



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 1338/2024

In the matter between:

JOCELYN DE BRUYN

APPELLANT

and

**THE MASTER OF THE HIGH COURT,
PRETORIA**

FIRST RESPONDENT

MARTHA JOHANNA PRINSLOO N O

SECOND RESPONDENT

MARTHA JOHANNA PRINSLOO

THIRD RESPONDENT

MARCO KOTZE

FOURTH RESPONDENT

MARIUS KOTZE

FIFTH RESPONDENT

MARELIE VAN ROOYEN

SIXTH RESPONDENT

Neutral citation: *De Bruyn v The Master of the High Court, Pretoria and Others* (1388/2024) [2026] ZASCA 92 (26 June 2026)

Coram: MOLEFE, KGOELE and KOEN JJA and BASSON and
MAMOSEBO AJJA

Heard: 18 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal

website and released to SAFLII. The date and time for the hand-down of the judgment is deemed to be 11h00 on 26 June 2026.

Summary: Administration of Estates – spousal maintenance claim – Maintenance of Surviving Spouses Act 27 of 1990 – Administration of Estates Act 66 of 1965 – review of Master’s refusal of objection to liquidation and distribution account.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Kooverjie J, Mkhabela and Mazibuko AJJ sitting as court of appeal):

‘The appeal is dismissed with costs.’

JUDGMENT

Molefe JA (Kgoele and Koen JJA and Basson and Mamosebo AJJA concurring):

[1] This is an appeal by Ms Jocelyn de Bruyn (the appellant) against the judgment and order of the Gauteng Division of the High Court, Pretoria (the full court). The full court dismissed the appellant’s appeal against the order of the Gauteng Division of the High Court, per Nyathi J (the high court). The high court had dismissed her application to review the decision of the Master of the High Court, Pretoria (the Master), who refused her objection to the inclusion of a spousal maintenance claim in the liquidation and distribution account (L&D account) in the estate of the late Mr Johannes Jacob Prinsloo (the deceased).

[2] The application was brought in terms of ss 35(10) and 54 of the Administration of Estates Act 66 of 1965 (the Estates Act). The appellant sought: an order reviewing and setting aside the Master’s decision; an order substituting it with an order upholding her objection; a declaration that no valid claim for maintenance as contemplated in the Maintenance of Surviving Spouses Act 27 of 1990 (the Surviving Spouses Act) was established, and an order for the removal of the executrix of the deceased estate.

Background

[3] The appellant is the adult daughter of the deceased, who passed away on 29 January 2015. She was born from a previous marriage of the deceased.

[4] The first respondent is the Master. The second and third respondents are Ms Martha Johanna Prinsloo, who is cited in her official capacity as the executrix of the deceased's estate and in her personal capacity, respectively. She shall be referred to as 'the respondent' when addressed in either capacity.

[5] The respondent married the deceased in 1989 and remained his spouse for 26 years. She was nominated and appointed as the executrix in the deceased's last will and testament. The fourth, fifth and sixth respondents are the respondent's children born from a previous marriage. They are also beneficiaries in the deceased's will. The Master, the fourth, fifth and sixth respondents did not participate in the litigation and were cited merely as interested parties.

[6] In terms of the deceased's will, the immovable property, Erf 124, Wonderboom Ext 1 (the immovable property), was bequeathed to the appellant. The respondent was bequeathed a lifelong usufruct over the immovable property. She was 70 years old when her husband passed away. She has no formal qualifications or employment experience. The deceased supported her throughout their marriage and made some provision for her maintenance needs in his will. The will also gave her the power to sell all estate assets by auction.

[7] The respondent appointed a third party to assist her in the winding up of the deceased estate and an actuary to assist in the calculation of her maintenance claim as surviving spouse. As the executrix, she published a provisional L&D account.

[8] The L&D account reflects a spousal maintenance claim against the deceased estate in terms of the Surviving Spouses Act. The claim exceeded the entire value of the deceased estate, leaving no assets available for distribution to the deceased's heirs. To settle her spousal maintenance claim, the L&D account awards the immovable property to the respondent in her personal capacity.

[9] On 20 February 2018, the appellant lodged an objection to the L&D account with the Master regarding, inter alia, the spousal maintenance claim. In her objection, she took issue with the 'excessive maintenance claim' and that it exceeds the value of the deceased estate, leaving no assets available to the heirs.

[10] The Master requested the actuary to perform a supplementary calculation, taking into consideration the respondent's life policies, to reduce the maintenance claim. On 29 October 2018, the respondent lodged an amended second L&D account and a supplementary actuarial report. The spousal maintenance claim is reflected in the L&D account in an amount equivalent to the difference between the amount of total gross assets in the estate and the total liabilities, excluding the maintenance claim. The effect is that there is no balance available for distribution, but the estate is also not rendered insolvent. Having considered the amended L&D account concomitant with the amended calculation, the Master was satisfied that the maintenance claim complied with the provisions of the Surviving Spouses Act and dismissed the appellant's objection.

Litigation History

In the high court

[11] Aggrieved by the Master's dismissal of the objection, the appellant launched an application in the high court to review and set aside the Master's decision in terms of s 35(10) and s 54 of the Estates Act. She contended that the

respondent's maintenance claim does not comply with the Surviving Spouses Act. She also applied for an order for the removal of the respondent as the executrix of the deceased estate.

[12] The appellant contended that the respondent's maintenance claim was exclusively supported and motivated by an actuarial report based on information obtained from the respondent and not verified by collateral sources; accordingly, the report should not be accorded probative value. The appellant did not, however, give a counter-view, nor her own version of what would be reasonable, or a report from an actuary of her choice. The high court (per Nyathi J) dismissed the application but granted the appellant leave to appeal the judgment to the full court.

In the full court

[13] Before the full court the appellant persisted with her claim for an order that the decision of the Master be set aside and be replaced with an order to the effect that the objection to the L&D account is sustained. She further sought an order that the respondent has no spousal maintenance claim against the deceased estate. In addition, she continued with her claim for the removal of the respondent as the executrix.

[14] The full court dismissed the appeal with costs. On petition, special leave to appeal was granted to this Court.

In this Court

[15] The issue to be determined in this appeal is whether the full court correctly refused the appeal to set aside the Master's decision rejecting the appellant's objection to the L&D account, specifically in respect of the spousal maintenance claim, as well as refusing to remove the respondent as the executrix of the

deceased estate. The appellant's case in the full court was that the respondent has no claim for spousal maintenance.

[16] At the hearing of this appeal, counsel for the appellant however abandoned the claim for the removal of the respondent as an executrix and the contention that the respondent has absolutely no claim for spousal maintenance. The case evolved to challenging only the amount of the spousal maintenance claim.

Legal Principles

[17] Section 35(10) of the Estates Act provides:

‘Any person aggrieved by any such direction of the Master or by a refusal of the Master to sustain an objection so lodged, may apply by motion to the Court within thirty days after the date of such direction or refusal or within such further period as the Court may allow, for an order to set aside the Master's decision and the Court may make such order as it may think fit.’

[18] Section 54 of the Estates Act deals with the removal of an executor from office. In particular, s 54(1)(a)(v) allows the court a discretion to remove an executor from office. The main factors taken into account are whether such an executor took the interests of the estate and beneficiaries into consideration.

[19] The relevant sections governing the maintenance claim of a surviving spouse are ss 2 and 3 of the Surviving Spouses Act. Section 2(1) provides:

‘If a marriage is dissolved by death after the commencement of this Act the survivor shall have a claim against the estate of the deceased spouse for the provision of his reasonable maintenance needs until his death or remarriage in so far as he is not able to provide therefor from his own means and earnings.’

[20] Section 3 deals with what determines reasonable spousal maintenance needs. Factors which need to be taken into consideration include:

- ‘(a) the amount in the estate of the deceased spouse available for distribution to heirs and legatees;
- (b) the existing and expected means, earning capacity, financial needs and obligations of the survivor and the subsistence of the marriage; and
- (c) the standard of living of the survivor during the subsistence of the marriage and his age at the death of the deceased spouse.’

[21] This Court in *Friedrich and Others v Smit NO and Others (Friedrich)*,¹ held that:

‘The provisions of ss 2 and 3 of the Surviving Spouses Act specifically provide that the surviving spouse is only entitled to reasonable maintenance, and that the estate of the deceased is liable only to the extent to which the surviving spouse is not able to provide for it from his or her own means and earnings. Reasonable maintenance must exclude extravagant demands of maintenance and a surviving spouse who cannot show that he or she is not able to maintain him or herself is not eligible for maintenance from the deceased’s estate. In order to meet the threshold set by the Surviving Spouses Act, Mrs Friedrich was required to show that she was in need of reasonable maintenance and was unable to maintain herself.’²

Applicability of s 3 of the Surviving Spouses Act

[22] It is undisputed that the deceased and the respondent were married for 26 years at the time of his death. However, a surviving spouse has no claim against the estate of the deceased spouse ‘merely by reason of the marriage’.³ The respondent still has to satisfy the provisions of s 3 of the Surviving Spouses Act: that she is in need of a reasonable maintenance and is unable to maintain herself from her own income and resources.

¹ *Friedrich and Others v Smit NO and Others* [2017] ZASCA 19; 2017 (4) SA 144 (SCA) (*Friedrich*).

² *Ibid* para 17.

³ *Friedrich* para 15.

[23] It is the appellant's case that the respondent's claim for maintenance fails to properly address the factors listed in s 3 of the Surviving Spouses Act, specifically, in light of *Friedrich*. The appellant's fundamental issue with the maintenance claim remains that the claim was supported solely and exclusively by actuarial reports, with all the information being provided by the respondent and without any independent verification.

[24] The appellant contends that the deceased was not solely responsible for the respondent's maintenance, as she was employed by the deceased's company and received income from that employment. Furthermore, that there was no independent executor to scrutinise her claim, as she was both the claimant and the executrix.

[25] The respondent's answer is that the appellant lacks good faith and that her intentions are simply to delay the finalisation of the estate. The appellant's objections to the actuarial report are without merit as she has neither produced evidence to dispute the respondent's itemised expenses nor identified any specific inaccuracies.

Analysis

[26] The Master provided the following reasons for refusing to uphold the appellant's objection. The total gross assets reflected in the amended first and final L&D account amounted to R4 831 500, while the total liabilities were R1 460 646.74, leaving a distributable balance of R3 370 853.26, excluding the maintenance claim. The actuary calculated an amended maintenance claim at R5 114 144, but this amount was reduced to align with the available distributable balance. Consequently, the maintenance claim was adjusted by R1 620 923 to prevent the estate from becoming insolvent.

[27] Having considered the amended L&D accounts together with the revised actuarial report, the Master was satisfied that the maintenance claim complied with the Surviving Spouses Act. The Master accordingly dismissed the appellant's objection to the respondent's maintenance claim.

[28] Evidence was required from the respondent to show that she is entitled to any spousal maintenance.⁴ In order to determine an inability to support herself, this Court has held that:

'In this determination, the factors listed in s 3 of the Surviving Spouses Act should be taken into account but as the Act stipulates, these are not exhaustive: any other factor may be taken into account.'⁵

[29] The onus to adduce evidence to establish these factors is clearly on the respondent. Section 3(a) requires that in determining the reasonable needs of a surviving spouse, it is necessary at the outset to examine the amount available in the deceased estate for distribution to the heirs and legatees. This relates to the estate's ability to meet a spousal maintenance claim. As determined by the Master, the estate reflects a distributable balance of R3 493 221.01, excluding the maintenance claim. Accordingly, there are sufficient funds in the estate for distribution to the beneficiaries.

[30] In his will, the deceased unequivocally expressed his intention that the respondent's maintenance should be provided for. He bequeathed to her the usufruct of the immovable property, which would enable her to derive a rental income and thereby secure her maintenance. In *Robertson v Robertson's Executors*,⁶ the court stated:

⁴ *Friedrich* para 14.

⁵ *Friedrich* para 17.

⁶ *Robertson v Robertson's Executors* 1914 AD 503.

‘Now the golden rule for the interpretation of testaments is to ascertain the wishes of the testator from the language used. And when these wishes are ascertained, the Court is bound to give effect to them, unless we are prevented by some rule or law from doing so.’⁷

[31] This Court in *Spangenberg and Others v Engelbrecht NO and Another*,⁸ held that:

‘... [I]f the intent of the testator can be ascertained from the language used, there is no reason to further consider the further requisites as set out in *Endumeni*, because the interpretation of the will is based only on the subjective intention of the testator as can be ascertained from the words used by the testator.’⁹

[32] Turning to the second ground, it is necessary to consider the evidence relating to the surviving spouse’s existing means, earning capacity, financial needs and obligations, as well as the duration of the marriage. These factors, as set out in s 3(b), are central to determining the spouse’s needs and her ability to maintain herself. This is to determine whether the respondent had a valid claim under the applicable statutory framework.

[33] The respondent and the deceased were married in 1989, and at the time of the deceased’s death on 29 January 2015, they would have been married for 26 years. The respondent was born on 15 November 1945, and she was 70 years old at the time of her husband’s death, well above the retirement age.

[34] The respondent’s evidence is that her current means and earning capacity are derived from her employment with her son, Marco Kotze’s (the fourth respondent) company, and she earns R9 000 per month. In addition, she rents out a chalet situated on the immovable property for R6 000 per month. This

⁷ Ibid at 507.

⁸ *Spangenberg and Others v Engelbrecht NO and Another* [2023] ZASCA 100.

⁹ Ibid para 25.

rental income is, however, irregular as her tenants do not consistently meet their monthly obligations. The actuarial report further reflects a bequeathed annuity of R55 000 since the death of the deceased, and an amount of R181 561 received from a policy, and investment holdings amounting to R50 235. These amounts were deducted from her claim.

[35] Evidence of financial needs and obligations includes the medical aid contributions, insurance for the immovable property and the salary of a domestic worker, which amounts to a total of R8 000. The respondent is required to meet these expenses from her monthly salary of R9 000. Her monthly vehicle instalment of R4 175 and fuel expenses of approximately R2 000 per month are paid by her son. In addition, the respondent is responsible for the payment of water and electricity consumed by the appellant and her family, who reside on the immovable property. It is clear that the respondent's sources of income per month on their own are inadequate to meet her maintenance needs.

[36] The deceased estate is not absolved from its obligation to maintain a surviving spouse by virtue of the provisions of the Surviving Spouses Act. Her son's act of kindness does not preclude her entitlement to maintenance from the estate of her deceased spouse.

[37] In *Oshry NO and Another v Feldman*,¹⁰ the executors contended that voluntary financial contributions made by the surviving spouse's children should be taken into account as part of her means when assessing her maintenance claim against the deceased estate. This Court rejected this argument, holding that such voluntary support does not constitute the survivor's own means for purposes of the Maintenance of Surviving Spouses Act. To hold

¹⁰ *Oshry NO and Another v Feldman* [2010] ZASCA 95; 2010 (6) SA 19 (SCA); [2011] 1 All SA 124 (SCA).

otherwise would risk depriving the surviving spouse of her statutory maintenance claim should the children later cease or become unable to provide support, while also preventing recourse against the deceased's heirs in terms of s 2(2) of the Act.

[38] The third ground concerns the standard of living enjoyed by the surviving spouse during the subsistence of the marriage and her age at the time of the deceased's death. Throughout their marriage, the respondent was employed by her husband at the company he owned. They had vehicles and a substantially large property with ample space. There was also a farm owned by the deceased, which was sold at the time of his death.

[39] Even after his death, the deceased made provision to ensure that her maintenance needs were met. He bequeathed to his wife a lifelong usufruct over the property, which would have generated rental income for her. The respondent provided evidence that she had been unable to fully exercise her usufruct rights due to the appellant's continued occupation of the property, which commenced prior to the deceased's death.

[40] Since the appellant moved onto the property, the respondent has had to substantially reduce her own living space to accommodate the appellant and her family. The respondent further lost income from her previous employment at the deceased's company after the appellant's husband liquidated it.

[41] Due to the respondent's inability to exercise her usufruct, she lost potential rental income estimated at R819 000, which she could have earned had she been able to lease the property. In addition, she is liable for water and electricity charges amounting to R12 216 per month, incurred by the appellant and her family, who refuse to contribute towards these expenses and pay no rent.

[42] It is trite that one of the invariable consequences of marriage is a reciprocal duty of support between spouses. The full court rightly held that the respondent established a right to spousal maintenance in at least the amount claimed.

[43] It is evident that the respondent's standard of living has significantly deteriorated since the passing of her husband, and that this decline is largely attributable to the appellant's conduct. The appellant has adopted an obstructive attitude from the time the respondent claimed her maintenance. She is a beneficiary in the deceased estate and should have been motivated to act in the interest of the estate. The respondent, who is elderly, was unnecessarily put through protracted litigation.

[44] The Master's decision to refuse the objection was correct and legally sound. The respondent's maintenance claim meets the requirements of the Surviving Spouses Act. The respondent established the right to maintenance. It is reasonable and was supported by evidence of need on the part of the respondent. It has not been shown that the full court erred. Accordingly, the appeal must fail.

[45] The following order is made:
'The appeal is dismissed with costs.'

D S MOLEFE
JUDGE OF APPEAL

Appearances:

For the appellant:

N Louw

Instructed by:

Strydom & Bredenkamp Inc., Pretoria

Hendre Conradie Inc., Bloemfontein

For the second and third

respondents:

K Fitzroy

Instructed by:

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Honey Attorneys, Bloemfontein.