

SOUTH AFRICA / JUDGMENT

Nedbank Ltd v Cunningham (20905/2011) [2012] ZAWCHC 89 (9 May 2012)

[2012] ZAWCHC 89**COURT**

Western Cape High Court, Cape Town

BEFORE

Weinkove

CASE / FILE NUMBER

20905/2011

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA (WESTERN
CAPE HIGH COURT, CAPE TOWN)
CASE****NUMBER:** 20905/2011**DATE:** 9
MAY 2012**In the matter between:** NEDBANK
LIMITED
.....Applicant
and
TRACEY
VIOLET CUNNINGHAM
.....Respondent**JUDGMENT**

(Application for Leave to Appeal) WEINKOVE, AJ: This is an application for leave to appeal against a decision which I gave in connection with the surrender by the applicant of her estate and the present application is not opposed by the respondent, that is the applicant in the original application. Facts have been indicated to me, which show that the applicant's husband who is a co-owner of the sole asset in this estate, has withdrawn and settled his application for his voluntary surrender, so that an absurd situation exists, in that the only asset in their respective estates is equally owned by them, but in respect of the respondent in this matter, there is a provisional order of sequestration, whereas the other half of the property owned by the

respondent's husband, is not subject to a sequestration order. In order to regularise this position, it seems to me that I should grant leave to appeal and authorise the intervening party to intervene and to place affidavits before the court of appeal in the hope that that court can regularise this position, which seems to me to be wholly undesirable. In the result, the application for leave to appeal is granted and the proposed intervening party is granted leave to file further affidavits, which shall be served upon the respondent before the hearing of the appeal. The question of costs shall stand over for determination by the court of appeal. WEINKOVE, AJ

JUDGMENT

(Application for Leave to Appeal)

WEINKOVE, AJ:

This is an application for leave to appeal against a decision which I gave in connection with the surrender by the applicant of her estate and the present application is not opposed by the respondent, that is the applicant in the original application.

Facts have been indicated to me, which show that the applicant's husband who is a co-owner of the sole asset in this estate, has withdrawn and settled his application for his voluntary surrender, so that an absurd situation exists, in that the only asset in their respective estates is equally owned by them, but in respect of the respondent in this matter, there is a provisional order of sequestration, whereas the other half of the property owned by the respondent's husband, is not subject to a sequestration order.

In order to regularise this position, it seems to me that I should grant leave to appeal and authorise the intervening party to intervene and to place affidavits before the court of appeal in the hope that that court can regularise this position, which seems to me to be wholly undesirable.

In the result, the application for leave to appeal is granted and the proposed intervening party is granted leave to file further affidavits, which shall be served upon the respondent before the hearing of the appeal. The question of costs shall stand over for determination by the court of appeal.

WEINKOVE, AJ

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