

Court Declares Sale Of The Deceased's Porsche Unlawful

A legal dispute over a classic Porsche 911 T 2.2 from the estate of the late James Ernest Frost was the subject of the *Myburgh NO v Moolman [2025] ZAGPPHC 424* case.

In this case, the executor of the estate, Mr. Myburgh, challenged the purchaser's possession of the vehicle. The core of the dispute was a sale that the executor argued was unauthorised and possibly fraudulent.

The court heard that WhatsApp negotiations mentioned a purchase price of R300,000. However, the written agreement only showed R75,000 was paid into the estate's account. The remaining balance was supposedly a private arrangement with the heirs. Mr. Myburgh refused to sign the agreement, but the respondent still took the Porsche.

Acting Judge Hershensohn determined that the arrangement was invalid because it circumvented the executor's authority as defined by the *Administration of Estates Act 66 of 1965*. The court also found the agreement lacked the necessary contractual intent. As a result, the court ruled that the respondent had no legal right to the vehicle and ordered its immediate return to the estate. The respondent was also ordered to pay for the legal costs.

The case provides a clear lesson on the proper handling of a deceased person's property.

Under the *Administration of Estates Act*, an executor is the only person legally authorised to manage a deceased estate. Their job is to ensure the estate's assets are appropriately handled and all debts are paid before anything is sold or distributed.

Here's how it works:

- **Public Notice:** The executor must place a notice in the Government Gazette and local newspapers. This notice provides creditors with a specific timeframe to submit any claims against the estate. This step is

crucial to make sure all debts are accounted for.

- **No Early Sales:** The Act is clear that no property from the estate can be sold until this notice period has expired. This rule protects everyone, especially creditors, by ensuring assets aren't sold off before their claims can be addressed.
- **Controlling the Assets:** Anyone who has a deceased person's property must hold onto it until an executor is formally appointed. This prevents assets from being improperly taken or sold.
- **Formal Accounting:** The executor must prepare a detailed "liquidation and distribution account" that lists all the estate's assets and liabilities. This account must be approved by the Master of the High Court.

The *Myburgh case* is a stark reminder that these rules are not optional. The court found that the attempted sale of the Porsche bypassed the executor's authority and was therefore unlawful. The lesson is simple: to avoid costly legal disputes and ensure a deceased estate is settled correctly, all parties—executors, heirs, and potential buyers—must follow the strict legal process laid out in the *Administration of Estates Act*. Doing so protects the interests of all parties involved, from creditors and beneficiaries.

The case also illustrates that, in many cases, it is better to nominate an impartial, objective, and experienced person as executor instead of a family member.

Volker Krüger