

SOUTH AFRICA / JUDGMENT

Molema v Matabologa (10751/2000)

[2020] ZAGPPHC 396 (5 August 2020)

[2020] ZAGPPHC 396**COURT**

North Gauteng High Court, Pretoria

BEFORE

M Van Staden

CASE / FILE NUMBER

10751/2000

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 10751/2000

In the matter between:

MB MOLEMA

APPLICANT

and

WM MATABOLOGA

RESPONDENT

APPLICATION FOR LEAVE TO APPEAL JUDGMENT

VAN STADEN, AJ:

- [1] The applicant t applies for leave to appeal against the judgment and order handed down by this court on 20 March 2020.
- [2] The application was lodged out of time and the applicant applied for condonation, raising principally that the delay was caused by factors associated with the lockdown ordered pursuant to the outbreak of the Covid-19 pandemic. I was satisfied that a case was made out for condonation, and thus ordered that condonation be granted.
- [3] The application for leave to appeal was not opposed.

- [4] The application concerns the question of whether the applicant's appeal would have a reasonable prospect of success, as contemplated in section 17(1)(a)(i), or there is some other compelling reason why the appeal should be heard, as contemplated in section 17(1)(a)(ii), of the Superior Courts Act, 10 of 2013 ("the Act").
- [5] Erasmus Superior Court Practice, Van Loggerenberg, 2nd edition, Vol 1, citing the authorities mentioned therein, indicates that an appellant faces a higher and stringent threshold in terms of the Act, compared to the provisions of the repealed Supreme Court Act 59 of 1959.
- [6] Although the judgment raises the novel issue of ownership interests in immovable property having been waived, I am not satisfied that the appeal would have a reasonable prospect of success.
- [7] Even if I were to be wrong on the applicant waiving his ownership rights in the immovable property in question, I do not believe the applicant has a reasonable prospect of success of overturning the judgment on appeal. No reasoning or substantiation was furnished by the applicant why he waited almost two decades to approach the court, to vary the divorce decree in terms of the provisions of Uniform Rule 42 (1). I am of the opinion that a court of appeal would not find that the applicant has made out the necessary case to obtain a variation of the divorce decree granted on 25 August 2000.
- [8] However, the judgment does raise the novel point of a person having waived ownership rights in immovable property. Although authority exists for the waving of ownership rights in immovable property[1], I am not aware of a judgment where it was indeed found that ownership rights in immovable property were waived.
- [9] Furthermore, academic writers differ on whether it is indeed possible to waive ownership rights in immovable property[2].
- [10] Bearing in mind the novelty of the point of law raised, as well as the difference between academic writers on the waving of ownership rights in immovable property, I believe a compelling reason is made out why the appeal should be heard.
- [11] This court is conscious that compelling reason is not made out merely because academic writers differ from each other. However, in the context of the novelty of the ratio decidendi, this court considers it a factor to be borne in mind.

ORDER

[12] Accordingly I order as follows:

1. Leave to appeal is granted to a full court of this Division.
2. There is no order regarding the costs of the application for leave to appeal.

M VAN STADEN

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE OF HEARING: 2 JULY 2020

DATE OF JUDGMENT: 5 AUGUST 2020

ATTORNEY FOR APPLICANT: SHAPIRO & LEDWABA INCORPORATED

ADVOCATE FOR APPLICANT: ADV MELLO

ATTORNEY FOR RESPONDENT: ADV PAIGE-GREEN

ADVOCATE FOR RESPONDENT: LEWIES & ASSOCIATES

[1]See Meintjes NO v Coetzer and Others 2010

(5) SA 186 (SCA) at para 16; and Minister van Landbou v Sonnendecker 1979 (2) SA 944 (A).

[2]See the views of JC Sonnekus in “Abandonnering van eiendomsreg op grond en aanspreeklikheid vir grondbelasting: Aantekeninge” 2004 TSAR 747 and “Vermoënsregtelike implikasies van gevonde sake” 2016 TSAR 731, as well as the views of CG van der Merwe in Sakereg, second edition, pages 227 and 377; see the contrary views of Cramer in “The abandonment of landownership in South African and Swiss law” 2017 SALJ 870.

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