IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 39802 / 2016
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO
(3) REVISED: YES/NO
DATE: 12 June 2026
SIGNATURE:

In the matter between:

V[...] S[...] S[...]	**Applicant**
and	
A[...] L[...] M[...]	**First Respondent**
LINDIWE FLORENCE KAABA	**Second Respondent**
THE STANDARD BANK OF SOUTH AFRICA	**Third Respondent**
CLEMENT MOAGA	**Fourth Respondent**
REGISTRAR OF DEEDS, PRETORIA	**Fifth Respondent**
CITY OF THSWANE METROPLITAN MUNICIPALITY	**Sixth Respondent**

This Judgment was handed down electronically by circulation to the parties and or their representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be **12 June 2026.**

JUDGMENT

M Snyman, AJ

Introduction

[1] Applicant seeks the following relief by way of review:

> 1. *"That the late filing of the application be condoned;*
> 2. *That the liquidation and distribution of the joint estate of the Applicant and the second respondent by the first respondent is reviewed and or set aside and or corrected and or varied.*
> 3. *The first respondent's appointment as liquidator of the joint estate be rescinded and set aside.*
> 4. *That the fifth respondent be ordered to de-register the third respondent as the lawful owner of the immovable property erf XXXX, XXXXX to restore the Applicant as the lawful registered owner of the above mentioned property.*
> 5. *Costs of the application, if opposed."*

Background

[2] The applicant and 1st respondent was married in community of property. During 2017 the marriage was dissolved by order of this court incorporating a settlement agreement.

[3] In terms of the settlement agreement the applicant would come out within 18 months purchase the first respondents half share of the property.

[4] It is claimed that the applicant did not do so timelessly and as a result the first respondent approached the court for the appointment of the second respondent as the receiver and liquidator of the joint estate with specific powers.

[5] This application was opposed, but the attorneys withdrew shortly before the hearing thereof and an order was granted, inter alia appointing at the second respondent.

[6] Second or from respondent claims that she offered the property to the applicant.

[7] It is common cause that the applicant in a letter from a former attorney offered to purchase the immovable property for the amount of R152 000.00. From this amount the outstanding bond in respect to the property and obviously some of the rights and taxes needed to be deducted.

[8] The second respondent however claims not to have received a written offer in these terms and before the property could be put up for auction received an offer for the purchase of the property and an amount of R 305 000.00.

[9] It was ever clearly never disclosed to the applicant that the property was indeed purchased by the 3rd respondent the comma who is claimed to be related to the first respondent. In itself a claim to be related is not a bar to selling the property to a person but the reason seems to be that the applicant was unaware a year of. No explanation is however given you know why he did not respond to the documentation referred to in the answering affidavits and filed as part of the record.

[10] Upon receipt of the purchase price the outstanding bond was paid and cancelled, the outstanding rates and taxes paid, and the remaining amount after the deduction of the second respondents fees and expenses in regard to the valuation and transfer of

the property was approximately R 25 000.00. this was tendered to be paid to the applicant.

[11] As indicated above the applicant seeks a rescission of an order and the setting aside of the transfer of the property to the third respondent and whatever the second respondent did, be reviewed and set aside.

[12] Before embarking on a further investigation of the facts. it needs to be ascertained whether any of the aforementioned orders can lawfully be granted.

Rescission

[13] It is clear that the applicant did not comply with the provisions of the settlement agreement entered into and made an order of court in respect of the sale of the property in 2017.

[14] There is in fact an in law no reason why the order appointing a receiver and liquidator be set aside. It seems to be common cause that the applicant was aware of the application, and no proper explanation is given why the matter was not opposed at that stage. It seems clear that a proper explanation either in terms of the common law or rule 42 had to be made setting aside that order.

[15] At the outset the order is sought in paragraphs one and three of the notice of motion cannot be granted. There has simply been no compliance with the requirements in support of such an order.

Review

[16] The applicant claims that the relationship between the 1st and 3rd the respondents results therein that the liquidator's actions be reviewed and set aside.

[17] It is a review in the true sense either at common law or in terms of legislation seems not to be the issue at stake. The simple answer is whether the court has the power to set aside what the 2nd respondent did on the facts before the court.

[18] From the documentation provided by the liquidator it is clear that the offer was not forthcoming from the applicant whether she had to do more in seeking to obtain an offer was not argued nor were any facts before placed before court in support of such a contention.

[19] The letter of the former attorney of the applicant to purchase the half share of the property for an amount of R 152 000.00 does not constitute a binding offer. Whether the applicant was properly informed either by his attorney or the liquidator to provide a proper offer is also not a properly or fully dealt with.

[20] The communication relating to the offer received from the third respondent was also not responded to.

[21] As a result, the order to set aside or review the liquidation and distribution of the joint assets cannot be granted.

[22] In law there is simply no bar thereto that the property be sold to a relative or a person having a relationship with any of the other parties. The property was sold at clearly the undisputed market value thereof.

[23] The second prayer can therefore similarly not be granted.

[24] Having said the above, it is not denied that the 1st and 3rd respondents or the related. They are indeed represented by the same attorneys. In a transparent society one would however have expected that this would be pointed out to the applicant right at the outset.

Setting aside of the sale

[25] In South Africa transfer of immovable property takes place by registration at the Deeds Office. Furthermore, once transfer has taken place to an innocent third party, such transfer cannot be set aside.

[26] In *Nkutha and Another v Standard Bank of South Africa Limited and Others* the court dealt with the issue as follows[1]:

> ***"In principle, this can be achieved – but only if the sale in execution itself can be impugned as having conferred on the sheriff no legal power to effect transfer of the property to the purchaser. And that would only have been the case if the peremptory statutory requirements relating to the sale in execution had not been complied with, or if the underlying default judgment was a nullity ab initio and thus conferred, ex tunc, no power on the sheriff to have conducted the sale in execution.***
>
> *[17] If these circumstances pertain, and if therefore the real agreement (also known as the transferring agreement) whereby the transferor intended to transfer [of] ownership and the transferee in turn intended to receive ownership is void, then despite the reigning abstract theory in our law of the passing of ownership also of immovable property, ownership will not have passed and may be vindicated right down the line of the subsequent successive innocent purchasers."*
>
> [Emphasis added]

[27] In the matter of *Menqua and Another v Markom and Others*[2] the Supreme Court of Appeal, after investigating the basis for setting aside sales in execution and the

[1] (23213/2011) [2017] ZAGPJHC 282 (11 August 2017) at [16] and [17]
[2] 2008 (2) SA 120 (SCA) para [24]

common law concluded that the sheriff derives his or her authority to transfer ownership pursuant to a sale in execution of immovable property from rule 43(13) of the Magistrates Court Rules. In the High Court, it so derives it from the provisions of Rule 46. If the sale in execution is null and void because it violates the principle of legality, as in the present case, then the sheriff can have no authority to transfer ownership of the property in question. The purchaser will thus not acquire ownership despite registration of the property is his/her name and no subsequent sale will be valid.

[28] The power of the second respondent to sell the property is set out in the court order in terms of which she was appointed during 2022 clearly granting her the authority to sell the property by private treaty or public auction. The sale was however not a sale in execution, but I accept for the purposes of this matter, that the same principles apply.

[29] The question is then whether there is any other basis to set aside such a sale.

[30] In *Nedbank Limited v Mendelow NO*[3] Lewis JA held that:

> ***"…it is trite that were registration of a transfer of immovable property is effected pursuant to fraud or a forged document ownership of the property does not pass to the person in whose name the property is registered after the purported transfer.*** *Our system of deeds registration is negative: it does not guarantee the title that appears in the deeds registry. Registration is intended to protect the real rights of those persons in whose names such rights are registered in the Deeds Office. And it is a source of information about those rights. But registration does not guarantee the title, and if it is affected as result of a forged power of attorney or fraud, then the right apparently created is no right at all."*

[31] The question is then whether there was some form of fraud and misrepresentation?

[3] 2013 (6) SA 130 (SCA) para [12]

[32] I accept that the first and third respondents are related and that this was kept away from the applicant, that does not constitute fraud or misrepresentation.

[33] Even if an argument that the second respondent had an obligation to be transparent and divulge the information relating to the purchaser to the applicant, I cannot find that she in fact had knowledge or that any of her actions qualify under any of the legal exceptions to set aside the sale to the third respondent.

[34] As such, the prayer to set aside the sale and transfer can also not be granted.

[35] The result is that the application cannot succeed.

Costs

[36] The applicant despite approaching the court long after the fact or that he is not successful in the application, I do not regard this as a matter where a punitive costs order as sort by as the first and third respondents is warranted.

[37] It is also clear that the applicant is sought to, even if it was a belated, purchase the property at the proper value thereof. Whether this requirement was properly communicated to applicant to provide a valid offer for acceptance, is not clear.

[38] I have, in considering the facts and even if I accepted or concluded wrongly that the first and third respondents are related and that this deliberately withheld from the applicant, it does not entitle the applicant to the relief sought.

[39] The counsel for first and third respondents furthermore filed two different sets of heads of argument.

[40] I am therefore in the exercise of my discretion not willing to grant any cost order in the matter.

Order

[41] The application is therefore dismissed and no order is granted in respect of the costs.

BY ORDER

M SNYMAN, AJ

Counsel for Applicant :	Mr Pillay
Applicant's Attorneys:	Pillay Thesigan Inc
Counsel for Respondent:	Adv K Maserumula
Respondent's Attorneys:	Mathibe Maswai Attorneys