

SOUTH AFRICA / JUDGMENT

P.K v Rorich, Wolmarans and Luderitz Inc and Others (11207/18) [2021] ZAGPPHC 271 (13 April 2021) [2021] ZAGPPHC 271

COURT

North Gauteng High Court, Pretoria

BEFORE

L I Vorster

CASE / FILE NUMBER

11207/18

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO. 11207/18

In the matter between:-

P K[...]

APPLICANT

and

RORICH, WOLMARANS & LUDERITZ INC

1ST RESPONDENT

NAIDOO PRISHANIA N.O.

2ND RESPONDENT

THE MASTER OF THE HIGH COURT,

JOHANNESBURG

3RD RESPONDENT

R E S[...]

4TH RESPONDENT

M K[.]

5TH RESPONDENT

N C M[...]

6TH RESPONDENT

ID. [...]

JUDGMENT

VORSTER, LI Aj

1. The Applicant applies for an order in the following terms:

“1. That the Agreement signed by the Applicant and her deceased husband I K K[...] “the Deceased” on the 18th of July 2012 not be enforceable against the Applicant and also in favour of the Deceased estates.

2 That the st Respondent is ordered to pay 50% of the prceeds of the sale

- 3 That the Third Respondent be interdicted from approving and conrfirming the amendment of the Liquidation and Distribution Account under Estate Number [...] to the effect that it should be in accordance to the last Will and Testament of the Deceased;

4 That, alternatively in the event that the Third Respondent has already amended the Liquidation and Distribution Account to effect the contents of the last Will and Testament, the Applicant is seeking an order interdicting the First Respondent from finalising the Estate of the Deceased in accordance with the contents of the last Will and Testament of the Deceased;

5. The Respondents to pay the costs of this Application only if opposed.”

2. The Respondent disputes the relief claimed by the Applicant. The relevant facts of this matter are to a very large extent common

cause between the parties and can be summarized as follows:-

2.1. The Applicant married I K K[...] on 14th of May 1987 in community of property.

2.2 They had an immovable property which was registered in the name of the deceased.

2.3 The Applicant and K[...] divorced on the 25th of October

1991. As part of the divorce process an agreement between them was made an order of Court. In that agreement each party was entitled to possession in his or her possession and nothing was said about the immovable property.

2.4 The Court who heard the divorce action, which was unopposed, allowed the Plaintiff, K[...], to amend the written Deed of Settlement within 14 days of date of the Settlement Agreement being made an order of Court.

2.5 The Fourth Respondent alleged that she was married to the deceased on the 25th of September 2010 by means of a Customary Marriage. That marriage is disputed by the Applicant.

2.6 During July 2010, the Applicant was in hospital after having been injured in a motor collision. She was approached by a person (the 10th Respondent) whom the Applicant presumed was representing the deceased at the time. She was still in Charlotte Maxeke Johannesburg Hospital. The purpose of that visit was to obtain the signature of the Applicant to the document headed "Variation Agreement" and which was signed by the Applicant.

2.7 In that document the Applicant alienated her 50% of the property to the deceased.

1. The crux of the dispute between the Applicant and particularly the 4th Respondent is whether the Variation Agreement, which admittedly was signed by the Applicant whilst in hospital, is a valid document disposing of her 50% undivided share in the immovable property registered in the name of the deceased. The Applicant's case is that she was indisposed in a hospital after having suffered

severe injuries in a motor collision and she was in the process of recuperation. For that reason she did not take particular notice to the Variation Agreement that was presented to her for signature and just mechanically signed it. There is no evidence by the Applicant or the 4th Respondent that the nature and content of the amendment to the Settlement Agreement was explained to the Applicant or that the Applicant was even told that the agreement is an amendment to the original Settlement Agreement in the divorce.

2. Before I deal with the merits of the matter, it is necessary to refer to a point in limine which the 4th Respondent raised. That point in limine is an invocation of Section 96 of the Administration of Estates Act, No 66 of 1965. That section provides that the Master may, if needed, approach the Court to obtain relief in the course of the administration of deceased estates. The short answer to this point is that that section does not exclude the jurisdiction of the Court to adjudicate on issues and problems relating to deceased estates. Consequently, this point in limine might fail.
3. A second point which the 4th Respondent raises is that the deceased in his last Will disposed of the 50% share in the property which according to him had been transferred to him by the Applicant in terms of the Variation Agreement. The argument is that such is the last Will and Testament of the deceased and his disposition of that 50% share in the immovable property overrides any order a Court may make setting aside the amendment agreement. This attack is also untenable. A person can only dispose of his property and goods in his last Will and Testament. He cannot dispose of anything belonging to anybody else. The question is therefore whether the 50% share in the undivided share in the property was transferred by the Applicant to the deceased in terms of the Variation Agreement during July 2010 or not.

4. The Applicant's case is that she was unaware that the document which was presented to her for signature was an agreement or

a variation of an existing agreement between her and the deceased. Her evidence is that she was indisposed to the extent that she hardly took notice of what was going on around her and was in no position to enter into binding agreements of any sort. This evidence is of course hotly disputed by the 4th Respondent.

5. It is common cause that the Applicant signed the amendment agreement during July 2010. The dispute on the evidence must be approached by means of an analysis of the relevant evidence to come to a decision whether there is in fact a material factual dispute which precludes a decision on the matter without oral evidence. I am of the view that the factual dispute whether the Applicant knew and

intended to forfeit her undivided half share in the immovable property by the signature of the amendment agreement. Is not a real

dispute. It can be resolved without oral evidence, looking purely at the evidence as a whole. The document was signed by Applicant. The 4th Respondent Infers that the document was signed with intention to be bound by the contents thereof .Taking into account the surrounding common cause facts that inference does not pass the probability test for the following reasons: The document is presented for signature approximately 10 years after the divorce was finalised. There is no evidence that the nature and effect of the document presented to her for signature was a binding agreement in terms of which she forfeited her 50% undivided half share in the immovable property was explained to her. There is no evidence that the transfer of her share of the property was ever discussed with her .

6. It was never explained to the Applicant what nature and importance of the document was which was presented to her for signature. If that had been the case it would have been a simple matter for the 4th Respondent to adduce evidence in that regard. There certainly would in my mind be a duty to explain to the Applicant the nature and effect of the document before she signs it. The simple reason for that conclusion is that after divorcing the deceased for 10years the Applicant and the deceased abided by their initial oral agreement to leave the immovable property in their joint ownership. Out of the blue during July 2010 a person comes to the Applicant laid up in bed in hospital after a serious motor collision, present a document to her and which she signed. I have no doubt, had

she been told what the import and effect of the document was, she would not have signed it. There is no single reason to suspect why the Applicant, being the owner of an undivided share in an immovable property would dispose of it to her erstwhile spouse for no apparent reason. On the crucial aspect whether the Applicant knew what she was signing there is no evidence apart from the evidence of the Applicant stating that she was unaware of it. In my view the evidence of the Applicant about the circumstances in which the amendment agreement was signed taken together with the absence of any evidence that the nature and import of the document was explained to her before signing it and the complete improbability that the Applicant would have

disposed of her 50% undivided share in the property, without any apparent reason to do so, is in my view conclusive for a finding that the Applicant succeeded in proving that she did not sign the said document with the intention to dispose of her 50% undivided share in the property. Consequently in my view the application must succeed.

I make the following order:

1 That the Agreement signed by the Applicant and her deceased husband I K K[...] “the Deceased” on the 18th July 2012 is not enforceable against the Applicant and also not enforceable against the deceased estate of the deceased

2. That the First Respondent be compelled to pay to Applicant 50%

3 That the Third Respondent be interdicted from approving and confirming the amendment of the Liquidation and Distribution Account under Estate Number [...] to the effect that if should be in accordance to the last Will and Testament of the Deceased;

4 That, alternatively in the event that the Third Respondent has already amended the Liquidation and Distribution Account to effect the contents of the last Will and Testament , an Order interdicting the First Respondent from finalising the Estate of the Deceased in accordance with the contents of the last Will and Testament of the Deceased;

5. The Fourth Respondent is ordered to pay the Applicants costs of suit.

L I VORSTER, AJ

13 April 2021

Counsel: Applicant Kenneth Malatji Attorneys

4th Respondent S.Jozana

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