

REPUBLIC OF SOUTH AFRICA



OFFICE OF THE CHIEF JUSTICE

(GAUTENG DIVISION, PRETORIA)

CASE NO: 54914/2014

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED. ✓

24/11/2016

H. Fourie

DATE

SIGNATURE

24/11/2016

In the matter between:

MARIA MADALENA GONSALVES ERASMUS

Plaintiff

and

GERALDEAN JAYDE ERASMUS N.O.

Defendant

JUDGMENT

Fourie AJ

1. The applicant for leave to appeal was the plaintiff in a trial that came before me as a stated case.

2. The issue was whether the defendant, as executrix in the deceased estate of the plaintiff's late husband, is bound by the commencement values set out in the antenuptial contract concluded by the plaintiff and her late husband. The defendant is also the sole heir to the estate, and was cited as defendant in both these capacities.
3. I found in favour of the defendant and the plaintiff subsequently gave notice of her intention to apply for leave to appeal to the full bench of the Gauteng division of the High Court of South Africa, *alternatively* the Supreme Court of Appeal, against my judgment. I assume this to be the whole of my judgment.
4. The first ground upon which the application is based is that there are conflicting decisions in relation to the question of law that I was called upon to determine. The cases are **Olivier v Olivier**, 1998 (1) SA 550 (D), **Jones & Another v Beatty NO & Others**, 1998 (3) SA 1097 (T), and **Thomas v Thomas**, 1999 JDR 0296 (NC), all of which I discussed in my judgment.
5. That the cases may be conflicting is true, but it is somewhat of a distinction without a difference.
6. In **Olivier**, a divorce, the husband pleaded that the commencement values in the antenuptial contract were incorrect, that in terms of section 6(3) these were *prima facie* proof only, and that the contrary may therefore be proven. While the court expressed the *obiter* view that section 6(3) does apply to an antenuptial contract reflecting commencement values, and not only to a so-called statement of values, the court held that only third parties, and not the

parties to the antenuptial contract, can rely on that provision. The parties to the antenuptial contract, on the other hand, can attack the commencement values reflected therein on the common law grounds of misrepresentation, duress, undue influence, etc.

7. In **Jones**, the commencement values were disputed by the heirs in a deceased estate, on the ground that they were incorrect, and exception was taken, *inter alia*, that it was not open to third parties, such as the plaintiffs, to question the accuracy of the commencement values. Although the court held that as the parties had declared commencement values in their antenuptial contract, section 6(3) had no application, the plaintiffs were not non-suited as at common law the plaintiffs, as heirs, would be entitled to challenge the commencement values in the antenuptial contract and the parol evidence rule does not apply to them as strangers to the contract. See also **Traub v Barclays National Bank Ltd; Kalk v Barclays National Bank Ltd**, 1983 (3) SA 619 (A).
8. In **Thomas**, also a divorce, the court decided on two issues relevant hereto. In the first instance, the Court held that section 6(3) applies to the commencement values in both an antenuptial contract and in a so-called statement, and the declared commencement values in both documents are *prima facie* proof thereof. Further, that the spouses as well as third parties, would be free to prove the actual value (see page 14.)
9. From the foregoing summary it is clear that in each one of these cases the Court recognised the right of third parties to challenge the commencement

values recorded in antenuptial contracts. The difference lies in whether such party is entitled to rely on the provisions of section 6(3) in so doing.

10. I found the defendant, who is the executor of the deceased estate and the sole heir thereto, to be a third party to the antenuptial contract. That this finding is incorrect, did not form a ground of appeal, but it was argued by Mr Hitchings that I erred in so doing. Apart from what I said in my judgment in respect of the position of the executor, Combrinck J made it clear in **Olivier** that an heir and a creditor are considered third or interested parties. It was not in dispute in **Jones**. In fact, what would constitute a third or interested party was not in issue in any of the cases.
11. Even if I was wrong in aligning myself with **Thomas** regarding the application of s 6(3), as I did, this does not avail the plaintiff. As the defendant is a third party to the antenuptial contract, and did not confine herself to reliance on s 6(3) (nor indeed even refer to the section), it matters not which decision is correct. The outcome remains the same. This ground cannot succeed.
12. The second ground of appeal is that I erred in finding that the defendant had in her pleadings made out a case to attack the commencement values recorded in the antenuptial contract. There is no merit in this. In **Jones** (as in **Olivier**) the plaintiff pleaded merely that the commencement values were "*incorrect*". Judge MacArthur, who had been called upon to consider an objection to a proposed amendment to the pleadings on the basis that the allegation did not disclose a cause of action as there were no allegations indicating why the commencement value is incorrect, found that the

allegation did disclose a cause of action, even if the particulars pleaded were scanty and could be considered vague.

13. I have already dealt with the third ground advanced by the plaintiff. The defendant is not bound by the commencement values. Nothing further need be said.
14. The fourth ground is that there are reasonable prospects that another court may reach a different decision to that made by this court. That may be so, but that is no longer the criteria for the grant of leave to appeal. In terms of section 17 of the **Superior Courts Act**, 10 of 2013, leave to appeal may only be given where the judge or judges concerned are of the opinion that the appeal would have a reasonable prospect of success.
15. For the reasons already stated, I am of the view that the appeal does not have any prospects of success.
16. The application for leave to appeal is dismissed with costs.



H R FOURIE
ACTING JUDGE OF THE HIGH COURT