

SOUTH AFRICA / JUDGMENT

Adcock v Adcock and Others (3617/09)

[2012] ZAECPEHC 28 (26 April 2012)

[2012] ZAECPEHC 28**COURT**

Eastern Cape High Court, Port Elizabeth

BEFORE

E Revelas

CASE / FILE NUMBER

3617/09

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Of Interest**IN THE HIGH COURT OF****SOUTH AFRICA****EASTERN CAPE –****PORT ELIZABETH****Case No: 3617/09****Date Heard: 6/02/2012****Date Delivered:**

26/04/2012

In the matter

ANGELIQUE DANIELLE

MICHELLE ADCOCKPlaintiff

and

SCOTT WILTON ADCOCK

.....First

Defendant

W ADCOCK N.O.

.....Second

Defendant

SCOTT WILTON ADCOCK

N.O.Third

Defendant

ROSEMARY ADCOCK N.O.

.....Fourth

Defendant

JUDGMENT

REVELAS J

Husband and wife – proprietary rights – plaintiff ex-wife claiming the existence of universal partnership with former husband and a family trust and a division of the assets thereof – main asset being farm bought by plaintiff’s father-in-law – animus contrahendi scrutinized.

- [1] The plaintiff and the first defendant were married to each other out of community of property in terms of the accrual system and their marriage was dissolved during 2010 in the Southern Divorce Court where a decree of divorce was granted, but no other relief. The plaintiff had abandoned the relief initially sought by her in terms of the accrual system, and she persued the remainder of her claim against the four defendants in this court, alleging the existence of a universal partnership between herself, the first defendant (her former husband) and the Wilton Trust (“the Trust”) in equal shares, alternatively in accordance with a ratio to be determined in this trial. The first defendant, the plaintiff’s former husband, is also the third defendant, and cited in his capacity as trustee of the Trust. The remaining defendants (the second and fourth defendants), are also cited as trustees of the Trust. They are the plaintiff’s parents in law.
- [2] Apart from seeking a declaratory order to the aforesaid effect, the plaintiff also seeks confirmation of the dissolution of the universal partnership and the appointment of a liquidator with stipulated powers and duties to realize all the assets of the alleged partnership, its main asset being the farm Wiltonside, which is registered in the name of Trust. To this end the plaintiff had approached an attorney from Free State, who consented in writing to act as liquidator should the need for such an appointment arises.
- [3] The plaintiff alleged in her particulars of claim, that when the universal partnership came into being between herself, her former husband and the Trust, the latter was represented by the second and third defendants (her father-in-law and husband) and that the universal partnership agreement was concluded orally, or tacitly, or impliedly. The plaintiff contended that she, the first defendant and the second defendant contributed equally to the business of the partnership their labours, service and skill on the farm Wiltonside, which was the main business of the partnership and the farm was acquired during the subsistence of the partnership. The plaintiff also alleged that a property, 4 Cyril Street, Mount Pleasant, Port Elizabeth, was also acquired by the partnership.
- [4] The purpose of the partnership, the plaintiff maintained, would be for the joint benefit of the plaintiff, her former husband and the Trust, with the express purpose of making profits, upon the marriage being terminated it was an implied term that the partnership would be terminated and its nett asset value distributed equally between the partnerships according to the partnership ratio.

- [5] In Wille's: Principles of South African Law 9th Ed (Gen Ed F du Bois pp 1004-1005) a partnership is said to be a legal relationship between at least two persons, but not more than twenty, in which the parties agree to carry on a lawful enterprise and common to which each contributes something of commercial value with the object of making and sharing profits.
- [6] The four essentials of a universal partnership as formulated by RJ Pothier in his A Treatise on the Contract of Partnership (as translated by Tudor) are:

Each of the partners must bring something into the partnership, or bind themselves to bring something into it whether it be money, or labour or skill.

The partnership business should be carried on for the joint benefit of the parties.

The object should be to make a profit.

The contract should be a legitimate one.

The first three requirements have been recognized and consistently applied in our courts in matters concerning the existence of a partnerships, and more particularly, universal partnerships between spouses and cohabitees. The fourth element of legitimacy, being a requirement common to all contracts, is obviously no longer a stated requirement of the enquiry into whether a partnership has been established or not.

See: Bester v van Niekerk 1960 (2) SA 779 A at 783H-784A; Mühlmann v Mühlmann 1981 (4) SA 632 (W) at 634C-J; and 1984 (3) SA 102 (A) at 124 C-D; Pezutto v Dreyer 1992 (3) SA 370 (A) at 390 A-C; Ponelat v Schrepfer 2012 (1) SA 206.

- [7] The most recent judgment of the Supreme Court of Appeal on the question of universal partnerships is the majority judgment of Brand JA in Butters v Mncora (181/2011) [2012] ZASCA 29 (28 March 2012). In paragraph
- [17] thereof the requirements for a partnership as formulated by Pothier were confirmed, and the principles regarding universal partnerships were set out as follows in paragraph [18] of the

judgment:

"[18] In this light our courts appear to be supported by good authority when they held, either expressly or by clear implication that:

Universal partnerships of all property which extend beyond commercial undertakings were part of Roman Dutch law and still form part of our law.

A universal partnership of all property does not require an express agreement. Like any other contract it can also come into existence by tacit agreement, that is by an agreement derived from the conduct of the parties.

The requirements for a universal partnership of all property, including universal partnerships between cohabitees, are the same as those formulated by Pothier for partnerships in general.

Where the conduct of the parties is capable of more than one inference, the test for when a tacit universal partnership can be held to exist is whether it is more probable than not that a tacit agreement had been reached”.

What renders this matter substantially different from the usual situation where one of the parties claims to be a partner of a universal partnership, is the allegation that a trust was one of the partners of the universal partnership.

The Evidence

- [8] The witnesses for the plaintiff was herself and Professor Staude of the Rhodes Business School. Only the second defendant testified on behalf of the defendants.
- [9] The plaintiff and the first defendant met on the beach at Kenton-On-Sea in 1989. They married each other on 6 April 1995 in Phalaborwa, the hometown of the plaintiff. At the time the first defendant was living in Port Elizabeth. When the plaintiff and the first defendant met, the plaintiff was a student at Rhodes University, studying for a BA degree and the first defendant was studying Building Management at the Technicon in Port Elizabeth. The plaintiff abandoned her studies just before completing her course and did not obtain her degree, something she deeply regretted.
- [10] Prior to the marriage the first defendant worked for a while at Stocks and Stocks, a civil engineering firm, and at Rockland's Chickens, a commercial chicken farm. For the first two years of the marriage the couple lived in Phalaborwa. They worked in the business of the plaintiff's father. The main form of business was the sealing of tanks and reservoirs for the mines in the area, and also lining swimming pools. According to the plaintiff, her husband “shadowed” her father, and she “shadowed” her mother. Her husband did not like it much there and saw no future for himself in her father's business.
- [11] Towards the end of 1996, they moved back to the Eastern Cape where the first defendant hailed from. Two children, a boy and a girl were born of the marriage in 1999 and 2001 respectively. The parents of both parties were concerned as to how this young couple would make a living. At the outset it should be noted that at the time, neither of these young people in this marriage, when they started a life together, showed any signs of making a living without the financial assistance or otherwise of their parents.
- [12] They moved onto the farm Wiltonside, which was made available to them by the second defendant. Because of his experience with chickens at Rocklands farms, the first defendant tried his hand at chicken farming, on a small scale at first. Live chickens were sold to people in the area. Later, this operation expanded and chickens were sold directly to the butchers and other purchasers. The plaintiff recalled how she used to sell broiler chickens from the boot of her Toyota Corolla motor car to the butcher in Kenton-On-Sea. Crocodiles were also introduced to the farm and were fed the chickens not fit for sale. The plaintiff's father

bought ten heifers and for the entire time that the couple lived on the farm, there had always been cattle and they depended on the cattle to supplement their cash income.

- [13] The first defendant's chosen occupation was that of a professional hunter. During about 1999, he turned his occupation into a business and the chicken business became redundant. The defendant would take hunting parties or individual hunters on hunting trips in the area and in other parts of the country. Many hunters were from abroad. Later, game was introduced onto the farm, also for hunting purposes. The plaintiff acted as a hostess, for the hunters and refurbished the prefab house on the farm for the visiting hunters. However, most of the hunting in which the first defendant was involved in, was conducted at other locations. The plaintiff's duties were to make tea and coffee for the hunters. During the subsistence of the marriage the first defendant went to the United States of America to market his hunting business and was away from home for almost two months in total. His work in this field caused him to be away from home for periods of a few days or for more than two weeks at a time. The plaintiff attempted to create the impression that the first defendant was away on hunting trips for most of the time, leaving her to fend for herself and her children alone on a farm, beset with dangers and problems with all the responsibilities of the entire farm on her shoulders alone. The first defendant did not testify, but the extent of his absenteeism from the farm was nonetheless in dispute and appeared to be exaggerated.
- [14] The plaintiff described life on the farm as an arduous experience. The road to and from Grahamstown was treacherous in bad weather. She was alone in the farm far too often. She carried a pistol with her to ward off snakes. Two of her dogs were bitten by snakes. The plaintiff described how water pumps would break when the defendant was away, and how she was without hot water for a week, having to boil water in the stove to enable her and her children to bath. The plaintiff particularly recalled with evident resentment that when she called her father-in-law when the water pump broke one night, he advised that she should "get someone to fix it". The water pump broke only once.
- [15] The plaintiff gave several examples of how she assisted on the farm and contributed towards the farming operations. She testified that she helped and supervised digging out a swimming pool, she renovated the old dilapidated brick farm house (pointed it herself) and enhanced the prefab house on the farm, and organized the staff. She also took one of the farm workers to hospital (once), when he was attacked and bitten by the farm dogs. She also liaised with the accountant who was responsible for keeping the books of the Trust. She fed the crocodiles on the farm, and sometimes slaughtered chickens in the middle of the night, though the latter activity occurred rarely if I understood the evidence correctly.
- [16] I was somewhat at a loss to apprehend how some of these facts demonstrated the existence of a partnership, but they nonetheless gave one an impression of the plaintiff's life on Wiltonside.

- [17] Once the children started attending school, many more demands were made on the plaintiff's time, since the children were day scholars at a private school in Grahamstown. The plaintiff added somewhat resentful, that this at the behest of the fourth respondent (her mother-in-law) was because a Government School "was not good enough for her grandchildren". Given the fact that the plaintiff lived on a farm 50 kilometres from Grahamstown, with no other school any closer, this comment struck me as somewhat unfair. But then again, it became apparent during the trial there was a very strained relationship between the plaintiff and her parents-in-law.
- [18] The plaintiff, despite her perceived adverse circumstances and the hardships she believed she was subjected to, did not rest on her laurels. She started a business selling foodstuffs, primarily salad dressings, under the name "The Farmers Wife". With the help of her assistant Thembi (her surname was not given), salad dressings were made in the former chicken run which was refurbished for the making of her products. Her business expanded. In the Western Cape new products such as jams and other bottled products were sourced and then sold in the Eastern Cape under "The Farmers Wife" label. Despite her husband's scepticism, the plaintiff did so well as an entrepreneur, that retail stores such as Pick 'n Pay in Grahamstown bought her products. Later more retail stores as far as Port Elizabeth had "The Farmer's Wife" products on their shelves.
- [19] The plaintiff was even invited to give a talk at the Rhodes Business School. Professor Staude, former director of the Rhodes Business School gave evidence at the trial that he had invited her for a two hour talk to business students and it was a huge success. The students were "eating out of her hand" he said. Her topic was "Business Control. Professor Staude attributed the plaintiff's success to her passion for business. During cross-examination, he was asked whether he knew that no tax returns were completed for the "The Farmer's Wife" enterprise and that was sold for R50 000.00 that same year. "The Farmers Wife" was indeed sold for R50 000.00 to the first defendant when the parties were in the process of becoming divorced. The plaintiff maintained that she was under duress to sell her business for so little to her husband who insisted that she sell it to him "because he said he had nothing".
- [20] The hunting business of the first defendant and the plaintiff's "The Farmers Wife" enterprise, were conducted separately from the farming. The cattle seemed to be mainly overseen by the first defendant or the second defendant in the absence of the former, and a farm worker named Thembisile, whose surname was also not given. From time to time Thembisile's father also helped out on the farm. More than once during her evidence the plaintiff referred to the apparent invaluable contribution made by Thembi, her assistant and Thembisile to the farming operations. She even said that Thembi should also have been made a partner and in the business. In her business correspondence she also praised Thembi. An evaluation of all the evidence led me to form the impression that very little would have been accomplished on the farm without the help of these two workers due to the constant absences of the plaintiff and the first defendant.

- [21] All tax returns relating to the farm Wiltonside were completed by the accountant who kept the books of the farm. The plaintiff liaised with the accountant concerning their finances and the business of the Trust. All finances pertaining to the hunting business, the Farmers Wife, the cattle, chickens and very much all else went through the books of the Trust. Even the family's boats kept at Kenton-On-Sea, were accounted for on the Trust books.
- [22] The plaintiff's errands, meetings and deliveries in connection with her business had to be carefully planned and co-ordinated around the children's school, and particularly their extra-mural activities. This meant that the plaintiff and her children would leave the farm often before sunrise in their car (a Toyota Corolla) packed to the rafters with "The Farmers Wife" produce, the children's sports clothes etc. Except for school holidays the plaintiff would spend all her week days in Grahamstown, mostly waiting for the children. The children often changed into their sports clothes in the washing rooms of the Wimpy Restaurant in Grahamstown.
- [23] These long waiting periods in Grahamstown led to another achievement on the part of the plaintiff. The plaintiff enrolled as a full time student to complete her BA degree. The plaintiff described how she always felt that she had disappointed her parents by not completing her studies and at last she believed she had found the opportunity to demonstrate to them that she had it in her to obtain a degree. She passed all her subjects, some with distinction and even "top of the class". She mentioned that her husband and parents-in-law were absent on the day of her graduation ceremony, despite her invitation to them. She was now a wife, mother, business entrepreneur and a person with a degree. She was clearly very enterprising and energetic.
- [24] The plaintiff's enthusiasm for her studies was not shared by the rest of the family. The fourth defendant, (the plaintiff's mother-in-law), in an attempt to be reconciliatory after a spat between the plaintiff the second defendant, wrote a letter to the plaintiff in which she inter alia urged her to give up her studies. It is clear from the letter that the fourth defendant sought to persuade the plaintiff that her responsibilities on the farm and towards her family did not allow for this new, extra activity. She urged her daughter-in-law to make sacrifices in the way Christ did, and the plaintiff to see her life and responsibilities on the farm as an adventure. The plaintiff's description of her life on the farm certain did not convey the impression that she saw it as an adventure. She rather saw it as an adverse experience, filled with hardships she did not bargain for when she got married, but that she tried to make the most of it. The plaintiff produced this letter in evidence, as further proof of her substantial contribution to the

partnership and relied on the following paragraph in particular:

"Your capacity or ability of fulfilling the demanding duties of being a mother, a wife, a businessman, running the farm on your own and being a student".

- [25] The plaintiff had many responsibilities, but the evidence does not support the proposition that the plaintiff ran the farm on her own. The lion share of actual farming activities, such as maintenance, looking after the chickens, and cattle and selling them and organizing the game, were performed by Thembisile, the second defendant and the first defendant. The plaintiff did from time to time help out with these activities, but not to the extent that they were here usual duties.
- [26] The second defendant's role on the farm was, according to the plaintiff, more to do with the maintenance on the farm, such as fixing fences and the like. When the first defendant was away, the plaintiff said, there would often be problems which arose because the instructions given to the staff by the second defendant would be in conflict with those given by his son before he left the farm on a hunting trip. She said these problems then had to be sorted out by her, apart from all her other tasks. The plaintiff and the second defendant clearly did not get along. That was common cause during the trial.
- [27] The defendants described the plaintiff's contribution to the farming activities in their plea as "menial". Her counsel, Mr Jooste, referred me to the literal meaning of the word "menial". In the Concise Oxford Dictionary (7th Edition) the meaning of the word "menial" in relation to service, is given as "degrading" or "servile". The plaintiff became visibly upset about the fact that the defendant had described her contribution to the farming operations in these terms, and justifiably so.
- [28] To conclude, the plaintiff and her husband ran businesses from the farm to support themselves. Their main source of income was "The Farmer's Wife" enterprise which was very successful. The chicken business later made way for the first defendant's hunting business. The cattle, which also originated from the plaintiff, through the father, provided them with extra cash. The plaintiff also contributed to the farm, through her parents (and once through the finances of the business) by providing vehicles which were used on the farm, and also for ferrying the children to school, or to take hunters to their destinations.
- [29] The defendants applied for absolution of the instance at the end of the case presented for the plaintiff. The gist of the application was that the plaintiff's pleadings did not accord with her evidence in court. In her particulars of claim the plaintiff maintained the partnership consisted of herself, the first defendant and the Trust. When specifically questioned about the partnership's members during cross-examination, and by myself to clarify her position, the plaintiff stated that the partnership was between herself and the Trust only. It was also argued that on the evidence presented it could not be found that a universal partnership existed.
- [30] No negative inference could be drawn from the discrepancy between the plaintiff's pleadings and her statement in court about the actual partners in the alleged universal partnership. She expressed an opinion which, on a rather technical ground, was at variance with her pleadings, which one must emphasize, emanated from the offices of her legal team. In my view, that did not constitute a ground for absolution from the instance. Ordinary

caution prevented me from granting absolution on any of the other grounds advanced. The defendants had a case to answer to, particularly since the books of the Trust were intertwined with the business ventures of the plaintiff and the first defendant which were conducted from the farm.

Discussion

[31] It was clearly more advantageous to the plaintiff to allege a universal partnership with the Trust and her husband, than a universal

partnership with her husband alone. Counsel for the plaintiff, Mr Jooste, relied on the judgment in the Land and Agricultural Bank of SA v Parker and Others 2005

(2) SA 77 where criticism was levelled against the abuse of family trusts in what Cameron JA (as he then was) described as a “battle

about a family trust” (at 81 G-H). The particular, the paragraphs relied upon by the plaintiff were paragraphs 37 and [37.1]

of the judgment (at 90 D-G) where it was held that:

“[37] The courts will themselves in appropriate cases ensure the Trust form is not abused. The courts have the power and duty to evolve the law of trusts by adopting the trust idea to the principles of our law (Brown v Blann, Botha NNO and Another). This power may be invoked to ensure that trusts function in accordance with business efficacy, sound commercial accountability

and the reasonable expectations of outsiders who deal with them. This could be achieved through methods appropriate to each case.

[37.1] As mentioned earlier, within its scope the rule that outsiders contracting with an entity dealing in good faith may assume that acts performed within its constitution and powers which have been properly and duly performed and are not bound to enquire whether acts of internal management have been regular, may well in suitable cases have a useful role to play in safeguarding outsiders from unwarranted contestation of liability by trusts that conclude business transactions.

28 [1984] ZASCA 19; 1984 (2) SA 850 A F-G Per Joubert JA.”

[32] Mr Jooste invited me to develop the common law pertaining to trusts, so as to find application in this matter, and infer the necessary animus contrahendi on the part of the trustees to form a universal partnership, and essentially to hold that the contestation of liability on the part of the trustees qua Trust, would be an abuse of the Trust. The extension of a tacit agreement to include the Trust in this partnership by developing the common-law, would not be a simple matter.

- [33] In the judgment of the Appellate Division (as it then was) in *Mühlmann v Mühlmann* (supra at 124 A-D), the enquiry into whether a tacit agreement was concluded to form a partnership was held to be “whether it was more probable than not that a tacit agreement had been reached”. At 123 H-J of the judgment, courts are warned to be careful to ensure that there is the *animus contrahendi* to form a partnership and that the conduct from which a contract is sought to be inferred is not simply what reflects what is ordinarily to be expected of a wife in a given situation. To find that the second and fourth defendants intended to bind the Trust a partner in a partnership of the kind alleged, the normal principles applicable to the existence of a tacit contract are to be applied.
- [34] The plaintiff is therefore required to establish “conduct in circumstances which are so unequivocal that the parties must have been satisfied that they were in agreement” (See: Christie, *The Law of Contract in South Africa*, at 85 and the Butters judgment (supra) at paragraph 18 (d).
- [35] The plaintiff does not rely on the existence of a *universorum quae ex quaestu veniunt* where the parties contract a partnership of all that they may acquire during the continuation thereof from every kind of commerce. The plaintiff seeks to establish a *universum bonorum*, where the parties agree to put in common, all their property, both present and future. This is very common with couples, (married to each other or not), who live with one another and share a relationship of caring and sharing. The second and fourth respondents are obviously outsiders with regard to this relationship, and to find that the Trust became a third partner in this type of partnership will require a finding that the second and fourth defendants had the intention to bind the Trust in this way. That is something that cannot be inferred easily from their conduct since from the onset, the relationship between the plaintiff and the second defendant was strained.
- [36] All the evidence suggested that just after the parties were married it did not look as if they were going to make a living on their own, and therefore the second defendant lent them a helping hand in offering to let them live on the farm. The primary motive behind this gesture was to enable them to live cheaply and find their feet. The second defendant never embarked on any business venture, with them. Even though he visited the farm primarily to maintain it, in the course of which he liaised with Thembisile about the cattle and other matters on the farm. He never conducted himself in any way which could be construed as him having aspirations to earn any profits from the children’s business ventures. When he visited the farm he conducted himself as the farmer, a father figure, and the owner of the farm (even though the legal position was that the Trust was the owner). The chickens and cattle were no longer profit making entities when the parties decided to divorce each other. The plaintiff did not even know what breed of cattle was kept on the farm.
- [37] Much was made of the fact that the first defendant (also cited as the third defendant), did not testify. The plaintiff’s version of events, together with that which was put to her on the third defendant’s behalf during cross-examination, does not take the case for a partnership with the Trust much further. On the evidence presented, it could arguably be found that there

was tacit agreement between the plaintiff and her husband to form a universal partnership (which was never the case for the plaintiff), but that does not apply to the Trust. One has to have careful regard, as the case law cautions, to the question of whether there was the required animus contrahendi on the part all three the alleged partners to form a universal partnership.

- [38] In my view, the first defendant could not, as third defendant, in his capacity as trustee, unilaterally bind the trust to such a partnership. That would have been contrary to the prescripts of the Trust Deed. The conduct of the second defendant is most essential to this enquiry.
- [39] Counsel for the plaintiff submitted that in all things, the second defendant acted typically as the main partner of the universal partnership and had most of the major decision making powers. I would agree with that submission, to the extent that he made all major decisions. On any issue or suggestion, e.g. to make alterations or erect new structures on the farm, the second defendant had the last word. An example thereof was his refusal to permit additional accommodation for hunters being built at the river on the farm. Although the second defendant lived in Kenton-On-Sea with his wife, and he did not want keys to the farm house, he did not visit the farm as a guest. In my view, his actions were in keeping with that of an owner.
- [40] The second defendant did not see the farm as a partnership asset. He created trusts, specifically with the purpose of keeping property such as the houses and farms he bought, in his family, for the benefit of his two sons and their biological offspring, but not for any former daughters in law, of which he had two. He disliked them. The trust deed of the Trust was even amended after the divorce of his other son, so as to exclude the children of the ex-wife of his other son, from an earlier marriage. The class of beneficiaries created the founder are clearly incompatible with the Trust being a partner in a universal partnership with only two members of the family, to the exclusion of the other beneficiaries.
- [41] The farm Wiltonside was made up of three portions which were bought in 1996 (before the creation of the Trust), 1997 and 1996 respectively, and registered in the name of the Trust. The second defendant financed all the purchases. The second defendant's financing of the purchase of the farm Wiltonside is a very significant fact to consider in this matter as well as the fact that the purchase of the first portion took place before the Trust was even established.
- [42] The several control mechanisms built in the Trust Deed to keep the Trust assets in the family, particularly the stipulation that if the founder and his wife (the second and fourth defendants) die, the assets of the Trust are to be distributed to their children and grand children, militate against the notion of the Trust as a partner.

- [43] That some of the cattle on the farm were advanced by the plaintiff's father and that the plaintiff and the defendant made improvements to the homesteads and other areas around the house during their twelve year sojourn on the farm, does not give rise to an inference that a partnership with the Trust existed. They did not seek to make a profit for themselves or the Trust. Perhaps they thought to improve their future inheritance, but that is a different matter entirely.
- [44] The manner in which the plaintiff and the first defendant came to live on the farm was, as counsel for the defendants, Mr Nepgen, put it: "no more than a family arrangement to provide them with a place to stay and an opportunity to earn a subsistence". The plaintiff and the first defendant left Wiltonside sometime before the divorce, with the view to make a better living with the help of the plaintiff's father (once again). He had in the meantime, also moved to Port Elizabeth.
- [45] The fact that the plaintiff liased with the second defendant's accountant of many years, Mr Riley, and that the financial statements concerned were those of the Trust, does not give rise to an inference that the Trust was in partnership with the plaintiff and her husband either. The second defendant allowed her and the first defendant (his son) to use the Trust's status as a VAT vendor, and to use its VAT number to reclaim tax in respect of the farming operations. This was another family arrangement. The second defendant's very limited knowledge of the books does not enhance the probabilities that the Trust was a partner. On the contrary, it detracts therefrom because the second defendant was the founder of the Trust, and he wanted nothing to do with the business ventures run from the farm. The financial statements in question were also not an accurate reflection of the Trust's financial position, because they were so intertwined with the finances of the other business ventures run from the farm.
- [46] I am unable to infer any intention on the part of the trustees of the Trust that in these family arrangements, legal obligations would arise which would bind the Trust as a partner in a universal partnership with the plaintiff. For obvious considerations, the application of the principles of a Trust, who was not a party to the marriage, is iniquitous, if not against public policy.
- [47] In my view, the plaintiff failed to establish that a universal partnership existed between herself, the Trust and her husband. Accordingly, the plaintiffs claim is dismissed with costs.

E REVELAS

Judge of the High Court

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