



PRO BONO AND HUMAN RIGHTS ALERT

IN THIS ISSUE

SECURING THE INHERITANCE OF A MINOR CHILD

The Pro Bono and Human Rights practice recently obtained a favourable order on behalf of our client, the sole guardian and single mother of a minor child, from the South Gauteng High Court in a long ongoing matter concerning her child's right to an inheritance from the deceased father's estate.

A LONG BATTLE TO EXPUNGE A FRAUDULENT MARRIAGE FROM THE RECORDS OF THE DEPARTMENT OF HOME AFFAIRS

By 2010, almost seven thousand South Africans found themselves married to people they didn't know. Sometimes as a consequence of so-called 'marriages of convenience' entered into in order to provide illegal immigrants with rights to residence and citizenship. Other times as a consequence of corruption, fraudulent marriages have become a common occurrence in South Africa.

SECURING THE INHERITANCE OF A MINOR CHILD

In terms of the finalised liquidation and distribution account the minor child was entitled to inherit an amount which was never paid out to our client or the Guardian's Fund by the first executor.

The First Respondent alleges that she had paid out a sum of money inclusive of the minor child's inheritance to the first executor, however, there was no proof thereof.

The Pro Bono and Human Rights practice recently obtained a favourable order on behalf of our client, the sole guardian and single mother of a minor child, from the South Gauteng High Court in a long ongoing matter concerning her child's right to an inheritance from the deceased father's estate.

The application was brought against the First Respondent (the customary wife of the deceased) in both her personal capacity as an heir in the intestate estate and in her capacity as executor of the deceased's estate.

In terms of the finalised liquidation and distribution account the minor child was entitled to inherit an amount which was never paid out to our client or the Guardian's Fund by the first executor, an attorney who was later suspended by the Master of the High Court, who then subsequently appointed the First Respondent as the next executor of the deceased's estate.

We later discovered that the first executor of the estate was suspended from practice for alleged theft of trust money (including moneys paid to him in respect of the deceased estate) in November 2013 and removed from the roll. After the Attorney's Fidelity Fund rejected a claim made on behalf of our client, and after unsuccessful engagements with the First Respondent we then brought an application to the High Court against the First Respondent.

The First Respondent alleges that she had paid out a sum of money inclusive of the minor child's inheritance to the first executor, however, there was no proof thereof. Even if she had, this in any event did not discharge her obligation as executor to the minor child because any moneys that may have been paid over to the first executor were never paid to our client or to the Guardian's Fund on behalf of the minor child. The First Respondent, who has herself lodged a claim against the Attorney's Fidelity Fund, has been the sole heir of the deceased estate thus far and has enjoyed all assets of the deceased's estate which was mainly made up of an immovable property, and which she later sold.

The application was argued by Lara Grenfell and Louw van der Merwe from the Johannesburg Bar before Judge Van de Linde on 4 March 2016 on the unopposed roll. The learned judge granted an order in favour of our client and her minor child.

We are now in the process of taking steps to retrieve the outstanding inheritance from the First Respondent.

**Jacque Cassette
and Mershalene Naicker**

A LONG BATTLE TO EXPUNGE A FRAUDULENT MARRIAGE FROM THE RECORDS OF THE DEPARTMENT OF HOME AFFAIRS

The number of fraudulent marriages reported to the Department has, in fact, increased to such an extent that an instant SMS-notification service has been put in place for individuals to check their marital status as well as the date on which they were married.

The couple decided to get married in 2012 and it was only at this point that it came to our client's attention that according to the Department's marriage register she was already 'married' to someone else whom she had never met (the unknown spouse).



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Marriage alone carries with it considerable challenges but these are exacerbated for some South Africans ready to formalise their relationships when they find out that their marriage cannot be processed as one of the partners is already recorded by the Department as being married to someone else. This is precisely the precarious position in which our client found herself in 2012 when she and her partner sought to formalise their relationship of two years.

Our client met her partner in 2010 and soon gave birth to their first child. The couple decided to get married in 2012 and it was only at this point that it came to our client's attention that according to the Department's marriage register she was already 'married' to someone else whom she had never met (the unknown spouse). As a result of this erroneous entry in the marriage register our client has been unable to marry her partner and father of her child and potentially faced various proprietary consequences as a result of what appears to have been an act of fraud. Although our client immediately

informed the Department of the fraudulent marriage, her attempts to remedy the situation herself through consultations with the Department failed and consequently she sought our assistance in mid-2013.

Our numerous efforts to engage with the Department proved no more successful. Although the Department insisted that it had conducted an internal investigation that confirmed that a marriage had been entered into, for reasons it failed to ever explain, it refused to furnish us with either the investigative report or a copy of the relevant entry into the marriage register in question. As result of the Department's lack of co-operation we were forced to resort to litigation to compel it to rectify its records.

Without any other means of obtaining details of the unknown spouse, we were required to litigate in two stages. First we had to obtain leave from the Court to give due notice of the application by means of substituted service. Having obtained a directive from the Court in this regard and having effected service on the unknown spouse by attaching a notice on the South Gauteng High Court's notice board and in a newspaper, we filed our substantive application to have the record expunged in 2015.

A LONG BATTLE TO EXPUNGE A FRAUDULENT MARRIAGE FROM THE RECORDS OF THE DEPARTMENT OF HOME AFFAIRS

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Hughes J ordered that the Department expunge the erroneous marriage from its records and allowed the Department fourteen days in which to comply.



Needless to say no opposition was noted by the unknown spouse. Although it filed a notice of intention to oppose the application, the Department failed to file an answering affidavit or ever tender any explanation for its conduct in resisting the amicable resolution of the matter. Ultimately we recently obtained an order at the North Gauteng High Court on 8 March 2016 unopposed. Hughes J ordered that the Department expunge the

erroneous marriage from its records and allowed the Department fourteen days in which to comply. This period expires on 31 March 2015 and the State Attorney has been informed of the Order. The fact that we were forced to take the Department to court to assist our client is unfortunate. We await confirmation that the record has been expunged.

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Jacquie Cassette and Yumna Laher

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