PVL1501 – Case summaries: 2014

Ex Parte Boedel Steenkamp 1962 (3) SA 954 (O)

The facts of the case are as follows:

The testator left the residue of his estate to his daughter and to the first generation "wat by datum van dood in die lewe is". The testator's daughter was pregnant at the time of his (the testator's) death and subsequently gave birth to Paul Johannes.

The executor to the estate sought a declaratory order on the issue of whether only the children born at the time of the testator's death would inherit or if Paul Johannes, born after the death of the testator, would also be able to inherit.

Curator ad litem for Gerda and Daniel Johannes (the two children already born) held that the words "wat by datum van dood in die lewe is" is sufficient enough and without ambiguity to exclude the unborn child from the estate.

Curator ad litem for Paul Johannes was of the opposite opinion stating that there is no evidence that the testator wished to exclude the unborn child from his will.

The legal questions are:

1. Does the *nasciturus* have the legal capacity to inherit?
2. Is Paul Johannes (*in ventre matris)* entitled to a share of the estate?

Judge De Villiers R held that the *nasciturus* should be able to inherit by means of the *nasciturus fiction* subject to being born alive and it being to the advantage of the *nasciturus.* He further held that Paul Johannes is entitled to share in the estate of the testator in equal amounts to his mother, brother and sister.

Judge De Villiers R referred to the decision of House of Lords in Elliot v Lord Joicey where the court held that if the testator's intentions are not clear, when words as "in lewe" or "gebore" are used in conjunction with a specific time line and there is no other specific statement specifically excluding the child *in ventre matris* it should be presumed that the testator had no intention of excluding the child *in ventre matris* form his/her will.

Road Accident Fund v Mtati 2005 (6) SA 215 (SCA)

The facts of the case are as follows:

A pregnant woman was seriously injured when a motor vehicle collided with her. The accident was caused by negligence of the driver in question. The pregnant woman's child (Z) was subsequently born with brain injuries and mental disability. The father instituted a claim on behalf of the child against the Road Accident fund.

The Road Accident Fund raised a special plea. It contended that firstly and unborn child is not a person (legal subject) and is therefore not entitled to compensation and secondly, because an unborn child is not a person (legal subject) the driver does not owe a duty of care to the unborn child.

The legal question consisted of two parts, namely:

1. Does Z have a claim against the Road Accident Fund for the damages resulting from the disabilities?
2. Should such an action be allowed by using the *nasciturus fiction*, or by using the ordinary principles of delict?

The supreme court of appeal decided that it would be intolerable if our law did not grant an action for prenatal injuries and that such an action should be based on the law of delict. The appeal was thus unsuccessful.

The reasoning for the judgment was as follows:

The court held that, according to the ordinary principles of the law of delict, unlawfulness and damage are separate elements for delictual liability and that the child's delictual right of action becomes complete when he/she is born alive. The assertion that the driver of the vehicle did not owe Z a legal duty because she had not yet been born must be rejected.

As a result of this judgment, all future claims for prenatal injuries will have to be based on the ordinary principles of the law of delict and not on the *nasciturus fiction.* The *nasciturus fiction* will still apply to other areas of the law.

Christian Lawyers Association of SA V The Minister of Health 1998 (11) BCLR 1434 (T) SA 1113 (T)

The facts are as follows: The plaintiffs sought an order declaring the Choice on Termination of Pregnancy Act 92 of 1996 unconstitutional, striking it down in its entirety. The plaintiffs argued that life begins at conception; therefore termination of pregnancy is in violation of section 11 of the Constitution of the Republic of South Africa, 1996, which affords everyone the right to life.

The defendants argued that the *foetus* is not a bearer of rights in term of section 11 of the Constitution.

The legal question is: Does the wording of "everyone" or "every person" in the Constitution include an unborn child (as a legal subject), from the moment of conception?

Judge McCreath held that the question is not one to be answered by medicine but by proper interpretation of section 11 of the Constitution.

He further stated that if the drafters of the Constitution intended to protect the *foetus*, specific reference to the protection of the *foetus* would have been made in the Bill of Rights, section 28.

The Transvaal Provincial Division of the High Court held that to afford legal personality to the *foetus* would impinge to a lesser or greater extent on the rights to human dignity, life, privacy, religion, belief and opinion and health care. The court thus concluded that the particulars of the claim fail to make out a cause of action and the exception must succeed.

Christians Lawyers' Association V Minister of Health 2004 (10) BCLR 1086 (T)

The facts are as follows:

The plaintiffs challenged the constitutionality of the Choice on Termination of Pregnancy Act 92 of 1996 that allows a pregnant minor of whatever age to independently consent to the termination of her pregnancy. The plaintiffs sought a declaratory order striking down the relevant provisions. They alleged that a woman below 18 years of age is incapable of giving informed consent as required by the Act and that she has to have the assistance of her parents or guardian when she decides to have her pregnancy terminated. They further alleged that allowing a minor to independently decide to have her pregnancy terminated violates several of her constitutional rights, amongst others, having a child's best interest be of paramount importance.

The defendant raised the exception that the plaintiff's particulars of claim do not disclose a cause of action. The court upheld the exception.

The legal questions are:

1. Are women below the age of 18 incapable of giving informed consent?
2. Does the Termination of Pregnancy Act 92 of 1996 infringe on the rights of women wishing to terminate their pregnancies?

Judge Mojapelo J held that the termination of pregnancy is regulated and the act in question is, does not affront the Constitution. He further held that the right in question is not unregulated and for that reason he made the following order:

1. The exception is upheld
2. The plaintiff's claims are dismissed.

The reasons for the judgment were as follows:

The court held that due to a distinction made in the act between women capable of giving informed consent and those women not capable of giving informed consent, is a rational distinction and is therefore capable of justification. It is therefore NOT unconstitutional.

The court further held that the plaintiff's claim that the best interests of the child clause is infringed upon is unsustainable. The legislative choice opted for in the Act served the best interests of the pregnant child because it is flexible and accommodates the individual position of a girl based on her intellectual, psychological and emotional make up and majority.

Re Beaglehole 1908 TS 49

The facts are as follows:

A testator left an amount of money to beneficiary. The executor of the estate had paid the money to the master of the High Court because the testator could not be traced. The executor applied for an order of to pay the estate over to him (the executor) so he could pay the money to the testators remaining heirs. It was alleged that the executor had not been heard from in over 15 years and therefore is presumed dead. The court refused to issue the presumption of death.

The legal question:

What law system should be applied during the hearing of the case in question?

The judgment:

Judge Innes CJ refused to grant the order of presumption of death when applying Roman-Dutch law principles which are, is his opinion, the correct system of law to be used.

The reasoning:

Judge Innes CJ held that in Roman-Dutch law, no prescribed period of being untraceable constitutes granting an order of presumption of death and the decision is left to the discretion of the judge.

He further held that more accurate inquiries about the whereabouts of the person in question could have been made and therefore did not grant the order of presumption of death.

Ex Parte Pieters 1993 (3) SA 379 (D)

The facts are as follows:

The applicant's father disappeared in 1975. The applicant mother died and left a sum of money to his (the applicant's) father. The applicant applied for and order to either a) an order of presumption of death or b) and order compelling the Master of the High Court to effect payment to him and his siblings, subject to them providing security. There was no evidence that would indicate that the applicant's father is possibly dead, except his age (73). The court did not issue the presumption of death but authorised the Master of the High Court to distribute the money equally between the applicant and his siblings without the necessity of providing security.

The legal question:

Under what circumstances will the court grant an order of presumption of death?

The judgment:

Judge Alexander J held that no presumption of death will be ordered because the applicant's argument is not strong enough to order a presumption of death. The Master is authorised to distribute the amount of R6148.14 equally between the applicant and his siblings.

The reasoning:

The court held that, taking all the known information into account, the information is not enough to presume the person in question as dead. Judge Alexander J referred amongst other cases to *Re Beaglehole* and held that he knows of no rule which would require to court to presume death only on the lapse of years.

J V Director General, Department of Home Affairs 2003 (5) BCLR (CC)

The facts are as follows:

One party to a same-sex life partnership gave birth to twins who had been conceived via *in vitro* fertilisation. The ova of the first applicant were used with donor sperm. Both parties wished to be registered and recognised as the twins' birth-mothers. The Births and Deaths Registration Act 51 of 1992 only made provision for one male and one female parent, thus the first applicant could not be registered as the twins' parent. The applicants approached the Durban High Court. The court *inter alia* ordered the Director-General of Home Affairs to register the second applicant as the twins' mother and the first applicant as the twins' parent. The Durban High Court further declared section 5 of the Children's Status Act 82 of 1987 unconstitutional. The applicants approached the Constitutional Court for confirmation of the decision in question. The Constitutional court confirmed the unconstitutionality of section 5 of the Children's Status Act 82 of 1987.

The legal question:

Is section 5 of the Children's Status Act 82 of 1987 unconstitutional?

The judgement:

The Constitutional court held that section 5 of the Children's Status Act 82 of 1987 is unconstitutional and made the following order:

i. Section 5 of the Children's Status Act 82 of 1987 is declared to inconsistent with the Constitution to the extent that the word "married" appears in that section and to the extent that the section does not include the words "or permanent same-sex life partner" after the word "husband" wherever it appears in that section.
ii. In section 5 of the Children's Status Act 82 of 1987 the word "married" is struck out wherever it appears in that section.
iii. In section 5 of the Children's Status Act 82 1987 the words "or permanent same-sex life partner" are read in the after the word "husband" wherever it appears in that section.
iv. The words in subsection 5(1) (a) "as if the gamete or gametes of that woman or her husband were used for such artificial insemination" are struck out.

The reasoning:

The court held that the discrimination was unfair with regards to gays and lesbians and therefore amended section 5 of the Children's Status Act 82 of 1987 accordingly.

M V R 1989 (1) SA 416 (O)

The facts are as follows:

The applicant and the respondent had sex on a regular basis. The respondent alleged that she was a virgin at the time she and the applicant had had sex on a regular basis. The applicant denied this and said she (the respondent) had another boyfriend. The respondent denied this. In January 1979 the respondent informed the applicant that she was pregnant. The applicant subsequently paid maintenance for eight years. The respondent informed the applicant that she applied for an order of an increased amount of maintenance from the applicant. The applicant applied for paternal testing and the respondent opposed this application. The respondent, in the mean time, married R and the child, S, accepted and loved R as his/her father. The respondent and R planned on telling S, during the next year, that the applicant is his/her father. The court felt that it was crucial for the child's development and happiness that clarity in this matter be reached.

The legal questions are:

1. Is there, in this particular case, need for the court to intervene as "oppervoog" of children.
2. Is it within this court's jurisdiction to compel the mother to subject herself to blood tests?

The Judgment:

Judge Kotze R held that the court has to intervene in this particular case because it would be to the advantage of the child in questions. He further held that the court could compel the respondent to go for blood tests, once again, because it would be to the advantage of the child to know who is his/her father.

The reasoning:

Judge Kotze held that compelling a man that is not the father of the child to pay maintenance is not an advantage to the child that should be considered by the court. He further held that it would be an advantage to know who the real father of the child it, before the respondent told the child that the applicant is his/her father. Judge Kotze ruled that the mother has to go for the blood tests and she should also have to child go for the blood tests in order to clarify if the applicant is the father of the child.

S v L 1992 (3) SA 713 (E)

The facts are as follows:

The appellant alleged the respondent to be the father of her child. The respondent had paid maintenance from time to time but never alleged that he was the father of the child. He admitted to having intercourse with the appellant at the time the child could have been conceived, but contended that he was not the only mad who had done so. The appellant applied to the maintenance court for an increase in maintenance to be paid by the respondent. The respondent opposed the application and requested the appellant to submit herself and the child to blood tests in order to establish whether the respondent was indeed the child's father. The applicant refused. The respondent applied to the high court for an order compelling the appellant to submit herself and the child to medical testing. The order was granted, but the appellant successfully appealed successfully to the full bench.

The legal questions are:

1. Can the court compel the woman to submit herself and the child to blood testing?
2. Should the respondent have approached the Supreme Court for an order compelling the mother to submit herself and the child to blood testing?

The judgment:

The appeal was successful - the mother was not compelled to submit herself and the child to blood testing. Erasmus J further held that the respondent should not have approached the Supreme Court for an order to compel the appellant to submit herself and the child to blood testing. Erasmus J held that respondent should have remained in the maintenance court and there adducted proof of the appellant's refusal to submit herself and the child to blood testing.

The reasoning:

The Supreme Court held that the respondent could not prove, on a balance of probabilities that submitting the child to blood testing would be to the advantage of the child. The child knew she was illegitimate and accepted the respondent as her father. The appellant felt it would cause a feeling of insecurity by the child. The Supreme Court held that they, as upper guardians of minors, do not have the authority to intervene with the custodian parent's decision.

The court further held that they (the Supreme Court) should not lightly intervene in the proceedings of another court, in order to grant a party procedural remedy which it does not have in terms of the lower court's rule of practice.

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LB v YD 2009 (5) SA 463 (T) and YD v LB (A) 2009 (5) SA 479 (GNP)

LB v YD:

The applicant (the alleged father) and the respondent (the mother), who had never married each other, were involved in an intimate relationship between February 2006 and April 2007. The respondent discovered that she was pregnant on 23 March 2007. In April 2007 she became intimately involved with another man, whom she married in July 2007. The respondent's daughter, Y, was born on 8 November 2007. The applicant requested the respondent to submit to blood tests voluntarily to determine paternity with regard to Y. The respondent informed the applicant that she was not prepared to subject herself to a blood test and that it was not in the best interests of Y to do so either.

The applicant then launched the application in the high court for an order directing the respondent to submit herself and Y to blood tests. After considering the facts in Seetal v Pravitha 1983 (3) SA 827 (D), M v R 1989 (1) SA 416 (O) and O v O 1992 (4) SA 137 (C), Murphy J came to the conclusion that the preponderance of authority favoured the proposition that the high court, as the upper guardian of all minors, was entitled to authorise a blood test on a minor despite objections by a custodian parent. He held that it would be in the best interests of Y that paternity be scientifically determined and resolved. He ordered the respondent to submit herself and her minor child Y, within 30 days of the order, to blood tests for the purpose of determining whether the applicant is the biological father of the child Y.

YD v LB (A):

The respondent then applied for leave to appeal in YD v LB (A). The respondent (the applicant in the application for leave to appeal, but to avoid confusion, I shall keep referring to her as the respondent) raised 16 grounds of appeal, but the application for leave to appeal was dismissed.

Discussion:

The position with regard to the use of blood tests to determine paternity in South Africa is very uncertain, and reliance on recent, post-constitutional cases is the only way to determine the courts' attitude with regard to ordering blood tests in a paternity dispute. Apart from D v K

1997 (2) BCLR 209 (N), which was heard after the coming into operation of the Constitution of the Republic of South Africa 200 of 1993 (the interim Constitution), but before the Constitution of the Republic of South Africa, 1996 (the Constitution) came into effect, the present case is the only case that deals with blood tests to determine paternity in a constitutional framework. It is also the first case that deals with blood tests in paternity disputes to be reported in 13 years, and the first case of this nature since the implementation of the Children's Act 38 of 2005. As a result, the decision is an important one.

There are some aspects of Murphy J's judgment that need to be mentioned:

It appears as if he did not properly take cognisance of the marital status of the mother.

She was married at the time of the child's birth. In terms of the maxim pater est quem nuptiae demonstrant Y was born to married parents, and it is presumed that the woman's husband is the child's father. Evidence on a balance of probabilities is needed to rebut the presumption that her husband is her child's father. The court failed to take this into account in its judgment.

Other than the best interests of the child, he did not consider any of the relevant constitutional rights, such as the right to human dignity, freedom and security of the person, and privacy. This unfortunately jeopardises the relevance of the decision.

The decision of the court to compel the respondent and Y to submit to blood tests is welcomed, but because all the facts and presumptions with regard to paternity, as well as all the relevant constitutional rights were not considered, the decision does not provide the much needed guidance as far as this area of the law is concerned.

Frasier V Children's Court, Pretoria North 1997 (2) SA 261 (CC)

The facts are as follows:

The second respondent fell pregnant while she and the applicant were still living together. During her pregnancy, the second respondent decided to give the child up for adoption. The applicant disagreed and launched a series of unsuccessful application to stop the proposed adoption and to have the child handed to him. The applicant applied for review of the Children's court decision by the High Court. On review, the adoption order was set aside and the matter was referred to the Constitutional Court.

The legal question is:

- Is section 18(4) (d) of the Child Care Act 74 of 1983 unconstitutional?
- Should the court declare s 18(4) (d) of the Child Care Act 74 of 1983 invalid or should the court give Parliament an opportunity to correct the act in terms of s 98 (5) of the Constitution of South Africa.

The judgment:

The Constitutional Court made the following order:

1. The court declared s18 (4) (d) of the Child Care Act 74 of 1983 as invalid and amended the act to include the father's consent with regards to adoptions.
2. In terms of the proviso to s98 (5) of the Constitution, Parliament is required within a period of two years to correct the defect in the said provision.
3. The said provision shall remain in force pending its correction by Parliament or the expiry of the period specified in paragraph 2.

The reasoning:

The court held that the Act in question was unconstitutional, because it discriminates unfairly against fathers of extra-marital children on the grounds of their marital status. The court held that it can be argued that the Act also discriminates unfairly on grounds of gender, because of the fact that a mother of an extra-marital child has different rights to that of a extra-marital father.

Motan V Joosub 1930 AD 61

The facts are as follows:

The appellant was in a customary, Muslim, marriage with the respondent. As their union did not constitute a valid marriage, their children were born of unmarried parents. The appellant claimed maintenance from the paternal grandparents. The respondent denied liability. The exception was dismissed and it was held that the paternal grandfather of the children who are born of unmarried parents is not obliged to support them. The appellant unsuccessfully appealed against the decision.

The legal question:

Are paternal grandparents liable to pay maintenance for children of his son born of unmarried parents?

The judgment:

The opinion of the lower court is correct and the appeal therefore is dismissed.

The reasoning:

The court held that according to Roman law, the paternal grandparents were not liable to maintenance of their son's illegitimate children. The court held that in this case, there can be some certainty that the children are those of the son of the grandparents, but in other cases, there is not sufficient certainty regarding paternity. If paternal grandparent were required to pay maintenance for every illegitimate child of their son, it may impose a burden which may be difficult for them to remove by proof.

Pietersen V Maintenance Officer [2004] 1 All SA 117 (C), 2004 (2) BCLR 205 (C)

The facts are as follows:

The applicant is an unmarried student who gave birth to a child in 2003. The child's father admitted to paternity. The child's father did not pay maintenance towards the child, as he had no income. The Maintenance Court also found that the father could not contribute towards maintenance. The applicant's parents supported the applicant and the child. The applicant lodged a maintenance complaint with the maintenance officer to the effect that the child's paternal grandparents are legally liable to maintain the child but failed to do so. The applicant asked the maintenance officer to summon the paternal grandparents to attend the maintenance enquiry. The maintenance officer refused to do so, because the law does not compel the paternal grandparents to pay maintenance towards their unmarried son's children.

The legal question:

1. Does the common-law rule differentiate between people or categories of people? If so?
2. Does the differentiation amount to unfair discrimination?
    I. Does the differentiation amount to discrimination? If it is on a ground specified in section 9 (3), then discrimination will have been established.
    II. If the differentiation amounts to discrimination, does it amount to unfair discrimination? If it has been found to have been on specified ground, then unfairness will be presumed.
3. If the differentiation is found to be unfair then a determination will have to be made as to whether the common-law rule can be justifies under the limitations clause (Section 36 of the Constitution)

The judgment:

Judge Fourie J held:

It is declared that the paternal grandparents have a legal duty to support the extra marital child of the applicant to the same extent as the maternal grandparents.

The first respondent is directed to take necessary steps for an enquiry to be held in terms of section 10 of the Maintenance Act No 99 of 1998, with a view to enquiring into the provision of maintenance, by the second and third respondents, for the said extra marital child of the applicant.

The reasoning:

Judge Fourie J held that the differentiation between children born out of wedlock and extra marital children not only denies extra marital children an equal right to be maintained by their paternal grandparents, but is also not in line with the "best interests of the child" clause in the Bill of Rights.

Louw V MJ & H Trust 1975 (4) SA 268 (T)

The facts are as follows:

While still a minor, the appellant bought a motorcycle from the respondent. While relying on his minority at the time the contract was concluded, the appellant subsequently reclaimed R338 which he had paid to the respondent. The respondent contested on the grounds of misrepresentation by the appellant. The respondent filed a counterclaim for payment of arrear installments and for the value of parts stolen off the motorcycle. It was alleged that the theft was due to the appellant's failure to observe the contractual obligation. The court held that the minor was bound by the contract and that the appellant was liable for the value of the stolen parts.

On appeal to the Transvaal provincial division the appellant argued that the respondent knew the appellant was a minor and should not have accepted the appellant's representation of being emancipated. Alternatively it was argued that the minor's contract could not be enforced even if the contract was induced by misrepresentation and that the minor was accordingly entitled to *restitutio in integrum.*

The legal questions:

1. Could the minor be held accountable even if he misrepresented himself?
2. Is the appellant entitled to *restitutio in integrum?*

The judgment:

The appeal was allowed to the extent that in relation to the counterclaim, the magistrate's judgment should be altered to one of absolution from the instance on the claim for R298.45 and to the judgment for the plaintiff (the appellant) on the claim of R69.

The reasoning:

Judge Eloff J held that the minor could not be held accountable because the contract was void, even if the minor misrepresented his contractual capacity. The respondent was not entitled to claim enforcement of the contract.

It was further held that the minor was not entitled to *restitution in integrum*, not because the contract was void, but because of his fraud.

Edelstein V Edelstein 1952 (3) SA 1 (A)

The facts are as follows:

The appellant was in the custody of her mother and got married with consent of both her parents, while she was still a minor. The appellant and her husband entered into an antenuptial contract prior to the wedding. The contract excluded community of property, community of loss and profit, marital power was excluded. The appellant's mother, only the mother assisted her in entering into the contract. The appellant's husband died and left a will in which the appellant was a beneficiary. The executors of the estate framed the liquidation and the distribution account on the basis that the marriage had been out of community of property. After being advised that the antenuptial contract was invalid, the appellant sought an order declaring that she had been married in community op property and directing the executors to amend the liquidation and distribution account by awarding her half of the net value of the joint estate. The only opposing party was the commissioner of Inland Revenue. The commissioner held that the amount of death duties payable would be less if the order was granted.

The legal question:

Was the contract the minor entered into, with assistance from her mother, a valid contract?

The judgment:

The application was dismissed in the court *a quo*, but succeeded on appeal.

The reasoning:

The minor entered into the contract without the consent/assistance of both her parents (mother and father). The antenuptial contract was thus void and it was held that the parties were married in community of property.

Wood V Davies 1934 CPD 250

The facts are as follows:

While the plaintiff was still a minor, he inherited £10 000. The terms of the will stated that the money would remain in a trust and that the plaintiff would only be entitled to in interest on the capitol. During the plaintiff's minority, the plaintiff's guardian purchased a house on the plaintiff's behalf. A purchase price of £1750 was agreed on and was payable in installments. The value of the property was £1550. Until the plaintiff's majority, the installments were paid out of the interest of the inherited amount. When the plaintiff reached age of majority, a considerable amount of the purchase price was still unpaid. The plaintiff claimed cancellation of the contract and repayment of the amounts he had already paid in terms of the contract. The plaintiff alleged that the contract was prejudicial to him.

The legal question:

1. Had the minor's legal guardian have the authority to enter into the contract on the minor's behalf?
2. Was the contract entered into, prejudicial towards the minor?
3. Was the minor entitled to *restitution in integrum?*

The judgment:

Judge Sutton J held that the plaintiff is entitled to *restitution integrum* and there must be an order for the cancelation of the contract of sale and the return of payments made on the minor's behalf under the contract, together with interest. The defendant is entitled to be placed in *statu quo.* The plaintiff had occupation of the property purchased since May 1st 1929 and he must account the defendant for the use and occupation of the property. The judgment was therefore in favor of the plaintiff.

The reasoning:

Judge Sutton J held that the contract was prejudicial towards the minor, firstly, because the property was bought for £200 more than it was valued at and secondly, it imposed liabilities on the plaintiff he attained when he became a major.

Dickens V Daley 1956 (2) SA 11 (N)

The facts are as follows:

The respondent, a minor, entered into a lease agreement with the appellant. The respondent drew a cheque in favor of the appellant, but the cheque was dishonored as payment had been stopped by the respondent. The appellant sued the respondent for payment in the magistrate's court. In a special plea the respondent admitted to drawing the cheque, but averred that he was a minor and therefore had no *locus standi in iudicio* and that the appellant's claim was accordingly unenforceable. The appellant contended that the respondent was emancipated and was therefore liable on the cheque. The appellant relied on the fact that the respondent had been living with his mother and stepfather and was paying his board and lodging; that the respondent had been working as a clerk for four years, that the respondent's father did not exercise control over the respondent and that he operated on his own bank account. The Magistrate ordered absolution from the instance. The appellant successfully appealed.

The legal question:

Was the respondent tacitly emancipated?

The judgment:

The magistrate erred in granting the absolution from the instance. The appeal was allowed.

The reasoning:

The court held that the respondent was tacitly emancipated, because the respondent's father abandoned the right to exercise power over the respondent's mode of life and such operations. The respondent undertook to maintain himself.

Watson V Koen H/A BMO 1994 (2) SA 489 (O)

The facts are as follows:

The respondent sued the appellant in the magistrate's court in terms of an agreement of sale between them relating to course material. The appellant averred that he could not validly enter into the agreement because he was a minor. The respondent maintained that the appellant was emancipated. The magistrate found in favor of the respondent. The minor successfully appealed against the magistrate's decision.

The legal question:

Is the appellant emancipated, either tacitly or emancipated by his parents?

The judgment:

The court found in favor of the appellant and the appeal was successful.

The reasoning:

Judge Write R held that the respondent could not prove clearly that the appellant was indeed emancipated, either tacitly or by his parents.