

SOUTH AFRICA / JUDGMENT

D.F.S v M.N.S (55065/21) [2022] ZAGPPHC 43 (11 January 2022) [2022] ZAGPPHC 43

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

55065/21

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

On this 11th day of January 2022

Before the Honourable Justice Makhoba J

Via Videoconferencing

Order granted electronically in accordance with the directives regarding special arrangements during the National State of Disaster

CASE NO: 55065/21

In the matter between

D[....] F[....] S[....]

APPLICANT

ID: [....]

And

M[....] N[....] S[....]

RESPONDENT

ORDER

Having perused the documents filed on record as well as the written submissions and argument on behalf of the Applicant the following order is electronically granted:

1. Variation of Clause 3.1 in toto of the Settlement Agreement, that was made an order of Court on 17 February 2020, signed by the parties on 17 September 2019 under case number: 76642/2019. Clause 3.1 to be substituted in toto with the following:

"3.1 The parties are joint registered owner of the immovable property described as 9727 Unit 17, Ga-Rankuwa, GAUTENG herein after referred to as "the immovable property". The joint ownership to be terminated between the parties, as follows:

3.1.1 The estimated value of the immovable property is R 640:-00.0 and each party is entitled to the half share in the net proceeds of the immovable property.

3.1.2 The Plaintiff is still in occupation in the immovable property and until the immovable property is registered in the new owner's name, the Plaintiff remains liable for the maintenance and upkeep of the immovable property, water and electricity, rates and taxes, comprehensive insurance premium in respect of the immovable property.

3.1.3 The Plaintiff is afforded a period 3 months to buy the Defendant's half share in the immovable property, subject thereto that the Plaintiff provide guarantees within 3 months from the date of the granting of this order.

3.1.4 If the Plaintiff fails to provide the guarantees within 3 months, the Defendant is afforded 3 months to buy the Plaintiff's half share in the immovable property, subject thereto that the Defendant provides a guarantee within 3 months from the period as indicated in clause 3.1.3.

3.1.5 In the event that the Defendant fails to provide the guarantees as set pit om clause 3.1.4, the immovable property will be placed on the open market for 6 months to be sold;

3.1.6 In the event that the immovable property could not be sold on the open market in the 6 month period, the immovable property will be sold on auction for the highest possible bid with a reserve price equal to the sum of the total liabilities as follows:

3.1.6.1. The full outstanding amount due to the total authorities;

3.1.6.2. Auctioneers commissions;

3.1.6.3. The cancellation costs in respect of the mortgage bond registered over the immovable property.

3.1.7 Both parties undertake to sign all documentation necessary to effect transfer and registration of the immovable property into the name of the new owner on written demand, should either party fail to sign the necessary document within 7 days of written demand, the sheriff of the High Court of South Africa who has jurisdiction is authorized to sign such documentation on behalf of the defaulting party's costs.

3.1.8 In the event of the sale of the immovable property, whether on open market and/or auction, the nett proceeds to be divided between the parties."

2. The Respondent is interdicted and prohibited to interfere and/or sabotage the marketing of the immovable property, that the Respondent is interdicted from restricting access to the immovable property from any estate agents and/or any potential buyers.
3. The Respondent is ordered to pay the costs of this application.

BY ORDER

REGISTRAR

Counsel for the Applicant: M Coetzee

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