



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: 19 April 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

H [REDACTED] *J* [REDACTED] *v* *P* [REDACTED] *J* [REDACTED] (285/2023) [2024] ZASCA 55 (19 April 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding with costs, an appeal against the decision of the Free State Division of the High Court, Bloemfontein (the high court).

The appellant and the respondent were married to each other out of community of property with the inclusion of the accrual system on 4 November 2000. The respondent launched divorce proceedings in the regional court for the Regional Division of the Free State held at Bloemfontein (the regional court). In addition to defending the matter, the appellant instituted a counterclaim against the respondent for spousal maintenance. The appellant, furthermore, delivered a notice requesting further particulars requesting the respondent to make, amongst others, full financial disclosure of his earning capacity. The respondent refused to furnish the same, contending that they are irrelevant for the purposes of trial.

Dissatisfied with this reply, the appellant applied for the respondent to be compelled to comply. On 22 March 2022 the regional court ordered the respondent to answer to the paragraphs so requested in the appellant's request to compel. The respondent appealed this order. The appeal was heard by the high court which set aside the order to compel. The high court relied on the decision of *Rall v Rall*, a full court decision of that court, which held that a party could not be required to give particulars in relation to a bare denial. The appellant then petitioned this Court for special leave to appeal against the judgment of the high court and it was granted.

The first issue in this matter was whether the regional court's order, ordering the respondent to provide further particulars, was appealable. The second issue was whether this Court is empowered to entertain the appealability of the order of the regional court despite the fact that it was not raised and entertained by the high court. As far as the third issue is concerned, namely, whether the decision of the high court to follow the judgment in *Rall v Rall* was justified, the SCA indicated that this issue could only arise if it is found that the order of the regional court was not appealable.

The SCA held that the regional court's order compelling discovery was purely interlocutory in nature and had no final effect. The SCA affirmed the decision in *TWK v Hoogveld Boerderybellegings* wherein this Court warned against courts other than the Constitutional Court in adopting the standard of the interest of justice as a foundational basis upon which they decide whether the matter was appealable or not. The SCA held further that, the high court was obliged to raise the issue of appealability *mero motu*. It should have struck the appeal before it from the roll as the order of the regional court was not appealable. Consequently, the SCA did not pronounce on the merits of the matter.

As a result, the SCA upheld the appeal with costs. The order of the high court was set aside.

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