

**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Case No: 178/13  
NOT REPORTABLE**

In the matter between:

**JOAN SHANNON JAKINS (nee DELL)**

**APPELLANT**

and

**MICHELLE BAXTER**

**FIRST RESPONDENT**

**SANDRA-LEE HENSBURG**

**SECOND RESPONDENT**

**Neutral citation:** *Jakins v Baxter* (178/13) [2013] ZASCA 190 (29 November 2013)

**Coram:** Lewis, Cachalia, Leach, Wallis JJA and Meyer AJA

**Heard: 19 November 2013**

**Delivered: 29 November 2013**

**Summary:** Disputed clause in an antenuptial contract - proper interpretation.

## ORDER

**On appeal from:** Full Court of the Eastern Cape, Grahamstown (Van Zyl, Nhlangulela JJ and Bacela AJ concurring sitting as court of appeal):

1 The appeal is upheld with costs, such costs to be paid out of the estate of the late Norman Emslie Jakins. The order of the court below is set aside and substituted with the following order:

'1.1 The appeal is dismissed with costs, such costs to be paid out of the estate of the late Norman Emslie Jakins.

1.2 The order of the high court is confirmed but amended as follows:

1.2.1 The decision of the Master of the High Court, Grahamstown, not to uphold the objection of the applicant lodged against the First and Final Liquidation and Distribution Account in the estate of the late Norman Emslie Jakins, in relation to the proceeds of the Old Mutual Flexi-life Policy in the name of the erstwhile Norman Emslie Jakins (Policy Number 12383353), is set aside.

1.2.2 It is declared that the applicant is entitled to payment of the proceeds of the life policy referred to in para 1 above.

1.2.3 The first and second respondents, as executors in the estate of the late Norman Emslie Jakins, are directed to pay to the applicant the sum of R783 306.15, together with interest thereon at the legal rate, calculated from the date of the submission of the applicant's claim to the executors of the estate, to date of payment.

1.2.4 The first and second respondents, as executors in the estate of the late Norman Emslie Jakins, are directed to pay the costs of the application.'

## JUDGMENT

### **CACHALIA JA (LEWIS, LEACH, WALLIS JJA AND MEYER AJA CONCURRING):**

[1] This appeal concerns a disputed benefit of an Old Mutual life policy. The proceeds of the policy, amounting to R799 967.21, became payable upon the death of Mr Norman Emslie Jakins. Old Mutual paid the amount to his estate. His widow, Joan Shannon Jakins (nee Dell), the appellant in this appeal, then sought declaratory relief to the effect that she, and not the estate, was entitled to receive this benefit. She also asked for other consequential relief. The executors of the deceased's estate, who are the respondents in this appeal, opposed the relief claimed on the ground that the benefit fell into the estate. The court of first instance found in her favour, but a full court of the Eastern Cape reversed the high court's order. The appellant now comes on further appeal with leave of this court.

[2] The appellant's claimed entitlement to the relief is founded upon a clause in an antenuptial contract (ANC) concluded before her marriage to Mr Jakins in October 1995. The clause was contained in an undertaking to make over, cede, transfer, and assign in favour of the appellant:  
'All benefits which will accrue as at the date of his death arising from his membership of his Tongaat-Hulett Pension Fund.'

[3] The appellant contends that the meaning and effect of the clause is that the benefit from the life policy accrued to her because its source was the proceeds of his pension fund, albeit that this occurred after his retirement when he was no longer a member of the fund. The respondents dispute her interpretation of the clause. In their view the clause allowed her to claim the proceeds of the pension fund, which would have accrued upon the deceased's death, only if he was a member of the fund at the time. So, they contend, because he had retired and was no longer a member of the fund when he died, the benefit did not accrue to her.

[4] To better understand the dispute it is helpful to set out the context in which the ANC was concluded. The deceased was, at the time, an employee of Tongaat-Hulett and a member of its pension fund. The division in which he was employed was taken over by the Bokomo/Sasco Group. The Bokomo/Sasco Group and its pension fund were in turn taken over by Pioneer Foods. The respondents accept that notwithstanding the changes in the identity of the pension fund, it remained the same fund for the purposes of the clause.

[5] The appellant and the deceased were middle-aged when they concluded the ANC in anticipation of their marriage in 1995. She was 50 years of age and he 56. He was nearing retirement. The pension fund to which he belonged was governed by the Pension Funds Act 24 of 1956 (the Act). The rules of the fund allowed him to withdraw a third of his retirement benefits as a cash sum upon retirement and to buy a pension with the balance. Section *Z7C(bfK)* of the Act entitled him to exclude the benefit from forming part of the assets of his estate by designating a beneficiary - the appellant in this case - to receive the benefit upon his death, which is the effect of the disputed clause.

[6] Before their marriage the appellant had a usufruct in her favour over an amount of R1 198 312 left to her by her previously deceased husband. But the right to the use of this money would endure only if she remained unmarried. In her founding papers the appellant says that she and the Mr Jakins were mindful of this fact when they concluded the ANC, which conferred the benefit on her. Put simply they understood and intended the benefit to compensate her for her loss of the income from the usufruct in the event of his death.

[7] It is also significant that upon his retirement, and in line with the regulatory provisions referred to above, the deceased invested the sum of R799 967.21 from his pension fund in a 'Capital Preservation Option'. Old Mutual in turn invested the sum in two annuities which were to provide the deceased with a monthly income of R7 879.98 and R1 677.29. From the latter amount a monthly sum of R1276.74 was deducted to fund the life policy so that the

capital amount of R799 967.21 was preserved. It is this amount - the exact sum that was transferred from his pension fund - that the appellant claims as a benefit that accrued as at the deceased's death arising from his membership of his pension fund.

[8] I now turn to the proper interpretation of the disputed clause. The respondents submit that the syntax and grammatical arrangement of the clause is that 'benefits' refers to what is payable from a pension fund; 'accrue' to that which comes into existence upon the death of Mr Jakins, and 'arising' to that coming into existence as a result of his membership of the pension fund at the time of his death. Thus interpreted, they contend, the language does not permit an interpretation that extends the meaning to include the proceeds of a life policy funded out of income received during his lifetime from the investment proceeds of his pension.

[9] Considered within the context in which the ANC was concluded - and the purpose of the benefit conferring provision to make financial provision for the appellant upon the death of the deceased - the respondents' interpretation of the clause is not correct. On their interpretation the word 'arising' is superfluous. Without that word the clause would read:

'All benefits which will accrue as at the date of his death from his membership of his . . . Pension Fund.'

[10] Worded thus the benefit would have accrued from the deceased's membership of the pension fund, which is how the respondents seek to interpret the disputed clause. But the inclusion of the word 'arising' means that the clause has to be read to mean that the benefit originates from the pension fund, and does not require the deceased to have been a member at the time of his death. If the clause is read in this way, which accords with the context within which the ANC was concluded, the life policy clearly originated from the pension fund because it was funded from the fund's proceeds. It follows that the court of first instance was correct to treat the life policy as a benefit that fell within

the ambit of the disputed clause, and the full court incorrect to hold the contrary.

[11] In the result the appeal must succeed and the order of the full court must be set aside. The order of the court of first instance ought to have been confirmed, but amended so that it read sequentially and referred to the correct sum mentioned in fn 1.

[12] The following order is made:

1 The appeal is upheld with costs, such costs to be paid out of the estate of the late Norman Emslie Jakins. The order of the court below is set aside and substituted with the following order:

‘1.1 The appeal is dismissed with costs, such costs to be paid out of the estate of the late Norman Emslie Jakins.

1.2 The order of the high court is confirmed but amended as follows:

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1.2.2 It is declared that the applicant is entitled to payment of the proceeds of the life policy referred to in para 1 above.

1.2.3 The first and second respondents, as executors in the estate of the late Norman Emslie Jakins, are directed to pay to the applicant the sum of R783 306.15, together with interest thereon at the legal rate, calculated from the date of the submission of the applicant’s claim to the executors of the estate, to date of payment.

1.2.4 The first and second respondents, as executors in the estate of the late Norman Emslie Jakins, are directed to pay the costs of the application.’

**A CACHALIA**  
**JUDGE OF APPEAL**

APPEARANCES:

For Appellant: A G Dugmore

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