



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 66445/2020

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

19/06/2025

In the application of:

PIETER HENDRIK STRYDOM N.O.

Applicant

(in his capacity as Executor in the estate of late Vicky Adele Jennings)

and

JUSTIN BARRY JENNINGS

First Respondent

REGISTRAR OF DEEDS

Second Respondent

JUDGMENT

LABUSCHAGNE J

The following order was granted *ex tempore* with reasons to follow:

ORDER

- [1] The attorney of the first respondent is directed to come on record forthwith and to upload the necessary notice onto CaseLines.
- [2] The consolidation application of the first respondent is dismissed with costs, such costs to include the costs of the curator ad litem, on Scale B.
- [3] It is confirmed that the death of Dr Jennings terminated the marriage with the first respondent and her joint ownership of immovable properties held in joint ownership with the first respondent.
- [4] The draft order commencing at CaseLines 032-6 is attached hereto marked "X" and is made an order of court.

JUDGMENT - REASONS

- [1] The applicant is the executor of the late Dr Vicky Adele Jennings who owned two immovable properties jointly with her spouse, the first respondent. One is situated at Carswald Estate in Midrand and the other in the Eastern Cape. They were in the midst of divorce proceedings when Dr Jennings commenced this application for termination of their joint ownership.
- [2] There are two minor children, aged 11 and 7, whose interests are protected in the condonation application referred to below by their curatrix ad litem, Adv Becker.

[3] In the pending divorce proceedings the issues are the maintenance of their two minor children, their primary care and the application of the accrual system. The applicant has since passed away and her estate is represented by her executor, who persists in the application. The first respondent brought a counter-application for consolidation of this application with the divorce proceedings.

[4] The death of Dr Jennings has terminated both the marriage and the joint ownership in the two immovable properties (see the authorities below). What remains in these termination proceedings, absent agreement between the executor and the first respondent, is to determine a way to give effect to the termination of joint ownership.

THE CONSOLIDATION APPLICATION

[5] The first respondent has brought a substantive consolidation application for consolidation of the application for termination of joint ownership and the divorce proceedings. The bulk of the argument centred on the consolidation application. Counsel for the first respondent contends that the relief sought in the application and the divorce overlap to such an extent that it is convenient to consolidate the two processes. The consolidation was opposed on the basis that there is not an overlap, and the divorce should go to trial on the remaining disputes. The curatrix made common cause with the applicant in opposing the consolidation.

- [6] It is trite that consolidation would be appropriate where it would avoid a multiplicity of actions on the same issues. In this instance there are compelling reasons why this is not applicable on the current facts.
- [7] Save for the best interests of the minors, what remains to be decided in the divorce is not the distribution or liquidation of assets, but the extent of an accrual claim. It is a claim eventually sounding in money.
- [8] In **BM v BNG** (unreported case number 2008/25274) (South Gauteng High Court, Johannesburg – as it then was) Brassey AJ describes a party's interest in an accrual in divorce proceedings as *"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."*
- [9] The right to share is not a vested right but a contingent right to participate in the benefits of the accrual upon dissolution of the marriage (Cloete J in **Reeder v Softline Ltd and Another** 2001 (2) SA 844 (W) at 848 I to 849 B).
- [10] The disposal of property jointly owned is not part of a claim to share in an accrual. At best it may form part of a court's determination of how an established accrual claim is to be discharged. But in this instance the right to an accrual first needs to be established at trial.
- [11] A second reason why the consolidation is not appropriate is because it seeks to consolidate an application with an action. No suggestion of how the

pleadings will look was offered. On the face of it, it is undesirable to consolidate processes that are not designed to be consolidated.

- [12] I am not persuaded that a consolidation would save court time. On the contrary, it will introduce contrived concepts of what the pleadings in a hybrid process consisting of both motion and action proceedings, would be. The consolidation application therefore cannot succeed.

THE JOINT OWNERSHIP

- [13] The death of Dr Jennings terminated the joint ownership. In **Havemann's Assignee v Havemann's Executor** 1927 AD 473 Wessels JA states at 477(in fine):

“During the lifetime of the spouses, D. A. Havemann did not own the estate in two capacities, i.e., as the owner of the one half and possessor of the other half. The spouses during their lifetime were the joint owners of the whole, and only upon the death of one was the joint ownership broken. Mrs. Havemann would naturally therefore, look upon her husband as the owner of the estate which he held in his possession. It must be noted that no life interest is specifically bequeathed to the survivor, but the latter is told to remain in full possession.”

- [14] In terms of the Administration of Estates Act, 66 of 1965, her interest in the property firstly passed to the Master and is now administered by her duly appointed Executor. In the absence of agreement between the parties the

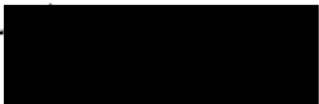
first respondent has hardly any defence to a claim for sale of the properties in question.

- [15] The termination of joint ownership by means of the *actio communi dividundo* has two sides to it. First, the right to terminate. And secondly, once such a right has been established, how to give effect to such termination. Reinders J stated the following in **Marogoa v Marogoa** 2023 JDR 0198:

“[4] *It is trite that where property is owned in joint ownership, each such co-owner has an undivided share therein. The share need not be equal. As a general rule, every co-owner would be entitled to have such co-ownership terminated with the **actio communi dividundo**.*

[5] *A party merely has to allege and proof(sic) the existence of the joint ownership and a refusal by the other to agree to the termination and/or inability to agree in respect of the method of termination (or an agreement to terminate but refusal to comply therewith). A respondent (defendant) does not have a plethora of defences once any of the above requisites has been proven. The general rule is that a court has a wide discretion and would follow a method that is fair and equitable to both parties. This would include for example a sale by public auction and division of the nett amount, in appropriate cases an allocation of the property to one owner subject to payment of compensation and even a private auction restricted to co-owners and division of the nett amount. “*

- [16] As death of Dr Jennings has already terminated the joint ownership and established the right to a division, the only remaining issue is the means of giving effect to the division flowing from the termination of joint ownership. The applicant has prepared a draft order which provides for the sale of the immovable properties and for a settling of debts due by the first respondent and the estate, the terms of which were considered and debated in court.
- [17] The first respondent only questions one prayer in the draft, ie the clause naming the proposed liquidator, but merely because the applicant proposed her appointment. The strained relationship between the applicant and the first respondent is the cause of this distrust.
- [18] There is no factual basis for doubting the suitability of appointing the proposed liquidator, who is a legal practitioner in good standing with the Legal Practice Council.
- [19] In the premises I granted the order set out above incorporating the draft order marked X.



LABUSCHAGNE J
JUDGE OF THE HIGH COURT

APPEARANCES

Counsel for Applicant: Adv A.J Schoeman

Instructed by:

NBP Attorneys.

481 Anderson Street, Menlo Park.

Pretoria

Counsel for Respondent: Adv D Matlatle

Instructed by:

Richard Sithi Attorneys.

210 Amarand Avenue.