

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED.
<u>15/03/2017</u> DATE	
 SIGNATURE	

CASE NO: 62488/15

In the matter between:

M

Plaintiff/Respondent

and

M

Defendant/Appellant

JUDGMENT IN RESPECT OF LEAVE TO APPEAL

OPPERMAN J

[1] This is an application for leave to appeal against the judgment handed down by this court on 1 December 2016.

[2] Prior to dealing with the merits of the application for leave to appeal, it is necessary to deal with a feature of the order, which contains a patent error as envisaged in terms of rule 42 (1) (b) of the Uniform Rules of Court. The appellant was ordered to pay the respondent the amount of R 3 500 000, being her benefit in respect of the accrual to which she is entitled. The parties agreed that if the commencement value of both parties' estates were accepted as being nil, then the benefit to which the respondent would be entitled, would be $R7,5 \text{ million} / 2 = R 3,75 \text{ million}$, should no forfeiture order be made. The court found that the commencement value of both parties' estates was nil and that the respondent was not to forfeit any part of her benefit. That being so, the appellant ought to have been ordered to pay the respondent the sum of R 3,75 million. Paragraph 3 of the typed order (and paragraph 107.3 of the judgment) should read: *"The defendant is ordered to pay to the plaintiff the amount of R3,75 (three million seven hundred and fifty thousand rand) being her benefit in respect of the accrual to which she is entitled."*

[3] I deal then with the application for leave to appeal:

[4] At the conclusion of the evidence at the trial, the court granted a decree of divorce, set aside an interim maintenance order granted in the Middelburg Regional Court under case number MRCB557/2014 and reserved judgment on:

- 4.1. The appellant's claim for rectification of the antenuptial contract;
- 4.2. The appellant's claim for a declaratory order regarding the commencement value of his estate as recorded in the antenuptial contract;
- 4.3. The appellant's claim that the respondent should forfeit the benefits of the marriage either wholly or in part;

4.4. Costs.

All such issues were referred to as '**the reserved issues**'.

- [5] The interpretation of section 6 of the Matrimonial Property Act 88 of 1984 ('**MPA**') and the numerous conflicting judgments which exist in respect thereof is, in my view, the decisive factor which warrants this court granting leave to appeal. This, despite having found that the appellant failed to prove the value of his estate at the commencement of the marriage and that this finding, on any construction of section 6 of the MPA, would not avail the appellant in altering the order granted. However, the nature and identity of the assets, which the appellant had brought into the marriage at the commencement thereof, is common cause between the parties. This fact, might avail the appellant, should section 6 of the MPA be interpreted in his favour.
- [6] The facts of this case are quite unique. There are reasonable prospects that another court would order forfeiture, either wholly or in part, or that it might find that section 9 of the Divorce Act 70 of 1979 ('**the Divorce Act**') or certain requirements embodied therein, no longer has application under a no fault divorce regime.
- [7] I hold the view that no reasonable prospects of success exist in respect of the appellant's rectification claim. The probabilities are overwhelmingly against him persuading another court that Mrs Wentzel's evidence is to be rejected in favour of his version on this aspect.
- [8] I am of the opinion that the appeal would have reasonable prospects of success in respect of three of the four reserved issues. I also hold the view

that the existence of conflicting judgments in respect of the interpretation of section 6 of the MPA, provides compelling reasons why the appeal should be heard.

[9] I accordingly grant the following order:

- 9.1. Leave to appeal to the Full Court of the High Court of South Africa, Gauteng Division, Pretoria is granted in respect of all the reserved issues on the grounds mentioned in appellant's application for leave to appeal dated 19 December 2016, save for the rectification claim. In respect of the rectification claim, leave to appeal is refused.
- 9.2. Costs of the application for leave to appeal are to be costs in the appeal.

A handwritten signature in black ink, appearing to read 'I Opperman', is written over a horizontal line. The signature is stylized with a large loop and a long horizontal stroke extending to the right.

I OPPERMAN
Judge of the High Court
Gauteng Division, Pretoria

Heard: 15 March 2017

Judgment delivered: 15 March 2017

Appearances:

For Plaintiff/Respondent : Adv AF Arnoldi SC

Instructed by: Couzyn Hertzog & Horak

For Defendant/Appellant : Adv ML Haskins SC

Instructed by: De Beer Attorneys