

INTESTATE SUCCESSION

# Granting life partners spousal rights 'unfair'

**DIEKETSENG MALEKE**  
dieketseng.maleke@inl.co.za

THE Constitutional Court's decision in 2021, which led to the revision of the Intestate Succession Act to include permanent life partners in a love relationship as "spouses", is unfair, says Refiloe Maunatlala, a lecturer in the Department of Private Law at the University of Pretoria.

The revision of the act will give life partnerships the same legal status as a spouse when it comes to Intestate law, which means the surviving partner can claim against the estate of a late partner.

The law will affect individuals whose partners die intestate (without a will). It also has regulations on how the assets should be divided in the case where there is no will.

Maunatlala's comments come at

the time when, later this year, the Judicial Matters Amendment Bill will come into law, giving life partnerships the same legal status as a spouse when it comes to Intestate law.

The changes come after the Western Cape High Court ruled in October 2020 that the Intestate Succession Act was unconstitutional and invalid. The ruling said it was unfair discrimination and violated the rights and dignity of women who were in life partnerships, as it excluded life partners in a relationship intended to be permanent, in the definition of "spouse".

This was upheld by the Constitutional Court in December 2021, which required the act to be revised.

"The Constitutional Court's decision to extend the ambit of Intestate Succession to include permanent life partners can be somewhat unfair. This

decision creates legal uncertainty. The Constitutional Court failed to seize the opportunity to redress the law of Intestate Succession," Maunatlala said.

Maunatlala was speaking at the Fiduciary Institute of Southern Africa conference in Sandton this week under the theme of Fiduciary practise in a complex world.

It remained unclear how one could significantly distinguish between cohabitation and permanent life partnership.

She said that due to the uncertainty, permanency was dealt with differently on a case-by-case basis.

"This will create more uncertainties. The lack of clarity, therefore, is problematic. This uncertainty will lead to some deceased person's estate going to their cohabiting partner as some might abuse the uncertainty.

"What makes one sure that the deceased would have intended that their partner inherit from the Intestate estate, especially if the couple never intended on formalising their union?"

Maunatlala said that although she agreed with the sentiments that it would be unfair to completely exclude or disregard permanent life partners, placing them on the same footing as a spouse for the purposes of Intestate Succession could be unfair to the spouses.

Another speaker at the conference, Deputy Pretoria Master at the Department of Justice and Constitutional Development, Preesha Seetal, said the department was revising a form to verify permanent life partnerships.

She said the accompanying affidavit required a detailed account of the

claim of permanent life partnership. The surviving partner had to confirm that they were in a permanent partnership and had an unlimited mutual agreement of support and co-habitated at a certain address.

"The form has a space for the address. The following is submitted as proof: a mutual agreement of support. How can you truly prove that mutual support is established? This can include a pension benefit or pension fund where both parties were each other's beneficiaries, any form of insurance policies, medical aid, for example."

Seetal said the length of the relationship was important. How the couple presented to friends and family work colleagues was also important.

"The more evidence you have, the better, I suppose, for you," she said.