

Butters v mncora 2012 (4) sa 1 (sca) case summary

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Butters v Mncora 2012 (4) SA 1 (SCA) 2. Nomsa Virginia Mncora (1) 3. Mr Butters, the appellant, and Ms Mncora, the respondent, lived together for nearly 20 years as husband and wife but were never married. Butters was a business owner while Mncora ran their household and raised the children. (para 1) When the relationship ended, the respondent claimed half of the appellant's assets based on the fact that she believed that a tacit universal partnership existed between them.

(para 2) 4. Heher JA and Cachalia JA (15) 5. The appellant is appealing the claim that a tacit universal partnership existed between him and the respondent. (para 3) 6. The appellant is not appealing the percentage of his estate which Ms Mncora was awarded and is also not appealing the delictual damages for breach of promises which was awarded.

(para 3) 7. It is pointed out by June Sinclair in *The Law of Marriage Vol 1* 274 that South African family law does not generally protect and support people who remain unmarried, even if they live together for an extended period of time. An example of this issue can be seen in *Volks NO v Robinson* 2005 (5) BCLR 446 (CC) at para 20. (para 11) 8. The *societas universorum bonorum* is when parties decided to share all their property from both the present and future, while the *societas universorum quae ex quaestu veniunt* is that only property acquired during the partnership will be shared. This case involves the first principle.

(para 14) 9. Pothier said that there are 3 essential points which must be proven in order to establish if a universal partnership exists. The points are as follows: each party must bring either money, labour or skill into the

partnership, the business must benefit both parties and the third essential is that a profit should be made. (R J Pothier A Treatise on the Law of Partnership (Tudor's translation 1. 3. 8)) This can be seen in Bester v Van Niekerk 1960 (2) SA 779 (A) at 783H-784A.

(para 11) 10. Brand JA found that: a. " Universal partnerships of all property which extend beyond commercial undertakings were part of Roman Dutch law and still form part of our law" (Butters v Mncora 2012 (4) SA 1 (SCA) at [18a] b. A universal partnership of all property can be entered into tacitly based on the conduct of the parties as with all contracts. (para 18b) c. The requirements for a universal partnership of all property and between cohabitees are the same requirements, brought forward by Pothier, which are used to establish partnerships in general.

(para 18c) 11. An ipse dixit is a statement which is said by an individual and has no further proof of validity. The majority refers to this in paragraph 27, saying that the appellant will say anything to better his case against the respondent. 2. The ratio decidendi of this case was that the appellant did not say or do anything to make the respondent think that she was not able to share in his profits, thus tacitly agreeing with his conduct that they were in a universal partnership. (para 31) The ratio decidendi also includes the fact that it is not possible to establish laws to protect cohabitees as with spouses (para 29) and that a universal partnership is not at all the same as a marriage in community of property (para 30).

3. The minority concluded that a partnership had not been established as the appellant started the business, managed it and made it successful without

the help of the respondent. (para 36) 14. The minority of the judges were persuaded by the fact that if the event had not occurred where Ms Mncora caught Mr Butters with another woman, Mr Butters would have, assumedly, maintained the respondent for the rest of her life. The minority felt that the appellant was not lying about the parties not “ sharing everything” and said that there was no evidence to show otherwise.

(para 43) 15. I agree with the majority judgements because the appellant had never said or done anything to make the respondent believe that they were not in a universal partnership. They had been in a relationship for 20 years, Ms Mncora was raising his children and Mr Butters had proposed to Ms Mncora during their relationship.