

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

DATE: 4/5/2006

CASE NO: 21384

UNREPORTABLE

PETER FENTON

PLAINTIFF

and

PAUL NEIL FENTON

1ST DEFENDANT

DOROTHEA WILHERMINA FENTON

2ND DEFENDANT

JUDGEMENT

MABUSE AJ:[1] The plaintiff has instituted an action against the two defendants jointly and severally in this matter for payment of a sum of R466222. 67. The amount claimed represents a total of the donations the plaintiff made for benefit of the defendants, who are married to each other in community of property. By agreement between the parties, the issue concerning the value of the jewellery was separated from the other issues and postponed sine die.

[2] The Plaintiff is the first Defendant's" (Paul) father and the second Defendant's "(Dorotheas)" father-in-law. In 2002, the plaintiff immigrated from England to South Africa at the instance of the defendants and to lived with them in Pretoria. The plaintiff stayed with the defendants at the defendants' house until he moved out permanently on the 24th March 2003. I will, in the course of the judgment, revert to the circumstances which led to the plaintiff moving out of the defendants' house on the 24th March 2003.

[3] It is not in dispute that in the period during which the plaintiff lived with the defendants, he spent substantial amounts of money on various items for the benefit, and on behalf, of the defendants. It is also not in dispute that the plaintiff was not, in law, obliged to spent any amount in respect of the items for which he expended money. The plaintiff regards all the money he paid as a donation. He holds the view that good cause exists to reclaim the donation. On the other hand, the defendants regard such payments, in their plea, as a gift. However, in their testimony they regard such payments as their inheritance. On this ground, they hold the view that plaintiff could not regard the payments as donation and was therefore not entitled to reclaim such payments from them.

According to **Potte v Rand Township Register 1945 AD 277 at 290**

3/..... a donation

"a donation is an agreement which has been induced by pure benevolence or sheer liberality whereby a person under no legal obligation undertakes to give something to another person, called the donee, with the intention of enriching the donee, in return for which the donor receives no consideration nor expects any further advantage ".

According to Voet, Commentarius 39. 5. 22, one of the grounds on which a donation may be revoked is gross ingratitude on the part of the donee. Under these circumstances, the donor may recover the gift if the donee has shown ingratitude towards the donor. This principle was followed in **Mulligan v Mulligan 1925 W.L.D 178 at 180** where the court stated that:

"the donee may demand the return of the gift on the basis of any act of ingratitude "

[4] The foundation *for* the plaintiff's departure from the defendants' *house* was laid on the 21st February 2003. On the said date, the plaintiff picked up an argument with Paul over *some* repairs that Paul was making in the *house*. These repairs involved, according *to* the plaintiff, excessive use of poliylla. The second event came as a result of an oven that could not open properly. The argument arose as a consequence of the plaintiff's advice *to* Paul. The third and

last incident that was the straw that broke the camel's back occurred as a result of a report that the defendants' daughter made to them about the plaintiff.

While both the defendants were in the house, their daughter came rushing in and reported to them that the plaintiff had screamed at their son, Tian. On the basis this report, Dorothea approached the plaintiff who vehemently denied the allegations. It would seem in all probabilities that Dorothea was dissatisfied with the plaintiff's denial. A furious exchange of words ensued between the plaintiff and Dorothea. Dorothea screamed at the plaintiff and accused him of having screamed at her son. Having screamed at the plaintiff, Dorothea vowed that she would never stay with plaintiff in their house. The plaintiff had no problem with Tian and, according to him, their relationship was just normal. He was shocked at the way the second defendant had screamed at him. She then said to him:

"Why don't you fuck-off with your fuck dog. There is no place for you and your fuck - dog. Fuck -off"

While she screamed at the plaintiff, Paul tried to calm her down. As a consequence of the heated squabble Dorothea had with the plaintiff, she, her mother and their children left her house and went to live with her brother for two weeks. They left the plaintiff and Paul behind. After two weeks she

returned to the house and on her return found that the plaintiff was still living present. She then said:

"Is jy nog hier? You are not going to stay in this house"

[5] Then Dorothea walked into his bedroom, spilled dog food on the carpet and kicked it around. At this stage, the plaintiff was busy packing his clothes in a suitcase. Dorothea then came with the bottle containing some kind of liquid and tipped it on the plaintiff's clothes. Either of the defendants smashed a bottle on the floor of his bedroom. The pieces spread around the floor of the bedroom. They disconnected the power cable of the refrigerator in which he had put some food and said that he could give the food to *"his black people who were waiting outside"*. They said they would give the *boerewors* to the dog. The defendants then told him that he had three hours within which to leave their house. He did not however, leave the house but remained with them until the 24th March 2003. On the 24th March 2003, he moved out the defendants' house. He had bought himself a house somewhere else. This concluded the plaintiff's case.

[6] According to Paul, it is indeed so that the event of the 21st February 2003 led to his father leaving their house. On the said day he testified, he was busy

in the house when his daughter came rushing in. She made a report to him that the plaintiff had screamed at Tian. As a result of this report, a quarrel ensued between the plaintiff and Dorothea. Dorothea then said that they were not prepared to withstand the plaintiff's treatment of Tian. She and her mother then packed their bags and went to live with Dorothea's brother. They left him behind with his father. He tried unsuccessfully to get them back to his house. He denied that Dorothea screamed at the plaintiff during her quarrel with plaintiff. He told the plaintiff that he did not want to lose his wife and children and requested him to look for alternative accommodation.

[7] On his wife's return, they looked around for the plaintiff as they wanted to tell him to leave their house. They could not speak to him as he had locked himself in his bedroom. The plaintiff himself volunteered that he would leave their house. He admitted that the Plaintiff paid substantial amounts for him and his family's benefit. However he testified that when he offered to refund the money, the plaintiff told him that the amounts he paid, were part of his (the 1st Defendant's) inheritance. In his evidence he also testified about certain areas of his father's attitude which were a concern to him and his family.

[8] Under cross-examination, he conceded that after her daughter had reported that the plaintiff had screamed at his son, he never verified it with the plaintiff. According to him, he did not approach him because his father always denied everything. He gave his father an alternation to look for accommodation.

[9] Paul's evidence that it is the event of the 21st February 2003 that gave rise to this matter is confirmed by the evidence of Dorothea. In addition, she admitted, in her testimony, that the plaintiff made certain payments which benefited her family. Paul did not dispute these payments. The plaintiff told them that the money that he used to make all the payments, came from Paul's inheritance. Because of the language barrier between her and the plaintiff, there was no proper communication between them. It was as a result of the fact that the plaintiff had screamed at her son that she, the children and her mother left their house to go and stay with her brother. She also received a report from her daughter about the screaming and when she confronted the plaintiff, he denied ever having screamed at Tian. When she came back from her brother's house, she found that the plaintiff had left their house. The plaintiff's bedroom was empty. Under cross-examination when she was asked if she believed the report by her daughter that the plaintiff had screamed at Tian she answered:

/8..."Waarom

"Waarom sal die kinders lieg? Waarom het hy kwaad geword as ek met hom gepraat het?".

[10] It is not in dispute that while he stayed with the defendants, the plaintiff made certain substantial payments for the benefit of the defendants. It is also not in dispute that such payments can, and in fact are classified as donations. The defendants do not deny that they offered to refund the money that the plaintiff paid for them. However, they are strongly of the view that they are not obliged, for two different reasons, to refund any money paid for their benefit by the plaintiff. In the pleadings, the defendants pleaded firstly that the money that the plaintiff paid for their benefit was a gift, whereas they testified that, when.. making payments, the plaintiff told them that such payments were made out of their inheritance. The pre-trial minutes show clearly that the defendants regarded all the payments that the plaintiff made as gift.

[11] There is incontrovertible evidence that the plaintiff left the defendant's house following the events of the 21st February 2003. According to the plaintiff, before the 21st February 2003, there was no suggestion that he had any problem with the defendants or their children. In particular he did not have any problems with Tian. Although the plaintiff denied it, it is clear from the

evidence of the defendants, especially Paul, that they were unhappy in many respects with the plaintiff. It would seem that over a period and as a result of some teething problems, the hitherto strong bond between the plaintiff on one hand and the defendants family on the other hand, was being progressively eviscerated. It would also appear that the parties were able to sort out their problems, either by engaging in discussions *for* that purpose or pretending that nothing untowards had happened. The parties never at any stage in the past adopted drastic steps in resolving their disputes. Never before the 2Pt February 2003 did the defendants' strategy to resolve their differences with the plaintiff involve ordering him out.

[12] The defendants' bone of discontent is that the plaintiff screamed at their son. They received a report *from* their daughter and having received it, confronted the plaintiff who denied it. Notwithstanding his denials, Paul believed his daughter and held the view that his father always denied everything. Paul believed his daughter without having verified her report. Dorothea too believed her daughter *for* the simple reason that:

" Waarom sal die kinders lieg? Waarom het hy kwaad geword as ek met hom gepraat het?"

The defendants strongly believed, and perhaps blindly, what their daughter reported to them. The problem with believing what their daughter reported to them is that there was always a chance that their daughter might have misconstrued the way in which the plaintiff spoke to Rian. The defendants may find themselves acting on the untested and unreliable reports by their daughter.

[13] The evidence is overwhelming that the defendants ordered the plaintiff out of their house on the basis of a report from their daughter. First it was Dorothea who ordered him out on the 21st February 2003 and who also treated him the way in which he testified. Then later it was Paul who gave him a ultimatum to leave, as he admitted under cross-examination. Both of them told him that he had three hours to leave their house.

[14] During cross-examination of the plaintiff, it was never put to him that his relationship with the children was not a normal one nor was it put to him that the children were afraid of him. It was never put to the plaintiff that he and the defendants' children had constant problems over the television. It was never put to him that he had told the defendants that he had for everything out of their inheritance. In the premises the court finds that the defendants' evidence that

the plaintiff told them that the payments that he made to their benefit was their inheritance is highly improbable. If in deed that were so, they could have pleaded it in their plea. To confirm that it was a fabrication, there is no evidence whatsoever either of the defendants having tried, while they each had a chance, to obtain more information from the plaintiff about their inheritance. It is highly unlikely that Paul would have refrained from asking the plaintiff about his mother's estate, while the plaintiff displayed some generosity by spending so much money on them. Quite correctly so, they pleaded that the amount the plaintiff expended on them was a gift.

[15] But what is a gift if not a donation? The court also finds that the defendants ordered the plaintiff out of their home on the basis of the untested and unreliable report by their daughter. There is just no good reason why the defendants believed their daughter than the plaintiff. In my view, their act of ordering the plaintiff out of their house in that manner is an act of ingratitude that entitled the plaintiff to revoke his donation.

... [16] In **The Selective Voet being the Commentary on the Pandects Volume Translated by Perceival Gane** 6 p 112 - 112 the following is stated:

"Nevertheless five just causes of ingratitude are listed which, If

/12... the donee

the donee has offended against the donor in regard to them, there is room for revocation, that is to say, for change of mind. Code 111. 55(56).4.

These causes are when the donee has laid wicked hands upon the donor, or has contrived a gross and actionable wrong or some huge volume of sacrifice or a plot against his life, or finally has not obeyed conditions attached to the donations Code 111. 55 (56) 10"

[17] The principle laid down in Voet above was adopted in **Mulligan v Mulligan 1925 v W. L. D. 178 at p 182** where the court stated that:

«The right to revoke on the ground of ingratitude is recognized in the Roman - Dutch law where a gift has been accepted. Five reasons for revocation are given Voet (39. 5. 22) says it does not seem to admit of doubts that a gift can be revoked for similar and other weighty reasons"

I am satisfied therefore that the plaintiff has proved his case.

.. **WHEREFORE** judgment is granted against the First and Second Defendants, jointly and severally, the one paying and the other to be absolved, for:

(a) Payment of the sum of R466222.67.

113 ... (b) Payment

- (b) Payment of interest on the said sum of R466222. 67 per anum a tempore morae.
- (c) Costs of the suit

MABUSE AJ

APPEARANCES:

COUNSEL FOR THE PLAINTIFF : Adv F Du Toit SC

COUNSEL FOR THE DEFENDANT: Adv F J Labuschagne

ATTORNEYS FOR THE PLAINTIFF: HENN INC:

ATTORNEYS FOR THE DEFENDANT : VAN DER WALT & HUGO

DATE OF HEARING :23 NOVEMBER 2005

DATE OF JUDGMENT