

SOUTH AFRICA / JUDGMENT

B v B (1794/2015) [2019] ZAGPPHC 1058 (18 September 2019)

[2019] ZAGPPHC 1058

COURT

North Gauteng High Court, Pretoria

BEFORE

Neukircher

CASE / FILE NUMBER

1794/2015

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

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

GAUTENG

DIVISION, PRETORIA

(1)

REPORTABLE:

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

CASE NO: 1794/2015
DATE; 2019
.07.17
18/9/2019
In the matter between
CH
B[....]
Applicant
and
HJC
B[....]
Respondent

JUDGMENT

(Leave to appeal)

NEUKIRCHER, J:

This Is an application for leave to appeal against a judgment that was granted by me on 25 April 2019. The grounds for the application are set out In the notice of application for leave to appeal which is quite substantial document and I do not Intend to repeat all the grounds. The gist of the respondent's argument Is that I erred in not finding that the Christian ceremony conducted by the applicant and Mr Visagie In December 2017 was a valid marriage and that as a result of that, his maintenance set out in the Agreement of Settlement entered into between the parties at their divorce had lapsed.

There are further ground set out. It was also argued that It was common cause that the deed of settlement had a patent error in that it appeared from the wording of that document the “defendant” was to pay maintenance to the “defendant” And that (according to the argument) this was thus also a valid defence.

Mr Prinsloo argued that in coming to the conclusion that the respondent was In contempt of court, I was also clearly wrong as I could not have made that finding because of the fact that I found that in regards to the marriage issue there was no wilfulness and mala tides present, and therefore the elements of contempt had not been proven,

There is also an argument that, given the various legislation and the authorities, it is clear that a valid marriage was entered into between the applicant and Mr Visagie.

And, Mr Prinsloo also argues that the issue of whether or not a valid marriage was concluded Is a disputed fact on these papers which should have been referred to oral evidence for clarity.

In so far as the de bonis propriis cost order granted against Mr Augustyn : he has also applied for intervention in these proceedings as he wishes to appeal the cost order that was granted against him. The argument is that all that was done by him was bona fides and that he should have been given an opportunity to properly place his evidence before court or his version before court before such an invasive order was granted against him.

Ms Straus on behalf of this respondent in the application for , leave to appeal (who is the applicant in the main application) has argued that it was not common cause there was a marriage between Applicant and V[....]; that in the letter that was written to the applicant's attorney of record In December 2017 the respondent there threatened to stop his maintenance payments because of the alleged marriage that had been concluded and yet despite this and despite that knowledge, on her assurance that no marriage was entered into he had continued to pay maintenance until the parties had ended up in the Maintenance Court where two legs of a dispute in regard to payment of maintenance were proffered to the magistrate - the first being the alleged patent error in the settlement which was upheld and the matter struck off the roll ; and the second was in regards to the issue of the applicant's so-called remarriage.

I have set out comprehensively my thoughts and reasoning in respect of all these issues in the judgment that was handed down and I do not intend to repeat them as it is unnecessary. I firstly am of the view that in so far as the de bonis propriis is concerned, Mr Augustyn was the author of the settlement agreement.

It is quite disturbing to me that when realising that the settlement contained the error an immediate proffer of amendment was not made.

Instead of this in the Maintenance Court proceedings this was raised as a reason that the agreement was invalid and the magistrate struck the matter off the roll.

That issue was then argued again before me at this hearing. As I have said to Mr Prinsloo he is a creature of instructions and he does not get instructions from his client, but from his attorney. In my view Mr Augustyn should have immediately conceded that the settlement agreement was incorrect and that agreement to amend should have been entered into between the parties. I have set this out in my judgment, I do not intend to say anything further.

And I gave Mr Augustyn two separate opportunities on two separate days to place his version before this court. He chose not to do so. I am therefore of the view that there are no grounds for his application for leave to appeal.

Section 17 of the Superior Court's Act says that I may only grant leave if I am of the view that another court will come to a different decision. I am not of that view.

In so far as the leave to appeal on the main application is concerned. I am also not of the view that another court will come to a different decision and that being so and given the grounds set out in my judgment, the applications for leave to appeal of both Mr Augustyn and the respondent are dismissed with cost.

NEUKIRCHER, J

JUDGE OF THE HIGH COURT

DATE: 2019-07-17

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2019/1058.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/b-v-b-unknown-topic-agpphc-2019>

Prepared on 9 October 2026 · Esheria