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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: A2025-051683

In the matter between:

S[...] R[...]

APPELLANT

and

T[...] P[...] R[...]

RESPONDENT

JUDGMENT – THE COURT – WRIGHT, STRYDOM and SENYATSI JJ

1. The appellant, Ms R[...] and the respondent, Mr R[...] were married. They have three children. They got divorced in 2018. The order of divorce included a settlement agreement regarding, among other things, maintenance for the children. At the time of the divorce, the youngest child was a minor. All the children are now majors.

2. There has been ongoing, acrimonious dispute between the parties regarding amounts owed by Mr R[...] for maintenance. Ms R[...] describes Mr R[...] as a serial defaulter.
3. On 13 December 2022, Ms R[...]’s attorney, Mr Greenstein of Greenstein’s Attorneys asked the Registrar of this court to issue a writ for arrears. Ms R[...] made an affidavit and annexed documents to it to substantiate her request for the writ.
4. It would appear that neither Mr R[...] nor his attorney received notice that the writ would be sought. On the strength of the affidavit, the Registrar issued the writ. The writ directed the sheriff to attach the proceeds of a retirement annuity which Mr R[...] held at Liberty Group Ltd up to an amount of R1 673 637,30.
5. Liberty deducted a portion of money for payment to SARS. After deduction of the tax and after deduction of the sheriff’s fees, an amount of R548 382, 53 was paid by the sheriff into the trust account of Greensteins.
6. On 30 March 2023, Ms Rhoda of Liberty emailed Ms Sumares of Greenstein’s Attorneys saying that “ *there are no further funds or investments held at Liberty by the client TP R[...] from which we can deduct proceeds to satisfy the WRIT.* “
7. The next day, Mr R[...] launched an application to set aside the writ. He said that the amount owed by him was disputed both on legal and calculation grounds.
8. Ms R[...] opposed the application and raised a counter-application.
9. In the counter-application, Ms R[...] sought various prayers for different amounts of money allegedly due for maintenance on different bases.

10. Included in the counter-application is a prayer that Greensteins pay to Ms R[...] the sum of R548 382,53 from Greensteins' trust account.
11. Ms R[...] admitted in her answering affidavit that her affidavit given to the Registrar in support of the request for a writ contained errors and that Mr R[...] had not been credited with payments made by him in a total amount of R279 246. Mr R[...] opposed the counter-application.
12. The learned judge below granted Mr R[...]’s application, set aside the writ and dismissed Ms R[...]’s counter-application.
13. Ms R[...]’s application for leave to appeal was dismissed. Ms R[...] now appeals the order setting aside the writ and the dismissal of her counter-application with the leave of the Supreme Court of Appeal.
14. The lengthy, complicated papers reveal legal disputes, for example whether or not Mr R[...] should be credited with payments made directly to beneficiaries like the children’s school and one of the children, rather than to Ms R[...]. Huge disputes of fact abound.
15. The settlement agreement is hardly a liquid document. It provides, for example, in clause 7.2.2 that Mr R[...] is liable for 50% of the children’s tertiary education “*subject to each of the children displaying an aptitude for the aforesaid education and his reasonable progress therein.*” Under clause 7.2.3, Mr R[...] must pay 50% of the reasonable costs of the children’s extra mural activities.
16. This case raises the question of whether it is for a court, rather than the Registrar, to determine legal questions. It raises too, the question of whether a person such as Ms R[...] who seeks a writ, should present to the Registrar an

affidavit which sets out an amount of money claimed which is readily ascertainable by simple arithmetic calculation. Another question is should Mr R[...] and his attorneys have been given notice of the request to the Registrar. It is in our view, not necessary to answer these questions.

17. In the court below, Ms R[...]’s first line of defence was that the application to set aside the writ was moot. In her answering affidavit she said that she would not use the writ again. This statement gels with the email from Ms Rhoda of Liberty that Liberty had no further funds to satisfy the writ. The writ, specific to Liberty and specific to a particular policy cannot be used again. As will be seen below, Mr R[...] admits that the money paid by Liberty had been owing by him. In our view, the appeal, relating to the order setting aside the writ should succeed on the question of mootness.

18. The parties accuse each other of dishonesty.

19. Mr R[...] alleges an oral agreement concluded after the divorce which, he says, has the effect of reducing his liability. Ms R[...] denies the oral agreement and says that in any event it is precluded by the Shifren clause in the agreement.

20. Ms R[...] says that she arranged a bursary at an educational institution for one of the children and that she is entitled to all of the benefit in fee reduction. We make no finding on this.

21. Regarding the counter-application, it would, but for two particular considerations, be unwise to attempt to unravel the substantial disputes of fact on the papers before us. It requires precise pleadings, full discovery and a trial to get to the truth in the counter-application.

22. The first particular consideration is that Mr R[...], in his answering affidavit, dated 7 June 2023, in the counter-application admitted owing R296 642,82. He tendered payment in tranches. He said, baldly, that payment all at once would cripple him financially. For this latter allegation to begin to gain traction Mr R[...] would have needed to furnish detailed lists of assets and liabilities and details of income and expenditure. He did not.
23. The second particular consideration is that Mr R[...], in coming to his calculation of R296 642,82 had already credited himself with the sum of R548 382, 53 which sum has been in the trust account of Greensteins for some time. Mr R[...] makes the admission at the end of a table in annex TR2 to his replying affidavit in the main application, dated 19 May 2023. Mr R[...] refers to R 548 382,43 but he means R548 382,53.
24. Mr R[...] does not say in his answering affidavit that he had paid any part of the R296 642,82.
25. In our view, the non-payment by Mr R[...] of the sum of R296 642,82 and his failure to consent to the release of the R548 382,53 is inexcusable. Mr R[...], represented by attorney and counsel chose to litigate rather than to pay his admitted arrears.
26. Mr R[...] must pay to Ms R[...] the R296 642,82 and interest thereon at the prescribed rate, which as at 7 June 2023 was 11.25% per year. This rate remains fixed even with fluctuations in the rate as gazetted from time to time. See paragraph 27 of the judgment in Davehill (Pty) Ltd v Community Development

Board, a judgment of the Supreme Court of Appeal delivered on 30 September 1987.

27. Ms R[...]’s prayer in her counter-application that her attorneys release to her the sum of R548 382,53 must succeed to the extent of R 548 382, 53 plus interest as accrued in the trust account of Greensteins. There is no express prayer in the counter-application that the sum of R548 382,53 be released with interest but it follows that accrued trust interest should be paid to Ms R[...].
28. We should allow the appeal against the order setting aside the writ. We should allow the appeal against the order dismissing the counter-application but we should send that part of the counter-application not covered by the two payments with their interest to trial.
29. The judge below made no costs order, partly as it was held that Mr R[...] owed at least some money to Ms R[...].
30. The appeal was timeously prosecuted by Ms R[...]’s attorney until, as he candidly admits, he made an error in computing certain relevant time periods for the prosecution of the appeal.
31. The test for condonation is whether it is in the interests of justice to grant condonation. We consider the nature of the relief sought, the extent and cause of the delay, the effect of the delay on the administration of justice and other litigants, the reasonableness of the explanation for the delay, the importance of the issue to be raised in the intended appeal and the prospects of success. Condonation is not there for the taking. See Director of Public Prosecutions,

Johannesburg and another v Schultz and others, a judgment of the Constitutional Court delivered on 23 January 2026, at paragraphs 105 and 106.

32. The length of delay is about three months, which is hardly negligible but there is no prejudice to Mr R[...]. We should re-instate the appeal.

33. Ms R[...] is successful in the reinstatement application but the opposition thereto by Mr R[...] is reasonable. Accordingly, the parties should bear their own costs regarding re-instatement and condonation.

ORDER

- 1. The appeal is reinstated.**
- 2. The parties shall bear their own costs relating to the condonation and reinstatement application.**
- 3. The appeal against the order setting aside the writ is allowed and replaced with an order reading “ *The application is dismissed as it is moot.* “**
- 4. The appeal against the order dismissing the counter-application is allowed.**
- 5. The order dismissing the counter-application is set aside and replaced with orders as set out in paragraphs 6, 7 and 8 below.**
- 6. Greensteins Attorneys must release from their trust account the sum of R548 382, 53 plus whatever interest has accrued thereon while in Greenstein’s trust account and pay the capital sum with interest to Ms R[...].**
- 7. Mr R[...] is to pay to Ms R[...] R296 642,82 together with interest at 11,25% per year from 7 June 2023 to date of payment.**

8. In the counter-application, and in the event of Ms R[...] wishing to pursue more amounts of money than are referred to in paragraphs 6 and 7 of this order -

8.1 The notice of counter-application stands as a simple summons.

8.2 The notice to oppose stands as a notice to defend.

8.3 Ms R[...] is to deliver a declaration by 27 February 2026 at 4pm.

8.4 Thereafter, the matter proceeds as a trial action.

9. Mr R[...] is to pay the costs of Ms R[...] in the main application and in the counter-application.

10. Mr R[...] is to pay the costs of Ms R[...] relating to the application for leave to appeal and in the application to the Supreme Court of Appeal.

11. Mr R[...] is to pay the costs of the appeal, excluding those costs relating to condonation and re-instatement.

12. Scale C applies, as from 13 April 2024, to all the litigation referred to in paragraphs 9-11 above.

WRIGHT J

STRYDOM J

SENYATSI J

HEARD : 27 January 2026

DELIVERED :

APPEARANCES :

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