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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 47384/2017

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: YES

DATE: 6 May 2026

SIGNATURE OF JUDGE:

In the matter between:

R[...] M[...] M[...] M[...]

Applicant

and

N[...] A[...] T[...] M[...]

Respondent

JUDGMENT

Woodrow, AJ:

- [1] The applicant seeks an order appointing Ms PN Manamela, an attorney and conveyancer, of Phuti Manamela Incorporated Attorneys, “... *as receiver and liquidator, to receive and liquidate the estate of the parties which existed between them as at date of divorce.*”¹ The applicant requests the court to grant Ms Manamela wide ranging powers in this regard,² and for costs “... *to be borne by the parties' estate on party and party [scale]*”.³
- [2] Ms PN Manamela has deposed to a confirmatory affidavit consenting to her appointment as receiver and liquidator of the estate of the parties.
- [3] The parties were married in community of property. Their marriage broke down and the applicant (as plaintiff) instituted divorce proceedings and issued action against the respondent (as defendant) under the above case number during 2017.
- [4] The marriage was dissolved by this court on 18 January 2021 in terms of an order which appears to have been agreed to by the parties (the “**divorce order**”).⁴

¹ Notice of motion, CaseLines, 088-1, prayer 1.

² Notice of motion, CaseLines, 088-2 to 088-3, prayer 2 – 2.7, including also the “duties” set out in paragraph 7 of the applicant’s founding affidavit which the applicant seeks to incorporate into her notice of motion.

³ Notice of motion, CaseLines, 088-3, prayer 3.

⁴ The original draft order that appears to have been made an order of court, initialled by Strydom AJ on 18 January 2021, provides that the divorce order is made “... *as follows*

[5] Apart from dealing with the parties' parental responsibilities and rights in respect of their children, the divorce order made provision for the dissolution of the parties' joint estate as follows:

2. That the parties' joint estate be dissolved as follows:

- 2.1 The parties immovable property known as 1[...] C[...] Street, Zambezi Country Estate, Montana, Pretoria remain the sole property of the Defendant and the latter is ordered to buy the Plaintiff out from the mentioned immovable property within ninety (90) days from date of grant of this decree of divorce.
- 2.2 The Defendant is to buy the Plaintiff out at 50% of the market value of the immovable property mentioned in 2.1 above, failing which, the said immovable property be sold at an auction or by an Agent at an amount equal or more than its market value and the proceed thereof be shared equally by the parties.
- 2.3 The parties' remaining three (3) immovable properties known as 9[...] K[...] Street, Nkwe estate, Rosslyn; 9[...] I[...] street, Nkwe estate, Rosslyn and 5[...] S[...] Street, Khumalo Valley, Katlehong be awarded to the parties' three (3) children born out of their marriage relationship.

as agreed by and between the parties:". (my emphasis) See CaseLines, 000-1. A perusal of the terms of the divorce order further supports the fact that the order was agreed between the parties. The 'final order of divorce' attached by the applicant to the founding affidavit does not contain these words. Be this as it may, it is apparent that the terms of the order were agreed between the parties and made an order of court by agreement.

2.4 That the parties register a trust for the benefit of the three (3) children where the three (3) immovable properties mentioned in paragraph 2.3 above are to be held for the benefit of the parties' three (3) children.

2.5 That each party retain, as their sole assets, any or all vehicles currently in its possession.

2.6 Each party to retain all policies, savings, investments currently held or opened in its name.

2.7 Each party to retain its pension fund interests.

2.8 Each party to be liable for debts incurred in its own names.

[6] The divorce order makes provision for the *modus* of the dissolution of the joint estate of the parties. The facts addressed by the applicant in her founding affidavit deal with difficulties experienced regarding compliance with the divorce order relevant to the immovable property known as 1[...] C[...] Street, Zambezi Country Estate, Montana, Pretoria (the “**C[...] Street property**”) only, - that is, with non-compliance with the orders in paragraphs 2.1 and 2.2 of the divorce order.

[7] Regarding the other three immovable properties, referred to in the orders in paragraphs 2.3 and 2.4 of the divorce order, and whilst there has not been compliance with the divorce order regarding registration of a trust for the benefit of the children in respect of such immovable properties, the applicant

does not raise this as an issue that requires resolution and states as follows:

*“... The children have now attained the age of majority and thus it is my humble submission that the registration of the Trust it is no longer warranted and the said properties will be registered under the names of each individual child.”*⁵

[8] There exists a significant disconnect between the relief sought in the applicant's notice of motion and the facts addressed in the applicant's affidavits. The applicant has not made out a case for all of the far-reaching relief sought in the notice of motion. The essence of the facts addressed in the applicant's founding affidavit is that the respondent has prevented and frustrated compliance with the orders in paragraphs 2.1 and 2.2 of the divorce order relevant to the C[...] Street property only. No case is made out for the appointment of a receiver and liquidator for the liquidation of the entire estate - *“... to receive and liquidate the estate of the parties which existed between them as at date of divorce.”*⁶.

[9] The case made out by the applicant is that the respondent has frustrated the liquidation / disposal of the C[...] Street property. The applicant addresses the fact that the respondent has shown no interest in finalizing the division of the joint estate (with reference to the C[...] Street property), has left her to pay outstanding levies and other costs in respect of the C[...] Street property, and has actively frustrated the sale of the C[...] Street property. The

⁵ Founding affidavit, CaseLines, 088-8, par 5.7.

⁶ Notice of motion, CaseLines, 088-1, prayer 1.

respondent, whilst denying any bad faith or dishonesty, and furnishing a bald and ambiguous bare denial,⁷ confirms that he attended the auction of the C[...] Street property (which took place on 25 September 2024, and at which the applicant signed an offer to purchase the property for R 2,260,000.00) *“... to try and stop what was happening and to make the auctioneers aware that the immovable property auctioned was part of an ongoing legal proceedings ...”*. A perusal of the affidavits as a whole, including also the correspondence⁸ from the attorneys who were instructed to attend to the transfer of the C[...] Street property, demonstrate that the respondent has in fact frustrated the sale and liquidation of the C[...] Street property. This has been to the ongoing prejudice of the applicant who has had to incur significant expenses in respect of the C[...] Street property.

[10] Quite apart from the aforesaid, the facts show that the mechanism agreed to by the parties for the liquidation of the C[...] Street property has not been successful in achieving finalization of the division of the joint estate. Effect has not been given to an order of this court. Further, the applicant is not obliged to remain co-owner against her will.⁹

[11] In heads of argument for the applicant, having set out how the court order has been frustrated with specific reference to the sale of the C[...] Street property, the following is submitted:

⁷ Answering affidavit, CaseLines, 092-7, par 4.

⁸ “**PL05**”, CaseLines, 089-49.

⁹ **T.M.N v Y.N** (2025/232707) [2026] ZAGPJHC 256 (6 March 2026) par [32].

As a consequence of the Respondent's conduct, effect has not been given to the court order, and hence the Applicant has launched this application that a receiver and liquidator be appointed in order to ensure that the court order be given effect and to ensure that complete compliance is adhered to.

[12] The respondent raises no proper justification for his conduct. The respondent raises no proper defence. The allegation of ongoing legal proceedings under case number 20909/2022¹⁰ (a) does not constitute a defence to the relief that the applicant seeks, (b) is no justification for the respondent's frustration of an order of this court, and (c) is factually incorrect, the aforesaid application having been withdrawn.¹¹

[13] The respondent failed to buy out the applicant at 50% of the market value of the C[...] Street property as envisaged in paragraphs 2.1 and 2.2 of the divorce order. Accordingly, the C[...] Street property was required to be sold at an auction or by an Agent at an amount equal or more than its market value and the proceeds thereof were to be shared equally by the parties as envisaged in paragraph 2.2 of the divorce order. It is common cause that this has not occurred.

[14] Where parties are unable to agree on the division or on the person to effect the division, then the court may appoint an impartial person (variously

¹⁰ A copy of that notice of motion is attached to the answering affidavit as "**TAN1**", CaseLines, 092-10.

¹¹ Notice of withdrawal, "**PL08**", CaseLines, 089-58.

referred to as a receiver, liquidator or curator) to effect the division,¹² to collect, realise, and divide the estate.¹³ Whilst the parties have agreed on the *modus* of division *in casu*, such *modus* has not achieved the purpose of liquidating the remaining asset in the estate, namely the C[...] Street property. In my view, the court may appoint a receiver and liquidator to liquidate and realise such asset and to give effect to the divorce order. Such receiver and liquidator would proceed under the *actio communi dividendo*.¹⁴

[15] In my view a receiver and liquidator ought to be appointed in order to give effect to paragraph 2.2 of the divorce order. Such receiver and liquidator shall be afforded such powers and functions necessary to effect the division of the remaining asset in the estate, namely the C[...] Street property. Furthermore, and in order to avoid a further impasse in the matter, should compliance with paragraph 2.2 of the divorce order not result in the sale of the C[...] Street property, further orders to achieve the sale of the C[...] Street property shall be included in the order that I intend to grant.

[16] In her notice of motion, the applicant does not seek a cost order against the respondent directly. The applicant has sought an order that costs “...be borne by the parties' estate ...”.¹⁵ The order that I intend to grant shall make provision for the costs of this application, together with any further necessary

¹² **Revill v Revill** 1969 (1) SA 325 (C) at 327.

¹³ **Gillingham v Gillingham**, 1904 T.S. 609.

¹⁴ **Robson v Theron** 1978 (1) SA 841 (A) at 854 – 855; **Morar NO v Akoo** 2011 (6) SA 311 (SCA) par 12.

¹⁵ Notice of motion, CaseLines, 088-3, prayer 3.

costs and fees that are to be incurred in liquidating the remaining asset, to be paid from the gross proceeds of the sale of the C[...] Street property. The nett proceeds shall then be divided between the parties.

Order:

[17] Accordingly, I make the following order:

1. **Ms Phuti Nonosy Manamela**, ("**Ms Manamela**"), a director of Phuti Manamela Incorporated Attorneys situated at No. 1[...] P[...] Road, Rooihuiskraal, Centurion, Gauteng Province, is appointed as receiver and liquidator, to receive and liquidate the immovable property known as 1[...] C[...] Street, Zambezi Country Estate, Montana, Pretoria (the "**immovable property**").
2. Ms Manamela as receiver and liquidator is granted the following powers:
 - 2.1. To take all such steps as may be necessary to sell the immovable property at an auction or by an agent at an amount at least equal to its market value in accordance with paragraph 2.2 of the order of this court dated 18 January 2021 under case number 47384/2017 (the "**divorce order**").
 - 2.2. To engage the services of any suitably qualified person to assist her in determining the market value of the immovable property, alternatively to take such steps that she deems

appropriate to determine the market value of the immovable property.

- 2.3. In the event that Ms Manamela is unable to dispose of the immovable property in terms of paragraph 2.1 of this order within a period of four months from date of this order, then Ms Manamela is authorised to take all such steps as may be necessary to sell the immovable property at an auction to the highest bidder.
- 2.4. To obtain from either party or both parties, and to sign and to execute on behalf of either party or both parties, any documents, deeds or any other papers that may be necessary to sell, auction, dispose of and effect transfer of the immovable property.
- 2.5. To make payment of the necessary fees and costs incurred in liquidating the immovable property in terms of this order, of liabilities and debts in respect of the immovable property, and the party and party costs of the application, from the gross proceeds of the sale of the immovable property, and thereafter to distribute the nett proceeds of the sale of the immovable property equally between the parties.
- 2.6. To accept offers and bids from either of the parties, subject thereto that such offer or bid constitutes the highest or best offer or bid in respect of the immovable property, and subject to the terms of this order.

3. Ms Manamela as receiver and liquidator is not required to find and/or provide security for her administration.
4. Ms Manamela's fee will be determined on an hourly basis, or part thereof, at a rate prescribed by law (excluding VAT) for her services to receive and liquidate the immovable property.
5. The party and party costs of the application shall be paid from the gross proceeds of the sale of the immovable property.

WOODROW AJ

ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties and or parties' representatives by e-mail and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on this 6TH day of May 2026.

Appearances:

Counsel for the Applicant: R R Maisela

instructed by: Pilusa Attorneys

Counsel for the Respondent: N Lebeloane (Trust Account Advocate)

Date of Hearing: 12 March 2026

Date of Judgment: 6 May 2026