

SUMMARY

Masoko Ephafras Rapitsi ("**the Deceased**") was at the time of his death, a contributing member of a Transnet Retirement Fund ("**Retirement Fund**") underwritten by Momentum. The Deceased nominated his four children as beneficiaries to the Retirement Fund. The Applicant in the matter is the Deceased's daughter. The Applicant was granted interim relief in this matter on 2 May 2018.

The Applicant's mother ("**surviving spouse**") and the Deceased were divorced on or about 30 July 2014 and the Deceased passed away on or about 30 January 2017.

After the death of the Deceased, the Applicant approached Transnet to claim money for the burial of the Deceased and was notified that a claim had already been lodged by the surviving spouse of the Deceased, however such claim had not yet been paid.

Subsequent to the Deceased's funeral, the Applicant approached Transnet again to claim the pension benefits from the Deceased's Retirement Fund. Upon lodging the claim, Transnet assured the Applicant that she will be contacted prior to payment being processed for the purpose of ensuring that the correct beneficiaries would be paid.

The Applicant stated in her founding affidavit that on or about 27 April 2018, she was informed by her attorney that an amount of R1,000,000.00 ("**One Million Rand**") had been paid into the account of the Deceased's surviving spouse on account that the Deceased had paid Labola to her during or about 2015.

The Applicant disputed that the surviving spouse was married to the Deceased by customary union and further alleged that the surviving spouse was conniving with other family members in order to defraud the Applicant and her siblings of their pension benefits.

On 2 May 2018, the Applicant brought an *ex parte* urgent application to court to freeze the surviving spouse's bank account and to interdict all banks from processing any instruction, transfer or withdrawal in relation to such bank account. The Applicant relied on a resolution signed by the Trustees of the Retirement Fund dated 19 February 2018 which content noted that the four children of the Deceased, and the surviving spouse were to be paid the Deceased's pension benefits. As per the resolution, the surviving spouse was to be paid R1,000,000.00 ("**One Million Rand**") by virtue of her capacity as such. The application was brought on an urgent basis on the understanding that payment to the Deceased's surviving spouse had already been effected.

The surviving spouse of the Deceased opposed the application and stated that she in fact did not receive any payment from the Retirement Fund. In support of her statement, she attached copies of her bank statement illustrating that she did not receive any payment from the Fund. In light of the above, the court was satisfied that the surviving spouse did not receive any payment from the Fund.

The court relied on the case of "**Setlogelo v Setlogelo**" which set out the test for the granting of interim relief. Such relief pending an action is known to be an extraordinary remedy which is within the discretion of the court to either grant or withhold.

The court also referred to the cases of "**Knox D'Archy Ltd and Others v Jamieson and Others [2]**" and "**Messina (Transvaal) Development Co Ltd v South African Railways and Harbours 1929 AD 195**" which stated as follows:

"...Where there is merely a possibility, not a practical certainty, of inference or injury, as in the present case, the court will be reluctant to grant an interdict, especially if the party seeking the interdict will have other means of redress and will not suffer irreparable damage."

The court also set out the requirements for an application for an interim relief:

1. The first requirement is that the Applicant must satisfy a *prima facie* right. As the Applicant had a direct interest in the amount to be paid to the surviving spouse, the court was satisfied that the Applicant had established a *prima facie* right.
2. The second requirement is that the Applicant must satisfy that there is reasonable apprehension of irreparable and imminent harm that will result should the order not be granted. The Applicant was of the view that the purpose of the interdict was to prevent future harm. The application was premised on the fact that the money had already been paid into the surviving spouses account, and such premise was relied on when the court decided that the Applicant satisfied this second requirement. It was later established and proved that the interim relief was obtained without the full facts being placed before the Court as the funds had not yet been paid to the surviving spouse.
3. The third requirement is that the Applicant establish the balance of convenience. The court mentioned two competing interests and further mentioned that those interests are inextricably linked to the harm that the surviving spouse is likely to suffer in the event that the order is granted and the harm that the Applicant is likely to suffer in the event that the order is not granted. The court found that the Applicant merely made mention of the third requirement, stating that she will suffer grave injustice if the order is dismissed, but did not state the grounds on which her view was based.
4. The fourth requirement was that the Applicant illustrate the absence of any other remedy. The court found that the Applicant did in fact have an alternative remedy, to review the decision of the Trustees of the Retirement Fund, and as such failed to satisfy this requirement.

HELD

It was held that the Applicant had obtained the interim relief without placing the full facts before the court. as such the court was unable to exercise its discretion effectively. The court found that the Applicant failed to satisfy the requirements for the granting of interim relief. In light of the aforementioned, the order granted on 2 May 2018 was discharged and the interim relief was dismissed with costs.

VALUE

This case highlights the importance of placing the full facts before the court when seeking interim relief. Courts will not grant an applicant interim relief should the applicant fail to satisfy all the requirements for the granting thereof.

Written by Jayna Hira Checked by Charlotte Clarke

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