



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION MAHIKENG**

Not reportable

CASE NO: 4133/2025

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates: **NO**

In the matter between:

GERHARDUS VAN DER WESTHUZEN N.O

First Applicant

(In his capacity as the executor in the estate of the late

I[...] J[...] H[...], estate number

2024/2023)

GERHARDUS VAN DER WESTHUZEN N.O

Second Applicant

(In his capacity as the trustee of the

IJ Testamentary Trust, M[...](1)(M)

and

THE MASTER OF THE NORTH WEST HIGH

First

Respondent

COURT (estate number: 2024/2023)

A[...] H[...]

(Identity Number: 6[...])

Second Respondent

Coram: Matlhape AJ

Heard: 23 January 2026

Delivered: Judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII. The date and time for handing down of the judgment are deemed to be 16h00 on 06 May 2026.

Summary: Section 35 (10) of the Administration of Estates Act 66 of 1965 – objection against first and final Liquidation and Distribution Account related to the maintenance claim of an ex-spouse which had been allowed by the Master– Duty of an estate to support an ex-spouse after divorce where parties had entered into a settlement agreement regarding maintenance. Divorce Settlement agreement neither expressly states nor tacitly imply that the duty of support shall extend beyond the death of the deceased – The court seized with such an application to consider the matter afresh – Master’s decision is set aside.

ORDER

1. The decision of the first respondent dated 14 April 2025, upholding the second respondent’s objection to the first and final Liquidation and Distribution Account in the estate of the late I[...] J[...] H[...], is set aside and substituted with the following:
 - (a) The second respondent’s objection to the omission of her claims for future maintenance and future medical expenses from the Liquidation and Distribution Account is dismissed.
 - (b) It is declared that the second respondent’s claims for future maintenance and future medical expenses under clause 2 of the

deed of settlement concluded on 4 July 2018 and made an order of court on 13 August 2018 are not enforceable against the deceased estate.

2. The executor is directed to include in the Liquidation and Distribution Account any arrear maintenance which had accrued and remained unpaid as at the date of the deceased's death, including the amount of R36 000.00, if established.
3. Each party to pay its own costs.

JUDGMENT

MATLHAPE AJ

Introduction

[1] This is an application in terms of section 35(10) of the Administration of Estates Act 66 of 1965 ("The Estates Act"). The applicants seek to set aside the decision of the Master of the High Court, Mahikeng, dated 14 April 2025 in terms of which the Master upheld the second respondent's objection to the first and final Liquidation and Distribution Account (L and D Account) in the estate of the late I[...] J[...] H[...] ("the deceased"). The objection related to

maintenance claims lodged by the second respondent, the deceased's former wife, which claims had been rejected by the executor and omitted from the L and D Account.

Contextual Background

[2] The second respondent and the late I[...] J[...] H[...] ("the deceased") were married in 1989 out of community of property, subject to the accrual system. During the subsistence of the marriage, the parties jointly acquired and developed farming operations, to which the second respondent alleges she made substantial financial and personal contributions over several years.

[3] The second respondent was employed as a teacher. At various stages, received pension payouts which she avers were invested into the farming enterprise. She further contends that she contributed an inheritance received from her late mother-in-law towards the family's farming activities. In addition, she managed the farming operations during periods when the deceased was incapacitated, including after his brain operation in 2009.

[4] The parties divorced in 2018. As part of the divorce proceedings, they concluded a deed of settlement on 4 July 2018, which was subsequently made an order of court on 13 August 2018. In terms of that agreement, the second respondent elected not to pursue her accrual claim. In exchange, the deceased undertook to pay her maintenance in the amount of R12 000.00 per month,

together with her reasonable and necessary medical expenses, including medical-aid contributions.

[5] The settlement agreement provided that such maintenance would endure until the occurrence of one of the following events , being, either the death of the second respondent, her remarriage or her cohabitation. The agreement, however, did not expressly stipulate that the maintenance obligation would survive the death of the deceased or bind his estate.

[6] The deceased passed away on 30 March 2023. Following his death, the first applicant, in his capacity as executor, proceeded to prepare the first and final L and D Account. In doing so, he rejected maintenance claims lodged by the second respondent on the basis that such claims were not enforceable against the deceased estate.

[7] The second respondent lodged two principal claims against the estate, being, a claim for future maintenance, calculated with reference to her life expectancy and based on the monthly maintenance stipulated in the settlement agreement and a claim for future medical expenses, similarly calculated on a prospective basis. She had also lodged a claim for maintenance on behalf of her son. There is no objection regarding the son's claim.

[8] The executor rejected the second respondent's claims and excluded them from the L and D Account. Aggrieved by this, the second respondent launched an objection to the L and D Account in terms of the Estates Act.

[9] On 14 April 2025, the Master upheld the second respondent's objection and directed that the L and D Account be amended to include the maintenance claims. The Master reasoned, inter alia, that in common law contractual obligations are not automatically terminated by the death of a party and that the second respondent was entitled to rely on the settlement agreement for such claims.

[10] Likewise, the applicants, aggrieved by that decision, instituted the present proceedings seeking to set aside the Master's decision and to substitute it with a determination that the second respondent's claims for future maintenance and medical expenses are not enforceable against the deceased estate.

[11] The second respondent filed a notice to abide the decision of this Court, together with an explanatory affidavit wherein she maintains that she has a legitimate interest in the estate and should not be mulcted in costs, given her financial circumstances and the basis upon which she lodged her objection.

Issue For Determination

[12] The crisp issue is whether, on a proper interpretation of the Deed of Settlement, the Divorce Act 70 of 1979 and the common law, the deceased

estate remains liable for the deceased's post-divorce maintenance obligations after his death.

Legal Framework

[13] Section 35(10) of the Administration of Estates Act provides that:

“Any person aggrieved by any such direction of the Master or by a refusal of the Master to sustain an objection so lodged, may apply by motion to the Court within thirty days after the date of such direction or refusal, or within such further period as the Court may allow, for an order to set aside the Master's decision and the Court may make such order as it may think fit”.

[14] Section 35(10) of the Act permits any person aggrieved by a direction of the Master concerning a L and D Account to apply to court for relief. Once such a matter comes before a court, such a court is not confined to a narrow review of the Master's reasoning. The court should consider the matter afresh and may make such order as it considers just and equitable, considering the circumstances of the case.

[15] The nature of proceedings under section 35(10) has been authoritatively settled. In **Friedrich v Smit NO and Others**¹ the Supreme Court of Appeal held that such proceedings are in the nature of an appeal in the wide sense. At paragraph 14, the Court stated:

¹ 2017 (4) SA 144 (SCA)

“The power conferred by s 35(10) of the Estates Act on the Court is, as the court a quo stated, an appeal in the wide sense in that ‘the Court can consider the matter afresh and may make any order it deems fit’. (See *Meyer v Iscor Pension Fund* 2003 (2) SA 715 (SCA) at 725I.) The decision of the Master referring the matter to court for the determination of quantum did not mean that the court was confined to the determination of the quantum. It had to apply its mind to the matter afresh. Once it was found that Mrs Friedrich did not lead any evidence to show that she was entitled to reasonable maintenance, that should have been the end of the matter”.

[16] Section 7(1) of the Divorce Act provides that:

“In the absence of an order made in terms of subsection (1) with regard to the payment of maintenance by the one party to the other, the court may, having regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, their conduct in so far as it may be relevant to the breakdown of the marriage, an order in terms of subsection (3) and any other factor which in the opinion of the court should be taken into account, make an order which the court finds just in respect of the payment of maintenance by the one party to the other for any period until the death or remarriage of the party in whose favour the order is given, whichever event may first occur.”

[17] consequently, the above section enjoins a court granting a decree of divorce to make an order in accordance with a written agreement between the parties regarding maintenance, where a settlement agreement exists.

[18] The Supreme Court of Appeal considered this provision directly in **Kruger NO v Goss and Another**². The issue there was whether an order for rehabilitative maintenance, pursuant to a decree of divorce, is enforceable by a spouse against her former husband's deceased estate. The SCA held that such a claim was not enforceable unless the parties had expressly or tacitly agreed that the deceased estate would remain bound after death. The Court also reaffirmed the common-law principle that the reciprocal duty of support between spouses is an incident of the matrimonial relationship. When the marriage is terminated by death, that duty ordinarily comes to an end. The Maintenance of Surviving Spouses Act 27 of 1990 created a statutory claim for surviving spouses in certain circumstances, but that statute does not extend to former spouses.

[19] Importantly, the SCA held that a spouse may agree to bind his or her deceased estate to pay maintenance after death, but that such an intention must be apparent from the agreement. The Court stated that "a spouse is free to agree to bind his/her estate to pay maintenance after death", but found that this had not occurred in that case.

Analysis

[20] The second respondent's claim is founded entirely upon clause 2 of the Deed of Settlement. That clause provides that maintenance is payable until the second respondent's death, remarriage or cohabitation. It does not provide that

² [2009] ZASCA 105; 2010 (2) SA 507 (SCA).

the deceased's estate shall remain liable after his death. Nor does it contain language indicating that the obligation was intended to survive the deceased's death.

[21] The fact that the maintenance was payable until the second respondent's death does not, without more, mean that the deceased estate became bound. That wording identifies the terminating events relating to the beneficiary spouse. It does not expressly or by necessary implication impose liability on the deceased estate.

[22] The distinction is material. An obligation binding the estate after death is a serious limitation on freedom of testation and on the rights of heirs, dependants and other creditors. Such an obligation should not lightly be inferred. Had the parties intended that the estate would remain liable for maintenance and medical expenses after the deceased's death, they could and should have said so in clear terms.

[23] The Master appears to have approached the matter on the broad proposition that contractual obligations do not automatically terminate on death. That proposition, while generally correct in ordinary contractual matters, does not resolve the present dispute. The claim in issue is not an ordinary commercial debt. It is a post-divorce maintenance obligation rooted in the Divorce Act and in the former matrimonial relationship.

[24] As stated herein above, the effect of death on post-divorce maintenance obligations was considered in **Kruger**, where the Court recognised that parties are not precluded from extending such liability beyond death, but that clear intention is required. At paragraph 16, the Court held:

“Of course a spouse is free to agree to bind his/her estate to pay maintenance after death. That is not what occurred in the present case. To allow maintenance claims of the kind encountered here against deceased estates might have all sorts of undesirable consequences. The legitimate claims to maintenance of minor children might be diminished or excluded. And, the rights of beneficiaries might be implicated. Section 3(b) of the MSSA provides that a claim for maintenance of a surviving spouse shall have the same order of preference against the estate of the deceased spouse as a claim for maintenance of a dependent child of such deceased person and that in the event of competing claims, each shall, if necessary be reduced proportionately. Theoretically, a claim for maintenance such as the present one could compete with the claim of a surviving spouse and with claims by dependent children and beneficiaries. In the absence of legislative regulation the permutations and uncertainties abound.

[25] The second respondent’s personal circumstances and her alleged contributions to the farming operations during the marriage may evoke sympathy. She states that she contributed pension payments as well as the inheritance monies towards the family farming activities and that she agreed not to enforce the accrual system on condition that the deceased would pay

maintenance. Those considerations, however, cannot create a claim against the deceased estate where the deed of settlement itself does not do so.

[26] If the second respondent compromised an accrual claim or other proprietary claim during the divorce, her rights are determined by the terms of the settlement agreement. The court cannot now recast that settlement into a post-mortem estate obligation where the agreement contains no such provision.

[27] The claim for future medical expenses stands on the same footing. It is ancillary to the maintenance clause and was part of the deceased's personal maintenance obligation during his lifetime. In the absence of an express or tacit term binding the estate, the claim for future medical-aid premiums and medical expenses is not enforceable against the estate.

[28] A different conclusion would create uncertainty in the administration of deceased estates. It would permit open-ended maintenance claims by former spouses to compete with the claims of heirs, creditors, surviving spouses and dependent children without clear statutory regulation or contractual wording. That is precisely the concern identified by the Supreme Court of Appeal in **Kruger**.

Arrear Maintenance

[29] A distinction must, however, be drawn between future maintenance and arrear maintenance which had accrued before the deceased's death. Any

maintenance instalment which fell due during the deceased's lifetime, and remained unpaid at the date of death, constitutes an accrued debt. Such a debt is enforceable against the estate.

[30] On the facts placed before this Court, the applicants accept that arrear maintenance in the amount of R36 000.00 may be included in the Liquidation and Distribution Account, subject to the second respondent accepting liability for the costs occasioned by the reframing and re-advertising of the account. That concession is properly made. The arrear amount is distinguishable from the claim for future maintenance.

Conclusion

[31] I am satisfied that the Master erred in upholding the second respondent's objection insofar as it related to future maintenance and future medical expenses. The deed of settlement does not expressly or tacitly bind the deceased estate. The common law, the Divorce Act and the binding authority of **Kruger** all point to the same conclusion, that, the second respondent's claim for future maintenance and future medical expenses is not enforceable against the deceased estate.

[32] The application must therefore succeed.

Costs

[33] It is trite that the issue of costs is in the discretion of the court and that the court must exercise that discretion judicially having regard to the circumstances of each case. In this matter, the Applicants are the ones who approached the court as they are the parties aggrieved by the decision of the First Respondents. Therefore, the Second Respondent had a valid and lawful interest in the matter, hence she abides the decision of the court. Therefore, there shall be no order as to costs against the second respondent, she having filed a notice to abide and having a legitimate interest in the administration of the estate.

Order

[34] Consequently, the following order is made:

1. The decision of the first respondent dated 14 April 2025, upholding the second respondent's objection to the first and final Liquidation and Distribution Account in the estate of the late I[...] J[...] H[...], is set aside and substituted with the following:
 - a. The second respondent's objection to the omission of her claims for future maintenance and future medical expenses from the Liquidation and Distribution Account is dismissed.
 - b. It is declared that the second respondent's claims for future maintenance and future medical expenses under clause 2 of the

deed of settlement concluded on 4 July 2018 and made an order of court on 13 August 2018 are not enforceable against the deceased estate.

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3. Each party to pay its own costs.

MATLHAPE B

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Appearances:

Judgment reserved: 23 January 2026

Judgment delivered: 06 May 2026

For the applicants: Advocate CD Pienaar SC

Instructed by: Nienaber & Wissing Attorneys
Mahikeng