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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 20539/2016

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

Date: 8 September 2025

Signature: K. La M Manamela

In the matter between:

HENDRIK JOHANNES TJAART N.O.

Applicant

and

L[...] G[...] G[...]

First Respondent

D[...] G[...]

Second Respondent

In re:

D[...] G[...]

Plaintiff

and

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the judgment is deemed to be 8 September 2025.

JUDGMENT

Khashane Manamela, AJ

Introduction

[1] The applicant is a liquidator or receiver¹ appointed by the order of this Court on 6 February 2023, which order included the dissolution of the marriage between the first and second respondents ('the Divorce Order'). The first and second respondents ('the respondents') were married in community of property since 26 January 1991. The Divorce Order incorporated a settlement agreement on the division of the respondents' joint estate ('the Settlement')² and the applicant's specific powers and duties to give effect to the agreed division of the joint estate ('the Powers').³ This opposed application relates to the second and final liquidation and distribution account ('Second L&D') drafted by the applicant in the discharge of his responsibilities in terms of the Powers. The first respondent formally objected against the Second L&D on various grounds.⁴ The second respondent is not taking an active part in this application and has not objected to the Second L&D.

¹ *Gillingham v Gillingham* [1904] ZATransvLawRpSC 102; (1904) 3 TS 609 (11 August 1904) at 613 observed that the person appointed to effect the division of the joint estate may be referred to as 'liquidator, receiver, or curator - perhaps curator is the better word'.

² Divorce Order, annexure 'B', CL 003-10 to 003-12.

³ Divorce Order, annexure 'A', CaseLines ('CL') 003-4 to 003-9.

⁴ Pars [12]-[15] below.

[2] The applicant, in the face of the first respondent's objection, brought this application seeking the following relief:

1. that the Second and Final Liquidation and Distribution Account be approved and made an order, subject thereto that:-
 - 1.1 the distribution in Specie of 50% (fifty percentum) of the membership interest held by the community estate of the parties equating to 14.25% (fourteen point two five percentum) in Nyumbani Investments CC be transferred and registered to the Second Respondent with all rights attaching thereto in law;
 - 1.2 the distribution in Specie of the remaining 50% (fifty percentum) and of the membership interest shall remain in the name of the First Respondent with all rights attaching thereto in law;
 - 1.3 that the Second Respondent be ordered to cede and make over to the First Respondent 50% (fifty percentum) of the value of his Pension Fund Interests with Momentum Insurance being policy numbers: 0[...] and 9[...] as at the date of divorce and the First Respondent to take all such steps as may be necessary in law to have her said interest registered with Momentum;
 - 1.4 the First Respondent shall pay the costs of this application on the party and party scale...⁵

[3] The applicant sought to slightly vary or amend the above relief set out in the notice of motion, by the removal of the word 'final' in the heading or description of the account (i.e. 'Second and Final Liquidation and Distribution Account') to just 'Second Liquidation and Distribution Account'. The first respondent appeared to object thereto. I ruled that the amendment was not necessary as in most instances this

⁵ Notice of Motion, CaseLines ('CL') 013-1 to 013-3.

type of accounts would be described as ‘first and final’ or ‘second and final’ in headings.⁶ Besides the amendment of the notice of motion without similar amendment to the actual Second L&D would have been of no consequence, and the account may be varied – for other reasons - in terms of the order made by this Court.

[4] The application came before me on 19 August 2025. Mr NS Nxumalo appeared for the applicant and Ms K Howard appeared for the first respondent. Both counsel had filed written argument or heads of argument in terms of the directives of this Court. Nevertheless, I am grateful for their efforts. I reserved this judgment at the conclusion of the hearing.

Nature and extent of the first respondent’s opposition, as well as additional affidavits by the parties

[5] The first respondent’s answering affidavit was branded a ‘Preliminary Answering Affidavit’.⁷ In this affidavit, the first respondent stated that she is not opposing the relief sought in paragraphs 1.1 to 1.3 of the notice of motion,⁸ but only the relief sought in paragraphs 1 and 1.4 thereof.⁹ This was repeated in the first respondent’s supplementary answering affidavit delivered on 11 July 2025.¹⁰ Consequently, the applicant urged the Court to grant the relief said to be not opposed by the first respondent without further ado. But the inadvertent error in this regard is obvious, as opposition by the first respondent of the relief sought in terms of paragraph 1 of the notice of motion amounts to opposition of the entire relief sought by the applicant in this application. Paragraph 1 seeks the approval or confirmation of the Second L&D from the Court. Therefore, the nature and extent of the opposition by the first respondent would be determined from the facts and submissions before the Court rather than the purported concession. I also mention that I will admit all additional affidavits filed on behalf of the parties and, equally,

⁶ EE Blignaut, NJ Wiechers and I Vorster, *Administration of Estates* (LexisNexis May 2024) at 10.1.

⁷ The first respondent explained the reason for the delivery of a preliminary affidavit, as opposed to a conventional answering affidavit, to be due to lack of funds as the second respondent has allegedly not complied with the Divorce Order with regard to stipulations of the Court regarding maintenance.

⁸ First respondent’s preliminary affidavit par 4.1, CL 013-77.

⁹ First respondent’s preliminary affidavit par 4.2, CL 013-77.

¹⁰ First respondent’s supplementary affidavit pars 13.1 and 13.2, CL 013-98.

condone the timing of their delivery in the interests of justice dictated upon by the facts of this matter. One only hopes that this does not encourage similar conduct to become embedded in future litigation by these parties or even by others in other litigation in this Division.

Brief background

[6] A brief background of the issues relevant to the determination of this matter is necessary to place them in a proper context. This would be constituted from what appears to be common cause between the parties or I will indicate what is disputed.

[7] The respondents, as stated above, were married in community of property from 26 January 1991 until their divorce in terms of the Divorce Order granted by Deputy Judge President Ledwaba on 6 February 2023. The divorce proceedings were initiated by the second respondent in 2016 and are still proceeding – in some respects – in this Division. They precipitated other proceedings of an ancillary or interlocutory nature, including an application based on Rule 43 of the Uniform Rules of this Court.

[8] The respondents, as also stated above, concluded a settlement agreement (i.e. the Settlement) which, together with the duties and powers of the applicant as the appointed liquidator or receiver (i.e. the Powers), were incorporated in the Divorce Order. The Settlement also provided for the following: (a) that, the first respondent's counterclaim for spousal maintenance, as well as the issue of costs, will be postponed *sine die* to a trial date to be allocated by the Registrar or a preferential trial date, and (b) that, the second respondent would continue to make payment of the interim maintenance to the first respondent in terms of the order granted in terms of Rule 43(6) dated 22 July 2022, *per* Strijdom J, and until determined otherwise by the Court.

[9] On 20 September 2023, the applicant submitted to the parties the first and final liquidation and distribution account ('the First L&D'). The First L&D was almost uneventful when compared to the Second L&D in that no formal objection was lodged by either of the former spouses against the First L&D.

[10] As already stated the Second L&D was submitted on 21 March 2024. The first respondent's notice of objection to the Second L&D was lodged on 18 April 2024 ('the Objection'). The Objection in its full length appears below.¹¹

[11] In July 2024, this application ensued. In August 2024 the first respondent filed her preliminary answering affidavit and almost a year later, on 11 July 2025, filed her supplementary answering affidavit to deal further with the merits of the matter. The latter affidavit appears to contain some form of a counterapplication in that the first respondent, does not only oppose the approval of the Second L&D, but also seeks relief of her own in the form of removal of the applicant from the office of the receiver or liquidator.¹² I deal with these issues below, but first a layout of the Objection.

First respondent's Objection

[12] As stated above, after the First L&D, the applicant proceeded to submit to the parties the Second L&D, which he referred to as the 'Second and Final Liquidation and Distribution Account' on 21 March 2024. The first respondent quibbled about this branding as indicated above.¹³

[13] In terms of the Powers, the respondents are entitled to raise objections to an account by the applicant within 14 days from the date that the account has been sent, otherwise the material account will be deemed to be accepted. As stated above, the Objection to the Second L&D, appears to have been lodged timeously by the first respondent on 18 April 2024. It is important to bear in mind – for reasons that would become clearer below – that there was no objection against the First L&D.

[14] The Objection appears as follows in the operative part:

BE PLEASED TO TAKE NOTICE that the Defendant objects to the
Second and final liquidation and distribution account prepared by the

¹¹ Par [14] below.

¹² First respondent's supplementary answering affidavit par 87 *et seq*, CL 013-107 to CL 013-109.

¹³ Par [3] above.

Receiver, being Mr Hendrick Johannes Tjaart (Hennie) Eloff of Equitrust (Pty) Ltd for the following reasons:

1. The Defendant objects to the sale of the 14.25% members' interest currently held by D[...] G[...] in Nyumbani Investments CC until such time as the loan account payable by Nyumbani Investments CC to D[...] G[...] is recovered and included in the liquidation and distribution account.

The loan account as per the signed financials of Nyumbani Investments CC currently held by D[...] G[...], is R 322 420.00. It is submitted that the sale of the members interest and the loan accounts must be dealt with as one indivisible transaction.

2. The Defendant objects to the payment of the cheque and credit account from the joint estate as this is the Plaintiff's personal expense which was accrued by him after the separation of the parties for his own benefit.

3. The Defendant objects to the conclusion by the Receiver that the Defendant's legal costs is not a debt of the joint estate. The Plaintiff having paid his legal costs from the joint estate of the parties.

4. The Defendant objects to the failure of the Receiver to make provision for the payment of legal fees to the Defendant's erstwhile attorneys of record. Provision is to be made as the matter is under dispute in the above honourable court under CASE NO. 2021/23626.

5. The Receiver has failed to take into his possession and account for the Plaintiff's watches that form part of the estate, including but not limited to the Rolex, 2X omegas, Phillip Patek.

6. That the Receiver make provision for payment of legal fees by the joint estate to secure the release of 50% the Plaintiff's pension fund to the Defendant.¹⁴

[15] I follow, liberally, the lead of the parties in labelling the objections as follows: (a) 'the Nyumbani Objection' (i.e. the objection concerning the 14.25% members' interest held by the second respondent in Nyumbani Investment CC); (b) 'the Cheque and Credit Account Objection' (i.e. the objection to the payment of the debit balance of the second respondent's cheque and credit account from the joint estate); (c) 'the First Legal Costs Objection' (i.e. that the second respondent's legal costs is not a debt of the joint estate and, thus, the applicant should not have settled this from the estate); (d) 'the Second Legal Costs Objection' (i.e. that, the applicant failed to make provision for the payment of legal fees of the first respondent's erstwhile attorneys); (e) 'the Watches Objection' (i.e. that, the applicant failed to take under his control and to account for the watches belonging to the second respondent which he sold for his sole benefit, and (f) 'the Momentum objection' (i.e. the applicant did not make provision for payment of legal costs by the joint estate to secure the release of the first respondent's share of pension fund from Momentum Insurance). The grounds of the Objection in (c) and (d), relating to legal costs, are dealt with together by the parties. I will also emulate this, below.

Powers and duties of the liquidator/receiver (i.e. the Powers)

[16] Central to the dispute between the parties in this application is the nature and extent of the Powers of the applicant, as the appointed liquidator or receiver. It is common cause that the applicant's primary duty under the Powers is to take control of the assets in the joint estate and settle the liabilities thereof. Any residue - after satisfaction of the liabilities and payment of fees due to the applicant and other specified costs - is to be fairly distributed by the applicant between the respondents.

[17] The Powers - providing for the duties and powers of the applicant as the liquidator - include the following:

¹⁴ CL 013-43 to 013-45.

1. The Receiver/Liquidator shall have all the powers contained herein, in section 38 of the Superior Courts Act, 10 of 2013, in the court order, the Uniform Rules of Court and generally to have such powers as are conferred on a Trustee as laid down in the Insolvency Act 24 of 1936 (as amended).
2. The powers of the Receiver/Liquidator shall include but not limited to:
 - 2.1 the right to make all investigations necessary and in particular to obtain from the parties all information and details with regard to the assets comprising the joint estate (movable, immovable, tangible or intangible);
 - 2.2 the right to accumulate details of all liabilities of the joint estate;
 - 2.3 the right to obtain information regarding the financial affairs of the parties from bank managers, building societies, managers or any other financial institutions where monies are held or may have been invested;
 - 2.4 the right to obtain information from auditors of companies, close corporations, trusts or businesses in which the joint estate may have an interest; or business and personal accountants with regard to personal affairs and tax matters and any other person who may have knowledge of the affairs;
 - 2.6 the right to obtain and call for balance sheets and financial statements in respect of all companies or businesses in which the parties have interest;

...

- 2.11 the right to afford both parties personally the opportunity to make recommendations to him/her about any matter relevant to his/her duties and to identify any purchaser as well as the purchase price of any asset ...
- 2.12 the right to give due consideration to the wishes of the parties pursuant to the representations made by them and make such decisions in respect thereof as he may deem fit;
- 2.13 the right to sell any assets to either of the parties for a price that he/she deems to be the true market price of the assets;
- ...
- 2.17 in particular, the Receiver/Liquidator is empowered to distribute and allocate the movable assets of the joint estate between the Plaintiff and the Defendant and will not be obliged to realise/sell all the assets of the joint estate;
- 2.18 the right to pay the liabilities of the joint estate;
- ...
- 2.20 the right to direct, in terms of Section 7(8) if the Divorce Act, 70 of 1979 (as amended), read together with Section 37B of the Pension Funds Act, 24 of 1956 that a portion not exceeding 50% of a party's pension interest as at date of divorce shall accrue to the other party on the following basis:

- 2.20.1 the Receiver/Liquidator shall require the relevant pension and/or provident fund concerned to make an endorsement to its records accordingly; and
- 2.20.2 to direct and authorise that the accrued portion of the pension interest may be paid, ceded and/or transferred to the other party or such alternative fund as the other party may nominate, as soon as possible after the necessary endorsement has been made, and in accordance with the rules of the relevant pension and/or provident fund concerned...¹⁵

[18] The Powers, as stated above, incorporate the provisions of section 38 of the Superior Courts Act 10 of 2013, the Uniform Rules of Court and the general powers of trustees in terms of the Insolvency Act 24 of 1936. The Settlement between the respondents is also incorporated as part of the Divorce Order. I deal, next, with some of the legal principles applicable to the issues requiring determination in this application.

Applicable legal principles

[19] Section 38 of the Superior Courts Act, placed in focus by the Powers, refers to a 'referee' appointed by a court to conduct investigation in civil proceedings. It reads in the material part:

- (1) The Constitutional Court and, in any civil proceedings, any Division may, with the consent of the parties, refer—
- (a) any matter which requires extensive examination of documents or a scientific, technical or local investigation which in the opinion of the court cannot be conveniently conducted by it; or
 - (b) any matter which relates wholly or in part to accounts; or

¹⁵ CL 003-4 to 003-9.

(c) any other matter arising in such proceedings, for enquiry and report to a referee appointed by the parties, and the court may adopt the report of any such referee, either wholly or in part, and either with or without modifications, or may remit such report for further enquiry or report or consideration by such referee, or make such other order in regard thereto as may be necessary or desirable.

(2) Any such report or any part thereof which is adopted by the court, whether with or without modifications, shall have effect as if it were a finding by the court in the proceedings in question.

(3) Any such referee shall for the purpose of such enquiry have such powers and must conduct the enquiry in such manner as may be prescribed by a special order of the court or by the rules of the court

...

[20] The Divorce Order, naturally, provided for the dissolution of the marriage between the respondents, the Settlement and the Powers. The Powers are extensively quoted above. The following is material for current purposes regarding the Settlement:

[t]hat the claim in terms of prayer 3.4 of the Defendant's counterclaim, as amended, as well as the issue of costs be separated from the remaining claims, and the determination of said claim and costs shall be postponed *sine die* to a trial date to be allocated by the registrar, alternatively a preferential trial date to be allocated by the Deputy Judge President...¹⁶

[21] What appears immediately above from the Settlement is relevant to the objection(s) regarding payment of legal costs. It is clear that the respondents agreed to defer the issue of costs, among others, for later determination by the Court. This, obviously, will be costs of the divorce action. In the Powers, in the portion not quoted above, the applicant is 'obliged to collect all assets, discharge all liabilities and pay to

¹⁶ Court Order annexure 'B' (i.e. memorandum of settlement), CL 003-10 to CL 003-11.

the parties after deduction of his fees and the legal costs of the parties in the divorce action an interlocutory applications in that action'.¹⁷ I will say more on this below.

[22] The provisions of the Matrimonial Property Act 88 of 1984 ('the MPA') are also relevant. Section 15 thereof is more relevant, as it provides for powers of spouses, and provides as follows in the material part:

(1) Subject to the provisions of subsections (2), (3) and (7), a spouse in a marriage in community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse.

(2) Such a spouse shall not without the written consent of the other spouse—

(a) alienate, mortgage, burden with a servitude or confer any other real right in any immovable property forming part of the joint estate;

(b) enter into any contract for the alienation, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate;

(c) alienate, cede or pledge any shares, stock, debentures, debenture bonds, insurance policies, mortgage bonds, fixed deposits or any similar assets, or any investment by or on behalf of the other spouse in a financial institution, forming part of the joint estate;

...

(3) A spouse shall not without the consent of the other spouse—

(a) alienate, pledge or otherwise burden any furniture or other effects of the common household forming part of the joint estate;

...

(9) When a spouse enters into a transaction with a person contrary to the provisions of subsection (2) or (3) of this section, or an order under section 16 (2), and—

(a) ...;

(b) that spouse knows or ought reasonably to know that he will probably not obtain the consent required in terms of the

¹⁷ The Powers (of the liquidator or receiver) par 3.1, CL 003-8.

said subsection (2) or (3), or that the power concerned has been suspended, as the case may be, and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the other spouse upon the division of the joint estate.

[23] It is submitted on behalf of the first respondent that section 15(9) of the MPA is relevant to the determination to be made in this matter. Section 15(9) proscribes certain juristic acts by a spouse married in community of property regarding the joint estate without the consent of the other spouse. It is argued on behalf of the first respondent that where such juristic acts are performed contrary to section 15(9) the receiver or liquidator ought to properly investigate and consider representations by the former spouses with a view to effect adjustments were required. The Court, it is further submitted, may be approached in the event of disagreements for a final ruling. The Court, it is also submitted, has the privilege of further oral and other evidence to either confirm, amend or clarify the account and grant, where necessary, further and alternative relief to enable the liquidator to bring the joint estate to practical conclusion.

[24] The jurisdiction of the Court, envisaged above, is comparable to that exercisable by the Court under section 38 of the Superior Courts Act, it is also submitted on behalf of the first respondent. The latter cloaks the Court with the discretion regarding the report of a referee appointed in terms of the provision, and the Court may either 'adopt the report of any such referee, either wholly or in part, and either with or without modifications, or may remit such report for further enquiry or report or consideration by such referee, or make such other order in regard thereto as may be necessary or desirable'.¹⁸

[25] The first respondent, also, relies on the decisions of this Division in *Darmalingam NO v Marques and Another*,¹⁹ *M v M*²⁰ and *SSM v PJNO and*

¹⁸ Par [19] above for a reading of s 38(1) of the Superior Courts Act.

¹⁹ *Darmalingam N.O v Marques and Another* (9256/21) [2022] ZAGPPHC 79 (31 January 2022), per Skosana AJ [29].

²⁰ *M v M* (82156 /14) [2017] ZAGPJHC 354 (20 November 2017), per Thompson AJ [13] (i.e. second [13] due to inadvertent errors in numbering), [17]-[21].

*Another*²¹ to urge this Court to make adjustments where the second respondent is found to have disposed of the assets in the joint estate without the consent of the first respondent, as his then spouse.

[26] The applicant agrees with the first respondent that the remedy for any loss suffered by a spouse who did not consent to the impugned juristic act is an adjustment in favour of such party in terms of section 15(9)(b) of the MPA upon the division of the joint estate.²² But, the applicant considers the first respondent's invocation of that provision to be misplaced. The applicant also relied on the decision in *M v M*²³ to advance its case that a call for an adjustment in terms of the provision ought to be pleaded and ventilated during the divorce proceedings so that, if allowed, they form part of the order made by a court decreeing the divorce. For a receiver or liquidator may only effect adjustment ordered by a court. This is not the case in this matter, it is submitted. But counsel for the first respondent retorted on the basis of the holding in *Darmalingam v Marques*²⁴ that adjustments may be effected even at the stage when the Court is seized with an application to overcome an objection against a liquidator's account.²⁵ Other legal principles would be dealt with as they emerge in the discussion of the issues requiring determination, below.

Issues requiring determination

[27] From what appears above, the issues to be determined in this application are the segmented parts or grounds for the Objection, summarised above.²⁶ But the first respondent raised further grounds of opposition in her answering affidavit(s) concerning the following: (a) shares in Coldline Food Brokers (Pty) Ltd, and (b) the Dullstroom property. She also urged the Court to remove the applicant from the office of receiver or liquidator. The applicant objected to the latter grounds or issues on the basis that they have not been properly raised. More on the latter, below.

²¹ *SSM v PJNO and Another* (15515/2017) [2023] ZAGPPHC 2024 (18 December 2023) [18].

²² *Mulaudzi v Mudau and Others* (1034/2019) [2020] ZASCA 148 (18 November 2020) [15].

²³ *M v M* [2017] ZAGPJHC 354 [17] – [19]. See also *K C v Jordaan and Another* (B8542023) 2024 ZAGPPHC 38 (22 January 2024) [16] – [17].

²⁴ *Darmalingam v Marques* [2022] ZAGPPHC 79

²⁵ *Darmalingam v Marques* [2022] ZAGPPHC 79 at [29].

²⁶ Par [15] above.

[28] Further, from the issues stated above, there may be other issues, being of an ancillary nature, which may creep into the discussion of the above issues. And the discussion may reveal some interlinkages between the issues, where this proves unavoidable.

Nyumbani Objection

[29] Because of the manner in which the issues are raised and the essence thereof, I will – in the anterior - reflect the case (and submissions on behalf) of the first respondent and those of the applicant in the posterior. This does not speak to the burden to establish the material issues, but their sequence in logic. This approach will be repeated even when dealing with the other grounds of the Objection and those beyond.

[30] The Nyumbani Objection is on the basis that the sale of the 14.25% members' interest held by the second respondent in Nyumbani Investment CC ('Nyumbani') ought to be dealt with as one indivisible transaction with the loan account in the amount of value of R406 172 payable by Nyumbani to the second respondent. Nyumbani owns an immovable property situated at 33 Windsor on Vaal to which the interest relates. Effectively, the objection is that the applicant ought to first recover the monies represented by the loan account and distribute same with the proceeds from the sale of the members' interest.

[31] The first respondent argues that the transfer of her half share of the second respondent's membership interest in Nyumbani would be highly prejudicial to her as she would have to purchase the second respondent's portion of the interest into her name. And the first respondent is saddled with the added liability regarding the loan account. Besides, the first respondent does not bear the responsibility to realise the assets of the joint estate, as this is for the applicant as the appointed receiver or liquidator. And, further, that the second respondent unilaterally (without the first respondent) purchased the members' interest in Nyumbani, to start with, although he used funds from the joint estate. The first respondent also suggests that the full members' interest in Nyumbani be transferred to the second respondent against payment by the latter to her of the equivalent of 50% of the members' interest and

loan account, as she has no interest or desire to be part-owner or interest-holder in Nyumbani. She cannot afford the contributions, the argument concludes.

[32] The applicant dismisses, as unfounded, the Nyumbani Objection. It is argued on behalf of the applicant that monies owed to the joint estate in terms of the loan account would not be affected by the distribution of the member's interest. Any right to pursue what is due under the loan account is unaffected by the transfer of the membership interest to the first respondent. Further, the first respondent's refusal to accept a distribution in *specie*, is rejected on behalf of the applicant as lacking a basis in law, especially given the fact that the loan account is an asset in the joint estate and not a liability. It is not in the best interests of the parties to realise the loan account through litigation as this would be at a significant costs to the joint estate, the applicant further contends. And the Powers include the division of the assets in *specie*.

[33] Starting from the tail-end of the submissions, I agree with the applicant that he is indeed empowered to distribute or divide the movable assets between the respondents in *specie* and is 'not ... obliged to realise/sell all the assets of the joint estate'.²⁷ I also agree with the applicant that both the member's interest and the loan account are dealt with together in the Second L&D. I don't agree that the first respondent has to do anything than requesting the accounting officer of Nyumbani to effect changes in the corporate records of Nyumbani so that they accordingly reflect the division of the membership interest currently held by the second respondent. There is no added responsibility to realise the assets of the joint estate, as the applicant had undertaken to sign whatever documentation required in this regard. The Powers do not empower the applicant to force the second respondent to buy-out the first respondent. It is up to the first respondent to decide what to do with her 50% of the members' interest and loan account. It is also irrelevant how the acquisition of the interest came about and that the first respondent is uninterested in being a part-owner or interest-holder in Nyumbani. Therefore, this ground for the Objection is found to lack merit and is dismissed.

²⁷ Powers at par 2.17, quoted in par [17] above.

Cheque and Credit Account Objection

[34] This ground of the Objection is against the payment of the debit balance of the cheque and credit account held by the second respondent from funds of the joint estate. The first respondent says these expenses accrued after the separation of the spouses for the sole benefit of the second respondent.

[35] According to the first respondent a large portion of the expenses in focus under this ground for the Objection were incurred by the second respondent for payment of his own personal expenses and were payments which were made pursuant to the order under the Rule 43(6) proceedings. Payment or settlement of the expenses from the joint estate would diminish the value thereof to the detriment of the first respondent and sole benefit of the second respondent, it is submitted on behalf of the first respondent.

[36] The applicant's case is that the payments were made when the respondents were still legally married to each other and, thus, the impugned expenses or debts were also those of the first respondent. The spouses shared not only the assets of the joint estate, but the liabilities too until the Divorce Order.²⁸ Further, that the payment was made in the best interests of the joint estate and not for the personal gain of the second respondent. This is disputed by the first respondent, primarily because the applicant did not mention or provide proof of how the expenses were incurred. It is also argued on behalf of the applicant that issues regarding the proceedings in terms of Rule 43(6) are beyond the Powers, as they were separated in terms of the Divorce Order. Further, that the payment of the expenses under this ground for the Objection was reflected in the First L&D which attest to the complete and transparent nature in which the applicant handled the issues. The first respondent failed to object to the First L&D, despite having ample opportunity to do so. The current objection on this ground is the first respondent's revisitation of the relevant issues already accounted for and finalised, having a dilatory effect to the finalisation of the winding up of the joint estate. Also, that the applicant, further, says that the contribution towards costs by the second respondent relating to the Rule

²⁸ *Darmalingam v Marques* [2022] ZAGPPHC 79 at [25].

43(6) proceedings was made from the joint estate before the applicant was appointed.

[37] It is my view that this ground of objection seeks to undo the First L&D after it was confirmed. This is contrary to the Powers forming part of the Divorce Order of this Court.²⁹ The impugned expenses are only reflected in the Second L&D to effect a credit in favour of the joint estate in the amount of R5.69, which appears to have arisen from an overpayment. A proper approach would have been the first respondent taking steps for the revisitation of the First L&D by the Court, which would have to commence with variation of the Divorce Order housing the Powers. The issues in this ground for the Objection do not relate to the Second L&D and, therefore, the objection or ground will also be dismissed.

First and Second Legal Costs Objection

[38] This First Legal Costs Objection is in reaction to the applicant's view that the first respondent's legal costs is not a debt of the joint estate. The first respondent objects to the applicant's view or conclusion as, according to her, the legal costs incurred by the second respondent were paid from the joint estate. The Second Legal Costs Objection is to the effect that the applicant failed to cater for payment of legal costs of the first respondent's previous attorneys. The first respondent is of the view that provision ought to be made for payment of the costs as the matter is under dispute in this Division under case number 2021/23626.

[39] As part of these grounds of the Objection, the first respondent argues that the assets of the joint estate were used to settle legal costs incurred by the second respondent when the second respondent had the necessary financial means to do so by his own. On the other hand, she struggled for funds to pay her outstanding legal costs. The Second L&D ought to have provided for her legal expenses. Therefore, the first respondent urges this Court to reject the Second L&D and direct that same include her legal costs.

²⁹ The Powers par 5.4, CL 13-27.

[40] The applicant's case under these grounds of objection includes that the issues relating to legal costs are beyond the scope of the Powers afforded to him as they are reserved to be determined separately by the Court. The applicant denies that the second respondent's legal costs were paid from the funds belonging to the joint estate. It is submitted on behalf of the applicant that the payment was made from an inheritance the second respondent received from his late mother. And the inheritance was excluded from the second respondent's marital regime through a testamentary provision. Further, that the second respondent also utilised the proceeds from the sale of the watches to settle his legal bills. The latter is dealt with further under the next objection.

[41] I agree with the submissions on behalf of the applicant that issues pertaining to legal costs were deferred for later determination by the Court in terms of the Settlement between the respondents, incorporated in the Divorce Order.³⁰ This appears to be contradicted by the Powers granted to the applicant,³¹ although nothing would turn on this.

[42] These grounds for the Objection clearly relate to the views expressed by the applicant, as opposed to a line item in the Second L&D, and the utilisation of the proceeds from sale of watches. Therefore, save in as far as it relates to the latter, these grounds are dismissed.

Watches Objection

[43] The Watches Objection relates to the first respondent's view that the applicant failed to take under his control the watches belonging to the second respondent eventually sold by the latter for his sole benefit.

[44] The watches complained about here are of luxury makes, including Rolex, Omega and Phillip Patek. But the applicant doubts the veracity of what he brands an 'extensive list of watches' supplied in the first respondent's supplementary answering affidavit. He says the list has been disputed by the second respondent. It is also

³⁰ *Darmalingam v Marques* [2022] ZAGPPHC 79 at [27].

³¹ Par [17] above.

stated that the latter informed the applicant that he sold all his watches in 2020 for an amount of R70 000. This was prior to the appointment of the applicant as receiver or liquidator, which was in 2023 and when the respondents were separated, and, thus, before the Divorce Order. Therefore, it would have been physically impossible for the applicant to have taken the impugned watches into his possession, it is pointed out on behalf of the applicant.

[45] According to the applicant, he also lacks authority to deal with issues relating to the alleged use by the second respondent of the proceeds from the sale of the watches to settle his legal bills relating to the Rule 43 application. The legal costs issue are still to be determined by the Court in separate proceedings. I hasten to point out that I do not agree with the latter statement. What is deferred for later determination are costs in the divorce action. Therefore, any other costs, unless they have been directed to be 'costs in the divorce action',³² are not deferred. But this is not to say that such costs ought to be paid from the joint estate.

[46] This complaint or ground for the Objection relates to what occurred in 2020. But this was after the divorce had already been instituted. And it concerns – what at face value appears to have been - valuable assets of the joint estate disposed of for an amount of R70 000. This issue did not form part of the First L&D and the Second L&D. The issue requires further investigation by the applicant, particularly regarding whether the assets were not sold in the manner and extent prejudicial or resulting in a loss to the joint estate.³³ Subject to what the second respondent may have to say, the first respondent may be entitled to half of the proceeds from the sale of the watches in the amount of R70 000 or whatever amount the applicant's investigation may reveal. But in the meantime, I will direct that the applicant amend the Second L&D to reflect that an amount of R35 000 due and payable to the second respondent in terms thereof is carried over to the next account. This would cater for a possible crediting of this amount to the first respondent as her half share, should the facts so suggest. I will also direct that the applicant conduct an investigation in this regard.

Momentum Objection

³² For example, the costs order granted on 28 March 2018 *per* Nowosenetz AJ, CL004-1.

³³ Section 15(9) of the MPA, quoted and discussed in pars [22]-[25] above.

[47] According to the applicant, the Divorce Order does fall short of the provisions of section 7(8)(a) of the Divorce Act 70 of 1979 for failure to reflect details of Momentum Pension Fund. Momentum did not give effect to the Settlement between the respondents in this regard. The first respondent's ground of Objection under this part is that the applicant did not provide for payment of legal costs by the joint estate to secure the release of the first respondent's share of pension fund from Momentum. The first respondent appears to expect a legal battle and, thus, a requirement for legal services in this regard with Momentum. The joint estate, it is contended, ought to pay the legal fees occasioned by the efforts by the first respondent or on her behalf in securing the release to her of 50% of the second respondent's pension fund administered by Momentum.

[48] The applicant, says the joint estate lacks funds to litigate against Momentum. To overcome Momentum's refusal to note the first respondent's interest in the second respondent's pension fund, the applicant sought consent of the first respondent for the variation of the Divorce Order to render it compliant with section 7(8)(a) of the Divorce Act, but in vain. The first respondent withheld her consent, but instead, indicated that she intends to initiate legal proceedings against Momentum on her own. The applicant labels the latter approach, on the part of the first respondent, architecture of own misfortune, which invalidates this ground of objection. But during the hearing counsel for the applicant appeared to suggest that the issue has been resolved as the Momentum pension funds may have been received and paid over to the applicant, in whole or in part. This appears from the applicant's supplementary affidavit. I expressed my concerns during the hearing that the second respondent may have acted contrary to the Divorce Order in this regard. The value of the second respondent's pension fund is unclear to me. Therefore, it is not possible to consider making adjustments in the Second L&D in this regard. All I will be able to direct is that any payment due to the second respondent in terms of the Second L&D be deferred until the second respondent has satisfied the applicant that he has accounted to the first respondent for her 50% interest in his pension funds. Therefore, this objection is upheld only in its varied form, as aforesaid.

Post Objection grounds

[49] It is common cause that the first respondent raised other grounds of objection against the Second L&D further from those in the Objection (i.e. the notice of objection lodged by the first respondent on 18 April 2024), reflected above.³⁴ These relate to an alleged 50% shareholding by the second respondent in Coldline Food Brokers (Pty) Ltd ('Coldline'), and an alleged 50% interest in favour of the second respondent in an immovable property situated in Highlands, Dullstroom ('the Dullstroom property'), already disposed of without the second respondent accounting to her for her 25% share or interest. I, conveniently, refer to these grounds or issues as the 'Post-Objection' grounds.

Coldline objection

[50] According to the first respondent, the second respondent is a director and 50% shareholder in Coldline. She seeks her half share (i.e. 25%) in the 50% shareholding allegedly held by the second respondent in Coldline. The first respondent criticises the applicant for not realising the shareholding in Coldline and reflecting same in the Second L&D. According to the first respondent, the applicant's excuse was that there is simply no value in Coldline without any independent verification of this. It is argued on behalf of the first respondent that Coldline remains 'in business' according to the records of the Companies and Intellectual Property Commission or the CIPC. This renders the Second L&D 'inaccurate' and not providing a true reflection of the position of the joint estate of the respondents. It is further argued that the second respondent previously misappropriated proceeds from the sale of movable assets of Coldline in the amount of about R1.6 million, which the applicant has not factored into the Second L&D. The applicant simply dismissed the first respondent's claim without looking into it due to his attitude and bias towards the first respondent, it is submitted. Therefore, the Second L&D cannot be approved or confirmed by this Court.

[51] The applicant criticises the first respondent for not disclosing when she became aware of the alleged shareholding by the second respondent in Coldline, as

³⁴ Par [14] above.

well as for not including this ground as part of the Objection. It was only raised in August 2025.

Dullstroom property objection

[52] The first respondent says that she was informed at the beginning of the divorce proceedings that the Dullstroom property had been sold, but she was never provided with her 25% share of the proceeds of sale. The applicant says that the respondents jointly offered the Dullstroom property for sale around June 2018 and proceeds thereof were utilised for the benefit of the joint estate prior to the divorce and, thus, prior to his appointment as receiver or liquidator. The applicant, again, complains that this ground did not form part of the Objection.

Conclusion (on the Post Objection grounds)

[53] The applicant appears to appreciate the first respondent's concerns regarding the Coldline objection and the Dullstroom property objection, despite his attempt at justifying their omission from the Second L&D. He says he demonstrated his willingness to accommodate the first respondent by amending the notice of motion to make it clear that the Second L&D would be subject to a supplementary final liquidation and distribution account. The latter step, according to the applicant, would reflect the outcome of his investigations into the Post Objection grounds. I agree with this suggested approach. The Second L&D cannot be delayed due to future investigations. Whatever the investigations reveal would be addressed in future accounts, be they supplementary or sequential to the Second L&D. There is nothing in law that all issues in a joint estate ought to be fully and finally determined before an account is confirmed or approved. The fact that there has already been the First L&D confirms this.

The removal of the applicant, as the receiver or liquidator

[54] The first respondent, as part of her opposition of the relief sought, also sought the removal of the applicant on account of a myriad of alleged failures to meet the requirements of his office as receiver or liquidator. These include that the applicant

has on numerous occasions made decisions which unfairly and exclusively benefit the second respondent. Consequently, it is submitted in this regard that the applicant is not fit to be remain in that position.

[55] The applicant opposed the call for his removal - primarily - on the basis that the first respondent is not making the request to the Court by way of a counterapplication. Also, the applicant considers it a contradiction that the first respondent would call for his removal whilst she has associated herself with the Second L&D in some respects by not opposing the relief sought by him.

[56] I agree that a counterapplication was necessary when the first respondent's intention is not only to seek the dismissal of the application on the basis of her objections, but also relief of her own. The second respondent may have something to say about such relief being sought or granted by the Court. Also, the Court is primarily concerned with the Second L&D and has already expressed its views on how same is to be varied or handled in terms of the order to be made. The removal of the applicant in the same order – even if a counterapplication wasn't necessary – would not only constitute the reinforcement of the pillars to the structure but a complete demolition of the edifice.

Conclusion and costs

[57] The applicant is successful on most of the grounds of objection. The applicant is of the view that as an impartial party appointed by the Court it had to launch this application to safeguard the interests of the joint estate. The first respondent could have conducted herself in a reasonable manner to avoid prejudice to the joint estate. Therefore, the applicant seeks that the first respondent be held liable for costs of this application on a party and party scale.

[58] The applicant pursued the litigation on behalf of the joint estate. Therefore, he is absolved from any liability as to costs from a personal point of view. But it also ought to be recognised that although the first respondent's Objection has slender success, her efforts would result in the Court ordering an investigation on very critical aspects of the joint estate, which may avail some positive outcomes for the joint

estate. This suggests to me that although her case had considerable blemish, it was not *mala fide* and deserving of some level of frowning from the Court by way of an adverse costs order. Therefore, I will direct that the costs of this application be costs in the administration of the joint estate.

Orders

[59] In the premises, I make the order, that:

- a) the applicant's second and final liquidation and distribution account ('the Second L&D') is hereby approved, subject to the variation in b) hereof;
- b) the applicant is directed to amend the Second L&D to reflect that an amount of R35 000 (thirty five thousand rand) due and payable in terms thereof to the second respondent is carried over to the liquidation and distribution account to be drafted after the Second L&D and, thereafter, to be awarded either to the first respondent or second respondent depending on the outcome of an investigation by the applicant regarding the sale of the watches by the second respondent, referred to in paragraphs [43] to [46] above;
- c) the applicant is directed not to make any payment to the second respondent in terms of the Second L&D until or unless the second respondent has accounted to the first respondent for her 50% interest in his pension funds held or previously held with Momentum to the satisfaction of the applicant;
- d) the applicant is directed to conduct an investigation regarding the value of the shareholding held or previously held by the second respondent in Coldline Food Brokers (Pty) Ltd and the ownership and sale of the immovable property situated in Highlands, Dullstroom previously owned by the first and second respondents, and
- e) costs of this application, either as agreed or taxed, shall be borne and paid by the joint estate.

Khashane La M. Manamela
Acting Judge of the High Court

Date of Hearing : **19 August 2025**

Date of Judgment : **8 September 2025**

Appearances :

For the Applicant : Mr NS Nxumalo

Instructed by : Ransley-Melvin Attorneys, Johannesburg
c/o Paul du Plessis Attorneys, Pretoria

For the Respondent / Plaintiff : Ms K Howard

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