

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH AND SOUTH GAUTENG HIGH COURT. PRETORIA)**

DATE: 11 DECEMBER 2009

CASE NO: 25705/2003

NOT REPORTABLE

In the matter between:

A. B. M.

APPLICANT

AND

S. E. M.

FIRST RESPONDENT

S. W.

SECOND RESPONDENT

JUDGMENT

PHATUDI (J)

[1] The bonds of marriage between the Applicant/Plaintiff and the First Respondent/Defendant were dissolved on the 1 March 2005 with settlement agreement incorporated in as an Order of Court.

[2] The Applicant instituted this application on the 7 November 2007 seeking relief as set out in the Notice of Motion. The Application was set down for 28 November 2007 but struck off the roll.

[3] Since November 2007 to date, umpteenth applications were launched by either party including this matter before me. The applicant is still seeking relief as sought in the notice of motion dated 7 November 2007. being:

“1. Ordering the Respondent to comply with the Court order dated 1 March 2005;

2. Directing that should the Respondent fail to comply with this order within 10 days of service of this order, that the Second Respondent (Sheriff) be authorised to sign any documentation on the First Respondent's behalf and to take any steps necessary to:

a. Transfer her half undivided share in the immovable property situated at [.....] to the Applicant upon payment by the Applicant of the amount of R65000.00 on date of registration of transfer:

3. Calling upon the first respondent to advance reasons on a date to be determined by the Above Honourable court why she should not be held in contempt of Court and why she should not be committed to prison for a period within the Above Honourable Court's discretion;

4. That leave be granted to apply at a later stage on the same papers for an order declaring the first respondent to be in contempt of court and that she be committed to prison for a period within the court's discretion;

5. That the costs of this application be paid by the first respondent as between attorney and client"

[4] The kernel of this application is a sought order ordering the first Respondent to comply with clause 3.1.8 of the settlement agreement. The said clause provides that [T]he Defendant will sign all and any transfer documents relating to her undivided half share in the immovable property within 7 (seven) days from being requested to do so by the Plaintiff...'

[5] The settlement agreement (as ordered) further provides that 'the Plaintiff will make payment towards the Defendant of an amount of R65000.00 in lieu of her undivided half share ..' (clause 311) The payment is said to be payable 'on the date of registration'.

[6] No action was taken by the Applicant from 1 March 2005 up to March 2007. The applicant states in his founding affidavit that my attorneys...began communicating with the first respondent in an effort to obtain her compliance with the court order` (para 3 1).

[7] In response thereto, the first respondent states that she '...refused to sign the transfer documents and declined to take the money from the Applicant until proper provision is made for the children, (para 3.5 of answering affidavit)

[8] She refused to sign the required documents on the basis that she continued to stay with the minor children in the said house and that she effected payment towards the bond while staying with the children

notwithstanding the custodial order in favour of the Applicant.

[8] In considering the evidence and the submissions made by Mr Politis. counsel for the Applicant, I am not persuaded that the first respondent is in contempt of an order made on 1 March 2005. Her concession on refusal to sign the documents was, in my view, a way of 'counter claim" or trying to exercise her right of a "lien" towards recovering her damages. I find that she ignorantly acted on the premise that the applicant should first reimburse her for her damages, which ignorance I find excusable.

[9] Ms Steenekamp submitted that the First Respondent struggled immensely to survive financially as she had to maintain the children and service the bond in fear of loosing the roof over the children's heads. The said children are still living with the first Respondent.

[10] However, the Respondent succeeded on 10 December 2008 in obtaining an order enforcing the other terms of the order dated 1 March 2005 that are in her favour.

[11] The order of 1 March 2005 is still in force and effect There is neither variation of the order sought by the First Respondent nor a counter claim for the damages she allegedly sustained while staying with the children and or for recovery of the amount paid towards the bond

[12] The Respondent conceded to have refused to accept the money and to sign the required documentation to effect transfer of her undivided half share.

[13] An order of a Court of Law is valid until set aside by a Court of competent jurisdiction. An order of court must be obeyed at all times notwithstanding how wrong it may be.

[14] The Respondent has been ordered to sign all and any transfer documents relating to her undivided half share in the immovable property. In my view, the provisions of the order of 1 March 2005 is still valid and stands to be adhered to. I, as a result thereof, make the following order.

[14.1] The first Respondent is ordered to comply with court order dated 1 March 2005.

[14.2] The first Respondent is further ordered to sign all or any transfer documents relating to her undivided half share in the immovable property within 10 days from date hereof.

[14.3] First Respondent to pay applicant's costs on Party and Party scale.

AML PHATUDI
JUDGE OF THE NORTH GAUTENG HIGH COURT

Heard on: 01 December 2009

For the Applicant: Adv Politis

Instructed by: Messrs MATABANE INC

For the Respondent: Adv Steenekamp

Instructed by: Messrs TINGULULU GILLY GWANGWA ATT.

Date of Judgment: 11 December 2009