and C are trustees and beneficiaries.

E and C, in their capacities as trustees of the trust, instituted a claim of R4m against the estate based on an alleged loan extended by the trust to the deceased to finance the purchase of the residence in question. When S requested proof of the existence of this loan, E and C refused her access to the trust's records.

The court (Binns-Ward J) expressed the court's displeasure that a matter like this was not resolved without it ending up in court. The court held that the mere fact that E and C were trustees of the trust inheriting the residue of the estate and at the same time lodging a claim against the estate rendered them irreparably conflicted and not in a position to exercise their fiduciary duty as executors properly. The court emphasised the basic principle that nobody can be judge in his/her own case, and that, because the executors had to take decisions about two competing claims which would influence their own interests, they were insurmountably conflicted. The court ordered their removal as executors under the provisions of section 54(1)(a)(v) of the Administration of Estates Act, 66 of 1965.