



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 21 September 2009

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

On 21 September 2009 the Supreme Court of Appeal handed down judgment in *Fred Kruger NO v Denise Emmerentia Goss and another*. It overturned a judgment of the Pretoria High Court which held that an order for rehabilitative maintenance pursuant to a decree of divorce is enforceable by a wife against her former husband's deceased estate.

The first respondent, Ms Denise Emmerentia Goss, and Mr Fred Loll Stephanus Kruger married each other on 23 March 1988. The marriage was out of community of property with the exclusion of the accrual system as contemplated in Chapter 1 of the Matrimonial Property Act 88 of 1984. Approximately three and a half years later they were divorced by order of the Pretoria High Court (Hartzenberg J). The divorce order was granted after a trial lasting a week. The respondent had no capital claim against her former

husband and had restricted her claim to one for rehabilitative maintenance. The court granting the divorce order made an order, inter alia, that Mr Kruger pay Ms Goss R6 000 per month for 57 months.

Subsequent to the divorce proceedings and the order referred to above, Mr Kruger duly and punctually paid rehabilitative maintenance to the first respondent until 31 August 2006. He passed away on 29 September 2006 due to natural causes. By this time he had paid 33 of the envisaged 57 monthly instalments.

After his death the deceased's son, Mr Fred Kruger, was appointed executor of his estate. Ms Goss lodged a claim against the deceased's estate for the remainder of the rehabilitative maintenance, which she considered due to her. This amounted to R144 000, which was calculated as follows: 24 months x R6 000. The executor, after taking legal advice, rejected the claim.

During March 2008 the first respondent launched application proceedings in the Pretoria High Court against the executor. She sought an order declaring that the estate was liable to pay her rehabilitative maintenance. More specifically, she sought an order for payment of the amount of R144 000 together with interest.

The Pretoria High Court granted the relief sought by her and also ordered the executor, the appellant in this case, to pay her costs.

The SCA, with reference to s 7(2) of the Divorce Act 70 of 1979, and after considering the common law, held that the duty of support which spouses owe each other and consequently the liability for maintenance are incidents of their matrimonial relationship. Termination of that relationship by death brought the duty to an end. The SCA held that the court had erred in enforcing the first respondent's claim against her former husband's deceased estate. It noted that a spouse is free to agree to bind his or her estate to pay maintenance

after death but that is not what occurred in the present case. To allow claims of this kind might have all sorts of undesirable consequences. The legitimate claims to maintenance of minor children might be diminished or excluded. And the rights of beneficiaries may be implicated. A claim such as the one in question could compete with the claim of the surviving spouse and with claims by dependant children and beneficiaries. In the absence of legislative regulation the permutations and uncertainties abound.

The appeal was upheld with costs.