REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Case No: 5214/2013

Reportable: NO
Of interest to other Judges: NO
Revised: NO
Date: 25 June 2026 Shadrack Tebeile AJ
Signature: _____

In the matter between:

S[…] I[…] Applicant

and

S[…] M[…] T[…] First Respondent

WILLIAMS SHAWN Second Respondent

Heard on : 20 April 2026

Decided on : 25 June 2026

Coram : TEBEILE AJ

JUDGMENT

TEBEILE AJ:

Introduction

[1] This is an application brought by the applicant, Mr I[…] S[…], seeking certain relief to finalise the division of the joint estate that arose from his marriage in community of property to the first respondent, Mrs M[…] T[…] S[…]. The second respondent, Mr Shawn Williams, is the duly appointed receiver and liquidator of the joint estate.

[2] The application, although not entirely without merit, was largely unnecessary. As will become apparent, this court had already granted a comprehensive order on 26 April 2023 (per Venter AJ) that empowers the second respondent to wind up the joint estate. The evidence before this court also indicates that the first respondent has, contrary to the applicant's contentions, cooperated with the second respondent in the liquidation process.

Background

[3] This matter has a long history, and which history is necessary to be fully placed in this judgment for the purpose of this application. The applicant and the first respondent were married in community of property on 9 March 1985. Two daughters were born of the marriage. During June 1988, the parties purchased the immovable property situated at Erf […], Dobsonville Extension […], Johannesburg ("the property").

[4] On 9 February 2011, the applicant vacated the matrimonial home. The first respondent thereafter instituted divorce proceedings. On 26 July 2013, a decree of divorce was granted in the absence of the applicant. The order provided that the

marriage was dissolved and that each party was to remain with the property in his or her possession.

[5] The applicant contends that he only became aware of the divorce decree during March 2018 when he applied for vehicle finance. He thereafter launched an application to vary the divorce order. On 8 March 2022, Mahomed AJ granted a variation order.

[6] The judgment of Mahomed AJ made it clear that the parties were married in community of property, that there was no evidence the applicant had abandoned his share in the joint property, and that no forfeiture order had been sought or granted. The Learned Judge held that "the marital home is the asset in that joint estate, regardless of each parties' contributions or residence."

[7] On 13 March 2023, this court per Mahomed AJ again issued a further order declaring that "the immovable property remains as an asset in the joint estate of the parties as at the date of divorce."

[8] On 26 April 2023, Venter AJ made an order ("the order of Venter AJ") appointing the second respondent as receiver and liquidator of the joint estate. That order empowered the second respondent to:

8.1. Realise the immovable property for the benefit of the parties in equal shares as at the date of divorce.

8.2. Deduct from the gross proceeds thereof all liabilities of the joint estate in respect of the property as at the date of divorce, including all legal costs as taxed or agreed, as well as his commission.

8.3. Thereafter divide the net proceeds equally between the parties.

[9] Despite the existence of this comprehensive order, the applicant launched the present application on 3 September 2024. The relief sought includes a *mandamus* compelling the second respondent to sell the property, an interdict against the first respondent disputing the liquidator's powers, and a declaration that the applicant is entitled to 50% of the current value of the property.

[10] A significant portion of the applicant's founding affidavit is devoted to allegations that the first respondent has delayed and frustrated the liquidation process. However, the evidence before this court tells a different story.

[11] The first respondent has filed a detailed answering affidavit, supported by extensive email correspondence, demonstrating her cooperation with the second respondent. The following facts emerge from the record:

11.1. The first respondent provided the second respondent with access to the property for valuation purposes.

11.2. She funded improvements to the property out of her own pocket to enhance its value.

11.3. She obtained and provided the electrical compliance certificate, the house plan, and the certificate of occupation to the conveyancers.

11.4. She complied with all documentation requests from the liquidator and the conveyancers.

[12] The email correspondence annexed to the papers shows that on 11 November 2024, the conveyancer requested the electrical compliance certificate. The first respondent had already provided it well in advance, and the conveyancer's office confirmed same on the same day.

[13] On 13 January 2025, the conveyancers informed all parties that the transfer was awaiting extended rates clearance figures and bridging finance. On 17 January 2025, the conveyancers advised that the property was registered under leasehold and that consent from the Minister of the Department of Human Settlements ("the Department") was required to pass transfer. The conveyancer noted that there were applications from July 2024 still awaiting approval. This delay is plainly administrative and entirely beyond the first respondent's control.

[14] The liquidator himself, on 10 April 2025, confirmed to the Department that the application for conversion of the land tenure right had been received, processed, and sent to the Minister's office for approval on 24 March 2025. The liquidator has been actively following up on this process. At no stage has the liquidator complained that the first respondent has delayed or obstructed the process.

[15] It is also significant that the property has already been sold by the second respondent for R899 000. The agreement of sale was signed on 21 August 2024.

[16] In light of the above, I find that the first respondent has cooperated with the second respondent. The applicant's allegations of obstruction and delay are not supported by the evidence.

The joint estate and its liabilities

[17] It is trite law that a marriage in community of property results in the pooling of all assets and liabilities of the spouses. It is trite that a marriage in community of property requires that all assets and liabilities are merged in a joint estate, and both parties hold equal shares of both assets and liabilities.

[18] The legal consequence of this regime is that the joint estate is liable for all debts incurred by either spouse during the marriage. When the joint estate is liquidated, the liabilities must first be discharged from the estate before any distribution to the spouses takes place. A party cannot claim a half-share of the assets while refusing to accept a half-share of the liabilities.

[19] In this application, the applicant correctly seeks 50% of the value of the property. That is his right. However, he must accept that the joint estate's liabilities, including the bond repayments, municipal rates, utilities, maintenance costs, and improvements that the first respondent solely financed during the subsistence of the marriage, must be deducted from the gross proceeds before any division takes place. This is not a matter of discretion, but a matter of law.

[20] The first respondent has submitted reconciliations and supporting documentation evidencing her sole financial contributions to the property. The applicant has provided no documentary evidence of any contribution, despite repeated requests. However, this court is not invited to determine the precise amounts of those liabilities. That is precisely the function of the second respondent as liquidator. The order of Venter AJ empowers the second respondent to "quantify the liabilities of the joint estate as it relates to the property." That is a task for the liquidator, not for this court on motion proceedings.

Whether the application was necessary and moot

[21] At the inception of the hearing on 20 April 2026, the applicant's counsel conceded that prayer 1 of the notice of motion is moot. The counsel for the first respondent argued that the entire application was unnecessary and that the order of Venter AJ had to some extent resolved the dispute between the parties.

[22] In my view, the order of Venter AJ of 26 April 2023 already provides a complete and comprehensive outline for the winding up of the joint estate. That order expressly empowers the second respondent to:

22.1. Realise the property.

22.2. Deduct all liabilities of the joint estate as at the date of divorce, including legal costs and his commission.

22.3. Divide the net proceeds equally between the parties.

[23] It is also significant that the property has already been sold by the second respondent for R899 000. The agreement of sale was signed on 21 August 2024. The relief sought by the applicant compelling the second respondent to sell the property is therefore moot, as correctly conceded by the counsel for the applicant.

[24] In my view, no further *mandamus* or interdictory relief is required to give effect to that order. The second respondent is an officer of the court and is fully empowered

to carry out his mandate. I am of the view that the applicant's insistence on obtaining a further order was, in the circumstances, mainly unnecessary. The relief sought herein has been largely granted by the order of Venter AJ in April 2023.

[25] It is trite that this court will not grant orders that are redundant or serve no practical purpose.

[26] In *JT Publishing (Pty) Ltd v Minister of Safety and Security*[1] , the Constitutional Court held that courts will not grant orders that are moot or academic. The Court stated:

> "A corollary is the judicial policy governing the discretion thus vested in the Courts, a well established and uniformly observed policy which directs them not to exercise it in favour of deciding points that are merely abstract, academic or hypothetical ones"[2].

[27] Similarly, in *Police and Prisons Civil Rights Union v South African Correctional Services Workers' Union and Others*[3], the Constitutional Court stated that it will not adjudicate a matter that no longer presents an existing or live controversy.[4] Although those cases concerned appeals, the principle is equally applicable here: this court exists to resolve live disputes, not to issue orders that duplicate existing relief. In my view, the application was unnecessary and it intended to seek an order that is moot.

Costs

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[1] 1997 (3) SA 514 (CC).
[2] Id at para 15.
[3] 2019 (1) SA 73 (CC).
[4] Id at para 43.

[28] The applicant seeks a costs order against the first respondent on an attorney and client scale. The first respondent resists this and argues that the application is unnecessary and abusive.

[29] The first respondent also sought a costs order against the applicant on an attorney and client scale. At the hearing of the application the applicant's counsel argued in the alternative to the above mentioned costs order, that there should be no order as to costs.

[30] The general rule is that costs follow the result. However, this court has a wide discretion in awarding costs.

[31] In this matter, the applicant approached this court with the impression that the first respondent obstructed the second respondent's process as a liquidator. The applicant correctly argued that he is entitled to 50% of the net value of the property.

[32] However, that entitlement was already established in the order of Venter AJ. The applicant's decision to launch this application, despite the existence of that order, was largely unnecessary.

[33] Furthermore, the evidence demonstrates that the first respondent has cooperated with the liquidator. The applicant's allegations of obstruction are not borne out by the record. In these circumstances, it would not be just to award costs against the first respondent.

[34] Conversely, the applicant should not be penalised with a costs order against him, as he was seeking to enforce his rights due to protracted liquidation process which clearly is frustrating to both parties, albeit in a manner that was not strictly

necessary. A fair costs order in the circumstances is that each party should bear their own costs.

Order

[35] In the premises, I make the following order:

1. The relief sought by the applicant is moot and has no practical effect.
2. The application is dismissed.
3. Each party to pay their own costs.

SHADRACK TEBEILE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

For the Applicant:	Advocate GB Hardy (Heads of argument prepared by Adv C Beukes) instructed by MC Kruger Attorney.
For the First Respondent:	Mr MB Radebe instructed by Mashele Attorneys Inc.
For the Second Respondent:	No appearance