

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

CASE NO: 158730/2014

DATE: 30-07-2024

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 22 October 2024

SIGNATURE

In the matter between

D[...] E[...] T[...]

Applicant

and

F[...] T[...]

Respondent

J U D G M E N T
LEAVE TO APPEAL

YACOOB, J:

This is an application for leave to appeal a judgment that was handed down over a year ago. The application for leave only came to my attention during April 2024 due to some lapses in the appeals office and was initially set down for hearing during May 2024. It was postponed to give the parties an opportunity to attempt to settle the matter. However, those attempts were unsuccessful.

The test for leave to appeal is whether there is a prospect of success on appeal, and the applicant has to show that another court is likely to come to a different conclusion than this court did.

Mr Seoka, for the applicant, submitted that it is a simple question. The question is, do the parties agree on the division of the estate? If they do not agree, then the matter should be referred to the liquidator.

The application before me was for the appointment of a receiver and liquidator of the joint estate of the parties, who are already divorced. However, as I found in my judgment, it seems to me that the question is a little bit more complicated, and one has to look at the questions on which the parties disagree. It is only when the parties disagree on the mode of division, rather than the proportions in which the division is to take place, that it is appropriate to appoint a liquidator.

Mr Ndlovu, for the respondent, submitted that another court would not come to a different conclusion, that the parties are not *ad idem* about what their legal rights are within the estate, and that these questions need to be determined by a court. This is in fact consistent with my view, that the applicant ought to have brought the actual dispute about what the rights of the parties are to a court, rather than simply seeking the appointment of a liquidator.

It matters what the dispute is, or rather it matters what it is the parties are unable to agree about. So the question is not simply whether the parties agree, but what it is they cannot agree about. I cannot simply accept the argument that if the parties do not agree, the question must be referred to a liquidator.

I am therefore not satisfied that another court would come to a different conclusion, because there are disputes between the parties which affect their legal rights and which are not within the purview of a liquidator to determine. For these reasons,

THE APPLICATION FOR LEAVE TO APPEAL IS DISMISSED,
WITH COSTS.

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YACOOB, J
JUDGE OF THE HIGH COURT
DATE: 22/10/2024