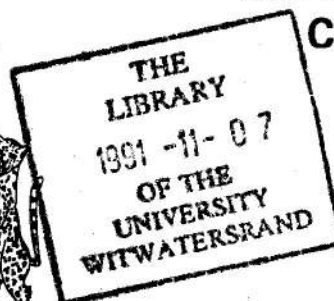
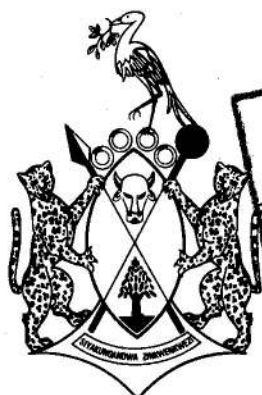


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DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 72

It is hereby notified that the Deputy Chairman of the Council of State has assented to the following decree which is hereby published for general information: -

MAINTENANCE OF SURVIVING SPOUSES DECREE, 1991  
DECREE No. 27 OF 1991

# COUNCIL OF STATE — REPUBLIC OF CISKEI

## MAINTENANCE OF SURVIVING SPOUSES DECREE, 1991

### DECREE

To make provision for a claim for maintenance by the surviving spouse of a marriage against the estate of the deceased spouse in certain circumstances and to provide for incidental matters.

*[English text signed by the Deputy Chairman of the Council of State. Assented to on 14 October 1991.]*

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows: -

**1. Definitions.** - In this decree, unless the context indicates otherwise -

"court" means the Supreme Court or other court of competent jurisdiction;

"executor" means an executor as defined in section 1 of the Administration of Estates Act, 1965 (Act 66 of 1965) and includes any other person who liquidates or distributes an estate whether in terms of the said Act or on the instructions of the Master or in accordance with the provisions of any other law;

"Master" means the Master of the Supreme Court;

"own means" includes any money, monetary benefit or property accruing to the survivor in terms of the matrimonial property law or the law of succession or otherwise at the death of the deceased spouse;

"survivor" means the surviving spouse of a marriage dissolved by death.

**2. Survivor's claim against estate of deceased spouse for maintenance.** - (1) The survivor of a marriage which is dissolved by death after the commencement of this decree shall have a claim against the estate of the deceased spouse in an amount sufficient to provide in the reasonable maintenance needs of the survivor within the meaning of section 3 and in so far as own means and earnings are insufficient to provide in such needs.

(2) The survivor shall, in respect of such claim for maintenance, have no right of recourse against any person to whom money or property has been duly paid, delivered or transferred in terms of any provision of section 34 or 35 of the Administration of Estates Act, 1965 or pursuant to an instruction of the Master or other competent authority in terms of section 18 or 25 of that Act or any other applicable law.

(3) (a) The proof and disposal of the survivor's claim for maintenance shall, subject to paragraphs (b), (c) and (d), be dealt with in accordance with the provisions *mutatis mutandis* of the Administration of Estates Act, 1965.

(b) The survivor's claim for maintenance shall have the same order of preference in relation to other claims against the estate of the deceased spouse as a claim for maintenance of a dependent child of the deceased spouse has or would have against the estate if there is or were such a claim and, if the claims of the survivor and a dependent child compete with each other, such claims shall, if necessary, be reduced proportionately.

(c) In the event of a conflict between the interests of the survivor as claimant against the estate of the deceased spouse and the interests of the survivor as guardian of a minor dependent child of the deceased spouse, the Master or other competent authority may defer the claim for maintenance until such time as the court has decided on the claim.

(d) The executor of the estate of the deceased spouse shall be competent to create a trust for the benefit of the survivor in terms of an agreement with the survivor and to transfer assets from the estate to the trust in settlement of the claim of the survivor or part thereof.

**3. Determination of reasonable maintenance needs of survivor.** - In the determination of the reasonable maintenance needs of the survivor, the undermentioned factors shall be taken into account in addition to any other factors that may be relevant:

(a) the amount in the estate of the deceased spouse which is available for distribution to heirs and legatees;

(b) the existing and expected means of subsistence, earning capacity, financial needs and obligations of the survivor;

(c) the standard of living of the survivor during the subsistence of the marriage and the age of the survivor at the time of its dissolution.

**4. Short title.** - This decree shall be called the Maintenance of Surviving Spouses Decree, 1991.

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