

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 59502/2022

REPORTABLE: **NO**
OF INTEREST TO OTHER JUDGES: **NO**
REVISED.
21 February 2022

In the matter between:

S[....] T[....] L[....]

APPLICANT

And

S[....] G[....] A[....]

FIRST RESPONDENT

FIRST NATIONAL BANK

SECOND RESPONDENT

(Registration No:1929/001225/06)

THE REGISTRAR OF DEEDS, PRETORIA

THIRD RESPONDENT

JUDGMENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be 21st February 2022.

TWALA J

[1] For the sake of convenience, in this judgment I shall refer to the parties as in convention. Furthermore, this Court directed that this matter be determined on the papers without an oral hearing, as provided for in the Gauteng Division Consolidated Directives; re Court Operations during the National State of Disaster issued by the Judge President of this Division on the 18th of September 2020.

[2] This is an application for leave to appeal against the whole of the judgment and order of this Court handed down electronically on the 12th of January 2022 granting the applicant an interim interdict and other ancillary relief as prayed for in the notice of motion.

[3] It is a trite principle of our law that leave to appeal may only be given where the Judge or Judges concerned are of the opinion that the appeal would have a reasonable prospect of success or where there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration. (*See section 17 (1)(a)(i) and (ii) of the Superior Courts Act, 10 of 2013*).

[4] The grounds for the leave to appeal are succinctly stated in the notice of application for leave to appeal and I do not intend to restate them in this judgment. Furthermore, I would like to extend my gratitude and appreciation to both counsel for the submissions made in their concise heads of argument.

[5] It is common cause that the crux of this application for leave to appeal is whether the order granted on the 12th January 2022 is final or has the effect of a final order. The test to determine whether a judgment or order is final or has the effect of

a final order was set out in *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A) which test was restated with approval by the Supreme Court of Appeal in *Road Accident Fund v S M* (1270/2018) [2019] ZASCA 103 (22 August 2019) in that a judgment or order is a decision which 'has three attributes: first, the decision must be final in effect and not susceptible to alteration by the court that made it; second, it must be definitive of the rights of the parties; and, third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings'.

[6] In *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others* 2020 (8) SA 325 the Constitutional Court stated the following:

"Para 47 Turning to the present matter, it should be borne in mind that both applicants seek urgently to appeal an interim interdict, which is purely interlocutory in nature. An interim interdict is a temporary order that aims to protect the rights of an applicant, pending the outcome of a main application or action. It attempts to preserve or restore the status quo until a final decision relating to the rights of the parties can be made by the review court in the main application. As a result, it is not a final determination of the rights of the parties. It bears stressing that the grant of an interim interdict does not, and should not, affect the review court's decision when making its final decision and should not have an effect on the determination of the rights in the main application. The purpose of an interdict is to provide an applicant with adequate and effective temporary relief.

Para 49 The law concerning the appealability of interim interdicts is settled. Interim interdicts are generally not appealable. This is because interim interdicts are not final in nature; they are not determinative of the rights of the parties and do not have the effect of disposing of a substantial portion of the relief claimed. However, these reasons are not exhaustive. There are various other sound policy reasons for the general non-appealability of interim interdicts. One of these is that appeals are not entertained in a piecemeal fashion, as that would prolong the litigation, resulting in the wasteful use of judicial resources and incurrence of legal costs".

[7] I do not agree that the judgment and order appealed against is final or has the effect of a final order. The judgment and order is interim pending the finalisation and determination of the proprietary rights of the parties in the divorce proceedings. Put differently, the order is not final since it is not determinative of the rights of the parties nor does it dispose of a substantial portion of the relief sought in the action proceedings. The unavoidable conclusion is therefore that the judgment and order is not appealable and the application for leave to appeal falls to be dismissed.

[8] In the circumstances, I make the following order:

The application for leave to appeal is dismissed with costs.

TWALA M L
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION

Heads submission: 14th of February 22

Date of Judgment: 21st February 2022

For the Applicant: Advocate L Grobler

Instructed by: Van Hulsteyn Attorneys

Tel: 011 523 5300

Email address: barbaraS@vhlaw.co.za

For the Respondents: Karen W Smith

Instructed by: Van Zyl Johnson Inc

Tel: 011 064 0599

Email address: karen@vanzyljohnsonattorneys.co.za