

SOUTH AFRICA / JUDGMENT

B v B (19820/2008) [2009] ZAWCHC 58 (27 March 2009) [2009] ZAWCHC 58

COURT

Western Cape High Court, Cape Town

BEFORE

R Mitchell

CASE / FILE NUMBER

19820/2008

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IN

THE CAPE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL
DIVISION)REPORTABLE CASE

NO: 19820/2008

In the matter between:

L v
B Plaintiff
and
D M v
B Defendant

JUDGMENT

BY : MITCHELL, AJ

For the Plaintiffs) : Adv. P TORRINGTON

Instructed by : BUTLER-BLANCKENBERG INC.

BRENDAN M NIELSEN Tannery Park 21 Belmont Road RONDEBOSCH (Ref: BMN/nf/V877)

For the Defendant(s) : IN PERSON

Instructed by :

Date(s) of hearing : Thursday 26 February 2009

Judgment delivered : Friday, 27 March 2009

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO. 19820/2008

In the matter between:

L v B Plaintiff

D M v B Defendant

JUDGMENT DELIVERED ON 27 MARCH 2009

MITCHELL A.J.

- [1] This matter came before me in the Third Division on 26 February 2009 as an undefended action for divorce.
- [2] After hearing evidence from the plaintiff, I granted a decree of divorce but reserved the question of the further relief which the plaintiff sought in respect of the proprietary consequences of the marriage.
- [3] The parties were married to each other on 2 June 2006 out of community of property and with incorporation of the accrual system. A copy of their antenuptial contract is attached to the particulars of claim and reveals that each of them listed the commencement value of their respective estates giving details of their assets and the values to be attached thereto. The prayers, as formulated in the particulars of claim read as follows:
- '(a) A decree of divorce,
- (b) An order that the Defendant render to the Plaintiff an account supported by documentary proof containing full particulars of the value of the Defendant's estate in order to determine the difference in the accrual between the respective estates;
- (c) Debatement of the aforesaid account;
- (d) Payment to the Plaintiff of any amount to which the Plaintiff may be entitled in terms of the provisions of Chapter 1 of the Matrimonial Property Act 88 of 1984;
- (e) Further and/or alternative relief
- (f) Costs of suit only in the event of the action being defended.
- [4] In response to my question, the plaintiff stated that she had no information as to the defendant's current assets or of the values to be attached thereto. She was accordingly unable to state whether or not his estate had shown a greater accrual than hers during the course of the marriage. I pointed out to her that if the reverse was true, she might well end up having to transfer a portion of her assets to the defendant in order to equalise their respective accruals.

[5] What troubled me in particular regarding the formulation of the prayers was that it did not seem appropriate for the matter to be dealt with by way of the rendering and debate of an account.

[6] Section 3(1) of the Matrimonial Property Act No. 88 of 1984 reads as follows;

'At the dissolution of a marriage subject to the accrual system, by divorce or by the death of one or both of the spouses, the spouse whose estate shows no accrual or a smaller accrual than the estate of the other spouse, or his estate if he is deceased, acquires a claim against the other spouse or his estate for an amount equal to half of the difference between the accrual of the respective estates of the spouses.'

Section 4 deals with how the accrual is to be calculated and s 5 excludes certain assets from the accrual.

[7] From the evidence before me it does not appear that the plaintiff has yet made use of the provisions of s 7 of the Act which reads as follows:

7 Obligation to furnish particulars of value of estate

When it is necessary to determine the actual value of the estate of a spouse or a deceased spouse, that spouse or the executor of the estate of the deceased spouse, as the case may be, shall within a reasonable time at the request of the other spouse or the executor of the estate of the other spouse, as the case may be, furnish full particulars of the value of that estate, '

It seems that prayer (b) has been formulated with this section in mind, However, in order to ascertain whether either spouse has a claim against the other, it is necessary to calculate the accrual in the estate of both of the spouses.

In order for this to be done, such particulars must be available in respect of the estates of both of the parties.

[8] If the furnishing of these particulars leads to further disputes, it might be necessary for the court to become involved in the matter again. It might, for example, be necessary to appoint a receiver with appropriate powers, the precise nature of which would depend on the areas ultimately in dispute.

[9] Accordingly, after considering the formulation of the relief to which the plaintiff is, in my opinion, entitled, I make the following order:

It is recorded that a decree of divorce was granted to the plaintiff on 26 February 2009;

It is ordered that the terms of the antenuptial contract relating to the accrual system are to be implemented. In this regard:

- (i) the parties are ordered to furnish to each other within one month of the date of this order full particulars of the value of their estates as envisaged by s 7 of the Matrimonial Property Act No. 88 of 1984;

(ii) should the estate of either party show a greater accrual during the course of the marriage than that of the other, that party shall pay to the other one half of the difference between the accrual of their respective estates;

(iii) if the parties are unable to agree on the sum, if any, payable pursuant to paragraph (ii) above, the plaintiff is given leave to apply to court on the same papers, duly supplemented, for further relief. D R MITCHELL, A J

(iii) if the parties are unable to agree on the sum, if any, payable pursuant to paragraph (ii) above, the plaintiff is given leave to apply to court on the same papers, duly supplemented, for further relief.

D R MITCHELL, A J

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