REPORTABLE

THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
[WESTERN CAPE DIVISION, CAPE TOWN]

CASE NO: 3958/2023

Before ***ALLIE, J***
Hearing: ***13 February 2025***
Judgment Delivered:

In the matter between:

MADELEINE LOUISE GERNTHOLTZ	First Applicant
LINDSAY CAROLINE TEGROEN	Second Applicant
ROGER DAVID BRAY	Third Applicant
GREGORY JON BRAY	Fourth Applicant

and

JACOBUS NICOLAAS JOHANNES PIETERSE N.O.	
in his capacity as the executor the estate of	
GRANTLAND MICHAEL BRAY	First Respondent
BOERELEGIOEN RSA (PTY) LTD	Second Respondent
BOERELEGIOEN NPC	Third Respondent
PATHFINDER BUSHCRAFT & SURVIVAL (PTY) LTD	Fourth Respondent
MADELEINE GERNTHOLZ N.O.	
in her capacity as a trustee for the time being of the	
BRAY FAMILY TRUST	Fifth Respondent
LINDSAY CAROLINE TEGROEN N.O.	

in her capacity as a trustee for the time being of the

BRAY FAMILY TRUST Sixth Respondent

ROGER DAVID BRAY N.O.

in his capacity as a trustee for the time being of the

BRAY FAMILY TRUST Seventh Respondent

GREGORY JOHN BRAY N.O.

in his capacity as a trustee for the time being of the

BRAY FAMILY TRUST Eighth Respondent

DARRON WEST N.O.

in his capacity as a trustee for the time being of the

BRAY FAMILY TRUST Ninth Respondent

MASTER OF THE HIGH COURT Tenth Respondent

THE MINISTER OF JUSTICE Eleventh Respondent

THE MINSTER OF POLICE Twelfth Respondent

THE MINISTER OF STATE SECURITY Thirteenth Respondent

JUDGEMENT DELIVER ELECTRONICALLY ON 18 FEBRUARY 2025

ALLIE, J:

Relief sought

1. This is an application in which the Applicants seek the following relief:

   1.1. The bequest to second, third alternatively fourth respondent in paragraph 3 of the last Will and Testament of the late Grantland Michael Bray, dated 15 December 2020, as read with the Codicil thereto, dated 2 June 2021, is invalid on the basis that:

1.1.1 the bequest is vague; and

1.1.2 the bequest is contrary to public policy.

1.2. Declaring that the assets bequeathed in terms of the said paragraph 3, devolve by intestate succession;

1.3. Costs be awarded to Applicants on Scale C, to be paid by the second and third respondents, jointly and severally, the one paying the other to be absolved, such costs to include the costs of two counsel.

2. A few days before the hearing of this application, second and third respondents, who are the only respondents (hereinafter referred to as "the respondents") who opposed the application, caused their attorney to withdraw.

3. The erstwhile attorney informed the Court that the respondents were aware that the case would be heard on the set down date but there was no appearance by the respondents or anyone on their behalf.

Factual Background

4. The applicants are the two sisters and two brothers of the testator, who are all trustees and beneficiaries of the family trust.

5. The family trust is cited as a respondent in the event that this application is unsuccessful, in which event, the applicants intend to bring an action to have

the entire Will declared invalid, then the prior Will of the testator made in 2001, may become relevant and in that Will, he made a bequest to the Trust.

6. At age 26, the testator was involved in a motor vehicle accident while doing military service.

7. As a consequence of that accident, the testator became a quadriplegic.

8. Prior to the accident, according to the first applicant, the testator was difficult and unpleasant. After their dad's death in December 2020, first applicant visited the testator weekly, hence her allegations concerning the physical and mental health of the testator, his lifestyle, interests and political views, are within the personal knowledge of the first applicant.

9. The testator was diagnosed with Borderline Personality Disorder and was prescribed medication known as, Arizofy.

10. From approximately 2012 until 2022 the testator allegedly became obsessed with the idea of an impending genocide of white people in South Africa. That idea was further fuelled by his already present racism and the online content that he was exposed to.

11. He viewed far-right YouTube channels constantly. He allegedly became paranoid and believed that the "day" of impending genocide of white people would arrive soon.

12. Applicants believe the training arm of the Boerelegioen ("BL") was housed in Pathfinder Bushcraft and Survival (Pty) Ltd of which Mr Steytler, is the sole director.

13. The testator met Steytler and Jonck on 3 December 2020.

14. At that meeting, the testator allegedly told Clinton, an employee of the testator, to hand a bag of Krugerrands to Steytler and Jonck, which Clinton did.

15. Second and third respondents deny have receiving any Kruggerrands from the testator and filed an affidavit by Mr Jonck also denying that he and Mr Steytler received it.

16. In 2021 Steytler again visited the testator and gave him a BL beret and flag.

17. Clinton reported that Steytler told the testator he had been granted membership of the BL and gave him an alleged fictitious membership number but, according to Clinton and the Applicants, he was not granted membership because the Manifest of the BL proclaims that a person can only become a member if he or she has was of Boer-blood.

18. The testator made the Codicil of June 2021 after Clinton expressed reservations about the BL.

19. Since the testator met Steytler and Jonck, he became more and more paranoid about an impending genocide.

20. The testator, who was living in a security estate in Noordhoek, bought a house in Fish Hoek without seeing it because he felt he would better, be able to be rescued there by the BL.

21. The testator allegedly told an employee, Yolanda that his money would be used for an organization that would exterminate every black person.

22. Later, the testator tried to question the authenticity of the "Generals" in the BL and that was when Yolanda told him he was being scammed by crooks.

23. Between February / March 2022, the testator called his attorney who couldn't take the call. When the call was returned, the testator was too ill to speak.

24. On 3 March 2022 the testator had first applicant obtain a copy of the Will and read through the Will with him, but he passed away on 5 March 2022.

25. In March 2022 the attorney could not contact Steytler and Jonck and established that they had resigned from the BL.

26. In May 2022 Van Zyl, the alleged founder of the BL came to inspect the testator's property with his wife. Clinton asked why the testator had to pay a monthly membership fee if he had already given R6000 000,00 in gold coins and why he was not formally made a member.

27. Van Zyl was furious that Steytler and Jonck had received the coins. He was not aware of it. Once they received the coins, they resigned from the BL without disclosing the gold coins.

28. Van Zyl allegedly told Clinton that the testator could not be made a member because he did not have "Boer blood".

29. The first applicant's research revealed that the BL renders vigilante security services to farmers without being registered in terms of the Private Security Industry Regulation Act 56 of 2001 ("PSIRA").

30. The applicants allege that the Will is vague on what portion must be given to Pathfinder and which Boerelegioen organisation or entity is the intended beneficiary.

31. Applicants allege that the bequest to the Boerlegioen and Pathfinder are contrary to public policy. In support of that allegation, the applicants make the following allegations in the papers.

32. Those allegations of the BL's operations, manifest and ideology being contrary to public are as follows:

33. The fundamental purpose of the BL is allegedly, to undo, through unlawful means, the prescripts of the Constitution of the RSA.

34. The BL is a far-right, white supremacist group, that states in its manifest that it is a :

> *"Civil defence movement that enables citizens to resist the promised slaughter of whites in RSA as well as the theft of their property."*
>
> *"The BL will assist the policy of the Department of Justice and the police force and thus assist with tracking and successful prosecution of hit squads that murder innocent boere."*

35. It is in substance and effect, a paramilitary civil defence force.

36. Applicants conclude that the BL is mired in racial hatred and military training to actively arm themselves against black South Africans. The leader proclaims he is ready to lead his people to war. Therefore, their aims and objectives are not in accordance with public policy.

37. White supremacy mobilises around imagined threats to white people and sees itself in a war for the survival of white people.

38. It is unlawful to train a paramilitary or to provide training for security service without being registered under PSIRA.

39. What white supremacy does, is to *"recycle the discourse of black, incompetence and whites being under threat thereof."*

40. The literature relied on by applicants explain that when the out-group can be constructed as a genuine threat to the existence of the in-group, that is when extreme acts can be justified as noble and just, although this discursive step was not taken by participants in the study under consideration in the material under discussion in that study.

41. Rhetoric of an impending cataclysm is meant to impel Afrikaner white South Africans to take that step.

42. The intention of BL is to utilise funds received from the bequest to further train at their camps and to further its messages of racial hatred and separation.

43. The BL provides private security services unlawfully because they are not registered the PSIRA.

44. In an email, one Jardim informed the testator that the BL trains people for a protection force for when the day arrives.

45. Section 38(3) (a) PSIRA creates an offence to provide security service without being registered in terms of Section 20(1) (a).

46. Applicants allege that the bequest, if left undisturbed, would fund unlawful and prohibited training and activity.

47. Applicants allege that a private organisation can't be allowed to undermine the spirit purport and objects of the Bill of Rights with impunity and to train a private army with the express purposes of returning to Apartheid.

48. Applicants allege that the BL expressly rejects the preamble to the Constitution. by allying themselves with people who seek a separation from the Republic to establish an enclave. Conduct of seeking to separate parts of the country into an enclave separate from the Republic, contravenes section 1 of the Constitution and is antithetical to section 9 of Constitution, where the BL announces that only persons with Boer-blood exclusively can be members.

49. The applicants alleges that the BL trains and radicalises people who identify as white Afrikaners to take up arms in defence of the Afrikaner nation, thereby laying themselves open to a contravention of section 12(1)(c) of the Constitution.

50. Hate speech and speech that incites violence are not included in protection of free speech under section 16 of Constitution.

51. Applicants allege that the operations of the BL are contrary to the rule of law.

52. Applicants allege that the common law already prohibits testamentary dispositions that are contrary to public policy.

53. Undoubtedly, conduct and speech that offends the spirit purport and objects of Bill of Rights, are contrary to public policy.

54. Second and third respondents, for their part, allege in the answering affidavit that to find that all conduct that offends the Constitution are contrary to public policy, will require that every organisation that receives any bequest or donation, should be subjected to scrutiny to establish if their aims and objectives are contrary to the Constitution and to public policy.

55. Applicants allege that it is not open to the BL to contend that there's an impending genocide and every white Afrikaner needs to defend themselves against a coming race war.

56. Applicants allege that to do so, is to seek to actively stoke racial hatred.

57. Respondents allege that the second respondent is dormant and not functional because it has not yet registered under the Private Security Industry Regulation Act 56 of 2001 ("PSIRA").

58. Respondents allege that the BL provides security and training services to communities.

59. They allegedly train farmworkers and security guards with the SAPS.

60. They train on self- awareness, self-defence, first aid and firearm law.

61. Respondents allege that the deceased re-thought the Will on four different occasions and did not make the bequest randomly.

62. Respondents allege that the BL does not exclude any race / gender / religion.

63. Respondents deny that the BL is a white supremacist organisation.

64. Respondents say that the BL also trains people on welding machines, tractor maintenance, farming, firefighting and self-discipline.

65. In describing how the BL was conceptualised, the deponent to the answering affidavit says that the BL developed from white Afrikaners for their benefit.

More and more other races and cultures have allegedly reached out for training. The BL now have 15 percent members who are not Afrikaners, for example during the July 2021 riots, they assisted all races.

66. Respondents however annex no documentary proof of membership by other races nor of collaboration with the S.A.P.S.

67. Respondents allege that obedience to all the laws, is not a requirement to receive a bequest or legacy. In that submission, the Respondents misconceive the purpose and import of public policy.

68. Respondents deny that the BL has any affiliation with the Boeremag.

69. Respondents assert that the family trust paid legatees who were employees and paid their salaries, therefore they made confirmatory affidavits. However, the deceased estate is legally obliged to pay unpaid salaries and the executor is obliged to pay legatees.

70. Respondents deny that the BL has anything to do with Camp Phoenix and say its not an arm of BL.

71. Respondents explain that the BL rented Camp Phoenix premises from time to time.

72. According to Respondents, Jonck denied to Van Zyl, that any Krugerrands were handed to him and Steytler.

73. The respondents allege that the testator is reflected as a member of the BL and challenge how first applicant established he was not a member.

74. Respondents allege that the BL consists of retired policemen who are able to gather intelligence on political tension in the country. However, no lawful authority for that activity is alleged. Gathering intelligence unlawfully and using it to undermine the authority of the state has treason related consequences.

75. Respondents allege that the BL focuses on crime prevention, disaster management and protection of communities.

76. Respondents allege that the BL concentrates on fact not fiction nor far-right wing myths and they deny discrimination based on race. They allege that they only act against criminals. That allegation begs the question of how private citizens can determine who is a criminal or not, and exact punishment on people suspected of committing crimes.

77. Respondents deny that they have a policy to exterminate black people.

78. Respondents allege that it's slanderous to allege that they are crooks, as Yolanda did.

79. The BL denies holding aberrant racist views.

80. The respondents allege that the second respondent, the company of the BL was not even registered when the will was signed and therefore it can't be a beneficiary.

81. Respondents allege that there is no factual proof of racism and discrimination provided by Applicants. That allegation is persisted with despite the respondents annexing to their founding affidavit, the BL's Manifest which was discussed earlier.

82. Respondents seek to suggest that first applicant is equally guilty of racism or undermining the objectives of the government in that she made a Facebook post in 2017 saying that Zuma's not her president. As it turned out, many people held similar views to what was expressed in that post and subsequently Mr Zuma resigned as President.

83. Respondents allege that the Ranger courses offered by BL is intended to make people proficient in handling firearms and in self-defence. The BL nonetheless do not address how they can be lawfully entitled to do so without registration under the PSIRA.

84. Respondents admit the content of the webpage created in 2018 for the **BL** but say that they don't have the skills to change it.

85. Respondents admit mentioning EFF and BLF specifically but say it's because of farm attacks.

86. Respondents point out that the BLF posts were declared as hate speech by SAHRC in September 2022.

87. Van Zyl admits that he said in the video in the "*old day there was crime control, successful prosecutions and better service delivery,* " but he says that does not mean that he supports Apartheid. It is allegedly, his opinion.

88. In reply, the applicants made the following averments:

89. The BL is an organised army containing regiments, battalions and platoons.

90. No evidence is attached to support the claim of 15 percent non-white membership nor that it trained Zulu men.

91. The dispute is not about a mere difference of opinion, as respondents suggest, it is about ideology and the extent to which that ideology is being promoted to undermine the rule of law.

92. Respondents attach no evidence to support their claim that the BL provides protection and security training in collaboration with the SAPS.

93. The Manifest of the BL, would precludes the testator from becoming a member.

94. No basis is provided for the respondents' contention that named beneficiaries were paid twice

95. Respondents allegedly provide no *bona fide* grounds on which they dispute the facts alleged by Applicants. Applicants allegations are supported by the BL's Manifest annexed to the answering affidavit, that the BL are white supremacists.

96. Respondents provide no basis for denying Yolanda's close relationship with the testator.

97. Jonck was surprised that the bequest was only to BL as he thought it was to Pathfinder as well. That underscores the vagueness of the bequest in the Will.

98. There is no lawful basis for BL to provide crime prevention and protection of communities when they are not register with PSIRA nor are they a police force.

99. There is no lawful basis upon which the BL can arrogate to themselves, the right to identify and deal with criminals.

100. The BL's alleged love for culture, religion and language can't be used as a cover for racist ideology.

101. No proof was provided that Dennis Clinton Van Der Loo was intoxicated when Van Zyl visited the home of the testator for the purposes of an inspection.

102. Respondent provide no reasonable explanation why PSIRA registration could not occur some 7 to 9 years after the BL was established.

103. Applicants say their challenge relates to whether the bequest is competent as the Will does not state to which entity of the BL it is made, therefore it is allegedly both vague and contrary to public policy.

104. Applicants state that while one may have a right to life and property, there is no basis to form a paramilitary group to protect same.

105. Applicants allege that the Constitution only allows one defence force.

106. The BL website shows that they seek to undermine the laws of the country.

107. A call for a return to the old days by the BL, can only be a call for the return to Apartheid.

108. The BL's racial exclusionary policy of Boer blood membership only, together with their training to defend and protect Boer-blood people and their chant of *"die boere kom"* shows a militaristic stance. The motto of Apartheid South Africa is used by the BL.

109. At paragraph 1.5 of their Manifest they promote the rhetoric of an impending cataclysm.

110. The purpose of PSIRA is to ensure that people offer security services for reward in an appropriate manner that complies with the law but the BL does not comply with the law because it is not registered with PSIRA.

111. Providing security training is in fact providing security services.

112. The BL attempts to incite violence based on race and does not seek to uphold the rule of law.

113. The BL's aims are contrary to the Constitution and therefore, contrary to the public policy.

114. The Biowatch principle applies to Constitutional litigation. Applicant seeks only party and party costs.

115. Condonation for late filing of the replying affidavit was sought and the reason for it being filed late is that the Applicants had to respond to a wide range of factually disputed issues set out in the answering affidavit.

116. In the absence of any opposition to the condonation, the condonation is granted with no order as to costs.

Applicable Law

117. In considering whether the disputes of fact raised by the respondents are *bona fide*, material, far-fetched and untenable, regard must be had to the well-established principles set out in **Plascon- Evans**[1] in determining those disputes in motion proceedings.

118. In **NDPP v Zuma**,[2] the following was said concerning determination of disputes of fact in motion proceedings:

> *"[26] Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine*

[1] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at [634] – [635]

[2] NDPP V Zuma 2009(2) SA277 (SCA) at [26]

probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.[13] The court below did not have regard to these propositions and instead decided the case on probabilities without rejecting the NDPP's version."

119. The "official" flag of the Boerelegioen is the "Vierkleur", named, the old Apartheid South Africa's flag, which can't be displayed publicly as decided in the case of **Afriforum** [3]

120. In Afriforum, the Supreme Court of appeal opined as follows:

> *" [39] The message conveyed by gratuitous public displays of the old flag is plainly one based on race – apartheid and white supremacy. Indeed, this is common ground…*
>
> *[40] The old flag is an awful reminder of the anguish suffered by millions of people under apartheid South Africa before the advent of democracy in 1994. It symbolises, clearly and painfully, the policy and manifestation of apartheid. In fact, Afriforum's answering affidavit states: 'During Apartheid the old flag was held aloft as a symbol of the past regime's power. At the time it was seen as a constant reminder of an oppressive and racist system'. As stated in the founding affidavit of the SAHRC, the old flag represents precisely that racist and repressive regime, and the dehumanising ideologies espoused during its rule – the racial superiority of white South Africans and the corresponding inferiority of black South Africans.*
>
> *[41] As a revered icon of apartheid, the old flag represents hate, pain and trauma for most people, particularly black South Africans. The gratuitous public displays by people of the old flag*

[3] Afriforum NPC v Nelson Mandela Foundation Trust and Others 2023 (4) SA 1 (SCA).

– a provocative symbol of repression, authoritarianism and racial hatred – brings into unmistakeable view their affinity and mourning for the apartheid regime, characterised by its degrading, oppressive and undignified treatment of black South Africans. The message conveyed is a longing for the days of apartheid and the restoration of white minority rule.

[47] Racist conduct, the Constitutional Court said in South African Revenue Service, must be dealt with firmly:

> *'[R]acist conduct requires a very firm and unapologetic response from the courts, particularly the highest courts. Courts cannot therefore afford to shirk their constitutional obligation or spurn the opportunities they have to contribute meaningfully towards the eradication of racism and its tendencies'*

[48] These two cases, it was held in Qwelane, 'demonstrate the presence of deeply rooted structural subordination in relation to race'. The Court went on to say:

> *'In these cases, the Court underscored how facially innocuous words or notorious words have to be understood based on the different structural positions in post-apartheid South African society. This is an approach which takes cognisance of how words perpetuate and contribute towards systemic disadvantage and inequalities. In essence, this is the corollary of our substantive equality demands that flow from the Constitution. The purpose of hate speech regulation in South Africa is inextricably linked to our constitutional object of healing the injustices of the past and establishing a more egalitarian society. This is done by curtailing speech which is part and parcel of the system of subordination of vulnerable and marginalised groups in South Africa.*

[49] The message communicated by gratuitous public displays of the old flag is not innocuous, let alone facially innocuous. Rather, those who publicly hold up or wave the old flag, convey a brazen, destructive message that they celebrate and long for the racism of our past, in which only white people were treated as first-class citizens while black people were denigrated and demeaned. It is a glorification and veneration of the hate-filled system that contributed to most of the ills that beset our society today. The message is aimed at intimidating those who suffered, and continue to suffer, the ravages of apartheid; and poses a

direct challenge to the new constitutional order. This, when, as stated in the Minister's affidavit, it has been determined that apartheid is a crime against humanity. And when Afriforum itself states: 'Most South Africans recoil from the old flag and openly denounce Apartheid as a crime against humanity'.

[50] Such displays of the old flag are calculated to be harmful: it results in 'deep emotional and psychological harm that severely undermines the dignity of the targeted group' – black people. It also incites harm: it is able to ignite exclusion, hostility, discrimination and violence against them. It can, 'have a severely negative impact on the individual's sense of self-worth and acceptance. This impact may cause the target group members to take drastic measures in reaction, perhaps avoiding activities which bring them into contact with non-group members or adopting attitudes and postures directed towards blending in with the majority'. This, in turn, not only perpetuates systemic disadvantage and inequalities, but also obstructs the constitutionally mandated objective of building a non-racial society based on human dignity and the achievement of equality; and impairs the pursuit of national unity and reconciliation…"

121. The Boerelegioen attempts to glorify the Apartheid government by adopting its motto, namely, *Ex Unitate Vires*, which is a further painful reminder to the majority of South Africans, of the brutal and odious past regime that ruled them.

122. Stripped of all its ostensible niceties, white nationalism is the belief that national identity should be built around white ethnicity and that white people should maintain a superior dominance over the country's culture and ethos.

123. For white nationalism to gain traction, it fosters a false narrative of an imagined threat to its cultural identity that it contends is being erased. That narrative enables it to frame its ideology as a just cause and a war for survival.

124. South Africa's own oppression and exploitation of the majority was sold to the more privileged sectors of society as being based on the alleged need to suppress, the so-called "*swart-gevaar*". While the words swart-gevaar are no longer prevalent, the fear-mongering now takes the form of persuading white people that farm murders are the designed commenced of a white genocide, which genocide is allegedly, imminent.

125. The Boerelegioen's use of these tactics to garner support for their organisation, which is an admitted white supremacist organisation has, at its core objective, activity such as, the training of paramilitary and/or a vigilante groups, in violation of the law.

The void for vagueness issue

126. The Will read with the Codicil provides as follows:

> *"I appoint as heir to the whole of the balance of my estate the **Boerelegioen** with specific instruction that ~~the bulk~~ a portion of the inheritance be utilised for the Pathfinder Bushcraft and Survival Training Camps or any other training by the **Boerelegioen**..."*

127. It is trite that in the interpretation of a will, the testator's intention is the primary consideration, as expressed by the Court **Van Aardt.**,[4] where it was held that:

[4] Settlers 1820 National Monument Foundation v Van Aardt and Others 1977 (2) SA 368 (E)

> *"In interpreting a will a Court is not limited to considering the words in which the bequest is couched but may also have regard to certain extrinsic evidence in order to determine the intention of the testator . The extent to which such evidence may be used has been succinctly stated by CORBETT, J., in Allen and Another, NN.O. v Estate Bloch and Others, 1970 (2) SA 376 (C) at p. 380, as follows:*
>
> > *"Basically the duty of the Court is to ascertain not what the testator meant to do when he made his will, but what his intention is, as expressed in his will. Consequently, where his intention appears clearly from the words of the will, it is not permissible to use evidence of surrounding circumstances or other external facts to show that the testator must have had some different intention. At the same time no will can be analysed in vacuo. In interpreting a will the Court is entitled to have regard to the material facts and circumstances known to the testator when he made it: it puts itself in the testator's armchair. Moreover, the process of interpretation invariably involves the ascertainment of the association between the words and external objects and evidence is admissible in order to identify these objects. This process of applying the words of the will to external objects through the medium of extrinsic evidence may reveal what is termed a latent ambiguity in that the words, though intended to apply to one object, are in fact equally capable of applying to two or more objects (known technically as an 'equivocation') or that the words do not apply clearly to any specific object, as where they do not describe the object or do not describe it accurately. In both these instances additional extrinsic evidence is admissible in order to determine, if possible, the true object of the bequest but except in the case of an equivocation, such evidence."*

128. In **Birkett** [5], the Court held that "*where, however, the language of a will, although intended to apply to one person or thing only, is equally applicable to two or more and it is impossible to gather from the context what was intended, an equivocation arises, and, in addition to the extrinsic evidence of surrounding*

[5] Ex Parte Essery and Vial NNO: In Re Estate Birkett 1980 (2) SA 392 (D) at 395D – 395E

circumstances, direct declarations of the testator's intention may be given to solve the ambiguity."

129. Hence the extrinsic evidence of establishing what the identity, aims and objectives of the Boerelegioen is, was a necessary exercise in clarifying who the bequest had been made to and for what purpose it was meant to be usd.

130. From the papers, it has emerged that there are three possible entities, namely:

130.1. First, there is the Boerelegioen RSA (Pty) Ltd;

130.2. Second, there is the Boerelegioen NPC; and

130.3. Third, there is the introduction by the respondents, of a voluntary association which was founded in 2016

131. The only expression of the testator's intention that is evident, is the intention for the funds to be used for "training", as well as, the testator's own assertions that he wanted the funds used to benefit an organisation which he deemed to be one which will "*exterminate every black person in South Africa*" and will be used to defend or ward off a white genocide, which is clearly imagined and not real.

132. While the respondents deny that extermination of black people is their aim and objective, they nonetheless contend that they are the intended beneficiaries. They do so without explaining how they will carry out the testator's alleged motivation for making the bequest, namely, wanting to exterminate black people in South Africa.

133. In light of there existing three distinct entities carrying the name of the Boerelegioen and the fact that the person that the testator met and informed that he wanted to make a bequest to the BL, namely Mr Steytler having resigned from the BL, it follows that the bequest is vague concerning which entity was the intended beneficiary under the Will and Codicil, even when regard is had to extrinsic evidence.

134. Additionally, the Will and Codicil do not specify the portion that the BL is meant to use for the activities of training camps conducted under the aegis of Pathfinder Bushcraft and Survival (Pty) Ltd, who in any event do not oppose this application.

135. If respondents' contention that the BL is not a racially exclusive organisation and allegedly trains people of Zulu origin is correct, then clearly, that was not the type of organisation that the testator intended to make the bequest to and intended to fund training camps for.

The contravention of public policy issue

136. In **Barkhuizen v Napier**[6] the Constitutional held as follows concerning the relevance of Constitutional values in determining the content of public policy:

> *"[28] Ordinarily, constitutional challenges to contractual terms will give rise to the question of whether the disputed provision is contrary to public policy. Public policy represents the legal convictions of the community; it represents those values that are held most dear by the society. Determining the content of public policy was once fraught with difficulties. That is no longer the case. Since the advent of our constitutional democracy, public policy is now deeply rooted in our Constitution and the values which underlie it. Indeed, the founding provisions of our Constitution make it plain: our constitutional democracy is founded on, among other values, the values of human dignity, the achievement of equality and the advancement of human rights and freedoms, and the rule of law. And the Bill of Rights, as the Constitution proclaims, "is a cornerstone" of that democracy; "it enshrines the rights of all people in our country and affirms the democratic [founding] values of human dignity, equality and freedom."*

137. The testator's intention to fund the training of people in order to impart to them, the skills in order to provide security services, embark upon paramilitary activity to defend a perceived white genocide, without the organisation under whose auspices that training would occur, having the necessary registration under PSIRA, means that the activity so funded would be unlawful, both under the PSIRA statute and under the Constitution of the RSA which permits of only one army, namely, the SANDF and which does not permit racist, discriminatory and exclusionary activity.

---

[6] 2007 (5) SA 323 (CC) at [28]

138. Section 20(1)(a) of the PSIRA Act provides that:

> *"20. (1) (a) No person, except a Security Service contemplated in section 199 of the Constitution (Act No. 108 of 1996), may in any manner render a security service for remuneration, reward, a fee or benefit, unless such a person is registered as a security service provider in terms of this Act."*

139. Security Service is defined in PSIRA, as follows:

> *"security service" means one or more of the following services or activities:*
>
> *(a) protecting or safeguarding a person or property in any manner;*
>
> *(b) giving advice on the protection or safeguarding of a person or property, on any other type of security service as defined in this section, or on the use of security equipment;*
>
> *(c) providing a reactive or response service in connection with the safeguarding of a person or property in any manner;*
>
> *(d) providing a service aimed at ensuring order and safety on the premises used for sporting, recreational, entertainment or similar purposes;*
>
> *(e) manufacturing, importing, distributing or advertising of monitoring devices 50 contemplated in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992)*
>
> *(f) performing the functions of a private investigator;*
>
> *(g) providing security training or instruction to a security service provider or*
>
> *(h) installing, servicing or repairing security equipment;*
>
> *(i) monitoring signals or transmissions from electronic security equipment;*

(j) performing the functions of a locksmith;

(k) making a person or the services of a person available, whether directly or prospective security service provider; indirectly, for the rendering of any service referred to in Paragraphs (a) to (j) and (l), to another person;

(l) managing, controlling or supervising the rendering of any of the services referred to in paragraphs (a) to (j).

(m) creating the impression, in any manner, that one or more of the services in referred to in paragraphs (a) to (l)"

140. The intention of the bequest is to provide financial assistance to the BL to enable them to contravene 38(3)(a) read with section 20(1) (a) of PSIRA.

141. In **Syfrets,**[7] the court held that in the constitutional era, public policy was rooted in the Constitution and the values it enshrines. The Court, therefore, considered whether the provisions constituted unfair discrimination and if so, whether they were contrary to public policy. The court found that when applying the test enunciated in **Harksen**[8], namely, balancing competing constitutional values and principles of public policy, the public nature of the trust, was also taken into consideration. The court concluded that "the testamentary provisions in question constitute unfair discrimination. Accordingly, it concluded that they were contrary to public policy as reflected in the foundational values of non-

---

[7] Minister of Education v Syfrets Trust Ltd N.O. 2006 (4) SA 205 (C).

[8] *Harksen v Lane No* 1998 (1) SA 300 (CC).

racialism, non-sexism, and equality". It held that it was therefore empowered to vary the trust and delete the offending provisions.

142. In **Emma Smith Educational Fund**, [9] the court found that:

> *"The constitutional imperative to remove racially restrictive clauses that conflict with public policy from the conditions of an educational trust intended to benefit prospective students in need and administered by a publicly funded educational institution such as a University, must surely take precedence over freedom of testation, particularly given the fundamental values of our Constitution and the constitutional imperative to move away from our racially divided past."*

143. **BOE Trust** [10] also concerned the creation of a testamentary trust meant to create a bursary fund for the benefit of white South African students. On appeal, the Supreme Court of Appeal, while affirming the principle of freedom of testation, found that the freedom was not absolute. In paragraph 28, the Court held as follows:

> *[28] But freedom of testation, and the rights underlying it, are not absolute. The balance to be struck between freedom of testation and its limitations was formulated by Innes ACJ as follows:*
>
> > *'Now the golden rule for the interpretation of testaments is to ascertain the wishes of the testator from the language used. And when these wishes are ascertained, the court is bound to give effect to them, unless we are prevented by some rule of law from doing so.'*

---

[9] Curators Ad Litem to Certain Potential Beneficiaries of Emma Smith Educational Fund v The University of KwaZulu-Natal [2010] ZASCA 136; 2010 (6) SA 518 (SCA)

[10] BOE Trust Ltd N.O. (in their capacities as co-trustees of the Jean Pierre De Villiers Trust 2013 (3) SA 236 (SCA) (BOE Trust Supreme Court of Appeal judgment).

144. In the BOE Case, the court avoided the issue of the constitutionality of the expressly discriminatory provision in the Will, namely, bequeathing the funds to white students only and the consequential contravention of public policy that ought to follow. However the court *a quo* decided the matter before the Emma Smith case.

145. In **King v De Jager**[11] the Constitutional Court was seized with the determination of "*whether public policy has advanced to the extent that courts should be empowered to act as the final arbiter of whether a testator may discriminate, even unfairly so, in his or her private will*". Ultimately the Court found that the discriminatory provisional was unconstitutional, contrary to public policy and therefore unenforceable.

146. The common law regards unlawful wills and those that are contrary to public policy as not enforceable.

147. In **Harvey**[12] the Supreme Court of Appeal said that there are cases where the interests of society require a court's interference on the grounds of public policy. The Court was seized with having to "*rewrite the deed, by instituting persons as beneficiaries, who have been excluded by the donor.*"

[11] King N.O and Others v De Jager 2021 (4) SA 1 (CC) at para [103]

[12] Harvey *N.O. v Crawford N.O.* 2019 (2) SA 153 (SCA) at para at [70]

148. The Court in Harvey confirmed that a private bequest could be challenged on the basis of discrimination.

Application of the law to the facts

149. While in form, the bequest to the Boerelegioen does not appear to be *prima facie* unfairly discriminatory and to offend public policy, in substance, when regard is had to the Manifest of the Boerelegioen, which respondents say is their Constitution, their webpage, the allegations in the answering affidavit and their video material which are not challenged, then clearly the BL and the testator's stated objective and purpose for which he wished to have the funds used, do fall foul of the law in the following respects.

150. This country is only legally entitled to have one army, that is, the South African National Defence Force. Therefore, paramilitary activities of the BL are unlawful.[13]

151. The Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 27 of 2006 defines in section 1, armed conflict as including armed forces, which appears to apply to armed forces that would be joined outside of South Africa. However, the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act and the PSIRA collectively operate to make illegal, the training of persons in

[13] sections 198 and 199 of the Constitution of the RSA

the use of arms for the purpose of participating with armed groups unless the trainers are registered under PSIRA and comply with certain regulations and protocols or have obtained the necessary authorization from the National Conventional Arms Control Committee

152. Turning to respondents' allegation that the BL deals with criminals, it should be noted that private persons who are not members of the police force may only arrest suspects in terms of section 42 of the Criminal Procedures Act 51 of 1977 and no provision is made for those effecting arrests to "*deal with*" suspects as though they were already "*criminals*" i.e. people that have already been convicted of committing a crime. Certainly, no legal provision exists to enable the BL" to deal with criminals" as respondents have alleged.

153. The Manifest of the BL is discriminatory against persons other than those with alleged "Boer blood" and amounts to a violation of the Bill of Rights in the Constitution that prohibits exclusionary practices based on ethnicity and race.

154. The Manifest, webpage and videos of the BL also violates section 16(2) of the Constitution that expressly prohibits expression that propagates war, incites imminent violence or advocates hatred based on race, ethnicity, gender or religion and which amounts to incitement to harm, for example expressing the desire to exterminate black people.

155. In light of the common cause fact that the BL was conceptualised and established as an organisation for white persons by white persons to defend a perceived white genocide and is stated as being only open to members who have "Boer-blood," the purported disputes of fact raised by the respondents are not *bona fide* and are far-fetched and untenable. Therefore, respondents' version is not afforded the protection of the Plascon-Evans principle.

156. Expression of the nature described above cannot find protection under freedom of speech nor under cultural protection. They remain contrary to public policy and therefore, also contrary to the common law.

157. In the circumstances, given that the common law provides for a declaration of unenforceability where a provision in a will is contrary to public policy, there is no need for this Court to develop the common law as contemplated in section 39(2) of the Constitution of the RSA.

158. In the result, I am satisfied that the second and third respondents who had filed an answering affidavit, annexures thereto, including several confirmatory affidavits, had ample opportunity to present their case to this court, even without the assistance of legal representation, in the event that they were unable to obtain legal representation after their attorney withdrew, but they failed to present argument before this Court.

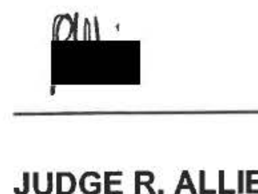
159. Nonetheless, this Court has taken into consideration, all of the allegations and arguments that the respondents presented on the papers and weighed it up against the submissions made on behalf of applicants and the applicable law.

160. This Court is therefore, persuaded that the applicants have made out a case for the relief they seek with regard to declaring the bequest to the Boerelegioen to be vague and contrary to public policy and therefore invalid and unenforceable.

161. The respondents have been substantially unsuccessful in this application and have caused the applicants to incur the cost of responding to every allegation that they made in their lengthy affidavit. Therefore the respondents who opposed this application must bear the costs.

162. The employment of two counsel and Scale C was justified given the novel nature of the case as well as its complexity.

163. In the result, I make an order in terms of the draft order annexed hereto.



JUDGE R. ALLIE

APPEARANCES

For the Applicant:	Adv Craig Webster SC Muhammad Ebrahim
Instructed by:	Werksmans Attorneys
For the Respondent(s):	No appearance
Instructed by:	
Judgment delivered on:	18 February 2025

"X" 18/2/2025

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Before the Honourable Ms Justice Allie
Cape Town, ~~Thursday~~ Tuesday, 18 February 2025

CASE NO: 3958/2023

In the matter between:

MADELEINE LOUISE GERNTHOLTZ	First Applicant
LINDSAY CAROLINE TEGROEN	Second Applicant
ROGER DAVID BRAY	Third Applicant
GREGORY JON BRAY	Fourth Applicant

and

JACOBUS NICOLAAS JOHANNES PIETERSE N.O. in his capacity as the executor the estate of GRANTLAND MICHAEL BRAY	First Respondent
BOERELEGIOEN RSA (PTY) LTD	Second Respondent
BOERELEGIOEN NPC	Third Respondent
PATHFINDER BUSHCRAFT & SURVIVAL (PTY) LTD	Fourth Respondent
MADELEINE GERNTHOLZ N.O. in her capacity as a trustee for the time being of the BRAY FAMILY TRUST	Fifth Respondent

LINDSAY CAROLINE TEGROEN N.O. in her capacity as a trustee for the time being of the BRAY FAMILY TRUST	Sixth Respondent
ROGER DAVID BRAY N.O. in his capacity as a trustee for the time being of the BRAY FAMILY TRUST	Seventh Respondent
GREGORY JON BRAY N.O. in his capacity as a trustee for the time being of the BRAY FAMILY TRUST	Eighth Respondent
DARRON WEST N.O. in his capacity as a trustee for the time being of the BRAY FAMILY TRUST	Ninth Respondent
MASTER OF THE HIGH COURT	Tenth Respondent
THE MINISTER OF JUSTICE	Eleventh Respondent
THE MINSTER OF POLICE	Twelfth Respondent
THE MINISTER OF STATE SECURITY	Thirteenth Respondent

~~DRAFT~~ ORDER

HAVING HEARD COUNSEL FOR THE APPLICANTS AND HAVING READ THE PAPERS FILED OF RECORD IT IS ORDERED THAT:

1. The bequest to second, alternatively, third respondent, alternatively fourth respondent ("the bequest"), in paragraph 3 of the last will and testament of Grant Michael Bray, dated 15 December 2020 ("the will"), as read with the codicil thereto, dated 3 June 2021 ("the codicil"), is invalid on the basis that:

1.1. The bequest is void for vagueness; and

1.2. that the bequest is contrary to public policy.

2. Declaring that the assets bequeathed in terms of the said paragraph 3 fall to devolve by intestate succession.

3. Costs on Scale C, to be paid by the second and third respondents, jointly and severally, the one paying the other to be absolved, such costs to include the costs of two counsel.

BY ORDER OF THE COURT

____

COURT REGISTRAR
Werksmans Attorneys
HC Box 31
Ref: M Wiehahn