

SOUTH AFRICA / JUDGMENT

Makhathini v Gwala and Another (22180/2016) [2018] ZAGPJHC 586 (31 October 2018)

[2018] ZAGPJHC 586

COURT

South Gauteng High Court, Johannesburg

BEFORE

Spilg

CASE / FILE NUMBER

22180/2016

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GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 22180/2016

In the matter between:

MAKHATHINI, EUNICE SONOSINI Applicant And GWALA, OCTAVIA HLENGIWE First
Respondent MASTER OF THE HIGH COURT Second Respondent

REASONS

FOR RULING

SPILG, J:

INTRODUCTION

1. The applicant is the widow of the late Gule Makhathini who passed away on 8 October 2006. The applicant resides in Kenilworth, Johannesburg. She is also the executrix of her husband's deceased estate pursuant to letters of executorship dated 17 December 2013.
2. The applicant instituted motion proceedings against Ms. Gwala who she describes as her late husband's "ex-girlfriend". She lives in Regents Park.
3. The applicant seeks two orders:
 - a. The first is to declare the relationship between Ms. Gwala and her late husband to be dissolved.

- b. The other is to declare as divisible the immovable property in which Ms. Gwala resides, or has resided, and which is registered in the joint names of her late husband and Ms. Gwala and that an attorney nominated by her, Mr. Sejwane of Sejwane-Thuwe Attorneys, be appointed as receiver and liquidator to attend to the division of that property.
4. Ms. Gwala entered appearance to defend but has not filed an opposing affidavit. The applicant therefore set the matter down for judgment on the unopposed roll.

THE

ISSUES

5. The papers are extremely thin. While I accept that two other judges have dealt with the matter, it has been more in the nature of securing effective service and it is unlikely that there was a necessity to consider the papers in any detail.
6. I have two fundamental concerns with regard to the application.
7. The first arises from counsel confirming my suspicion that the applicant's late husband had separated from her some time before he passed away, had formed a relationship with Ms. Gwala and had been living with her right up to the time he passed away.

Accordingly the true nature of the relationship between Ms. Gwala and the applicant's late husband needs to be dealt with far more fully than to describe her as "an ex-girlfriend". He passed away while living with her some years. Whether he married her according to customary union despite still being married under civil law and the consequences to their proprietary regime require to be fleshed out.

Accordingly there is not enough in the founding affidavit to sustain the first order sought, even if it is competent in law. I am however loathe to dismiss the application or leave it in unresolved indefinitely.

8. Secondly the question of whether an undivided half share of the property jointly owned by the deceased and Ms. Gwala should fall into the estate in which the applicant is the executor cannot be resolved on the papers as they stand.

If Ms. Gwala is still in the property then aside from fundamental issues of whether their relationship had other proprietary consequences, who paid for the property, whether there was an inter vivos bequest, whether Ms. Gwala effected any improvements, and whether constitutional issues relative to the right to occupy arise, there is also the question of whether a PIE notice is required and whether the property should be sold. These issues may in turn involve an inquiry into whether Ms. Gwala's rights to occupy will be affected in a manner that offends her right of access to land. These issues may all require to be considered before a court can determine the second order sought, let alone sanctioning the sale of the property which may result in Ms. Gwala's eviction.

9. I am seized of the matter and it is appropriate to
 - a. Postpone it so that Ms. Gwala appears before me in order that the real issues can be fully appreciated by me;
 - b. Refer the matter to evidence on the issues that crystalise and if need be to direct the production of any relevant documents in a cost effective manner.

ORDER

10. I accordingly order that:
 1. The application is postponed to 16 November 2018 at 10am in court 6D for purposes of determining issues to be referred to oral evidence
 2. The first respondent is to appear in court on that day with or without legal representation
 3. The applicant is to serve this order together with the reasons for the decision of 31 October 2018 on Kgadima Kekana Attorneys for the first respondent
 4. Costs reserved

SPILG J

DATE OF HEARING: 25 October 2018

DAE OF JUDGMENT: 31 October 2018

FOR APPLICANT: Adv. L Peter

Mqongozi Attorneys

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Prepared on 10 October 2026 · Esheria