

KOKA KELEGANE NELLY

Applicant

and

QUEEN COURT TRADING CC

1st Respondent

MASHININI NTSEBENG DOMINIC

2nd Respondent

SUMMARY OF THE JUDGMENT

MDALANA AJ:

It is trite that the burden of proof in motion proceedings where a final order is sought lies with the applicant. An applicant must set forth her case in the founding papers.

In casu, the executrix of the deceased's estate sued the surviving member of the close corporation where her husband held a 50% interest for R1 663.463.00, being the value of the deceased's members' interest.

Held section 35 of the Close Corporation Act 69 of 1984 regulates the disposal by an executor of an interest of a deceased member. In terms of the section an executor must first seek a transfer of a deceased member's interest to the legatee or heir and that such transfer can only be effected if the remaining members of the corporation consent to the transfer. Where this consent is not forthcoming within 28 days after it was requested, the executor can sell the member's interest to the corporation, or any member of the corporation or to any other person who qualifies for membership.

An executor cannot unilaterally impose a sale on any remaining member.

Since the applicant had not alleged in her founding papers that she made an offer to sell to the deceased member's interest to the respondents and that such offer was accepted, there is no basis in law for her to claim payment of the value of the deceased 50% member's interest.

Application is dismissed with costs.