

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

THE REPUBLIC OF SOUTH AFRICA



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

CASE NO: 16760/2018

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

DATE

SIGNATURE

In the matter between:

C[...] **W[...]**

Applicant

and

D[...] **W[...]**

First Respondent

REGISTRAR OF DEEDS, PRETORIA

Second Respondent

JUDGMENT

VAN EEDEN, AJ

1. In this matter I granted an order on 20 July 2023 in terms of prayers 1, 2 and 3 of the notice of motion dated 30 January 2023. My reasons for doing so follow.
2. The applicant and the first respondent are wife and husband. The second respondent is the Registrar of Deeds, Pretoria. The first respondent left the matrimonial home on 22 August 2017 and the parties have not lived together since then. On 15 November 2017 the applicant instituted divorce proceedings against the first respondent, which are still pending.
3. On 3 August 2017 the first respondent donated his half share of the immovable property known as Remaining Extent of Portion 29 (a Portion of Portion 1) of Erf 3 Atholl Township (“**the property**”) to the applicant in terms of a written deed of donation. When the first defendant failed to take the necessary steps to effect registration of transfer into the name of the applicant, the current application was launched as long ago as 2 May 2018. The applicant now seeks an order compelling the first respondent to take all steps and to sign all documents necessary to effect registration of transfer into the name of the applicant and failing him complying with such order, that the sheriff be authorised and directed to take all such steps.
4. The applicant was represented by Ms Masemola. The joint practice note dated 7 July 2023 requested that the matter be heard by way of online Microsoft Teams due to the first respondent “*being elderly and having recently fractured his femur causing a myriad of issues with his mobility*”. The first respondent

had personally provided heads of argument and a list of authorities, and I had assumed that he would personally appear, he not being represented by an attorney. However, when the matter was called at 10h00 on 17 July 2023, Ms Masemola indicated that the first respondent had apparently been hospitalised on Friday, 7 July 2023.

5. Given the inordinate delay in hearing this matter since the time that it was instituted, I allowed the matter to stand down until 14h00 on Thursday, 20 July 2023. The matter had already been postponed on 16 February 2023 when the first respondent's affidavit did not comply with rules pertaining to the commissioning of affidavits.

6. When the matter was called on 20 July, Ms Masemola informed me that the first respondent was still in hospital and too ill to personally attend to the matter. Ms Masemola urged that the matter should continue in his absence. A court will not easily proceed in the absence of one of the parties. However, in this matter the first respondent used the opportunity to file heads of argument. He was previously represented by an attorney, and he had the opportunity to appoint an attorney. The first respondent was also aware that his health was failing him. It appears to me that he took a calculated risk when he decided not to appoint an attorney, or to appear in person. It is also not clear that the first respondent will soon recover to such an extent that he can again attend court. I think it would be unfair to the applicant and the children of the applicant and the first respondent, some of whom are still minors, if finality is

not reached. In the circumstances I directed that the application should proceed in the absence of the first respondent.

7. The reason for the donation does not appear from the founding affidavit or the deed of donation. In paragraph 20 of this replying affidavit, the first respondent stated that in making the donation, he was “*acting out of pure liberality*”. I thus accept that the donation was a pure donation.
8. The first respondent opposes this application on the basis that he had revoked the donation, alternatively that he revoked it in terms of a counterclaim instituted at the time that he filed his answering affidavit. The first respondent contended that he was entitled to revoke the donation based on gross ingratitude. In contending for such gross ingratitude on the part of the applicant, the first respondent explained that the applicant had assaulted him after the deed of donation had been signed and he also claimed infidelity on her part. The first respondent referred to **DE and Another v CE and Others [2020] 1 All SA 123 (WCC)** in support of his contentions in his list of authorities dated 28 November 2002 (it should presumably be 2022).
9. It is correct that the first respondent is as a matter of law entitled to revoke a donation in the case of gross ingratitude. However, it does not appear to me that the facts set out in his affidavits are supportive of a finding of such gross ingratitude.
10. Assuming the correctness of the first respondent’s allegations that the applicant had assaulted him, it appears that the first respondent’s complaints

relating thereto date back to 2009. In the first respondent's practice note of 24 October 2022 (Caselines 17-1, paragraph 4.1) he states that the applicant *"has a bad and erratic temper and started assaulting Respondent in 2009"*. In paragraph 4.2 he also gives a description of the alleged first assault on him in 2009, together with various further alleged incidents of assault. These assaults preceded the donation. If the assaults preceding the donation were not of such a nature as to prevent the donation, assaults post the donation can hardly be relied upon to demonstrate gross ingratitude. Moreover, the claim of infidelity relates to the period after the first respondent had left the matrimonial home and can also not be relied upon to establish gross ingratitude.

11. There is a further factor which is to be considered when evaluating the first respondent's entitlement to claim revocation of the donation on the basis of gross ingratitude. The applicant submitted a supplementary affidavit (Caselines 13-1). The applicant attached 2022-correspondence between her attorney and the first respondent's erstwhile attorney demonstrating that the first respondent was prepared to perfect the donation and that he would no longer rely on the defence of gross ingratitude. "CW3" (Caselines 13-26) reflects an email from the applicant's attorney to the first respondent's attorney recording that the first respondent *"has unconditionally agreed to sign over his 50% share of the house"* on the *"... proviso that you first cast your eye on the documents and see if you are happy with them"*. The settlement that the parties reached in this manner, was not proceeded with, as the first respondent later sought to tie it to a condition that the applicant should waive

the maintenance debt he owed her. The correspondence does not reflect that the parties had ever negotiated this waiver of debt. It appears to me that it was an afterthought by the first respondent to escape the consequences of the donation and then the subsequent settlement. His intention had always been that the donation was out of pure liberality and not to satisfy his obligations towards the applicant. Thus, even if the assaults post the donation and the infidelity complained of constituted sufficient grounds to establish gross ingratitude, they were forgiven during the negotiations during 2022, just as the earlier assaults were forgiven at the time of the donation.

12. In the premises the first respondent failed to prove an entitlement to claim revocation of a pure donation based on gross ingratitude and the application should succeed. I accordingly granted an order in terms of the notice of motion as already explained.

H VAN EEDEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Counsel for Applicant: Ms Masemola
Instructed by: Leslie Cohen & Associates

Counsel for First Respondent: No appearance.

Date of hearing: 20 July 2023

Date of judgment: