

SOUTH AFRICA / JUDGMENT

P.S.R v L.S.R (35539/14) [2021] ZAGPPHC 279 (19 April 2021) [2021] ZAGPPHC 279

COURT

North Gauteng High Court, Pretoria

BEFORE

C.P. Rabie

CASE / FILE NUMBER

35539/14

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Policy

HIGH

COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER

JUDGES: NO

(3)

REVISED:

yes

19

April 2021

CASE NO: 35539/14

Hearing before Rabie J by way of
Zoom conference.

In

the matter between: P.S.
 R[....]
 Applicant
 and
 L.S.
 R[....]
 Respondent

JUDGMENT

1. This is an application to amend the parties' divorce order in respect of the name of the respondent's pension fund in which the applicant has to share. The parties have reached a settlement in respect of all issues except for the issue of costs.
2. A brief background is the following. The applicant and the respondent were divorced on 25 April 2016. Subsequent to the divorce the parties sought to amend the order of divorce to incorporate a division of benefits arising from the respondent's pension funds. In that application the respondent was the applicant and an order was made on 28 November 2018. However, the respondent described the pension fund incorrectly with the result that an incorrect order was made. The pension fund duly rejected the endorsement.
3. The respondent failed to correct the situation and that led to the applicant launching the present application. At some point the respondent also launched a counter application relating to a pension fund of the applicant.
4. The parties succeeded in settling all the major issues and are ad idem with the order this court should make, except for the order of costs. The merits of the application as well as the respondent's application were in reality never in dispute. Regarding the main issues the parties are in agreement that the pension funds are now correctly described and that each party should be declared entitled to 50% of the share of the other party in hers/her pension fund.
5. Regarding the dispute about costs, the founding affidavit and answering affidavit of the respective parties are by no means clear. It appears, however, that the applicant accuses the respondent of submitting the wrong information regarding his pension fund which resulted in her having to bring the present application. On the other hand the respondent explained that the particulars relating to his pension fund had been changed and that he was not to blame. He also stated that the applicant should have established the true facts herself.

6. It is not necessary to refer to the arguments on behalf of the parties in any greater detail. The present application is an example of a total and unnecessary waste of costs. If the attorneys of both parties have simply lifted their telephones and talked to each other, the correct application could have been brought to court with the minimum of costs. Yet, the attorneys remained at arms length with the parties now blaming one another for the costs that have been incurred.
7. It may be correct that the respondent should have established the correct information and could hardly have expected the applicant to do so and his failure necessitated the present application. However, the applicant failed to inform the respondent of her pension fund in which he was entitled to share and this necessitated the application from the respondent's side.
8. A very simple application was required to amend the original divorce order and that could and should have been done with relatively little costs involved. The matter should never have escalated to an opposed matter which in any event became settled, which it actually was from the start, except for the issue of costs. In my view both parties carry some blame in respect of the escalation of costs and for that reason I am of the view that the parties should pay their own costs.
9. In the result, the following order is made:
 1. The decree of divorce granted on 25 April 2016, as amended on 28 November 2018, is hereby varied by substituting paragraph 4 and 5 of the order of 28 November 2018, with the following:

"4.1 The defendant in the divorce action, namely L[....] S[....] R[....] is a member of the NAMPAK CONTRIBUTORY PROVIDENT FUND.

4.2 The plaintiff in the divorce action, being P[....] S[....] R[....] and the non-member spouse, is entitled to 50% of the member's pension interest in the NAMPAK CONTRIBUTORY PROVIDENT FUND as at date of divorce and the fund is ordered to make payment to the non-member spouse.

5.1 The defendant in the divorce action, namely L[....] S[....] R[....] is a member of the RETIREMENT-ON-LINE RETIREMENT FUND.

5.2 The plaintiff in the divorce action, being P[....] S[....] R[....] and the non-member spouse, is entitled to 50% of the member's pension interest in the RETIREMENT-ON-LINE RETIREMENT FUND as at date of divorce and the fund is ordered to make payment to the non-member spouse."
 2. Each party shall pay his/her own costs of the application.

C.P. RABIE

JUDGE OF THE HIGH COURT

19 April 2021

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