

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 57534/14

IN THE MATTER BETWEEN

G..... T..... L.....

Applicant

And

N..... E..... L.....

Respondent

JUDGMENT

LEGODI J

[1] In this application a relief is sought as follows:

*“1. That Rynhart Kruger Attorney of 658 Wainright Street, Moreleta Park, Pretoria be appointed as Liquidator and Receiver of the immoveable property situated at 1....., Diepkloof, Zone, Johannesburg in the joint estate of the parties and to effect the division of the proceeds thereof in accordance with Powers and Duties of Liquidator (**Annexure “X”**).*

2. Costs of this Application to be paid by the Respondent in the event that the Respondent opposes this application, alternatively that the costs of this application are to be costs in the liquidation of the immoveable property of the joint estate in the event of the Respondent not opposing this application;

3. Further and/or alternative relief’.

[2] The respondent, the ex-husband of the applicant, is opposing the application on the basis that the settlement agreement which was made an order of the court contains specific provisions dealing with the manner in which their joint estate is to be wound up and divided and that the route followed by the applicant is not provided in the agreement.

[3] The parties divorced on the 16 May 2012 and settlement agreement was made an order of the court. In terms of clause 2.1.2.1 of the agreement, the parties agreed that their joint immovable property shall be evaluated by three valuers or reputable estate agents, which valuers or estate agents shall be nominated by an attorney recommended by the Law Society of the Northern Provinces and the applicant’s attorneys of record were to

request the Law Society to make such recommendation within fourteen days after the decree of divorce was received from the Registrar of the divorce court.

[4] On 22 May 2012 the applicant's attorneys requested the Law Society to nominate an attorney to appoint three estate agents, to evaluate the immovable property of the parties. There was no response to this letter.

[5] On the 31 October 2012 the respondent's attorneys addressed a letter to the applicant's attorneys and recorded as follows:

- "7. Our client is willing to pay your client out in terms of the settlement relating to the immovable property situated at 1 Diepkloof Zone Soweto.*
- 2. We enclose herewith the valuation by the bank FNB and the estate agent GM Real Estate being R460 000-00 (four hundred and fourty thousand).*
- 3. The bond outstanding as at date of divorce is approximately R75 000.00*
- 4. The lights outstanding is R19 131-60 and the rates and water is R15 841-*

00.

In the circumstances our client offers your client the sum of R165 013-70

- R440 000-00*
- R 75 000-00 mortgage bond*
- R 19131-60 electricity*
- R 15 841-00 rates, water & refuse*

R330 027-40 - 2

R165 013.70

[6] On 28 November 2012, the applicant's attorneys responded to the letter of 31 October 2012 as follows:

"We refer to the above and your letter dated 31 October 2012

Kindly be advised that our client does not accept the valuation as calculated by your client.

Our client will proceed to obtain a valuation of the property and we request that your client co-operates in granting access to the valuator to inspect the property for such purpose.

Your client is not entitled to deduct the electricity account from such value as he has been solely responsible for such use and non-payment.

We shall revert to you as soon as the valuation has been done in order to calculate the average value with that of GM Real Estate".

[7] On the 15 January 2013 the applicant though her attorneys made proposal to the respondent as follows:

7.1 That the respondent pays R250 000 in respect of the applicant's share of the immovable property,

7.2 That the respondent be responsible for any amount due on the property including the

outstanding bond, water and electricity,

7.3 That the respondent should advise the applicant when it would be suitable for the valuator to inspect the property, should the respondent not accept the offer for division. The respondent was further requested to provide about three days on which the valuation could be made.

[8] A response by the respondent to the letter of the 15 January 2013 was that the house's value was R440 000 which valuation was already rejected by the applicant. The respondent however, failed to respond to provide dates on which the house could be valued by an estate agent. Instead, on the 7 February 2013 a letter was addressed to the applicant's attorneys in which it was recorded:

"We refer to our letter dated 24 January 2013.

We await a response to our letter or we would be applying to appoint a receiver or liquidator should we not receive a response on or before 15 February 2013".

[9] On the 25 February 2013 the applicant's attorneys addressed a letter to the respondent's attorneys and recorded:

"We refer to the above matter. Our client obtained a valuation despite your failure to provide us with dates and times suitable for the valuator to enter the residence.

Please find attached hereto the valuation as obtained by our client for the said immovable property.

We refer you to the provisions of the settlement agreement regarding the valuations and purchase of our client's half share therein. We further refer you to the provisions regarding debts payable by the respective parties of debts in his or her name.

We await your client's confirmation of purchase of our client's 50% share. Should your client still dispute this, we shall proceed to enforce the provisions of the settlement agreement at your client's cost. There is no need for a liquidator as a settlement agreement exists and furthermore, we have dealt with several liquidators who take 10% of the value involved. Hence your proposed liquidator requesting 30% is unacceptable. We await to hear from you".

[10] The value indicated as per the valuation certificate referred to in the letter of 25 February 2013 was R650 000. On 18 March 2013 the respondent's attorneys addressed a letter to the applicant's attorneys advising that in the light of the valuation obtained by the applicant, the respondent could not buy out the applicant and instead, suggested that the applicant should buy out the respondent. This proposal was not acceptable to the applicant. She therefore suggested that the house be sold and an undertaking was also sought from the respondent that he will not frustrate the efforts to ensure that valuers or estate agents

are given access to the house to have it valued. It was further suggested to the respondent that if the property is not sold within six months from the 25 March 2013, a liquidator be appointed to sell the house.

[11] Instead of responding positively to the proposal, the respondent on the 12 April 2013 caused a letter to be written to the applicant's attorney in which it was simply recorded as follows:

"The above matter refers.

Kindly be advised that our client is willing to offer your client R220 000.

We await your response. "

[12] A response to the letter 12 April 2013 is contained in a letter from the applicant's attorneys in which is recorded:

"We refer to the above matter.

Our client has advised us that she is willing to settle as follows:

- 1. Your client shall pay our client an amount of R250 000.00 in respect of her share of the immovable property.*
- 2. Your client shall be solely responsible for any amounts due on the property, including the outstanding bond, water and electricity, of which he has had the sole use and failed to pay for such use, as well as any rates and taxes.*

Should your client not accept the above, kindly advise us if our client can proceed to appoint estate agents to sell the said property. Should your client hamper the selling of the property, our client shall proceed to approach the court for the appointment of a liquidator in order to sell the property without interference from your client so that the proceeds may be divided".

[13] On the 20 May 2013 the respondent replied and stated:

"We refer to your letter dated 3 May 2013 received on 6 May 2013.

We have consulted our client herein. Your client is responsible and liable for the 50% of the electricity and water, rates and taxes as up to the date of divorce. The child is living with our client and using the lights and water. Your client is also liable for ¹A the value of the house, less your client's share of the liabilities as at date of divorce.

Kindly furnishes us with your reciprocal valuations as per the settlement agreement"¹.

[14] In dealing with the letter of the 20 May 2013, the applicant in her answering affidavit states:

*"... On **20 May 2013**, the Respondent's attorneys addressed a further letter, which I attach hereto as **Annexure "O"**, in which they now attempted to reduce the amount further by claiming I was responsible for half the bond payments from the date of issuing the summons, which argument is bad in law, as I had vacated the property and the electricity*

*and water accounts which the Respondent had failed to pay I can also mention that I moved out of the communal home on 3 March 2008 due to the Respondent's violence and he has since that date, he enjoyed the exclusive use of the property. The utilities accounts were in his name and it was agreed in paragraph 3 of **Annexure "B"** that each party was to pay the debts in his or her name. Therefore his argument carried no weight. He also had a tenant, his brother, living with him, who he admitted, under oath, contributed to the expenses".*

[15] The applicant sees the conduct of the respondent as being indicative of a person who is not willing to cooperate. Many attempts to sell the house are said to have been deliberately frustrated by the respondent. For example, two interested buyers offered to buy the house in excess of R600 000 but that did not happen as the respondent is said to been uncooperative in allowing access to the house. The Respondent was warned that if the parties did not resolve the dispute, the court would be approached for the appointment of a liquidator.

[16] In paragraph 12 of the founding affidavit, the applicant states:

*"On 12 June 2013, the Respondent's attorney of record responded, I attach hereto a copy thereof as **Annexure "Q"** In the last paragraph of the said letter the Respondent's attorney advises that a liquidator would take 30% of the estate as his fees. It is clear from this response that there will be no resolution. She further estates that the taxed costs would also be paid within the next week".*

[17] I gave background in the preceding paragraphs so that the respondent's main defence can be seen in context. In paragraphs 5.1 and 5.2 of the respondent's written heads is contended as follows:

"5.1 In casu, the Applicant have failed to implement the terms of their settlement agreement and yet, it is the applicant who has come to this court to ask for a settlement of the mode of which the property is to be divided (which had already been determined and agreed upon by the Respondent);

5.2 The Applicant had refused to cooperate or abide by the provisions of the settlement agreement The mode of division had been agreed upon an attorney appointed by the Law Society in terms of 2.1.2.1 of the settlement agreement has to be appointed"

[18] I am satisfied that the parties are unable to resolve the dispute under discussion. Furthermore, it is not like in terms of the agreement, the applicant is not entitled to approach the court. In clause 2.1.2.6 of the agreement and in particular the last sentence, it is recorded:

"Should the Defendant in any obstruct such sale, the plaintiff may approach a court having

jurisdiction in order to appoint a divider to take control of and to sell the property, in which case the Defendant shall be liable for the costs of such application"

[19] In the circumstances of the present case, there can be no defence to this quotation and "obstruct such sale" should be understood to refer to every step leading to the actual sale and when such steps are delayed, frustrated and or obstructed, the applicant should be entitled to approach the court.

[20] Consequently, I make an order as follows:

20.1 Rynhart Kruger Attorney of 658 Wainright Street, Moreleta Park, Pretoria is hereby appointed as Liquidator and Receiver of the immovable property situated at 1....., Diepkloof, Zone, Johannesburg in the joint estate of the parties and to effect the division of the proceeds thereof in accordance with the Powers and Duties of Liquidator (Annexure "X");

20.2 The respondent to pay the costs of this application.

M F LEGODI

JUDGE OF THE HIGH COURT

FOR THE APPLICANT: NICOLE MITCHELL

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HEARD ON: 25 MAY 2015

JUDGMENT HANDED DOWN: 19 JUNE 2015

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER:

In the matter between:-

GRACE THOBILE LEBUSHA

Applicant

And

NKGELE EDWARD LEBUSHA

Respondent

POWERS AND DUTIES OF LIQUIDATOR

1. The Liquidator shall take over the parties immoveable property situated at 1....., Diepkloof, Zone, Johannesburg and shall enjoy all the powers as administrator thereof. Without derogating from the generality of the foregoing, the Liquidator shall also be entitled:-
 - 1.1 to obtain the outstanding amount due to FNB on the mortgage bond registered over the immoveable property with account number 00..... directly from First National Bank;
 - 1.2 to instruct or appoint any estate agents or valuers to obtain a valuation of the parties immoveable property;

- 1.3 to instruct or appoint any estate agents to sell the parties immoveable property;
- 1.4 to sell the immoveable property of the parties immediately by private sale or by private or public auction;
- 1.5 to obtain market related valuations of all assets referred to in **Annexure “L1”** of the Settlement Agreement, **Annexure “B”**, excluding items 1, 3 and 9 and to, at his discretion, attach a market related replacement value to each item which the Respondent refused to hand over to the Applicant and to allocate such values to the Applicant from the proceeds of the sale of the immoveable property from the Respondent share of his 50% share of the nett proceeds;
- 1.6 to pay, from the gross proceeds of the sale of the immoveable property, the following:
 - 1.6.1 the balance of the mortgage bond at FNB;
 - 1.6.2 the taxed costs of this application in accordance with the order of this Honourable Court, whether it be from the Respondent's 50% share of the nett proceeds or from the gross proceeds;
 - 1.6.3 any estate agent or auctioneers commission;
 - 1.6.4 any valuers utilized;
 - 1.6.5 the liquidation fees, to a maximum of 10% of the value of the immoveable property and valuation allocated for the assets in paragraph 1.5 above;
- 1.7 to submit, after completion of his duties referred to above, a full report of his allocations to both the Applicant and the Respondent and to pay to the parties the following:
 - 1.7.1 50% of the nett proceeds to be paid to the Applicant;

1.7.2 the amount allocated by him of the assets listed in **Annexure “L1”** not received by the Applicant in accordance with the provisions of paragraph 1.5 above to be paid to the Applicant from the Respondent's 50% share of the nett proceeds;

1.7.3 the balance of the Respondent's 50% share to be paid to the Respondent.

1.8 to sign any documents on behalf of the Applicant and Respondent as may be necessary to effect the sale and transfer of the immoveable property to the purchaser thereof;

1.9 to give the Respondent a first right to purchase the immoveable property, which right must be exercised within 14 (fourteen) days

after the liquidator has advised the Respondent of the valuation of the property and assets in **Annexure “L1”**, in which case the Respondent must pay to the liquidator 50% of such valuation together with any additional amount and/or costs as calculated by the liquidator, which amount must be paid to the liquidator within 60 (sixty) days after exercising his right to purchase the immoveable property, failure of which the liquidator shall proceed immediately with the sale of the property by private sale or private or public auction.

1.10 to apply to this Court for any further directions as he shall or may consider necessary and to recover such costs from one or both parties or from the proceeds of the sale of the immoveable property;

1.11 to instruct and appoint attorneys and/or counsel to institute legal proceedings, including an application for the eviction of the Respondent if the Respondent refuses to co-operate with the sale of the immoveable property or obstructs the liquidator in the course of performing his duties to sell the immoveable property;