



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

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Ruth Eunice Sechoaro v Patience Kgwadi (896/2021) [2023] ZASCA 46 (4 April 2023)

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

The issue before the SCA was whether on the objective facts, by signing the 2012 agreement the respondent had bound herself to parting with her 50% share in the property to the deceased, Mr Kgwadi, for no value. Put differently, whether the respondent's unilateral mistake (*error*) in signing the agreement without reading it was reasonable (*justus*).

The respondent, Ms Patience Kgwadi, married Mr Kgwadi on 14 May 1987 in community of property. Their marriage was dissolved on 25 October 1991. They concluded a settlement agreement which was made an order of court on the same day. The court order afforded Mr Kgwadi a period of 14 days to apply to court for variation of the settlement agreement. At the time of their divorce, the respondent and the deceased were joint owners of an immovable property in Boksburg (the property). Since the settlement agreement did not deal with the division of the property, they verbally agreed that each of them would be entitled to half of the value of the property. It was specifically agreed that Mr Kgwadi would pay the respondent half the value of the property. He, however, never did.

On 25 September 2010, Mr Kgwadi married the applicant, Ms Ruth Eunice Sechoaro. Thereafter, on 2 October 2010, he made a will in which he, inter alia, bequeathed 50% of his estate to his fiancée, the applicant, provided she survived him by a period of seven days, and they were still married at the date of his death. Mr Kgwadi appointed First National Bank Trust Services (Pty) Ltd (FNB) as the executor of his estate.

On 28 March 2012, the respondent was seriously injured in a motor vehicle accident and was admitted to Charlotte Maxeke Hospital in Johannesburg (the hospital). She remained in hospital until September 2012. On 18 July 2012, a messenger from the law firm Denoon Sampson Ndlovu Inc, whom she assumed to be representing Mr Kgwadi, called at the hospital to get the respondent to sign a document, entitled 'variation agreement', in terms of which she would award the joint property solely to Mr Kgwadi, which she did. Mr Kgwadi passed away on 29 September 2014. The Master of the High Court, Johannesburg (the Master) appointed Ms Prishania Naidoo, FNB's nominee, as the executor of the estate. On 31 May 2017, the respondent as a seller, and Ms Naidoo, on behalf of FNB, signed an offer to purchase the property by a third party in the sum of R550 000. On 22 January 2018, Rorich Wolmarans Luderitz Inc, the attorneys attending to the transfer of the property, informed the respondent by email that she was not entitled to 50% of the proceeds of the sale of the property, because the variation agreement stated that the property was awarded solely to the deceased.

The respondent signed the agreement without reading it, as she did not have the strength to do so in the state that she was in. She assumed that the agreement dealt with what she and the deceased had agreed upon, ie, that he would pay her 50% of the value of property.

The SCA held that Mr Kgwadi knew, or must have known, contrary to what was stated in the agreement presented to the respondent for signature, that she had not consented to amend their prior agreement that he would pay her 50% of the value of the property; that he was not entitled to sole ownership of the property; and that there was no basis for depriving the respondent of her share of the property. Consequently, when he received the agreement after the respondent had signed it, Mr Kgwadi knew of her mistake as he was the cause of it. Furthermore, the SCA found that the respondent acted consistently with her belief that the agreement did not contain a term to the effect that she gave up her 50% share in the property to Mr Kgwadi for no value. Therefore, the SCA considered the respondent's unilateral mistake to be reasonable and excusable.

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