

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 6317/ 2010

In the matter between:

FERREIRA, DAVID HERMANUS

And

ROSSBERG, SOPHIA MAGRIETA

FERREIRA, ELIZABETH HENDRIEKA

1ST RESPONDENT

2ND RESPONDENT

JUDGMENT

MAVUNDLA J;

[1] The applicant brought an application for the payment of an amount of R343 229.54 together with interest accrued to be paid to the plaintiff, as well the costs to be paid jointly and severally alternatively by the second respondent.

[2] The second respondent has also counterclaimed, seeking the appointment of a new liquidator alternatively an order for the payment of a specific amount as determined by Mr. Prinsloo being the person appointed by the parties to determine the accrual for the division in terms of the Antenuptual Contract with necessary adjustments with the necessary legal adjustments as proposed.

[3] It is common cause that the parties were married to each other out of community of property and of profit and loss, but with the inclusion of the Accrual System as contemplated in Chapter one of the Matrimonial Property Act 88 of 1984. The parties were subsequently divorced on the 23 November 2007 at the Central Divorce Act. They also reached a settlement agreement which was made an order of the Court, as regards division of their assets. In terms of the said agreement, it was agreed *inter alia*, that their respective estates will be determined, with the cut of date being the date on which the divorce was granted, and divided in terms of the provisions of Antenuptual Contract

H3174/ 86 concluded by the parties on 20 June 1986, by Mr. Dawid Prinsloo of Hopetown a Chartered Accountant.

[4] It is trite that there has to be finality to matters. In my view, for the orders of court to have the efficacy of a legal document, there must be finality to the litigation that is the *pons* of that particular judgment. Orders of Court, especially if obtained by consent, cannot be lightly varied.

[5] It is common cause that Mr. Prinsloo has not been cited in these proceedings. The order sought by the second respondent, is essentially to relieve Mr. Prinsloo of his functions as agreed upon by the parties. It is suggested by the second respondent that Prinsloo has no legal knowledge of determining whether the assets and liabilities are excluded in terms of various contracts concluded by the parties. Although incompetence might be reason to relieve an appointed liquidator of his functions in an estate, he must be served with

the papers seeking such relief. *In casu*, Mr. Prinsloo has not been served with this application.

[6] The second respondent, has not proffered me with cogent reasons why since November 2007 she did not take appropriate steps to have Mr. Prinsloo relieved of his official duties in their estate. Condonation is a discretionary matter of the court. *In casu*, have not been persuaded why I should exercise my discretion in favour of the second respondent. Her counter application must therefore be dismissed with costs.

[7] The amount sought by the applicant, Mr. David Hermanus Ferreira is kept in the trust account of the first respondent, the erstwhile attorney of record of the second respondent. It would seem that one of the reasons why the amount is not being paid out to the applicant is that applicant owes maintain money to the same amount held in trust, in respect of the maintenance of his and second respondent's daughter. It is common cause that, this daughter, that she is a major studying B.Com at Stellenbosch University. The respondents have no right to

withhold payment for this reason because they have no *locus standi* to claim maintenance on behalf of Ms Ferreira, or any of the major children of the parties.

[8] The first respondent and the second respondent were aware of the determination by Mr. Prinsloo of the respective shares of the parties.¹ The first respondent was also informed as early in August 2009 that she no longer has any reason to keep the amount in her trust account². The respondents did not take any action to counter this assertion.

[9] I am of the view that the respondents have not made a case why the relief sought by the applicant should not be granted. It is trite that costs follow record of the second respondent. She could not pay out the money held in her, unless so instructed by the second respondent. As she the agent of the second respondent, it would be inappropriate to mulct her with costs of this matter. The second respondent must bear all the costs.

¹ Vide paginated pages 43-45, 83-90 of the papers

² Vide paginated page 92 annexure "DD" of the papers.

[10] In the result, I make the following order:

1. That the first respondent is ordered to forthwith make payment to the applicant of the amount of R343, 229, 54 together with the interest accrued thereon and to account to the applicant in respect thereof;
2. That the first and second respondent jointly and severally, the one paying the other to be absolved, pay costs of this application.


N.M. MAVUNDLA
JUDGE OF THE HIGH COURT

DATE OF JUDGMENT : 27/05/2011
APPLICANT'S ATT : WEAVIND & WEAVIND INCORPORATED
APPLICANT'S ADV : MR. J.W. STEYN
2nd RESPONDENTS' ATT : WOLVAARDT INCORPORATED
2nd RESPONDENTS' ADV: MR. I. ENGELBECHT