

SOUTH AFRICA / JUDGMENT

Eksteen v De Villiers and Another (22293/2010) [2011] ZAWCHC 379 (8 September 2011) [2011] ZAWCHC 379

COURT

Western Cape High Court, Cape Town

BEFORE

Baartman

CASE / FILE NUMBER

22293/2010

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IN THE HIGH COURT OF SOUTH AFRICA (WESTERN CAPE HIGH COURT, CAPE TOWN)

Case Number: 22293/2010

In the matter between:

Errol EksteenApplicant

and

Maurina De VilliersFirst Respondent

Stephanus Andries Daniel Du Toit N.O.Second Respondent

JUDGMENT DELIVERED ON 8 SEPTEMBER 2011

Baartman J

[1] This is an application for leave to appeal against judgment delivered on 13 July

2011. The first respondent alleged that the court erred in the following respects:

In finding that the applicant did not hold the Coghill street property (the Coghill property) as nominee.

In finding that Leif Vestrum (Leif) waived his rights in respect of the Coghill property.

(c) In refusing a claim based on enrichment. Nominee owner

[2] In finding that the applicant did not hold the Coghill property as nominee, I found that there had existed a close family bond between the applicant and the childless Vestrum couple. That finding was based on the following:

- (a) Leif, a Norwegian national, was married to Irene Vestrum (Irene), the applicant's late aunt. The Vestrum couple was childless. The applicant, the second child of a single mother, did not know his

father; the Vestrum couple had, as a result, treated the applicant as their child since his early years.

- (b) The Vestrum couple lived in Norway for some years during which time they maintained a close relationship with the applicant.
- (c) In 2001, the Vestrum couple retired to South Africa. The applicant was to be the couple's only heir; therefore, they registered their newly acquired residence, the Coghill property, in the applicant's name to obviate the applicant having to take transfer after their respective deaths.
- (d) The applicant in turn named the couple as his sole heir in the event of the couple surviving him.
- (e) In rejecting the first respondent's denial of the family ties, I considered that the first respondent only entered the Vestrum household as a 29-year-old companion to Leif, after the demise of Irene. The first respondent's denial of the family ties was opportunistic in the extreme; therefore there is no reasonable prospect of another court coming to a different finding on this issue. She said,

"I deny that Eksteen was considered as a child to Leif as he never once said that Eksteen was considered as such despite our relationship. As I lived with Leif, I am sure that I would have seen the bond...but I was at no stage under the impression that he was considered as such."

The waiver issue

- [3] In finding that Leif had waived any rights he might have had to the Coghill property, I considered the following:
- (a) Leif approached Terence Rex (Rex), an attorney, about an unrelated matter and claimed that he was the owner of the Coghill property.
- (b) Rex, in a follow up consultation, recommended a rectification of the registration and drafted the necessary documentation for that process. The recommended cause of action would have required Leif to pay transfer duty. Leif was reluctant to incur that cost.
- (c) In 2007, Leif consulted 2 further persons before informing Rex, telephonically, that he was not proceeding.
- (d) At the time, the first respondent who was then living with Leif was concerned that the applicant would put her out of the Coghill property upon Leif's demise. Leif shared the first respondent's concern for her imminent homelessness upon his demise.

- (e) At the time, Leif was the registered owner of a second property, the Wellington property. Leif executed a will and left his estate to the first respondent. Thereafter, Leif informed the applicant that he had left the Wellington property to the first respondent.
- (f) Rex had already informed Leif that the Coghill property would not obviously, without further legal process, form part of his estate.
- [4] In my view, there is no reasonable prospect that another court will come to a different finding in the above circumstances.

The enrichment claim

- [5] I have found that in the circumstances of this matter, having regard to the particular family ties, that the applicant was not enriched at the expense of Leif. In respect of that finding, in the circumstances of this matter, there is no reasonable prospect of another court coming to a different finding.

COSTS

- [6] The first respondent employed senior counsel for this application. The applicant followed suit. This application did not involve complicated facts or complex legal issues to warrant the employ of senior counsel. I intend not to allow the costs occasioned by the employ of senior counsel.

CONCLUSION

- [7] I, for the reasons stated above, make the following order;
- (a) The application for leave to appeal is dismissed with costs.

Baartman, J

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