

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



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

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED.

SIGNATURE

DATE: 7 March 2024

Case No. 18246/2019

In the matter between:

HW

First Plaintiff

SJW

Second Plaintiff

and

RS

Defendant

JUDGMENT

WILSON J:

- 1 The plaintiffs seek leave to appeal against my judgment of 24 November 2023. In that judgment, I absolved RS from the instance, at the end of the whole case, on the basis that neither party had, on a conspectus of all the facts, proved their version.

2 The plaintiffs' case was that R610 000 that the first plaintiff, HW, had advanced to RS in cash was a loan for her personal expenses. The amount was advanced as part of what HW freely admitted was a ruse to deprive his wife, the second plaintiff, of that money in a forthcoming divorce. He also freely admitted that he made no record of the transaction at the time, and could point to no objective evidence that recorded the transaction as a loan. He also accepted that, although he never intended the money to go anywhere near RS' business, that was in fact where it ended up.

3 RS' case was that the amount advanced to her was a gift, not a loan. Its purpose was to help her pay her business debts, and to free her of her business obligations, enabling her to close her business down.

4 I recorded in my trial judgment that HW was not an impressive witness, and that his evidence ought to be treated with circumspection, particularly as his entire case was based on a plan to deceive his wife.

5 Mr. West, who advanced the application for leave to appeal before me, did not challenge any of these findings. He instead laid great emphasis on a series of WhatsApp exchanges in which RS consistently failed to deny that the R610 000 was a loan and not a gift. He also relied on an entry in RS's company's books of account that record the transaction as a loan. This documentary evidence was enough, Mr. West argued, to create the reasonable prospect that an appeal court will conclude that I should have given judgment for the plaintiff.

6 Mr. West pressed his submissions home with the assertion that RS never advanced an explanation for her failure to deny that HW had loaned her the

money in the WhatsApp exchange, or for recording the money as a loan in her business account. In this Mr. West was mistaken. In evidence that was clear, consistent and otherwise reliable, RS did in fact explain why she failed to deny HW's assertions that he loaned her the money. She said that the assertions were made at a time when her relationship with HW was collapsing, and that she saw those assertions as acts of spite with which she did not engage in order to avoid conflict. She explained her later half-hearted assurance that she would repay HW when she was back "on her feet" as another attempt to mollify him. She also explained that her decision to record the money as a loan to her business was taken on the advice of her bookkeeper for tax purposes.

7 I found neither of these explanations particularly convincing, but I could not entirely reject them. In particular, they were not so poor as to raise my level of confidence in the evidence of RW, whose self-serving and deceitful conduct hangs over every aspect of this case, to the point that I could give judgment for him.

8 Still, Mr. West contended that the WhatsApp exchanges and the bank records were enough in themselves to provide the corroboration a court would need to give judgment for RW, notwithstanding the very poor quality of his evidence.

9 I do not think that is correct, but I am driven to accept that an appellate court might reasonably disagree. I wonder to what extent an appellate court will really be in a position to gainsay the credibility findings that I have made, but I am content to leave that decision to the court of appeal itself.

10 Mr. West quite properly accepted, at the close of his argument, that there was no basis on which to refer this matter to the Supreme Court of Appeal, and I agree. Raising as it does only factual issues, the appeal lies to a Full Court of this Division.

11 For all these reasons –

11.1 The plaintiffs are granted leave to appeal to a Full Court of this Division against the whole of my judgment and order dated 24 November 2023.

11.2 The costs in the application for leave to appeal will be costs in the appeal.

S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 7 March 2024.

HEARD ON: 7 March 2024

DECIDED ON: 7 March 2024

For the Plaintiffs: HP West
Instructed by Lindeque Van Heerden Attorneys

For the Defendant: B van der Merwe
Instructed by GJ Brits Attorneys