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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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M[...] v *M[...]* (Case no 1235/2022) [2025] ZASCA 55 (9 May 2025)

Today the Supreme Court of Appeal (SCA) granted an application for leave to appeal against the judgment of the Gauteng Division of the High Court, Johannesburg (the high court), wherein the applicant, as plaintiff, sought a decree of divorce and, among others, an order that the defendant, as respondent, furnish her with a statement of account supported by documents, as to the value of his estate at the commencement of their marriage, as recorded in their antenuptial contract (ANC). The idea was that the parties would thereafter debate the statement of account. She also sought an order that it be declared that the respondent be bound to the commencement value of his estate determined pursuant to the debatement of the statement of account; and that the respondent pay half of the difference between the accrual in value of his estate, between the dates of their marriage and the breakdown thereof, alternatively the date of divorce.

The high court granted a decree of divorce and an order pertaining to the other prayers, postponing for later determination the outstanding issue of whether an accrual was payable by the respondent to the applicant in terms of the provisions of their ANC, as read with the provisions of the Matrimonial Property Act 88 of 1984 (the MPA). On such later date, the high court dismissed the applicant's claim for accrual with costs and refused to grant her leave to appeal. On 1 February 2023, two judges of the SCA considered her application for leave to appeal and referred it for hearing of oral argument.

There were three issues to be determined by the SCA. The first issue pertained to which of the parties was to be ordered to pay the costs occasioned by the application for condonation for the late lodging of the appeal record; the second was whether the applicant should be granted leave to appeal; and the third, if leave to appeal was granted, was whether the applicant had an accrual claim against the respondent's estate. On the condonation issue, the SCA held that because the

applicant and her attorney had not prepared the appeal record with the necessary speed and thereby causing the delay, the applicant was to pay the costs of the application for condonation. On the second issue, the SCA highlighted that there were conflicting judgments on the central issue to be determined, namely the interpretation of s 6(3) of the MPA. For that reason, leave to appeal was granted to the applicant. On the third issue, whether there had been an accrual in the respondent's estate between the commencement of his marriage and the dissolution thereof, the SCA began by determining if the parties were bound by the value declared by the respondent at the commencement of the marriage in the ANC and thereafter if the applicant had discharged the onus of proving an accrual. The high court found that the parties were bound by the respondent's declared commencement value in the ANC. It found further that there was no accrual.

Before entering into their marriage, the parties concluded an ANC wherein the applicant declared a commencement value of nil and the respondent declared his at R68.7m. In the divorce proceedings the applicant disputed the accuracy of the amount of the respondent's declared commencement value, alleging it was overstated. The respondent argued that his estate had substantially decreased, the value thereof having been calculated at R11.5m shortly before the dissolution of the marriage.

The applicant sought the reconsideration of the commencement value of the respondent's estate on the basis that the value that he declared in the ANC served only as *prima facie* proof of the commencement value in terms of s 6(3) of the MPA. The SCA noted that there are two lines of cases of interpretation of s 6(3). One was to the effect that parties who conclude an ANC are bound by such declaration and the other was to the effect that such declaration serves merely as *prima facie* proof of the commencement values. It expressed that s 6(3) must not be read in isolation but with regard should be had to s 6(4)(b) of the MPA. Section 6(3) refers to an antenuptial contract contemplated in s 6(1) or a statement signed and attested in terms of s 6(1) or a certified copy thereof contemplated in s 6(2). To that, the SCA explained that s 6 clearly distinguishes between an ANC and a statement. Further that Legislature also drew a distinction in that same section between two types of ANCs. The one type being where a party to an intended marriage declares the commencement value of his estate in the ANC which serves as conclusive proof unless recognised common law defences are raised and the other where a party does not declare the commencement value and therefore deemed nil until it is proven otherwise.

The SCA found that the applicant could not rely on s 6(3) since the respondent had declared a commencement value. She could, as the Court explained, have raised recognised common law ground, which she failed to do. The SCA found that the commencement value of the respondent's estate was the amount declared in the ANC. In assessing whether there was an accrual, the SCA found that, on the applicant's own case, the value of the respondent's estate at the conclusion of the marriage was lower than the commencement value of his estate. The applicant accordingly failed to discharge the onus of proving her accrual claim. In the result the appeal was dismissed with costs.

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