



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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Lonwabo Hlakanyane v Ziyanda Hlakanyane (775/2020) [2021] ZASCA 130 (30 September 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal by the appellant, and set aside the order of the Eastern Cape Division of the High Court, Mthatha (high court).

The issue before the SCA concerned the interpretation and application of s 18(a) of the Matrimonial Property Act 88 of 1984 (the Act), specifically whether an award of R800 000 in respect of non-patrimonial damages formed part of the joint estate.

The parties were married in community of property on 22 December 2015. In 2011, the respondent was involved in a motor vehicle accident and was awarded non-patrimonial damages in the amount of R800 000. She invested an amount of R550 000 with Standard Bank in an interest-bearing account (the investment). The appellant contended that prior to the marriage the respondent had made him aware of the investment. In 2018 the appellant instituted divorce proceedings in the Mthatha Regional Court seeking a decree of divorce and division of the joint estate. The respondent in her amended plea contended that the investment did not form part of the joint estate and should be excluded as it constituted non-patrimonial damages received as a result of a delict committed against her in terms of s 18(a) of the Act. Upon conclusion of the divorce proceedings, the regional court ordered the division of the joint estate, but excluded the investment from the division. The appellant appealed to the high court. The high court was split two to one, the majority however confirmed the regional court's order and excluded the investment from the joint estate.

On appeal the SCA in a majority judgment held that the investment of the respondent was to be included in the joint estate for the purposes of division of the estate. The SCA held further that the context of s 18 must be read in its entirety, and apparent therefrom was the plain language and words used. The section highlighted that delictual damages received by a spouse during the course of a marriage in community of property, which were non-patrimonial in nature (s 18(a)); and damages for bodily injuries owing to the fault of one's spouse in terms of s 18(b) must be excluded from the division of the joint estate on divorce. The SCA concluded that the protection afforded by s 18(a) applied notwithstanding a marriage in community of property. In such a case, damages recovered during such a marriage for non-patrimonial loss became the property of the injured spouse and did not form part of the joint estate. It did not apply to damages recovered prior to such a marriage; and therefore it did form part of the joint estate.

In a separate dissenting judgment it was held that the damages paid to the respondent for her non-patrimonial/special damages meant for her personal use, before her marriage in community of property did not fall into the joint estate and thus appeal ought not to succeed. There were no reasons for restricting the reach of the section to the award of damages that were acquired before the marriage by spouses who were married in community of property subsequent thereto. This interpretation would not offend against the provisions of the Act as the date of such award was not expressly excluded in it.