



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

30 May 2018

STATUS: Immediate

ST v CT (1224/16)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

1. The Supreme Court of Appeal (the SCA) today upheld in part an appeal by the appellant (Mr ST) in a divorce matter. The SCA overturned findings and orders of the Western Cape Division of the High Court in Cape Town regarding accrual and maintenance.
2. The SCA held that, notwithstanding adverse credibility findings justifiably having been made against the appellant, Mr ST, it did not warrant the rejection of all his evidence regarding his estate. His version had to be tested against the objective facts and, absent any controverting evidence, had to be accepted where it was borne out by the objective facts.
3. The SCA held that a prenuptial waiver of maintenance after divorce by the respondent, Mrs CT, contained in an antenuptial contract was invalid and unenforceable. The majority held that the basis for invalidity was that such a waiver was against public policy, namely s 7 of the Divorce Act 70 of 1979. The minority held that the basis for invalidity was that an agreement concluded prenuptially cannot override a court's statutory power (in s 7 of the Divorce Act) to grant maintenance upon divorce.
4. The SCA further held that a party required to disclose assets in terms of s 7 of the Matrimonial Property Act 88 of 1984, must establish proper compliance. A party who avers that certain assets are excluded from her or his estate for purposes of calculating the accrual bears the burden of proof to establish such exclusion and the nexus between excluded assets and current assets.

5. Lastly, the SCA held that a living annuity does not form part of a party's estate for purposes of a calculation of accrual.

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