

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

Case No: 2033/2008

In the matter between:-

G. F. P. Applicant

and

M. P. (born S.) Respondent

**JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL AND ON LEAVE TO CROSS
APPEAL**

Mbenenge J:

[1] The parties in these proceeding shall retain the appellations used in the main application from which these proceedings arise.

[2] The applicant sought, in the main, an order rescinding and setting aside the agreement marked “A” incorporated in the order of this court dated 4 August 2010 alternatively, rectifying the agreement by substituting 4 August 2010 in paragraph 2.1 thereof with “*date of dissolution of the marriage*”.

[3] I found that the subject order had been incompetent, but instead of rescinding the order varied the same, having been of the view that the mere variation as against a rescission was the appropriate thing to do.

[4] The judgment has now become the subject of an application for leave to appeal on a plethora of grounds. The respondent is not only opposing the application, but has, for her part, also applied for leave to cross-appeal the judgment in so far as the subject order was varied and not rescinded in its entirety.

[5] In my view, both applications pass muster. The fact that I am confident that even on appeal my judgment will stand, is nothing to go by. There is a reasonable prospect that another court will come to another conclusion.

[6] Because there are conflicting judgments as to when the operative moment at which the accrual should be calculated in the Matrimonial Property Act 88 of 1984, the Supreme Court of Appeal appears to me to be the appropriate forum to which the appeal and cross appeal sought should lie.

[7] Therefore the order that I grant is the following:

1. *The respondent is granted leave to appeal to the Supreme Court of Appeal against part of the order and judgment of this court delivered on 10 November 2015 varying the agreement marked Annexure "A" incorporated in the order of this court granted on 4 August 2010 (the agreement) and substituting, in clauses 2.1 and 2.2.5 of the agreement, "4 August 2010" with "the date of dissolution of the marriage" as being the date on which the Receiver will determine accrual entitlement.*
2. *The applicant is granted leave to cross appeal to the Supreme Court of Appeal against the order in so far it as declines to rescind and/or set aside the agreement incorporated in the order of this court granted on 4 August 2010, and varies the order.*
3. *Costs of the application for leave to appeal and those of the application for leave to cross appeal shall be costs in the appeal and the related cross appeal.*

S M MBENENGE

JUDGE OF THE HIGH COURT

Applicant's Counsel : Mr A Beyleveld SC (instructed by Kaplan Blumberg Attorneys)

Respondent's Counsel : Mr JJ Nepgen (instructed by Joyzel L. Obbess Attorneys)

Heard on : 25 January 2016

Delivered on : 02 February 2016