

Constitutional Court judgement dealing with permanent life partnerships

The Constitutional Court has recently published a judgement which has significant implications for people (both gay and heterosexual) who are cohabiting without marriage and one of the parties dies. What the Court ruled is the following;

1. The first question to be determined (as this will affect the entire applicability of the judgement) is whether it can be said that there was a “permanent life partnership” between the parties. This concept is not defined but the Court quoted with approval previous judgements which laid out the kind of evidence which would need to be produced to determine the issue. Much of this is common sense but the most central and critical evidential issue is whether the parties by their conduct had effectively accepted a reciprocal duty of financial support.
2. If this latter aspect can't be proved to the Court, the judgement is of no significance. If such a relationship is proved to the Court (in other words that there was a permanent life partnership which included the reciprocal duty of financial support) the following now applies;
 - a. If the deceased party dies leaving a will which does not adequately address the needs of the surviving party to the permanent life partnership, that party is entitled to make a claim for financial support against the estate of the deceased. Such claim ranks before the rights of all the other beneficiaries who might have been nominated in the deceased's will.
 - b. If the deceased party dies without a will the surviving party to the permanent life partnership will be viewed as a beneficiary in the estate of the deceased in the same way as spouses currently are. If there are no other beneficiaries, the surviving party will inherit the entire estate. If there are other beneficiaries, then a certain portion of the estate is allocated to the survivor. Having said this if the portion allocated to the survivor is insufficient to meet the survivor's, needs the survivor will still have the rights to submit a claim for financial support against the estate which will rank before the claims of all beneficiaries.

As some of you will no doubt be curious about exactly how the court will decide upon the existence of a permanent life partnership which included the reciprocal duty of support, here is the full extent of the issues which will guide the court in making the decision. The court will take into account evidence relating to some (but not necessarily all) of the following issues namely the respective ages of the partners; the duration of the relationship ; whether the parties have had children together; whether the partners took part in a ceremony manifesting their intention to enter into a permanent partnership, what the nature of that ceremony was and who attended it; how the partnership is viewed by the relations and friends of the partners; whether the partners share a common abode; whether the partners own or lease the common abode jointly; whether and to what extent



the partners share responsibility for living expenses and the upkeep for the joint home; whether and to what extent one partner provides financial support for the other; whether and to what extent the partners have made provision for one another in relation to medical, pension and related benefits; whether there is a written partnership agreement and what its contents are; and whether and to what extent the partners have made provision in their wills for one another.

For the academically inclined herewith a link to the full judgement. Click below:

<https://collections.concourt.org.za/.../%5bJudgment%5d...>

This has been written to provide basic information to the reader. If decisions are going to be made based on its contents, please consult your attorney before doing so.

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