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**REPUBLIC OF SOUTH AFRICA**  
**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, JOHANNESBURG**

**Case Number: 2024-124070**

- (1) REPORTABLE: YES / NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED: YES/NO

In the matter between

**V[...]** **G[...]**

Applicant

And

**S[...]** **G[...]**

First Respondent

**REGISTRAR OF DEEDS JOHANNESBURG**

Second Respondent

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**J U D G M E N T**

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VON LUDWIG AJ

**Order**

A. The Application is dismissed;

- B. No order is made on the Conditional Counter-Application, the condition therefor not having been fulfilled.
- C. Applicant shall pay the costs of the Respondent herein, on the party and party scale C, to include the costs of counsel.
- D. As regards the costs between the Applicant and her own legal representatives the attorney acting for the Applicant herein shall not be entitled to charge the Applicant any fee pertaining to this application whatsoever. Insofar as counsel may have drafted the Founding and/or Replying Affidavits, no fee therefor may be recovered by counsel for such drafting and any consultations pertaining thereto. Counsel's fee for preparation for and argument of this application is not disallowed unless the same counsel who drafted the Founding Affidavit herein is the counsel who argued this application in which case the fees for preparation, Heads and Court are likewise disallowed.

## **Judgment**

### **Introduction**

- [1] Applicant and Respondent were married to each other on 17 September 2011.
- [2] They are now divorcing.
- [3] On 17 September 2011 (prior to their marriage) Applicant contends she and Respondent consulted with attorney the late Mohamed Dangor and executed a Power of Attorney authorising attorney Shameema Dangor to conclude on their behalf an Ante Nuptial Contract ("ANC") excluding accrual.

- [4] On 22 September 2011 (five days after their marriage) Shameema signed an antenuptial contract in front of Notary Blignaut.
- [5] The Power of Attorney ("PoA") is no longer with Shameema, but her Affidavit is provided in which she states that the parties "attended to the signature of" a PoA before Mr Dangor, that she was given the PoA and "an Antenuptial Contract" by him, and that she executed that "Antenuptial Contract" before Notary Blignaut. A copy of the document she signed in front of the Notary, which was subsequently registered, is furnished.
- [6] Dangors does not have a copy (or the original) of the PoA "due to the lapse of time" and it is also not produced by, or obtained from, the Notary who ought to have it in her Protocol. Nowhere is it evident that the PoA had any draft ANC attached to it.
- [7] The ANC signed by Shameema was registered and sent to the parties. Proof of its registration in the Deeds Office is also furnished.
- [8] Applicant more than once makes the bald allegations that the parties intended to be married by ANC excluding accrual and this is how they lived. However she gives no examples or factual confirmations of this.
- [9] Applicant bases her case on the fact that the "ANC" was registered, and the submissions that it reflects the pre-marital intention of the parties and the parties "operated on the understanding" that their "respective estates are separate".
- [10] First Respondent (hereinafter "Respondent") denies signing the PoA and contends that the marriage is In Community of Property.

- [11] He submits that the spouses lived as if married in community of property and contends that he would not have effected repairs and renovations to the common home (registered in her name) if it did not belong to them both.
- [12] The house ("Naturena") which Applicant bought before the marriage and is registered in her name was the common home.
- [13] His version is that the parties agreed to sell it, but it did not sell. He bought the Applicant's half share for R600 000.00 (more than had been offered on the open market). He remains living there and took over all responsibility for it. Applicant brought prospective buyers to view it in his absence so he changed the locks.
- [14] Applicant contends she could not sell it, allowed Respondent to live there pending sale and divorce, and that Respondent lent her R600 000.00. She says there could not be a sale to Respondent since the sale of immovable property must be in writing and it was not. It is hers and she requires access to it.
- [15] Applicant bought an apartment ("Winchester") which was registered to her on 02 August 2024 and cites this as her address.
- [16] Respondent alleges she moved into Winchester on 30 August 2024. He contends this is her new home, Naturena is his home, she has taken all she wants from Naturena and now they each have an abode. It would make no sense, he contends, for her to have 2 properties, a share of the furniture and contents, and R600 000 from him, and for him to have nothing, at the end of their long marriage and his input into the property.

- [17] Applicant does not deny leaving Naturena but says she did so due to Respondent's conduct. She nonetheless contends for "peaceful and undisturbed possession" thereof, saying that physically occupying it as her residence is not a necessary requirement of such possession.
- [18] Respondent counter-applies for re-payment of the R600 000 if the marriage is found to be out of community of property as this would mean there was no "her share" of Naturena for him to have bought.

### Relief Sought

- [19] The Applicant seeks a declaratory order that the Ante Nuptial Contract "be declared to be valid and enforceable" and that the marriage of the parties is declared to be out of community of property with exclusion of the accrual.
- [20] Applicant also wants the Respondent to give her the keys to Naturena and permit her "unfettered and undisturbed access".
- [21] Applicant seeks an interdict preventing Respondent from depriving her of access to Naturena in a number of described ways.
- [22] Applicant wants attorney client costs against the Respondent if he opposes, and the same against the Second Respondent if opposed by Second Respondent.
- [23] Respondent contends the ANC is not valid in law as it was signed after the marriage hence the marriage is In Community of Property.
- [24] Respondent conditionally counter-applies that if the marriage is found to be out of community of property he wants his "purchase price" of R600 000 back.

## Analysis

- [25] It is trite law that an Ante (before) Nuptial (marriage) Contract must be signed prior to the marriage. In this case there is no suggestion that it was.
- [26] It is common cause that the Contract which is in existence was signed after the marriage (whether or not the PoA pursuant to which it was signed was signed by Respondent and/or had a copy of the intended ANC attached, which on the facts of this case do not need interrogation).
- [27] Only a Power of Attorney was signed before the marriage.
- [28] In response to a specific question from me, it was established that it is not the Applicant's case that signature of the Power of Attorney before the marriage suffices, although even if that had been her case it would have failed since it is clear law that the Contract itself needs to be signed before the marriage.
- [29] Instead it was Applicant's case simply that the contract was registered, there is Deeds Office proof of its registration, it therefore "exists" and cannot be "wished away". It further represents, she contends, the intention of the parties, who lived according to it. As a consequence of all of this it is binding and it falls simply to the Court to "declare" it valid and enforceable. If Respondent contended otherwise it fell to Respondent to apply to have it set aside which he had never done.
- [30] Quite simply this is where Applicant's case fails. The first requirement of the law is that the contract must be signed by the parties before the marriage. The fact that it has been registered, and that a document physically exists with the

title “Ante Nuptial Contract” cannot do away with this requirement or render it “valid” when it is non-compliant with the essential legal principle from which its very name is derived.

[31] A number of further innovative submissions were made by the Applicant’s counsel, and a number of counter-arguments were advanced for Respondent, which taxed me in the writing of this Judgment until I kept returning to the basic fact that if an Ante Nuptial Contract is not signed by the parties before the marriage it is simply not a valid Ante Nuptial Contract.

[32] Respondent points out that this is not an application in terms of s21 of the Matrimonial Property Act (to change matrimonial property regime) or in terms of s88 of the Deeds Registries Act (to post-nuptially register a contract having the effect of an ANC). He highlights that both of these applications require common intention of the parties. Since Applicant contends that the parties intended to be married out of community excluding accrual and Respondent contends the exact opposite, there is no possibility of the Applicant bringing either of these applications, especially since significant time has lapsed since she was first alerted to the need for the contract to have been signed before the marriage.

[33] Respondent denies signing the PoA.

[34] It is self-evident that there are material disputes of fact.

[35] It would be an interesting exercise to summarise the various alternative arguments, but a Judgment does not have to provide a precis of every submission made to the Court. A useful Judgment must analyse whether a case has been made out on the facts for relief which has a valid basis in law

and illustrate to the litigants where a case failed and why, or where it succeeded and why. Once it has been clearly established that there is not, and cannot be, a basis in law for the relief sought, no further purpose is served in detailing other and alternative submissions which change neither the law, the facts, or the outcome. Thus I do not digress to the additional aspects raised by both parties.

[36] I do however consider it necessary to say that Applicant made no proper attempt to even address the Court as to why she contends declaratory relief is appropriate and I am of the view that it is glaringly evident that this is not a situation which permits of a declarator.

[37] Because this particular matter deals with the effects that the parties' marital property regime has on them *inter partes*, and not on third parties, it seemed initially necessary to examine further the Applicant's submission that there was a common intention between the parties to be married out of community of property with exclusion of the accrual. This could not help the Applicant to establish the existence of a valid Ante Nuptial Contract, but could it, I wondered, assist her in dealing with the alleged agreement between herself and the Respondent regarding the alleged sale of Naturena?

[38] However, a Court may address only the issues which are before it and the specific relief sought is to "declare the ante nuptial contract" to be "valid and enforceable", to declare the marriage to be out of community of property without accrual and, as a consequence of that, to give certain relief in respect of an immovable property which Applicant says belongs solely to her.

- [39] Within these parameters it does not fall to me to examine the possible consequence of an *inter partes* agreement to conduct themselves as if married out of community of property. In any event however, this is disputed by the Respondent who says exactly the contrary, giving us a material dispute of fact in Motion proceedings which precludes me from dealing with it (and does not require me to make any findings about referral to evidence or trial since no such relief was sought).
- [40] Yet again we circle back to the basic premise that there is no Ante Nuptial Contract and a Court has no power to “declare” a document which is not in compliance with the law to be “valid”, especially in circumstances where the requirements for declaratory relief have not been shown to exist.
- [41] As a consequence of the absence of a valid Ante Nuptial Contract the parties are married In Community of Property.
- [42] As a consequence of their marriage in community of property the Applicant cannot be the sole owner of Naturena and is thus not entitled to the relief sought by her in respect of Naturena on the basis she has sought it.
- [43] Given that the parties have not been found to be married out of community of property the basis for Respondent’s conditional counter-application falls away and it does not require adjudication.
- [44] Having determined that the marriage is one in community of property and that the Applicant’s basis for the property-related relief accordingly must fail, is it permissible for the Court, or incumbent on the Court, to deal further with the immovable properties and the R600 000, and the fact that they, and all the

purported transactions pertaining to them, must now be dealt with in the context of a Joint Estate?

- [45] Yet again, a Court cannot adjudicate on issues other than those before it. Nor can a Motion Court adjudicate on papers when there is a clear dispute of fact. This Court can do no more than leave these issues for the Divorce Action (in which this entire issue ought anyway to have been adjudicated). This Court can do no more than express the hope that, going forward with their divorce, the parties realise the benefit of the Directive for Mandatory Mediation in Gauteng and manage to resolve the proprietary consequences of their divorce in a less litigious and more cost effective manner than has happened to date.

#### Costs

- [46] There appears to be no reason for costs not to follow the result. The question goes to what type of costs should the Respondent be entitled to recover.
- [47] The Applicant has come to Court on the most basically incorrect principle of law, seeking a form of relief for which she has not made out a case (and for which a case does not exist). It is a trite principle that an Ante Nuptial Contract must be signed ante the marriage. The circumstances in which declaratory relief can be ordered are clear and specific. Applicant had no prospects of success on either.
- [49] It was clear to the Applicant even in her own Founding Affidavit that a dispute of fact was anticipated, and this was confirmed clearly in the Answering Affidavit. Yet she chose to persist with a Replying Affidavit and all the way to and through Opposed Motion Court.

- [50] There is also no cogent reason why the Applicant chose to attempt to circumvent the process of the Divorce Trial and have the issue of the matrimonial property regime adjudicated in this Court.
- [51] In short the Applicant has proceeded regardless, with the wrong law and the wrong procedure, and for this there must be consequences which extend further than simply failing to secure the relief which she sought.
- [52] What concerns the Court is that the issues on which the Applicant has failed are those of simple law and basic procedure. A litigant, as a layperson, has an expectation that their legal advisers will guard them from litigation which has no prospect of success, and from basic procedural errors. It seems to the Court that the Applicant has not been guarded in this way. Whilst an attorney does act on the instructions of a client, the attorney has a duty to a client to not proceed with litigation in the circumstances I have outlined in the first sentence hereof. In circumstances such as these the Applicant ought not to bear the entire consequence in her own pocket.
- [53] Thus, as regards the Applicant and Respondent I order that the Applicant shall pay the costs of the Respondent herein, on the party and party scale C to include the costs of counsel.
- [54] As regards the costs between the Applicant and her own legal representatives I order that the attorney acting for the Applicant herein shall not be entitled to recover from the Applicant any fee pertaining to this application whatsoever. Insofar as counsel may have drafted the Founding and/or Replying Affidavits, no fee therefor may be recovered by counsel for such drafting and any consultations pertaining thereto. I do not disallow counsel's fee for preparation

for and argument of this application, unless it was the same counsel who drafted the Founding Affidavit herein in which case the fees for preparation, Heads and Court are likewise disallowed. (I permit counsel to charge for preparation and Court if it is a different counsel from the counsel who drafted the papers because counsel have a right and a duty to accept a brief offered to them if not otherwise engaged and may find themselves arguing a case on papers not drafted by themselves).

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**C VON LUDWIG AJ**

ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 03 September 2025

DATE OF JUDGMENT :22 September 2025

Appearances : For the Applicant : Adv M Sebola  
Instructed by : Paul T Leisher & Assoc  
For the Respondent : Adv K Meyer  
Instructed by : Kaveer Guinness