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

CASE NO: 16033/2014

19/12/2017

In the matter between:

S M C

Plaintiff

and

A P M C

Defendant

JUDGMENT

Rautenbach AJ

1. In this matter the only issue before me is whether the parties came to an agreement of settlement although not signed which can be incorporated into an order of divorce when this matter is to proceed as an unopposed divorce action.
2. The Defendant is of the view that the matter was finally settled whereas the Plaintiff disputes this and allege that there were still certain outstanding issues. The biggest problem that the Court is confronted with is the fact that the Settlement Agreement as argued on behalf of the Defendant was never signed by the parties as is normally the case in Settlement Agreements which are incorporated into orders of divorce.
3. The Defendant led evidence and the first witness was Mr Scheepers, an

attorney from Adams and Adams.

4. According to Mr Scheepers the parties met on the 2th July 2015 and that he attended the meeting with two of his staff members as well as Advocate Haskins SC.
5. According to Mr Scheepers the meeting did not start in a good atmosphere as Mr Mare as the attorney on behalf of the Plaintiff had issues with the two agreements. Firstly the Divorce Settlement and secondly an issue between the Defendant and the Plaintiff's son who together bought the house that the Plaintiff and Defendant used to live in. Apparently Mr Mare and his client wanted the two transactions to be linked together.
6. In her evidence the Plaintiff actually conceded that she wanted to couple the Settlement Agreement in the divorce to the Agreement on the house to see to it that her son gets a good deal.
7. It is clear from all the witnesses' versions that no pre-trial took place and that the reason for a pre-trial not taking place according to Mr Scheepers and Mr Haskins was that the matters were settled for all intents and purposes.
8. The Plaintiff who gave evidence had a different view of the matter and stated that there were some issues outstanding and that she would still read the Agreement of Settlement and consider it before deciding on accepting it. It is common cause however that the Plaintiff was not in the room where the parties discussed the settlement. In our law it is clear that legal representatives with proper mandates has the power to bind parties to settlements and to the making of admissions and other concessions on behalf of their clients.¹
9. It is further common cause that Mr Mare would draw up the Settlement Agreement as was discussed during the settlement negotiations. It also appears that Mr Scheepers himself also drafted a document as a Settlement Agreement.
10. The Plaintiff gave evidence that before the matter could actually be settled

in the sense that she was happy with the Settlement Agreement and prepared to sign it, Mr Mare passed away. Due to this, the Law Society handed the matter to another firm of attorneys namely Gerhard Botha and Partners Incorporated who then acted on behalf of the Plaintiff.

11. It appears from the correspondence between the parties that Gerhard Botha and Partners Incorporated was of the view that no Settlement Agreement was reached in the matter.
12. However on the 25th May 2016 the parties had a further pre-trial in the matter. This pre-trial was attended to by the Defendant's attorneys Mr Scheepers as well as Ms Bergh who also gave evidence in this matter.
13. I have already pointed out that it was common cause that the first pre-trial did not take place because of the very fact that the parties were of the view that the matter was either settled or almost settled.
14. I used the words "settled or almost settled" as this question can only be answered in taking into account all the evidence and then draw the necessary inferences therefrom if necessary. I also wish in this regard to point out that on the 5th August 2015 Adams & Adams directed a letter to Leon Mare Attorneys requesting the Deed of Settlement on an urgent basis (*"vir die klient se oorweging"*). It was argued on behalf of the Defendant that Mr Scheepers' uncontested evidence was that he wanted to ensure that as the matter had already become settled, that the specific wording that he wanted, have indeed been adhered to. One can only wonder and speculate what would have happened if those words did not correspond.
15. When the further pre-trial took place on the 26th May 2016 the legal representatives on behalf of the Defendant took part in a pre-trial which was subsequently signed and appears under Bundle 3 of the Defendant's bundle marked "O" at page 18 thereof. What is surprising is that in this Pre-Trial Minute and on page 8 thereof, the parties agree that certain

¹ Mhlobo v. Multilateral Motor Vehicle Accident Fund 2001 (2) SA 59 (SCA).

issues were in dispute.

16. Nowhere in the Pre-Trial Minutes is any indication given by the Defendant that the matter was in fact settled. I would have expected from the Defendant, if the matter was settled, at least the following:

- 16.1. That the Defendant would have informed the Plaintiff that there was no reason for a pre-trial as the matter was settled and would have drafted a document in the form of a Pre- Trial Minute stating that the parties settled the matter but that that settlement is now in dispute.

- 16.2. Alternatively, that the Attorney on behalf of the Defendant noted that the matter was settled but that they have some or other reason to proceed with the pre-trial.

- 16.3. Alternatively, that the Defendant's Attorney when Bergh signed the Pre-Trial Minute, would have stated that she signs the Pre-Trial Minute as under protest as the matter was settled.

17. Much was made of the fact that the pleadings of the Defendant was not yet amended to reflect the settlement. In my view nothing turns on this. The fact that the amendments was late should not have changed the position regarding the settlement. In my view the existence of this Pre-Trial Minute signed by the representatives of the Defendant shows clearly that the matter was not settled. In fact, it is the most plausible inference I can draw from their conduct. As was pointed out in the Defendant's Heads of Argument the onus is on the party alleging that a compromise has been reached.² The Plaintiff in my view failed to prove the compromise.
18. Regretfully both parties spent three days on trial in the High Court on a matter that could easily have been settled especially if one has regard to the matters that are still outstanding.
19. I also take notice of the fact that the Plaintiff intentionally used the divorce

² **The Torch Moderne Binnehuysvervaardiging Wenn (Eiendoms) Beperk v. Husseri 1946**

settlement proceedings in an attempt to influence the separate issue between her son and her husband which shows an ulterior motive on her part.

20. Because of the Plaintiff's conduct, I am not inclined to grant her a cost order although she came out as the successful party in the dispute before me.
21. In the circumstances I make the following orders:
 1. No Settlement Agreement came into being between the parties at any point of time up until the present and the Defendant's special plea is therefore dismissed.
 2. I make no order as to costs.
 3. The costs that were reserved on a previous occasion when the matter could not be heard is reserved for the Trial Court to be dealt with.

J G Rautenbach

Acting Judge of the High Court

Gauteng Division

Pretoria