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

CASE NO: 2026-051794

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

SIGNATURE:

DATE: 07 April 2025

In the matter between:

V[...] D[...], G[...]

Applicant

and

V[...], J[...]

Respondent

JUDGMENT

COURTENAY AJ:

Introduction:

[1] The applicant and the respondent were married on 18 October 1990 at Pretoria in community of property. The applicant vacated the matrimonial home in or about March

2025 and initiated divorce proceedings on 9 May 2025. Those proceedings remain pending, as does a separate application she has brought under Rule 43 of the Uniform Rules of Court.

- [2] The present application was brought on an urgent basis. It seeks declaratory and interdictory in respect of the joint estate. The notice of motion provides:

- “2. Declaring that the individual assets of the Applicant and the Respondent are assets in the joint estate of the Applicant and the Respondent;*
- 3. Directing the Respondent to desist from marketing, selling or otherwise alienating any assets in the joint estate, whether movable or immovable.*
- 4. Directing the Respondent to desist from employing person/s to market, sell or otherwise alienate ... asset[s] in the joint estate on his behalf.*
- 5. Directing the Respondent to desist from dealing in any way with any asset in the joint estate without the prior written consent of the Applicant.”*

- [3] The interdictory relief at paragraphs 3 to 5 of the notice of motion is expressed in the broadest possible terms and is largely repetitive in its effect. I address it in this judgment as a single order and refer to it as the “blanket interdict”.

- [4] The applicant also, and in her notice of motion, sought an order compelling the respondent to account for all assets of the joint estate sold or alienated since 1 April 2023, and directing that a half-share of the proceeds from those sales be paid into the trust account of the respondent’s attorney of record. Both claims were abandoned from the bar during the hearing.

The factual background:

- [5] The former matrimonial home is in Meyerspark, Pretoria. The respondent continues to live there. The applicant now lives with her elderly parents in Mooiplaats, Pretoria. The parties also own a smallholding at Donkerhoek, where several of the joint estate’s movable assets are kept, and an immovable property in Silverton.

- [6] The applicant’s case is that the respondent has embarked on a course of conduct aimed at dissipating and exploiting assets of the joint estate for his own benefit and to her

disadvantage. The respondent contests this characterisation. The facts, as far as they emerge from the papers, are as follows:

- [7] On 26 February 2026, the parties' son discovered that various movable assets were being advertised for sale on Facebook Marketplace. On her own search, she found that various movable assets were being advertised for sale under the profile of Karin Stander, described by the applicant as a female friend of the respondent. The applicant did not list the items individually in her founding affidavit, she rather annexed screenshots as annexure "FA1".and averred that she identified the assets depicted in those screenshots as property belonging to the joint estate. The items appearing in the annexure include: an industrial brick-making machine at R850,000; a brick-making factory at R300,000; a 1985 JCB TLB at R80,000; a complete S130 Bobcat at R70,000; a Mahindra bakkie at R70,000; a mulcher with hydraulic motor at R60,000; a 2005 Husqvarna Enduro 250 motorcycle at R30,000; diesel pipes and metres at R30,000; two panel saws at R25,000; a trailer at R18,000; a large safe at R8,000; a hydraulic and pressure tank at R8,000; a double cab bakkie canopy at R8,000; a bakkie frame at R7,000; a deep freezer at R5,000; a compressor at R4,000; and steel window and door frames at R500.
- [8] The respondent's answer to the applicant's averment is a denial. He contends that annexure "FA1" speaks for itself, that it reflects screenshots of online listings under the heading "Karin's listings", and that it proves neither ownership of the item depicted, nor that they form part of the joint estate, nor that the person reflected acted as his agent, nor that any sale was concluded, nor that any proceeds were received by him. He avers that after the applicant and the parties' sons left the family business, he was left alone to manage the properties, and that he engaged an acquaintance to place listings from time to time to clear his yard of items that had become unused or were deteriorating in the sun. He does not say Ms Stander is that acquaintance. He does not identify which items, if any, he instructed to be listed. He does not identify any item in the annexure as falling outside the joint estate. These are matters within his own knowledge.
- [9] The Silverton property was also listed on Facebook Marketplace at R3 500 000. The respondent describes this as a "market test" to gauge the property's potential value. He accepts that no transfer of immovable property registered in both names could proceed

without the applicant's signature. A flat adjoining the matrimonial home, occupied by the parties' adult son and his family for approximately eleven years without paying rent, was vacated on the respondent's notice to make it available for letting. The applicant says the flat has been advertised at R14 000 per month. The respondent does not say whether a lease was concluded.

- [10] The applicant also complains that the respondent exploits joint estate properties to generate rental and business income for his own account, including from the smallholding and from firewood sales conducted over many years. The respondent's answer is that he has bought and sold firewood on a daily basis from the smallholding for twenty-four years, that the applicant was witness to that business throughout the marriage, and that all income is applied to joint expenses and necessities. The applicant does not dispute the duration or nature of his business in reply.

Preliminary Issues:

- [11] The respondent raises three preliminary objections: that the application lacks urgency; that Rule 43 provides an adequate alternative remedy; and that the applicant approaches the court with unclean hands. None of these objections have merit.

The issue of urgency:

- [12] The test for urgency is well established. An applicant must set forth explicitly the circumstances rendering the matter urgent and the reasons why substantial redress cannot be obtained at a hearing in due course.¹ The enquiry is not whether the applicant is anxious, but whether the ordinary course of litigation will leave her without substantial redress. If it will, the matter qualifies for urgent enrolment. If it will not, no degree of subjective anxiety can convert the matter into one warranting departure from the ordinary procedures.²

- [13] The respondent's challenge rests on delay. The applicant knew of the vehicle sales as early as February 2025, yet launched this application only in March 2026. Even after discovering the Facebook Marketplace listings on 26 February 2026, she waited nine

¹ See, generally, *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite and Others* [2011] ZAGPJHC 196.

² Id at [9].

days before issuing. The urgency, the respondent submits, is self-created.

[14] The argument mistakes the background with the trigger. The earlier vehicle sales are not the conduct that prompted this application. The trigger was the discovery on 26 February 2026 that movable assets of the joint estate were being actively marketed for sale on a public platform. What followed was not delay but orderly preparation: a demand to desist through the applicant's attorney on 2 March 2026, the issue and service of the application on 6 March 2026. Eight days from discovery to litigation, four of which were devoted to the sensible step of demanding compliance before resorting to court.³ That sequence is the opposite of self-created urgency. It is the conduct of a litigant acting with appropriate expedition.

[15] The matter is urgent.

The availability of Uniform Rule 43:

[16] The respondent contends that Rule 43 provides an adequate alternative remedy. Rule 43, he submits, is the appropriate vehicle through which a spouse may 'regulate the management, preservation, and enjoyment of joint estate' assets pending divorce. He cites *Taute v Taute* 1974 (2) SA 675 (E) and *Van Vuuren v Van Vuuren* [2012] ZAGPPHC 160 in support of this proposition.

[17] The contention misconceives the nature of Rule 43. The Rules of Court concern the procedure by which substantive rights are enforced.⁴ They do not lay down the substantive law. The court's power to make *pendente lite* orders for maintenance, contribution to costs, and care and contact with children is derived from the substantive law.⁵ Rule 43 merely provides a streamlined procedure for invoking that power. If it were abolished, the substantive power would not disappear; only the procedure by which it would be invoked would change. This much was made clear in *CT v MT*⁶.

[18] Rule 43 is not a remedy. It is a procedure. The respondent's contention conflates the two. An interdict restraining a spouse from dealing with assets of the joint estate does

³ See, *Nelson Mandela Metropolitan Municipality v Greyvenouw* 2004 (2) SA 81 (SE) at 94C-D and *Stock v Minister of Housing* 2007 (2) SA 9 (C) 12I-13A, both cited with approval in *East Rock Trading* at fn. 1.

⁴ See, Van Loggerenberg et al *Erasmus: Superior Court Practice* (RS 28, 2025, D1 Rule 43-3).

⁵ Ibid.

⁶ *CT v MT* 2020 (3) SA 409 (WCC) at [19] & [20].

not fall within any of the categories for which Rule 43 provides a procedural vehicle. The remedy lies within the court's substantive jurisdiction and must be pursued through the ordinary procedures available for that purpose. The authorities the respondent invokes do not support the contrary position. *Taute* concerned the principles governing interim maintenance. It says nothing about interdictory relief. *Van Vuuren*, as cited, could not be located.

[19] The point is dismissed.

An abuse of process:

[20] The respondent alleges that the applicant opened a criminal complaint of assault against him on 6 March 2026, immediately before service of the urgent application, that he was arrested on 8 March 2026, and that his detention over the weekend prejudiced his ability to prepare his opposition to the application, which was due on 9 March 2026. The respondent suggests that this sequence of events forms part of a coordinated strategy to weaponise the court's processes and constitutes an abuse of both the civil and criminal litigation systems. He also contends that the applicant removed assets from the former matrimonial home on or about 26 February 2026, conduct said to be inconsistent with her stated fear that the respondent is dissipating the joint estate.

[21] The respondent, despite being incarcerated, filed a comprehensive answering affidavit. The matter was argued on an opposed basis. Whatever prejudice the arrest may have caused, the respondent was heard. The court has his version before it. The criminal complaint remains untested. The allegation that it was tactically motivated is just that – an allegation. It is irrelevant to the merits of the application.

[22] The removal of assets takes the respondent nowhere. The applicant explains that she removed furniture after the respondent himself, in his answering affidavit to the pending Rule 43 application, stated that she may take existing furniture rather than purchase new items. The removal of assets from one location to another is not alienation. The items remain part of the joint estate. The conduct the applicant seeks to interdict is the sale of estate assets to third parties, not their relocation.

[23] The point is dismissed.

The Matrimonial Property Act:

- [24] The resolution of both the declaratory order and the interim interdict requires an understanding of the statutory framework governing the management of a joint estate. The Matrimonial Property Act⁷ (“the MPA”) establishes a comprehensive regime that defines the powers of spouses married in community of property, delineates the transactions that require consent, and provides specific remedies when those powers are exceeded. The architecture of this regime is central to the analysis that follows.
- [25] A marriage in community of property has defined legal consequences. The separate estates of the spouses merge into a single joint estate. The spouses become tied co-owners in undivided and indivisible half-shares of all assets, and joint debtors in respect of all liabilities, whether existing at the time of the marriage or acquired and incurred during its subsistence.⁸ The half -shares are not merely undivided; they are indivisible for as long as the marriage endures.
- [26] Co-ownership of this kind raises an immediate question: who is responsible for managing the joint estate? The common law answer was the husband, by virtue of the marital power.⁹ Section 14 of the MPA replaced that regime with one of equal and concurrent authority. It provides that:

“Subject to the provisions of this Chapter, a wife in a marriage in community of property has the same powers with regard to the disposal of the assets of the joint estate, the contracting of debts which lie against the joint estate, and the management of the joint estate as those which a husband in such a marriage had immediately before the commencement of the Act.”

- [27] Ownership and management are not the same thing. Both spouses hold undivided half-shares in every asset of the joint estate, but the right to manage that estate – to deal with its assets, to contract debts against it, to alienate its property – is governed not by the law of co-ownership but by the statutory framework that sections 14, 15, and 16 establish. The framework, as Visser and Potgieter explain, comprises two elements: equal or concurrent management, meaning that each spouse may perform juristic acts

⁷ Act 88 of 1984.

⁸ Heaton (ed) *The Law of Divorce and Dissolution of Life Partnerships in South Africa* (2014) 62.

⁹ See, generally, Hahlo *The South African Law of Husband and Wife* (1985) 189.

involving the joint estate without the consent or even knowledge of the other;¹⁰ and joint management, meaning that certain defined acts may be performed only with the consent of the other spouse.¹¹ The default is concurrent management. Joint management is the exception, confined to the categories of transaction specified in sections 15(2) and 15(3).

- [28] Section 15(1) gives effect to the first element. A spouse in a marriage in community of property may perform any juristic act regarding the joint estate without the consent of the other spouse. The power extends to all juristic acts, including alienation; consent is not required unless the MPA demands it.¹²
- [29] Sections 15(2) and 15(3) give effect to the second element. Section 15(2) prescribes a closed list of transactions requiring written consent: the alienation of immovable property;¹³ the cession or pledging of bonds;¹⁴ suretyship;¹⁵ the alienation of assets held mainly as investments;¹⁶ and entering into credit agreements.¹⁷ Section 15(3) identifies a further set of transactions requiring consent, but the formality is less exacting: informal, oral, or tacit consent suffices.¹⁸ The most significant category for present purposes is the alienation, pledging, or burdening of furniture or other effects of the common household forming part of the joint estate.¹⁹ The term “*effects of the common household*” refers to items functionally connected to the joint household. Domestic appliances, furniture, and similar articles fall within its scope.²⁰ Items that do not serve

¹⁰ Visser & Potgieter *Introduction to Family Law* (1998) 117. See, also Van Heerden et al *Family Law in South Africa* (2021) 96.

¹¹ Visser & Potgieter (n 10) 118; Van Heerden et al 96

¹² Visser & Potgieter (n 10) 118. This is also in keeping with marital power under the old regime, see, Hahlo (n 9) 190.

¹³ Sec. 15(2)(a) & (b) of the MPA. See also, Hahlo (n 9) 162 where the author correctly states that “[i]n accordance with the principles governing the acquisition of ownership in an estate as a whole (per universitatem), immediately on solemnization of the marriage all assets, movable or immovable, corporeal or incorporeal, which one of the spouses brings into the marriage becomes common by operation of law, as regards to both ownership and legal possession. See, further Van Heerden et al (n 10) 86.

¹⁴ Sec. 15(2)(c) of the MPA.

¹⁵ Sec. 15(2)(h) of the MPA.

¹⁶ Sec 15(2)(d) of the MPA.

¹⁷ Sec. 15(2)(f) of the MPA.

¹⁸ Visser & Potgieter (n 10) 120.

¹⁹ Sec. 15(3)(a) of the MPA.

²⁰ Visser & Potgieter (n 10) 120.

a household function do not. A motor vehicle, for instance, is probably excluded.²¹

[30] The remedial architecture follows the same division. Section 15(9) empowers a court to set aside a transaction, or to order an adjustment upon the division of the joint estate, where a spouse transacts in contravention of section 15(2) or 15(3), or in contravention of an order under section 16(2). The remedy reaches no further. A transaction that falls within the general management power under section 15(1) cannot be set aside. No adjustment is available upon division. The transaction is valid, and the asset is gone.

[31] It does not follow that the prejudiced spouse is without recourse. The recourse is preventive, not curative. Section 16(2) empowers a court, where it is satisfied that it is essential for the protection of the interest of a spouse in the joint estate, to suspend for a definite or indefinite period any power which the other spouses may exercise. The effect is to strip that spouse of the relevant management power for the duration of the order and to bring any transaction concluded in contravention of the suspension within the reach of of section 15(9). Section 20 provides a further remedy: a court may order the division of the joint estate where the conduct or proposed conduct of a spouse will seriously prejudice the other's interest.²² Beyond these statutory remedies, a spouse may, in appropriate circumstances, apply for an interdict to prevent a threateningly unlawful act by the other spouse which may cause harm, provided no other reasonable remedy is available.²³

Discussion:

[32] The applicant seeks two forms of relief: a declaratory order that the individual assets of the parties are assets of the joint estate, and an interdict restraining the respondent from dealing with any assets of the joint estate without her prior written consent. Each is considered in turn.

The declaratory relief:

[33] The applicant seeks a declaratory order that the individual assets of the parties are assets of the joint estate. The power to grant such an order is conferred by section

²¹ Ibid.

²² This though is regarded as a “*drastic step*”. See, *BTTM v NKM* [2024] ZAGPPHC 992 at [4].

²³ Visser & Potgieter (n 10). See, also *Elesang v PPC Lime Ltd & Others* 2007 (6) SA 328 (NC) at [25].

21(1)(c) of the Superior Courts Act.²⁴ It is a discretionary power. The court must first be satisfied that the applicant is an interested person with an existing, future, or contingent right, and must then decide whether the case is a proper one for the exercise of the discretion.²⁵

[34] An existing or concrete dispute between the parties is not a prerequisite for the exercise of the jurisdiction, although the absence of such a dispute may, depending on the circumstances, cause the court to decline to exercise it.²⁶ The court will not, however, grant a declaratory order where the issue raised is hypothetical, abstract, or academic, or where the legal position is clearly defined by statute.²⁷

[35] The first requirement is met. The applicant is a spouse married in community of property and thus holds an undivided half-share in every asset of the joint estate. The second requirement is not. The legal position the applicant asks the court to declare is a trite incident of the common law. A marriage in community of property has the consequence, by operation of law, that the assets of the spouses form part of a single joint estate (unless otherwise provided). No court order is needed to make this so. No court order can add to it. The respondent does not contend otherwise. There is no dispute about the classifications of any specific asset. The declaration seeks to restate what the law already provides, and neither party contests it.

[36] The declaratory order is refused.

The interim interdict:

[37] The test for an interim interdict is trite. In this regard:

“The granting of an interim interdict pending an action is an extraordinary remedy within the discretion of the Court. Where the right which it is sought to protect is not clear, the Court’s approach in the matter of an interim interdict was lucidly laid down by INNES, J.A., in Setlogelo v Setlogelo In general the requisites are –

²⁴ Act 10 of 1013.

²⁵ See, *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd* 2005 (6) SA 205 (SCA) at [18].

²⁶ *Shoba v OC, Temporary Police Camp, Wagendrift Dam* 1995 (4) SA 1 (AD) at 29.

²⁷ *PYK v TSK* [2025] ZAGPPHC 241 at [16], relying on with approval *Ex parte Noriskin* 1962 (1) SA 856 (D).

- (a) *a right which, 'though prima facie established, is open to some doubt';*
- (b) *a well-grounded apprehension of irreparable injury;*
- (c) *the absence of ordinary remedy.*

In exercising its discretion the Court weights, inter alia, the prejudice to the applicant, if the interdict is withheld, against the prejudice to the respondent if it is granted. This is sometimes called the balance of convenience.

*The foregoing considerations are not individually decisive, but are interrelated; for example, the stronger the applicant's prospects of success the less his need to rely on prejudice to himself. Conversely, the more the element of 'some doubt', the greater the need for the other factors to favour him. The Court considers the affidavit as a whole, and the interrelation of the foregoing considerations, according to the facts and probabilities ... Viewed in that light, the reference to a right, 'though prima facie established, is open to some doubt' is apt, flexible and practical, and needs no further elaboration."*²⁸

[38] Both parties treated the application as a contest about ownership. The applicant asserted a right, grounded in her undivided half-share of the joint estate, to safeguard its assets against diminution. The respondent disputed the sufficiency of her evidence to sustain that claim. Neither engaged with the statutory regime governing management of the joint estate. On 18 March 2026, and as a consequence, I requested supplementary written submissions on four questions: whether the requirements for an anti-dissipation interdict apply; what juristic acts section 15(1) of the MPA contemplates; whether any of the exceptions in sections 15(2), (3), or (7) apply in the present instance; and the significance of sections 15(9)(b), 16 and 20, bear on the matter. Both parties filed submissions and I am indebted to them for doing so.

[39] The order the applicant seeks is a blanket one. It would direct the respondent to desist from dealing in any way with any asset of the joint estate without her prior written consent. It is not confined to identified assets or to defined categories of transactions. Its practical effect would be to impose a consent requirement on every juristic act the

²⁸ *Eriksen Motors (Welkom) Ltd v Protea Motors Warrenton* 1973 (3) SA 685 (A) cited with approval in *East Rock Trading 7 (Pty) Ltd* (n 1) at [14].

respondent performs in relation to the joint estate.

- [40] The availability of an interdict to protect a spouse's interest in the joint estate is not in doubt.²⁹ A co-owner may seek to interdict the alienation of a specific co-owned asset. That is a proprietary remedy. It flows from the right of ownership and protects a defined interest in a defined thing. The blanket order the applicant seeks is a different creature. It does not restrain the respondent from dealing with an identified asset. It restrains him from dealing with any asset of the joint estate without the applicant's prior written consent. That is not the protection of a proprietary interest in identified property. It is a restriction on the respondent's power to manage the joint estate.
- [41] The distinction matters. The power to manage the joint estate is governed by the statutory framework of the MPA. The default under section 15(1) is concurrent management: each spouse may act independently. Consent is required only where the MPA demands it. What the applicant seeks on the blanket formulation is not the protection of her interest in any particular asset. It is the curtailment of the respondent's management power across the entire joint estate. The vehicle for restricting management powers is section 16(2) of the MPA. The applicant has not invoked it. On the blanket formulation, the *prima facie* right is not established.
- [42] The balance of convenience, moreover, and in any event, weighs against the blanket order, at least on the papers presently before me. The respondent, for example, buys and sells firewood daily and has done so throughout the marriage. The applicant does not dispute this; she was, on the respondent's uncontested account, a witness to the business for twenty-four years. A blanket order requiring her prior written consent before dealing with any asset of the joint estate would impede the respondent's ability to conduct that business and to manage the ordinary affairs of the estate. It would also, in all likelihood, prejudice the applicant. A Rule 43 application is pending. The income the respondent derives from his daily commercial activities on the smallholding is, on the face of it, relevant to any determination of maintenance. An order that restrains the activity from which that income is derived undermines the very foundation on which a maintenance claim may rest.

²⁹ See, for example, *Elesang v PPC Lime Ltd* (n 23) at [25]. See, also *Visser & Potgieter* (n 10) 130; *Hahlo* (n 9) 256; *Van Heerden* (n 10) 104. See, further, *Laws v Laws* 1972 (1) SA 321 (W) and *Chellammah v Nair* 1953 (3) SA 799 (N).

- [43] The applicant has an alternative remedy. Section 16(2) provides for relief of precisely the scope she seeks. It empowers a court to suspend the management powers of a spouse where such suspension is essential for the protection of the other spouse's interest in the joint estate. The scope of the relief dictates the legal vehicle to be used. A blanket restraint on the exercise of statutory management powers is, in substance, an application to suspend those powers. The legislature has provided a specific mechanism for such suspension. An interim interdict is not a substitute.
- [44] The refusal of the blanket interdict is not a finding that the respondent's conduct in the management of the joint estate is beyond reproach. The listing of joint estate assets for sale through a third party's Facebook profile, without knowledge of the applicant, is conduct of the kind that section 16(2) is designed to address. The applicant is not precluded from pursuing that remedy.
- [45] A further issue warrants mention. The applicant identified specific assets on Facebook Marketplace that she claims are at risk of alienation. These assets could have supported a targeted application for an interdict concerning each one. However, the applicant did not pursue that route; instead, she employed the general remedy, using the Facebook Marketplace listings as illustrative justification for an order extending to all assets of the joint estate.
- [46] The blanket interdict is refused.

Costs:

- [47] The ordinary rule is that the unsuccessful party pays the costs. The circumstances of this case warrant a departure. The respondent's conduct in listing joint estate assets for sale through a third party's Facebook profile without the applicant's knowledge is what brought this application before the court. The use of a third party's profile to advertise joint estate assets is not the conduct of a spouse acting transparently in the management of a joint estate.
- [48] The answering affidavit compounds the difficulty. The respondent admits arranging the listings to clear his yard, yet refuses to acknowledge that the person under whose profile the items were listed is the person he instructed to do so. He attempts to manufacture disputes about whether the listed items form part of the joint estate without

substantiating that contention. His denials, tested against his own admissions, do not withstand the scrutiny demanded.

[49] A successful litigant whose own conduct provoked the litigation and whose engagement with the court is marked by evasion, contradiction, and reliance on disputes he cannot sustain is not entitled to the reward of a costs order in his favour.

[50] The following order is made:

1. The application is dismissed.
2. Each party is to pay their own costs.

COURTENAY AJ

JUDGE OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on Caselines.

For the applicant:	Adv CB Ellis
Instructed by:	M Stander Attorneys.
For the respondent:	Adv M du Plessis
Instructed by:	JW Wessels & Partners Inc.
Date of hearing:	17 March 2026.
Additional submissions received:	25 March 2026.
Date of judgment:	07 April 2026.