



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 13 MARCH 2023

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

CW v GT (867/2021) [2023] ZASCA 23 (13 March 2023)

Today, the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against a decision of the Gauteng Division of the High Court, Johannesburg (the high court).

The issue before the SCA was whether the high court was correct in upholding the exceptions to the claim under the *lex aquilia*.

During the period between 8 November 2016 and 22 September 2018, the parties were in a romantic relationship. The applicant alleged that throughout their relationship, the respondent professed in words and deeds that he loved her, he wanted to marry her and remain married to her until parted by death. During the course of their relationship, he showered her with expensive gifts and lavish five-star holidays. On 31 March 2018, the respondent proposed to marry the applicant and presented her with an engagement ring worth R63 000. On 15 September 2018, the parties were married out of community of property with the accrual system.

From about 22 September 2018 their blissful matrimonial relationship took a turn for the worst. The applicant stated that the respondent's conduct changed towards her. She alleged that he no longer showed her any love and respect but, instead he regularly abused and belittled her; he used profanity towards her; and generally treated her in contrast to how he treated her during their courtship. On 18 November 2018, the respondent ordered the applicant to leave the marital home. On 11 December 2018, the respondent instituted divorce proceedings against the applicant. The applicant alleged that on 24 December 2018 she became aware that the respondent had falsely represented to her, knowingly, that he loved and wanted to remain married to her, when in fact he had known prior to the marriage that he considered the relationship between them to be 'over'. On 29 January 2019, and with this knowledge at hand, the applicant launched action proceedings in the high court. She claimed that she was induced to marry the respondent when he wrongfully and intentionally made the representations that he did. As a result of the representations, she incurred wasted wedding expenses in the amount of R331 342.36. The respondent raised nine exceptions to the applicant's particulars

of claim. The high court held that that this sort of claim was not recognised in our law and it would not be in the public interest to develop the common law to entertain such a claim.

The SCA held that the respondent's exception questioned the existence of a legal duty not to cause harm in relation to the specific facts of this case. The challenge for the respondent was that the averments made in the particulars of claim were insufficient for purposes of answering the crucial question posed in *Lillicrap*: whether there are any considerations of public or legal policy that require the extension of the Aquilian remedy to the circumstances of the case. That being the case, the respondent's exception was misconceived. Based on the same reasoning, the SCA held that the respondent failed to establish that the particulars in support of the patrimonial damages claim were excipiable on every interpretation that could be attached to them. In his concurring judgment, Makgoka JA engaged with the jurisprudential premise on which the high court's judgment rests. Makgoka JA held that the reasoning of the high court ignored the prima facie wrongfulness of a fraudulent misrepresentation. In her concurring judgment, Molemela JA held that on the averments alleged in the particulars of claim, there were insufficient facts before the high court to assist it in the determination of whether there are policy considerations that require the extension of the lex Aquilia in the specific circumstances of this case. It was for that reason that Molemela JA agreed that the issue of whether the net of the Aquilian action is indeed being cast wider, as contended for by the respondent, is a matter that could only be tested and decided by the trial court with the benefit of all the pleadings and evidence.

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