

SOUTH AFRICA / JUDGMENT

**L.A.M. and Another v E.M. and Another
(Leave to Appeal) (2025/066517) [2025]
ZAGPJHC 684 (7 July 2025)
[2025] ZAGPJHC 684**

COURT

South Gauteng High Court, Johannesburg

BEFORE

Liebenberg

CASE / FILE NUMBER

2025/066517

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2025-066517

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

7 July 2025

In the matter between:

L[...] A[...] M[...]

First applicant

L[...] A[...] M[...] NO

Second appellant

and

E[...] M[...]

First respondent

E[...] M[...] NO

Second respondent

In re:

E[...] M[...]

First Applicant

E[...] M[...] NO

Second Applicant

L[...] A[...] M[...]

First Respondent

THE MASTER OF THE HIGH COURT OF Second Respondent

SOUTH AFRICA, PRETORIA

INVESTEC BANK LIMITED

Third Respondent

HENDRIK CHRISTOFFEL DU TOIT NO Fourth respondent

THE REGISTRAR OF DEEDS,

Fifth respondent

JOHANNESBURG

L[...] A[...] M[...] NO

Sixth respondent

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties / their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Caselines/CourtOnline by the Judge's secretary. The date of this order is deemed to be 7 July 2025.

JUDGMENT (LEAVE TO APPEAL)

CORAM LIEBENBERG AJ:

[1] To avoid confusion, I refer to the parties as in the main application. Because the first and sixth respondent were the only respondents to participate in the proceedings, they are referred to as “the respondents” herein.

- [2] The respondents are aggrieved by the orders I granted on 22 May 2025. The impugned orders are dealt with separately.

Order re urgency [paragraph 1 of the order]

- [3] Both in the heads of argument and at the hearing of this application, Ms Rodrigues, who appeared for the respondents, abandoned the application for leave to appeal the order granted in paragraph 1 of the main judgment, to the effect that the matter was heard as one of urgency in terms of Rule 6 (12). Accordingly, nothing more needs to be said on this score.

Order re matrimonial home [paragraph 2 of the order]

- [4] Generally, for an order to be susceptible to an appeal, it must have the following features:[1] (i) it must be final in effect and not susceptible to alteration by the court of first instance; (ii) it must be definitive of the right of the parties, that is it must grant definite and distinct relief; and (iii) it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. Exceptionally, interlocutory orders may be appealable if either the interests of justice demand it, or if the order has a final and definitive effect on the proceedings.[2]
- [5] Neither of the parties apparently considered the appealability of paragraph 2. Plainly, the order granted is an interim order, pending finalisation of the divorce action. The first respondent, who bears the onus to demonstrate exceptional circumstances, did not contend that the order is final in effect or that the interests of justice demand that the order be appealed against. Accordingly, no appeal lies against the interim order.
- [6] In any event, the first respondent's upset that the order did not include his entire undertaking, loses sight of the duty of a court to act in a stewardly manner bearing in mind its institutional interests which are not subordinate to the wishes of litigants.[3] A competent and proper court order is one the terms of which must be from a legal and practical point of view, capable of being included in a court order.[4] The first respondent's undertaking was couched as mutually destructive alternatives – not to sell the immovable property alternatively to sell the property and retain the net proceeds in trust. This Court could not and was not prepared to incorporate such alternatives in a court order.
- [7] If and when changed circumstances demand it, the first respondent is at liberty to seek a variation of the interim order. In the meantime, the order is not susceptible to an appeal.

Orders re trust [paragraphs 3, 4 and 5 of the order]

- [8] The relief sought in the notice of motion was phrased thus:

“4. That the second applicant is granted leave to approach this court for the relief sought below as a single trustee of the Muller Family Trust:

4.1 The fifth respondent is directed, within 3 court days from the granting of the order, to sign and date a document (“the letter of resignation”) in which he shall record the following:

I, the undersigned, L[...] A[...] M[...] (with identity number [...]), do hereby give notice to the Trustee(s) and Beneficiaries of the Muller Family Trust (IT001317/2022(T)) of my resignation as trustee of the trust with immediate effect.

whereafter he shall, forthwith, deliver the original signed letter of resignation to the second applicant.

4.2 Should the fifth respondent fail to provide the letter of resignation within 3 court days, the Registrar of this Honourable Court is authorised to sign the letter of resignation on his behalf.

4.3 The second applicant shall deliver the original letter of resignation to the second respondent and the third respondent.

4.4 The third respondent shall, forthwith, remove the fifth respondent's access to and authorisation to transact on any and all bank accounts held by the Muller Family Trust with Investec Bank Limited.

4.5 Unless and until a further authorisation has been provided by the trustees of the Muller Family Trust, the third respondent shall, forthwith, allow only the second applicant to access and transact on any and all bank accounts held by the Muller Family Trust with Investec Bank Limited.

4.6 The first respondent shall, within 24 hours of the granting of this order, pay to the bank account held by the Muller Family Trust with Investec Bank Limited under account number 1[...] the amount of R70 414.17 (seventy thousand four hundred and fourteen rand and 17 cents) which he withdrew from this account on 25 and 29 April 2025.

4.7 The first respondent shall deliver to the second applicant the Land Rover Defender 110 AWD 3.0 D 221kW D300 X-Dynamic HSE vehicle (vin number S[...]) in his possession within 5 court days from the granting of this order."

[9] The respondents argue that the notice of motion is to be interpreted to mean that the only relief sought by the second applicant was for only leave to approach a court in due course and not the actual relief contained in the subparagraphs of paragraph

4. I am satisfied that the interpretation contended for is not supported by the text of the notice of motion, which must be gauged in the context of the allegations contained in the founding affidavit.

[10] On the applicants' uncontested version, on 21 August 2024 the fifth respondent was removed as trustee by majority vote of the trustees then in office at a duly convened meeting of trustees. It follows that the fifth respondent cannot be ordered to resign from an office he no longer occupies. The fourth respondent having resigned in November 2024, prior to the launching of the main application, left the second applicant as the sole trustee currently in office. It was in so far as there may be a contestation about the provisions of the trust deed, [5] that the second applicant sought recognition of her locus standi as sole trustee to protect the trust fund.[6]

- [11] In their answering affidavit, the respondents did not respond meaningfully to the allegations regarding the trust, the trustees, the first respondent's most recent withdrawal of trust funds from the bank account, and the applicants' fear that the trust's assets, including the motor vehicle, may be sold. There is also no suggestion in the affidavit that the respondents viewed the relief as being a bifurcated application or that they anticipated further proceedings in this regard. The highwater mark of the defence is the assertion that '[t]here is no basis for the Honourable Court to remove me as trustee of this Trust.'[7] Ms Rodrigues was constrained to concede that the respondents' answering affidavit does not support the argument nor the interpretation contended for.
- [12] I agree with Mrs Ossin, who appeared for the applicants, that the respondents' argument appears to be opportunistic, and arose ex post facto following questions posed by this Court during argument. Ultimately, the first respondent's approach to the application was yet a further example of an undesirable lack of frankness required in matrimonial litigation.[8] Rather than grappling with the merits of the relief sought, the answering affidavit contained numerous technical points and ad hominem attacks on the applicants' attorneys.
- [13] Thus, there is no reasonable prospect of success on appeal against the orders pertaining to the trust, nor is there any other compelling reason to grant leave to appeal.

Order re costs

- [14] The principle that a successful party should, as a general rule, have his costs remains subject to the basic principle that an award of costs is in the discretion of the presiding judicial officer, who may deprive such a successful party of his costs, depending on the circumstances of the case.[9] Being an order made in the exercise of a judicial discretion, interference on appeal is ordinarily only justified where the discretion was not exercised judicially; where the decision was informed by wrong principles; the decision was affected by a misdirection of facts; or the decision could not reasonably have been reached by a court properly directing itself to the relevant facts and circumstances.[10] On appeal it is not enough to show that the lower court's order was wrong.[11]
- [15] The sole basis for the first respondent's discontent with the costs order granted against him, is that the applicants did not obtain "substantial success", having failed on the anti-dissipation issue[12] and the disclosure issue.[13]
- [16] As is evident from paragraph [21] of the main judgment, despite the applicants' limited success, in awarding costs against the first respondent, this Court was swayed by his actions and inactions which forced the applicants' hand, and his secretiveness. It was not contended that the Court's consideration of the first respondent's uncontested behaviour was erroneous or capricious or otherwise objectionable, or that it exercised its discretion in a manner where interference is otherwise apposite .

[17] Accordingly, I am not satisfied that the first respondent's proposed appeal against the costs order has reasonable prospects of success or that there is any other compelling reason why the appeal should be heard.

Order

[18] In the result, the following order is granted:

(a) The application for leave to appeal is dismissed with costs, including counsel's fees on scale B.

SARITA LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

Heard on 4 July 2025

Judgment

on 7 July 2025

For the applicants:

Adv Ilana Ossin (082 373 6002 / iossin@mweb.co.za)

Instructed by:

BERNADT VUKIC POTASH & GETZ (REF: SVS/cm/161229)

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For the first and fifth respondents:

Adv M Rodrigues (072 202 5981/ michrodrigues@mweb.co.za)

Instructed by:

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[1] *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) and further developed in *City of Tshwane Metropolitan Municipality v Afriforum* 2016

(6) SA 279 (CC) at [39] - [42].

[2] *DRDGold Ltd v Nkala* 2023

(3) SA 461 (SCA).

[3] *Eke v Parsons* 2016

(3) SA 37 (CC) at [34].

[4] *Eke v Parsons* above at [26].

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- [5] Founding affidavit para 11.2.3 read with clause 6.4 of the trust deed.
- [6] Founding affidavit para 11.2.4.
- [7] Answering affidavit para 12.1.
- [8] Para [8] of the main judgment.
- [9] Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others
[1996] ZACC 27; 1996 (2) SA 621 (CC) at [3].
- [10] Zuma v Office of the Public Protector 1447/2018 [2020] ZASCA 138 (30 October 2020) at para [20]
- [11] Public Protector v South African Reserve Bank
[2019] ZACC 29 at [144]
- [12] Paras [4] – [12] of the main judgment.
- [13] Paras [13] – [14] of the main judgment.
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