IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)

CASE NO. EL 713/2024

In the matter between:

N[...] M[...] APPLICANT

And

SILMA HAMDULAY N.O FIRST RESPONDENT

STANDARD BANK OF SOUTH AFRICA
ESTATE AND FINANCIAL PLANNING DIVISION SECOND RESPONDENT

T[...] M[...] THIRD RESPONDENT

S[...] M[...] FOURTH RESPONDENT

K[...] M[...] FIFTH RESPONDENT

MASTER OF THE HIGH COURT SIXTH RESPONDENT

JUDGMENT

COLLETT AJ

Introduction

[1] This application raises a novel situation regarding the appointment of a receiver, post the passing of a spouse, to effect the division of a joint estate as ordered at date of divorce. The applicant and K[...] N[...] M[...] (hereinafter referred to as '*the deceased'*), whose marriage in community of property was dissolved by decree of divorce on 15 August 2017, failed to attend to the division of the joint estate prior to the *deceased's* passing on 22 December 2020 for reasons more fully apparent *infra*. Accordingly, the applicant seeks, *inter alia*, the appointment of a receiver to effect same which relief is opposed by the first and second respondents (hereinafter collectively referred to as the '*respondents*'). First respondent is the appointed executor and an employee of the second respondent.

Factual Matrix

[2] As a starting point, the common cause or facts agreed to by the legal representatives during argument are of relevance, more particularly:

2.1 The *deceased* and applicant were married to each other in community of property and such marriage was dissolved by decree of divorce on 15 August 2017.

2.2 Division of the joint estate had not occurred at the time of the demise of the *deceased* on 22 December 2020.

2.3 The parties agree that 50% of the value of the joint estate as at date of divorce belongs to the applicant.

[3] Given the peculiar circumstances of this matter, it is necessary to digress and consider certain facts arising from the founding affidavit, which are undisputed, and may be informative in arriving at a just and equitable decision.

[4] The applicant and the *deceased* were married to each other in community of property at Verwoedberg, Pretoria on 24 June 1995, which is not denied by the *respondents*, with the fourth and fifth respondents being the children born of the marriage relationship.

[5] Seemingly, the parties ceased living together when the *deceased* left the matrimonial home and the applicant moved to Cape Town with the children. There is no date provided as to when this occurred. The *deceased* failed to support the applicant or the minor children culminating in a maintenance case being opened in East London. Whilst no date is provided, apparently the *deceased* failed to pay the maintenance. The applicant and the children later moved to Durban where the children embarked on tertiary education and they remained there until 2015. Thereafter, the applicant retired from Transnet and returned to East London staying between her brother in East London and her rural home in Flagstaff. The applicant states that during this period of time there was '*very little contact*' between the *deceased* and herself.

[6] It is common cause that the *deceased* obtained a decree of divorce during 2017, pursuant to a substituted service application. The applicant had no knowledge thereof and only established this in 2021 after the *deceased* has passed away. The applicant subsequently became aware of a will executed by the *deceased* during 2015 wherein the third respondent is referred to as his wife and heir.

[7] Pursuant hereto, the applicant launched an application culminating in an order on 19 October 2021 ordering division of the joint estate, and particularly that applicant was

entitled to 50% of the joint estate and 50% of the *deceased's* interest in a pension fund held by Liberty Life Group.

[8] Whilst not strictly relevant to the present application, it deserves mention that on 23 October 2023, pursuant to a further application brought by the applicant, the marriage of the *deceased* and third respondent was declared null and void *ab initio* but the will was declared valid by the Court. The second respondent was appointed as executor of the *deceased's* estate in terms of the will, with the first respondent being appointed by the sixth respondent as the executor of the *deceased's* estate on 6 March 2021.

[9] The applicant avers that she and the *deceased* remained joint owners of the property of the joint estate in a '*joint partnership'* up until the death of the *deceased* due to the non-division of the joint estate. The applicant contends further that she does not know the full extent of the joint estate of the *deceased* and for this reason she requires a receiver to be appointed.

[10] Seemingly, the first respondent, having acknowledged the applicant's half share ownership in the joint estate at date of divorce, has called upon the applicant to provide details regarding the assets thereof, including those belonging to the applicant, which the latter has failed to do. Regardless, the uncontroverted fact is that the full extent of the joint estate between the *deceased* and the applicant at date of divorce is unknown. Accordingly, the crisp issue before this Court is whether a receiver should be appointed to attend to the division of the joint estate of the parties consequent upon the decree of divorce granted on the 15 August 2017.

Legal context

[11] When a marriage in community of property is dissolved by decree of divorce, the joint estate is terminated and flows as a matter of law whether or not the court order directs the

division or not.[1] In the absence of agreement between the parties as to the division of the joint estate, a receiver may be appointed.

[12] The inherent power of a court to appoint a person to assist in the division of a joint estate was succinctly stated by *Innes CJ* in *Gillingham and Gillingham:*[2]

'…but where they do not agree the duty devolves upon the Court to divide the estate, and the Court has the power to appoint some person to effect the division on its behalf. Under the general powers which the Court has to appoint curators it may nominate and empower someone (whether he is called liquidator, receiver, or curator – perhaps curator is the better word) to collect, realise and divide the estate.' (my emphasis)

[13] Accordingly, the court is clothed with a discretion to appoint a liquidator to collect, realize and divide the joint estate. In *Robson v Theron*[3] it was held that the court has a wide equitable discretion relating to the division of a joint estate having regard to what is most advantageous to the co-owner. Whilst this position has been confirmed subsequent hereto, it is also recognised that the court is not obliged to appoint a liquidator.[4]

[14] Evidently, pivotal considerations are, *inter alia*, where the parties cannot agree on the division of the joint estate and the estate is not of so trivial a nature or value that it does not justify the appointment of a receiver.[5] In *Revill v Revill,*[6] whilst considering the appointment of a receiver to effect the division of the joint estate, the Court referred to the impartiality principle stating:

'…no man can be a judge in his own cause, no man can force his decision upon another. I cannot read this judgment in any other way other than reflecting the general principle that where

[1] *Keyser v Keyser* 1979(4) SA 12(T) at p 15H
[2] 1904 J.S 609
[3] 1978 (c) SA 841A 855C
[4] *Moosa NO & others v Akoo and others* [2008] All SA 585 (N) at 591 G
[5] *Schoeman v Rokeby Farming Co (Pty) Ltd* 1972(4) SA 201 (N) at 206 D - G
[6] 1969 (1) CPD 325 at 326 G -H

a division has to be made it must be made by an impartial person appointed by the Courts when the parties cannot between them agree as to the division or upon the person who is to make the division.' (my emphasis)

[15] It is trite that the joint estate of a marriage in community of property terminates upon death or divorce and a surviving spouse acquires a half share not by way of inheritance. Ordinarily, should the marriage in community of property still subsist at the time of death, the executor is required to wind up the entire estate and settle all liabilities of the joint estate whereafter the surviving spouse will receive a half share thereof

[16] The *Administration of Estates Act 66 of 1965* (hereinafter referred to as the *'Estates Act'*), provides the Master with far-reaching powers regarding the compilation of an inventory upon the death of a person. The inventory in the case of a joint estate existing at the death of a spouse would include the assets and liabilities of the surviving spouse. In accordance with the *Estates Act*[7] the Master has jurisdiction over the property of a deceased person and such estate may not be liquidated or distributed without a letter of executorship granted and signed by the Master.[8]

[17] An executor appointed by the Master in accordance with the *Estates Act*, has custody and control over the property in the deceased estate and is authorised to liquidate and distribute such estate.[9] Clearly, the inventory provided relating to the estate of the deceased is instructive of this process. The executor is obliged to submit a liquidation and distribution account of the deceased estate to the Master within a prescribed time period[10] or such further period as the Master may allow.[11] The submission of this account will result in the finalisation of the liquidation and distribution of the deceased estate.

Evaluation

[7] *Section 4(1)*
[8] *Section 13(1)*
[9] *Section 26*
[10] *Section 35*
[11] *Section 35(1)(c)*

[18] The affidavits of both parties are not a picture of clarity in addressing the elephant in the room, being the retrospective division of the joint estate of the applicant and the *deceased* as at date of divorce. The salient feature of this matter is that the half share of the applicant in the joint estate consequent upon the divorce between the *deceased* and applicant should be specifically excluded from the *deceased's* estate. This is by operation of both matrimonial and testamentary law.

[19] The first respondent is *'authorised as such to liquidate and distribute the estate of the late K[...] N[...] M[...]'* in accordance with the letter of executorship. As the applicant's half share in the joint estate accrued as at 15 August 2017, any suggestion that it either forms part of the *deceased's* estate or that the first respondent has authority to do administer same is misplaced. The letter of executorship[12] is decisive of the estate to which first respondent's authority extends which would incorporate only the *deceased's* half share flowing from the division of the joint estate as at date of divorce.

[20] Whilst it is trite that the *deceased* had freedom of testation, despite the will having been executed on16 July 2015 during the subsistence of the marriage between the applicant and the *deceased*, he could not dispose of the applicant's half share of the joint estate either during the subsistence of the marriage or upon divorce as at 15 August 2017. Put differently, the applicant's half share in the joint estate, less applicable liabilities at the time of the dissolution by divorce, is the exclusive property of the applicant.

[21] The question for consideration is whether this court should exercise its discretion to appoint a receiver to attend to the division of the joint estate of the applicant and *deceased* as at date of divorce based on the facts before it.

[22] The unequivocal conclusion from the common cause facts is that the joint estate between the *deceased* and applicant that was not divided as at date of divorce with the applicant's entitlement thereto being undisputed. The reason for the non-division is water under the

---

[12] Applicant's founding affidavit , Annexure B page 40(a)

bridge and it serves no purpose to cast aspersions relating thereto. The *de facto* position is that it did not take place and by operation of law, it should have and must happen.

[23] Whilst the submission by *respondents'* counsel is correct that the administration of the *deceased*'*s* estate is governed by the *Estates Act*, it loses sight of the fact that the applicant's half share does not and should not form part of that estate. It would have been a different scenario if the parties were married in community of property at at the date of the *deceased's* death.

[24] The question of the bias, impartiality or capability of the first respondent are non-issues as her appointment relates to the liquidation and distribution of the *deceased's* estate not the property of the applicant. Similarly, submissions regarding the practical considerations and potential conflicts advanced by *respondents'* counsel between the first respondent and a receiver will not arise as the duties of the receiver would not overlap with those of the first respondent.

[25] Lastly, the *respondents*' counsel referred to the cost implication regarding the appointment of a receiver and suggested that the applicant should appoint somebody at her own cost to effect a division. Quite why the applicant should be burdened with these costs is unclear considering that the *deceased* would have known at the date of divorce that the joint estate needed to be divided.

[26] There is no suggestion that the applicant knew of this prior to establishing the existence of the decree of divorce after the demise of the *deceased*. It deserves mention that the allegations in the founding affidavit far from support a harmonious and cooperative relationship between the applicant and the *deceased*, hence the probabilities lean towards a receiver having to be appointed upon the divorce of the parties to effect division of the joint estate. Ordinarily the costs of appointing a receiver are costs in that joint estate.

Appropriate relief

[27] In considering whether a receiver should be appointed in this instance, this Court is mindful of the following:

27.1 There can be no agreement between the parties on the division of the joint estate for obvious reasons.

27.2 On the probabilities, the estate as gleaned from the draft liquidation and distribution account, is not of a trivial a nature or value such that it would not ordinarily justify the appointment of a receiver.

27.3 The executor is, to say the least, neither empowered to administer the applicant's half share nor aware of the value of the joint estate at the date of divorce and, if anything, is in a compromised position in this regard.

27.4 The extent of the *deceased's* estate on the face of it, is vast and complicated. On the applicant's own version, she is unaware of its extent and the first respondent is unaware of the applicant's assets or liabilities at the date of divorce.

[28] The applicant has identified Mr Paterson as a potential receiver alleging in the founding affidavit that he has in excess of 30 years' experience as a receiver. Somewhat belatedly, the consent of Mr Paterson found its way into the application papers by means of a further affidavit. Whilst this affidavit was frowned upon by the *respondents*, no submission was made to disregard it. Mr Paterson's consent refers to Case No. EL 51/2017 which relates to the divorce action, and his engagement would be in respect of the division of the joint estate pursuant to the decree of divorce granted therein. The *respondents'* counsel correctly submitted that in event of a receiver being appointed, the only mandate should be in respect of the joint estate assets and liabilities up until 15 August 2017, deferring to the court to define the functions of the receiver.

[29] Despite the wholly unsatisfactory and regrettable state of affairs relating to the non-division of the joint estate pursuant to the decree of divorce, it would be remiss of this

Court not to exercise its discretion in appointing a receiver to determine the value of the joint estate of the applicant and the *deceased* as at 15 August 2017. The appointment of a receiver is considered just and equitable given the circumstances of the matter and will facilitate certainty regarding the value of the applicant's half share of the joint estate.

[30] The determination from the receiver regarding the division of the joint estate of the applicant and the *deceased* as at the date of divorce does not fall within the powers assigned to the first respondent in accordance with the *Estates Act.* Moreover, the value of the applicant's half share in the joint estate as at 15 August 2017 will assist the first respondent in the liquidation and distribution of the *deceased's* estate. Any claim that the applicant may reasonably believe that she has post the division of the joint estate as at 15 August 2017 is not before this court for consideration.

[31] There is no basis set out in the founding papers for the interdict sought by the applicant against the first respondent from attending further to the administration of *deceased's* estate pending the division of the joint estate between applicant the *deceased*. It is trite that applicants must set out the grounds for the relief sought in their founding papers. The applicant has failed to so relating to the interdict.[13] In any event, there is no reason to '*freeze*' or interdict the first respondent from administering the *deceased's* estate as the first respondent, given the nature and extent of the *deceased's* estate, may attract responsibilities pending the liquidation and distribution of the assets. It is reasonable to conclude that the assets and the business interests referred to in the draft liquidation and distribution account may require administration and input from the first respondent pending the finalisation of the receiver's mandate.

[32] Moreover, the first respondent will not be able to finalise the liquidation and distribution account of the *deceased's* estate pending the finalisation of the mandate of the receiver. As it is this liquidation and distribution account that facilitates the ultimate finalisation of the *deceased's* estate and is governed by the *Estates Act*, the sixth respondent should

---

[13] *Reynolds NO v Mecklenberg (Pty) Ltd* 1996 (1) SA 75 (W) at 78I

extend the submission thereof by the first respondent pending the completion of the duties of the receiver.

Costs

[33] Regrettably, neither party seems to have sought the intervention or guidance of the sixth respondent in this matter. Whilst the *impasse* between the parties is tangible and real, protracted litigation is and will have the effect of depleting the *deceased's estate*

[34] The applicant has been only partially successful in this matter and I accept that the *respondents'* opposition thereto was in the interests of the of the *deceased's* estate. Frankly, it may have been preferable if the applicant had sought the appointment of a receiver at the time of seeking the declarator regarding the joint estate.

[35] The relief sought actually relates to the division of a joint estate which existed as at 15 August 2017 and it seems fair that the costs, as is ordinarily the case upon an appointment of a receiver, are to be costs in that joint estate.

Order

Accordingly, the following order is issued:

1. Mr Andrew Stuart Paterson is appointed as a receiver to collate the assets and liabilities and to facilitate the division of the joint estate of the applicant and the deceased, *K[...] N[...] M[...]* (hereinafter referred to as the '*deceased*'), as at date of decree of divorce 15 August 2017 under Case No. EL 51/2017, within 90 days of the service of this order upon him.

2. Directing the applicant and first respondent to furnish the receiver with a complete inventory of all known or potentially being assets and liabilities of the

joint estate of the applicant and *deceased,* as at that date of divorce 15 August 2017 within 10 (ten) days of this order.

3. The receiver is assigned the undermentioned powers and duties:

3.1 The receiver is authorised to demand from the applicant and the first respondent a full account of all assets movable and immovable potentially belonging to the joint estate of the applicant and *deceased* as at 15 August 2017, including but not limited to, pension funds, investments, debt and monies due to the said joint estate

3.2 With respect to the immovable property the applicant and first respondent shall each appoint an estate agent / valuer to value the immovable property of the joint estate and the average value of the combined values shall be accepted as the value of the property by the receiver who will calculate the liquidity of the immovable property.

3.3 The receiver shall obtain appraisals for the purpose of determining the value of any of the other assets that form part of the joint estate.

3.4 The receiver is authorised to apply to this Honourable Court for further determination and direction, in the case where he is not satisfied with the information furnished to him by either of the parties or in the case of any other difficulty arising in determining the nature, extent and value of the joint estate.

3.5 The receiver shall be empowered to rule on any objection from the applicant or first respondent on behalf of the *deceased* and either allow or disallow it, either in whole or in part and his decision shall be sent to the applicant, first and sixth respondent which will become final and binding upon them should they not approach this Honourable Court for relief within 7 (seven) days of that decision.

3.6 The receiver is to prepare a final account and to establish the value of the applicant and *deceased's* half share in the joint estate as at 15 August 2017 in accordance with the law and any objection thereto must be lodged within 7 days of receipt of the final account by the applicant and first respondent.

3.7 In the event of no objection being made to the receiver's final account within the time limit provided, it will become final and binding in respect of the value of the half share of the applicant and the *deceased* relating to the joint estate as at 15 August 2017.

4. The first respondent upon being advised of the value of the applicant's half share in the joint estate as at 15 August 2017, is directed to exclude such value from the *deceased's* estate and pay same to the applicant prior to finally liquidating and distributing the *deceased's* estate.

5. The sixth respondent is directed to extend the time period for the submission of the liquidation and distribution account in the estate of the late *K[...] N[...] M[...]* Estate no 001193/2021 in terms of *Section 35(1)(b)* of the *Administration of Estates Act 66 of 1965* pending the final determination by the receiver of the value of the applicant's half share in the joint estate as at 15 August 2017.

6. The costs of this application are costs in the joint estate of the applicant and the *deceased* as at 15 August 2017.

7. A copy of this order must be served on all respondents.

S A COLLETT
ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant	: Mr SJ Swartbooi SC together with Ms L Swartbooi
Instructed by	: B Nduli & Co.
For the Respondent	: Mr Steenkamp
Instructed by	: Heidi van der Meulen Attorneys
Date of hearing	: 21 August 2025
Date of delivery of judgment	: 03 September 2025