

SOUTH AFRICA / JUDGMENT

KB v DB (35189/2011) [2012] ZAGPJHC 213 (27 July 2012) [2012] ZAGPJHC 213

COURT

South Gauteng High Court, Johannesburg

BEFORE

Willis

CASE / FILE NUMBER

35189/2011

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IN THE HIGH COURT OF
SOUTH AFRICA

(SOUTH GAUTENG HIGH
COURT, JOHANNESBURG)

CASE

NO: 35189/2011

DATE:

2012-07-27

In the matter between

K

B

Applicant

and

D

B

Respondent

JUDGMENT

WILLIS J:

- [1] The parties are in the throes of a divorce action. On the papers before me, the assets in question are considerable. It appears from the papers before me that this is likely to be an acrimonious divorce action. In fact, it already is an acrimonious divorce action.
- [2] The issue before me is whether to order the further particulars that have been sought by the plaintiff, relating to the accrual that exists on the papers, between herself and the defendant. The pertinent aspect of the inquiry relates to assets alleged by the plaintiff to be overseas, held in various trusts.
- [3] The difficulty is that the defendant has not pleaded to these allegations in the plaintiff's particulars of claim. The defendant took exception thereto. That exception was dismissed and that is subject to

an appeal which, apparently, will be heard in August.

- [3] The defendant has protested that the request for further particulars is premature and, in this regard, has relied on his interpretation of Section 7 of the Matrimonial Property Act 88 of 1984. Counsel for the plaintiff has referred me to the case of *Le Roux v Le Roux*

[2010] JOL 26003 (NCK).

- [4] It would be wrong for me to express a final view on the matter, relating to the interpretation of Section 7 and the judgment of Olivier J in *Le Roux v Le Roux*. I think that I may, however, fairly record that I disagree with counsel's interpretation of Section 7 in as much as he protests that the interpretation given by Olivier J is wrong.

- [5] *Prima facie*, it seems to me that Olivier J is correct when he says at paragraph 52:

"52. In terms of the provisions of Section 7 of the Matrimonial Property Act, a spouse will be entitled to request particulars of the other spouse's estate:

'when it is necessary to determine the accrual of the estate of a spouse.'

"There is no suggestion that it could only become necessary after (my emphasis) the marriage has been dissolved and therefore after (my emphasis) a claim for payment in terms of Section 3 has already been acquired."

- [6] I do, however, agree with counsel for the defendant that it is premature to seek particulars relating to issues where the pleadings have not yet been closed. To me, it seems illogical and irrational. The

pleadings first need to be closed. I accept that the defendant may well have a sense of frustration but, it seems to me, that the pleadings will indeed close within a matter of weeks and then the matter can be reconsidered.

[7] Accordingly, I propose to make an order postponing the application for particulars until a date to be determined after the close of pleadings in this matter. Obviously, in regard to costs, it seems to me that the only appropriate order that I can make is that costs be reserved but I hope that counsel for the defendant will convey to the defendant my prima facie views as to the particularity that may ultimately be required once pleadings have been closed.

[8] The following is the order of the court:

ORDER

1. The application is postponed sine die, for a reconsideration once the pleadings in this matter have been closed.
2. The costs of this application incurred to date are reserved.

- -----

Counsel for the applicant: P.A. Van Niekerk SC.

Attorneys for the applicant: Ian Levitt Attorneys

Counsel for the respondent: K.W. Luderitz SC.

Attorneys for the respondent: Cyril Ziman & Associates

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KAREN TESSA BROUZE Applicant

and

DAVID SOLOMON BROUZE Respondent

CASE NO: 35189/2011

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