

SOUTH AFRICA / JUDGMENT

S.M v M.M and Another (038386/2025)

[2025] ZAGPJHC 431 (4 April 2025)

[2025] ZAGPJHC 431**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Crutchfield

CASE / FILE NUMBER

038386/2025

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Policy**IN THE HIGH COURT****OF SOUTH AFRICA****GAUTENG DIVISION,****JOHANNESBURG****CASE****NO: 038386/2025****DATE:**

04-04-2025

(1)

REPORTABLE: NO.

(2)

OF INTEREST TO OTHER JUDGES: NO.

(3)

REVISED.

DATE

4 April 2025

In

the matter between

S[...]

M[...]

Applicant

And

M[...]

M[...]

First Respondent
PALESA
MOATLHUDI
Second Respondent

JUDGMENT

CRUTCHFIELD, J:

The applicant, S[...] E[...] M[...], brings proceedings urgently for interdictory relief and ancillary claims thereto.

The first respondent, M[...] D[...] M[...], the applicant's estranged husband, opposes the application. The

second respondent, Palesa Moatlhudi, did not oppose nor participate in the application.

The first respondent and the second respondent allegedly, are also married to each other and in the process of divorce proceedings.

The applicant seeks relief interdicting the respondents from having their written settlement agreement, signed in finalisation of their marital disputes, ("the agreement"), made an order of court insofar as the agreement relates to assets comprising part of the matrimonial estate between the respondents. The applicant seeks relief pending final determination by a court of the rightful ownership of those assets.

Furthermore, the applicant claims an interdict preventing the respondents from executing or enforcing the terms of the agreement pending a court determining ownership of the assets and that the divorce proceedings between the applicant and the first respondent be consolidated with those between the respondents.

The applicant alleges that she married the first respondent validly by customary law on 30 November 2019, and that the marriage is one in community of property. The applicant and first respondent allegedly registered their marriage and procured a marriage certificate. The registration of the marriage on 20 March 2023 resulted in a marriage certificate that states that the marriage is a civil marriage.

The applicant instituted divorce proceedings to which the first respondent pleaded that the marriage was not valid as he was married

to another woman, being the second respondent.

The applicant subsequently discovered that the second respondent also instituted divorce proceedings against the first respondent, to which the first respondent pleaded a denial of the marriage between himself and the second respondent because he was married to an unnamed woman.

Subsequently, the respondents settled their marital disputes in terms of the agreement between them as aforementioned.

The applicant alleges that various of the assets that are allocated between the respondents in terms of the agreement, formed part of the joint estate between the applicant and first respondent. Furthermore, the applicant contends that she stands to suffer irreparable prejudice if the agreement between the respondents is made an order of court and the respondents execute the provisions of that agreement in respect of those assets. The first respondent argues that the application is moot as the respondents have signed the agreement, that is binding upon them, in finalisation of their disputes including the division of their joint estate. The respondents'

divorce is set down for hearing on the unopposed roll on 6 June 2025.

The first respondent contends that the marriage between him and the applicant is null and void ab initio. Alternatively, the first respondent submits that if there is a valid customary marriage between him and the applicant then the marriage is a civil marriage as reflected on the parties' marriage certificate and that it is out of community of property.

Thus, the first respondent seeks the striking off of the application with costs for the absence of urgency alternatively, the dismissal of the application with costs.

As to the urgency of the application, notwithstanding the applicant having requested a copy of the agreement from the first respondent's

attorney, the agreement was not forthcoming. The agreement was only uploaded onto the digital caselines platform whilst the parties were waiting to be heard by me in the urgent court. The applicant alleges that the first respondent in terms of the agreement, is disposing of assets that he alleges belong only to him, to the prejudice of the applicant. Accordingly, up until the uploading of the agreement on the digital CaseLines platform, the applicant did not know what assets would be divided between the respondents and the potential effect thereof upon her.

Furthermore, the applicant acted in bringing the application urgently, under the impression that the respondents' divorce was set down provisionally for hearing on 20 March 2025. The applicant discovered subsequently that the divorce would be heard on 6 June 2025. Notwithstanding, the applicant stands to suffer prejudice potentially if the respondents proceed to finalise their divorce proceedings on 6 June 2025 and thereafter execute the provisions of the agreement in respect of the asset allocation between the respondents.

The applicant cannot enjoy substantial recourse in due course because absent the order being granted in terms of the notice of motion

before me, the respondents' divorce will be finalised before the applicant obtains a date for this application on the opposed

motion roll and before the applicant's divorce action is determined on the trial roll.

In the circumstances, I am of the view that the application is urgent and stands to be determined accordingly.

The applicant alleges that it is in the interests of justice that one court hears all of the relevant evidence and determines if the two marriages respectively are valid and, if so, which matrimonial proprietary regime applies in respect of each marriage and which assets fall to be divided within the confines of each marriage and each divorce, assuming the respective marriages to be valid.

I note the first respondent's contention that the applicant cannot proffer a version that disputes that of the respondents, and that the order sought by the applicant, if granted, will cause prejudice to the second respondent, who has signed the agreement in respect of her alleged divorce with the first respondent. These submissions are meritorious.

However, if the respondents' agreement serves to dispose of assets that rightfully accrue within the alleged marriage of the applicant and first respondent, then it is just that the consequences thereof be considered and determined by a court.

Furthermore, the first respondent relied on *Molokane v Williams and Others*,^[1] which relied on the decision of the Constitutional Court in *Ramuhovhi and Others v President of the Republic of South Africa and Others*,^[2] to the effect that if it is accepted that a customary marriage exists between the applicant and the first respondent, then there is no joint estate and that marriage is one out of community of property. Thus, the agreement between the respondents does not serve to prejudice the applicant.^[3]

However, the case law relied upon by the first respondent^[4] and the alleged consequences thereof, apply only in the event that the respondents' marriage was validly concluded in terms of customary law. The second respondent, importantly, did not deliver a confirmatory affidavit in support of the first respondent's

allegations concerning their marriage.

I am certainly not in a position to determine that the respondents were married, validly so, in terms of customary law.

That question, as well as the consequences of that determination upon the applicant's alleged marriage to the first respondent, must be decided by a court after hearing all the evidence in respect of both respective marriages, as well as the consequences thereof, including the division of the assets in terms of the respective divorce proceedings.

The applicant is entitled to question the respondents and challenge the first respondent's conclusion that a valid customary marriage was concluded between the respondents.

The prejudice that will be suffered potentially by the applicant in the event that I do not grant the relief claimed by her far outweighs the prejudice to be suffered by the second respondent in the event that I do grant the relief sought by the applicant. The prejudice to the second respondent amounts to a delay in finalising her divorce proceedings from the first respondent, which in itself

is significantly prejudicial to the second respondent. Notwithstanding, the applicant, in the event that I do not grant the relief sought by her, stands to lose assets that potentially may accrue rightfully within the applicant's marriage to the first respondent.

In the circumstances, it is in the interests of justice that one court determines the issues raised in this matter after hearing the relevant evidence. Accordingly, I intend to grant the order sought by the applicant.

The costs of the application before me, will be costs in the cause of the consolidated action.

By reason of the aforementioned, I grant the following order:

ORDER

1. The actions in this court under case number 2025-000037 and case number 2023-011264 are consolidated into one action under case number 2025-000037.
2. Pending the outcome of the consolidated action under case number 2025-000037:
 - (a) The first and second respondents are interdicted and restrained from seeking an order in any court that any settlement agreement concluded between them relating to any of the first respondent's assets, be made an order of court.
 - (b) The first and second respondents are interdicted and restrained from executing and enforcing any terms of any settlement agreement concluded between them that relates to any of the assets of the first respondent.
3. The costs of this application are costs in the cause of the consolidated action under case number 2025-000037.

I hand down the judgment.

CRUTCHFIELD, J

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT: 4 April 2025.

DATE OF HEARING: 1 April 2025.

[1] Molokane v Williams and Others (2015/12381)

[2023] ZAGPJHC 1210.

[2] Ramuhovhi and Others v President of the Republic of South Africa and Others [2017] ZACC 41 (13 November 2017).

[3] Ngwenyama v Mayelane 2012

(4) SA 527 (SCA), Netshituka v Netshituka

[2011] ZASCA 120 and Monyepao v Ledwaba

[2020] ZASCA 54.

[4] Id.

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