



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 June 2024

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

KSL v AL (Case no 356/2023) [2024] ZASCA 96 (13 June 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing the application to submit further evidence with costs, upheld the appeal with costs and set aside paragraphs 5 and 6 of the order of the Gauteng Division of the High Court, Pretoria (the high court) and replaced it with an order that: 'The anti-dissipation application is dismissed with costs.'

The core issues before the SCA were firstly, whether the respondent succeeded in establishing the requirements of an interim interdict for an anti-dissipation order, secondly, whether the high court applied the correct legal principle pertaining to the order it granted and, thirdly, whether an interim interdict is appealable.

The appellant and the respondent were married to each other out of community of property with the inclusion of the accrual system as envisaged in Chapter 1 of the Matrimonial Property Act 88 of 1989. The marriage suffered an irretrievable breakdown and a decree of divorce was subsequently granted on 14 March 2019, while the issue of their proprietary rights (the accrual) was postponed to be determined at a later stage. While divorce proceedings were pending, the appellant founded a trust with the objective of providing financial support to the parties' major children in the amount of R1 800 000 and subsequently caused an amount of R5 114 70.75 to be invested in a living annuity.

Two years after the divorce, the appellant sold his immovable property, which upon discovery, led the respondent to institute an anti-dissipation application in the high court. The high court granted the anti-dissipation order and the appellant's conveyancing attorneys were ordered to retain the proceeds of the sale of the property in an interest bearing account and in the event that it was already paid to the appellant, the appellant was ordered to pay the proceeds into the account of the conveyancing attorneys to be retained in an interest bearing account. The application for leave to appeal was dismissed by the high court but granted by the SCA.

The SCA held that the appellant had failed to show exceptional circumstances to justify an order to adduce further evidence in view of the fact that the evidence was known to him for before the matter was heard and therefore had sufficient time to adduce the evidence at that stage already. The SCA held further that the respondent failed to discharge the onus on her to show that her accrual was less than that of the appellant and as a result, the high court erred in regarding the appellant's rule 34 tender as the respondent's *prima facie* accrual claim against the appellant.

The SCA held further that the high court did not apply the correct legal principle as enunciated in *Knox D'Arcy* that the respondent has to show that the appellant was dissipating his assets with the intention of defeating her claim. The SCA considered it important to decide the matter, in view of the high courts' judgments that suggested that intention did not need to be shown in anti-dissipation applications. The SCA held finally that the appellant has succeeded in demonstrating that the interests of justice required the order of the high court to be appealed against and that the circumstances considered, allowing the order of the high court to stand, would result in an injustice

Accordingly, the appeal was upheld.

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