

Court Helps A Wife Who Does Not Inherit From Her Deceased Husband

Take the following set of facts.

- The deceased and his wife were married on 5 July 1980. She was a registered pharmacist with a stable, higher income, while his earnings were irregular. Throughout their marriage, she funded household expenses and supported his business ventures. In 1984, she sold her pharmacy for R155,000 and gave the proceeds to him. Her savings, including the pharmacy sale, were used to purchase their first home.
- The deceased invested her funds in a plastic container business and a townhouse development, both of which were profitable. He deposited proceeds from farm sales into a money market account in his name, while she continued covering living costs. She also managed the household, raised their three children, and assisted with his farming. After his melanoma diagnosis, she cared for him and handled medical transport for 11 years.
- At his death, the deceased's estate was significantly larger, partly due to his use of her funds for joint and personal expenses. In 2023, he transferred two of her properties—worth R800,000—into his name without compensating her.
- His will left the residue of his estate to a trust benefiting child welfare initiatives managed by the Gereformeerde Kerk, Bethlehem.

These were the principal facts before the Court in the matter of *IV v Puchert NO [2025] 4357-24 (ECMK)*, where the applicant (the wife) brought an application under Section 7(3) of the *Divorce Act, 1979*, seeking a redistribution of the deceased husband's estate.

In support of her claim, the applicant relied on the precedent set in *EB v ER NO*

and a Similar Matter 2024 (2) SA 1 (CC), in which the Constitutional Court held that the Section 7(3) redistribution remedy applies to all marriages out of community of property, irrespective of whether they were dissolved by death or entered into after 1 November 1984.

In the *Puchert case*, the Court ruled in favour of the applicant, awarding her 65% of the deceased's estate assets—she had initially sought 100%—as a just and equitable redistribution based on the facts presented.

This judgment provides a significant remedy for a surviving spouse who:

- was married out of community of property without the accrual system (also if the marriage was concluded after 1984);
- does not inherit under the deceased spouse's will; and
- made substantial contributions to the growth of the deceased's estate.

Such a spouse may apply for a redistribution order under Section 7(3) of the Divorce Act.

Alternatively, the surviving spouse may consider a maintenance claim under the Maintenance of Surviving Spouses Act, 1990, depending on the circumstances.

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