IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable / Reportable

Case No: 1969/2024

In the matter between:

LYNETTE SAVVAS	**APPLICANT**
And	
GEORGE MICHAEL SAVVAS N.O.	**FIRST RESPONDENT**
FAIZEL MFANINZANA AMADE N.O.	**SECOND RESPONDENT**
THE MASTER OF THE FREE STATE HIGH COURT, BLOEMFONTEIN	**THIRD RESPONDENT**

Neutral citation: *Lynette Savvas v George Michael Savvas N.O and Others (1969/2024)*

Coram: **Daniso, J**

Heard: **21 November 2024**

Delivered: **07 April 2025**

ORDER

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1. The application is dismissed with costs.

JUDGMENT

Daniso, J

[1] This is an opposed application for payment of interim maintenance in the amount of R36 440.78 from the deceased estate of the late Mr Machel George Savvas (the deceased) who passed away on 24 October 2021, pending the finalization of its administration.

[2] The applicant is the surviving spouse of the deceased. On the facts germane to this matter, the applicant and the deceased were married to each other on 18 October 1996 out of community of property with the inclusion of accrual. No children were born from their marriage. At the time of the deceased's death their marriage had endured for twenty-five (25) years. After his death, his estate was registered with the third respondent (the Master) under estate number 100659/2021. The first respondent was appointed as the executor of the deceased estate (the executor), he is the deceased's son from a former marriage. The second respondent is the executor's legal representative for the purpose of administering the deceased estate.

[3] The deceased died testate. In his last will and testament dated 7 February 2014, he bequeathed his estate as follows:

> *"1. To my son George Michael Savvas my business (Ideal Processed Meats), my motor car (Audi S6), my Hi-Fi system and all my firearms.*
>
> *2. To my daughter Theano Savvas my share of the building (T.G.S. Shopping Centre) at 46 Wildeals Avenue.*
>
> *3. To my wife Lynette Savvas my home (including contents-excluding the Hi-Fi system and cd's and Lp's) at 3[…] K[…] v[…] d[…] W[…] Avenue, Universitas Ridge, Bloemfontein.*
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> *4. An insurance policy with Liberty Life is to be used to pay all expenses incurred and, if there are any monies left to be given to my daughter Theano Savvas…"*

[4] The application is directed against the executor only and it is premised on the grounds that the deceased's death has left the applicant financially destitute. Her claims for interim and final maintenance lodged with the executor in terms of sections 2 and 3 of the Maintenance of Surviving Spouses Act[1] (the Surviving Spouses Act) read with section 26(1A) of the Administration of Estates Act[2] (the Estates Act) were rejected without a valid reason. The result is that she will have to wait until the Liquidation and Distribution account (the L and D account) has laid open for inspection for the approval or rejection by the Master and only then can she review the Master's decision. This process will lead to delays in the administration of the deceased estate including the payment of her maintenance which she can ill afford.

[5] The executor's answering affidavit was filed two days late. In addition to seeking condonation for the late answering affidavit the executor also seeks leave to file an

[1] The Maintenance of Surviving Spouses Act No, 27 of 1990.
[2] The Administration of Estates Act No, 66 of 1965.

additional affidavit whilst the applicant seeks condonation for her replying affidavit which was also delivered about eight (8) days out of time. The parties have attributed the delays in filing the affidavits to unavailability of their respective counsel to settle the papers and the complexity of the matter. The executor's additional affidavit is intended to deal with the new matters raised in the applicant's replying affidavit.

[6] The respective condonation applications are not opposed. I am satisfied that the delays have been sufficiently explained. No prejudice has been indicated by the respective parties as a result of the late affidavits including the additional affidavit and the parties are desirous that this matter is advanced. These factors cumulatively, constitute sufficient cause warranting condonation of both the late affidavits and the filing of the executor's additional affidavit. Condonation is accordingly granted.

[7] It is tested law that in terms of our common law, a surviving spouse has no claim for maintenance against the estate of his or her deceased spouse merely by reason of their marriage.[3] It is for that reason that the Surviving Spouses Act was promulgated. Its object is "*To provide the surviving spouse in certain circumstances with a claim for maintenance against the estate of the deceased spouse...*". The relevant provision reads as follows:

> *"**2 Claim for maintenance against estate of deceased spouse***
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> *(1) If a marriage is dissolved by death after the commencement of this Act the survivor shall have a claim against the estate of the deceased spouse for the provision of his reasonable maintenance needs until his death or remarriage in so far as he is not able to provide therefor from his own means and earnings.*
>
> *(2) ….*

[3] *Botha v Botha* **2009 (3) SA 89** (W) para 32.

(3) (a) The proof and disposal of a claim for maintenance of the survivor shall, subject to paragraphs (b), (c) and (d), be dealt with in accordance with the provisions of the Administration of Estates Act, 1965 (Act 66 of 1965).

(b) The claim for maintenance of the survivor shall have the same order of preference in respect of other claims against the estate of the deceased spouse as a claim for maintenance of a dependent child of the deceased spouse has or would have against the estate if there were such a claim, and, if the claim of the survivor and that of a dependent child compete with each other, those claims shall, if necessary, be reduced proportionately.

(c) In the event of a conflict between the interests of the survivor in his capacity as claimant against the estate of the deceased spouse and the interests in his capacity as guardian of a minor dependent child of the deceased spouse, the Master may defer the claim for maintenance until such time as the court has decided on the claim.

(d) The executor of the estate of a deceased spouse shall have the power to enter into an agreement with the survivor and the heirs and legatees having an interest in the agreement, including the creation of a trust, and in terms of the agreement to transfer assets of the deceased estate, or a right in the assets, to the survivor or the trust, or to impose an obligation on an heir or legatee, in settlement of the claim of the survivor or part thereof."

[8] The summary of the applicant's pleaded claim is the following; in his life time the deceased was an affluent businessman. He owned shares in a business names Ideal Processed Meats and also earned income from renting out his business premises known as T.G.S Shopping Centre therefore the estate has sufficient funds to satisfy her claim for interim maintenance. During the subsistence of their marriage, he had sufficient means to cater for their above average lifestyle and was solely responsible for all their household and living expenses and this is despite the fact that she was also employed as a hairdresser earning between R7000.00 to R10 000 per month. Except for contributing about R1000.00 per month towards the electricity bill, her income was

used for her personal expenses such as personal care products, cosmetics and clothing as and when required.

[9] She states that during the course of their marriage the deceased repeatedly assured her that she should not be concerned about any financial obligations and it is in that regard that he also made provision for her financial well-being in his last will and testament dated 7 February 2014 in terms of which, he bequeathed the common home and its contents to her and also envisaged that the executor should make contributions to her maintenance.

[10] The applicant submits that the deceased continued to maintain her financially when she lost her employment on 21 September 2021 due to the impact of the Covid-19 pandemic. Pursuant to the death of the deceased she is unable to cater for her reasonable maintenance needs. In order to provide for herself she had to seek means to earn an income. During September 2021 she was able to secure a facility where she has been operating a hairdressing salon earning a monthly income of R28 608.84 since. She pays R7000.00 per month to rent a chair and spend R4000.00 per month to purchase hair products.

[11] Annexures “FA31” and “FA33” of her founding affidavit are her bank statements evidencing her financial situation and Annexure “FA32”, is a breakdown of her monthly expenses:

Details of Maintenance Expense	**Amount**	**Frequency**
Accommodation:		
Rental	15000,00	pm
OR		

Lump Sum to Pay off bond		
Property costs		
-Maintenance		
-Insurance building/ contents		
- Water / electricity	3000,00	pm
- Rates and Taxes	2800,00	pm
Retirment home costs		
Garden help/ services	1730,00	pm
Transport:		
Bus/ Taxi fares		
Purchase price of car and replacement frequency		
Running Costs of car		
- Insurance	1312,74	pm
- Tyres		
- Maintenance / services	2829,40	pm
- Petrol	2300,00	pm
Clothing	2347,09	pm
Food	7313,57	pm
Personal hygiene	2104,00	pm
Hair dresser		
Cosmetics etc.	1716,84	pm
Telephone and cellphone	2258,40	pm
Internet	800,00	pm
House help / laundry		
Entertainment:		
Television license	260,00	om
Satelite TV		
Magazine subscription / Reading material	99,00	pm
Medical:		
Medical Aid contribution	3828,00	pm
Regular Medication		
General/ Other	1313,00	pm

Donations/ Church		
Bank Charges	115,00	pm
Professional Services: accountant		
Holiday costs		
Other:		
Alarm	350,00	pm

[12] It is the applicant's case that her income is meagre. It does not cater for all her monthly maintenance needs as it leaves a shortfall of R28 874.74 as determined by the actuary.[4] Her situation has been exacerbated by the fact that after the death of the deceased, the executor stopped all communication with her and suppressed all the information relating to the administration of the deceased estate. Her requests to be apprised with the status of the administration of the deceased estate were ignored as a result thereof, on 3 March 2022 she lodged an interim maintenance claim to the executor through his attorneys Messrs Martins Attorneys. The claim was not addressed as the executor terminated his attorneys' mandate before the matter could be resolved.

[13] In her quest to settle the matter, her legal representative transmitted an unquantified maintenance claim to the executor's legal representatives on 19 July 2022 seeking payment from the deceased estate in the sum of R6.5million constituting her maintenance in the amount in the amount of R4million and the value of the common home that the deceased bequeathed to her in the amount R2.5million. Her settlement proposal was rejected by the executor labelling it fallacious in that, the settlement proposal has not taken into account the financial status of the estate and the true contributions made by the deceased to her maintenance. The executor also pointed out that the common home does not form part of the deceased estate, it is registered in the name of the Savvas Family trust.

[4] Annexures "FA15" and "FA24" are the actuarial reports by Messrs Wim Loots Actuarial Consulting dated 7 December 2022.

[14] On 8 December 2022 relying on the actuarial report, she lodged a “formal” interim maintenance claim with the executor in the amount of R8 509 057.00. In response, the executor stated that he could not accept or reject the claim due to lack of supporting documents and this is despite the fact that it is the duty of the executor of a deceased estate to investigate all claims against the estate. Upon being provided with the requested documents,[5] the executor still maintained that he was unable to accept or reject the claim and that he was still awaiting claims from banking institutions in on order to finalize the L and D account.

[15] Out of abundance of caution, on 5 June 2023 she lodged a final maintenance claim in the same amount of R8 509 057.00. The claim was rejected on the grounds that its acceptance will leave the deceased estate with a shortfall. The applicant contends that there is no merit to the executor’s assertion in this regard as the two inventories submitted by the executor do not reflect the correct value of the deceased estate as not all the assets of the deceased’s assets are reflected namely: the deceased’s two Rolex watches, the components of the Hi-Fi system and the rental income from the TGS building. In any event, the possibility of the estate having a shortfall is not a valid reason for rejecting her claim as a maintenance claim, in terms of the Surviving Spouses Act, ranks in preference before any claim for distribution to heirs and legatees. If there is a shortfall in the deceased’s estate, the executor must realise the assets of the deceased estate including those which have been bequeathed to rectify the cash shortfall. If the proceeds of such sales are insufficient then at best, that could result in a reduction of any claim for maintenance.

[16] It is argued on behalf of the applicant that, at the time of the deceased’s passing the applicant was not employed. When the deceased passed on, she was forced to start working however at the age of 64 she cannot continue working. The executor must

[5] Bank statements for the period 01 December 2021, Wi-Fi and vehicle service parts invoices.

accordingly be compelled to comply with his obligations and pay her the interim maintenance in the amount of R11 074.32 per month. The costs of this application to be in the administration of the estate of the late Mr. Machel George Savvas.

[17] The executor's answering and additional affidavit raises two points *in limine* that: the applicant's claim in its current form is premature as it has never been lodged with the executor before these proceedings were launched. The letter dated 3 March 2022 relied upon by the applicant as proof of the lodgement of her interim maintenance claim merely notified the executor of a possible accrual and maintenance claim[6] and since the claim is not based on the common law the applicant is not entitled to seek the court's intervention without having lodged her claim with the executor. The application ought to fail on this score alone. As regards the non-joinder, it is the executor's case that the applicant has also failed to join Ms Savvas in these proceedings and this is despite the applicant's assertion that if it is found that the deceased estate has a shortfall its assets must be sold to cater for her maintenance needs whether they have been bequeathed

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[6] The relevant parts of the letter state the following:

"1. Bovermelde aangeleentheid verwys en meer spesifiek u skrywe gedateer 25 laaslede.

2. Skrywe hiervan wens te bevestig dat ons namens on klient sal toesien tot die berekening van haar onderskeie eise, welke bestan uit moontlike onderhouds en/of aanwas eis.

3. In 'n poging om die bereking te bespoeding, verneem ons 'n saak van dringendheid graag ***'n volledige lys van die bates en laste*** *van die oorledene ten einde ons instaat te stel om die volledige eise te bereken.*

4. Geliewe kennis te neem dat ons klient allle regte ten aansien van die voorvermelde eise voorbehou.

5. Skrywer hiervan wens verder te bevestig dat die berekening van hierdie eise 'n tydsame proses is, maar soos ons reeds aan u voorheen meegedeel het, is daar reeds aan 'n Aktuaris instruksies gegee om sodanige eise te bereken en is ons tans in die proses om alle nodige inligting in die verband te bekom.

6. Ons vertrou u vind dit so in orde en verneem graag dringend van u.

Die uwe,

STANDER & ASSOCIATES

PER H J STANDER

or not. As a co-heir and beneficiary in the deceased's estate Ms Savvas has a direct and substantial interest in the matter. The court should therefore decline to hear the matter until she has been joined.

[18] In reply, the applicant recants her initial pleaded version and states that her interim maintenance claim was lodged on 8 April 2022.[7] Nevertheless, seeking reliance on *Nedbank Ltd v Steyn and Others (Steyn),*[8] it is the applicant's case that the lodgement of a claim for maintenance is akin to lodging a claim against the deceased estate in terms of the Estates Act therefore, a failure to lodge it timeously does not bar a claimant from launching court proceedings. Similarly, the non-joinder of an heir is not a valid defence to the applicant's claim. Based on these reasons, the executor's points *in limine* ought to be dismissed.

[19] Whilst I am of the view that there is merit to the executor's contention that the applicant's claim in its current form has never been lodged with the executor before the applicant sought the intervention of this court, I do not agree that her failure to do so bars the applicant from pursuing her right to sue the deceased estate in terms of the Estates Act. As it was pointed out in Steyn, failing to follow the claims procedures as contemplated in the Estates Act ss29, 32, 33 and 35 does not deprive a creditor of his/her common-law right to institute a claim against the deceased estate.[9] I also do not agree that the joinder of Ms Savvas is material to these proceedings. It must be borne in mind that s26(1A) deals with the executor's obligation to release funds of the deceased estate to cater for the subsistence of the deceased's family before the L and D account is opened for inspection. The order that this court will make in these proceedings will be solely directed at the executor. No prejudice can befall an heir as the Master's consent is required for the executor to act in terms of s26(1A). Consequently, the executor's points *in limine* are dismissed.

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[7] Annexure "RA1" of the replying affidavit.
[8] *Nedbank Ltd v Steyn and Others* **2016 (2) SA 416** (SCA).
[9] *Steyn* para 6-13 and the quoted cases therein.

[20] The merits of the application are opposed on the grounds that the applicant is not financially distressed this application is simply an inheritance claim cloaked in a maintenance claim as she is aggrieved by the provisions and bequests the deceased made in his last will and testament. It is clear from the first and final L and D account lodged on 20 May 2024 that the deceased estate has a cash shortfall in the amount of R273 962.83. Its value is therefore not sufficient to satisfy the applicant's exorbitant lump claim of over R8 million including the claim that has been presented in these proceedings.

[21] It is the executor's case that the applicant's assertion that during the subsistence of the marriage the deceased provided her with a lavish lifestyle is factually incorrect as on the available facts, the deceased did not have abundance of money. He lived on debt, to the extent that the estate could not even cater for his medical expenses after his death. Any complaints pertaining to the alleged misrepresentation of the true value of the deceased's assets cannot be resolved on papers and have no bearing in these proceedings, she is entitled to raise these complainants in the appropriate forum.

[22] Regarding the applicant's maintenance needs, the executor contends that the applicant's claim presented in these proceedings has not been properly quantified. It cannot be determined as to how the amount of R36 440.78 is arrived at as according to her evidence her maintenance needs amount to R28 874.74[10]. It does not end there, her claim includes expenses for rental in the sum of R15 000.00 while she still resides in the common property and rates and taxes in the amount of R2 800.00 which are paid for by the executor. There are also unspecified expenses for "General/other" for R1 313.00 and some "maintenance/services for R2 829.40 and an excessive monthly expenditure of food for R7 313.57. The applicant lives alone, an amount of R5 500.00 should be more than enough to cater for her food expenses. According to the executor,

[10] Para 111-116 of the applicant's founding affidavit.

except for the actuarial report which is based on incorrect information and assumptions that as at 7 December 2022 the applicant was unemployed whereas on her own version, she has been self-employed since September 2021, the applicant has not provided any documentary proof for the alleged expenses.

[23] With regard to her means, her bank statements Annexures “FA31” to “FA33” indicate that from 1 December 2021 to 28 March 2002 she had an available balance of R62 059. 33 and from 1 December 2023 to 25 March 2024 the available balance account was R92 319.56. Her bank statements put paid to her allegations of lack of financial means to cater for own maintenance needs. It is also important to note that no attempt has been made by the applicant to explain the origins of these funds. According to the actuary, the applicant has an investment totalling R237 379.35 which is also not mentioned in the applicant’s papers.

[24] According to the executor, there is no merit to the applicant’s claim it must be dismissed with costs.

[25] In reply, the applicant admits that the amount claimed in the notice of motion in the amount of R36 440.78 is incorrect and states that the correct amount should be R28 874.32 per month. It is also not disputed that the applicant still resides in the common home therefore the rental, rates and taxes expenses can be deducted from her claim however, the expenses for / services should be taken into account as there is no evidence to dispute that she does fix whatever is damaged in the property, in that respect her claim will then be limited to R11 074.32.

[26] It is trite that the court determines the reasonable maintenance needs for a surviving spouse by having regard to the factors enumerated in s3 of the Surviving Spouses Act such as:

"(a) the amount in the estate of the deceased spouse available for distribution to heirs and legatees;

(b) the existing and expected means, earning capacity, financial needs and obligations of the survivor and the subsistence of the marriage; and

(c) the standard of living of the survivor during the subsistence of the marriage and his age at the death of the deceased spouse."

[27] The provisions of s3 place the onus to adduce evidence to establish these factors squarely on the applicant.[11] On the available facts, the executor's evidence that due to cash shortfall in the amount of R273 962.83, the cash value of the deceased estate is not sufficient to satisfy the applicant's claim has not been gainsaid by evidence to the contrary.

[28] On the established facts, the applicant's evidence does not pass muster as far as her claim that she is financially destitute is concerned. Her allegations that her inability to maintain herself is also as a result of having been unemployed since September 2021, precisely a month before the deceased's death is blatantly false as on her own version she has been self-employed since September 2021 which is the same month her previous employment was terminated.

[29] The applicant has rendered inconsistent and unsubstantiated evidence with regard to her expenses. In her notice of motion, she claims R36 440.78. In her founding affidavit she calculated the claim to be an amount of R28 874.32 which she incidentally sought to reduce to an amount of R11 074.32 in argument. I am of the view that the amendment does not even cure these defects as there is no evidence to substantiate the expenses claimed.

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[11] *Friedrich AND Others v Smit NO AND Others* **2017 (4) SA 144** (SCA) para 17.

[30] The applicant's purported lack of means is also not borne out from her bank statements for the period 1 December 2021 to 25 March 2024. What they establish is that barely two months after deceased's passing the applicant had an available balance of R62 059. 33 from then on till a month before launching these proceedings in April 2024 her balance was R92 319.56 which is way more than her monthly maintenance needs. I am thus not persuaded that the applicant has no sufficient income to meet her reasonable maintenance needs.

[31] I have consequently arrived at the conclusion that no proper case has been made out for the granting of the order sought by the applicant. The application ought to be dismissed. There is no reason why the costs should not follow the result.

[32] In the premises, I make the following order:

Order

1. The application is dismissed with costs.

NS DANISO, J

APPEARANCES:

Counsel on behalf of the applicant:	Adv. R. van der Merwe
Instructed by:	Stander & Associates
	BLOEMFONTEIN

Counsel on behalf of the first respondent:	Adv. M.S. Mazibuko
Instructed by:	Amade & Company Incorporated
	BLOEMFONTEIN