

SOUTH AFRICA / JUDGMENT

G and Others (37115/2015), R v [2017] ZAGPPHC 634 (26 September 2017)

[2017] ZAGPPHC 634**COURT**

North Gauteng High Court, Pretoria

BEFORE

C.P. Rabie

CASE / FILE NUMBER

37115/2015

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Policy**HIGH****COURT OF SOUTH AFRICA****(GAUTENG****DIVISION,****PRETORIA)****(1)****REPORTABLE: YES/NO****(2)****OF INTEREST TO OTHER JUDGES: YES/NO****(3)****REVISED****...26/9/2017.....****.....****DATE****SIGNATURE****Case****no. 37115/2015****In**

the matter between: M.J.
R.
Applicant
and
N.
G. First
Respondent
N.
G.
N.O. Second
Respondent
THE
MASTER
OF
THE
HIGH COURT,
PRETORIA Third
Respondent

JUDGMENT

RABIE J

1. This is an application for leave to appeal. In the main application the applicant applied in her capacity as guardian of her daughter, Y, for relief against the first and second respondent who is the same person but cited in different capacities. I shall refer to the first and second respondents merely as "the respondent". The main application was dismissed with costs and hence the application for leave to appeal. For purposes of this application the applicant has to show that the appeal would have a reasonable prospect of success.
2. The defendant based her application on a number of grounds set out in a Notice of Application for Leave to Appeal. Before referring to these grounds I may briefly refer to certain of the salient facts of the matter.
3. The applicant is the divorced wife of Mr E.N. R., who had passed away ("the deceased"), with whom she had a daughter Y. The respondent is a daughter of the deceased from a previous marriage. Prior to his death the deceased took out a policy insuring his life and in respect of which the respondent was the sole beneficiary. The proceeds of this policy, which paid out after the death of the deceased, never formed part of his estate and was thus paid to the respondent.
4. In his last will and testament the deceased confirmed that his policies go to the respondent. He also uttered the wish that the respondent would assist her younger sister, Y, through school and university and in respect of what she may need. In this regard the respondent stated that she decided to respect her father's wishes and for that reason had used some of the money paid out to her in terms of the aforesaid policy, to pay towards the care of Y.

5. In the main application the applicant submitted that she, as the custodian parent of Y, and Y herself, had certain rights in respect of the aforesaid policy as well as the right to maintenance, and that the respondent had a concomitant obligation to account to the applicant in respect of the policy, to furnish the applicant with certain documentation and information, to debate the account with the applicant and to pay maintenance in respect of Y.
6. This court found, inter alia, that the aforesaid policy was an insurance contract between the deceased and Liberty Life in the interest of the respondent as a third party and that the respondent was entitled to the full proceeds thereof. Consequently the proceeds never formed part of the deceased estate and the deceased could therefore not provide for same in his will or be prescriptive as to what the respondent should do with the money paid to her.
7. It is not necessary to refer to the issue of maintenance since the present application is only aimed at the original relief directed at the aforesaid policy and the debatement of an account.
8. The present application for leave to appeal was based on a number of grounds. It was submitted, inter alia, that the court erred in finding that there was never a legal duty or obligation on the respondent to disclose any information in respect of the policy to the applicant, that the undertaking by the respondent did not confer any rights on the applicant or Y, that the undertaking did not result in a fiduciary relationship between them, that the respondent need not account to anyone in respect of the funds, and that the claim for statement and abatement should be dismissed.
9. It was accordingly submitted, inter alia, that the respondent, by undertaking to comply with the deceased's wishes in respect of Y, had a legal duty and certain legal obligations, alternatively, a fiduciary duty, to Y by virtue of the aforesaid undertaking. Consequently, so it was submitted, the funds accrued to Y and she is entitled to certain information regarding the status of the investment and other details and to the respondent accounting to her.
10. During the application before this court submissions were made on behalf of the applicant in support of the aforesaid grounds. It is not necessary to refer to all the submissions in detail as same had been fully debated before and addressed in the earlier judgment of this court.
11. In the main there can be no doubt that the respondent became entitled to the proceeds of the policy as a result of the policy itself and the contract with Liberty Life and not as a result of a bequest by the deceased in his will. In fact, the deceased had no right, in the circumstances of this case, to be prescriptive in respect of what the respondent should or should not do with the said proceeds.

12. The fact that the respondent altruistically decided to take care of certain of her sister's needs and the fact that for bookkeeping purposes she kept a part of the money separate inside the account, do not change anything and did not create legal rights in favour of Y and neither did it create any obligations or a fiduciary duty on the part of the respondent. The respondent did not receive the proceeds of the policy as a consequence of the deceased's will and did not accept the money

subject to any condition contained in the will. Her decision to assist her sister was a decision to assist her sister from her own money and that decision did not create any obligations for her nor did it create duties towards the applicant or Y, as submitted by the applicant.

13. In my view the appeal would have no reasonable prospect of success in respect of the aforesaid grounds.
14. It was also submitted on behalf of the applicant that this court erred in exercising its discretion in respect of the order of costs of the application against the applicant. In this regard it was, inter alia, submitted that the application was necessitated by the respondent's refusal to provide any information to the applicant regarding the aforesaid investment and that since the application was launched, the respondent provided a large portion of the information and documents sought by the applicant. Consequently, so it was submitted, the applicant was substantially successful in the litigation.
15. The submissions in respect of the order for costs are for all practical purposes new submissions. In my view there is, however, no merit in these submissions and no prospect of success in another court. The respondent and her attorney explained the difficulties they had in obtaining information from the financial institutions. When same became available, even at a later stage, the information available was presented to the applicant. The fact remains that the applicant was not entitled to the discovery and information she relied on as a matter of right and consequently it cannot be said that she was substantially successful in the application or at all.
16. In the result the following order is made:
 1. The application for leave to appeal is dismissed with costs.

C.P. RABIE

JUDGE OF THE HIGH COURT

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