

SOUTH AFRICA / JUDGMENT

Matuwe v Matuwe and Others (22/2011)

[2011] ZANWHC 71 (8 December 2011)

[2011] ZANWHC 71**COURT**

North West High Court, Mafikeng

BEFORE

M J Ramagaga, N Gutta

CASE / FILE NUMBER

22/2011

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Source record**IN THE****NORTH WEST HIGH COURT****(MAFIKENG)****HIGH COURT****REF. NO.:22/2011****In the matter****between:**

GAAFELE

PAULINA MATUWE

.....APPLICANT

and

LERATO MATUWE

.....1ST

RESPONDENT

SELLO MATUWE

.....2ND

RESPONDENT

NTHABISENG

MATUWE3RD

RESPONDENT

REVIEW

JUDGMENT

RAMAGAGA AJ:

- [1] This matter comes to me by way of special review referred by the Magistrate that presided over and finalised a dispute allegedly arising from domestic violence.
- [2] The presiding Magistrate referred the matter because she is of the view that the dispute related to the deceased estate as a result she ought not have entertained the dispute under the auspices of the Domestic Violence Act 116 of 1998.

- [3] The following are brief facts of the case:

The applicant was cohabiting with the respondents' father when he (respondents' father) died. He was already divorced from the respondents' mother at the time of his death. There is a dispute whether the deceased was married to the applicant at the time of his death or not. That dispute is of no concern to this Court.

- [4] The Master of the Court has appointed Sello Matuwe, the second respondent as the executor of their father's estate.
- [5] It is apparent from the record that the applicant continues to live at the residence where she and the deceased cohabited until he died.
- [6] The applicant claims that the respondents harass her by demanding that she leaves her aforesaid residence and further by calling at her residence at night and demanding their deceased father's assets. The applicant states that she and the respondents are involved in a litigation dispute and requires a protection order by the Court pending finalisation of that dispute.
- [7] The presiding Magistrate granted the protection order in the following terms:

"The applicant is allowed to stay at 15 11th Avenue Geelhout Park only for (30) days one month starting today i.e. October 2011. The respondent Sello Matuwe not to visit, harass/threaten to evict the applicant."

- [8] As already stated, the cause of referral is the Magistrate's belief that she acted ultra vires because this matter does not fall within the ambit of the Domestic Violence Act. In order to determine whether the Magistrate did or did not act within her powers it is necessary to analyse the facts of this case against the objective of the Domestic Violence Act.>
- [9] It is important that I first highlight the important definitions in the Act, namely the definition of a domestic relationship, complainant and domestic violence respectively. Section one defines the above as follows:

“Complainant” means any person who is or has been in a domestic relationship with a respondent and is or has been subjected or allegedly subjected to an act of domestic violence, including any child in the care of the complainant.”

For a person to qualify as a complainant in the context of the Act one must have been in a domestic relationship and subjected to an act of domestic violence.

“Domestic Violence” is defined as a relationship between a complainant and a respondent in any of the following ways:

- (a) they are or were married to each other, including marriage according to any law, custom or religion;
- (b) they . . . live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other;
- (c) . . .
- (d) they are family members related by consanguinity, affinity or adoption.”

[10] Before I turn to deal with the definition of domestic violence, I need to pause and ask a question, from the record, can it be concluded that the complainant had a domestic relationship with the respondents.

[11] I have already stated elsewhere in this judgment that there is a dispute between the parties whether the respondents’ father was married to the applicant at the time of his death. If the parties were ad idem that they were in fact married one could with the greatest of ease answer the question in the affirmative because the parties would without doubt be related by affinity.

[12] A relationship by affinity comes into being as a result of a marriage. A relationship by affinity exists between a spouse and the blood relations of the other spouse. There is no doubt that the applicant and the respondents’ deceased father had a domestic relationship as envisaged by (a), (b) or (e) above, however the relationship between the applicant and the respondents is not provided by the Act as a domestic relationship.

[13] It is clear from the Act that it provides for protection of married person from each other and also from family members by consanguinity, affinity or adoption. This can be seen from the definition of a domestic relationship in (a) and (d) thereof.

[14] It would be an anomaly to imagine that the Act seeks to discriminate against persons that are not married to each other in terms of the definition contained in (b) and (e) of the domestic relationship as far as the protection from family relationship by affinity is concerned. More so section 9(1) of the Constitution provides that:

“everybody is equal before the law and has the right to equal protection and benefit of the law.”

[15] The Act reads as follows in its preamble:

“Recognising that domestic violence is a serious social evil, that there is a high incidence of social violence . . . that acts of domestic violence may be committed in a wide range of domestic relationships (my emphasis); and that remedies . . . effective;

AND HAVING REGARD to the Constitution of South Africa and in particular the right to equality and to freedom and security . . .”.

[16] It is clear from the above that the Act seeks to protect the most vulnerable who are involved in a wide range of domestic relationships from domestic violence.

[17] It is common knowledge that our laws presently recognises and protects the rights of person that are involved in relationships of cohabitation.

[18] I am thus of the view that the definition of a domestic relationship should be accorded an extended and purposive meaning. In the result, my finding is that the applicant qualifies to be treated as having a domestic relationship with the respondents.

[19] I now turn to deal with domestic violence.

“domestic violence is defined as:

- (a)
- (b)
- (c) intimidation
- (d) harassment

where such conduct harms, or may cause imminent harm to the safety, health or well-being of the complainant.”

[20] The record shows that the cause of complaint was harassment and intimidation. Perhaps it is necessary to draw attention to the presiding Magistrate that the administration of the deceased estate must be done in a lawful and decent manner. The respondents cannot and should not be allowed to commit acts of harassment and intimidation with impunity simply because one of them holds letters of executorship.

[21] In fact, it is obligatory upon the executor or the holder of the letters of authority to at all times conduct themselves in an orderly and lawful manner in execution of their duties. Executors represent the Master of the High Court and they must at all times conduct themselves in a manner befitting of that office.

[22] In the circumstances, I find that the Magistrate acted well within her powers when she presided over the application. What remains to be considered is the order that was granted by the Magistrate. I do not agree with the order. The effect of the order is to evict the applicant from her residence without due process. Due process will determine whether the applicant must vacate the residence or not.

[23] In the circumstances the order granted on 30 September 2011 is hereby set aside and substituted with the following:

“The respondents are ordered not to harass and intimidate the applicant in relation to the estate of their father or at all.

The respondents are ordered to refrain from calling at the applicant’s home uninvited or without agreement between the parties.

The respondents are ordered to refrain from directly or otherwise ejecting the applicant from her residence except through the court process.”

M J RAMAGAGA

ACTING JUDGE OF THE HIGH COURT

I concur

N GUTTA

JUDGE OF THE HIGH COURT

DATED : 08 DECEMBER 2011

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