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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2024-114120

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

DATE 14/11/2025

SIGNATURE

In the application for leave to appeal of:

M[...] **S[...]** **M[...]**

Applicant

and

L[...] **L[...]** **M[...]**

Respondent

In re:

L[...] **L[...]** **M[...]**

Applicant

and

M[...] **S[...]** **M[...]**

Respondent

JUDGMENT IN THE APPLICATION FOR LEAVE TO APPEAL

LABUSCHAGNE J

[1] The applicant for leave to appeal was the respondent in the main application.
To avoid confusion I will refer to him as Mr M[...] and to the respondent in

this application as Ms M[...].In the application for leave to appeal Mr M[...] raises three points:

- 1.1 First, that the court lacked jurisdiction and erred in finding that his institution of a counter application amounted to a submission to the court's jurisdiction.
- 1.2 Secondly, the applicant contends that the court erred in respect of a finding of urgency.
- 1.3 Thirdly, the applicant contends that the court erred in appointing the liquidator for the joint estate.

[2] A Court either has jurisdiction or it hasn't. According to the judgment of Hassim J of 17 December 2024, Ms M[...] applied for the appointment of a liquidator, following an order of 08 July 2024 by the Regional Court, Pretoria North dissolving the marriage and ordering the equal division of the joint estate. The application did not succeed as a separate application for the appointment of a liquidator was required. The court on that occasion also ordered that the applicant (Ms M[...]) shall be entitled to 50% of Mr M[...]’s pension interest received from the GEPI from date of marriage to date of divorce.

[3] A pension benefit in an amount of R3 239 553.24 had been paid to Mr M[...] on 02 June 2023, prior to the hearing of the divorce action, and more than a year before the marriage was dissolved.

[4] The appointment of a liquidator is part of the process giving effect to a court order dissolving a joint estate. It is within the powers of the court granting the order of dissolution to also appoint a liquidator. In **KN v Paterson** 2019 (JDR) 2059 ECG, a full court stated at paragraph [7]:

“... It has long been the case at common law that when a court of competent jurisdiction grants a decree of divorce in respect of a marriage in community of property the community of property ceases. In that event, in the absence of an agreed division of the estate, the court has the general power to appoint a person to effect the division on its behalf.”

- [5] The main application served before me in the urgent court, and at the same time, Mr M[...] filed a counter application to have his wife declared a vexatious litigant. I found that his conduct in instituting a counterclaim in the same proceedings amounted to a submission to the court's jurisdiction.
- [6] Counsel for the applicant argues that Mr M[...]’s express reservations regarding the court’s jurisdiction indicated that he was not submitting to the court’s jurisdiction. He contends that the counter application had to be brought in the Gauteng Division as Mr M[...] had to follow the court in which Ms M[...] was resident.
- [7] A test for a submission to jurisdiction is objective and not subjective. The conduct of Mr M[...] objectively represents a clear unequivocal intention to submit to the jurisdiction of this court in the hearing of the very application which his wife brought against him. His protestation to the contrary do not detract therefrom that his response to the urgent application was the counter application in the same division.
- [8] A submission to jurisdiction can either be done expressly, tacitly, by agreement or by conduct (see Van Dijkhorst J in **Reiss Engineering Company Ltd v Insamcor (Pty) Ltd** 1983 (1) SA 1033).
- [9] The only additional requirement, flowing from the judgment of Didcott J in **Standard Bank v Butlin** 1981 (4) SA 158 D, is that the submission to jurisdiction should be clear.
- [10] If Mr M[...] brought a separate application under a different case number, that may strengthen his argument.
- [11] There is another reason why the court has jurisdiction. The order for the appointment of a liquidator is giving effect to a Gauteng divorce court order in respect of joint assets located within the court’s jurisdiction. The execution of that order is part and parcel of the order granting the decree of divorce. The Court has jurisdiction over causes arising within its jurisdiction(sec 21(1))

of the Superior Courts Act, 10 of 2013). The divorce is a cause that arose within its jurisdiction. There is no logic or need to approach a Limpopo Court to give effect to a Gauteng Court order in respect of joint assets located mostly in Gauteng.

[12] Although the aforesaid was not part of my express reasoning at the time of the judgment, jurisdiction arises from objective facts and these facts are common cause.

[13] I am not persuaded that another court will or may come to a different conclusion on the issue of jurisdiction.

[14] As far as urgency is concerned, the conduct of the respondent in not cooperating in giving effect to securing the 50% interest of Ms M[...] in his pension fund, did give sufficient cause for concern to warrant urgent intervention. Even Hassim J suspected that Mr M[...] was not acting bona fide. Such a decision on urgency is in any event not appealable on these facts. There was no misdirection pointed out, as the rights of Mr M[...] to appropriate redress in due course have not been adversely affected.

[15] As far as the appointment of the liquidator is concerned, there is no merit in the contention by Mr M[...]. The appointment of a liquidator flows from the court's inherent powers in granting an order of divorce and directing that the joint estate be divided.

[16] I am therefore not persuaded that the applicant has established a basis for leave to appeal in terms of section 17(1)(a) of the Superior Courts Act, 10 of 2013.

[17] In the premises the application for leave to appeal is dismissed with costs.

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

APPEARANCES

COUNSEL FOR APPLICANT : ADV NKABINDE

INSTRUCTED BY : LINDY M[...] ATTORNEYS

COUNSEL FOR RESPONDENT : ADV MULLER

INSTRUCTED BY : ELLIOT ATTORNEYS