

# Does your life partner have a claim to your estate? Life Partnerships and succession

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Case: *Lindeni v The Master of The High Court, Johannesburg and Others*(2022/23635) [2023]ZAGPJHC 800 (30 June 2023)

## INTRODUCTION

The case of *Lindeni v The Master of the High Court, Johannesburg and Others* (2022/23635) [2023] ZAGPJHC 800(30June 2023) takes a look at intestate succession and whether life partnership spouses can be included in the distribution of the deceased's estate. The Applicant sought an order declaring that her and the deceased were in a permanent life partnership in which they had undertaken reciprocal duties of support and that the Master of the High Court be interdicted from winding up of the deceased estate pending the lapsing of orders made in *Bwanya v Master of the High Court, Cape Town and Others* (CCT 241/20)[2021] ZACC 51, 2022 (4) BCLR 410 (CC), 2022(3) SA 250 (CC) (31 December 2021)

## BACKGROUND

The Applicant stated that she met the deceased in November 2017, and they then got involved in a romantic relationship. They agreed that they wanted a committed relationship, to grow old together and be separated by death. She further stated that in March 2018, they started living together. She stated that the deceased initiated the lobolo process by his family sending a letter to the Applicant's home. She alleged that the deceased and his sister travelled to East London to meet the family and pay Lobolo. The amount that was paid was R19000 and on the same day, a celebration was held at the Applicant's family home. However, the lobolo was not paid in full as there was an outstanding amount of R11000. The Applicant's mother wrote to the deceased's family, acknowledging lobolo and expressing the family's gratitude for the lobolo. In September 2018, a welcoming ceremony was held at the deceased's family home in Soshanguve, and the Applicant's mother and her friend were present. Most of the deceased family were in attendance except the third and fourth Respondent, who did not support the

relationship. After the payment of lobolo, the applicant and the deceased regarded themselves as husband and wife. They went on a cruise in December 2018 to celebrate their union.

In January 2019, they attended a marriage preparation class in the methodist church led by Reverend Waqu, who had blessed their relationship in 2018. They acquired a family home in Midstream Meadows, financed by the deceased. The Applicant contributed to the upkeep thereof. In the estate access Application, the Applicant was listed as a resident. Between 2019 and August 2020 they transferred monies into each other's accounts to purchase household items. In August 2020 they performed a ritual to celebrate their new house. They mutually supported each other. They took out a funeral cover and in it the Applicant was referred to as a plan owner and the deceased as a life partner. In March 2020, the third Respondent's mother was granted a divorce from the deceased, to whom she had been married to since July 1st, 1994. In January 2021 the deceased died intestate. The Applicant's brother confirmed the lobolo negotiation and celebration. The deceased's sister confirmed the existence of the customary marriage between the Applicant and the deceased. The third Respondent refuted the allegation that the Applicant had a life partnership with the deceased. She alleged that the Applicant was the deceased's girlfriend and further stated that the deceased was still married to her mother, when he entered into a life partnership with the applicant, therefore the Applicant could not claim to be the deceased's surviving spouse.

## CENTRAL ISSUE

Were the Applicant and the deceased in a life partnership at the time of his demise? Whether the facts established a legally enforceable duty of support arising from a relationship akin to marriage. Whether the winding up of the deceased's estate should be interdicted pending lapsing of the suspension order of the *Bwanya* decision, where the judgment ordered that these words "Spouse" and "Marriage" were also declared to include a person in a life partnership. The declaration of invalidity was suspended for 18 months to afford Parliament an opportunity to cure the constitutional

defect. The decision will be set out in further detail herein below.

## COURTS INTERPRETATION

In *Bwanya v Master of the High Court, Cape Town and Others* (CCT 241/20)[2021] ZACC 51,2022 (4) BCLR 410 (CC),2022(3) SA 250 (CC) (31 December 2021), the Constitutional Court extended the definition of a “survivor” in Section 1 of Maintenance of Surviving Spouses Act, 27 of 1990 to include the surviving partner of a permanent life partnership; that of a “spouse” in Section 1 of the Intestate Succession Act, 81 of 1987 to include a partner of a permanent life partnership as a spouse. Further that “marriage” includes a permanent life partnership in which the partners undertake reciprocal duties of support.

Life partnership was confirmed by the Constitutional Court as akin to marriage. The factors developed by the above-mentioned court towards establishing the existence of permanent life partnerships in the National Coalition for Gay and Lesbian Equality were - the respective ages of partners; the duration of the partnership; whether there was a ceremony that partners took part in manifesting their intention to enter into a life partnership; what the nature of the ceremony was and who attended it; how relations and partners viewed the life partnership; whether partners shared a common abode or leased abode jointly; whether and to what extent the partners shared responsibility for the living expenses and upkeep of their joint home; to what extent one life partner provided support for the other; how and to what extent partners provided for each other in relation to medical, pension and related benefits; what contents of the partnership were or if partnership agreement was genuine, to what extent had partners made provision in their wills for one another. The Applicant placed reliance upon *Bwanya* and similar cases in that she was entitled to the deceased estate at the time of his demise. When the Applicant and deceased got involved in a relationship in November 2017, they were 49 and 50 years of age, respectively. They had been together for about three years at the time of the deceased’s demise. From 2018 until his demise in 2021 they lived together in the property they purchased together which was financed by the deceased. The Court concluded that all marriages, including life partnerships are now equal in the eyes of the law and enjoy recognition and acceptance. Section 10(1) of the Customary Marriages Act provides that spouses to a customary marriage are competent to contract a marriage with each other under the Marriage Act 25 of 1961), if neither of them is a spouse in a subsisting customary marriage with any other person.

The Court also referred to the *Monyepao v Ledwaba and Others* (1368/180) [2020] ZASCA 54 (27 May 2020) case, the Appellant (second wife) was married to the deceased in terms of customary law.

During the marriage, the deceased was however still married to his first wife in terms of customary law. The deceased married the Applicant, however he never got divorced but merely separated from his first wife. The Court found that the deceased’s first marriage was still valid, and the first wife could enjoy patrimonial benefits. It was evident that in July 1994, the deceased married his erstwhile wife. His wife instituted divorce proceedings, and they divorced in March 2020. The Applicant through her counsel argued that the relationship with the deceased existed since November 2017. The Court stated that all the celebrations of the lobolo and the welcoming celebrations were between May 2018 and November 2018, the divorce order from the erstwhile wife was granted after March 2020. The Court further stated that the divorce proceedings only commenced in 2019, while the Applicant and the deceased were already attending pre-marital classes between 2018 and January 2019. The Court established that the life partnership began while the deceased was still married to his erstwhile wife. The court considered the fact that their friends and loved ones accepted them as life partners. However, that did not make their relationship equal to a marriage or life partnership. The regard the deceased’s mother had towards the Applicant, as she averred that they accepted her as their daughter-in-law, could not assist the Applicant either. The divorce decree in March 2020 also did not assist the partners in automatically validating their relationship. In November 2017, the deceased was not competent to conclude any marriage or familial relationships, including the life partnership, as he was still married to his erstwhile wife and the marriage was only dissolved in March 2020.

The Applicant also sought an interim order interdicting the winding up of the deceased’s estate pending the lapsing of the suspension order made in *Bwanya*. In *Setlogelo v Setlogelo* 1914 AD 221 at 227, the Court held that It was trite law that one of the requirements for an interim interdict was that the Applicant had to establish prima facie right even if same was open to some doubt.

The Court found that the Applicant was not a surviving life partner in a life partnership in which she and the deceased had reciprocal support duties. The Judge agreed with the respondents’ counsel when he stated that the Applicant would lose nothing in terms of the Maintenance of Surviving Spouse Act, 27 of 1990 and the Intestate Succession Spouses Act, 81 of 1987 as she had not been able to establish any prima facie right in relation to the deceased estate emanating from the familial relationship between herself and the deceased. The evidence was solidified in that when the Applicant moved out of the residence she shared with the deceased, she removed some household goods which according to the judge she had no right to do, as she had no claim against the estate, nor did she have the right to inherit from it.

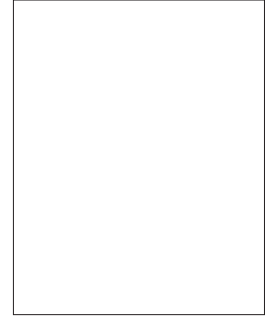
## CONCLUSION

The Applicant had requested for the Application to be granted. The Applicant initially brought an Application to court to declare that her relationship with the deceased was a customary marriage, which the application was later withdrawn following legal advice. The Court did not have the impression that the Applicant was malicious nor vindictive in bringing the Application. The Court was of the opinion that there was no justification in awarding costs in favour of the Respondent against the Applicant. The Applicant's application declaring that she and the deceased were partners in a life partnership was dismissed. The Application for the interim order interdicting the winding up of estate pending the lapsing of the suspension of orders made by the Constitutional Court in *Bwanya v Master of the High Court, Cape Town and Others*, which orders were suspended for a period not exceeding 18 months from 31 December 2021, was hereby dismissed. The court ordered that the estate of the deceased would bear the application costs.

*Please note: Each matter must be dealt with on a case-case basis, and you should consult an attorney before taking any legal action.*



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