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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JBURG**

CASE NUMBER: 2022/218731
NOT REPORTABLE
NOT OF INTEREST TO OTHER JUDGES
NOT REVISED
13.06.23

In the matter between:

M, S

Applicant

And

M, J

First Respondent

M[...] CONSULTANT CC

Second Respondent

Delivered: This judgment was handed down electronically by circulation to the parties and/or their legal representatives by email, and by uploading same onto CaseLines. The date and time for hand-down is deemed to be have been on 13 June 2023.

JUDGEMENT

KHAN AJ:

Introduction

- [1] The Applicant seeks urgent interdictory relief, preventing the First Respondent and the Second Respondent (“the Respondents”) from selling or disposing of the erstwhile matrimonial home, situate at of [...], Midrand, (“the property”), pending the finalization of the divorce proceedings between the Applicant and the First Respondent.
- [2] In the alternative, the Applicant seeks an anti-dissipation interdict, in the event the property has already been sold, in terms of which the proceeds from the sale of the property must be paid over and kept in trust until such time that the divorce proceedings are finalized.

Background

- [3] The parties were married to each other on the 9 February 2017, out of Community of Property, with the application of the Accrual system. On the 13 December 2016, the parties entered into an Antenuptial Contract (“the ANC”), in terms of which the commencement values of their respective estates were set out.
- [4] Relevant to these proceedings is clause 5 of the ANC, which provides as follows:-

“5. *That for the purposes of proof of the net value of their respective assets at the commencement of the intended marriage the intended spouses declared the net value of their respective estates to be as follows.*

5.1 that of J M to be R5,300,000. consisting of:

5.1.1 The immovable property situated at Erf [...], Mabopane X, held by Deed of grant TG3341/1994BP;

5.1.2 The immovable property situated at Erf [...], Zwartkop Extension 4, Gauteng, held by Deed of grant T82027/2002.

5.1.3 The immovable property situated at Unit [...] & Exclusive use area [...], Gauteng, held by Transfer ST 37609/2007 & Notarial Deed for Exclusive use SK 3641/2007S.

5.1.4 J M, shall release to a Family Trust, the property at erf [...], Gauteng, held by Notarial Deed of Lease K5600/2011L. in the name of M[...] Consultants CC”.

[5] On the 21 June 2022, the Applicant instituted divorce action against the First Respondent, alleging physical and emotional abuse. The Applicant alleges that the parties lived together in the property until November 2019 when the Applicant and the minor child vacated the property. The divorce between the parties is

acrimonious and has not been finalized, the Applicant has charged the Respondent criminally and both parties have sought protection orders against each other.

[6] On the 22 March 2023, the Applicant became aware that the First Respondent had advertised the property for sale on Property 24. Counsel for the Respondents' confirmed at the hearing of the matter that the property had not been sold.

[7] The Applicant alleges that the First Respondent, in alienating the property before the accrual claim vests prejudices her claim as it depletes the assets before the determinative date of the accrual claim thereby reducing, if not extinguishing the difference in accrual between the two estates. In addition, that the property is a major asset in the marriage and that she has contributed her finances and project management skills in building the house on the property. The property cost around R12,000,000.00 to build and is on sale in the amount of R11,600 000.00. The Applicant submits that the property is being sold below cost to quickly dispose of it and to dissipate the proceeds of the sale, to her prejudice.

[8] The Respondents' oppose the relief sought and have raised various points *in limine*, the first of which is that the application is not urgent. The First Respondent alleges that the Applicant has failed to set forth explicitly the

circumstances which he avers renders the matter urgent (*sic*) further that the Applicant did not address the reason why she would not be afforded substantial redress at a hearing in due course.

[9] In **East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others (11/33767)**¹, Notshe AJ stated: -

“The import thereof is that the procedure set out in Rule 6(12) is not there for the taking. An Applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in the application in due course. The rules allow the court to come to the assistance of a litigant because if the latter, were to wait for the normal course laid down by the rules, it will not obtain substantial redress.

It is important to note that the rules require absence of substantial redress. This is not equivalent to irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an Applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An Applicant must make out his case in this regard.”

¹ 2011(ZAGPJHC) 196 (23 September 2011) in paras 6 and 7

[10] The abovementioned principle was once again considered in the case of **Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and others**², at paragraphs 63 and 64:

"I proceed to evaluate the Respondent's submission that the matter is not urgent. The evaluation must be undertaken by an analysis of the Applicant's case taken together with allegations by the Respondent which the Applicant does not dispute. Rule 6(12) confers a general judicial discretion on a court to hear a matter urgently ... It seems to me that when urgency is an issue the primary investigation should be to determine whether the Applicant will be afforded substantial redress at a hearing in due course. If the Applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): Whether the Respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the Respondent's and the administration of justice, the strength of the case made by the Applicant and any delay by the Applicant in asserting its rights. This last factor is often called, usually by counsel acting for Respondents, self-created urgency."

² (35248/14) [2014] ZAGPPHC 400; [2014] 4 All SA 67 (GP) (19 June 2014)

[11] Having considered the founding affidavit and heard argument on the issue of urgency, I am persuaded that the Applicant has set out sufficient facts justifying why the application should be heard as a matter of urgency and why the Applicant will not be afforded substantial redress at a hearing in due course. Prior to bringing this application, the Applicant sought clarity from the First Respondent and her Attorneys sought an undertaking from the First Respondent's Attorneys that the property would not be sold. The First Respondent failed to give such an Undertaking and advised that he would proceed with the sale.

[12] The Applicant alleges that should the property be sold, she will suffer irreparable harm as the proceeds of the sale will be dissipated by the First Respondent. The property was listed for sale on the 25 October 2022. It is not known when the property will be sold. The First Respondent has not set out his financial position or the reason for the sale of the property or what informed the Second Respondent's decision to sell the property. It is not known whether the First Respondent will be in a position to pay the Applicant the difference in the accrual should the property be sold and the proceeds be utilised by him.

[13] I am satisfied that the Applicant will not obtain substantial redress at a hearing in due course and I accordingly condone the Applicant's non-compliance with the Rules of Court relating to service and time periods in terms of Rule 6(12).

Marriages subject to Accrual

[14] A marriage that is subject to the accrual system is a marriage out of community of property and community of profit and loss in terms of section 2 of the Matrimonial Property Act 88 of 1984, ("the Act") Each spouse owns and controls his or her own estate. As a result, neither spouse has any right in or claim to any of the assets of the other spouse during the subsistence of the marriage³.

[15] On dissolution of the marriage neither spouse is entitled to any of the assets of the other spouse, because section 3(1) of the Matrimonial Property Act expressly states that:-

"At the dissolution of a marriage subject to the accrual system, by divorce or by the death of one or both of the spouses, the spouse whose estate shows no accrual or a smaller accrual than the estate of the other spouse, or his estate if he is deceased, acquires a claim against the other spouse or his estate for an amount equal to half of the difference between the accrual of the respective estates of the spouses."

[16] Consequently, the spouse whose estate shows the smaller or no accrual is not entitled to claim assets to the value of half the difference between the accruals from the other spouse, he or she only has a monetary claim against the other spouse. In terms of sections 3(1) and (2) of the Act, the accrual claim arises only on dissolution of the marriage. During the subsistence of the marriage, the spouses have a right to share in the accrual of each other's estates. Although a

³ *Reeder v Softline Ltd & Another* 2001 (2) SA 844 (W).

spouse's accrual claim only arises at the dissolution of the marriage⁴, (this being the date the value of the accrual claim is determined), the *right* to share in the accrual of the other spouse's estate arises when the spouses enter into the marriage.

[17] In **MB v NB**⁵ Brassey AJ stated:

“Under the accrual system contemplated by the Matrimonial Property Act 88 of 1994, the parties have an interest in the amount by which each other’s estate improves in value over the marriage. The interest is purely equitable for, questions of dissipation aside, it becomes exigible only ‘at the dissolution of the marriage ... by death or divorce’ in terms of s 4(1) of the Act. Simply put, the effect of the provision is that each party receives, in terms of the operative order, a half share of the amount by which the other spouse’s estate has increased in value during the course of the marriage.”

[18] In **ND v MD**, Gilbert AJ stated,⁶ *“this brings with it the difficulty that one spouse may seek to dissipate his or her assets in anticipation of the dissolution of the marriage and the resultant determination of the value of the accrual claim. A dissipation of assets before that determinative date has two direct negative effects on the accrual claim, the alienator spouse has less assets in his or her estate at the determinative date, which reduces the extent of the difference in accrual between that estate and the estate of the beneficiary spouse, the less*

⁴ *AB v JB* **2016 (5) SA 211** (SCA) at paras 16, 19 and 20

⁵ 2010 SA 3 SA 220 GSJ AT para 41 and 233 F-G

⁶ (24953/2019) [2020] ZAGPJHC 228; [2021] 1 All SA 909 (GJ) (16 September 2020)

assets there are in the alienator spouse's estate once the value of the accrual claim has been determined upon the dissolution of the marriage, the less assets there are available to satisfy that accrual claim once awarded by the court. It is not unusual that the spouse who believes that he or she will have an accrual claim against the other upon dissolution of the marriage will be fearful of the other spouse dissipating assets and so would take steps to protect his or her contingent right to that accrual claim."

[19] The court in **Langebrink v Langebrink**⁷ and **Gernetzky v Gernetzky**⁸ found that the contingent accrual claim is susceptible to preservation by way of an interim interdict preventing the dissipation of assets pending the vesting and determination of that claim. This is so irrespective of the contingent nature of the accrual right but provided that an applicant can demonstrate *prima facie*, although open to some doubt that an accrual claim will accrue in his or her favour, once vested, although the extent thereof need not be determined.

[20] In considering the Applicant's claim for interim interdictory relief, the principles in **Webster v Mitchell**⁹ as modified in **Gool v Minister of Justice**¹⁰ apply. The requirements for interim interdictory relief are trite and as set out in **Setlogelo v Setlogelo**¹¹:-

⁷ 2017 JDR 1059 (GJ),

⁸ In 2007 JDR 0247 (E)

⁹ 1948 (1) SA 1186 (W) 1189

¹⁰ 1955 (2) SA 682 (C) at 688 D – E

¹¹ 1914 AD 21

- 20.1 A *prima facie* right, although open to some doubt on the part of the Applicant,
- 20.2 A well-grounded apprehension of irreparable harm if the interim relief is not granted,
- 20.3 The balance of convenience favours the granting of the interdict,
- 20.4 The absence of any other satisfactory remedy available to the Applicant.

[21] When determining whether the Applicant has satisfied these requirements, I am guided by the approach articulated by Holmes J in *Olympic Passenger Services v Ramlagan*¹².

"It thus appears that where the applicant's right is clear, and the other requisites are present, no difficulty presents itself about granting an interdict. At the other end of the scale, where his prospects of ultimate success are nil, obviously the court will refuse an interdict. Between these two extremes falls the intermediate cases in which, on the papers as a whole, the applicant's prospects of ultimate success may range all the way from strong to weak.

The expression 'prima facie established though open to some doubt' seems to me a brilliantly apt classification of these cases. In such cases, upon the proof of a well-grounded apprehension of irreparable harm, and

¹² 1957 (2) SA 382 (D).

there being no ordinary alternative remedy, the court may grant an interdict.

"It has a discretion, to be exercised judicially upon a consideration of all the facts. Usually this will resolve itself into a nice consideration of all the prospects of success and the balance of convenience. The stronger the prospects of success, the less need for such a balance to favour the applicant: the weaker the prospects of success, the greater the need for the balance of convenience to favour him. "I need hardly add that by balance of convenience is meant the prejudice to the applicant if the interdict be refused, weighed against the prejudice to the respondent if it be granted."

[21] I consider whether the Applicant has satisfied the requirements for an interim interdict. The commencement value of the Applicant's estate is recorded at R2.800 000,00, and that of the First Respondent at R5 300 000.00. It is noted that paragraph 5.1.4 of the ANC is repeated in the Applicant's commencement value. This is relevant as it is apparent that both parties intended for the property to form part of their estates and is further an indication that even though the property was registered in the name of the Second Respondent this was not considered a barrier for the inclusion of the property.

[22] The Applicant alleges that she has a contingent right to share in the accrual on dissolution of the marriage and is accordingly entitled to protect such contingent right, also that the First Respondent's 100% shareholding in the Second Respondent forms part of the estate of the First Respondent and as such would have to be included in the calculation of the accrual. The First Respondent argues that the Applicant has not established *a prima facie* right to a share in the accrual and that the Applicant's claim to accrual vests on dissolution of the marriage, at this stage she does not have a claim, but only a right.

[23] The Respondent submits that he has pleaded that the quantification of the actuarial claim should be referred to a referee for enquiry and report in terms of section 38 of the Superior Courts Act and that the Applicant should forfeit all the patrimonial benefits of the marriage, the Applicant has not replicated to the plea as yet.

[24] As indicated above, the courts in **Langebrink v Langebrink**¹³ and **Gernetzky v Gernetzky**¹⁴ have already found that the contingent accrual claim is susceptible to preservation by way of an interim interdict preventing the dissipation of assets pending the vesting and determination of that claim. The commencement value of the First Respondent's Assets, ***which included 3 others properties (my emphasis)*** together with the property was valued at R5 300 000.00. The property is itself presently for sale at R11.600 000. In my view it is apparent that the Applicant has demonstrated *prima facie*, that an accrual claim will accrue in

¹³ 2017 JDR 1059 (GJ),

¹⁴ In 2007 JDR 0247 (E)

her favour and has accordingly satisfied the first requirement for interdictory relief, that of a prima facie right.

[25] The Applicant sought an undertaking from the First Respondent that the property would not be sold pending the divorce, this was refused. The property has been on the market since 25 October 2022 and is being marketed for less than its market value. The parties are embroiled in a bitter divorce, the First Respondent acknowledges that the divorce will take a long time to be finalized. The Applicant stands to suffer irreparable harm if the property is sold and the proceeds of the sale are squandered by the First Respondent. The First Respondent has not set out his financial position to indicate whether he will be in a position to pay the difference between the accrual of the respective estates to the Applicant upon dissolution of the marriage, despite the sale of the property. The Applicant accordingly has a well-grounded apprehension of irreparable harm.

[26] It is common cause that the property served as the marital home of the parties until such time as the Applicant moved out of the property. Even though the property is registered in the name of the Second Respondent, there is no indication on the papers before me, that the property was ever utilized by the Second Respondent for business operations or for any other purpose save as the marital home where the family resided. The principal place of business of the Second Respondent is noted to be at [...], Centurion.

[27] It is common cause that the First Respondent is the sole shareholder and sole director of the Second Respondent. The Applicant alleges that the First

Respondent holds a major part of his assets through the Second Respondent and that there is no separation of affairs between the First Respondent and the Second Respondent. The Second Respondent is effectively the alter ego of the First Respondent and that inclusion of the property in the Antenuptial contract of the parties is evidence that the First Respondent has never regarded the Second Respondent as an independent company.

[28] The First Respondent denies that the property is listed as part of his commencement value or that he is disposing of the property, he alleges that the property is being disposed of by the Second Respondent. He further alleges that Clause 5.1.4 is a *stipulatio alteri* and should be severed from the rest of the ANC as it requires the First Respondent to release property that does not belong to him but to a juristic person.

[29] There are various problems with this proposition, the first and most glaring being why does the property feature in the ANC as part of the commencement values of the parties? If this was *de facto* the property of the Second Respondent and not simply a legal fiction, it should not feature in the ANC at all. The fact that it does lends credence to the Applicant's allegation that the Second Respondent is merely the alter ego of the First Respondent and not in fact a separate juristic entity. The First Respondent gives no explanation as to what motivated him to include the property in the ANC, knowing that same belonged to the Second Respondent. The First Respondent further does not indicate why an application

to sever clause 5.1.4 was not brought previously, given that the ANC was registered in 2016.

[30] If the First Respondent believed that the property was that of the Second Respondent, completely separate and distinguishable from himself, why would he include this property in his ANC prefaced by the words, *J M, shall release to the Family Trust*,..... why not say the Second Respondent. It appears to this Court that at the time when the ANC was signed the First Respondent considered the property to be his property and not that belonging to the Second Respondent. It is only now that the relationship between the parties has soured that the First Respondent is relying on the legal fiction to exclude the property from the accrual of the parties. The First Respondent has not set out any facts which indicates that the balance of convenience favours him, relying instead on technical defences which do not assist him or this Court. The factors set out above favour the Applicant, who will be prejudiced if the property is sold and the proceeds squandered.

[31] The Applicant sought an undertaking from the Respondent that he would not proceed with the sale before approaching this Court, the First Respondent has refused to accede to this request, the Applicant has no other option but to seek the intervention of the court in order to protect her contingent right in the property from being extinguished prior to the finalization of the divorce. The Applicant is accordingly entitled to interdictory relief.

[32] The First Respondent's remaining points *in limine* are briefly considered, firstly that the case was not properly issued. The First Respondent alleges that the case was issued on the 4th of April 2023 under case number 21873/2022, which is for the divorce proceedings and that this urgent application should have been issued under a different case number as these proceedings do not emanate from the divorce proceedings because the Second Respondent is not a party to the divorce proceedings.

[33] The argument in this regard cannot be countenanced, it is common cause that the parties are involved in a divorce and that case number 21873/2022 has been allocated to such divorce proceedings, whilst it is correct that the Second Respondent is not a party to the proceedings it is also common cause that the Second Respondent is the registered owner of the property. As such, no application in which the property is the subject matter of such application can be actioned without citing the Second Respondent. The argument that the Second Respondent is not a party to these proceedings has itself been blurred by the First Respondent by the inclusion of the property belonging to the Second Respondent in the ANC, it is thus the First Respondent himself that has brought the Second Respondent into the divorce proceedings of the parties. The property and the proprietary consequences of the marriages are inextricably linked and cannot be separated.

[34] The First Respondent submits that the property is registered in the name of the Second Respondent, does not form part of the joint estate of parties married in community of property and that labelling the property as a matrimonial property does not convert it into a matrimonial property. The First Respondent does not offer an explanation as to why the property was included in the ANC of the parties neither does he dispute that that property was used as a marital home by the parties.

[35] The First Respondent argues that the trust has not been established, no trustees exist, the Applicant is not a trustee and has failed to prove that she has the necessary locus standi, her claim has prescribed and that the property does not form of the estate of the parties as clause 5.1.4 indicates that the First Respondent shall release the property to the family trust. Again, the First Respondent fails to explain why the property is listed as part of the commencement value of the parties. Whilst it is common cause that the Trust was not registered, there is again no explanation from the First Respondent as to why the Trust was not registered.

[36] The failure to register the Trust does not exclude the property listed in the commencement value of the parties from being included in the estate of the parties as section 6(3) of the Act demonstrates:

“an antenuptial contract contemplated in subsection (1) or a certified copy thereof, or a statement signed and attested in terms of subsection (1) or a certified copy thereof contemplated in subsection (2), serves as prima facie proof of the net value of the estate of the spouse concerned at the commencement of his marriage.”

[37] In addition, the Supreme Court of Appeal¹⁵ has held,

“when dealing with Trusts in the context of an accrual, the court is empowered to pierce the trust veneer, and order that the value of such assets be taken into account in the calculation of the accrual.”

The alternative claim, anti-dissipatory relief.

[38] Pending dissolution of the marriage, the right to share in the accrual of the other spouse's estate is no more than a contingent right. The right becomes vested only when the marriage is dissolved and only if there is indeed an accrual.¹⁶ If, during the marriage, one of the spouses fraudulently intends (i e with the

¹⁵ P A F v S C F (788/2020) [2022] ZASCA 101; 2022 (6) SA 162 (SCA) (22 June 2022)

¹⁶ *Reeder v Softline Ltd & Another* 2001 (2) SA 844 (W).

intention to prejudice the other spouse) to alienate his or her assets, the spouse who stands to be prejudiced may, in principle, apply for an interdict to prohibit the alienation in order to protect his or her right to share in the other spouse's accrual¹⁷.

[39] The Appellate division in the leading case of *Knox D'Arcy Ltd v Jamieson*¹⁸, observed that:

"anti-dissipation" suffers from the defect that in most cases, and certainly in the present case, the interdict is not sought to prevent the respondent from dissipating his assets, but rather from preserving them so well that the applicant cannot get his hands on them. Since the purpose of the interdict is to prevent a person (the intended defendant) who can be shown to have assets and who is about to defeat the plaintiff's claim, or to render it hollow, by secreting or dissipating assets before judgment can be obtained or executed, and thereby successfully defeating the ends of justice by doing so, the applicant who bears the onus to establish the necessary requirements for the grant of the interdict, need show a particular state of mind on the part of the respondent, i e, that he is getting rid of the funds, or is likely to do so, with the intention of defeating the claims of creditors. But it is not essential to establish an intention on the part of the respondent to frustrate an anticipated judgement if the conduct of the respondent is likely to have that effect".

¹⁷ *Reeder v Softline Ltd & Another* 2001(2) SA 844 (W)

¹⁸ *Knox D'Arcy Ltd. and Others v Jamieson and Others* (283/95) [1996] ZASCA 58; 1996 (4) SA 348 (SCA); [1996] 3 All SA 669 (A); (29 May 1996)

[40] As for the standard of proof required and the manner in which disputed facts are to be approached in determining whether the interdict should be granted or not the Court¹⁹ concluded as follows:

“The basis of the petitioners' claim as set out in the petition for leave to appeal and their heads of argument is that they have proved prima facie that the respondents had an intention to defeat the petitioners' claims, or to render them hollow, by secreting their assets. It was common cause that if these facts could be proved, together with the other requirements for an interim interdict, the petitioners would have a good case, and for the reasons given above I agree with this approach. There was some argument on whether the fact that assets were secreted with the intent to thwart the petitioners' claim had to be proved on a balance of probabilities or merely prima facie. However, it seems to me that here also the relative strength or weakness of the petitioners' proof would be a factor to be taken into account and weighed against other features in deciding whether an interim interdict should be granted.”

[41] In **RS v MS & others**,²⁰ the wife sought an anti-dissipation interdict against her husband, restraining him from withdrawing or receiving funds held in his name pending finalisation of the spouses' divorce proceedings. The court pointed out that one spouse does not have a vested right in any of the assets invested or registered in the name of the other spouse²¹. Before the divorce, the spouse

¹⁹ Knox D'Arcy Ltd. and Others v Jamieson and Others (283/95) [1996] ZASCA 58; 1996 (4) SA 348 (SCA); [1996] 3 All SA 669 (A); (29 May 1996)

²⁰ 2014 (2) SA 511 (GJ)

²¹ paragraph 11

whose estate shows the smaller accrual merely has a contingent right to claim half of the difference between the accruals in the spouses' estates on divorce²².

[42] In order successfully to protect a contingent right by way of an interdict *pendente lite*, the applicant must prove that: (a) the respondent has assets within the jurisdiction of the court; (b) the respondent, *prima facie*, has no *bona fide* defence against the applicant's alleged contingent right; (c) the respondent has the intention to defeat the applicant's claim by dissipating or secreting assets; and (d) the applicant has a well-founded apprehension of irreparable loss, should the interdict not be granted²³.

[43] The court in this instance found that the applicant had failed to prove that these requirements had been satisfied as:-

43.1 The papers did not show that the husband intended to defeat the wife's claim by dissipating his assets, his withdrawal of funds and the scope of those withdrawals were not so extraordinary that they warranted an inference of *mala fides*. Furthermore, a substantial part of his financial investments could not be drawn on for another thirteen years.

43.2 The husband further offered to retain, untouched, assets totalling some R9 million, which he alleged would cover any claim his wife might eventually

²² paragraphs 12 and 13

²³ paragraphs 17 and 18

prove against him²⁴. These facts showed an absence of *mala fides* on the part of the husband²⁵.

43.3 The wife also failed to show a well-founded apprehension of irreparable loss, since her husband would be able to meet whatever claim she could prove in the divorce proceedings. Furthermore, if the interdict were to be granted, the husband would be deprived of the working capital he required to be able to conduct his business, and his business and cash flow would be significantly prejudiced.

[44] In the present case, the First Respondent does not deny that the property is on the market and it is apparent that he has every intention to proceed with the sale. He gives no justification as to why the property is on the market and why he will be prejudiced if same is not sold, his attitude is quite simply, the property is not his, it belongs to the Second Respondent, he is not selling the property, the Second Respondent is, the property is not part of his commencement value and paragraph 5.1.4 of the ANC should be severed from the remainder of the contract. The first Respondent further fails to place any facts before court as to his finances or the business operations of the Second Respondent and it appears from the papers that the Second Respondent does not conduct business from the property.

²⁴ paragraphs 24 and 25

²⁵ paragraph 26

[45] The First Respondent indicates that the property is not a matrimonial property but does not dispute the Applicant's version that the parties lived in the property as a family until November 2019. The Respondent raises various points *in limine* but fails to deal with the allegations of dissipation levelled against him, choosing rather to rely on technical defences, which in my view do not assist him.

[46] It is common cause that the property is located within the jurisdiction of this court, the First Respondent gives no explanation as to why the property is being sold, as indicated above, has placed no information before this Court to show that on divorce the Applicant's claim for accrual will not be prejudiced even if the property is sold.

[47] That the First Respondent relies on the fact that it is the Second Respondent who is the owner of the property and who is selling the property, fails to give an explanation as to why such property is featured in the commencement value in the ANC or how it is that he was able to include the property albeit not being the owner is indicative of the fact that the First Respondent intends to prejudice the Applicant's claim. In the circumstances, I make an order in the following terms:

Order

1. The application be and is hereby heard as an urgent application in terms of the provisions of Rule 6(12) of the Uniform Rules of Court, the Applicant's

non-compliance with the rules relating to service and time periods is condoned.

2. The First and Second Respondents are interdicted from selling or disposing of the property situate at of [...], Midrand, ("the property") pending the finalization of the divorce proceedings between the Applicant and the First Respondent.
3. In the event that the property has already been sold, the proceeds from the sale of the property must be paid over and kept in the Trust Account of an Attorney, until such time that the divorce proceedings are finalized.
4. The First and Second Respondents are ordered to pay costs on an attorney and client scale.

J L KHAN

*Acting Judge of the High Court
Gauteng Local Division, Jburg*

Heard: 14 April 2023
Judgment: 13 June 2023

Applicant's Counsel: Mr V M Nkoana
Instructed by: V M Nkoana Attorneys

First and Second Respondent's Counsel: Mr S N Molele
Instructed by: S Molele Attorneys