Pienaar v Master of the Free State High Court

Media Statement

Today the Supreme Court of Appeal (SCA) upheld an appeal by the appellants, who are the daughters of the testator. Their parents had divorced. The testator subsequently married the second respondent, Cynthia du Toit (Du Toit), and they had a son, Derick du Toit (Derick), the fourth respondent. The testator and Du Toit divorced on 19 October 2006, prior to the execution of both wills. The testator died on 30 June 2007. The testator executed a will in November 2006. Approximately six months later, in May 2007, he executed another will. The question for determination is whether the later will impliedly revoked the earlier will, in part.

In terms of the 2006 will the deceased expressly revoked previous wills and bequeathed: (i) his Sanlam Personal Portfolio to Du Toit, in the event of it being payable to his estate; (ii) an immovable property and a motor vehicle to Derick; and (iii) the residue of his estate to the appellants. That will also made extensive provision for the appointment of an executor and the general administration of the estate. In terms of the 2007 will, the deceased bequeathed an immovable property to each of his three children (the appellants and Derick) while Du Toit was granted lifelong use of the property bequeathed to Derick. A cash amount was awarded to the first appellant and Derick, and as in the previous will, the residue of the estate was to be shared by the appellants. In the later will the Volkswagen motor vehicle was bequeathed to the testator's son-in-law. In the 2006 will it was bequeathed to Derick.

It was common cause that at the time of his death the testator had three investments in his Sanlam Personal Porfolio. The first was made on 1 March 2002 and in it the testator had nominated his first wife as the beneficiary. The investment date of the second investment was 2 March 2007, and Du Toit was appointed the beneficiary. The third and disputed investment was made on 22 March 2007 and no beneficiary was appointed in respect of this policy.

The SCA held that it was clear from the language used in the 2007 will that the testator intended that the disputed policy should fall within the residue of his estate. Such an intention can be gathered with relative

certainty from the scheme as well as the terms of the later will. As has already been mentioned, at the time of his death, the testator had three investments in his Sanlam Personal Portfolio. In respect of two of these, he had nominated his first wife and Du Toit as beneficiaries, respectively. And the last Sanlam investment was merely a part of his estate. It is further clear from the 2007 will that he intended to leave the unspecified assets to the appellants. Those unspecified assets included the third Sanlam investment. The necessary inference is that the testator intended to change his previous will.