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: 24 July 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

B[…] v B[…] (259/2023) [2024] ZASCA 116 (24 July 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with costs including costs of counsel, an appeal against the decision of the North West Division of the High Court, Mahikeng. The appellant and the respondent were married, out of community of property, with the inclusion of the accrual system, on 4 November 2000. Subsequently divorce proceedings were launched in the Regional Court of North West held at Klerksdorp. A final decree of divorce, incorporating an agreement of settlement signed by the parties, was made an order of court on 9 March 2021. Several months later, on 1 July 2021, the respondent launched an application in the same court, seeking a variation of the settlement agreement, more particularly those clauses dealing with the patrimonial claims arising out of the accrual. The two clauses singled out by the respondent were 3.2 and 3.5 of the settlement agreement. In clause 3.2 the respondent agreed to make payment of R2 650 000 to the appellant in settlement of the accrual claim. Clause 3.5 provided that each party retain as their sole property any policies, investments and pension fund interests in their respective names. The basis of the application was that the accrual amount had been incorrectly calculated and that this was a mistake common to the parties. The effect of the amendment was to reduce the amount payable to the appellant. The Magistrate granted the variation order without the hearing of oral argument and granted an order on behalf of the respondent.

The appellant approached the high court seeking the setting aside of the regional court order. A full bench of the high court dismissed the appeal on the grounds that the order of the regional court was interlocutory and therefore not appealable. The finding by the high court gave rise to an application for special leave to appeal to this Court in terms of s 16(1)*(b)* of the Superior Courts Act 10 of 2013 (the Act), against the judgment and order of the high court.

The central issue in this appeal was whether certain clauses in a settlement agreement were concluded as a result of a common mistake between the parties.

The respondent contended that the calculations that were used to determine his liability to the appellant in terms of the difference in accrual, as well as the allocation of assets and liabilities, were overstated by R1 244 237.77. He attributed the incorrect calculations to a document prepared by the appellant's attorneys as well as the input made by his former attorneys. The appellant on the other hand, denied the existence of a common mistake known to the parties.

In its findings the SCA held that as a general rule, a settlement agreement was concluded as a form of compromise by parties who wanted to avoid protracted and expensive litigation. The purpose of a compromise was to prevent or put an end to litigation. A compromise had the effect of *res iudicata*. Here the settlement agreement signed by the parties was a final agreement between the parties, putting all disputed issues to rest. The SCA further held that, there were very limited grounds on which a party could rely on a mistake to resile from a contract. A settlement agreement can be set aside if it was fraudulently obtained. It can also be set aside on the ground of *justus* error, provided that such error vitiated true consent and did not merely relate to the merits of the dispute which was the very purpose of the parties to reach a settlement. On the facts of this case, the SCA found that there was no misrepresentation by the appellant. There were protracted negotiations between the parties which led

to a settlement agreement. In consultation with his legal representatives, the respondent signed the settlement agreement which was made an order of court. The fact that several months later he had a change of heart and believed that he had overpaid his former wife did not translate into a mistake common to the parties. Even if he genuinely believed that the calculations were incorrect and that he should not have accepted the advice of his legal representatives, this did not qualify as a *justus* error. If the mistake was due to that party's own fault, the error could not be said to be *justus* and the mistaken party cannot escape liability for the agreement that he signed. At best for the respondent, this was a unilateral error. It did not lay the basis for a claim for the variation of the settlement agreement on the grounds of a common mistake. Coming to the issue of whether the regional court's order was appealable. The SCA held that the relief sought by the respondent in the regional court was final in effect. There was no justification for that court to appoint a liquidator. Once this was so, the judgment of the high court fell to be set aside and special leave should be granted to the appellant.

~~~~ends~~~~
~~~~