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REPUBLIC OF SOUTH AFRICA
THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- (1) NOT REPORTABLE
(2) NOT OF INTEREST TO OTHER JUDGES

CASE NO: 51099/2007

15/3/2018

In the matter between:

H, M E

Applicant

and

H, M J

Respondent

JUDGMENT

SHANGISA AJ:

Introduction

- 1 The applicant seeks an order for the appointment of the liquidator and receiver of the parties' joint estate. The application is opposed by the respondent. Before considering the issues, I consider it convenient to set out a brief factual background to the dispute between the parties.

Factual Matrix

- 2 The applicant and the respondent ("the parties") were married to each other in-community of property on 11 August 1973. On 08 February 2010, the parties' marriage was dissolved by an order of decree of divorce of this court.
- 3 Subsequent to the aforementioned order of divorce, on 30 November 2015 the parties entered into a settlement agreement the effect of which was to amend the order of decree of divorce of 08 February 2010.
- 4 The nub of the issue between the parties turns on the question as to whether the applicant is entitled to have a liquidator appointed to divide the joint estate of the parties.
- 5 At the outset it is worth noting that the applicant has made numerous attempts to secure the respondent's agreement on the division of the joint estate. As appears from the common cause facts, the respondent has not been amenable to the applicant's overtures. In what follows I therefore deal with some of the applicant's aforementioned attempts and the basis upon which the respondent resists the present application.
- 6 The applicant retired from work in December 2014. She contends that the respondent has control and possession of the two movable properties owned by the parties' joint estate. He also controls other assets of the joint estate including a number of vehicles.
- 7 The applicant contends that on the day of her divorce to her husband in 2010, the respondent, the parties immediately entered into a settlement agreement. The latter provided for the division of the parties' joint estate.
- 8 However, despite the terms of the settlement agreement reached in 2010, the applicant contends that her husband continuously frustrated her by failing to cooperate and that she was consequently prejudiced by his

conduct.

- 9 I pause here to mention that the main thrust of the settlement agreement that was made an order of court is that the parties' joint estate be divided in two equal halves, and that the value of the estate be determined as at the date of divorce.
- 10 Owing to the respondent's refusal to abide by the order of court as set out above, in 2011 the applicant approached the high court for a further relief. In effect, she sought to compel her former husband's compliance with the court order that required a division of the joint estate.
- 11 On 30 November 2015 the applicant obtained a final order which provided for the division of the parties' joint estate in two equal halves. The effect of the order of 30 November 2015 was that the earlier settlement of 2010 was cancelled.
- 12 The applicant asserts that the joint estate comprises mainly of the two immovable properties, fifteen motor vehicles and some household furniture. The immovable properties that form part of the joint estate are situated in the Provinces of Gauteng and Limpopo.
- 13 On 15 March 2016 the parties' attorneys attempted to reach an agreement on the division of the joint estate. However, such attempts were unsuccessful. The applicant contends that there has been no willingness on the part of the respondent's to comply with the court order of 2015 and that consequently, the respondent refuses without justification to have the division of the joint estate effected.

The issues

- 14 The applicant accordingly seeks an order for the appointment of a liquidator and receiver to divide the joint estate.
- 15 The respondent opposes the application on the basis that he bought the immovable property in Limpopo solely for his mother. He accordingly avers in his answering affidavit that the Limpopo property was "*wrongfully included in the joint estate.*" He proffers no further substantiation or factual

basis for his assertion that the Limpopo property does not form part of the joint estate.

- 16 The respondent also opposes the appointment of the Liquidator and Receiver as suggested by the applicant. Instead, he contends that the Liquidator and Receiver should be appointed by the President of the Law Society. However, he does not refute the applicant's suggestion that the Liquidator and Receiver she has suggested is an impartial and independent attorney of this court. It is also noteworthy that despite being invited by the applicant's attorneys to suggest a suitable name of the liquidator and receiver, he has failed to do so.
- 17 The respondent places much emphasis on the fact that the Liquidator and Receiver must be appointed by agreement between the parties whilst refusing to suggest one. However, if one pays regard to the applicant's numerous attempts to have the division of the joint estate reach finality, and the respondent's refusal to comply with court orders, including the cancelled previous settlement agreement of 2010, it seems clear the respondent is hesitant to have the matter finalized. Whilst his conduct is prejudicial to the applicant, it seems to suit him since he controls the important assets of the joint estate including the two immovable properties and the vehicles.
- 18 I should also mention that the respondent contends that part of the joint estate took place in terms of the 2010 settlement agreement. He then avers that the applicant took possession of some of the movable items that form part of the joint estate. He also contends as I have already mentioned above, that the Limpopo property does not form part of the joint estate. That is not all, he also argues that the applicant earned a provident fund, and contends that it should form part of the joint estate.
- 19 It is easy to dispose of the respondent's contention about the pension amount obtained by the applicant. She states that she received a sum of R227 682.76 in April 2015. She argues that she used some of the proceeds to finance the litigation against the respondent and that she uses

part of the proceeds as a means of her daily sustenance.

Does the Limpopo Property form part of the joint estate?

- 20 In my view, the common cause facts clearly establish that the parties acquired assets of the joint estate, including both immovable properties, during the subsistence of their marriage in community of property. Significantly, the respondent does not dispute that the Limpopo property was acquired during such subsistence of the parties' marriage in community of property. Instead, he makes a bald assertion that he meant to exclude it from the joint estate.
- 21 In any event, there is a court order of 30 November 2015 which clearly states that the joint estate must be divided equally between the applicant and the respondent. That being the case, the Limpopo property also forms part of the joint estate since the parties were married in community of property.
- 22 There is simply no merit in the respondent's opposition. His defence appears calculated to prejudice the applicant by failing to have the equal division of the joint estate. What is more, the respondent has advanced unmeritorious and spurious grounds as bases for his opposition. That is so if one considers that there is this court's order with which the respondent appears reluctant to comply with. His conduct in the face of the court order of 30 November 2015 verges on the contempt of court.

Conclusion

- 23 The aforementioned being the case, I am satisfied that the applicant has made out a proper case for the appointment of the Receiver and Liquidator of the parties' joint estate. There is ample justification for the appointment of an independent and impartial party as a receiver and liquidator who should attend to the equal division of the parties' joint

estate. The applicant has suggested the name of an attorney of this court, Mr. Phillip Jordaan. The respondent has not proffered any principled objection to the aforesaid appointment. In the absence of any alternative suggestion by the respondent, I accordingly intend making an order of the applicant's suggested appointee.

- 24 I hasten to add that, contrary to the respondent's assertions, on the facts of this matter the immovable property situated in [...] Limpopo forms part of the parties' joint estate. It must therefore be included in the assets that form part of the joint estate.

Costs

- 25 I should perhaps here pause and note that on 30 November 2015 this court ordered the respondent to pay the costs on an attorney and client scale. It seems to me that a similar order is equally warranted in this matter. The respondent has deliberately ignored and blatantly failed to comply with at least two previous court orders of this court, of 2010 and 2015. He filed an answering affidavit in which he opposed the granting of the relief. He has deliberately been frustrating the applicant in the finalization of the division of the joint estate as contemplated in the order of this court of 30 November 2015.
- 26 In the ordinary course of events the appropriate costs order of this application would have been costs in the liquidation. However, in the circumstances of this matter, the respondent's conduct warrants the court's strongest possible censure. It therefore seems to me that it is appropriate in the circumstances of this matter to visit the respondent with a punitive costs order. I accordingly agree with counsel for the applicant that the conduct of the respondent warrants a costs order on a punitive scale.
- 27 In the premises I make the following order:

1. That PHILLIP JORDAAN of DIVORCE SETTLEMENT SERVICES of

PRETORIA be and is hereby appointed as Liquidator of the joint estate which exists between the Applicant and the Respondent with the powers and obligations as set out in ANNEXURE "MEH6" attached to the Applicant's Notice of Motion.

2. The respondent is ordered to pay the costs of the applicant on an attorney and client scale.

SHANGISA AJ
Acting Judge of the High Court,
Gauteng Division, Pretoria

DATE OF JUDGMENT:

APPEARANCES:

COUNSEL FOR THE APPLICANT:

Mr. L.E SEKELE

INSTRUCTED BY:

SIHLANGU ATTORNEYS

COUNSEL FOR THE RESPONDENT:

INSTRUCTED BY: