



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No: 3013/2021P

In the matter between:

MAKHWENENE INGRID MAGWAZA

APPLICANT

and

KHETHA NDOORA

FIRST RESPONDENT

REGISTRAR OF DEEDS

SECOND RESPONDENT

MASTER OF THE HIGH COURT

THIRD RESPONDENT

ORDER

The following order is granted:

1. The application to refer the matter to the hearing of oral evidence is refused with costs; and
 2. The application is dismissed with costs.
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JUDGMENT

MOSSOP AJ:

[1] There can be no doubt that, as the first respondent puts it, the late Mr Sylvester Ndoora (the deceased) was a philanderer. He was a philanderer in the true sense of

the word.¹ He appeared to love life, women and fathering children. He was married to the first respondent, with whom he fathered four children. In addition thereto, he fathered four children with four different women. He never married any of these other four women.

[2] One of the woman that he became involved with was the applicant. This relationship did not produce any children despite the deceased and the applicant undergoing in vitro fertilisation treatment (the IVF procedure). The relationship between the applicant and the deceased began in May 2015. When he commenced the relationship, the deceased did not disclose to the applicant that he was married to the first respondent. He remained married to the first respondent until his death. The fact of this marriage only came to the applicant's attention on 18 December 2018. Notwithstanding this knowledge, and her statement to the deceased that she would not marry him if the first respondent did not consent to the marriage which, as a matter of fact, the first respondent did not do, she accepted the deceased's marriage proposal in August 2019. They became engaged, but before the relationship could be progressed, the deceased became ill and died in December 2020.

[3] In bringing this application, the applicant sought the following relief in her notice of motion:

- '1. It is declared that a Universal Partnership existed between the Applicant and the late Sylvester Ndoora (hereinafter referred to as 'the Deceased').
2. Alternatively, that the love relationship which existed between the Applicant and the deceased with its consequential purported marriage engagement entered into between them in or during August 2019 at Sun City, North-West Province, is hereby declared to be a putative marriage.
3. That the Applicant is hereby entitled to fifty (50) percent of the joint estate accumulated by the Applicant and the deceased mentioned in paragraph 1 hereinabove.
3. [sic] Alternatively, the love relationship which existed between the Applicant and the deceased and the purported marriage engagement entered into between the Applicant and

¹ Being a person, usually a man, who has many casual sexual encounters especially when married or in a committed relationship (<https://www.dictionary.com/browse/philanderer#>).

the deceased on the date and place referred to above is hereby declared to be a Universal Partnership.

4. That the Applicant is hereby entitled to fifty (50) percent of the estate of the Deceased, alternatively, half of the assets that were accumulated by the Universal Partnership.

5. Alternatively, that the estate of the deceased was unduly and unfairly enriched (and the estate of the Applicant was equivalently unduly diminished thereby) and that the Applicant is entitled to be compensated therefore.

6. That in the event of the First Respondent opposing this application, it is ordered that the First Respondent shall pay the Applicant's costs of this application.'

[4] At the hearing, the applicant was represented by Mr Kwitshana and the first respondent was represented by Ms van Jaarsveld. When the matter was called, Mr Kwitshana commenced his argument. He had not progressed very far when the court enquired from him whether he was content to argue the matter in the light of the first respondent's submissions that there were disputes of fact incapable of being resolved on the papers.² This was asked because Mr Kwitshana indicated in his practice note that there were no disputes of fact. He indicated that he was ready to argue the matter on the papers but thereafter waived, and indicated that it might be preferable to refer the matter to oral evidence. At this juncture the court asked Ms van Jaarsveld what her attitude to the issue was. In brief, she stated that this matter should never have been brought on application but should have been brought on action. The applicant having made her election to proceed by application, the first respondent opposed the referral of the matter to oral evidence. Mr Kwitshana then asked for an opportunity to consider his position and take instructions. The matter accordingly stood down.

[5] Mr Kwitshana advised the court when it reconvened that he was now making an application for the matter to be referred to oral evidence. After hearing argument, I exercised my discretion and refused the application with costs and said that I would give my reasons later. What follows are those reasons.

² In *Law Society, Northern Provinces v Mogami and others* 2010 (1) SA 186 (SCA) at 195C-D, Harms DP stated that 'An application for the hearing of oral evidence must, as a rule, be made in limine and not once it becomes clear that the applicant is failing to convince the court on the papers or on appeal'.

[6] In *Kalil v Decotex (Pty) Ltd and another*,³ the court held that a court hearing an application for referral of an application to oral evidence has a discretion as to whether or not to allow this to occur. In expanding upon this, the court stated:

‘Naturally, in exercising this discretion the Court should be guided to a large extent by the prospects of *viva voce* evidence tipping the balance in favour of the applicant. Thus, if on the affidavits the probabilities are evenly balanced, the Court would be more inclined to allow the hearing of oral evidence than if the balance were against the applicant. And the more the scales are depressed against the applicant the less likely the Court would be to exercise the discretion in his favour.’⁴

[7] In the view that I took of the matter, and as will become apparent later on in this judgment, the applicant had made out an extremely weak case on the merits. There was no question of the probabilities being evenly balanced: they were tipped substantially against the applicant.

[8] On a procedural level, no application papers had been prepared in support of the application for the referral sought by the applicant. The application was made orally from the bar and was clearly a last minute effort. No draft order identifying the issues to be resolved by the hearing of oral evidence, the procedure to be followed and which rules of the Uniform Rules of Court would be applicable was handed up, as is usually the practice. When I asked about this, I was advised by Mr Kwitshana that the issues would be as identified in the first respondent’s counsel’s practice note. There was a fundamental difficulty with this submission. Two points of conflict were identified in the first respondent’s practice note: a dispute over the financial standing of the deceased’s businesses at the time that the applicant met him and a further dispute over the improvements made to an immovable property owned by the deceased and the first respondent. Mr Kwitshana, however, indicated that the dispute centred on whether there was a universal partnership between the applicant and the deceased. Yet that was not the issue that would be referred to oral evidence, based upon what Mr Kwitshana indicated to me. There was thus no consensus on what the disputes of fact were. Importantly, there was no indication from the applicant as to which of the

³ *Kalil v Decotex (Pty) Ltd and another* 1988 (1) SA 943 (A).

⁴ *Ibid* at 979H-I.

contentions of the first respondent in her answering affidavit could potentially be successfully discredited by oral evidence nor was I told what evidence would be led to establish this. And at the final moment, Mr Kwitshana indicated that he now desired that the matter be referred not to oral evidence, but to trial.

[9] In short, the application was poorly conceived and poorly motivated. It was accordingly refused with costs. The actual application was then argued.

[10] Before the matter proceeded further, the relief for a declaratory order that a putative marriage existed between the applicant and the deceased was abandoned by Mr Kwitshana. Accordingly, the issues that fall to be determined are whether a universal partnership existed between the applicant and the deceased and, in the alternative, whether the deceased's estate was enriched to the detriment of the applicant's estate.

[11] In South Africa, generally speaking, if co-habiting parties are not married to their partner, neither has any claim to the other's assets. Co-habiting parties can, however, agree to certain obligations, such agreement being either express or tacit.⁵ Cohabitation itself 'does not give rise to special legal consequences'.⁶ However, courts in this country have recognised that, what is termed a 'universal partnership', may exist between two unmarried parties. This recognition has its foundation in Roman and Roman-Dutch law. In Roman and Roman Dutch law, universal partnerships were distinguished into two types: firstly, those of all present and future property, termed *societas universorum bonorum*; and, secondly, those extending to everything acquired from every kind of commerce entered into during the existence of the partnership, termed *societas universorum quae ex quaestu veniunt*.⁷

[12] In *Pezzutto v Dreyer*,⁸ the essentials of a universal partnership were said to be the following:

⁵ *McDonald v Young* [2011] ZASCA 31; 2012 (3) SA 1 (SCA) para 19.

⁶ *Butters v Mncora* [2012] ZASCA 20; 2012 (4) SA 1 (SCA) para 11.

⁷ *Isaacs v Isaacs* 1949 (1) SA 952 (C) at 955.

⁸ *Pezzutto v Dreyer and others* 1992 (3) SA 379 (A).

‘(1) that each of the partners bring something into the partnership, whether it be money, labour or skill; (2) that the business should be carried on for the joint benefit of the parties; and (3) that the object should be to make a profit.’⁹

[13] These requirements are not specific to the consideration and assessment of whether a universal partnership existed: these are the requirements, generally, when considering whether a partnership came into existence. Our courts have found it unnecessary to develop a separate test specific to the assessment of universal partnerships.¹⁰

[14] A universal partnership of all property does not require an express agreement to this effect to have been concluded.¹¹ A tacit ‘universal partnership exists when parties act like partners in all material respects without explicitly entering into a partnership agreement’.¹² A tacit agreement is one in which it may be inferred from the conduct of the parties that they intended to enter into such a contract. However, tacit agreements are not readily inferred. As was stated in *Alfred McAlpine & Son (Pty) Ltd v Transvaal Provincial Administration*:¹³

‘[The court] cannot make contracts for people; nor can it supplement the agreement of the parties merely because it might be reasonable to do so. Before it can imply a tacit term the Court must be satisfied, upon a consideration in a reasonable and businesslike manner of the terms of the contract and the admissible evidence of surrounding circumstances, that an implication necessarily arises that the parties intended to contract on the basis of the suggested term. . .’¹⁴

[15] Until relatively recently, there were competing tests that were applied when considering whether a tacit agreement had come into existence. The two approaches encompassed, firstly, the more traditional formulation, namely that it was necessary to show on a preponderance of probabilities that unequivocal conduct existed which was

⁹ Ibid at 390A-B.

¹⁰ *Butters v Mncora*, *supra*, para 17.

¹¹ *Butters v Mncora*, *supra*, para 18(b); *Festus v Worcester Municipality* 1945 CPD 186.

¹² *Steyn v Hasse and another* 2015 (4) SA 405 (WCC) para 17.

¹³ *Beadica 231 CC and Others v Trustees for the time being of the Oregon Trust and Others* 2020 (5) SA 247 (CC) para 135, footnote 259, citing with approval the dicta of Corbett AJA in *Alfred McAlpine & Son (Pty) Ltd v Transvaal Provincial Administration* 1974 (3) SA 506 (A).

¹⁴ Ibid at 532533.

capable of no other reasonable interpretation than that the parties intended to, and did in fact, contract on the terms alleged. Secondly, that a court could hold that a tacit contract had been established where, by a process of making inferences, it concluded that the most plausible conclusion from all the relevant proven facts and circumstances was that a contract had come into existence. In 2019, in *Buffalo City Metropolitan Municipality v Nurcha Development Finance (Pty) Ltd and others*¹⁵, the Supreme Court of Appeal held that the test was that ‘the party alleging a tacit contract need prove unequivocal conduct giving rise to an inference of consensus on a balance of probabilities’.¹⁶

[16] ‘A universal partnership exists if the necessary requirements for its existence are met . . . regardless of whether the parties are married, engaged or cohabiting’.¹⁷ The essence of the concept of a universal partnership is an agreement about joint effort and the pooling of risk and reward. A universal partnership is, effectively, a community of property.¹⁸ As was said by the Supreme Court of Appeal in *Khan v Shaik*:¹⁹

‘Upon termination of the universal partnership, what follows is an accounting to one another; the poorer partner becomes the richer partner’s creditor. Accordingly, it is the contract that is the foundation of the universal partnership, not the mere fact of the consortium and the mere contributory efforts to building wealth.’²⁰

[17] Ms van Jaarsveld, as previously pointed out, indicated that there were disputes of fact in this matter. In making that submission, she was indeed correct. Those disputes of fact extend past the areas of dispute identified in the first respondent’s practice note. In *National Director of Public Prosecutions v Zuma*,²¹ the court pointed out that

¹⁵ *Buffalo City Metropolitan Municipality v Nurcha Development Finance (Pty) Ltd and others* [2018] ZASCA 122; 2019 (3) SA 379 (SCA).

¹⁶ Ibid paras 16 and 20 to 21.

¹⁷ *Ponelat v Schrepfer* [2011] ZASCA 167; 2012 (1) SA 206 (SCA) para 22.

¹⁸ *Sepheri v Scanlan* 2008 (1) SA 322 (C) at 338C-D.

¹⁹ *Khan v Shaik* [2020] ZASCA 108.

²⁰ Ibid para 8.

²¹ *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 26.

'Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities.'

The court mentioned further in *Zuma* that the correct approach to resolving factual disputes is set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.²² That matter held that when factual disputes arise in circumstances where the applicant seeks final relief, the relief should be granted in favour of the applicant only if the facts alleged by the respondent in its answering affidavit, read with the facts it has admitted to, justify the order prayed for. Put differently, the rule allows a court, in certain circumstances, to make a determination on disputes of fact in application proceedings without having to hear oral evidence and on the respondent's written version of events.

[18] Not all the facts in this matter are in dispute. It is common cause that the applicant is employed by a prominent bank in South Africa as a business advisor. The deceased was a geo-hydrologist by training but appears to have business interests that extended beyond the profession in which he had been formally trained. The fact that the deceased and the first respondent were married to each other on 29 September 1998 in Zimbabwe is accepted, as is the fact that they thereafter came to South Africa. The applicant does not dispute that the first respondent is a nurse employed at the Stanger Hospital.

[19] Many of the facts alleged by the applicant are, however, disputed by the first respondent. The applicant contends that at the time that she became involved with the deceased, he lived alone at a home that he owned in the suburb of Bisley in Pietermaritzburg (the Bisley house). This is not admitted by the first respondent. She states that she and the deceased jointly owned the Bisley house and concedes that the deceased did stay there when doing business in Pietermaritzburg. However, the first respondent states that the deceased's home was with her in Stanger at their matrimonial home.

²² *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C.

[20] The applicant claims to have resided separately in a rented flat in Alexander Road, Pietermaritzburg 'at all material times'. This is an interesting statement that is contradicted by her at a later stage. According to the applicant, as the deceased and her relationship strengthened, the deceased advised her in January 2016 to purchase a plot of vacant land in order that she might build a family home to accommodate her, the deceased and her two minor children born of another relationship. The applicant did not explain why this needed to be done in the light of the fact that the deceased, on her own version, already had a home in which he resided alone. He had not disclosed at this time to the applicant that he was already married. The applicant duly purchased the plot of land for R15 000. The applicant acerbically points out that '... the deceased never contributed a cent towards the purchase and/or building of the same property, I paid for everything with my own money.'

The applicant then built a dwelling on the property. The applicant asserts, again, that all material times she, the deceased and her children resided at the newly constructed house. This conflicts with her earlier statement that at all material times she resided in the flat in Alexander Road.

[21] Importantly, the applicant concedes that the deceased never told her that he was married to the first respondent, nor that he was involved in love relationships with other women. He passed himself off as a single, unmarried man. The applicant claims that the deceased, however, did disclose that he had six children from former girlfriends but stated that he no longer had a relationship with the mothers of those children. He was not truthful in this regard: he had eight children. He never introduced the applicant to any of his children.

[22] As regards her contribution to the success of the deceased, the applicant asserts that she

'... contributed immensely in recurpurating [sic] his business by using my professional skills and expertise, viz:

261. [sic] by providing and assisting with business networking with potential business people;

26.2 business administration and management skills;

26.3 assisting in filling of potential tender documents;

26.4 assisting in accounting and auditing skills of the business;

26.5 assisting in advising of relevant and necessary professional business consultants, to do audit reports, etc.

26.6 At times, during my spare time, I would be hands on, alternatively directly involved in the operations of his business on site level.

26.7 Likewise, I was personally responsible for his personal image and health upkeep and well-being, viz, type of clothes to wear, food and medical realm, etc.'

As a result of the alleged application of these skills, the applicant submits that the deceased's business 'grew exponentially.'

[23] The first respondent states in her answering affidavit that the deceased was a successful businessman who had provided well for his family over the years prior to his involvement with the applicant. This continued to be the case after his involvement with her commenced. He was a director and shareholder of five businesses.

[24] The allegations by the applicant of her contribution to the success of the deceased are allegations bereft of any detail: there is no particularity as to which businesses she provided advice to, nor does she disclose what 'networking' means, who she directed the deceased to network with or what the benefits of doing it were, or what business administration and management skills she utilised and to what effect. No details of what such exponential growth amounted to is disclosed. No evidence to demonstrate the financial growth claimed by the applicant due to her efforts has been disclosed: instead, the applicant requires the court to merely accept her word that this is what occurred.

[25] The first respondent points out that the deceased was a customer of the same bank as that which employed the applicant, and if any advice was given to the deceased, it is conceivable that it was advice that the applicant was obligated to provide arising out of her employment. The first respondent does, fairly, however, acknowledge that it appears that the applicant did render certain services to a company owned by the deceased, called Ruvhetha Engineering (Pty) Ltd, over the period July 2016 to December 2018. She was, however, according to the first respondent, paid for these services. This appears to be correct. In this regard, the first

respondent puts up approximately 120 pages of bank statements of that company. I have perused each of those pages. The total of the payments made to the applicant by that company comes to approximately R733 000. The overwhelming majority of the individual payments that collectively comprise that amount have the narration that the payments were made to the applicant for 'services'.

[26] The applicant claims that she made the following further contributions to the deceased's estate:

- (a) she spent R210 000 of her own money on the renovation of the deceased's Bisley house;
- (b) she assisted the deceased on the choice of furniture to buy for that house and did the interior decorations at the house;
- (c) she provided the deceased with advice to purchase a property in Umhlanga Rocks;
- (d) she advised him on purchasing a property in Hayfields in Pietermaritzburg;
- (e) she told the deceased to consult doctors arising out of his diabetic condition;
- (f) she made sure that the deceased took his medicine;
- (g) she ensured that the deceased insured his assets; and
- (h) she ensured that the deceased was on a medical aid scheme.

[27] Not all of these allegations require comment. Most of the allegations are neutral in their meaning and would be the sort of conduct expected of two people in an intimate relationship. The first respondent, however, denies virtually all these allegations:

- (a) on the issue of the R210 000 allegedly spent by the applicant on the deceased's home, the applicant puts up certain invoices to establish this point. The invoices are, however, non-specific invoices that one receives when making a purchase from a store: they do not record the name of the customer and are simply till generated recordals of the items purchased. They certainly do not record who made the payment. It is thus not possible to verify who did so. There are 11 such invoices. One falls outside the period specified by the applicant when she allegedly incurred these expenses and is therefore not considered. The total of the remaining invoices comes to R24 297.38.

This falls far short of the amount which the applicant claims to have spent out of her own purse;

(b) on the issue of the purchase of furniture and interior decorations for the Bisley house, the first respondent disputes the applicant's allegations. She states that when she went to that house to collect the deceased's clothing after his death, she noted that the house was decorated exactly as she and the deceased had decorated it in 2014;

(c) the purchase of the property in Umhlanga Rocks mentioned by the applicant failed and was not advanced to transfer;

(d) the first respondent disputes further that the applicant was an innovating force in securing the insurance of the deceased's assets: she asserts that all their assets had been insured since 2004, long before the deceased's involvement with the applicant, and puts up documentary proof of that; and

(e) regarding the allegation that the applicant was instrumental in getting the deceased onto a medical aid plan, she states that by virtue of her employment as a nurse she was entitled to join a medical aid scheme. The deceased became a dependent member on her medical aid scheme in 2011. In 2020, the deceased wanted to add a son of his, born of another woman, to the medical aid scheme, but the first respondent refused to countenance this. The deceased thereafter left her medical aid scheme and took out his own medical aid policy in order to include his son. There was no involvement of the applicant in this. She puts up documentation confirming that the deceased had been a member of her medical aid scheme.

[28] The denials of the applicant's allegations by the first respondent are not bald or uncreditworthy denials nor are they palpably far-fetched or so clearly untenable that they can simply be rejected on the papers. Some of the denials are backed up with documentary proof. I therefore cannot find that they are conjured up in order to create a false conflict of fact. I am accordingly required to accept the facts alleged by the first respondent.

[29] The applicant makes further allegations about being taken to Zimbabwe on at least four occasions by the deceased, the first time to to be introduced to his family,

about being given a Honda motor vehicle by the deceased as a birthday present in December 2018, about accepting his proposal to marry at Sun City in August 2019 and about the IVF procedure undertaken in order to conceive children with the deceased. In my view, these events do not progress the applicant's claim to the existence of a universal partnership. These events simply indicate a level of intimacy between the deceased and herself but do not, in my view, establish the universal partnership claimed by her.

[30] The applicant at no stage states that there was an express agreement to constitute a universal partnership. She accordingly relies on a tacit agreement. There are compelling facts that demonstrate that there was no such agreement. These facts, in the main, arise out of the applicant's founding affidavit. It was the existence of these statements by the applicant that caused me to come to the view that a referral to oral evidence would not disturb the probabilities in the applicant's favour. At various places in her founding affidavit the applicant makes the following comments about the deceased and his conduct:

- (a) he had 'blindfolded' her;
- (b) he was dishonest and evasive at all material times;
- (c) he had done 'marriage hoodwinking ploys' on her in order to 'exploit' her life;
- (d) by proceeding with the IVF procedure, the deceased perpetrated a 'blind sighting [sic] and wastage of my life and emotions';
- (e) 'As part of his wicked scheme', the deceased took out life cover for the Hayfields property and made the beneficiary his daughter born of the first respondent;
- (f) the deceased 'had been using me as his mule to enrich himself through exploiting my position, power and influence'; and
- (g) 'Judging by the modus operandi [sic] by which the deceased had been hoodwinking me, it is glaringly evident that, he had premeditated his wicked scheme to exploit my vulnerability of being a single and unmarried person and duped me with bogus marriage plans and preparations . . . '

[31] These are the applicant's own words. These are not words indicative of a person who has formed an understanding with his partner. If her description of the

deceased's conduct is accurate, such conduct is not reconcilable with an intent to pool assets. In fact, they point to a contrary conclusion. It is difficult to conclude therefrom that she and the deceased had tacitly agreed to the creation of a universal partnership. The deceased had not played open cards with the applicant until much later in their relationship, and it appears improbable that he would have committed himself as contended for by the applicant. A universal partnership does not appear to accord with the deceased's freewheeling lifestyle. The only person that he had any fixed arrangements with was his wife, the first respondent.

[32] But there are additional factors that militate against the establishment of a universal partnership:

- (a) the applicant was required to purchase the vacant plot of land and fund the construction of the dwelling without financial assistance from the deceased. That does not appear to be consistent with a man who has agreed to pool his assets;
- (b) the Honda motor vehicle given to the applicant as a birthday present was never registered in her name but remained in the name of one of the deceased's businesses, where it was insured not for personal use but for business use. It would appear to not have been a gift but merely an entitlement to use the vehicle; and
- (c) there is no evidence that the deceased ever put the applicant or her children onto his medical aid scheme after leaving the first respondent's medical aid scheme.

[33] Rather than pooling assets, it appears from the foregoing that the deceased retained control of his assets and kept their respective assets separate. He also kept the true state of his personal life from the applicant. From a consideration of these factors, and particularly her own statements about the deceased and his conduct, I conclude that the applicant has not proved unequivocal conduct giving rise to an inference of consensus on a balance of probabilities that she and the deceased entered into a tacit universal partnership.

[34] As regards the applicant's enrichment claim, the starting point is that there is no general enrichment action in our law.²³ The law, however, does provide recourse

²³ *Nortje en 'n ander v Pool*, NO 1966 (3) SA 96 (A).

to a person 'who believes he has unjustly enriched another person for the disgorgement of the benefits'.²⁴ The quantum of the enrichment is established by determining the extent of the impoverishment and the extent of the enrichment. The impoverished party is then entitled to the lesser of the two amounts so determined.

[35] The essential elements are that:

'(a) the defendant must be enriched, (b) the plaintiff must be impoverished, (c) the defendant's enrichment must be at the expense of the plaintiff and (d) the enrichment must be without cause (*sine causa*).'²⁵

The burden of proof in respect of these elements is on the plaintiff.²⁶

[36] In her notice of motion, there is no allegation of the quantum of the enrichment that the deceased's estate is alleged to have profited by nor has the value of the reduction in the applicant's estate been quantified. If the quantum of the enrichment is merely the amount of R210 000 which the applicant allegedly spent on the deceased's Bisley house, then she has not established that amount, as previously pointed out. The documentation allegedly supporting the expenditure by her of the sum of R210 000, which documentation is not conclusive of the fact that she personally made those payments, comes to one tenth of that value. I am, however, by no means certain that this constitutes the entire value of the alleged enrichment. But I cannot be sure. It is for the parties to properly plead their cases and not for the court to speculate what that case is. The enrichment claim is not properly pleaded and like the claim for the declaration of the existence of a universal partnership, it, too, must perish.

[37] In the circumstances I make the following order:

1. The application to refer the matter to the hearing of oral evidence is refused with costs; and
2. The application is dismissed with costs.

²⁴ *Fidelity Supercare Services Group (Pty) Ltd v Johannesburg Metropolitan Police Department* [2013] ZAGPPHC 6 para 20.

²⁵ *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 (3) SA 482 (SCA) para 2.

²⁶ *Willis Faber Enthoven (Pty) Ltd v Receiver of Revenue and another* 1992 (4) SA 202 (A) at 224H-J; *Senwes Ltd and others v Jan Van Heerden & Sons CC and others* [2007] ZASCA 18; [2007] 3 All SA 24 (SCA) para 35.

MOSSOP AJ

APPEARANCES

Counsel for the appellant	:	Mr A. M. Kwitshana Instructed by: LLM Attorneys Inc 51A Maud Avenue Scottsville Pietermaritzburg
Counsel for the respondent	:	Ms M. E. van Jaarsveld Instructed by: Lister and Lister Attorneys Suite no. 101 First Floor 161 Pietermaritz Street Pietermaritzburg
Date of Hearing	:	12 November 2021
Date of Judgment	:	1 December 2021