

SOUTH AFRICA / JUDGMENT

Mampe v Amplats Retirement Fund and Others (8074/2015) [2017] ZAGPPHC 687 (30 October 2017)

[2017] ZAGPPHC 687

COURT

North Gauteng High Court, Pretoria

BEFORE

Petersen

CASE / FILE NUMBER

8074/2015

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REPUBLIC OF SOUTH

AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE

NO: 8074/2015

Not

reportable

Not

of interest to other judges

In

the matter between:

MAKALELA MAGGY

MAMPE Applicant

and

AMPLATS

RETIREMENT

FUND First

Respondent

OLD

MUTUAL ASSURANCE

COMPANY Second

Respondent

PAULINA

MAKGOBELA

SELALA Third
Respondent
PAULINA
MAKGOBELA SELALA
On
behalf of ROMEO
SELALA Fourth
Respondent
MAKHOKHOB
MICHAEL MAMPE
On
behalf of TSHIAMO TESHEPO
DITIBANE Fifth
Respondent
MAZY
KATRINA
MAMPE Sixth
Respondent
MAKHOKHOB
MICHAEL
MAMPE Seventh
Respondent

JUDGMENT

PETERSEN AJ:

[1] The applicant launched this application on 27 January 2015, having successfully interdicted by way of order of court, the first and second respondents from paying the proceeds of the Retirement Fund of Mr Motate David Mampe ("the deceased") on 17 December 2014. The applicant seeks an order in the following terms:

1.1. The setting aside of the decision of the Board of Trustees of the first and second respondents excluding her, being the executrix and surviving spouse of the deceased Motata David Mampe and the deceased's surviving son Phemelelo Tshiamo Tshepo Ditibane, as beneficiaries of the Amplats Retirement Fund; and

1.2 That the first and second respondents be authorized and directed to apportion the benefits of the Retirement Fund of the deceased to the applicant and his surviving son, in accordance with the provisions of section 1(1)(c) of the Intestate Succession Act 81 of 1987.

[2] The first respondent opposes the relief sought. The remaining respondents have not filed notices of intention to oppose. The issue in dispute is limited to the applicant and first respondent. On the 19 March 2015 the first respondent filed its answering affidavit. The applicant has to date failed to file her replying affidavit and taken no further steps since 2015. The matter has been enrolled by the first respondent.

- [3] The applicant was married to the deceased by way of civil marriage in community of property on 22 October 2007. The deceased was in the employ of the first respondent at the time of his death on the 02 November 2013. There were no children born of the marriage between the deceased and the applicant. The deceased had a son who was born prior to his marriage to the applicant. His son's mother had predeceased him. The deceased's son lives with his paternal grandparents. At some stage, which is not clear in the papers, the applicant indicates that the deceased was involved in an extra marital relationship with the third respondent. The applicant's evidence is that no children were born of the extra marital relationship between the deceased and third respondent. The applicant contends that she, along with Phemelelo Tshiamo Tshepo Ditibane, are the only two heirs of the deceased.
- [4] The relief sought by the applicant is premised on the provisions of section 1(1)(c) of the Intestate Succession Act 81 of 1987. The first respondent has raised a point in limine that the same relief is sought by the applicant in proceedings lodged with the Pension Funds Adjudicator. The first respondent does not persist with this point but seeks dismissal of the application on the merits.
- [5] The first respondent challenges the applicant's reliance on section 1(1)(c) of the Intestate Succession Act as a valid cause of action contending that the deceased was a member of the first respondent and as such his benefits fall to be dealt with in terms of the provisions of section 37C of the Pension Funds Act 24 of 1956.
- [6] The Board of Trustees of the first respondent, pursuant to their mandate to investigate and give due consideration to the circumstances of the dependent's of the deceased traced all beneficiaries, including the son of the deceased and on 03 September 2014 allocated certain payments to the said persons. The applicant on her own account was separated from the deceased and not being supported by him.
- [7] Section 1(1)(c) of the Intestate Succession Act provides as follows :
- "(1) If after the commencement of this Act a person (hereinafter referred to as the 'deceased') dies intestate, either wholly or in part, and-
- (c) is survived by a spouse as well as a descendant-
- (i) such spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the Gazette, whichever is the greater; and
- (ii) such descendant shall inherit the residue (if any) of the intestate estate ..."
- [8] Section 37C of the Pension Funds Act provides as follows:
- "Disposition of pension benefits upon death of member.-

- (1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of such rules) payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of sections 37A(3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:
- (a) If the fund within twelve months of the death of the member becomes aware of or traces a dependent or dependents of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the fund, to one of such dependants or in proportions to some of or all of such dependants."
- [9] In terms of section 37C, the lump sum benefit payable upon the death of a member of a registered fund shall not form part of the assets in the estate of the member, other than a pension payable to a spouse or child of the member. In the present matter there is no pension payable to the applicant as the spouse of the deceased member or his child. Section 37C makes it plain that "notwithstanding anything to the contrary contained in any law", the benefit of the deceased stands to be dealt with by the Board of Trustees of the first respondent in accordance with the Pension Funds Act and rules of the Fund. Section 1(1)(c) of the Intestate Succession Act accordingly finds no application.

[10] On the question of costs, the first respondent seeks a cost order having defending the application with funds of the Retirement Fund. Ms Milovanovic submits that whilst it is unlikely that costs will be recovered from the applicant, these are the instructions she holds. Costs ordinarily follow the result. In considering the background to this matter and the subsequent abandoning of the application; and having regard to the financial status of the unemployed applicant, I propose to make no cost order.

[11] In the result the application is dismissed.

AH PETERSEN

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

Appearances:

On behalf of the Applicant: In absentia

On behalf of the First Respondent: Adv. A. Milovanovic

Instructed by: Bowman Gilfillan Attorneys

DATE HEARD: 30 OCTOBER 2017

DATE OF JUDGMENT: 30 OCTOBER 2017

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