

SOUTH AFRICA / JUDGMENT

Tsakane v Mogotsi and Another (M 406/2017) [2018] ZANWHC 69 (16 February 2018)

[2018] ZANWHC 69

COURT

North West High Court, Mafikeng

BEFORE

Hendricks, Gutta

CASE / FILE NUMBER

M 406/2017

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IN

THE NORTH WEST HIGH COURT, MAFIKENG

CASE

NO: M 406/2017

In

the matter between:

MOLOKWANG
GLADYS TSAKANE
Applicant
and
THE PRESIDING
MAGISTRATE, MR MOGOTSI
GA-RANKUWA
MAGISTRATE'S COURT
1st
Respondent
KGELEDI
JOHANNES MOLOKWANE
2nd
Respondent
HENDRICKS
J & GUTTA J
DATE
OF HEARING
:
16 FEBRUARY 2018
DATE
OF JUDGMENT

: 16
FEBRUARY 2018
COUNSEL
FOR THE APPLICANT
:
ADV. FERRIS
COUNSEL
FOR THE RESPONDENT
:
NO APPEARANCE

JUDGMENT

HENDRICKS J

Introduction

- [1] This is an application to review and set aside an order for divorce which was granted by the Regional Magistrate, Ga Rankuwa on 5th December 2016. The applicant and the 2nd Respondent were married in community of property. On 10th August 2016 the 2nd Respondent issued a summons for divorce. The family intervened and it was resolved that the parties should not divorce. They are still staying together as husband and wife. The Applicant did not file any opposing papers. On the 5th December 2016 they attended court together. The 2nd Respondent indicated that he is desirous to continue with the divorce. He then testified. After his testimony, the Regional Magistrate granted a decree of divorce and ordered the division of the joint estate on the basis that each party retains what is in his/her possession, with no order as to costs.
- [2] The applicant through the interpreter indicated that she want to bring something to the attention of the presiding Regional Magistrate. The record reflects:

“Interpreter : Application your worship from the defendant party.

Court

: Yes? You did not file any paper is that not so?

Next matter. Are you still having matters?

Court Adjourns.”

- [3] The prayer is to review and setting aside the court order and that the matter be remitted to the Regional Court to be heard de novo. The grounds of review are:

“10.1 The First Respondent failed to take into account all of the assets of the joint estate.

10.2 The First Respondent failed to consider the value of the assets that he indeed considered, namely my pension fund, the immovable property of the parties (although I do not have an immovable property);

10.3 The First Respondent failed to request a full exposition of the joint estate, and specifically the liabilities thereof.

10.4 The First Respondent issued out an order which is confusing, in the sense that the parties still reside together and do not know which tangible property to keep amongst themselves, as both parties are in possession of the tangible assets.

10.5 The First Respondent outright refused me an opportunity to set out my version, which is irregular especially because both parties were appearing in person.

10.6 If I was given an opportunity to address the First Respondent, I would have indicated the fact that I do not have an immovable property, there are liabilities to be considered in the joint estate, and there are also other movable assets in the joint estate that requires consideration.”

[4] In response to this application for review, the Regional Magistrate provided his reasons for the order. It reads thus:

“REASONS

HAVING GONE through the papers I wish to state as follows:

The matter was placed on unopposed roll as the applicant had not filed opposing papers despite being properly served with summonses.

The rights of both parties to a lawyer were explained at the beginning of the proceedings and the applicant gave no indication to the court or to the assistant Registrar of what is now stated in her founding affidavit otherwise the matter would have been dealt with differently.

The applicant is already having a copy of the transcript.

KINDLEY TAKE NOTICE that the first Respondent does not oppose the motion particularly on the issue of division of the joint estate as it appears that it is common course that the marriage is irretrievably broken down.”

[5] The transcript reflects that the rights of both parties to legal representation were indeed explained to them. However, when the applicant as the defendant wanted to bring something to the attention of the presiding Regional Magistrate, she was barred from doing so. This in my view was irregular especially because she was unrepresented. The reasons supplied are noted. The concession made by the Regional Magistrate that the matter could have been dealt with differently is to be welcomed. I am of the view that the order should be remitted back to the Regional Court, Ga Rankuwa to start de novo giving the applicant an opportunity to oppose, should she wishes to do so.

Order

[6] Consequently, the following order is made:

- (i) The order granted by the Regional Magistrate Mr. Mogotsi on the 5th December 2016 under case number NW/ODI/RC/408/16 in the Regional Court, Ga Rankuwa is reviewed and set aside.
- (ii) The matter is remitted to the office of the Assistant Registrar, Regional Court, Ga Rankuwa to be enrolled and to start de novo before another Regional Magistrate, different from Mr. Mogotsi.
- (iii) The Assistant Registrar must make the applicant aware of the fact that she can oppose the divorce action, if she so decides.

R D HENDRICKS

JUDGE OF THE HIGH COURT,

NORTH WEST DIVISION, MAHIKENG

I agree

GUTTA J

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/tsakane-v-mogotsi-and-others-unknown-topic-anwhc-2018>

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