21 July 2023

ARE TRUSTEES ALLOWED TO BUY TRUST ASSETS?

Generally, transactions or purchases where a conflict of interest arises, will be prohibited by law. However, when looking at the precedent set by the Courts, there are exceptions to this general rule. Trust assets may be purchased by trustees where safeguards have been put in place. These safeguards may include the other trustee/(s) consenting to the purchase of the trust asset, that the purchase of the trust asset is done in good faith, and the transaction is concluded at arm's length.

In the case of Kuttel v Master of the High Court and Others (819/2021) [2022] ZASCA 156 (16 November 2022), there was a dispute whether there was a conflict of interest in two trustees purchasing a trust asset. The trust beneficiary argued that it was a conflict of interest for the trustees to be purchasing said trust asset. The trust beneficiary's argument failed because of two reasons. The first reason was that the transaction involved the sale of shares, not immovable property. The second reason was that the necessary safeguards were put in place, as the trustees acted in good faith, obtained consent from the other trustees and transacted at arm's length.