

SOUTH AFRICA / JUDGMENT

Dladla v Ndhlovu and Others

(2022-13299)

[2023] ZAGPJHC 1019 (11 September 2023)

[2023] ZAGPJHC 1019

COURT

South Gauteng High Court, Johannesburg

BEFORE

GC Wright

CASE / FILE NUMBER

2022-13299

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 2022-13299

NOT REPORTABLE

NOT OF INTEREST TO

OTHER JUDGES

REVISED

11/09/23

In the matter between:

GAWULAPHI

DLADLA

APPLICANT

And

MABEL

PHINDILE NDHLOVU

FIRST

RESPONDENT

THE

MINISTER OF HOME AFFAIRS

SECOND

RESPONDENT

THE

DIRECTOR GENERAL OF THE DEPARTMENT OF HOME AFFAIRS

THIRD

RESPONDENT
THE
MASTER OF SOUTH GAUTENG HIGH COURT
FORTH
RESPONDENT

JUDGMENT

WRIGHT J

1. On 21 May 2021, as part of the unopposed motion roll, I granted an order in favour of the present first respondent, Ms Ndlovu. The order declared that Ms Ndlovu had been married by custom to the late Mr Madondo. The order provided for the Master of the High Court to issue letters of executorship to Ms Ndlovu in the deceased estate of Mr Madondo.
2. The present applicant, Ms Dladla seeks now rescission of my earlier order. She says that she was married by custom to Mr Madondo in 1974, well before Ms Ndlovu and Mr Madondo purportedly got married. Ms Dladla says that she never consented to the customary marriage between Ms Ndlovu and Mr Madondo and therefor any marriage between them is invalid. What appear to be at stake are the rights of Ms Dladla and Ms Ndlovu to inherit from Mr Madondo.
3. Ms Dladla says that the first time she learnt of my order was on 10 December 2021, some seven months after it had been granted. She points out that she was not cited in the application before me.
4. The present application was launched some four or five month's after Ms Dladla found out about my order. She explains that she did not have funds to approach a lawyer in time. In my view, this explanation is reasonable and there is no prejudice to the respondents.
5. Ms Dladla sets out a case in her founding affidavit regarding her marriage in 1974 to Mr Madondo. The answering affidavit of Ms Ndlovu raises huge disputes of fact. The replying affidavit contains factual allegations and evidence which should have been placed in founding affidavit.
6. These disputes of fact cannot be adjudicated on paper.
7. Ms Dladla has no legal standing to rescind the earlier order and no right to participate in the estate of Mr Madondo unless she proves her marriage to Mr Madondo. In these circumstances, she is at this stage entitled to condonation for the late bringing of the present application but the matter needs to go to trial.

8. Had I known of the fact that Ms Dladla had an interest in the matter, if in fact she has such interest, I would not have granted the order sought now to be rescinded and Ms Dladla would be entitled to request a rescission of my order. Because her standing is of cardinal importance to her application, the matter needs a trial.

ORDER

1. The applicant is granted for condonation for the lateness of the application.
2. The notice of motion stands as a simple summons.
3. The notice of intention to oppose stands as a notice of intention to defend.
4. The applicant is to deliver a declaration by 30 September 2023.
5. Thereafter, the matter proceeds as a trial action.
6. Costs reserved.

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 11 September 2023

DELIVERED : 11 September 2023

APPEARANCES :

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Prepared on 11 October 2026 · Esheria