

SOUTH AFRICA / JUDGMENT

C.E.B v C.T.W.B and Others (2021/7796) [2023] ZAGPJHC 971 (30 August 2023)

[2023] ZAGPJHC 971**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Moorcroft

CASE / FILE NUMBER

2021/7796

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IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2021/7796

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the application by

B, C E APPLICANT AND B, C T W FIRST RESPONDENT VAN HEERDEN, ELMARI SECOND
RESPONDENT ELMARI VAN HEERDEN PROKUREURS THIRD RESPONDENT

JUDGMENT

MOORCROFT AJ:

Summary

Urgent application – rule 6(12) – application brought on very short notice and long after the facts were at the disposal of applicant – struck from roll for want of urgency

Order

[1] In this matter I made the following order on 29 July 2023:

1. The application is struck for lack of urgency;
2. The applicant is ordered to pay the respondent's costs

- [2] I provide brief reasons for the order below.
- [3] The applicant served an application for an anti-dissipation interdict on Monday, 7 August 2023. The application required an answering affidavit by 10 August 2023 and the application was argued on 15 August 2023. The applicant sought to interdict her husband, the first respondent (referred to as 'the respondent') from receiving the full proceeds of a house he had sold and sought an order that 50% portion of the purchase price be kept in trust pending finalisation of the divorce action between the parties.
- [4] The parties were married in 2003 subject to the accrual system. They separated in 2020 and the applicant instituted divorce proceedings in 2021. The applicant's particulars of claim initially sought payment of half the purchase price of the property with which the application is concerned but the particulars were amended in June 2021 to seek a decree of divorce and her half of the accrual only. The claim for 50% of the purchase price was abandoned on the ground that there was no basis alleged for the claim.
- [5] The respondent put the property with which the application is concerned on the market in October 2021. An offer was received in November of that year but a sale did not materialise. The property was then put on auction in March 2022 and the applicant was informed accordingly.
- [6] In the beginning of April 2023 the applicant was advised that the property was in the process of being sold. She received a copy of the offer to purchase on 18 April 2023. Also in April 2023 the applicant's attorney sought an undertaking that the proceeds of the sale of the property be retained in trust and not paid over to the respondent's attorney. A further undertaking was sought on 6 June 2023 and the applicant's attorney advised that she would approach the court for an urgent interdict to prevent payment of the proceeds to the respondent. The undertaking was refused on 7 June 2023 subject to the qualification that arrear maintenance would be provided for. On the same day the applicant was furnished with a copy of the deed of sale and advised that the sale was now perfecta.
- [7] On 14 June 2023 the applicant was advised by her attorneys that she may have a claim for 50% of the proceeds on the basis of a promise made to her by the respondent in 2020 that he would pay her half the proceeds upon the sale of the property.
- [8] A pretrial conference was held on 20 July 2023 but settlement could not be achieved. The applicant then on 1 August 2023 proceeded to give notice of an intention to amend the particulars of claim to also rely on the verbal promise, and again sought an undertaking that her 50% of the proceeds be retained in trust pending finalisation of the action. The amended pages were delivered 3 August 2023.

- [9] The applicant was informed of the possibility of a claim based on the promise of 2020 by 14 June 2023 and she knew that the property was on the market to be sold as long ago as 2021 or 2022, and she knew that the property was actually in the process of being sold in April 2023. The application could have been launched in mid June or perhaps towards the end of June 2023. Instead the application was held back and brought on very limited time periods in August 2023.
- [10] Under these circumstances I am of the view that no case is made out for relief under rule 6(12) of the Uniform Rules.
- [11] I therefore make the order in paragraph 1.

J MOORCROFT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 30 AUGUST 2023.

COUNSEL FOR THE APPLICANT: L NIGRINI INSTRUCTED BY: ULRICH ROUX & ASSOCIATES

COUNSEL FOR THE RESPONDENT: P J GREYLING INSTRUCTED BY: WILLIAM TINTINGER

ATTORNEYS DATE OF ARGUMENT: 15 AUGUST 2023 DATE OF ORDER: DATE OF JUDGMENT: 29 AUGUST 2023 30 AUGUST 2023

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Prepared on 9 October 2026 · Esheria