Can partners in a permanent opposite-sex life partnership inherit from each other?

Introduction

In what may be easily be dubbed as a landmark ruling, the Western Cape High Court ruled that *section* 1(1*)* of the *Intestate Succession Act, 81 of 1987* (hereinafter referred to as the "*Intestate Succession Act*"), be declared unconstitutional, and invalid insofar as it excludes the surviving life partner in a permanent opposite- sex life partnership from inheriting in terms of this Act.

Prior to this ruling, only same-sex couples were entitled to claim a life partnership, which effectively afforded both parties similar status as married couples for certain legal rights.

This included the right to intestate succession and the maintenance of the surviving partner, should the relationship be terminated by death. For opposite-sex couples, however, these rights were only afforded to partners in a valid civil or customary law marriage.

Background

In this matter, the Applicant, Miss Bwanya, met the late Mr Ruch in February 2014. The couple were in a permanent opposite-sex life partnership when he died without leaving a valid will.

They started living together in his house in June 2014. Friends of the deceased testified at the hearing of this matter that Mr Ruch treated Miss Bwanya as his wife.

Further testimony was given by the deceased's friends that the deceased made plans for the two of them to travel to Zimbabwe, (being Miss Bwanya's country of origin), to start lobola negotiations, and prepare a wedding with Miss Bwanya's family.

Documentary proof was also submitted to the Court showing that the deceased

kept diary entries which showed the couple had intentions of having children in future, and also start a business together.

It was clear to the Court's mind that Miss Bwanya contributed a level of love, care, emotional support and companionship to the deceased and by extension the domestic life partnership, illustrating a duty of reciprocal support the parties had to one another.

Mr Ruch died in April 2016, and Miss Bwanya lodged claims against his estate as intestate heir as Mr Ruch's spouse, and under section 2 of the *Maintenance of Surviving Spouses Act 27 of 1990 (hereinafter referred to as the "Maintenance of Surviving Spouses Act").* She also sought an order be made wherein section 1(1) of the *Intestate Succession Act* be declared as unconstitutional, and invalid insofar as it excludes the surviving life partner in a permanent opposite-sex life partnership from inheriting in terms of this Act, and that the definitions of "survivor", "spouse" and "marriage" in the Maintenance of Surviving Spouses Act be declared unconstitutional and invalid insofar as they exclude partners in permanent opposite-sex life partnerships from claiming maintenance in terms of the Act.

Application of the Law

According to the *Intestate Succession Act*, and *Maintenance of Surviving Spouses Act,* opposite-sex life partners cannot inherit or claim maintenance respectively, as they are not considered spouses in terms of these pieces of legislation. This right of inheritance, however, has been awarded to same-sex life partners.

The Court held that the failure to include the spouses of opposite-sex couples from inheriting intestate where there was no will, was discriminatory and unconstitutional.

Interestingly, the Court remarked on how certain partners in a long term committed relationships are not keen in entering the institution of marriage, and should therefore not be prejudiced for making such decisions, and therefore the intention to get married should not be a factor in the outcome of this decision.

Decision of the Court

The Court ruled in favour of Miss Bwanya and declared *section 1(1) of*

the Intestate Succession Act unconstitutional, and invalid insofar as it excludes the surviving life partner in a permanent opposite-sex life partnership from inheriting in terms of this Act.

In other words, heterosexual life partners will now be able to inherit from each other without officially being married

Dealing with the Maintenance of Surviving Spouses Act, the Court held that it is bound by the decision of the Constitutional Court wherein the apex Court held in *Volks NO v Robinson and Others*, that the exclusion of a claim between heterosexual life partners under the *Maintenance of Surviving Spouses Act*, to cases where a legal duty of maintenance existed, is not unconstitutional.

Coming into Effect

Unfortunately, this decision has not come into effect just yet. The judgement is still subject to confirmation by the Constitutional Court in terms of section 172(2)(a) of the Constitution.

Cohabitation Agreements

Cohabitation can be described as an act by an unmarried couple living together in a long-term relationship similar to that of a marriage.

Partners in long-term partnerships may consider entering into cohabitation agreements to ensure that their rights to inherit from each other's estates are protected upon termination of the partnership.

The agreement will not constitute a marriage, and the cohabitation agreement will only be enforceable between the parties to the agreement and not enforceable against third persons.

A cohabitation agreement must not contain provisions that are immoral or unlawful. Also, should a dispute arise regarding the application and interpretation of the agreement a court may be approached for guidance and intervention.

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