THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 257/2024

In the matter between:

EUGENE PRINSLOO **APPELLANT**

and

DONOVAN THEODORE MAJIEDT N O **FIRST RESPONDENT**

REINETTE STEYNBURG N O **SECOND RESPONDENT**

Neutral citation: *Eugene Prinsloo v Donovan Theodore Majiedt N O and Another* (257/2024) [2025] ZASCA 74 (30 May 2025)

Coram: MATOJANE, WEINER and KOEN JJA and HENNEY and MODIBA AJJA

Heard: 15 May 2025

Delivered: 30 May 2025

Summary: Practice – non-joinder – Long-term Insurance Act 52 of 1998 (the Act) – whether the benefits of a long-term life insurance policy (the policy) received by surviving spouse as nominated beneficiary of policy holder protected in terms of s 63 of the Act on sequestration of their former joint estate – that issue separated for determination in action by trustees of former joint estate against son of deceased policy holder and surviving spouse, to whom such benefits were channelled – whether surviving spouse a necessary party who should have been joined.

ORDER

On appeal from: Free State Division of the High Court (Van Zyl J, sitting as a court of first instance):

1 The appeal is upheld;

2 The order of the high court dated 29 September 2022 is set aside and substituted with the following order:

'(a) The action is adjourned *sine die*;

(b) The defendant is directed to launch proceedings for the joinder of Mrs Nelly Arlene Prinsloo, as a party to the action, within 30 days of the date of this order, unless she, before the expiry of that period, by written notice filed with the Registrar of this court, has waived the right to be joined and has undertaken to abide by the decision of this court;

(c) The parties are directed to pay their own costs';

3 The action is remitted to the high court;

4 The parties are directed to pay their own costs of the appeal.

JUDGMENT

Koen JA (Matojane and Weiner JJA and Henney and Modiba AJJA concurring):

Introduction

[1] The issue which the parties seek to have determined in this appeal is whether the benefits of a long-term life insurance policy (the policy) on the life of the late 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, are, 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). All references to sections hereafter are to sections of the Act unless stated otherwise.

[2] The issue was, by agreement, separated for determination in the action instituted in the Free State Division of the High Court (the high court). The action was brought by the respondents, Donovan Theodore Majiedt and Reinette Steynburg, in their capacity as provisional trustees of the insolvent joint estate (the trustees) as plaintiffs. It was brought against the appellant, Mr Eugene Prinsloo (Mr Prinsloo), as defendant. He is the son of the deceased and Mrs Prinsloo. The issue was formulated as follows:

'The issue to be determined is whether the benefit received by [Mrs Prinsloo] is protected or not in terms of the provisions of Section 63 of the [Act].'

[3] On 29 September 2022, the high court granted an order that the benefit was not protected. It reasoned that s 63 did not find application to the facts.[1] The appeal is against the whole of the order with the leave of the high court.

[4] During the course of preparing for the appeal, the question arose whether Mrs Prinsloo should have been joined as a party to the litigation. The parties were accordingly advised to be ready at the hearing of the appeal to advance submissions as to whether Mrs Prinsloo should have been cited as a party to the proceedings before the high court and the appeal before this Court. Both parties filed supplementary heads of argument dealing with this question.

[5] Whether Mrs Prinsloo should have been joined must be considered: in the light of the common cause facts and background against which the issue separated

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[1] The high court ordered that:
'1 The benefits of the long term life insurance policy received by Nelly Arlene Prinsloo are not protected in terms of the provisions of section 63 of the Long Term Insurance Act, 52 of 1998.
2 The costs in respect of the determination of the aforesaid separated issue stand over for later adjudication.'

was required to be decided; the applicable legal framework; and the contentions of the parties. This judgment proceeds on that basis.

The common cause facts

[6] The deceased and Mrs Prinsloo were married to each other in community of property. On or about 27 September 2011, the deceased concluded the policy with Old Mutual. The deceased, as the life insured, was registered as the initial beneficiary. On 30 August 2013, he appointed Mrs Prinsloo as beneficiary of the death benefits provided in terms of the policy.

[7] The deceased passed away on 14 February 2018. On 11 April 2018, Old Mutual paid the death benefit 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 is the sole member of Iceburg. Mr Prinsloo then caused Iceburg to transfer two tranches of R5 million from Iceburg to his personal ABSA bank account on 11 April 2018 and 12 April 2018 respectively.

[8] On 17 April 2018, the Master appointed an executor to the joint estate that previously subsisted between the deceased and Mrs Prinsloo. 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.

[9] The trustees subsequently issued summons against Mr Prinsloo for payment of the sum of R10 million, claiming it: 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[2] (the Insolvency

[2] Insolvency Act 24 of 1936.

Act), or in terms of the common law;[3] or as part of a larger loan of R40 million; or, on the basis of enrichment. Mr Prinsloo pleaded, amongst other defences, that the benefits of the policy received are protected in terms of s 63(1)*(b)* 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 separated issue, if the court found in favour of Mr Prinsloo on the application of s 63, then the trustees' action should be dismissed with costs.

Statutory framework

[10] Part VII of the Act is headed 'Business practice, policies and policyholder protection'. Sections 62 to 65 follow under the heading 'Policyholder protection'. The following provisions of the Act are material. The term 'policyholder' is defined in s 1 to mean, in respect of a registered insurer, 'the person entitled to be provided with the policy benefits under a long-term policy'. The term 'life insured' is defined to mean 'the person or unborn to whose life, or to the functional ability or health of whose mind or body, a long-term policy relates'. Section 63 of the Act provides as follows:

'Protection of policy benefits under certain long-term policies

(1) Subject to subsections (2), (3) and (4), the policy benefits provided or to be provided to a person under one or more-

(a) in respect of a registered insurer, assistance, life, disability or health policies; or

(b) in the case of a licensed insurer, policies written under the risk, fund risk, credit life, funeral, life annuities, individual investment or income drawdown class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act, in which that person or the spouse of that person is the life insured and which has or have been in force for at least three years (or the assets acquired exclusively with those policy benefits) shall, other than for a debt secured by the policy –

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[3] With reliance on the *Actio Pauliana*.

(i) during his or her lifetime, not be liable to be attached or subjected to execution under a judgement of a court or form part of his or her insolvent estate; or

(ii) upon his or her death, if he or she is survived by a spouse, child, stepchild or parent, not be available for the purpose of the payment of his or her debts.

(2) The protection contemplated in subsection (1) shall apply to policy benefits and assets acquired solely with the policy benefits, for a period of five years from the date on which the policy benefits were provided.

(3) Policy benefits are only protected as provided in-

(a) subsection (1)(b),[4] if they devolve upon the spouse, child, stepchild or parent of the person referred to in subsection (1) in the event of that person's death; and

(b) subsection (1)(a) and (b), if the person claiming such protection is able to prove on a balance of probabilities that the protection afforded to him or her under this section.

(4) Policy benefits are protected as provided for in subsection (1)(a) and (b), unless it can be shown that the policy in question was taken out with the intention to defraud creditors.'

In the high court

[11] In finding that the benefits of the policy received by Mrs Prinsloo did not enjoy protection because s 63 did not apply, the high court: interpreted the section and found that the references to 'person' and 'his/her' and 'he/she' in s 63 were to the policy holder; held that in circumstances where s 63 is applicable, the policy benefits are, on the death of the policyholder, protected only against the debts of the policy holder; and disagreed with the contention that s 63 applied in the circumstances of the present matter where the third party, being the spouse of the policy holder in a marriage in community of property, was nominated as beneficiary, accepted the appointment and received payment of the policy

[4] It appears to be generally accepted that subsections (3) and (4) erroneously continue to refer to subsections (1)*(a)* and *(b)*, as was provided in the former version of subsection (1) instead of referring to subsections (i) and (ii) of the latest amended version of subsection (1). Subsection (1) was replaced by s 72(1) of the Insurance Act which has come into operation, but the legislature appears to have omitted to amend subsections (3) and (4) accordingly – See, for example, M Roestoff and A Boraine 'Is genomineerde begunstigdes ingevolge lewensekeringspolisse uitgesluit van beskerming teen insolvensie' (2022) 85 THRHR 408 at 414.

benefits directly and not via the estate of the deceased. Regarding costs, the high court noted that the parties had agreed that should it find in favour of the trustees, that the costs should be awarded in their favour. It however declined to do so as, in its view, its findings did not fall within the ambit of the agreement which separated the issue for determination.

Mr Prinsloo's contentions on appeal

[12] Mr Prinsloo does not pursue the contention that s 63 should be interpreted to apply not only to the policy holder/insured life, but also to a beneficiary like Mrs Prinsloo. He has limited his submissions to the impact which a marriage in community of property has on the ambit and application of s 63, contending that the policy proceeds are protected against creditors of the insolvent joint estate, that is the debts owed by the deceased and Mrs Prinsloo. The parties had made submissions on this aspect before the high court, but the high court did not pronounce thereon, the learned judge having concluded that she was not called upon to do so.[5]

Joinder

[13] A person is required to be joined as a party to proceedings if it is concluded that her joinder is necessary. The joinder of a party is necessary if she has a material direct or substantial interest in the relief claimed,[6] unless she has waived that right. A direct and substantial interest is an interest in the right which is the subject matter of the litigation, not merely a financial interest, which is an indirect interest in such litigation.[7] Where a joint financial or proprietary interest is

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[5] The learned judge remarked that the action will have to be determined on the basis of the provisions of the Insolvency Act 24 of 1936, combined with the relevant principles applicable where parties are married in community of property, in respect of which she expressly stated that she did not make any findings since she was not called upon to do so.

[6] See also *United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Anothe*r 1972 (4) SA 409 (C) at 415E-H; *Strydom v Engen Petroleum* 2013 (2) SA 187 (SCA) 198B (*Strydom*).

[7] *Henri Viljoen (Pty) Ltd v Awerbuch Brothers* 1953 (2) SA 151 (O) at 169.

implicated joinder should follow.[8] Joinder is not dependent on the nature of the subject matter of the suit but on the manner in which, and the extent to which, the court's order may affect the interests of third parties.[9] If it is concluded that a party should be joined, then it is required of a court to make an order which addresses that conclusion.[10]

[14] The test to be applied is well established. This Court, in *Transvaal Agricultural Union v Minister of Agricultural & Land Affairs*,[11] approved of the following crisp formulation of the test in *Herbstein & Van Winsen's The Civil Practice of the Supreme Court of South Africa*:[12]

'The first was to consider whether the third party would have *locus standi* to claim relief considering the same subject-matter. The second was to examine whether a situation could arise in which, because the third party had not been joined, any order the Court might make would not be *res judicata* against him, entitled him to approach the Courts again concerning the same subject-matter and possibly obtain an order irreconcilable with the order made in the first instance.'[13]

Discussion

[15] Ultimately, every case must depend on its own facts. Mr Prinsloo concedes that Mrs Prinsloo should have been joined. The trustees deny that Mrs Prinsloo should be joined. They contend that she does not have a direct and substantial interest in the subject matter of the litigation, that is the policy proceeds, or the interpretation of s 63. This, they argue, is because she divested herself completely

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[8] *Strydom* para 43 and 44; *Morgan and Another v Salisbury Municipality* 1935 AD 167 at 171; *Kock and Schmidt v Alma Modehuis (Edms) Bpk* 1959 (3) SA 308 (A) at 318F.
[9] *Amalgamated Engineering Union* at 657.
[10] *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 663 (*Amalgamated Engineering Union)*; *Rosebank Mall (Pty) Ltd and Another v Cradock Heights (Pty) Ltd* 2004 (2) SA 353 (W) at 365F and 392E; *Transvaal Agricultural Union v Minister of Agriculture and Land Affairs and Others* 2005 (4) SA 212 (SCA) para 64 and 65 citing *Amalgamated Engineering Union*.
[11] *Transvaal Agricultural Union v Minister of Agricultural & Land Affairs* 2005 (4) SA 212 (SCA) para 66.
[12] Van Winsen, Cilliers and Loots *Herbstein & Van Winsen's The Civil Practice of the Supreme Court of South Africa* 4th ed.
[13] At para 66. Also referred to in *Gordon v Department of Health, KwaZulu-Natal* 2008 (6) SA 522 (SCA) para 9.

of the policy proceeds and any interpretation she could notionally address on the issue will not and cannot have the effect that the policy proceeds will vest or revest in her post termination of the joint estate. Mr Prinsloo had become the owner of the proceeds. That is why they were compelled to proceed against him invoking the impeachment provisions of the Insolvency Act. Put differently, they argue, if Mr Prinsloo's interpretation is correct, Mr Prinsloo keeps the proceeds, they do not go to Mrs Prinsloo.

[16] The trustees' argument does not recognise that if Mr Prinsloo's contentions do not find favour, that Mrs Prinsloo indeed has a direct and substantial interest and should have been joined to the proceedings. This would allow her to advance her contentions on the interpretation and application of s 63. The following evidence her interest and the need for her joinder.

[17] First, Mrs Prinsloo would plainly have *locus standi* to claim the relief sought in the separated issue in her own right. The issue separated 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 named, did not enjoy protection in respect of certain benefits she had received.

[18] Second, 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 required 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. This might entail an interpretation of s 63 which Mr Prinsloo has abandoned[14] but which she wishes to advance.

[19] Third, the trustees' denial that Mrs Prinsloo has a direct and substantial interest in the subject matter of the litigation, the policy proceeds, or the interpretation of the Act, because she divested herself completely of the policy proceeds is a circuitous argument. The question whether she was entitled to divest herself of the proceeds of the policy, that is, that the benefits of the policy were protected in her hands to deal with as she saw fit, is the very issue raised for determination by the separated issue. It is a question of law on which she should be heard and therefore requires that she be joined.

[20] Fourth, the separated issue is material not only to the action by the trustees against Mr Prinsloo but also 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 by her to claim the release thereof from the insolvent estate as protected in her hands, the issue whether she enjoys protection in respect of the proceeds would already have been decided in the current litigation. Insofar as such a finding might not be *res judicata* against her, because she was not 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. The result will be a multiplicity of actions, an unnecessary waste of costs and the duplication of legal proceedings.

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[14] See paragraph 12 above.

This satisfies the test in paragraph 14 above. Considerations of convenience and the interests of justice also dictate that Mrs Prinsloo should be joined.

Conclusion

[21] The proceedings on the separated issue before the high court suffered from the fatal non-joinder of Mrs Prinsloo. The parties should have realised, in committing to the agreement for the determination of the issue separated, that Mrs Prinsloo should be joined as a necessary party. The appeal therefore must be upheld. As to who had the responsibility to join Mrs Prinsloo, this could have been resolved between the parties. Absent agreement on this aspect, either party would, in the light of their agreement to separate the issue on the terms that it was separated, have been vested with the required *locus standi* to apply for her joinder. As Mrs Prinsloo is the mother of Mr Prinsloo, it is reasonable and expedient, to avoid any further delay, that Mr Prinsloo be directed to launch an application for her joinder within 30 days of the date of the order of this Court, unless she waives the right to be joined and undertakes to abide by the decision of the court. Such an order is provided for below.

Costs

[22] The blame for the matter proceeding before the high court and initially this Court without the issue of non-joinder being properly considered, and resulting in this appeal being upheld, should be shared between the parties. The agreement separating the issue for determination should have addressed the question of the joinder of all necessary parties as well. In the exercise of my discretion on costs, I consider it appropriate that each party shall be liable for their own costs, both in the high court and this Court.

Order

[23] The following order is granted:

1 The appeal is upheld;

2 The order of the high court dated 29 September 2022 is set aside and substituted with the following order:

‘(a) The action is adjourned *sine die*;

(b) The defendant is directed to launch proceedings for the joinder of Mrs Nelly Arlene Prinsloo, as a party to the action, within 30 days of the date of this order, unless she, before the expiry of that period, by written notice filed with the Registrar of this court, has waived the right to be joined and has undertaken to abide by the decision of this court;

(c) The parties are directed to pay their own costs’;

3 The action is remitted to the high court;

4 The parties are directed to pay their own costs of the appeal.

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P A KOEN

JUDGE OF APPEAL

Appearances

For the appellant:	N Snellenburg SC
Instructed by:	Muller Attorneys, Potchefstroom
	Graham Attorneys, Bloemfontein
For the respondent:	L Meintjes
Instructed by:	Noordmans Attorneys, Bloemfontein.