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IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter of

THE COMMISSIONER FOR INLAND REVENUE
.....appellant

and

THE SOUTHERN LIFE ASSOCIATION LIMITED
.....respondent

CORAM: CORBETT, TRENGOVE , BOTHA, JJA, GALGUT
et NESTADT, AJJA.

DATE OF HEARING: 12 May 1986

DATE OF JUDGMENT: 26 August 1986

J U D G M E N T

GALGUT AJA:

This is an appeal against the judgment of BURGER
J sitting in the Cape Provincial Division. The judgment
is reported, see Southern Life Association Ltd v Commissioner

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for Inland Revenue 1985 (2) SA 267 (C). The facts are very fully set out at pp 268-69 of that judgment. I shall refer to it as the reported judgment.

The issue before this Court is the same as the issue before the Court a quo. I will therefore set out only so much as is necessary to facilitate the reading of this judgment and will confine myself to the main submissions made in this Court.

The respondent company was previously known as Anglo American Life Assurance Co Ltd ("AAL"). It is a registered insurer in terms of the Insurance Act 27 of 1943 ("the Act"). When it was still named AAL respondent entered into a written agreement with another registered insurer, Southern Life Association ("SLA"). The agreement contained, inter alia, a scheme for the amalgamation of the life insurance business of SLA and respondent. The amalgamation was to be effected by

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transferring the assets and obligations of SLA to respondent. In terms of sec. 25(1) of the Act the Cape Provincial Division confirmed the scheme on 26 September 1984. The Registrar of Insurance thereafter issued the certificate required by sec. 25(14) of the Act. I shall hereafter merely refer to sec. 25(14). In terms of the agreement SLA had to transfer to respondent shares held by it in various public and private companies as well as other marketable securities as defined in sec. 1 of the Stamp Duties Act, No 77 of 1968, and item 15 of Schedule 1 to that Act. I shall hereafter refer only to marketable securities. A dispute arose between respondent and appellant. The respondent relying on sec. 25(14) contended that no stamp duty would be payable in respect of the transfer to it of the marketable securities. The appellant held the opposite view. The respondent then sought a declaratory order. BURGER J upheld respondent's contention and made the order set out on page 273 of the report-

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ed judgment. The appeal is against that judgment and order.

Section 25(14) reads:

"If in terms of this section any business of any insurer has been amalgamated with any business of any other insurer or transferred to any other insurer, every officer (including any Registrar of Deeds, any Master of the Supreme Court and the Registrar of Companies) in charge of any office in which property or any mortgage or other right is registered in the name of or by the first-mentioned insurer or an appointment of or in favour of the first-mentioned insurer was made or a licence was issued to or in favour of the first-mentioned insurer, upon production to him of a certificate in which the registrar states that he or the court, as the case may be, confirmed the amalgamation or transfer in terms of this section and upon production to him of the title deed, mortgage bond, deed, certificate, letter of appointment, licence or other document in question, shall make such endorsement thereon and such entries in his registers or other books as may be necessary to effect or record the transfer of the property, mortgage, other right, appointment or licence in question to the amalgamated business or the insurer to whom any business was transferred, as the case may be, and no transfer.....

fer or stamp duty or registration, licence or other fees shall be payable in respect of any endorsement or entry made as aforesaid."

(The underlining is mine.)

In the written heads of argument counsel for the appellant submitted as he had done in the Court a quo that the words ".....every officer...in charge of any office..." should be limited so as to refer only to the three classes of officials named in the brackets, i.e. the Registrar of Deeds; the Master of the Supreme Court and the Registrar of Companies; alternatively that the words should be taken to refer only to officials in Government service who exercise similar functions to the three classes of officials named. I will refer to this submission as the basic submission.

In support of this basic submission, viz. that "officer" should be interpreted as set out above, counsel made a series of submissions which he maintained illus-

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trated that the basic submission was correct. These are set out in (a), (b), (c), (d), (e), (f), (g) and (h) below.

(a) At the outset of his argument in this Court he submitted that the words

"any Master of the Supreme Court and the Registrar of Companies"

should be ignored. He did so because the following documents would at no time be produced for endorsement or registration to either of them or their respective offices, viz.

"the title deed, mortgage bond, deed, certificate, letter of appointment, licence or other document in question".

In order to avoid repetition I shall refer to the above documents as "the documents", or "the document" as the context requires. I pause to say that in this regard counsel is correct. It is not the function of these two officials to register the transfer of rights. They were

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obviously wrongly included. I will return to this aspect later.

Counsel then referred to the following sections in the following statutes:

- (i) The Building Societies Act, No 24 of 1965, sec. 55 (10).
- (ii) The Participation Bonds Act, No 55 of 1981 sec. 9(4). (The predecessor of this section was sec. 8 A(4) of the Participation Bonds Act No 48 of 1964.)
- (iii) The Friendly Societies Act, No 25 of 1956, sec. 21(13).
- (iv) The Pension Funds Act, No 24 of 1956, sec. 14(3).
- (v) The Banks Act, No 23 of 1965, sec. 30(3).

It is not necessary, for the purpose of this

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judgment to detail the above sections. I only set out so much as is necessary to understand the submissions made by counsel in this regard.

In sec. 55(10) of the Building Societies Act it is said that when there is an authorised amalgamation of two building societies or the transfer of the business of one building society to another (authorised in the sense that it is done in terms of the formalities laid down in that Act) then

"The officer in charge of a deeds registry or other office in which is registered any mortgage bond or any immovable property"

shall make the necessary endorsement and entries in his registers, and no stamp duty, transfer duty, registration fee or charges are payable.

In the sections referred to in paras. (ii), (iii) and (iv) above, where an authorised amalgamation or transfer of the business takes place, the relevant document is

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to be produced to:

"(t)he officer in charge of a deeds registry
..... in which is registered"

the relevant document.

In the section referred to in para. (v) above,
i.e. in the Banks Act, where there has been an authorised
amalgamation or transfer of business,

"the Registrar of Companies, every
Registrar of Deeds or Master of the
Supreme Court and every officer in
charge of any office in which is
registered any title...."

to property, is required to make the relevant endorsements
and effect such entries in his register as may be necessary.

Counsel then submitted that in as much as the
two officials above mentioned were wrongly included in
sec. 25(14), it is obvious that the draughtsman had
mistakenly taken the wording of the Banks Act; that
he should have taken the wording of one of the statutes
mentioned in paras. (i) to (iv) above; that it followed

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that it was the intention of the Legislature that only documents of the type which are registered in a deeds registry would be exempted from stamp and other duties and charges; that it followed that the Registrar of Deeds was the officer intended by sec. 25(14).

It was then put to counsel that a Registrar of Deeds would not at any time have to endorse a licence or make an entry in his registers thereanent. See in this regard the reported judgment at p 271 E. Counsel then said that the reference to "licence" was also a mistake. Although this was not put to him, it seems as if this would also apply to a "letter of appointment" and to an "other document".

It is clear that the two officials, viz, the Registrar of Companies and Master of the Supreme Court, should not have been included. They must have been included per incuriam . This does not mean that other

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words in the section were inserted per incuriam.

It has often been said that legislative enactments

"should be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant".

See Rex v Standard Tea and Coffee Co (Pty) Ltd 1951 (4)

SA 412 (A) at p 416 F; see also Wellworths Bazaars Ltd

v Chandler's Ltd and Another 1947 (2) SA 37 (A) at p 43

and Attorney General, Transvaal v Additional Magistrate for

Johannesburg 1924 AD 421 at p 436. It follows that there

is no justification for further truncating sec. 25(14).

The section must be interpreted without the reference to

the two officials. So interpreted it certainly does not

lead to any absurdity.

When sec. 25(14) was introduced into the Act

the statutes in paras. (i) to (iv) above were all on

the statute book. There is no reason to believe that

the draughtsman (and hence the Legislature) overlooked them.

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The Legislature, when enacting sec. 25(14), decided to exempt insurance companies from transfer duty and stamp duty when land is transferred or a mortgage bond is ceded pursuant to an amalgamation or transfer of business. No reason was suggested why it should not have intended to exempt these companies from stamp duty when marketable securities are transferred in similar circumstances. It follows that the submission that the Legislature intended that the word "officer" should be restricted to mean the Registrar of Deeds or the other officials named in the brackets has no merit.

(b) Counsel then made submissions as to the meaning which should be given to the word "officer" in the English

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text and to the word "amptenaar" in the Afrikaans text which was the signed text. He submitted that the ordinary and usual meaning of "officer" was the type of officer employed in Government offices; that the ordinary and usual meaning of "amptenaar" was "iemand in diens van die owerheid"; "staatsamptenaar". He quoted extensively from dictionaries. Certainly the words can have the meanings for which he contends. However, the dictionaries also give the words other meanings. "Officer" in the Oxford English Dictionary is (inter alia) "one who performs a duty service or function". In the Woordeboek van die Afrikaanse Taal it is said that "die gebruik van amptenaar en beampte loop in Afrikaans sowel in die skryftaal as in die spreektaal deurmekaar". It also appears from this dictionary that both "amptenaar" and "beampte" can include an employee of a private corporation. See also Administrateur, Transvaal v Carltonville Estates Ltd 1959 (3) SA 150 (A) at p 158 G.

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Plainly the words can have different meanings in different contexts. In support of his contention counsel for appellant submitted that the word "including" gives an indication of the meaning to be given to the word "officer"; that the word "include" could, in a particular context, give rise to an exhaustive definition so that it can be equivalent to the word "means" or the words "means and includes"; that in other contexts it could be used to enlarge the meaning of words; that as used in sec. 25(14) it was not used for adding to "officer" but for the purpose of giving it an exhaustive meaning; that "officer" should therefore be taken to refer only to the three classes of officials named in the brackets; alternatively, that it should be taken to refer to officials in Government employ. This argument was considered by the Court a quo (see the reported judgment at p 269 F to 270 J). For the reasons stated by the Court a quo, this argument

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has no merit. There is a further indication that the term "every officer" was intended to be wider than the three officials mentioned. It is the reference to a licence. None of them deals with the registration of licences.

Secs. 105 and 133 (1) and (2) of the Companies Act No 61 of 1973 require a company to keep a register of its members and to detail therein the shares held by each member and any changes of membership and shareholding. Sec. 110 of that Act requires that the register is to be kept at the company's registered office or at the office of some other person with whom the company has arranged for the keeping and making up of the register. It was not suggested that the words "every officer in charge of any office" cannot apply to the official in charge of the register.

It follows that this submission in regard to the meaning to be given to "every officer" cannot be

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sustained.

(c) Counsel then submitted that sec. 25(14) provided that the document merely has to be endorsed and pursuant thereto no stamp duty is payable; that where transfer of any property by endorsement was permitted special provision was made in the relevant statute; that such a provision is contained in the Deeds Registries Act No 47 of 1937 (see secs. 44, 45 and 45: bis); that no such special provision appears in the Companies Act; that on the contrary secs. 133(1) and (2) of the Companies Act require that an instrument of transfer has to be lodged with the office of the company when a marketable security is transferred; that sec. 23(4) of the Stamp Duties Act postulates that there be such an instrument and that it is to be stamped; that this indicates that sec. 25(14) does not refer to transfers of marketable securities.

The answer to the submission is that sec. 25(14) was

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added to the Act by sec. 11 of Act 99 of 1980; that it is a later statute which provides for a special case, viz, where there has been an amalgamation of two insurance companies or the transfer of the business of an insurance company to another; that on a reading of the whole of sec. 25(14) it is clear that in those circumstances the Legislature intended to provide the procedures relating to the transfer of property and rights and to provide a simple transfer procedure and immunity from stamp and transfer duties and other charges. I should perhaps add that sec. 4(2) of the Stamp Duties Act specially provides that if any other law exempts an "instrument" from stamp duty the provisions of the Stamp Duties Act will not apply.

I am of the view that the provisions of sec. 25(14) are clear and override the provisions of secs. 133(1) and (2) of the Companies Act and of sec. 23(4) of the Stamp Duties Act. See in this regard Harris &

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Others v Minister of the Interior & Another 1952

(2) SA 428 (A) at p 459 which sets out in what circumstances a provision in a later statute will override a provision in an earlier statute. See also Die Uitleg van Wette (L.C. Steyn), 5th ed. at pp 189-190.

It follows from the above that this submission does not support the basic submission.

(d) Counsel sought to use the fact that in private companies the articles of association restrict the right to transfer shares - see sec. 20(1)(a) of the Companies Act. He submitted that if "officer" and "amptenaar" were not given the restricted meaning for which he contends, shares could be transferred in contravention of the articles. Section 26(7) of the Act provides that, inter alia, any shareholder likely to be affected by the amalgamation or transfer of business, is entitled to

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appear and be heard. Hence the Court would insist on notice being given to a shareholder likely to be affected by the amalgamation or transfer. He would be heard and his rights would be determined by the Court. If the Court thereafter confirms the amalgamation or transfer then, by virtue of sec. 25(11) of the Act it becomes binding on all persons. Furthermore, it is inconceivable that the insurance companies concerned would not take whatever action was necessary to overcome the restrictions.

It follows that this submission does not support appellant's basic submission.

(e) Counsel stressed that sec. 25(14) provides that "no other fees" are payable in respect of the registration of the transfer of the marketable securities; that it could not have been the intention of the Legis-

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lature to deprive the officer of a company, charged with the duty of making the endorsement and necessary entries in the register, of his fees. The argument overlooks the fact that the officer is employed by the company and ^{it} pays him. The insurance companies are not in any way responsible for his fees.

It follows that this submission has no merit.

(f) Counsel contended that no provision is made in sec. 25(14) for exemption from payment of stamp duties in respect of marketable securities registered in the name of a nominee; that this creates an anomaly. I am unable to see how this suggested anomaly supports the basic submission. See in this regard the reported judgment at p 272 E. I, however, venture to say that if marketable securities belonging to an insurance company (the nominator) are registered in the name of a nominee

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the necessary endorsements on the certificates and entries in the registers of the company concerned will be made by the officer in the employ of the company in order to reflect that the nominator is a different insurance company. Stamp duty would probably not be payable. I do not, however, have to decide this aspect.

(g) Counsel submitted that the exemption from stamp duty conferred by sec. 25(14) is in essence a tax provision and (I quote from counsel's heads of argument)

"If doubt persists in the interpretation of the section, there is no justification for extending the exemption. See Ernst v C I R 1954 (1) SA 318 (A) at 323 C-E".

Counsel then referred to exemption (h) to Item 15(3) of Schedule 1 to the Stamp Duties Act. This specifically exempts a Pension Fund from stamp duty when shares are transferred pursuant to an amalgamation scheme. There

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is no such specific provision in the Act. Therefore, so it is argued, sec. 25(14) was not intended to apply to marketable securities belonging to an insurance company; hence "officer" in sec. 25(14) does not mean the officer in the employ of a company.

The answer to this submission is as follows.

In the case of Pension Funds the relevant provisions relating to transfer of property rights upon amalgamations are to be found in sec. 14(3) of the Pension Funds Act. They refer only to "the officer in charge of a deeds registry". When the new Stamp Duties Act was passed in 1968, it introduced exemption (h), thus exempting Pension Funds from stamp duty in the case of transfers of marketable securities also. No similar provision was made in the case of insurance companies because sec. 25(14) was not yet in existence. When that section was introduced in 1980 one composite amendment was made to cover trans-

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fers of all kinds of property; it was not necessary to amend the Stamp Duties Act.

(h) The alternative submission in the written heads of argument was that if the words "every officer" do not refer exclusively to the three officials named in the brackets, then (I quote from the heads of argument)

"the words should be taken to refer only to officials of Government offices who exercise similar functions to the three classes of officials named."

Counsel did not seriously urge this submission during argument before us. It would appear to be a reliance on the ejusdem generis rule. In so far as an answer to the written submission is required, it is to be found in the reported judgment at pp 271 H to 272 B.

It will be seen from the reported judgment at p 271 A-C that the respondent (applicant in the Court a quo)

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submitted that the words in the brackets were probably included as a precautionary measure because of uncertainty as to whether the provisions in sec. 25(14) would bind the State. That submission was repeated in this Court. I, however, do not find it necessary to deal with it.

In the result I am of the opinion that the Court a quo was correct in holding that "including" in sec. 25(14) does not limit the meaning of the words "every officer" as contended for by appellant.

The appeal is dismissed with costs including the costs of two counsel.

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CORBETT, JA)
TRENGOVE, JA)
BOTHA, JA)
NESTADT, AJA)