



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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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

De Graaf NO v Camilleri (565/2022) [2023] ZASCA 117 (03 August 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal to the extent set out in the issued order against the decision of the Western Cape Division of the High Court, Cape Town, per Nziweni AJ (the high court), which granted payment in favour of the respondent, Ms Christine Susan Camilleri, against the appellant, Mr Anthony Robert de Graaf NO, the executor of the estate of her late husband, Mr Raymond Camilleri (the deceased) for a claim in respect of his pension interests. Each party was ordered to pay their own costs.

The facts of the matter were as follows. The deceased and the respondent were married in 1983, out of community of property, with the exclusion of the accrual system. On 2 August 1999, they were divorced and a consent paper which was concluded by them was incorporated in the divorce order that was made an order of court. The deceased's pension interests in his Munich Reinsurance Company Pension Fund (MR pension fund) and his Sanlam Retirement Annuity Fund (the Sanlam RA) were dealt with in paragraph 9 of the consent paper. A dispute arose between the respondent and the deceased with regard to the interpretation of the impugned clauses 9.4 and 9.7, the interpretation of which was the central issue in the appeal. The impugned clauses read: 'In addition to what is stated above, Plaintiff specifically agrees and undertakes to pay an additional amount to Defendant at the time of his withdrawal from the Fund, so as to ensure that she receives one-half of the nett entitlement to him as at date of withdrawal from the Fund, (i.e. nett of all taxes). Such "additional amount" shall be paid in the same manner as Plaintiff receives his payments from [the Fund]'. It was the respondent's case, which the high court accepted to be correct, that she was entitled to 50% of the deceased's entire pension and retirement annuity benefits accumulated during the marriage as well as after the divorce to the date of the deceased's exit from the MR pension fund and the Sanlam RA, respectively.

The SCA found that there could be little doubt that the parties intended that the respondent would be entitled to an additional amount, over and above that provided for in the Divorce Act 70 of 1979. The wording of the impugned clauses of the consent paper were not vague, but clear and unambiguous. The SCA found that it was agreed between the deceased and the respondent that the undertaking to pay an additional amount was to ensure that she received 'one-half of the nett entitlement to him as at date of withdrawal from the fund'. The additional amount in both instances would become due, at date of the deceased's withdrawal from the funds, which could only have meant at the time when he exited the funds.

The SCA found further that in terms of the MR pension fund rules the maximum net entitlement to the deceased was one-third of the total net amount (after taxation). The deceased was not entitled to the full pension benefit as at date of exiting the fund. In practice the deceased elected to commute less than the maximum one-third pension benefit in cash. However, the SCA found that the deceased could not have elected to commute a lesser amount than the 'nett entitlement to him', as in doing so he would have been flouting the meaning intended by the parties as clearly recorded in the impugned clauses.

The SCA accordingly found that in regard to the MR pension fund, the respondent was entitled to only 50% of one-third of the net pension benefit that the deceased was entitled to. In regard to the Sanlam RA, the SCA held that the respondent was entitled to 50% of the deceased's net entitlement in this fund as at date of withdrawal from the fund, less the sum which she had already received from Sanlam.

The SCA found that the high court had made an error in the calculation regarding the deducting of tax. Further, that the high court's order fell foul of the prohibition against cession of pension fund interest. Finally, that the high court failed to consider that the respondent was only entitled to 50% of the deceased's net entitlement at date of withdrawal from the MR pension fund, which could not have been more than one-third of the MR pension fund benefit. The SCA held that the appeal therefore had to succeed to the limited extent set out in the order.

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