

SOUTH AFRICA / JUDGMENT

Bridges v Van Jaarsveld (3662/2006)

[2008] ZAGPHC 342 (11 November 2008)

[2008] ZAGPHC 342**COURT**

High Courts - Gauteng

BEFORE

Raulinga

CASE / FILE NUMBER

3662/2006

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Source record**NOT REPORTABLE****DELIVERED: 11 NOVEMBER 2008****IN THE HIGH COURT OF SOUTH-AFRICA
(TRANVAAL PROVINCIAL DIVISION)****CASE NO: 3662/2006****IN****THE MATTER BETWEEN:**SUNETTE
BRIDGES PLAINTIFF
AND
DEON
VAN JAARSVELD DEFENDANT**JUDGMENT**

RAULINGA, J

Introduction

The Plaintiff instituted an action against the Defendant premised on a breach of promise to marry her. Initially, the Plaintiff had claimed an amount in excess of R1 million. An amount of R468 247-00 was abandoned and she now claims R678 203-08 for patrimonial and general damages. The essential allegations are contained in the plaintiff's particulars of claim.

Prior to instituting this action, the plaintiff had instituted a claim against the Defendant's mother for interference in the contractual relationship between her and the Defendant. The said action has since been withdrawn by the Plaintiff.

The Plaintiff and the Defendant entered into an oral engagement agreement on the 29th of July 2005 at or near Pretoria, which was initiated by the Defendant. The Defendant had verbally undertaken to marry the Plaintiff on 14 January 2006.

After the engagement it was agreed between the parties that the Plaintiff would move to Patensie in the Eastern Cape where the Defendant was managing a farm. As a result of the promise, the Plaintiff sold her property in Pretoria and also registered her son into the Woodridge School in the Eastern Cape. She also decided to forego her career as a singer.

It is common cause between the parties that the Plaintiff was previously married four times. This fact was admitted by the Defendant during a pre-trial conference on 8 May 2008.

On 5 December 2005 the Defendant gave the go ahead for the distribution of invitation cards to guests. Arrangements were made for 180 guests. By that time the Plaintiff and the Defendant had already incurred certain expenses. On 6 December 2005 the Defendant sent an sms message to the Plaintiff informing her that he was repudiating the engagement. Later the breaking of the engagement

would lie wildly publicised in the media.

The Plaintiff also claims for loss of income for the year 2006 due to the bridge of promise.

The Plaintiff bases her cause of action on the following requirements:

A contract that was entered into between the intended husband and wife to marry on specific date or within the foreseen future.

The breach of the contract which consists of a refusal to proceed with the marriage.

Wrongfulness of the breach is established if there is a unilateral repudiation on the part of the Defendant of the contract.

In respect of the delictual part of the claim it is not clear whether the breach was “injurious or contumelious”.

The damages suffered by the Plaintiff.

It would appear that the Defendant was under pressure from his mother to break the engagement and resile from the contract. (Exhibit “A” page 51 of Plaintiff’s bundle bears proof of this). There were threats by Defendant’s mother that he would lose the use of the farm if he insisted to continue with the marriage.)

The Defendant admits the expenses incurred by the Plaintiff without admitting liability.

The following are common cause between the parties:

That the parties became engaged and that a date for the intended marriage was agreed upon to be 14 January 2006.

That the agreement was terminated by the Defendant on 6 December 2005.

The following are the disputed facts:

Whether the Defendant unilaterally repudiated the agreement by the termination of the engagement agreement;

Whether the unilateral repudiation was wrongful;

Whether the termination of the engagement was “injurious or contumelious”.

During the trial two bundles were handed in as exhibits: The Plaintiff’s bundle was handed in as Exhibit “A” and the Defendant’s bundle was handed in as Exhibit “B”. The court was also referred to the Pleadings bundle.

Exhibit “A” and “B” contain mainly communications between the Plaintiff and the Defendant in the form of letters, e-mails, sms’s etc. invoices, bank statements and newspaper articles (comprising comments by journalists and photos).

The Parties

The Plaintiff is Sunette Bridges, an adult female and a singer by profession residing at 73 Isabel Street, Kilnerpark, Pretoria, Gauteng.

The Defendant is Deon Van Jaarsveld, an adult male and a farmer by profession, residing at Kwaggaskloof farm, Patensie, Eastern Cape Province.

The Plaintiff’s case

The Plaintiff Sunette Bridges ascended to the witness stand and testified as follows: She is the plaintiff in this matter. In 2006 she was residing in Pretoria when she instituted an action by way of summons. She met the Defendant for the first time in

November 2003 at Hancky next to Patensie in the Eastern Cape, where there was a function at which she was performing as a singer. She was introduced to the Defendant by a friend one Ferreira. At the time she was still married to Mr Louis Van Wyk, who was a music promoter and also her manager. She got married to Mr Van Wyk in

2003. Nothing romantic happened between her and the Defendant at that time. She again met the Defendant in Port Elizabeth in 2004 when she was touring with the Smokey musical band. At that time her marriage was in trouble due to infidelity on the part of her husband. In 2004 she got divorced from Mr Van Wyk. Later in the year she met the Defendant at a KKNK Cultural Music Festival at Oudshoorn. She was in the company of her friend Ms Ferreira when her romantic relationship with the Defendant started at that festival. At the time she was not yet divorced from Mr Van Wyk. They again saw each other after her divorce proceedings had ended in July 2004 at Jeffrey’s Bay, which is not far from Kwaggaskloof farm where the Defendant lived. She had taken her son (8) and her daughter (12) with her to the Defendant’s farm where they stayed for a week. Her children were friends with Karin

Ferreira's children. The Plaintiff informed the Defendant about her previous four marriages. The Defendant indicated to her that he accepted her past and he had no problem about it. For her, these were attractive attributes which would make the relationship blossom. The neighbours and the Defendant's friends were very excited about their relationship. When she met the Defendant's father it got very pleasant. The Defendant was 32 years old then and she was 34 years of age.

The Defendant visited her once every month and she would in turn visit him also once every month. He met her mother and she (the mother) established a good relationship with the Defendant. He taught her (the Plaintiff) a lot about farming and she taught him a lot about city life. In July 2004 the Defendant moved from his parents' place into a neighbouring farm house which he and the Plaintiff had renovated. The climax of their romantic relationship was reached when a (photo) was taken of them at Margate which later appeared in the Huisgenoot in December 2004. That December, they spent Christmas at the Klein-Karoo with Karin Ferreira. As a result of the photograph

which appeared in the Huisgenoot, in February 2005 the Rapport released an interview with both the Plaintiff and the Defendant. The Rapport was published on 27 February 2005 (Page 102 of Exhibit "A"). (The printout was admitted by the Defence as an original). She was however not present at the farm when this interview was conducted. Thereon-after, the floodgates of the media opened and they were interviewed by a number of journalists including Mr. Van Rensburg of the Huisgenoot. (All these interviews appear in the two bundles – Exhibit "A" and Exhibit "B"). (There is no need to give a minute detail of these interviews, save to refer to a few relevant ones.) (Vide in this regard page 105 and 106 of "Exhibit "A". At page 106 column 3 the following is reflected in answer to a question by a journalist (Huisgenoot dated 10 March 2005). The Defendant answered:

"Dat sy 'n shobiz meisie is, pla hom nie." Ons gun mekaar die lewe wat ons gekies het." And he continued: "As iets pla, kry ons dit uit die pad. En ek sal nooit die verlede teen haar hou nie. Ons kyk net vorentoe en tot nou was die vorentoe kyk net pragtig gewees."

However, the Defendant's mother was not with their relationship, to an extent that when the Plaintiff visited the Defendant at Patensie, the Defendant's mother wouldn't come. On 29 July 2005, the Defendant approached her mother in Pretoria to ask for the Plaintiff's hand in marriage. The Plaintiff's mother gave him permission to marry her. The Defendant thereafter proposed to her and once she had accepted his proposal he left a ring on her pillow in the bedroom. She was very excited. When she asked him if indeed he was serious, he answered in the affirmative. She then went to break the news to her mother and

her friends. The Defendant then said that he wouldn't tell his parents at that stage, because they wouldn't be happy about it. Once the Defendant engaged her to marry him, she knew that there was no possibility of her continuing with her career as a singer. Her career was in Gauteng and she had to vacate it. She was going to keep herself busy as a farmer's wife.

On 19 August 2005 her photo appeared on the front page of Die Burger where she was displaying the engagement ring. On 20 August 2005 there was another newspaper article of hers that appeared in the Beeld. (Vide pages 108, 109-100 of Exhibit “A”.) (On 2 August 2005 the article appeared in the Rapport. She had become the toast of the media and she was enjoying the highlight of her life. The story about her engagement appeared in all these newspapers. In the Rapport of 21 August 2005, the Defendant is quoted as having said:

“Ons gaan vir die wêreld wys dit kan gedoen word. Ons huwelik gaan hou. Sy is ‘n ongelooflike vrou met die warmste hart.”

She had opportunities in the Eastern Cape, though in a different way. She was still going to receive some income. She was involved in “Die Groot Vyf” which included Steve Hoffmeyer. (She can be seen singing in a photo that appeared in “Die Son”. (Vide also newspaper reports at pages 113 and 114 of Exhibit “A” dated 11 September 2005).

Because she was married previously, she wanted to have a small function in Gauteng. The Defendant however, insisted that they should have it at the Boardwalk in Port Elizabeth. They were going to invite about 200 guests.

She decided to sell her property which was situated at Rietfontein in Pretoria. She sold the house because she was engaged and couldn’t afford to pay R5000 per month. She needed an income. She discussed the sale of the house with the Defendant intensively. He went to show her a school where her children would attend. The children were going to attend a school at Woodridge College. She had to fly to the Eastern Cape with her son. She paid for the two tickets. Her daughter was in Grade 4 and her son in Grade

0. Her son’s father was paying for his schooling. The Defendant offered to pay for her daughter. The whole excitement was turned into a nightmare during November 2005 (about 20 November) when the Defendant became very unhappy because his family refused to recognise they were going to marry. He sent her an e-mail in this regard. When she confronted him about it, he told her that once she joined him at Patensie, the matter would be resolved. At that time she had already sold her house.

The Defendant started to send her e-mails as appear on pages 142 and 143 of Exhibit “B”. His sister was also not supporting him. He was nervous and edgy. He said he was confused. He sought advice from the Plaintiff. She told him that she had sold her house and removed the children from school. She had a wedding gown in her wardrobe. She needed an answer from him – he had to tell her what he had decided. (The Plaintiff then read out the e-mails which appear on page 144 of exhibit “B” and pages 48-56 of Exhibit “A”. There is a need to regurgitate one of these e-mails which appear on page 144 of exhibit “B” and on page 56 of exhibit “A”.)

“[Sunette@gam.co.za

From: “Kwaggaskloof” -kwagga@igen.co.za-

To: -Sunette@gam.co.za-

Sent: 4 December 2005 03:36pm.

Ek weet nie wat om te sê nie ek weet jy is baie kwaad ek is verskriklik jammer oor alles ek voel baie, baie sleg jy soek 'n rede daar is net sekere en ek kon nie vir jou jok nie ek voel nie meer dieselfde nie met jou trou soos ek nou voel nie ek kan my self ook nie bluf nie. Tannie ek weet tannie gaan ook die brief lees ek is baie jammer ek maak tannie se dogter seer maar hier is te veel dinge wat teen ons werk.

Sunette jy is a pragtige mens ek is baie jammer ek sal jou goed stoor.]”

She then transferred the sms's from her cellphone to her laptop. The recordings of the sms's from the cellphone to the laptop.

On 4 December 2005 after he had sent her the sms quoted above, he went to talk to the Ferreiras in the evening and when he arrived back at his house he phoned her and told her that everything was still fine. The morning of 5 December 2005 the Plaintiff and the Defendant were communicating without any problem. She sent him an sms about the dispatch of the cards. He replied confirming that she could send the cards out. He however sent another e-mail indicating that he was sorry. On 6 December 2005 she had a music concert at Saint Paul in Gezina Vineyard. She was accompanied by her friends Peter and Carin Rademan.

When she tried to contact the Defendant he wouldn't answer the phone. He was not communicating. It was that evening when she received a heartbreaking sms that appears as item 9 on page 48 of Exhibit “A”.

That sms reads as follows:

“Ek is so jammer dat ek alles so ver laat gaan het, ek is jammer as ek jou seer maak, maar ek is nie opgewonde nie en dis nie reg nie. Ek kan nie met jou trou nie.”

After reading this sms message she still continued with her performance. Thereafter her friends took her home. She cried the whole night. By then she had broken the bad news to her mother.

Her mother and her friends helped her to pack her goods because the removal trucks were arriving on 9 December 2005. She had to store her furniture elsewhere because she was no longer moving to Patensie. The Defendant never came to Pretoria as he had promised. The news of the breaking off of the engagement spread like wild fire in the “Beeld” and “Son”. (See exhibit C, D and E. the posters.) On 20 December 2005 she realised that the photographer had refunded an amount of R2 700. On 4 December 2005, she had received an e-mail from the Defendant in which he was concerned that his mother was against their marriage. The letter was sent to her by fax as reflected on page 51 of Exhibit “A”. In the letter the Defendant's mother pleaded with him not to marry her. She also threatened to stop him from using the farm, which is a family property. After he had broken the engagement the Defendant continued to send her a lot of sms's. She finally succumbed and met him at OR Tambo International Airport on or about 10 January 2006. When they met the Defendant apologised and said that he was sorry about what had happened. He suggested that they should continue dating while he was sorting things out. She then realised that

he was trying to calm her down so that she shouldn't institute a legal claim. By that time her lawyer had already sent a letter to the Defendant that they were going to institute a claim. The media issued a statement that she couldn't be traced. Towards the end of January 2006 she spoke to the media in reaction to what the Defendant was saying about her e.g. allegations that she was a money-monger. (Vide in this regard pages 153, 154 and 155 of Exhibit "A" in particular page 156 of "A")

for the publication dated 15 March 006.) They had arranged that the two of them (Plaintiff and Defendant) were going to share the expenses of the wedding. (The expenses reflected on pages 1-28 of Exhibit "A".) Vide Exhibit "I". Mr Van der Westhuizen gave her R200 000-00 which she used to survive. (Vide exhibit "A" pages 28-38 for the contract between the Plaintiff and Mr Van der Westhuizen.) Documents prepared by an auditor of a summary of her income appear on pages (117-118) of Exhibit "A". (The Plaintiff then explained the calculations.

When she was still married to Mr Van Wyk she had an agency which was a subsidiary of his business.

In 2006 her income climbed because she had started earning royalties. She also received income from photographs and CD's which was not reflected in the account. There was also money that she received in cash towards the end of 2005 which is also not reflected on her account. The amounts she received up to February 2006 are mere estimates. Defendant paid her some money which she did not include in the particulars of claim. There are statements which the accountant took when she left the house. These papers were never returned.

Immediately after she broke with the Defendant, she started a romantic relationship with Mr Lawson, because he was the first person who came to synthesise with her. She first got married when she was 20 years old. She has since married four times. She entered the music industry at the age of 30. Her father, Mr Bless Bridges mentored her. She holds a Diploma in Beauty Therapy. After the bridge of promise misery, she wrote a book and she has since released a magazine on the website.

Under cross-examination she said the following: In May 2006, she amended the particulars of claim from ±R1 million to ±R600 000-00 through her counsel, which was carefully considered.

Mr Tommy Lawson took the statements with him when he left her house. When the summons was issued for R1.1 million she had not yet received the statements. She only received the statements on 17 December 2005. The dress was a gift and she only paid R11 000 for the cost. She was not paid for the interviews she conducted with the media. She requested Mr Thomas Thompson to keep the wedding dress because she wanted her daughter to use it for Valentine's day functions. She never wore the dress. It was displayed for charity. Nobody would buy a dress belonging to somebody who was jilted. She entered into a DVD contract with Mr Van der Westhuizen because she wanted to pull herself together so that she could support herself. She received the said money on 23 January 2006. However she couldn't make more because of what the Defendant had done to her. She could have earned

about R376 000-00 for the book and R1,4 million for the DVD, but this was not to be. In January 2006 she could have banked about R652 249-35 into her account. The calculation by her bookkeeper would include Mr Lawson's income because he couldn't do his own banking because of his financial position. She received R32 000 for her agency, all the other money belonged to Mr Lawson. They only separated the account the following year. Before that, she shared the account with Mr Lawson. At one stage the defendant told her that they (including her children) should go and live in Spain to avoid his mother. She knew that the Defendant was under pressure from his mother. However the Defendant said he broke the engagement because she put an ultimatum to him. (The Defendant denied that the marriage engagement was unlawfully terminated.) She never agreed to the termination of the engagement. She withdraw the other claim against the Defendant's mother and the Defendant because she couldn't litigate in two cases. Her relationship with the Defendant would have worked despite the opposition by his mother. The Defendant had promised her that he would marry her and that his mother wouldn't force him to divorce. She never threatened the Defendant with litigation. She threw the ring that the Defendant bought into the ocean at Jeffrey's Bay. (It was only under re-examination that the list of deposits for 2006 were produced as exhibit "G".) She has not yet started to repay Mr Van der Westhuizen – but she will do that at another time. Her income started to go down after the breakdown of the engagement.

Elizabeth Bridges

She testified that she is Plaintiff's mother. The Plaintiff and the Defendant were in love and were very happy together. In June 2005 the Defendant invited them to his farm in the Eastern Cape. She flew there with the Plaintiff and her children. In July 2005 he approached her at Queenswood in Pretoria and asked to marry her daughter the Plaintiff. She explained the plaintiff's past experiences with him, including the fact, that she was previously married four times. He told her that his mother was not happy about the marriage, but he would marry her despite. The Defendant also promised her that he would financially support the Plaintiff from the proceeds of the farm. She agreed that he could marry her. Four days before the Plaintiff was to move to Patensie, she showed her an e-mail from the Defendant informing her that he was experiencing problems. Later the Defendant phoned her (the witness) that he was sorry and that he was coming to fetch the Plaintiff from Pretoria to Patensie. On 7 December 2005 the Plaintiff showed her a very upsetting sms from the Defendant saying that he was no longer going to marry her. The Defendant sent her an sms on 7 December 2005, apologising for what had happened. The Plaintiff had sold her house by then and she was not even performing. She was very upset.

Peter Andries Rademan

He knows the Plaintiff since the time they were together at the University of the Free State. They are close friends. He knows the Defendant whom he met in Pretoria. He and the Plaintiff used to visit the Defendant in the Eastern Cape. He was excited that the Plaintiff and the Defendant were going to marry. The Plaintiff one day showed him an e-mail from the Defendant. He realised that their relationship was going shipwreck. On 6 December 2005 the Defendant sent an sms to the Plaintiff informing her that he was no longer going to marry her. The Plaintiff was very

devastated. He and his wife consoled her.

Thomas Frederick Thompson

He is a fashion designer. He knows the Plaintiff she is his customer. On 16 August 2005 he made a quote for clothes for the Plaintiff. She paid a deposit of R2000-00. The price for the dress was R11 000-00. He also designed clothing for the children. The Plaintiff collected the clothing on 8 December 2005. At that time Beeld had called him to confirm if the wedding was called-off. He told them he didn't know. The Plaintiff paid him R14 825-00 for the clothing. The dress is still hanging in his shop. The Plaintiff once collected it, but brought it back later. He didn't make the dress free for the Plaintiff. There are pictures taken of the dress and everybody knows about it and as a result nobody would want to buy it.

Under cross-examination:

The value of the dress has decreased because it has been hanging in the shop and the newspapers published it. Under re-examination the highest price he has been offered for the dress is R2500-00. It will be difficult to sell it.

Close of Plaintiff's case

Defendant's case

The Defendant closed his case without tendering any evidence.

Evaluation and Analysis

In his plea, the Defendant raised the following grounds as justifiable reasons why the marriage engagement broke down:

Eiseres verskeie vorige onsuksesvolle huwelike gehad het en Verweerder nie onder die omstandighede kans gesien het om met die huwelik voort te gaan nie, inter alia, maar nie beperk tot die feit dat Eiseres se gedrag van so aard was dat Verweerder geen redelike verwagting het of kon gehad het dat die huwelik suksesvol sou wees nie.

Eiseres gedurende November/Desember 2005 Verweerder meegedeel het dat sy van voorneme was om haar sang loopbaan voort te sit. Die gevolg daarvan sou wees dat sy lang tydperke uithuisig sou wees. Eiseres sou haarself nie op die plaas bevind nie, maar in Gauteng en/of op ander plekke in Suid-Afrika, welke omstandighede Verweerder onversoenbaar gevind het met 'n suksesvolle huweliksverhouding.

Dit geblyk het dat Eiseres en Verweerder ooglopende persoonlikheidsverskille het en in ag genome Eiseres se huweliksgeskiedenis en agtergrond, die kanse op 'n suksesvolle huwelik nie in die omstandighede redelik geblyk het nie.

Nog voor huweliksluiting het Eiseres aan Verweerder hoë finansiële eise gestel, insluitende dat Verweerder 'n bydrae moet maak van die skoolfooie by 'n privaat skool, ten opsigte van die Eiseres se minderjarige kinders uit 'n vorige huwelik.

Verder tot voormelde het Verweerder aan Eiseres meegedeel dat hy bedenkinge het oor die voortsetting van die voorgename huwelik, het Eiseres aan Verweerder 'n ultimatum gestel om te besluit met betrekking tot gemelde huwelik en by mededeling deur Verweerder aan Eiseres dat hy bedenkinge het, het Eiseres en Verweerder by ooreenkoms gemelde verlowingsooreenkoms beëindig.

Considering that the Defendant closed his case without tendering any evidence and also weighing his silence against the overwhelming version of the Plaintiff, the grounds raised by the Defendant can be refuted for the following reasons: The Defendant had known the Plaintiff since November 2003. Their romantic relationship started in essence in July 2004. The Plaintiff had by then narrated her past to the Defendant. The Defendant during interviews with the media enthusiastically stated that he had no problem with her past. Before he proposed to the Plaintiff her mother had also warned him about the Plaintiff's previous life and marriages.

The Plaintiff testified that the Defendant promised that the two of them and the children would survive from the proceeds of the farm. He never bothered that she was going to forsake her profession as a singer. He ought to have anticipated that if she were to take some assignment, then she would spend a few days away from the common home. The Plaintiff was prepared to become a farmer, which would have reduced her chances of spending more time away from home.

The ground of personality difference is an afterthought. The Defendant himself in the newspaper interviews said how wonderful a person the Plaintiff was. He foresaw no obstacles in their future.

It was the Defendant who chose the school where the children had to attend. He also promised to pay the fees for the Plaintiff's daughter.

When she confronted the Defendant with an ultimatum, the Plaintiff was merely trying to ascertain as to what her demise would be. It would be an irony that she would agree to the breakdown of the marriage. It is my view that she was only inquisitive to know, not that she agreed.

After going through four marriages, the Plaintiff although she could have had the reconstruction of her soul, she didn't reincarnate. Her feelings remained the same. She had to undergo a process of healing during her four divorces. Neither did she live nine lives like a cat would do. The Defendant cannot blame her for the breaking of the marriage engagement. He made a proposal to marry her, and it is again he who broke it.

The Plaintiff herself was not an innocent bystander. As she testified, she was very extravagant in character and language. To say the least, she was hyperbolical in her testimony. There are a number of loopholes in her evidence. She had been married four times, which gives her the wisdom and advantage to deal with marital issues with hindsight. In a number of ways, she was the one calling the shots. There was no need for her to sell the house in a hurry. One would understand that she had to remove the children from their schools for the sole reason of bonding with them, but she could have continued to rent out the house. There was also no pressing need

to give up her profession as a singer without a considered decision. She ought to have weighed her pros and cons. The Plaintiff's dealings with her bank account and money in general is not impressive. She is not certain as to how much belongs to her in her account and how much her lover, Mr Lawson, with whom she shared an account, was withdrawing. There is money that she received in cash that cannot be accounted for. This is by word of her mouth without bringing into play the fact that the Defendant didn't testify.

The Plaintiff knew very well that she is a popular singer, which is further exacerbated by the fame of her late father, Mr Bless Bridges himself. She ought to have anticipated that anything she does would have attracted media attention. She gave interviews with a number of papers. She was a willing horse who was not forced to drink the bitter pill. Although the Defendant didn't testify, his counsel challenged the evidence of the Plaintiff extensively. Some of the issues the Plaintiff raised were rebutted through cross-examination. Compare this reasoning with *Small v Smith* 1954 (3) SA 434 (SWA) at 438.

However, most of these factors are more relevant to quantum than to merit.

The Plaintiff was corroborated in her evidence by three witnesses who testified on her behalf. In the absence of any evidence by the Defendant the court is obliged to have an adverse attitude towards his case. His silence strengthens the Plaintiff's case. In *Galante v Dickson* 1950 (2) SA 460 (A) at 465 the following was said: "In the case of the party himself who is available, as was the Defendant here, it seems to me that the inference is, at least obvious and strong that the party and his legal advisors are satisfied that, although he was obviously able to give very material evidence as to the cause of the accident he could not benefit and might well because of the facts known to himself, damage his case by giving evidence and subjecting himself to cross-examination." Vide also *Gleneagles Farm Dairy v Schoombee*, 1949 (1) SA LR 830 (AD) and *Elgin Fireclays Lt v Webb* 1947

(4) SA 744 (A).

As already elucidated above, there is no evidence to contest that the breakdown of the marriage was due to the unilateral cancellation by the Defendant. The Plaintiff's evidence is conclusive on this point. Further, the Defendant did not raise any mistake, fraud or incorrect misrepresentation as a ground for the break of the marriage.

"A person of age cannot repudiate a promise to marry on the ground of parental disapproval of the choice of a marriage partner, unless parental consent had been made a condition of the promise."

Sinclair – The Law of Marriage vol. 1 1996 edition page 324. In casu, both parties are majors and this submission does not hold.

In *Bull v Taylor* 1965 (4) SA 29 (A) at 36(G-H) the court granted contumelies in an action for bridge of promise and seduction. The learned judge quoted a passage from Wessels, Law of Contract, paras 3191 et seq: "... cases of breach of promise to marry have been advanced in support of the view that moral and

intellectual damages are often awarded by our courts. This class of case is, however, sui generis, for a breach of promise to marry is not only a breach of contract, but a substantial wrong done to the injured party, and the damages

are awarded both for loss in property and as a solatium to the feelings of wounded pride of the plaintiff.”

In *Krull v Songerhaus* 1980 (4) SA 299 (E) at 301 (D-F) it was held that since the Defendant had pleaded that his repudiation had been justified and therefor lawful, the onus of proving such justification rested on him.

Further that ... an agreement to marry is a contractual relationship of considerable importance to the parties, so much so that its unjustifiable repudiation may attract, and often does attract, both contractual and delictual damages. Compare *Guggenheim v Rosenbaum* 1961 (4) SA 21 (W) at 35H-36A in which it was held that the Plaintiff has the onus to allege and prove that the breach was injurious and contumelious – vide also Harms Amler’s *Precedents of Pleadings* page 61. In respect of the delictual part of the claim, the plaintiff has to allege and prove that the breach was wrongful –

Bull v Taylor supra at

35. In respect of the contractual part of the claim, unilateral repudiation is prima facie proof of the wrongfulness of the breach. It is for the Defendant to allege and prove facts of a sufficiently serious nature justifying

such repudiation -also Harms supra at 61.

Since the contractual liability of the Defendant does not depend on fault, in order to succeed with a claim, the Plaintiff has proved that the breach was: “injurious or contumelious.” It was proved through the Plaintiff’s evidence that the engagement was published in the *Huisgenoot* magazine and other newspapers, after the Defendant terminated the engagement by an sms message. This is contumelious. The break off of the engagement contract was also published by way of posters. The parties were engaged for a period of four and half months, already, when the contract was cancelled. The parties were to marry in five weeks’ time when the Defendant unilaterally terminated the engagement to marry.

There is no doubt that the Plaintiff was delictually wronged.

The Plaintiff’s version is therefore accepted on a balance of probabilities, and I therefore find that she has discharged her onus.

Damages

Contractual Damages

It has been argued on behalf of the Plaintiff that she is entitled to recover actual and/or prospective damages as in ordinary actions for damages in breach of contract.

Harms – Amler’s Precedents of Pleadings at page 62, opines that contractual damages normally consist of the loss of the financial benefits of the marriage as well as the actual monetary loss or expenditure reasonably incurred.

In *Gugenheim v Rosenbaum*

- (1) 1961 (4) SA 15 (WLD) at 36 (D-G) the court rejected the approach in *McCalman v Thome*, 1934 NPD 86, and referring to contractual and delictual damages Trollip J said the following:

“I am therefore constrained to disagree with McCalman’s case in that respect too, and to say that in my view, although the modern action for breach of promise is a composite one, combining

both contractual and delictual elements, as a general rule these elements should be clearly separated in the pleadings and in the

assessment of damages so as to avoid confusion.”

The learned judge had in the same judgment stated that:

“...the former has to be proved with that degree of precision required in breach of contract whilst the latter is in the court’s discretion. The latter is, whereas the former is not, subject to aggravation or mitigation according to the contumely of the defendant’s

conduct, and so on.” The latter must either flow directly from the breach of promise or must be reasonably supposed to have been within the contemplation of the parties at the time the contract was entered into as a probable consequence of the breach. However, one must guard against a duplication of damages which might be covered by an award of prospective loss. The distinction between restitutional interest; positive interest; reliance or negative interest, prospective etc. was discussed in *Mainline Carriers (Pty) Ltd v Jaad Investments CC and Another* 1998

- (2) SA 468 (CPD).

The question that is left open is whether the Plaintiff has proved with the degree of precision her entitlement to contractual damages. The Plaintiff contends that she has, whereas the Defendant is of the view that she has not proved contractual damages. The notion that the Plaintiff must prove contractual damages was approved in *Japmoco BK*, 2002

- (5) SA 649 (SCA).

Agent’s Commission and Cancellation Costs in Respect of the Bond

Although it is expected of a bride to normally join the bridegroom to his place of abode when they marry, in the circumstances the Plaintiff, with her hindsight of four failed marriages, could have opted to rent out the house instead of selling it in a hurry. She was obliged to be more cautious and calculating in her decision to sell the house. This is independent of whether the Defendant testified or not. I am of the view that the expenses incurred on the sale of the house were not reasonably incurred. I am afraid I am not inclined to grant this portion of the claim.

Wasted expenses paid by Plaintiff in Respect of the Wedding Ceremony

The Plaintiff is entitled to wasted expenses, but with a proviso that she elected to be photographed by a Sunday Newspaper in her wedding dress and as a result the purchase price of the dress dropped to a minimum. I can only grant an amount of R2 500-00 for the dress which is the amount she testified the dress is now worth. All other amounts are granted as claimed and the total is now R12 825-00 instead of R21 325-00. (Exhibit A page 2.)

Wasted Removal and Storage

There is no argument that the Plaintiff is entitled to this amount. I therefore would grant a total of R28 872-00 (Exhibit "A" pages 14-20.)

Loss of Income for the year 2006

This is a bone of contention between the Plaintiff and the Defendant.

Exhibit "G" which is a list of deposits for 2006 was only produced during re-examination of the Plaintiff. It is not clear why the Plaintiff waited until toward the conclusion of her evidence to produce this important document. One must also consider that during this period, the Plaintiff was sharing her account with her lover, Mr Lawson. The Plaintiff also admitted that there was money that she handled in cash. It is therefore difficult to quantify these amounts. There are times when the Plaintiff didn't take up certain assignments such as the one at KKNK in early 2006. There are a number of festivals she didn't attend and one doesn't just know how much she could have earned. From the papers, it is clear that the Plaintiff amended her claim from more than R1 million to about R648 000-00. It is difficult to contend how she had arrived at the first figure. The loan of R200 000-00 advanced by Mr. Van der Westhuizen to the Plaintiff causes some suspicion. (Exhibit "A" pages 29-38.)

However despite these discrepancies, if the Plaintiff's house were in order, she could have earned more than what she claimed.

Although the Defendant cross-examined the Plaintiff on the loan aspect, it can be mentioned that he was merely groping in the dark. Since there is no evidence to gainsay the version of the Plaintiff one will accept that she is entitled to recover a total of R137 316-00.

Wasted travelling costs to attend the Woodridge School

The trip was as a result of the promised marriage. The Defendant suggested that the children be moved to Woodridge School. I have no problem with the deposit of R1000-00 but the Plaintiff was not consistent in her evidence that she spent an amount of R2 300-00. I will therefore use my own estimation and grant her a total of R2 400-00.

Amounts spent on improving the house the parties would have occupied.

It would appear that the Defendant didn't contest the Plaintiff's version on this item. The amount of R6000-00 is granted.

Total amount of contractual damages

Having analysed the evidence of the Plaintiff I am of the view that she has successfully proved contractual damages to a total of R187 413-00. An amount of R15 000-00 paid by the Defendant as a contribution towards the removal and storage costs should be deducted bringing the total payable by the Defendant to R172 413-00.

Delictual Damages

It is indeed true that the Plaintiff suffered considerable embarrassment and humiliation when the Defendant terminated the marriage engagement by an sms message which was captured and published throughout South Africa in both Afrikaans and English medium newspapers. The Defendant ought to have known from the outset that “a little talk of web would catch him in its net.”

Despite his attempts to deny liability, the Defendant opted not to testify. It can be concluded that the manner and circumstances in which the bridge of promise was terminated constituted injurious or contumelious wrong. The Defendant broke off the engagement unilaterally. However one paramount thing I find in his favour is that he was apologetic. He sent numerous e-mails and sms's to the Plaintiff and her mother indicating that he was sorry. That attitude makes him a person who is compassionate and caring, though that came too late after the damage was done.

On the other hand as I have already stated above, the Plaintiff herself was hyperbolic and dramatic in making hurried decisions. She is a sophisticated young woman who had been married four times. She has gone through a lot of hurt and she must have cultivated a strategy to deal with difficult moments.

The awarding of delictual damages is in the discretion of the court. Vide *Sepheri v Scanlan* 2008 (1) SA 322 CPD) and *Guggenheim v Rosenhaun* 1961 (4) SA 29 WLD.

In the circumstances I can award only an amount of R110 000-00 as delictual damages. There is no reason to award a substantial amount in view of the fact that the Defendant was apologetic towards the Plaintiff and her mother. The Plaintiff has been awarded a substantial amount as contractual damage already and to give her more will be tantamount to a duplication.

Conclusion

Judgment is granted in favour of the Plaintiff:

1. Defendant is ordered to pay the amount of R282 413-00 to plaintiff.
2. Defendant is ordered to pay interest at the rate of 15,5% per annum on the aforesaid amount from 13 February 2006 to date of payment.
3. Defendant is ordered to pay the costs of the action.

RAULINGA J

JUDGE OF THE HIGH COURT

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Prepared on 12 October 2026 · Esheria