IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, MAKHANDA)

Not reportable

CASE NO. 123/2023

In the matter between:

KHAYAKAZI VERONICA MAHLATHI	First applicant
MERRIMAN NKOSOHLANGA MAHLATHI	Second applicant

and

SIPHIWO MPAKO	Respondent

In re:

SANLAM LIFE INSURANCE LIMITED	Applicant

and

KHAYAKAZI VERONICA MAHLATHI	First claimant
MERRIMAN NKOSOHLANGA MAHLATHI	Second claimant
SIVENATHI MPAKO	Third claimant
SIPHIWO GIVEN MPAKO	Fourth claimant
SELINA LOTTER N.O.	Fifth claimant

MASTER OF THE HIGH COURT (MAKHANDA) Sixth claimant

JUDGMENT

LAING J

[1] This matter concerns an interpleader notice. Pursuant to case flow management (CFM), the first and second claimants in the interpleader proceedings were made the first and second applicants for purposes of the determination of the dispute and the fourth claimant was made the respondent. The parties agreed that the matter could be adjudicated on the papers, without need for referral to oral evidence.

Background

[2] The late Dr Fundiswa Mahlati-Mpako ('the deceased') successfully applied to the applicant ('Sanlam') for a life cover policy on or about 14 October 2014. The policy was issued under number 0[...] and took effect from 1 January 2015. No beneficiaries were appointed in terms of the original policy. The deceased passed away on 6 July 2021, resulting in a death benefit of R1 229 255 and a funeral benefit of R122 926 becoming payable.

[3] Sanlam set out a detailed history of the matter in a letter sent to the respondent and the fifth claimant ('the executrix')[1] after the deceased's passing. The deceased had commenced, but not yet finalised, divorce proceedings against the respondent. No children were born during the marriage. On 5 October 2020, the

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[1] The fifth claimant is described in the founding affidavit to the interpleader proceedings as the executrix for the deceased's estate.

deceased completed form 3001E, titled ‘Appointment of nominees for funds’, in terms of which she nominated the first applicant (her sister), the second applicant (her brother), and the third claimant (a foster child) as beneficiaries for a retirement annuity. She failed to insert a policy number. On 19 October 2020, pursuant to the deceased’s telephone conversation with an employee of Sanlam, it became apparent that she had intended to nominate the first and second applicants, as well as the third claimant, as beneficiaries for her existing life cover and not the retirement annuity. The deceased had already nominated the first applicant and the respondent as beneficiaries in relation to the latter. Consequently, on 4 November 2020, the deceased completed form 3000E, titled ‘Appointment of beneficiaries for death and funeral benefits’. She nominated the first and second applicants, as well as the third claimant. The deceased inserted, however, the policy number for her retirement annuity instead of her life cover.

[4] It was Sanlam’s opinion that the contents of forms 3001E and 3000E, together with the telephone conversation, demonstrated that the deceased had indeed intended to appoint the first and second applicants, as well as the third claimant, as beneficiaries regarding her life cover. From subsequent communication with the various parties, it became clear to Sanlam that there were competing claims. This prompted the present application.

[5] The first and second applicants agreed with Sanlam’s description of the history of the matter. They alleged that the deceased and the respondent had experienced marital problems. They referred to the deceased’s last will and testament, executed on 17 September 2019, in terms of which she bequeathed her estate to the first applicant, the third claimant, and a niece in equal shares. No mention was made of the respondent. On 27 November 2019, the deceased obtained an interim protection order against him. She instituted divorce proceedings on 12 December 2019 and obtained a further interim protection order on 18 September 2020. The first and second applicants referred to a recording of the deceased’s telephone conversation with the Sanlam employee, contending that it demonstrated her intention to nominate the first and second applicants, as well as the third claimant, as beneficiaries for her life cover.

[6] The respondent alleged that Sanlam had informed him in or about April 2021 that there were no nominated beneficiaries. The proper forms in that regard had been required before a policy holder passed away. The respondent disputed the first and second applicants' interpretation of the recording, pointing out that, at the time of the deceased's passing, she had failed to submit to Sanlam the necessary forms in terms of which the first and second applicants, as well as the third claimant, were stipulated as beneficiaries. Consequently, the benefits of the life cover had to be paid to the estate.

Issues and legal framework

[7] The issue identified by the parties during the CFM process is straightforward. The court must decide the validity of the parties' respective claims to the benefits payable under the life cover.

[8] The provisions of rule 58 (6) of the Uniform Rules of Court provide the court with a wide discretion. It may adjudicate the claim after considering such evidence 'as it deems fit.' Whereas the first and second applicants contended that there is a factual dispute between the parties, neither the pleadings nor the evidence support this. The parties agree about the history of the matter, the contents of forms 3001E and 3000E, and the deceased's intentions. The crux of the matter is the effect of the deceased's having stipulated the policy number for her retirement annuity, rather than her life cover. This is a legal, not a factual, dispute.

[9] At the heart of the matter is the interpretation to be given to the contract concluded between the deceased and Sanlam, as purportedly amended by the former to provide for the appointment of beneficiaries. The parties referred to the oft-quoted decision in *Natal Joint Municipal Pension Fund v Endumeni Municipality*,[2] where the Supreme Court of Appeal, per Wallis JA, held as follows:

'Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context

[2] 2012 (4) SA 593 (SCA).

provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.'[3]

[10] The above principles were neatly summarised, subsequently, in *Betterbridge (Pty) Ltd v Masilo and Others NNO*,[4] where Unterhalter AJ confirmed that:

'[a]s the Supreme Court of Appeal has made clear, the interpretation of language, including statutory language, is a unitary endeavour requiring the consideration of text, context, and purpose.'[5]

[11] The above principles constitute the basic legal framework within which the dispute must be decided.

Discussion

[12] In the present matter, the parties were *ad idem* that the 'General Plan Provisions' to the policy encapsulated the relevant contractual terms for the appointment of beneficiaries. To that effect, Sanlam indicated that benefits would be paid either to the policy holder or to his or her estate. The exception to this was, however, recorded as follows:

' . . . you [ie the policy holder] may appoint one or more beneficiaries to receive the benefits payable at your death. We will pay the benefits to a beneficiary only if the latter accepts the

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[3] Para 18.
[4] 2015 (2) SA 396 (GP).
[5] Para 8.

appointment as beneficiary. However, a beneficiary can only accept the appointment after your death.'

[13] The provisions continued:

'You may cancel or change the appointment of a beneficiary at any time. The appointment, cancellation, or change must be in writing and signed by you, and must reach our head office before your death.'

[14] The respondent's argument is straightforward: the deceased failed to submit a valid nomination form, which would otherwise have resulted in the appointment of the beneficiaries in question. In that regard, form 3001E was for her retirement annuity and contained no reference to her life cover. When the deceased attempted to rectify the situation, she completed form 3000E for her life cover but referred to the policy number for her retirement annuity.

[15] The 'General Plan Provisions' stipulate three requirements for the appointment of a beneficiary: (a) it must be done in writing; (b) it must be signed by the policy holder; and (c) it must reach Sanlam's head office before the policy holder's death. The provisions make no mention of either form 3001E or form 3000E. They do not indicate that the appointment would be invalidated if the policy holder completed and submitted an incorrect form or inserted an incorrect policy number (or none). Returning to *Endumeni*, Wallis JA warned as follows:

'[j]udges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible, or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The "inevitable point of departure is the language of the provision itself,"[6] read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'[7]

[6] Per Lord Neuberger MR, in *Re Sigma Finance Corp* [2008] EWCA Civ 1303 (CA), para 98, as quoted by Wallis JA.
[7] *Endumeni*, para 18.

[16] The respondent contended that it was a requirement for the appointment of a beneficiary that the policy holder submit a valid nomination form. This is not, however, apparent from the language used. If a policy holder stipulated in writing the identity of a beneficiary, signed the document, and ensured that it reached the head office before his or death, then that was sufficient to have given effect to the provisions in question. To add the requirement indicated by the respondent would be to stray into the territory against which Wallis JA warned. It would amount to making a contract for the parties other than the one concluded. In *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others*,[8] the Supreme Court of Appeal, per Unterhalter AJA, cautioned that:

' . . . the triad of text, context, and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words, and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitute the enterprise by recourse to which a coherent and salient interpretation is determined.'[9]

[17] The court went on to hold that:

' . . . *Endumeni* is not a charter for judicial constructs premised upon what a contract should be taken to mean from a vantage point that is not located in the text of what the parties in fact agreed. Nor does *Endumeni* license judicial interpretation that imports meanings into a contract so as to make it a better contract, or one that is ethically preferable.'[10]

[18] There is, quite simply, nothing in the text of the 'General Plan Provisions' to suggest that the parties had intended the appointment of beneficiaries only to be given effect upon the submission of a valid nomination form, completed in full and correct in every respect. There were three express requirements. None of them can be interpreted as having stipulated that form 3000E (and only that form), with the correct policy number inserted, had to be submitted to result in the appointment of the beneficiaries and the concomitant duties imposed upon Sanlam.

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[8] 2022 (1) SA 100 (SCA).
[9] Para 25.
[10] Para 26.

[19] The context must not be overlooked. The deceased and the respondent had experienced marital problems. She had excluded him from her last will and testament and later obtained an interim protection order; this had been followed by the commencement of divorce proceedings and a further interim protection order. It is indisputable, from the recording, that the deceased had intended to appoint the first and second applicants, as well as the third claimant, as beneficiaries under her life cover. The following extract from the recording is essential to a proper understanding of the context within which the forms were submitted:

'DR MAHLATI-MPAKO:	Just before I forget to tell you, my dear, I did not have any beneficiaries on this one [ie the life cover]. And then I think sometime this month or September, I did send the beneficiary form [ie 3001E].
MS BENTING:	Let us have a look, let us have a look at that as well. Yes, you sent the form, that was the 7 October. We've got it here. It was an email that you sent us.
DR MAHLATI-MPAKO:	Okay.
MS BENTING:	Let me just open that form for you as well. Just waiting for the form to open . . ., because I can see they have created a case with regard to that. *I see the policy number was not completed on the form, but that is no problem.* I am going to put a note on this, that it pertains [to] the policy as well.'[11]

[20] The Sanlam employee was fully aware that the deceased had failed to include the policy number on form 3001E. That had, however, not been a problem. The conversation continued:

'MS BENTING:	Okay, I am also going to give you the reference number pertaining to that.
DR MAHLATI-MPAKO:	Okay.
MS BENTING:	I just want to go in there quickly. So, it should be placed on this policy number, hey?

[11] Sic, emphasis added.

DR MAHLATI-MPAKO: Yes, the life cover.

MS BENTING: The life cover.

DR MAHLATI-MPAKO: Yes.

MS BENTING: Okay, perfect. Let me just make sure of that form again. *Okay, the form you completed [ie 3001E] is the incorrect form. The form completed is for retirement annuities*.

DR MAHLATI-MPAKO: Oh, no.

MS BENTING: So . . .

DR MAHLATI-MPAKO: Not that one. I was referring to the life cover because they said on my life cover, on the policy there, there are no beneficiaries.

MS BENTING: I can see that on your life cover there are no beneficiaries, yes. *But now the problem is the form that you completed, it is for a retirement annuity*.

DR MAHLATI-MPAKO: No, my dear. The retirement annuity, I think I have got two beneficiaries, my sister and my husband.

DR BENTING: No, correct. Fundiswa, what I am saying is *the form is the wrong form that was completed*.

DR MAHLATI-MPAKO: Okay.

DR BENTING: *I need to send you the right form*.

DR MAHLATI-MPAKO: Please, my dear.

MS BENTING: I am going to email that through to you, I have got your email details. Let me do that for you first before I go through to the specialist. I just want to get that to you — and I am going to put the right policy number on the email that I am sending you as well.

DR MAHLATI-MPAKO: Okay.'[12]

[21] The employee required the 'right form' before she could complete the appointment of the beneficiaries nominated by the deceased for her life cover. She

[12] Sic, emphasis added.

would provide to the deceased the correct policy number for insertion on the form. The conversation continued:

‘MS BENTING:	I am almost finished. I am sending that email to you. Okay, that form is now on its way through to you. I also want place a note on the previous document that you sent to say it is the incorrect form.
DR MAHLATI-MPAKO:	Okay.
DR BENTING:	However, I have sent you now the right form. I will tell them that you are completing that and sending that back to us.
DR MAHLATI-MPAKO:	Okay.
MS BENTING:	I am going to give you the reference number for this case that was opened already for the change of beneficiary. Please take down the following reference.’

[22] The employee then provided the deceased with a reference number. Importantly, the former thereupon informed the latter as follows:

‘MS BENTING:	The case will be finalised by 27 October *on condition that you send us now the correct form*.
DR MAHLATI-MPAKO:	Okay.
MS BENTING:	Okay, that is that. . . .’[13]

[23] Whereas the submission of the ‘right form’ was, from the employee’s perspective, a necessary element for the completion of the appointment, it was never a contractual requirement. If anything, then form 3001E and form 3000E were created for the convenience of the parties. They were designed to facilitate, not make, the desired appointment. Crucially, it is common cause that the deceased indeed submitted the correct form (3000E) but incorrectly inserted the policy number for her retirement annuity. Neither in terms of the ‘General Plan Provisions’ nor the recording would this have invalidated the appointment. The purpose of the three

[13] Sic, emphasis added.

requirements discussed previously was undoubtedly to ensure that the identities of the beneficiaries, as nominated by the policy holder, were clearly conveyed to Sanlam prior to the time of death. This was done. The deceased's insertion of the incorrect policy number was an immaterial error that pertained to the administration of the process, not the creation of rights and duties under the contract.

[24] The respondent argued that the present matter involved a *stipulatio alteri*. In other words, the deceased's appointment of the beneficiaries in question gave rise to a stipulation of rights in their favour.[14] The absence of a valid nomination form, contended the respondent, prevented the beneficiaries from becoming parties to the underlying contract. For the reasons already discussed, the court cannot agree. The form eventually submitted by the deceased (3000E) was sufficient to have demonstrated a clear intention to have benefitted the beneficiaries. Nothing more turns on the argument.

Relief and order

[25] The terms of the contract concluded between the deceased and Sanlam do not support the respondent's argument. There was no requirement to the effect that a valid nomination form (3000E) was to have been completed and submitted before the appointment of the beneficiaries could have been given effect. The context of the matter was the estrangement between the deceased and the respondent and the former's intention to have conferred death benefits and funeral benefits upon the beneficiaries in question. All that Sanlam required was for the deceased to have nominated the beneficiaries in writing, signed the relevant document, and submitted it to the head office before her passing. The relevant provisions indicate that Sanlam merely had to be certain of the identities involved, nothing more.

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[14] The erstwhile Appellate Division restated the relevant principles pertaining to a *stipulatio alteri* in *Total South Africa (Pty) Ltd v Bekker NO* 1992 (1) SA 617 (A), at 625D–F. See, too, *Sage Life Ltd v Van der Merwe* 2001 (2) SA 166 (W), at 168E–H.

[26] Consequently, the court is persuaded that the deceased satisfied the requirements, notwithstanding her insertion of the incorrect policy number. The first and second applicants, as well as the third claimant, are entitled to the proceeds of the deceased's life cover and the costs of the proceedings. Regarding the latter, the first and second applicants sought an order to the effect that these be paid from the proceeds. There is no reason why not to do so.

[20] In the circumstances, the following order is made:

(a) the first and second applicants, as well as the third claimant, are entitled to the proceeds of the life cover held by the late Dr Fundiswa Mahlati-Mpako under number 0[...] and Sanlam is directed to make payment accordingly; and

(b) the costs incurred by the first and second applicants, as well as the third claimant (if any), including those in relation to all case flow management attendances, are to be recovered on a party-and party scale (scale B) from the proceeds.

JGA LAING

JUDGE OF THE HIGH COURT

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