

Protecting the Financial Rights of Non-member Spouses: Addressing the Exploitation of Retirement Benefits in South African Divorce Law

Authors : Ronelle Prinsloo

Abstract : In South Africa married retirement fund members can manipulate the legal framework to prevent their spouses from accessing shared retirement benefits during divorce proceedings. The current legal structure allows retirement fund members to accelerate the accrual of their benefits, often by resigning or purchasing living annuities before the finalization of a divorce. This action effectively places these benefits beyond the reach of their spouses, leading to substantial financial prejudice, particularly for financially weaker spouses, typically women. The research highlights that South African courts, including the Supreme Court of Appeal (SCA), have not adequately scrutinized the implications of these actions. Specifically, the SCA has ruled that the capital and proceeds from living annuities are not subject to division during divorce, which undermines the financial rights of non-member spouses. The courts' failure to consider the source of the money used to purchase these annuities and its potential inclusion in the joint estate or accrual system is a significant concern. The South African Law Reform Commission has recognized this issue, noting the negative impact on financially weaker spouses. The article critiques the lack of legislative response to this problem, despite its significant implications for the equitable distribution of marital assets. The current legal framework, particularly the definition of "pension interest" and the provisions under sections 7(7) and 7(8) of the Divorce Act, is inadequate in addressing the complexities surrounding the sharing of retirement benefits in divorce cases. The article argues for a comprehensive review and reform of the law to ensure that retirement benefits are treated as patrimonial assets, subject to division upon the occurrence of any trigger event, such as resignation, retirement, or retrenchment. The need for such reform is urgent to prevent economically disadvantaged spouses from being unjustly deprived of their fair share of retirement benefits. In conclusion, the article advocates for legislative amendments to the Divorce Act, specifically section 7(7), to clarify that pension interests automatically form part of the joint estate, regardless of whether divorce proceedings are underway. This change would safeguard the financial rights of non-member spouses and ensure a more equitable distribution of retirement benefits during divorce. Failure to address this issue perpetuates economic inequality and leaves financially weaker spouses vulnerable during divorce proceedings.

Keywords : economically disadvantage spouses, pension interest, retirement, South African Law Reform commission

Conference Title : ICLLS 2024 : International Conference on Law and Legal Sciences

Conference Location : Cape Town, South Africa

Conference Dates : November 04-05, 2024