

SOUTH AFRICA / JUDGMENT

Ndlovu v Old Mutual Limited and Another (1908/2022) [2025] ZAMPMBHC 22 (27 March 2025) [2025] ZAMPMBHC 22

COURT

Mbombela High Court, Mpumalanga

BEFORE

Shai

CASE / FILE NUMBER

1908/2022

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IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

CASE NUMBER: 1908/2022

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED.

DATE 27/03/2025

SIGNATURE

POPY ELIZABETH NDLOVU

APPLICANT

and

OLD MUTUAL LIMITED

1ST RESPONDENT

KHABANINA JABULILE MAZIBANE

2ND RESPONDENT

JUDGMENT

Shai AJ

Introduction

- [1] This is an application brought on an urgent basis by the applicant.
- [2] The applicant seeks for a relief, inter alia, in the following terms:
- 2.1 That the respondent be ordered to pay to the applicant her 50% share in terms of community of property;
- 2.2 That the respondent be ordered to pay the applicant her share of the deceased estate.
- [3] It would appear from the applicant's papers that reference to "respondent" means the first respondent.

Background

- [4] The applicant is the surviving spouse of Gijimane Mhaule Mazibane ("the deceased").
- [5] During his lifetime and while still married to the applicant, the deceased got married to the second respondent. This marriage contravened the Marriages Act and was consequently nullified by this Court on 12 June 2023.
- [6] The deceased died testate and in terms of his will, Old Mutual Trust (Pty) Ltd were nominated the executor of the estate.
- [7] There had been numerous correspondences between the applicant and Old Mutual Claims department since the nullification of the marriage of the second respondent. In the email of 7 January 2025, Old Mutual pointed out that they awaited confirmation on who Poppy Elizabeth Ndlovu is. They also indicated that the application would be kept on hold for 30 days and thereafter it would be processed
- [8] The applicant interpreted the email of 7 January 2025 to mean that a payout would be effected after the 30 days, hence this urgent application.
- [9] In its answer, the first respondent raised points in limine, including that the application lacks urgency.

Issues

- [10] The issues for determination herein are:
- 10.1 Whether the matter is urgent; and
- 10.2 If urgent, is the applicant entitled to the relief as claimed.

Urgency

- [11] A litigant that approaches the court for relief on an urgent basis must comply with Uniform rule 6(12)(b), which provides as follows:

“(b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances under which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress in due course.”

- [12] This rule allows the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress. The matter will be urgent if the applicant can demonstrate, with facts, that the applicant requires immediate assistance from the court, and that if his application is not heard on an urgent basis that any order he might later be granted will by then no longer be capable of providing him with the legal protection he requires.
- [13] A determination on urgency precedes a finding on merits. This means that before a court makes a finding on the merits of an urgent application, the court must first consider whether the application is indeed so urgent that it must be dealt with on the urgent roll. Should an applicant not succeed in convincing the court that he will not be afforded substantial redress at a hearing in due course, the matter will be struck from the roll. This enables the applicant to set the matter down again on proper notice and compliance (see *SARS v Hawker Air Services (Pty) Ltd*[1]). Where the facts indicate that the urgency is self-created, the application will, likewise, be struck from the roll.
- [14] The correct and crucial test to be applied in urgent applications is whether or not an applicant will be afforded substantial redress in due course[2]. This is determined by asking whether if the matter were to follow its normal course as laid down by the rules, an applicant will be afforded substantial redress. If they cannot be afforded substantial redress in due course, the matter should be enrolled and heard on an urgent basis.
- [15] If there is a delay in instituting the proceedings, an applicant has to explain the reasons for the delay and why despite the delay they claim that they cannot be afforded substantial redress at a hearing in due course.
- [16] The fact that the applicant wants to have the matter resolved urgently does not render the matter urgent. The urgency of a matter depends on the relief sought seen in context with the facts of a case. This calls for courts to determine urgency on a case-by-case, context specific basis.
- [17] It is this determination of urgency within a given context which renders the factual matrix of a case relevant in determining its urgency. The factual matrix should at no stage be confused with merits determination. The factual matrix is an intertwined blend of facts and circumstances that determine legal outcome. It refers to the context and circumstances underlying the controversy. Merits of a case are the important facts and reasons that help determine the outcome of a case. It is the quality of being particularly good or worthy,

especially so as to deserve praise or reward. The factual matrix is an adaptable tool that can be used at any stages of the litigation.

- [18] The court could therefore consider the factual matrix for purposes of determining urgency, without making a decision on the merits, that is, without rewarding or punishing any of the parties.
- [19] In casu, the applicant seeks for a remedy wherein the first respondent is ordered to process payments from an insurance policy/deceased estate. It is clear from the letter that the first respondent would process the claim immediately after the requested documents had been furnished.
- [20] This matter had been going on for a period in excess of a year. In my view, the email of the 7 January 2025 cannot be regarded as a trigger event. The circumstances had been the same throughout the entire period when correspondences were being exchanged.
- [21] I am, thus, not convinced that the applicant acted with the urgency called upon by the circumstances of this case. Urgency, if any, was self-created.
- [22] In my view, even if one were to find that urgency was satisfied, giving the relief sought by the applicant would be usurping the function of a duly nominated executor.
- [23] In view of this finding on urgency, it is unnecessary to deal with the other issues raised herein.
- [24] Consequently, the following order is made:
1. The application is struck off the roll for lack of urgency.
 2. Applicant is ordered to pay costs on a party and party scale B.

SHAI AJ

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

Counsel for the Plaintiff: Adv DJ Sibuyi Instructed by: Mthunzi Chambers C/O Thobela Sindy Attorneys Inc
Counsel for the Defendant: Adv VKruger Instructed by: Walkers Inc C/O Du Toit Smuts Attorneys
Date of Hearing 18 March 2025 Date of Judgment: 27 March 2025

[1] [2006] ZASCA 5;2006(4) SA 292 (SCA)

[2] East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite Pty Ltd and Others (11/33767[2011] ZAGPJHC 196 (23 September 2011))

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