

SOUTH AFRICA / JUDGMENT

Mntsweni and Others v Government Employees Pension Fund and Others (020044/2024) [2024] ZAGPPHC 242 (11 March 2024)

[2024] ZAGPPHC 242

COURT

North Gauteng High Court, Pretoria

BEFORE

Mooki

CASE / FILE NUMBER

020044/2024

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA,
(GAUTENG DIVISION,
PRETORIA)

Case No: 020044/2024

Reportable: No

Of interest to other

Judges: No

Revised: No

Date:

SIGNATURE

In the matter between: SAMUEL KGOLOKO
 MNTSWENI
 1ST Applicant
 NTHABISENG
 THEBE
 2ND Applicant
 MARY KELEBOGILE
 MOLWANTWA
 3RD Applicant
 KOKETSO IGNATIUS
 MALATSE
 4TH Applicant
 KABELO TSHWATLHANG
 5TH Applicant
 and
 GOVERNMENT EMPLOYEES
 PENSION FUND
 1ST Respondent
 C[...] K[...]
 T[...]
 2ND Respondent
 SHERIFF,
 ODI
 3RD Respondent
 STANDARD BANK LIMITED
 4TH Respondent

JUDGEMENT

MOOKI J

1

The applicants seek the following relief:

Suspension of paragraph 2 of an order made in the regional magistrate’s court pending the appointment of an executor to a deceased estate.

Interdicting the Government Employees Pension Fund from paying a pension interest until the appointment of an executor to a deceased estate.

Interdicting the Sheriff from executing paragraph 2 of an order made in the regional magistrate’s court pending the appointment of an executor to a deceased estate.

2

The applicants approached the Court on an urgent basis. The Court determined that the matter was urgent. The second respondent

opposes the relief sought and raised several preliminary objections. Those objections are:

2.1 The Court lack jurisdiction, in that the applicants' cause of action is based on an order by the Regional Court of the Regional Division of the North West, held at Ga-Rankuwa; within the jurisdiction of the North-West Division of the High Court.

2.2 The applicants lack standing for the relief that they seek.

2.3 No cause of action in that the High Court may interfere with an order of the Magistrates' Court only in an appeal or a review of such an order; whereas the applicants do not seek such appeal and/or review.

3

The applicants did not file a replying affidavit.

4

The second respondent, whom I describe as "the respondent" for ease of reference, was married to D[...] B[...] T[...] ("the deceased"). They were married in terms of a civil marriage on 3 May 2021.

5

The deceased issued summons in divorce proceedings in the High Court in 2022. The deceased then abandoned the proceedings. The respondent instituted divorce proceedings out of the Ga-Rankuwa Regional Court, North-West Division. She served process on the deceased in person. The deceased did not oppose the action. The regional court granted a decree of divorce on 9 October 2023, on the following terms:

Equal division of joint estate. The defendant must pay maintenance in the sum of R4500 per month in respect of the plaintiff for a period of twelve (sic) (12) months, from 07/12/23 until 07/12/24 payable into plaintiff's standard bank account number [...]. That part (50%) of the pension interest (sic) in the GEPF pension fund due or assigned to the plaintiff be paid to the plaintiff on the date of divorce. That the (Asst.) Registrar forthwith notify the Fund concerned that an endorsement be made in the records of that Fund that part of the pension interest concerned is so payable to the other party and that the administrator of the pension fund furnish proof of such endorsement to the (Asst.) Registrar, in writing within one (1) month of receipt of such notification. (as per section 11 of Act 55 of

2003) the GEPF pension fund is ordered to pay an amount equal to 50% of the value of pension fund no. [...] of the defendant as on date of divorce to the plaintiff. No order is made in respect of costs.

6

The deceased brought an application on 27 November 2023, seeking a rescission of the order by the Regional Court. He sought relief that the order be declared void because:

6.1 There was a pending divorce action in the High Court; and

6.2 The decree of divorce was granted erroneously because the respondent did not advise the court that she had been served with summons out of another court.

7

The respondent took issue with the papers as formulated by the deceased. The deceased was ordered to amend his papers. The deceased did not file amended papers as ordered.

8

The Regional Court issued a rule nisi on 14 December 2023. The rule was discharged on 16 February 2024.

9

The respondent's point on jurisdiction is dispositive of the matter.

10 The applicants seek the Court to intervene in relation to an order by a Regional Court in the Regional Division in the North-West Province. The Gauteng Division of the High Court has no jurisdiction over regional courts in the North West Province.

11

Section 21 of the Superior Courts Act, 10 of 2013 deals with the jurisdiction of the High Court:

“Persons over whom and matters in relation to which Divisions have jurisdiction.—

- (1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power -----”

12 The cause of action in this matter arose outside the area of jurisdiction of this Court.

13 The relief sought would not have been competent even if this Court had jurisdiction. That is because the High Court has limited jurisdiction in relation to proceedings in a Regional Court. The High Court may only consider appeals or reviews of orders by a Regional Court. A stay of an order by a Regional Court falls outside the powers of a High Court.

14 The application cannot succeed. I make the following order:

14.1 The application is enrolled as urgent in terms of Rule 6(12).

14.2 The application is dismissed for lack of jurisdiction.

14.3 The applicants are ordered to pay costs.

Omphemetse Mooki

Judge of the High Court

Heard: 6 March 2024

Decided: 11 March 2024

For the applicants: P Lebea

Instructed by: Fadane LL Attorneys Inc.

For the second respondent: WT Rakau (Advocate with a trust account)

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