

SOUTH AFRICA / JUDGMENT

Mthombeni v Mthombeni (9339/2018)

[2020] ZAGPPHC 791 (10 December 2020)

[2020] ZAGPPHC 791**COURT**

North Gauteng High Court, Pretoria

BEFORE

N Janse Van Nieuwenhuizen

CASE / FILE NUMBER

9339/2018

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Source record**IN THE****HIGH COURT OF SOUTH AFRICA(GAUTENG DIVISION, PRETORIA)****REPUBLIC****OF SOUTH AFRICA****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: YES/NO****(3)****REVISED****DATE:**

10 DECEMBER 2020

Case

Number: 9339/2018

In

the matter between:

JACOB

VUSIMUZI MTHOMBENI

Applicant

and

THEMBI

SARAH MTHOMBENI

Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

[1] This is an application for leave to appeal the judgment and order handed down by this court on 1 November 2019.

[2] The main thrust of the grounds relied upon by the applicant is the fact that the applicant did not have a fair trial.

[3] The contention that the applicant did not have a fair trial is based on the applicant's allegation that he suffered from a hearing deficiency at the time of the trial and could as a result not follow

the proceedings.

[4] As is evident from the transcript of the proceedings, the applicant was afforded every possible opportunity to participate in the proceedings, which opportunities he, for reasons unknown to the court, did not pursue.

[5] Notwithstanding the aforesaid, Ms Omar, the attorney acting on behalf of the applicant, persisted that the applicant should have been afforded the same rights as accused persons have in terms of section 35 of the Constitution. This would have entailed that the court should have referred the applicant to an audiologist to determine the

extent of his hearing deficiency.

[6] Ms Fabricius, counsel for the respondent, correctly pointed out that litigants in civil litigation is on the same footing and must be treated equally. The principles underlying a fair trial in civil litigation applicable to both litigants and a court should carefully weigh up the interests of both parties during the course of the proceedings.

[7] This the court has done and I am of the view that another court would not come to a different finding in this regard.

[8] The further ground is based on the forfeiture order granted in favour of respondent. The viva voce evidence of the respondent corroborated by documentary proof established on a balance of probabilities that she was entitled to a forfeiture order.

[9] In the result and having had due regard to submissions by both parties, I am of the view that the appeal does not have a reasonable prospect of success.

ORDER

[10] In the premises, I grant the following order:

The application for leave to appeal is dismissed with costs.

N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 12 December 2020.

DATE HEARD PER COVID19 DIRECTIVES: 08 December 2020

(Virtual hearing.)

DATE DELIVERED PER COVID19 DIRECTIVES: 10 December 2020

APPEARANCES

Counsel for the Applicant:

Ms Y. Omar

(With right of appearance)

Instructed by:

Zehir Omar Attorneys

Counsel for the Respondent:

Advocate M. Fabricius

Instructed by:

Shapiro and Ledwaba Inc.

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Prepared on 11 October 2026 · Esheria