THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Prinsloo v Majiedt N O and Another (257/2024) [2025] ZASCA 74 (30 May 2025)

Today the Supreme Court of Appeal (SCA) unanimously upheld an appeal against a decision of the Free State Division of the High Court (the high court) and ordered each of the parties to pay their own costs of the appeal. It set aside the order of the high court dated 29 September 2022 and substituted it with an order that the action pending before the high be adjourned *sine die,* that the defendant (Mr Prinsloo) be directed to launch proceedings for the joinder of Mrs Nelly Arlene Prinsloo as a party to the action within 30 days, that the parties each pay their own cost of the proceedings before the high court, and that the action be remitted to the high court.

The issue for determination before the high court was whether the benefits of a long term-life insurance policy (the policy) on the life of the late Mr Louis Hendrik Prinsloo (the deceased), received by his surviving spouse, Mrs Nelly Arlene Prinsloo (Mrs Prinsloo) to whom he was married in community of property, as the beneficiary nominated by him in terms of the policy, were, following the sequestration of their former joint estate, protected in terms of s 63 of the Long-term Insurance Act 52 of 1998 (the Act). The issue arose in the action instituted in the Free State Division of the High Court (the high court) by the respondents, Mr Donovan Theodore Majiedt and Ms Reinette Steynburg, in their capacity, as provisional trustees of the insolvent joint estate (the trustees) as plaintiffs, against the appellant, Mr Eugene Prinsloo (Mr Prinsloo), as defendant.

Following the death of the deceased on 14 February 2018, the Old Mutual on 11 April 2018 paid the death benefit in respect of the policy, amounting to R10 million, to Mrs Prinsloo. On the same day she transferred the full sum to the bank account of Iceburg Trading 713 CC (Iceburg). Mr Prinsloo, its sole member, then caused Iceburg to transfer two tranches of R5 million from Iceburg to his personal bank account on 11 April 2018 and 12 April 2018 respectively. On 10 September 2020, the joint estate of the deceased and Mrs Prinsloo was placed under provisional sequestration in the hands of the Master. A final order of sequestration was granted on 22 October 2020. On 24 November 2020, the Master appointed the trustees as provisional trustees of the insolvent joint estate.

In the action the trustees claim payment of the R10 million from Mr Prinsloo, inter alia as a disposition by Mrs Prinsloo, alternatively the joint estate, to Mr Prinsloo, to be set aside as impeachable pursuant to various provisions of the Insolvency Act 24 of 1936 (the Insolvency Act), or in terms of the common law. Mr Prinsloo pleaded, amongst other defences, that the benefits of the policy received by Mrs Prinsloo were protected in terms of s 63 of the Act and are therefore not available for the purpose of payment of the debts of the deceased and/or the insolvent joint estate, being the purpose for which the trustees seek to recover the R10 million from him. In terms of the parties' agreement relating to the issue separated, if the court found in favour of Mr Prinsloo on the application of s 63 then the trustees' action should be dismissed with costs. The high court determined that the benefit was not protected, as s 63 was not applicable.

During the course of preparing for the SCA appeal, the question arose whether Mrs Prinsloo should not have been joined as a necessary party to the litigation.

The SCA held that the need for her joinder had to be considered: in the light of the common cause facts and background against which the issue separated was required to be decided; the applicable legal framework; and the contentions of the parties. It concluded having regard to the provisions of the Act, especially s 63, the contentions advanced, and the principles relating to joinder, that Mrs Prinsloo should have been joined. She has a material direct or substantial interest in the relief claimed. The following considerations are material.

First, Mrs Prinsloo would plainly have *locus standi* to claim the relief sought in the issue as separated in her own right.

Second, the issue separated for determination is 'whether the benefit *received by [Mrs Prinsloo] is protected* or not in terms of the provisions of Section 63 of the [Act]' (Emphasis added). It is difficult to envisage a situation in which a person will have a more direct and substantial interest than where a declaration is sought from a court that she, being expressly named, did, or did not enjoy such protection.

Third, the issue as formulated, is whether the benefits received by Mrs Prinsloo are protected. Section 63(3)*(b)* provides that a person claiming such protection, is the one to prove on a balance of probabilities that protection is afforded to her under the section. Mrs Prinsloo would be entitled to maintain that the proceeds, and hence her channelling thereof to Iceburg, were protected.

Fourth, the trustees' denial that Mrs Prinsloo should be joined is predicated on their denial that she has a direct and substantial interest in the subject matter of the litigation, or the policy proceeds, as she had divested herself of the proceeds when they were transferred to Iceburg. The trustees contend that any interpretation that she could notionally address on the issue cannot have the effect that the policy proceeds will vest or revest in her post termination of the joint estate. That is a circuitous argument. It is the very issue whether she was entitled to divest herself of the proceeds of the policy, that is, that the benefits of the policy were not protected in her hands to deal with as she sees fit, that is raised by the issue separated. It is a material issue on which she should be heard and which requires that she be joined.

Fifth, the subject matter of the litigation in the action against Mr Prinsloo, based on the various causes of action alleged in the trustees' particulars of claim, is the recovery of the proceeds from Mr Prinsloo. The determination of the issue separated is material not only to the action by the trustees against Mr Prinsloo, but also to any claim Mrs Prinsloo might wish to pursue in respect of the policy proceeds in the future. If the issue separated is decided against Mr Prinsloo, and the proceeds are recovered from Mr Prinsloo, they will be reflected as an asset in the accounts of the insolvent joint estate. In any litigation to claim the release of the proceeds from the insolvent estate as being protected in her hands, the issue whether she should enjoy protection in respect of the proceeds would already have been decided in the current litigation. As much as such a finding may not be *res judicata* against her, because until now she has not been cited as a party to the present litigation, the possibility arises that another court in deciding whether she enjoyed protection in respect of the benefits of the policy, might reach a different conclusion irreconcilable with whatever order the high court might grant if the trustees' action was to succeed. There will then be conflicting judgments, in respect of the same legal issue, and the result will be a multiplicity of actions and an unnecessary waste of costs and the duplication of legal proceedings. Considerations of convenience and the interests of justice dictate that Mrs Prinsloo should be joined to the existing action in the high court unless she waived her rights in that regard.

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