

SOUTH AFRICA / JUDGMENT

F.G v P.G (50192/15) [2017] ZAGPPHC 893 (6 December 2017)

[2017] ZAGPPHC 893

COURT

North Gauteng High Court, Pretoria

BEFORE

M Mbongwe

CASE / FILE NUMBER

50192/15

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 50192/15

6/12/17

In

the matter between:

F

G Applicant

and

P

G Respondent

JUDGEMENT

MBONGWE, AJ:

INTRODUCTION

- [1] The applicant and the respondent are former husband and wife whose marriage was dissolved by an order of the court in September
2007. A settlement agreement which, inter alia, provided for the maintenance of the couples' minor children was made an order of the court. The present litigation concerns a monetary compensation by an insurance company in the sum of R179 375.00 due to the respondent for injuries he sustained in an aircraft accident and which was paid to him via the banking account of the applicant and which the latter refuses to pay over to the respondent. Litigation followed as a result and judgement was granted in favour of the respondent approximately six years later for payment to him by the applicant of an amount of R151 998.92. The applicant's subsequent application for leave to appeal against the judgment as well her appeal to the SCA were dismissed with costs.
- [2] At the time the applicant launched this application in 2015, she was indebted to the respondent in an amount just over R311 000-00 made up of the judgement amount plus interest together with legal costs that were awarded against her. In the present application the applicant seeks an order directing that she pays the judgement amount plus costs to a named firm of attorneys' trust account and a further order that directs such attorneys to pay her monthly maintenance for the parties' minor children. The applicant cites, as a reason for this measure, the respondent's previous failure to pay maintenance as per court order and her fear that the respondent might not pay maintenance in the future.
- [3] It is noted that this application follows an interdict the applicant had obtained against the execution of a writ for the recovery of the judgement debt plus interest, together totalling the aforementioned amount of just over R311 000-00, pending the determination of the present application. It is also noted that at the hearing of the interdict application, an agreement was entered into by the parties in terms of which partial payment of R151 000-00 was made to the respondent and the balance of R161 338-00 plus all legal costs to be paid into the named attorneys' trust account in an interest bearing account. At hearing of this application, the respondent expressed doubt as to whether the applicant had indeed paid the money into her chosen attorneys' trust account and no conclusive proof of such payment could be furnished by the applicant.

- [4] Prior to considering the merits of the current application , I have to state that it is of grave concern that the applicant has not cited as a party the attorneys into whose trust account she wishes the money to be paid and whom she wants ordered to pay monthly maintenance to her. While this defect per se may be fatal it was never rectified despite it being raised by the respondent in his answering affidavit. The situation is compounded by the applicant's failure to produce conclusive proof that she had

deposited the balance of her debt plus the taxed costs into the trust account of those attorneys.

- [5] Further, I find it extremely disturbing that the applicant has not complied with court orders, particularly after the dismissal of her appeal by the SCA. She chose, instead, to wait until the issuing of a writ of execution against her to bring the matter back to court by way of application for an interdict to avert execution of the writ pending the hearing of this application. She virtually approached the urgent court with dirty hands.

- [6] In the light of the applicant's reason for seeking the relief prayed for, namely, her fear that the respondent may not pay maintenance

unless this application is granted, I deem it necessary to consider the facts or the reasonableness thereof giving rise to her fears . Of importance appears to be that the respondent had once failed to pay maintenance and was duly sanctioned for his conduct. The applicant does not deny the respondent's assertion that since the sanction aforementioned, the respondent has to date not repeated his devious conduct.

- [7] In evaluating the reasonableness of applicant's fears that the respondent may default with maintenance payments in the future, I have taken the following factors into account;

7.1 The parties have in the past agreed that each lives with and be responsible for the well- being, including maintenance of the one child in his/her care. This arrangement went on for approximately a year without glitches. It was after the child in the respondent's care had returned to live with the applicant that the respondent defaulted with his maintenance obligation; the only blemish in his record.

7.2 The respondent continued and still retains the two children in his medical aid and there is no suggestion of him quitting his employment and receiving his pension pay-out;

7.3 The money concerned relates to compensation to the respondent for injuries sustained and relates to lifestyle cover and not any form disability; be it temporary or permanent;

- [8] The above factors, in my view, clearly distinguish the respondent's station from those in the cases the applicant seeks to rely on; in *Magewu v Zozo and Others* there has been a history of non-payment of maintenance necessitating legal proceedings to enforce maintenance obligation. The father of the child had left his employment and there was to be no salary from which his employer could continue to discharge the father's maintenance obligations as per court order. An order for the retention of the father's pension to guarantee future payment of maintenance was clearly necessary and justified. The circumstances in the

Magewu case are similar to those in *Mngadi v Beacon Sweet & Chocolates Provident Fund & Others*, but completely different to those in the present matter.

- [9] While the future receipt of maintenance in the said two cases was undoubtedly threatened and with no recourse open to the recipients of maintenance, the applicant in the present case has avenues open to her should the respondent default. The applicant has used one such avenue and the exercise paid off. I find, therefore, that the applicant's alleged fear is self-instilled, has no legal grounding and is designed to perpetuate her reluctance to comply with the order that she pays to the respondent the insurance amount she received as well as the legal costs ordered against her. The application must, therefore, fail.
- [10] As indicated earlier, the applicant, while in contempt of court orders, waited until a writ of execution was issued against her to launch an application stopping execution of the writ. There was no sound reason for her to do so. For this reason I find that the applicant should pay the reserved costs of that application.
- [11] Resulting from the findings in this judgment, I make the following order:
1. The application is dismissed with costs which shall include the costs reserved in the application for an interdict.

M MBONGWE, AJ

Acting Judge of the High Court, Pretoria.

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