

Bequeathed assets aren't yours until estate has been wound up

If someone bequeaths you something, such as a property, in their will, do not assume that you will immediately become the owner of that property on the death of the testator (the person who signed the will).

It is in fact the executor of the deceased estate who takes ownership, in a fiduciary (caretaking) capacity, while the estate is under administration.

Under the Administration of Estates Act the executor is obliged to take control of all estate assets until such time as the estate is fully wound up.

This was brought home recently in a court case decided by the Eastern Cape Local Division of the High Court of SA.

Acting Judge Albert Beyleveld granted an order to the executor in a deceased estate to have an heir evicted from a property which had been bequeathed to him in the will as he did not (yet) own the property and funds were needed to meet a claim by the deceased's wife.

Background

The applicant in the case was the surviving spouse of the deceased and was the appointed executor in the estate. The only asset in the estate was a house in which the deceased, his surviving spouse, and the nephew of the deceased lived. The deceased raised his nephew as if his own child and bequeathed the house to him in his last will.

The nephew (as the respondent in the case) opposed the court application.

A professional executor was initially appointed, but resigned. While in office the professional executor received a claim for maintenance from the surviving spouse under the Maintenance of Surviving Spouses Act and accepted the claim.

Due to the fact that the house was the only asset of any real value, the house would have to be sold to free up funds to pay the maintenance claim.

The surviving spouse had moved out of the house after her husband's death, but his

nephew was still living there at the time of the court application and refused to move out.

The surviving spouse brought the application for eviction to enable her, as executor, to take possession and control of the house.

The nephew maintained that, as a result of the bequest to him, he was the new owner of the property and could not be evicted.

He also argued that the claim for maintenance had not been lodged with the Master of the High Court and was therefore not valid.



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The surviving spouse, as executor, informed the Master of the High Court that the estate was insolvent and that she would apply to have the estate sequestrated.

The judgment

The court held that the executor is the owner of the estate assets, in a fiduciary capacity, while the estate is under administration and is entitled to the possession of all estate assets.

An heir does not have any rights to the possession of the assets until after the liquidation and distribution (L&D) account has been laid open for inspection, free from objections, and has been approved by the Master of the High Court.

The nephew is free to object to the L&D account, and therefore the surviving spouse's maintenance claim, only once the L&D account has been lodged.

A claim such as this need not be lodged with the Master separately.

In the meantime, the executor is entitled to have the nephew evicted from the property.

Note that this is a simple narrative of a more complicated court case which can be read in full at:

<https://www.fisa.net.za/court-case-about-the-rights-of-an-heir/>

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