

SOUTH AFRICA / JUDGMENT

Jacobs v Wagenaar N.O (1654/2020) [2020] ZAECPEHC 40 (20 October 2020)

[2020] ZAECPEHC 40**COURT**

Eastern Cape High Court, Port Elizabeth

BEFORE

Lindoor

CASE / FILE NUMBER

1654/2020

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IN THE HIGH COURT OF
SOUTH AFRICA
(EASTERN CAPE LOCAL
DIVISION, PORT ELIZABETH)

Case No: 1654/2020

Not

Reportable

Heard: 13 October 2020

Delivered: 20 October 2020

In

the matter between: DANIEL JACOBUS JACOBS
Plaintiff
AND
CHRISTIAAN WAGENAAR
N.O.
Defendant

JUDGMENT

Lindoor AJ

[1] This is an application for default judgment in terms of the provisions of Uniform Rule 31(5)(b)(vi) which was referred for hearing in open court by the Registrar.

[2] The plaintiff issued a summons in which he claims:

First Claim:

1. The partnership between the Plaintiff and the Defendant is dissolved;
2. A liquidator is to be appointed if the parties are not able to agree on the division of the assets of the partnership;
3. The Defendant is to pay the Plaintiff an amount of R597 000.00;
4. Interest at a rate of 10.5% on the capital amount from date of summons;
5. Costs of the action; and
6. Further and/or alternative relief.

Second Claim in the alternative to the First Claim:

1. The defendant is to pay the Plaintiff an amount of R597 000.00;
 2. Interest at a rate of 10.5% on the capital amount from date of summons;
 3. Costs of the action; and
 4. Further and/or alternative relief.
- [3] The defendant, who is sued herein in his capacity as executor of the estate of the late Elsa Ezelle Rossouw (hereinafter “the deceased”) elected not to defend the matter, insofar as no notice of intention to defend the matter was filed.
- [4] The plaintiff was called to testify by his counsel and his evidence is on record uncontested. He testified that he met the deceased in Bloemfontein whilst living there and they started courting and became engaged to be married on the 9th September 2011. At that time he was doing contract work in Iraq, but his contract came to an end in the year 2016.
- [5] He testified further that he re-applied to his former employer, the South African Police Services and his application was successful. He was appointed to the Canine Unit of the South African Police Services in Port Elizabeth, and that is how he and the deceased ended up in Port Elizabeth during or about October 2016.
- [6] At the time of his relocation to Port Elizabeth, neither he nor the deceased owned any immovable property in Port Elizabeth.
- [7] During January 2017, the plaintiff and the deceased jointly purchased an immovable property in Port Elizabeth, known as Erf 2398 Hunters Retreat, Nelson Mandela Bay Metropolitan Municipality, for a purchase price of R1 010, 000.00 (the property). Exhibit “B” which was handed up to court is a photocopy of the Deed of Transfer No. T4067/2017 of the property.
- [8] It was the plaintiff’s evidence that the purchase price for the property was paid for in cash by himself and that the deceased did not contribute towards payment of the purchase price. He withdrew the sum of R600,000.00 from his bond account, as he put it and added a further sum of R400, 000.00 in cash which he had saved from his contract work in Iraq. It was his

further evidence that although the deceased did not contribute towards the purchase price of the property, it was agreed between the parties that the deceased would at some future point in time repay the plaintiff for her half share in the property. I shall return to this point later.

- [9] The plaintiff testified that the deceased and himself formed a universal partnership and part of the relief sought from this court is that the partnership formed between the plaintiff and deceased be dissolved.
- [10] The deceased left a last will and testament, which was handed up to court and marked exhibit “D”, in terms of which her entire estate was bequeathed to her daughter Marizelle Rossouw. The plaintiff clearly will not inherit anything from the estate of the deceased, although part of the deceased’s estate will consist of her undivided half share in the immovable property.
- [11] The plaintiff’s evidence is lastly, that on account of the fact that the deceased passed away without repaying him for her half share of the immovable property, he was compelled to institute a claim against the deceased estate for payment of the sum of R505 000.00 which represents fifty (50) percent of the purchase price paid for the property.
- [12] Counsel for the plaintiff, in his closing submissions, sought an amendment of the amount in prayer 3 on page 10 of the record from R597 000.00 to R505 000.00. The amendment is accordingly granted.
- [13] Having considered the uncontested evidence of the plaintiff I am satisfied that the plaintiff is entitled to the relief sought in the first claim in his particulars of claim.
- [14] It is clear that when the plaintiff and the defendant became engaged to be married, that a partnership was formed, which fact is further evidenced by the purchase and registration of the immovable property in both the deceased’s and the plaintiff’s names.
- [15] The Supreme Court of Appeal in *Ponelat v Schrepfer*[1] referred to the essentials of a universal partnership which were succinctly summarised in the judgment of *Pezzutto v Dreyer and Others*[2] as follows:

“The three essentials are (1) that each of the partners bring something into the partnership, whether it be money, labour or skill;

- (2) that the business should be carried on for the joint benefit of the parties; and (3) that the object should be to make a profit (Pothier A Treatise on the Contract of Partnership (Tudor's translation) 1.3.8). A fourth requirement mentioned by Pothier is that the contract should be a legitimate one. However, as has been pointed out previously, this requirement is one common to all contracts and is therefore not a particular essential of a partnership (see *Bester v Van Niekerk* (supra at 784A-B)). Where Pothier's four requirements are found to be present the Court will find a partnership established 'unless such a conclusion is negated by a contrary intention disclosed on a correct construction of the agreement between the

parties' (Purdon v Muller (supra at 218E-F)). In essence, therefore, a partnership is the carrying on of a business (to which each of the partners contributes) in common for the joint benefit of the parties with a view to making a profit.”

The essentialia of the partnership set out above applies equally to a universal partnership.

[16] The court in Ponelat with reference to Mühlman v Mühlman[3]states further that:

“Our courts have recognised that a universal partnership, also known as domestic partnership, can come into existence between spouses and co-habitees where they agree to pool their resources.”

This is precisely what transpired in the present matter.

[17] I am, therefore, satisfied that a universal partnership came into existence between the deceased and the plaintiff. I further accept the uncontested evidence of the plaintiff that the deceased did not in her lifetime reimburse him for fifty

(50) percent of the purchase price in the immovable property, and accordingly, he is entitled to payment of that amount from the estate of the deceased.

[18] I accordingly make the following order:

1. It is declared that a universal partnership existed between the plaintiff and the deceased, Elsa Ezelle Rossouw and that the partnership is hereby dissolved;
2. Failing an agreement between the parties on the division of the assets of the partnership, that a liquidator be appointed to liquidate the said partnership;
3. The defendant is to pay the plaintiff the sum of R505 000.00;
4. The aforesaid sum of R505 000.000 shall accrue interest at the legal rate of 10.5% as from date of service of the summons to date of payment.
5. The defendant is to pay the plaintiff’s costs of suit.

J. LINDOOR

ACTING JUDGE OF THE HIGH COURT

Obo the Plaintiff: Adv I. Lambrechts

Instructed by

van der Berg Attorneys, 7 Bird Street, Central, Port Elizabeth

Ref: Quinton

Cell: 084 343 2573

[1] 2012

(1) SA 206 (SCA) at 212H-I

[2]

[1992] ZASCA 46; 1992

(3) SA 379 (A) at 390 as follows:

[3] 1984

(3) SA 102 (A)

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Prepared on 9 October 2026 · Esheria