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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2026-146038

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

31 July 2026 _____

In the matter between

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

APPLICANT

And

T[...] F[...] M[...]

FIRST RESPONDENT

FIRST NATIONAL BANK

SECOND RESPONDENT

INVESTEC BANK LIMITED

THIRD RESPONDENT

ABSA LIMITED

FOURTH RESPONDENT

REGISTRAR OF DEEDS, PRETORIA

FIFTH RESPONDENT

REGISTRAR OF DEEDS, JOHANNESBURG

SIXTH RESPONDENT

JUDGMENT

Mdalana-Mayisela J

[1] This is an application brought by the First Respondent to anticipate the return day of a *rule nisi* granted by this Court on 30 June 2026. The *rule nisi* was granted *ex parte* in favour of the Applicant, L[...] M[...]. It interdicts the First Respondent and various other parties from dissipating or concealing assets pending the finalization of divorce proceedings between the parties.

[2] The Applicant and the First Respondent are spouses. They were married in terms of customary law in Zimbabwe on 29 April 2000. Thereafter, on 2 July 2001, they concluded an antenuptial contract excluding the accrual system. On 20 July 2001, they concluded a civil marriage. The First Respondent is the sole director and sole shareholder of several companies, and he maintains bank accounts in South Africa, the United Kingdom, and Zimbabwe. The divorce proceedings are pending under case number 2026-018759.

[3] The Applicant contends that there is a serious legal question regarding the proper matrimonial property regime governing the marriage. She argues that because the customary marriage was concluded while the First Respondent was domiciled in South Africa, the marriage is in community of property. She further contends that the subsequent antenuptial contract is invalid because it cannot retrospectively alter the matrimonial property regime without a court order in terms of section 21(1) of the Matrimonial Property Act 88 of 1984. Alternatively, she claims a redistribution order in terms of section 7(3) of the Divorce Act 70 of 1979.

[4] The Applicant approached this Court *ex parte* and obtained a *rule nisi* that effectively freezes the First Respondent's personal bank accounts, the bank accounts of several companies under his control, and prohibits the transfer of immovable properties. The *rule nisi* order, in paragraph 8, expressly states that "*the application be served upon all the Respondents.*" The return date for all respondents to show cause why the rule should not be made final is 12 August 2026.

[5] Before the return date arrived, the First Respondent launched this application to anticipate the return day. He seeks final relief that the *rule nisi* be discharged and that the Applicant's anti-dissipation application be dismissed. He does not seek interim relief or a variation of the order. This is significant because the effect of his application, if successful, would be to

finally determine the matter before the other respondents have had an opportunity to be heard.

[6] The First Respondent's notice of motion lists only the Registrar of the Court and the Applicant's attorneys as parties to be served. The proof of service shows that only the Applicant was served with the anticipation application by email. The other five respondents, including the banks and the Registrars of Deeds, were not served and are not aware of this application.

[7] The fundamental principle of our law is that no final order may be made against a party without that party being given an opportunity to be heard. This is the *audi alteram partem* rule. In *Administrator, Transvaal and Others v Zenzile and Others*¹, the Appellate Division emphasized that the right to be heard is a fundamental principle of justice that cannot be lightly disregarded. This principle applies with equal force to applications to anticipate the return day of a rule nisi. Even if the anticipation is initiated by only one respondent, an *ex parte* order impacts the legal status of the entire case.

[8] The Second to Sixth Respondents are parties to this matter. They have been cited as respondents and are subject to the *rule nisi*. The banks have been ordered to freeze accounts. The Registrars of Deeds have been ordered to prohibit the transfer of immovable properties. They have a direct and substantial interest in the outcome of this application. If the First Respondent's application succeeds, the orders against them will be discharged. They are entitled to be heard on that question.

[9] The First Respondent argues that he is entitled to anticipate the return day in terms of Rule 6(8) read with Rule 6(12)(c) of the Uniform Rules of Court. That is correct. However, the right to anticipate does not relieve a party of the obligation to give proper notice to all affected parties. Rule 6(8) requires that a party anticipating a return day must give notice to all parties who have an interest in the matter. The First Respondent failed to do so. He cannot seek final relief against parties who were not given notice of the proceedings.

[10] The First Respondent seeks final relief, the discharge of the *rule nisi* and the dismissal of the Applicant's application. This is not a request for interim relief pending the return date. It is a request to finally determine the matter. A court cannot grant final relief against parties who have not been heard.

[11] The Applicant, in turn, asks this Court to confirm the *rule nisi*. I cannot do so. The return date is 12 August 2026, and that is the proper occasion for the confirmation or discharge of the rule. On that date, all parties will have been

¹ 1991 (1) SA 21 (A).

served, and all will have an opportunity to make submissions. To confirm the *rule nisi* now, in the absence of the other respondents, would be procedurally irregular. It would deprive the other respondents of their right to be heard on the merits of the order that affects them.

[12] The proper course is to remove this application from the roll. The First Respondent has brought his application prematurely and without proper notice to all affected parties. The matters he raises can and should be dealt with on the return date of 12 August 2026, when all parties are properly before the Court.

[13] I am not determining the merits of the First Respondent's application. He may well have valid arguments that the *rule nisi* should be discharged. Those arguments will be considered on the return date. However, they must be considered in the presence of all parties who have an interest in the outcome. The First Respondent must serve his papers on all respondents and give them proper notice of the return date.

[14] The question of costs must also be addressed. The First Respondent brought this application without proper service and without notice to the other respondents. He seeks final relief in circumstances where he cannot obtain it. This has caused unnecessary costs for the Applicant, who was compelled to oppose the application

[15] However, I am also mindful that the First Respondent was acting within his rights to anticipate the return day. The defect in his application is the failure to serve all parties, and it is procedural. The proper order is to remove the application from the roll and to reserve the costs for determination on the return date. On that date, the Court will have a full picture of all the circumstances and will be in a position to make an appropriate cost order.

ORDER

[16] I therefore make the following order:

1. The First Respondent's application to anticipate the return day is removed from the roll.
2. The *rule nisi* granted on 30 June 2026 remains in force pending the return date of 12 August 2026.
3. The costs of this application are reserved for determination on the return date of 12 August 2026.

4. The First Respondent is directed to serve a copy of this judgment and all relevant papers on all other respondents forthwith.

MMP Mdalana-Mayisela
Judge of the High Court
Gauteng Division, Johannesburg

Date of hearing: 29 July 2026

Date of delivery: 31 July 2026

Appearances:

For the applicant: Adv P Mafu

Instructed by: Memela KS Inc

For the respondent: Mr T Mudenda

Instructed by: Mudenda Inc Attorneys