



## CONSTITUTIONAL COURT OF SOUTH AFRICA

*David John Riley v Rochelle Tracy Riley*

CCT 337/21

Date of hearing: 16 August 2022

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### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On Tuesday, 16 August 2022 at 10h00, the Constitutional Court will hear an application for leave to appeal against the judgment, particularly paragraphs 3 to 7 of the order, and cost order of the High Court of South Africa, Gauteng Division, Pretoria (High Court) dated 10 February 2021.

The applicant is Mr David John Riley, an adult male previously married to the respondent, Mrs Rochelle Tracy Riley. The parties were married to one another in Zimbabwe on 1 September 1989, out of community of property, with an accrual system. They had three children during the subsistence of their marriage, who are already majors. In 2015, they relocated to South Africa and Mrs Riley instituted divorce proceedings in the High Court. Despite the marriage being solemnised in Zimbabwe, the parties agreed that the High Court had jurisdiction to adjudicate the divorce proceedings and also agreed that the Court would apply the relevant Zimbabwean laws. The relevant Zimbabwean legislation applicable was the Matrimonial Causes Act,<sup>1</sup> as amended (the Act).

The Act gave the High Court the discretion to make an order re-allocating matrimonial property when granting a decree of divorce. The High Court, as per Davis J, dissolved the Riley's marriage on 28 February 2018 and ordered a re-distribution in terms of section 7(1) and 7(4) of the Act. The relevant portions of the divorce order are as follows: (a) both parties were to remain joint owners of the immovable property at 459 Rua de Masala, Maputo, Mozambique (the Mozambique property), and would be equally entitled to whatever rental income the property generates; (b) Mr Riley was to transfer 40% of his shareholding in his businesses in Mozambique, and in his South African business to Mrs Riley within 60 days from date of the order (the business shares); and (c) the parties were each to retain the movable property in their possession at the time of the order as their own.

In January 2019, Mrs Riley launched a contempt application in the High Court on the basis that she had not received her share of the rental income from the Mozambique property and secondly on the basis that Mr Riley had not transferred the business shares into her name. There were further grounds for the contempt application, however they are irrelevant for the proceedings in this Court.

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<sup>1</sup> 33 of 1985.

On 18 July 2019, the High Court granted an order of contempt in the form of a *rule nisi*, in Mr Riley's absence, which had a return date of 17 March 2020 wherein Mr Riley was ordered to furnish reasons why the order should not be confirmed. The *rule nisi* was granted on the basis that Mr Riley had wilfully failed to comply with the divorce order. Mr Riley opposed the contempt application and brought a counter-application on 5 March 2020 wherein he sought condonation for the late filing of this application for leave to appeal against the whole of the divorce order, and alternatively, an order for the variation of certain paragraphs of the divorce order. Amongst others, he sought an order that he retains sole ownership of the property in Mozambique and that he retain as his sole property all the points in the Dream Vacation Club subscription and be solely liable for all levies and expenses thereof and further that the entire paragraph relating to the transferring of the business shares to Mrs Riley be deleted.

Prior to the hearing in February 2021, Davis J, through caselines, requested to be furnished with the total half share of rental income owed to Mrs Riley in South African and Mozambican currency, and the accounts it was being paid into. Mr Riley was not forthcoming but Mrs Riley provided that the amount was R489 136,59, alternatively MT2, 106, 322. The High Court held Mr Riley in contempt of the divorce order and sentenced him to imprisonment of 60 days, which was suspended in whole in the event that he made payment of Mrs Riley's rental income share into her South African bank account within 30 days of the order. Second, it ordered that if Mr Riley did not ensure in future that Mrs Riley is paid, quarterly, her share of the rental money of the Mozambique property then she shall be entitled to approach the court for further relief. Third, it made a variation of the order concerning the business shares and ordered Mr Riley to pay Mrs Riley a nominal equivalence of her 40% share of the businesses, and pay R44 000 for the nominal fee of the dream vacation points. Mr Riley applied for leave to appeal against the whole of the contempt order but this was dismissed by Davis J on 20 April 2021. The Supreme Court of Appeal dismissed Mr Riley's application for leave to appeal to it on 16 July 2021 and thereafter, on 30 September 2021 after applying to the President of the Supreme Court of Appeal for reconsideration in terms of section 17(2)(f) of the Superior Courts Act.

In this Court, Mr Riley submits that his rights in terms of section 34 have been violated and that this matter raises severable arguable points of law of general public importance. He submits that the High Court unilaterally amended the order of the Mozambique property and imposed as a fine, 60-day imprisonment which is totally against the jurisprudence of this Court, in that the enforcement of judgments debts does not form a part of contempt proceedings. Furthermore, Mr Riley submits that the High Court unilaterally varied or amended the divorced order initially issued by it notwithstanding that it was *functus officio* and without any jurisdiction to vary or amend its own orders.

Mrs Riley opposes the application and submits that the application before this Court turns on two issues: whether Davis J could vary his own order in the terms he had; and secondly whether Mr Riley could be found to be in contempt of court. She accordingly denies that Davis J was *functus officio* and submits that he could vary the divorce order in terms of rule 42(1)(c) of the Uniform Rules of Court, alternatively the common law. And that the High Court found correctly that the applicant's non-compliance with the divorce order was wilful and mala fide. She further submits that the order whereby Mr Riley was ordered to pay her an amount of R489 136, 59 was not part of the variation of the divorce order but was the amount owed to her for her shares of the rental income since the date of the divorce order. The High Court, she submits, did not vary the portion of the order relating to the rental income and the order relating to the payment of the amount of R489 136,59 was not the basis of the contempt of court application as the order was made after the application was launched.