

SOUTH AFRICA / JUDGMENT

Van Aswegen v Van Aswegen and Another (133235/2024) [2025] ZACC 767 (31 July 2025) [2025] ZACC 767

COURT

Constitutional Court

BEFORE

Wilson

CASE / FILE NUMBER

133235/2024

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 133235/2024

DATE: 31-07-2025

DATE 31 July 2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

In the matter between

VAN ASWEGEN

Applicant

And

VAN ASWEGEN AND ANOTHER

Respondent

J U D G M E N T EX TEMPORE

WILSON, J: The applicant, a woman in her eighties, seeks an order against the first respondent, who is her son, for the payment of R2 833 600 plus interest, together with an order directing the first respondent to sign an authorisation to change the ownership of a motor vehicle - a Suzuki SX4 - which is currently in her possession.

The basis of the applicant's claim is that she advanced the sum to which I have referred to the first respondent for the purposes of investing it on her behalf.

There are disputes on the papers relating to the amounts advanced and the purpose for which they were advanced. Broadly speaking the first respondent says that certain amounts were advanced to him as loans which he repaid.

The applicant denies this and says that they were investments made on her behalf and that the payments that the first respondent says were repayments on the loans were in fact the interest on her investments.

That dispute does not extend to the full amount the applicant claims. The respondent concedes in his affidavit, and Mr Coleman who appeared on behalf of the first respondent, accepted in argument, that the first respondent cannot resist an order directing the repayment of R500 000 to the applicant plus interest.

The dispute in this case really relates to the remaining R2 353 600 that the applicant claims. Mr Kloek, who appeared for the applicant, sought to persuade me on the papers that the factual version advanced by the first respondent in relation to that lower amount was so far-fetched and untenable that I may reject it on the papers.

I am unable to agree. The arguments Mr Kloek advanced effectively entailed conclusions as to the credibility of the first respondent's factual version. They did not persuade me of the absence of a genuine factual dispute.

However, in light of the facts that the dispute is easily defined; the amount of money in dispute is easily quantified; that some of the money is accepted as being due to be paid back; and that there is no dispute that the applicant did advance most of if not all of the money to the first respondent, this would not be a proper case in which to dismiss the application because the factual disputes that have arisen were foreseeable.

Nor is it appropriate to refer the matter to trial, given that the issues in dispute are narrow and easily defined; that the only relevant witnesses are the applicant and the first respondent themselves; and that there are two and a half lever-arch files of documentation tendered in support of each of the parties' claims.

This is a proper case, in my view, to refer the disputes I have identified to oral evidence to be heard by me as soon as possible. The need to hear the matter as soon as possible does not only flow from the fact that the applicant is of advanced age. It is also necessary in circumstances where a matter could be resolved on paper but for narrow factual disputes. In these circumstances, it is necessary for courts to act with expedition to resolve those disputes with a brief and quickly arranged evidentiary hearing.

I discussed with Mr Coleman and Mr Kloek the appropriate ambit of a referral order. It would not be fair to say that either of them agreed to the order that I am about to make. but I am nonetheless grateful for their assistance in helping me fashion it. Having said that, paragraph 1 of the order is neither seriously resisted on the papers. Nor was it resisted in written or oral argument.

For those reasons I make the following order:

1. The first respondent is forthwith to make payment to the applicant of R500 000 plus interest thereon at a rate of 11,5% per annum to run from 5 November 2024 to date of final payment.
2. The first respondent is ordered forthwith to provide the applicant with a duly signed notification of change of ownership/sale of motor vehicle in terms of the National Road Traffic Act, 1996 in order to register a white Suzuki SX4 with registration number F[...] into the applicant's name.
3. The issue of whether and on what basis the first respondent owes to the applicant the sum of R2 353 600 is referred to the hearing of oral evidence before me on 14 and 15 October 2025.
4. The parties may discover such documents as they may wish to present to the witnesses to be called to give oral evidence by no later than Friday, 21 August 2025.
5. Either party may apply on notice of no less than five days to the other party to call such further witnesses as may be necessary to determine the issue referred to oral evidence. That application must be in writing and must reach the offices of Wilson J by no later than 22 August 2025. A ruling on whether the witnesses sought to be called will be permitted to give evidence will be made by no later than 29 August 2025.
6. The applicant and the first respondent are directed to appear before Wilson J on 14 and 15 October 2025 for the purposes of being cross-examined on the version advanced by them in the affidavits currently before court.
7. The matter is postponed to 14 October 2025 with costs reserved.

WILSON, J

JUDGE OF THE HIGH COURT

31 July 2025

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Prepared on 10 October 2026 · Esheria