

## **Supreme Court of Appeal Overrules High Court in Decision Over WhatsApp Message Contract**

### ***Introduction***

The case between *Ntsieni Morris Kgopana and Mohlaki Rosina Matlala* in the Supreme Court of Appeal (“the SCA”) considered whether a WhatsApp message met the requirements to be considered a valid offer to contract between the parties. The Limpopo Division of the High Court previously decided on the matter, but with the SCA being a Court of higher authority, its final decision would always trump that of the lower Court (“*the court a quo*”). However, after hearing the matter and handing down judgment, did it agree or disagree with the *court a quo*’s findings?

### ***The Facts of the Case***

The Appellant and Respondent in the matter had a minor child in terms of which the Appellant made monthly payments of R 1 000, 00 in maintenance. The Appellant then contacted the Respondent one day and informed her that due to his deteriorating health, he would be retiring soon.

The Appellant further informed the Respondent that his pension benefits would amount to around R 600 000, 00 and that he was willing to pay the Respondent an amount of R 100 000, 00 in full and final settlement of all future maintenance payments. The parties agreed, and the money paid to the Plaintiff.

However, it later came to the Respondent’s attention that the Appellant had won the lotto, with his winnings amounting to just under R 21 000 000, 00. At first, the Appellant denied having won any monies but later decided to send the Respondent a Whatsapp message reading, “*If i get 20m I can give my children 1m and remain with 13m...*”.

Following receipt of the above Whatsapp message, the Respondent, in her capacity as guardian of the minor child, instituted proceedings against the Appellant for R 900 000, 00 claiming only the difference between the R 1 000 000, 00 and R 100 000, 00 previously paid by the Appellant.

## ***The High Court Decision***

The Limpopo Division of the High Court found in favour of the Respondent in the matter. In its reasoning, the Court referred to the fact that in sending the message, it was clear to the Court that the Appellant (Defendant at the time) had applied his mind to the division of his monies, resulting in each of his seven children receiving equal portions.

The Court further stated that the Appellant had conveniently received his lotto winnings at around the same time his health was deteriorating. These considerations, along with case law, aided the High Court to rule in favour of the Respondent, with the Applicant then referring the matter to the SCA for consideration.

## ***The Supreme Court of Appeal***

After a review of the facts of the matter and the decision of the *court a quo*, Van der Merwe JA (“Justice of Appeal”) ruled with reference to both case law and jurisprudence literature including, but not limited to, *Saambou-Nasionale Bouvereniging v Friedman 1979 (3) SA 978 (A)* and *Christie’s Law of Contract of South Africa*.

In his decision, the learned Justice of Appeal laid out that although the necessary intention to defend could be gauged from an objective review of the parties’ conduct, the real intention to contract had been absent. When sending the message to the Respondent, Van der Merwe JA was satisfied that the Appellant had been addressing a *‘hypothetical future event of him receiving R 20 million.’* In addressing the conduct of the Respondent, it was further stated that she never responded to the message and never claimed immediate payment which was of great significance.

The decision of the *court a quo* was therefore overruled, with the appeal successful before the SCA. Van der Merwe JA stated that *‘The appellant subjectively had no intention to contract and the message did not suggest otherwise.’*

## ***Conclusion***

Not only was this matter interesting in dealing with the principles around the intention to contract and its different doctrines, but it also reminded us of the legal structure in place in our judicial setting. Although one Judge might interpret a particular set of facts one way, another could completely

disagree. The only importance between the two would be the seniority and placement of both learned adjudicators. This is why it is always important to seek proper legal advice from experienced professionals as they would be able to advise you effectively and efficiently if your judicial disputes have any prospects of success compared to the time, financial and other resources you would need to set out in pursuit of an appeal.

