SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

CASE NO: 20831/2024

In the matter between:

J[...] D[...] B[...] Applicant

and

ALLAN GRAY PROPRIETARY LIMITED First Respondent
N[...] P[...] B[...] Second Respondent

Coram: Justice Nziweni
Heard: 20 April 2026
Delivered electronically: 9 November 2026 (electronically)

Summary: Husband and wife — Divorce — Settlement agreement made an order of court — Proprietary consequences — Obligation by policyholder to maintain ex-spouse as sole, irrevocable beneficiary of an annuity policy — Subsequent marriage in community of property — Policyholder subsequently

executing new beneficiary nomination in favour of surviving spouse in breach of court order — Status of subsequent nomination.

Insurance — Long-term insurance — Living annuity — Beneficiary designation — Contract for the benefit of a third party (stipulatio alteri) — Acceptance of benefit by ex-spouse during divorce proceedings vesting irrevocable contractual rights — Policyholder contractually and judicially divesting himself of capacity to unilaterally alter or revoke designation — Subsequent conflicting nomination an unlawful act constituting a nullity.

Matrimonial property — Marriage in community of property — Universality of the joint estate — Pre-existing judicial encumbrances — Asset entering subsequent joint estate subject to prior court orders and vested proprietary interests — Marriage in community of property not a legal mechanism to extinguish active judicial decrees or launder encumbered assets — Surviving spouse's marital claims subordinate to prior court order.

Court order — Enforcement and status of — Settlement agreement incorporated into divorce decree — Shift in legal status from mere contractual pact to enforceable judicial command (res judicata) — Court order standing with full force and effect until formally reviewed and set aside — Private administrative act executed in defiance of a court order incapable of creating valid third-party rights.

ORDER

See attached order marked "X".

JUDGMENT

Nziweni, J

Introduction and factual background

[1] This application traces its genesis to a divorce settlement agreement concluded between the applicant and her ex-husband, J[...]2 H[...] B[...] ("the deceased") with respect to the deceased's Allan Gray Living Annuity Plan ("the policy"). This Court is seized with Part B of this application. In this part, the applicant seeks an order directing the first respondent to pay the proceeds of the policy, which was purchased by the deceased and is subject to a Divorce Order granted on 30 September 2013. In essence, in this application the applicant seeks to enforce the settlement agreement.

[2] The application is not opposed by the first respondent ("Allan Gray"), which has filed a notice to abide. However, the application is opposed by the second respondent, who is the deceased's surviving spouse. It is not in dispute that the second respondent is nominated as a beneficiary to the proceeds of the policy. That then has led to a genesis of the application.

[3] There is no dispute as to the facts. The deceased passed away on 27 July 2024. The applicant was married to the deceased out of community of property by antenuptial contract. On 11 July 2013, the deceased and the applicant executed a divorce settlement agreement setting out their terms regarding maintenance, as well as the proprietary and ancillary consequences of their divorce. The applicant was the deceased's nominated beneficiary entitled to the proceeds of the insurance policy upon his death.

[4] It may be convenient at this stage to recite the relevant clauses of the settlement agreement that was incorporated in the Divorce Order. It provided as follows:

> "8.1 J[...]2 warrants that he is the holder of the following policies / annuities:
> 8.1,4 Allan Gray Living Annuity Plan Policy . . .
> 8.2 J[...]2 shall retain the policies and or annuities referred to in 8.1. 1 to 8.1.4 as his sole and absolute property and shall ensure that J[...] remains the beneficiary until said policies/ annuities mature.
> 8.3 J[...]2 shall not in any other way hypothecate, encumber nor deal with the said policies and or annuities other than is provided for in this agreement.
> 8.4 If J[...]2 dies:
> 8.4.2 J[...] shall be entitled to the proceeds of the annuity plans referred to 8.13 and 8.14.

8.5 J[...]2 undertakes at his own expense to do all that may be necessary to give formal effect to this irrevocable nomination including the signing of forms and the recording and registration with the insurers of the nomination."

[5] Paragraph 11 of the settlement agreement, that is headed as follows: 'BINDING ON THE ESTATE', reads as follows:

> 'The terms and conditions of this agreement shall be binding on the parties' estates, their executors, heirs and assigns.'

[6] On 31 March 2015, the second respondent married the deceased in community of property. The deceased subsequently nominated the second respondent, his surviving wife, as the beneficiary to the proceeds of the policy, in direct conflict with the prior divorce settlement agreement. That is so notwithstanding the existence of the settlement agreement that was incorporated in the divorce decree.

[7] This nomination resulted in competing claims to the policy proceeds. One based on a binding settlement agreement, and the other based on the subsequent nomination.

[8] Following the demise of the deceased, the applicant contacted Allan Gray regarding her entitlement to the policy proceeds. The applicant was informed that she was not reflected as the nominated beneficiary on record. Simultaneously, the second respondent has laid claim to the policy proceeds on the strength of her nomination.

The issue

[9] It is in that context that the issue which is at the heart of this application is whether the applicant is entitled to the relief sought. Put another way, the question is whether the second respondent is entitled, under the circumstances of this case, to assert a claim to the policy proceeds that conflicts with the deceased's prior contractually binding obligations.

[10] As can immediately be perceived, the case turns on whether the subsequent beneficiary nomination of the second respondent revokes the previous beneficiary designation.

[11] It is important to keep in mind that in the present case, as noted above, it is a striking feature of this case that after the conclusion of the divorce and the settlement agreement, the deceased married the second respondent in community of property. As I have already mentioned, what must be carefully observed, however, is that the determinative question becomes whether, in all the circumstances, the contractual right to the living annuity's income stream automatically fell into the joint estate of the deceased and the second respondent by operation of law, thereby overriding or altering the pre-existing beneficiary nomination in favour of the ex-wife.

[12] It may appear at first glance that there is a profound intersection and conflict between matrimonial property law and the law of contract. On one hand, the law of contract governs the pre-existing beneficiary nomination, which created a vested right or *spes* in favour of the deceased's ex-wife. On the other hand, matrimonial property law governs the subsequent marriage in community of property, which by operation of law immediately created a single joint estate.

The second respondent's contention

[13] In respect of her marriage regime, the second respondent opposes the relief sought on the grounds that her marriage to the deceased in community of property entitles her to the proprietary benefits flowing from that marital regime. She further asserted that she was nominated as the sole beneficiary of the living annuity by her late husband. Her primary contention is that a life insurance policy constitutes a bilateral agreement, and the insurer is bound to strictly adhere to the beneficiary nomination on record at the date of the insured's death.

[14] The second respondent further asserted that a policyholder retains an unfettered right to select and amend their listed beneficiaries. She argues that the deceased merely exercised his lawful rights in this regard when he executed the subsequent nomination in her favour.

[15] In relation to the divorce settlement agreement, the second respondent contended that for such an agreement to be legally binding, its terms must be clear, unambiguous, and precise. She asserted that the relevant clauses are vague and non-specific. Specifically, she argued that the settlement agreement fails to stipulate what percentage the applicant would be entitled to upon maturity, what would happen to the benefits of the policies, and whether the applicant's entitlement was deferred until the demise of the deceased.

[16] Based on these grounds, the second respondent's assertions raised a series of questions: First, did the deceased's subsequent marriage in community of property alter the legal status of his assets such that his rights in that policy became an unencumbered asset of the new joint estate? Second, upon his demise, did the second respondent's right to her 50% undivided share of the joint estate immediately vest and become a preferred claim taking precedence over any prior contractual or testamentary dispositions? And third, by honouring his divorce agreement, did the deceased, unlawfully alienate the second respondent's half-share of that asset?

[17] The second respondent essentially argued that a fatal legal incompatibility arose upon the deceased's death: that the deceased could not validly fulfil a historical contractual obligation to his ex-wife by using an asset that had since become legally owned, in equal undivided shares, by his new spouse.

Discussion

(a) A contract for the benefit of a third party

[18] Where parties voluntarily enter into a settlement agreement concerning proprietary interests in a living annuity, and that agreement is subsequently approved and incorporated into a divorce decree, it becomes judicially sanctioned. Consequently, it is wholly untenable for a third party to subsequently assail that agreement.

[19] It is undoubtedly true that a party may contractually bind himself to a specific patrimonial disposition of his property and validly renounce his power to revoke such

an agreement. In accordance with the foundational doctrine of *pacta sunt servanda*, public policy demands that a court will enforce the sanctity of such a commitment and will not permit a party to unilaterally defeat his solemn contractual obligations by subsequently executing a conflicting instrument.

[20] At this point, it bears reiterating that the question before this Court is which of the competing instruments prevails. It is crucial to emphasise that the settlement agreement in question was the direct consequence of historical divorce proceedings between the applicant and the deceased. During those divorce proceedings, the parties were required to consider the policy alongside all other property of the spouses. At that specific juncture, the second respondent was entirely not part of the equation, and the joint estate between the deceased and the second respondent had not yet been conceived. In that context, the spouses [the deceased and the applicant] executed an agreement in which the husband [the deceased] agreed to leave the policy to the wife [the applicant]. To this end, under that primary agreement, the deceased contractually bound himself to designate the applicant as the permanent beneficiary of the policy and expressly undertook not to revoke that designation.

[21] It follows, in all the circumstances of this case, that the deceased's subsequent nomination of the second respondent is fundamentally inconsistent with the settlement agreement incorporated into the decree of divorce. Crucially, it bears recalling that the agreement is not a mere stand-alone contract; it was incorporated into and made an order of court, carrying the full force of a judicial command. The deceased and the applicant explicitly wrote into their divorce settlement agreement that the applicant was to remain the beneficiary of the policy. The applicant divorced the deceased and structured her financial future, post-divorce maintenance, and long-term security relying on the fact that the policy proceeds would protect on his death.

[22] In this regard, the applicant is suing on a court order which incorporated a settlement agreement made for her benefit. The applicant accepted that benefit, which is clear because she signed the agreement. As such, the divorce settlement agreement constituted a valid *stipulatio alteri*. It is trite that once the benefit under the deed of settlement was accepted, it became a vested contractual right that the deceased could not legally strip away or transfer to his second wife. Consequently, the

contractual obligations established by the deed of settlement could not be revoked or overridden by a subsequent beneficiary nomination.

(b) Dismantling the matrimonial defence

[23] When viewed against this legal framework, the purported conflict between the prior settlement agreement and the second respondent's matrimonial property regime is exposed as a complete smoke screen. The second respondent attempts to create a legal contradiction where none exists. Matrimonial property law does not operate in a vacuum, nor does a marriage in community of property as a matter of course dissolve a pre-existing judicial decree. During the divorce proceeding, prior to the deceased's death there can be no doubt that the ‘divorce court’ was required to consider the policy, as well as all other property of the spouses.

[24] At the moment of the second marriage, the annuity policy was already deeply encumbered by a binding court order. As such, the policy remained subject to a vested proprietary interest in favour of the applicant. The joint estate could only capture the asset in its existing, restricted state. Therefore, framing this as a clash of matrimonial regimes is a deliberate distraction from the single, dispositive question before this Court: can a private citizen unilaterally bypass a binding court order? The answer is decisively no.

[25] While the enjoyment of the policy proceeds was deferred until the demise of the deceased, the agreement itself took immediate and irrevocable effect upon signature. The deceased was bound during his lifetime by a present contractual obligation and a judicial decree. Consequently, his legal capacity to alter the beneficiary nomination was restricted from the moment the court order was granted, not merely upon his death. To frame the matter as a post-mortem conflict of laws is to ignore the reality that the deceased had already contractually and judicially divested himself of the right to change the beneficiary, years prior. The ultimate question before this Court remains simple: who is the legally authorised beneficiary of the policy?

[26] If the parties voluntarily enter into an agreement concerning proprietary interests in a living annuity, which is subsequently approved and incorporated into a divorce

decree, the court will recognise its binding nature. Consequently, where a particular distribution of property has been judicially sanctioned during divorce proceedings, it is wholly untenable for a third party to subsequently assail that agreement.

[27] The corollary of this is that the subsequent beneficiary nomination of a surviving spouse cannot automatically override a prior contract for the benefit of a third party [*stipulatio alteri*] or a contractually bound beneficiary designation. A prior contractually binding obligation creates a vested right upon acceptance, which cannot be unilaterally diminished or defeated by the deceased through a subsequent beneficiary nomination in favour of a new spouse.

[28] This is so because South African law unequivocally recognises that parties to a contract may stipulate a benefit for a third party. Upon acceptance of that benefit by the third party, a binding contractual relationship is established, entitling the third party to enforce the agreement in their own name. It is an established principle of our law that a life insurance policy or living annuity held with an institution represents a classic example of such an arrangement.

[29] By incorporating the beneficiary nomination into their signed divorce settlement agreement, the deceased created a vested contractual right in the applicant's favour. By a parity of reasoning, therefore, it follows that having accepted this benefit, the settlement agreement became irrevocable. As such, [I am stating this at the cost of repeating myself], the applicant in this regard is suing on a court order which incorporated a settlement agreement made for her express benefit.

[30] The agreement was concluded freely and voluntarily by mature adults who reciprocally altered their patrimonial positions. I am prepared to accept, as a matter of commercial reality in divorce proceedings, that the applicant compromised valuable proprietary claims in exchange for the long-term financial security guaranteed by these provisions. In the absence of any fraud, duress, or misrepresentation, the plain language of the agreement must be given its proper, contextual effect.

[31] The second respondent's restrictive approach to interpretation is entirely out of step with modern South African jurisprudence. It is a well-established principle of our

law, as articulated by the Supreme Court of Appeal in *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA), that contracts must be interpreted contextually, purposefully, and commercially in a single, unitary exercise. The clear, unambiguous, and expressed purpose of clauses 8.1.3 and 8.1.4 was to secure the applicant‘s financial maintenance through the proceeds of the designated policies upon the deceased's passing.

[32] Crucially, the absence of minor procedural mechanics or explicit percentage breakdowns does not render a clause void for vagueness when the substantive intent, to deliver the policy proceeds to the applicant upon the deceased's demise, is clear and undeniable. Consequently, the deceased legally divested himself of the right to unilaterally revoke, substitute, or alter that beneficiary nomination. While a nomination form may ordinarily be an administrative choice, the deceased contractually bound his estate to maintain the applicant as the beneficiary.

(c) The High-Water Mark: The Power of a Court Order (Res Judicata)

[33] With this contractual backdrop in place, the high-water mark of this case rests upon the judicial status of the agreement. As already noted, that the written divorce settlement agreement was formally incorporated into and made an order of court. To the extent that any subsequent beneficiary nomination of the second respondent is inconsistent with that judicial decree, such a nomination cannot apply. It is a foundational principle of our law that a court order stands with full force and effect until it is set aside by a competent court.

[34] Consequently, the court order takes precedence over and invalidates the subsequent nomination of the second respondent. Once a settlement agreement is elevated to an order of court, its legal status shifts from a mere contractual pact to an enforceable judicial command. Hence, there was a strict legal restriction on the deceased’s capacity to change the beneficiary of the policy.

[35] Unlike a statutory pension fund where a trustee or statute has the final say, an annuity policy beneficiary designation is bound by the contractual and judicial restrictions placed on the policyholder during their lifetime. Ultimately, in the present

case, there is no statute to protect the second respondent; conversely, there is a binding court order specifically designed to protect the applicant. An administrative act born from a breach of contract and a violation of a court order cannot create a valid legal entitlement.

[36] Inasmuch as the deceased subsequently got married to the second respondent, it does not necessarily follow that he had no power to encumber the policy when he did so. Furthermore, the marriage regime of the second respondent, whether in or out of community of property, does not alter this position. A subsequent marriage cannot retroactively undo or dilute the binding nature of a prior court order.

[37] The second respondent's argument wrongly assumes that a subsequent marriage can undo a prior legal restriction. Inasmuch as the deceased entered into a subsequent marriage, that union cannot erase the judicial and contractual encumbrances he had already placed on the policy.

[38] The second respondent’s reliance on the principles of the universality of the joint estate, is entirely misplaced. While it is accepted that an annuity policy carries economic value and generally falls into a joint estate by operation of law, an asset cannot merge into a joint estate stripped of its pre-existing legal burdens.

[39] The court order granted in favour of the applicant predates the second marriage. Consequently, the annuity entered the joint estate heavily encumbered and bound by a valid judicial decree. A marriage in community of property is not a legal mechanism to launder an asset or extinguish an active court order. To this end, the deceased lacked the legal capacity to unilaterally bypass a binding court order by executing a subsequent beneficiary form. To hold otherwise would permit a private party to act in flagrant contempt of a judicial decree after their death, undermining the administration of justice and the finality of court orders. Therefore, the joint estate's claim to the asset remains entirely subordinate to the restrictions imposed by the prior court order.

[40] This approach is entirely aligned with established authority. As solidified by the Constitutional Court in *Eke v Parsons* [2015] ZACC 30; 2015 (11) BCLR 1319 (CC);

2016 (3) SA 37 (CC) (29 September 2015), a settlement agreement made an order of court carries the full, immutable authority of a judicial decree.

[41] In *Parsons* supra, the Constitutional Court states the following at paragraphs 29 and 31:

> "[29] Once a settlement agreement has been made an order of court, it is an order like any other. It will be interpreted like all court orders. Here is the well-established test on the interpretation of court orders: The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the well-established rules relating to interpretation of documents ..."

"[31] The effect of a settlement agreement that has been made an order of court is that it brings an end to the litigation... it changes the status of the rights and obligations between the parties. When the consent order is given, the party in whose favour it is made is a holder of a judgment." Footnotes omitted.

Conclusion

[31] Once a settlement agreement is made an order of court, its effect is to transform the legal status of the parties' rights and obligations, rendering the terms of the agreement final and enforceable as a binding judgment. Save for litigation that may be consequent upon the nature of the particular order, the order brings finality to the lis between the parties; the *lis* becomes res judicata. It changes the terms of a settlement agreement to an enforceable court order. The type of enforcement may be execution or contempt proceedings. Or it may take any other form permitted by the nature of the order. That form may possibly be some litigation the nature of which will be one step removed from seeking committal for contempt; an example being a mandamus.

[42] Furthermore, as a matter of matrimonial property law (see *Reynders v Rand Bank Bpk* 1978 (2) SA 630 (T)), an asset cannot merge into a subsequent joint estate stripped of its pre-existing judicial encumbrances. The deceased's capacity to nominate a beneficiary was legally restricted by a court order before the second

marriage ever occurred; consequently, the second respondent could not acquire a marital interest superior to that judicial decree.

[43] In addition, even if the second respondent purports to claim an unencumbered interest through the subsequent community of property regime, such a claim is fundamentally defeated by the doctrine of notice. As established by the Supreme Court of Appeal in *Dream Supreme Properties 11CC v Nedcor Bank Ltd* 2007 (4) SA 380 (SCA), at 387 para 15, a party who acquires a subsequent right with actual or constructive knowledge of a prior personal right cannot act in fraud of that pre-existing right. Because the judicial encumbrances and the applicant's rights under the divorce decree were a matter of public record and fully known prior to the inception of the second marriage, the second respondent cannot rely on the subsequent marital estate to escape or dilute those vested obligations.

[44] Insofar as the costs of this application are concerned, I see no reason why the general rule should not be applicable. As such, the costs will follow the results.

[45] In the result, I make the following order:

See attached order “X”.

_____

CN Nziweni
Judge of the High Court

APPEARANCES

For the Applicant	:	Advocate EE Carey-Wessels
Instructed by	:	Mr J Charles Larson Falconer Hassan Parsee Inc. c/o Van der Spuy

For the Second Respondent	:	Advocate Mdlalose
Instructed by	:	Mr J Kukard
		Andrew de Vos & Associates

"X"

09/11/2026

BOX 135

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Before the Honourable Ms Justice Nziweni
On Monday, 9 November 2026

Case No: 20831/2024

In the matter between:

J[...] D[...] B[…] **(Identity No: 5[…])**	**Applicant**
and	
ALLAN GRAY PROPRIETARY LIMITED **(Registration No: 2005/002576/07)**	**First Respondent**
N[...] P[...] B[...] **(Identity No: 9[…])**	**Second Respondent**

ORDER

Having read the papers filed of record, heard Counsel for the Applicant, and Counsel for the Second Respondent, **IT IS ORDERED THAT:-**

1. The First Respondent, Allan Gray Proprietrary Limited with registration number: 2005/002576/07, is directed to pay the proceeds of the Allan Gray Living Annuity Plain under Policy No: P[…], purchased by the late J[...]2 H[…] B[...], with identity number

5[…] and who died on 26 July 2024, to the Applicant, J[...] D[...] B[...] with identity number 5[…].

2. The proceeds payable to the Applicant in respect of paragraph 1 above:

2.1 Shall be paid into the Applicant's nominated bank account, as follows:

Account Holder	:	Larson Falconer Hassan Parsee Inc
Bank	:	Nedbank
Account type	:	Trust Account
Account number	:	1[…]

2.2 Shall be paid within 14 (fourteen) days of this Order.

3. The Second Respondent to pay the costs of this Application on Scale B. These costs include costs occasioned by the postponement at the hearing on 19 June 2025.

BY ORDER OF THE COURT

COURT REGISTRAR