

SOUTH AFRICA / JUDGMENT

Cholo v Motlana (61773/2021) [2025] ZAGPPHC 322 (27 March 2025)

[2025] ZAGPPHC 322**COURT**

North Gauteng High Court, Pretoria

BEFORE

MM Mojapelo

CASE / FILE NUMBER

61773/2021

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Policy**IN**

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

CASE NO: 61773/2021**(1)****REPORTABLE: YES/NO****(2)****OF INTEREST TO OTHER JUDGES: YES/NO****(3)****REVISED: YES/NO****DATE: 27/03/2025****SIGNATURE****In the matter between:**

KOLOBE
BRENDA CHOLO
Applicant
And
TREVOR
MOTLANA
Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 18 March 2025.

MOJAPELO AJ

1. During 2018, the applicant, Kolobe Brenda Cholo, and the respondent, Trevor Motlana, while having a love relationship acquired jointly a property known as Erf 2[...] T[...] Extension 74 Township, registration division IR in the Province of Gauteng. The property is registered under Deed of Transfer number T449924/2018. It is the applicant's case and indeed common cause between the parties that the love relationship has ended and the applicant seeks termination of joint ownership of this property. Although there is a dispute about the manner in which the property was acquired, there is no dispute that the joint ownership of the property should be terminated, however, the respondent is of the view that the applicant should not be entitled to any proceeds of the property should the property be sold.
 2. The facts are briefly that the applicant and the respondent commenced their love relationship during the year
2016. Out of that relationship, a minor child was born on 05 June
2019. The applicant states that the respondent's mother purchased the property and donated it to both of them and the property was transferred into both the names of the applicant and the respondent during June 2018 under Deed of Transfer number T449924/2018.
3. The respondent disputes the manner in which the property was registered into their names and states as follows:

"When we went to Conveyancers, my intention was to have my name only on the Title Deed, however, the applicant asked that I include her name on the title deed, as she needed to use this information later to buy her own house. She said it would be beneficial if she owned a house before. She knew that I asked my mother for a loan and that the money I had to pay back."
 4. While the respondent states that the applicant's name was not supposed to be on the title deed, he on the other hand states that his mother provided a loan to both the applicant and the respondent towards the purchase of the property. In that regard, he also attached summons under case number 60346/2021 wherein the respondent's mother is claiming payment of money which is alleged to have been loaned to both the applicant and the respondent. If indeed the respondent's mother is the one who

provided a loan for both parties to purchase the said property, what would have been the reason the respondent did not want the applicant to be included in the title deed. The respondent further alleges that the applicant never had any relationship with his mother because of her behaviour. On the other hand, he alleges that the mother was prepared to give both parties a loan for the purchase of the house. The respondent's ascertions in this regard are contrary.

5. In any event, the action by the mother against the parties based on the alleged loan has been pending since

2021. It is not for this Court to pronounce on its merits or prospect except to comment that if ever there is a dispute between the parties and the applicant's mother, it appears to have been protected in terms of the pending action which if brought to finality will determine the rights of the parties in relation to the allegations of a loan.

6. It is my view that that the action has no bearing on the dispute between the parties in respect of this property. The property has been registered in both the names of the applicant and the respondent. The parties stayed together in the said property and a minor child was conceived. The decision to terminate the joint ownership of the property is based on the end of a love relationship between the applicant and the respondent.

7. This matter has been postponed several times in this Court for a number of reasons. In one of those occasions, the respondent intimated that he was going to supplement his papers and/or bring a counter application. The Court has on various occasions postponed the matter and granted the respondent leave to file a supplementary affidavit or a counter application. Such supplementary affidavit and the proposed counter application were never made.

8. The matter also came before Maritz AJ on 23 February 2023 wherein he issued an order in the following terms:

"2. The applicant is hereby given leave to, within 10 days of this order, amend prayer 3 of her notice of motion, to provide for the following matters:

2.1 To nominate a person or institution to market and sell the property;

2.2 How the property ought to be sold (i.e. by private auction, private action etc);

2.3 Who should be appointed to accept the proceeds of the sale;

2.4 How must the proceeds of the sale be distributed by that person."

9. Both parties were further given leave to file a supplementary affidavit to support the reformulated prayer 3 of the notice of motion. The applicant complied with Maritz AJ's order and directive and on 07 March 2023 amended her notice of motion to include Maritz AJ's directives. The respondent did not file any supplementary papers despite being granted leave to do so by Maritz AJ.

10. During the hearing of the matter, the applicant was represented by counsel whereas the respondent represented himself. The respondent represented himself as his attorneys have withdrawn as his attorneys of record. However, his answering affidavit, together with the heads of argument, which had been previously filed by the attorneys who were on record were considered. He was given an opportunity to address the Court, which he did in his language of sesotho. Based on his interaction with the Court, it became clear that he accepts that the relationship between him and the applicant has ended and that the joint ownership of the property that is registered in both their names should be terminated. He, however, disputes that the applicant should be entitled to any portion of the proceeds of the sale of the property, should the property be sold.
11. In *Crawford v Goodman* 2022 JDR, it was held that a party claiming the termination of co-ownership must allege and prove the following:
 - 11.1. The existence of joint ownership.
 - 11.2. A refusal by the other co-owner to agree to a termination of the joint ownership, an inability to agree on the method of termination, or an agreement to terminate but a refusal to comply with the terms of the agreement.
 - 11.3. Facts upon which the court can exercise its discretion as to how to terminate the joint ownership. Generally, the court will follow a method that is fair and equitable to all of the parties.
12. This application is governed by the common law principles of the *actio communi dividundo* which have been summarized in the matter of *Robson v Theron* 1978
 - (1) SA 841 (A) as follows:

“(1) No co-owner is normally obliged to remain a co-owner against his will.
 - (2) This action is available to those who own specific tangible things (*res corporales*) in co-ownership, irrespective of whether the co-owners are partners or not, to claim division of the joint property.
 - (3) Hence this action may be brought by a co-owner for the division of joint property where the co-owners cannot agree to the method of division.
 - (4) It is for purposes of this action immaterial whether the co-owners possess the joint property jointly or neither of them possesses it or only one of them is in possession thereof.
 - (5) This action may also be used to claim as ancillary relief payment of *praestationes personales* relating to profits enjoyed or expenses incurred in connection with the joint property.
 - (6) A court has a wide equitable discretion in making a division of joint property. This wide equitable discretion is substantially identical to the similar discretion which a court has in respect of the mode of distribution of partnership assets among partners.”

13. In the matter of Crawford v Goodman 2020 JDR 1798 (GJ), it was held that; “If the co-owners cannot agree on the manner in which the property is to be divided, then the Court is empowered to make an order which appears to be fair and equitable. The Court may order the property to be sold and the proceeds to be divided amongst the co-owners according to their share of the property.”
14. It is so that in this matter, there is a dispute about the manner in which the property was acquired. What is clear is that the parties had a love relationship, and after the acquisition of the property, they stayed together in the disputed property and a minor child was born out of that relationship. It was only later when the relationship turned sour that the respondent moved out of the house. I therefore cannot find any equitable distribution other than the equal division of the proceeds of the property. Under the circumstances, it would be fair if the proceeds of the property are equally divided between the parties.
15. This matter is akin to a family dispute wherein a cost order against either party would not be appropriate.
16. I therefore make the following order:
 1. The co-ownership in the property known as Erf 2[...] T[...] Extension 74 Township, Registration Division I.R, in the Province of Gauteng, measuring 250 (Two Hundred and fifty) Square Meters in extend, held under the Deed of Transfer: T449924/2018 (herein after referred to as the property), is terminated.
 2. The respondent shall be offered an opportunity to buy the applicant's fair half value share in the property.
 3. In the event of the respondent failing and/or refusing to buy the applicant's fair half share value in the property within 45 days of the granting of this order: -
 - 3.1. The property be placed on the open market after 45 days of the granting of this order for a minimum of R1 100 000.00 (One Million One Hundred Thousand Rand), being the fair value of the property;
 - 3.2. The property be placed on the market and listed to be sold by the applicant's nominated Estate Agent, the Real Estate Services South Africa, the Estate Agent being Mr. Edgar Makati.
 - 3.3. Kubayi Attorneys be appointed as conveyancing attorneys to attend to the transfer of the property;
 - 3.4. Any commission due and payable to the appointed estate agent(s) will be paid from the proceeds of the sale of the property as per the sale agreement;
 - 3.5. Any amounts due and/or payable in relation to the rates and taxes of the property (clearance certificate) and /or Electrical Compliance Certificate (COC) and any other payment to be effected by the sellers for the purposes of the transfer will be paid from the proceeds of the sale of the property as per the sale agreement and/or offer the purchase;

- 3.6. The proceeds of the sale shall be shared equally amongst the parties.
4. In the event of the property being put on the market and the respondent failing and/or refusing to sign the transfer papers to give effect to paragraph 3 above, the Sheriff of Court Kempton Park is forthwith authorized to take such steps and sign all such documents on behalf of the respondent as may be required to give effect to paragraph (3) of this order within 5 days of written demand.
5. Each party shall pay his or her own costs of the application.

MM MOJAPELO

ACTING JUDGE

HIGH COURT GAUTENG DIVISION, PRETORIA

Counsel for the Applicant : Adv. N Mohlala Instructed by

: Ngoetjana Attorneys Counsel for the Respondent : (Self) – Attorneys Withdrew Head of Arguments on behalf of the Respondent

: Adv. L B Pilusa Date heard

: 03 February 2025 Date of the Judgement : 18 March 2025

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Prepared on 9 October 2026 · Esheria