

ALL THE FRILLS DON'T MAKE IT A MARRIAGE

Botha v Steyn (13326/2014) [2021] ZAKZDHC 23 (2 August 2021)

A and B, both South African citizens, got married in a splendid ceremony hosted at a hotel in London, or so A thought. The ceremony could not constitute a valid marriage because the UK marriage laws were not complied with, a fact that the evidence suggests they were both aware of at the time. After the ceremony, they concluded a short interim agreement about financial affairs that will come into place once they concluded a valid marriage. A later approached the court for an order of divorce and implementation of the agreement, unsuccessfully, because if there was no valid marriage, divorce laws do not come into play.

Parties entering into marriages abroad must take note and obtain legal advice beforehand to make sure their intentions are realised.

The Judgment can be viewed [here](#).

FACTS

Ms Botha and Mr Steyn met and became engaged in 2005. They lived together, travelling between London and South Africa.

In August 2007, they hosted a ceremony which was meant to be a wedding ceremony at a London hotel. For this ceremony, invitation cards were issued, family and friends were flown from South Africa to London; a wedding planner was on standby in London; a wedding dress was made by top London designers; all the guests were housed in London; a programme of how events would unfold was in place; and the parties exchanged rings at the eventual ceremony.

After all these elaborate preparations and eventual ceremony, however, 'the wedding' had not been registered in the United Kingdom ('the UK') because Ms Botha and Mr Steyn never complied with the UK marriage laws by marrying in the presence of a registrar (for a non-religious marriage) or attending to the publication of notices (for a religious marriage).

Ms Botha testified that the information she had received from Mr Steyn was that this was a matter of simply signing the register when they got back to South Africa, as they were both South African citizens. This never happened. After the ceremony in London, they had returned to stay together at a hotel in South Africa and Ms Botha was then referred to as Mrs Steyn by the staff of the hotel which was run by Mr Steyn.

In 2009 the relationship ended permanently and in November 2014 Ms Botha commenced the present litigation. She sought an order of divorce and maintenance and/or payment in terms of a contract entered into between them. In the alternative, should the court find that a valid marriage had not been concluded, she argued that she should be awarded sums similar to those in a divorce and by reason of Mr Steyn's representations that the marriage ceremony was a proper one, and her acceptance and enjoyment of the benefits and protections of a wife, which would thus entitle her to the financial support.

Mr Steyn denied that there was a valid marriage and argued that Ms Botha was aware hereof. He advised that he had contacted his UK solicitor, Mr Christmas, who also testified at the trial. Mr Christmas testified that before the ceremony, he had received a call from Mr Steyn saying that he was unable to comply with the requirements under the English law for giving notice or getting a special licence to allow a wedding to take place, in time before the ceremony to whom so many people had been invited. Mr Christmas had then advised him that he could have a ceremony of

some sort so as not to disappoint his invitees, but that it would not be a marriage and would be of no legal effect. This Mr Steyn understood.

Mr Christmas was again summoned to the home of Mr Steyn and Ms Botha in London at the end of December 2007. They indicated to him that they wanted an agreement between the two of them to cover their cohabiting arrangements since they were not married. Both parties wanted something in writing and it had to be processed there and then. Mr Christmas then prepared a short handwritten agreement. He was told that that would be a temporary arrangement, pending the parties coming to a more formal arrangement. Despite Mr Christmas's enquiry as to why they would not wait for the consummation of a formal agreement, they insisted they wanted something there and then. Ms Botha and Mr Steyn signed the document in the presence of Mr Christmas. Mr Christmas's understanding was that the agreement was by way of regulating the financial arrangements between them pending the formalisation of those arrangements sometime in the future. The essence of the document was the payment of monies, to wit R1 million, to Ms Botha in the eventuality that the parties ceased to cohabit for reasons other than as a result of having mutually agreed to separate, based on family commitments or periods of holidays.

HELD

Was there a valid marriage?

- The evidence provided by the UK solicitor in this matter was clear: The ceremony concluded in August 2007 did not constitute a valid marriage in terms of UK laws.
- The intention and belief of the parties is immaterial if the ceremony was not within the four corners of the Act, although on the facts of this matter, it appeared that both Ms Botha and Mr Steyn were aware of the fact that the ceremony did not constitute a valid marriage.
- In addition, the agreement on which Ms Botha relied, dealt with what would be due to Ms Botha "upon the conclusion of the marriage". That never occurred.
- Ms Botha could not prove that a valid marriage was concluded in the UK. As a result, there could be no talk of a decree of divorce.

CONCLUSION

The matter was dismissed as no marriage was entered into between the parties.