

Court case: Commencement values in accrual marriages

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[E v E \[2019\] ZAKZPHC 40](#)

In this recent case in the Pietermaritzburg High Court, the plaintiff (Mr E) sued for divorce after he was married to the defendant (Mrs E) for just over ten years. The marriage was out of community of property with inclusion of the accrual system. Both parties agreed that the marriage had broken down irretrievably. One of the issues to be determined was whether the commencement values of R500,000 each which were recorded in the ante-nuptial contract (ANC), were binding as an agreement between the parties or just *prima facie* statements of values by each party as at date of the marriage. The issue was raised in a counterclaim by Mrs E for her share of the accrual in Mr E's estate. Counsel for Mrs E argued that the parties are bound to the values in the ANC because it forms part of the agreement between them and that the provision in section 6 of the Matrimonial Property Act, 88 of 1984 (the Act), stating that such values are *prima facie* proof is only effective in relation to third parties. Counsel relied on *Olivier v Olivier* 1998 (1) SA 550 (D) for this argument. The relevant part of the Act (section 6(3) reads as follows:

“(3) An antenuptial contract contemplated in subsection (1) or a certified copy thereof, or a statement signed and attested in terms of subsection (1) or a certified copy thereof contemplated in subsection (2), serves as *prima facie* proof of the net value of the estate of the spouse concerned at the commencement of his marriage.”

The court (Ploos van Amstel J) accepted that in reality Mr E's estate was much larger at date of marriage and Mrs E's estate much smaller than the stated commencement values. If the real values were used there would be no real accrual in either estate.

The court held that the decision in *Olivier v Olivier* was clearly incorrect, and followed the decisions in *Thomas v Thomas* [1999] 3 All SA 192 (NC) and [TN v NN & others 2018 \(4\) SA 316 \(WCC\)](#) where the relevant courts held that the provision is to be interpreted to mean that the commencement values stated in the ANC is just *prima facie* proof of the values of the estates on date of marriage and that this applies inter partes as well and not only in relation to third parties.

Mrs E's counterclaim was accordingly dismissed.

When it came to Mrs E's maintenance, the court also remarked that if Mr E cannot pay the ordered maintenance from his income, he should access his loan account in the family trust of which he is a trustee and beneficiary.

Comment: – Executors need to be aware that upon death the surviving spouse, or the executor, may prove a different value as a commencement value for either or both of the estates involved. Similarly, trustees of “family trusts” may be in a position where one of the parties may upon divorce try to prove that the stated commencement value is not a true reflection of the real value of the other spouse’s (who may be a co-trustee or beneficiary) estate value on date of marriage. The spouse who may have a loan account (the trust owing him/her money) may be forced to access the loan account. As most loans to trusts are usually payable on demand, the trust could be placed in a seriously strained financial position by such a demand.