

SOUTH AFRICA / JUDGMENT

## R.A.S v Jordaan and Others (29014/18) [2025] ZAGPPHC 235 (28 February 2025)

[2025] ZAGPPHC 235

COURT

North Gauteng High Court, Pretoria

BEFORE

M J Teffo

CASE / FILE NUMBER

29014/18

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REPUBLIC OF SOUTH  
AFRICA

IN THE HIGH COURT OF  
SOUTH AFRICA

GAUTENG DIVISION,  
PRETORIA

CASE NO: 29014/18

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

In the matter between: R[...]  
A[...] S[...]  
Applicant  
and  
RUDOLPH  
PHILLIP JORDAAN  
First  
Respondent  
VALOTECH  
CC  
Second  
Respondent  
G[...] P[...]  
S[...]  
(born  
R[...])  
Third  
Respondent

## JUDGMENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading it to the electronic file of this matter on Caselines. The date and time of hand-down is deemed to be 10h00 on 28 February 2025.

TEFFO, J:

## Introduction

- [1] This is an application for the removal of the first respondent as the receiver and liquidator of the joint estate of the applicant and the third respondent and that another receiver and liquidator be appointed in his stead.
- [2] The applicant further seeks ancillary relief which relates to the first respondent's appointment as receiver and liquidator.
- [3] The application is only opposed by the first and second respondents. It will be convenient in this application to refer to the first and second respondents separately. Where appropriate they will be referred to collectively as the respondents. The third respondent who has not opposed the application will be referred to separately as the third respondent.
- [4] Condonation, which was not opposed, was granted for the late filing of the respondents' answering affidavit and the applicant's replying affidavit.

- [5] I was informed at the commencement of the hearing that there is a pending application under case no. 28013/2021 ('the pending application') instituted by the first respondent against the applicant. It appears that the parties endeavoured to consolidate the two applications so that they could be heard together. However, that was not possible. I was also informed that the pending application was not ripe for hearing as the parties were still to file heads of argument and comply with the directives of this court.

Factual

## background

- [6] The applicant and the third respondent were married to each other in community of property. They divorced on 6 February 2020. In terms of a settlement agreement signed by them on the day of divorce, the first respondent was appointed to act as liquidator and receiver of their joint estate and his powers and duties to act as such were attached to the settlement agreement. The settlement agreement was incorporated in the divorce order.
- [7] Pursuant to the divorce order, the first respondent commenced his duties as liquidator and receiver of the joint estate of the applicant and the third respondent. Meetings were held between him, the applicant, the third respondent and their legal representatives. Eventually, the first respondent produced a provisional report dated 21 July 2020. The applicant became dissatisfied with the conduct of the first respondent in the performance of his duties. This prompted him to bring this application.
- [8] It is prudent to mention that the second respondent is a close corporation under which the first respondent performs his duties as a liquidator and receiver.
- [9] In summary the applicant challenges the appointment of the first respondent as liquidator and receiver of the joint estate between him and the third respondent. He criticises the circumstances that led to the signing of the settlement agreement and attacks the conduct of the first respondent in the performance of his duties as receiver and liquidator. He alleges that the first respondent has not been impartial and that he has a reasonable apprehension of bias against him in favour of the third respondent. He accuses the first respondent of not cooperating with his attorneys, refusing to entertain his offer to purchase the matrimonial home with the third respondent for the sum of R500 000,00 and insisting that the matrimonial home should be sold for an amount of R450 000,00.
- [10] The respondents dispute the applicant's entitlement to the relief sought. They deny any improper or irregular conduct on their part. They contend that the application is a gross abuse of the court's processes and that the applicant is the cause of the delay in finalising the division of the joint estate.

The issues for determination

[11] What is the effect of a settlement agreement that has been made an order of court; whether the first respondent should be removed and replaced as liquidator and receiver of the joint estate of the applicant and the third respondent and whether the ancillary relief sought pursuant thereto should be granted.

Applicable legal principles

[12] The relevant principles applicable to the removal of liquidators were set out in the following cases:

*“[125] In Hudson and others NNO v Wilkins NO and others 2003 (6) SA 234 (T) (at para*

13) the court had this to say:

[13] A liquidator may be removed from office if there is sufficient suspicion of impartiality or conflict of interest, since a liquidator

must be and appear to be independent and impartial. He or she must be seen to be independent since his duties as liquidator may require him or her to investigate (see *Re Giant Resources Ltd* [1991] 1 Qd R107 at 117; *Re National Safety Council of Australia (Vic Division)* [1990] VR 29 ([1989] 15 ACLR 355 (SC Vic); *City of Suburban Ltd v Smith* [1998] 28 ACSR 328 (FC of A) at 336). A court will exercise its discretion to remove a liquidator if it appears that he or she, through some relationship, direct or indirect, with the company or its management or any person concerned in its affairs, is in a position of actual or apparent conflict of interest. In exercising that discretion Bowen LJ in *Re Adam: Eyton Ltd: Ex parte Charlesworth* (1887) 36 Ch D 299 at 306 said:

*“Of course, fair play to the liquidator himself is not to be left out of sight, but the measure of course is the substantial and real interest of liquidation.”*

[126] In *Ma-Afrika Groepbelange (Pty) Ltd v Millman and Powell NNO* 1997 (1) SA 547 (C) at 561H-J the following is stated:

‘Good cause for the removal of a liquidator has also been held to have been shown where a liquidator has not been independent. This was a ratio of the judgment in *Re Sir John Moore Gold Mining Co* (1879) 12 ChD 325 (CA) at 332, where a liquidator was removed because his “interests may conflict with his duty”. See also *Re P Turner (Wilsden) Ltd*

(1986) 2 BCC 99, 567 (CA) at 99, 570 and *Re London Flats Ltd* [1969] 2 All ER 744 (Ch) at 752E-F, where it was held that a liquidator should be “wholly independent” and that the removal of a liquidator should be “in the interests of every one concerned in the liquidation”.

[13] The Constitution of the Republic of South Africa[1] provides that an order or decision issued by a court binds all persons to whom, and all organs of the State to which, it applies.

[14] All orders of this Court, whether correctly or incorrectly granted, have to be obeyed until they are properly set aside[2].

- [15] In *Municipal Manager OR Tambo District Municipality and Another v Ndabeni*[3], the Constitutional Court reaffirmed the principle that a court order is binding until it is set aside by a competent court and this necessitates compliance, irrespective of whether the party against whom the order is granted believes it to be a nullity or not.
- [16] The proper approach to determining whether the applicant in motion proceedings has made out a case for the relief sought in a case where some of the allegations are disputed by the respondent was pronounced in *Plascon-Evans*. According to the *Plascon-Evans* rule, the applicant would succeed if the admitted facts alleged by it, together with the facts alleged by the respondent, justify the relief sought. However, it must be pointed out that where a respondent raises a bare denial to an allegation made by an applicant, the denial is not regarded as raising a genuine dispute of fact. In such a case the allegations made by the applicant may be taken into account in deciding whether the order sought is justified, unless the respondent has requested that the applicant's deponent be subjected to cross-examination[4].
- [17] Because the affidavits in motion proceedings constitute pleadings and evidence, the failure to respond to allegations made by the applicant is taken to be an admission of those allegations. In assessing whether the appellants have made out a case for the relief they seek, we will apply these principles[5].
- [18] A real dispute of fact arises, inter alia, where a court is satisfied that the party who purports to raise the dispute has in its affidavit seriously and unambiguously addressed the facts said to be disputed[6].

## Discussion

### The appointment of the first respondent as receiver and liquidator

- [19] The applicant alleges that he was not satisfied with the appointment of the first respondent as liquidator and receiver of his joint estate with the third respondent. He contends that on the day of the divorce, he was presented with a settlement agreement at court which he never had sight of prior to that date. He was informed that upon initialling and signing it, his marriage with the third respondent would be dissolved provided the settlement agreement was accepted by the court.
- [20] He claims that he did not know the respondents and he still does not know them. He was never shown the first respondent's credentials and has never seen his consent to act as liquidator and receiver of his joint estate with the third respondent. He asserts that the first respondent has indicated that he was never a party to an application for his appointment as liquidator and receiver. He alludes to the fact that he does not know the professional body to which the first and/or second respondent(s) belong where he would raise his concerns pertaining to the performance of the first respondent's duties.

- [21] In response to the allegations the respondents contend that the application is a gross abuse of the court's process in that the first respondent has been cited in his personal capacity and not in his capacity as a liquidator and receiver. They claim that the applicant seeks to amend a court order without seeking the correct relief.
- [22] The respondents assert that throughout the process the applicant acted in terms of the court order by attending meetings with the first respondent and his own attorney. Despite all this, he now alleges that he does not know them and did not and would not have consented to the appointment of the first respondent as liquidator and receiver. They contend that the applicant also provided the first respondent with the original signed version of his assets and liabilities.
- [23] In reply the applicant admits that pursuant to the divorce order, he attended at the offices of the first respondent and that he provided him with the original signed version of his assets and liabilities.
- [24] I find the issues raised by the applicant meritless for the following reasons: He admits that he signed the settlement agreement. The settlement agreement was made an order of court. In terms of the settlement agreement, the first respondent was appointed to act as receiver and liquidator of his joint estate with the third respondent. It is immaterial that the applicant never had sight of the first respondent's consent to act as liquidator and receiver and that the first respondent indicated that he was never a party to an application for his appointment as liquidator and receiver. The applicant was legally represented when the court granted an order for divorce. The court order of 6 February 2020 is binding until it is set aside by a competent court. Whether or not the applicant is dissatisfied with the settlement agreement, he is bound by it until it is set aside.
- [25] In this application the applicant did not seek relief to set aside the terms of the settlement agreement and/or rescind the order dated 6 February 2020. The order stands until it is set aside. It follows that it must be complied with.
- [26] The respondents contended that the first respondent has been cited in a personal capacity and not in an official capacity as liquidator and receiver. They asked the court to dismiss the application on that ground alone.
- [27] It is correct that the first respondent has not been correctly cited in this application. However, I find it not proper to dismiss the application on a technical ground without venturing into the merits.

#### The attack on the first respondent

- [28] The applicant alleges that he feels aggrieved by the conduct of the first respondent in the performance of his duties as liquidator and receiver. He avers that since his appointment on 6 February 2020, the first respondent only produced a provisional report dated 21 July 2020. He has failed to produce a final report.

- [29] In response to the allegations the respondents contend that the applicant did not disclose material facts in the application. They assert that a final report can only be provided after the estate has been finalised. They claim that this information was conveyed to the applicant by their attorneys on 11 August 2022. They allege that the division of the joint estate cannot be completed because of the actions of the applicant. I will deal with the alleged actions of the applicant later in the judgment.
- [30] Suffice to mention that the above allegations have not been dealt with in the replying affidavit. In my view the respondents have sufficiently responded to the allegations made by the applicant. I find that there is merit in their response in that the final report can only be completed when the liquidator and receiver has dealt with all the assets in the joint estate.
- [31] The applicant further alleges that in a letter dated 8 July 2022 in response to his attorney's request for information relating to the joint estate, the first respondent indicated that the third respondent received the sum of R252 411,27 from her pension fund administrators which was paid to her on or about 9 May 2014. The first respondent further indicated that he requested the Bank of the third respondent to provide statements and had not received same at the time. The applicant further alleges that his attorney was not informed as to when the request was made and why it was not made to the third respondent.
- [32] In response thereof the respondents clarified the contents of the letter and contended that the money was paid to the third respondent six years before the date of divorce. It is averred that the first respondent requested the Bank of the third respondent (Capitec) to provide the bank statements of the third respondent for that period. The statements had not been received at the time and the first respondent advised that he would report further on receipt of the information that he requested. The first respondent asserts that his duties and powers as liquidator and receiver do not date back to May 2014. It only commenced on the date of divorce.
- [33] It appears that the respondents are under the impression that the first respondent is not supposed to deal with the amount that the third respondent received 6(six) years prior to her divorce. That cannot be correct. The first respondent has been appointed to liquidate the joint estate of the parties. The money received by the third respondent is part of the joint estate. The first respondent was obliged to take it into account in the liquidation of the joint estate. Because the money was discovered long after it was paid to the third respondent, the first respondent can subtract one half of the amount of what the applicant would have received from the share that the third respondent is entitled to receive from her share of the joint estate. I therefore disagree with the respondents on this point. Even if his appointment as liquidator starts on the date of divorce, he must investigate and liquidate all the assets that belong to the joint estate.

- [34] The applicant further alleges that he wrote to the first respondent registering his frustrations with him which relate amongst others, to the first respondent's refusal to entertain his offer to purchase the matrimonial home for R500 000,00 and the first respondent's insistence that the house should be sold for R450 000,00.
- [35] In his response, the first respondent admitted receipt of the letters from the applicant. However, he denied the truthfulness of their contents. He asserted that the offer to purchase the immovable property for the sum of R500 000,00 never materialised as the applicant did not qualify for the relevant financing. He further contended that the offer to purchase was on the letterhead of an estate agent which would have the effect that commission would be earned by the estate agent, and it would have to be paid from the joint estate. He regarded that as an unnecessary expense as his powers as a liquidator and receiver allows him to sell the property without commission.
- [36] The respondents contend that the applicant is the cause of the delay in finalising the division of the joint estate. They allege that as far back as 21 July 2020, the applicant informed the first respondent that he was desirous of purchasing the other half-share of the immovable property (the matrimonial home). The first respondent sent the applicant an offer to purchase the property. The sale never materialised as the applicant failed to attend the meeting requested by his previous attorney on his behalf. They further allege that the first respondent also instructed valuers to determine the half-share of the property. Later the applicant informed the first respondent that he was no longer interested in purchasing the immovable property and conceded that the property ought to be sold.
- [37] The respondents contend that from thereon the applicant made it impossible for the first respondent to perform his duties. He failed to grant access to any estate agents and prospective buyers to the property. He also did not allow agents to enter the property and/or take photographs. The respondents claim that the first respondent cannot therefore perform his duties and sell the immovable property because of the conduct of the applicant.
- [38] They aver that the conduct of the applicant which frustrated and has been frustrating the first respondent's attempts and making it impossible for him to perform his duties as liquidator and receiver in order to finalise the division of the joint estate, prompted the first respondent to bring an application under case no. 28013/21 to compel the applicant to provide him and the relevant people with access to the matrimonial home which the applicant still occupies.
- [39] Although the applicant denies in reply that he did not qualify for finance to purchase the matrimonial home for R500 000,00, I do not accept the explanation by the first respondent that the sale would attract a commission to be payable to the estate agent. The estate agent was only an agent of the applicant. He was not entrusted with determining the amount for the house nor the liquidation of the joint estate. The first respondent should have accepted the offer from the applicant if it was reasonable.

- [40] Regarding the other allegations, the applicant in reply denied that he has frustrated the efforts of the first respondent to perform his duties and finalise the division of the joint estate. He contends that he only sought clarification and assistance from the first respondent on issues that concerned the joint estate. I do not find it necessary to deal with this allegation as it forms the subject matter of the pending application. The applicant dealt a lot with the pending application in his papers. I reiterate that the application is not before me.
- [41] The applicant further denies that he received an offer to purchase the matrimonial home from the first respondent in 2020 and/or was invited to any meeting for that purpose. He also denies that he informed the first and/or second respondents that he was no longer interested in purchasing the property.
- [42] The allegation by the first respondent is supported by the provisional report. At paragraph 5.1 of the report the following has been stated:
- “Attached find an offer to purchase for signature and return of the offer to purchase. Should we not receive the signed offer to purchase within 14 days of this report, it will be accepted that Mr Setumo is not proceeding in this regard, and the property will be placed in the market to be sold. Should we not receive an offer within a reasonable time, the property will be placed on auction.”*
- [43] It is common cause between the parties that the applicant received the provisional report dated 21 July 2020. Although the applicant denies receiving the offer to purchase the half-share of the immovable property, it is evident that the offer was attached to the report and the terms thereof are clear that should the first respondent not receive the signed offer to purchase within 14 days of the report, it will be accepted that the applicant is not proceeding to purchase the property and the property will be placed in the market to be sold. This explains the reason why the property has been put on the market. The applicant was afforded an opportunity to purchase the half-share in the immovable property and immediately the first respondent established that he could no longer be able to purchase the property, it was put on sale. I find that the first respondent acted in terms of his powers and duties as liquidator and there can be no doubt that this is in the best interest of the joint estate.
- [44] The other disputes by the applicant of the averments made by the respondents in the answering affidavit as highlighted above are, in my view, just bare denials.
- [45] The applicant further alleges that the third respondent has failed to provide a true and proper account of all her assets. He claims that the first respondent is not interested in dealing with the issue. However, his focus has always been on him.
- [46] Moreover, the applicant maintains that the first respondent is biased against him and has not been cooperative with him and his attorney.

- [47] I find these allegations unsubstantiated for the following reasons: there are no allegations on the papers that the third respondent had assets which the applicant knows about and which the third respondent did not disclose. Furthermore, the applicant does not state that this a list of such assets and that he notified the first respondent about them and the first respondent failed to investigate the allegations made.
- [48] The applicant further alleges that he has a well apprehended and reasonable suspicion that the third respondent has defrauded the joint estate during the process of his divorce with her by concealing some of her pension monies in other bank accounts. He reported this to the first respondent. However, the first respondent did not appear interested in dealing with the matter.
- [49] I have dealt with this allegation earlier on. It relates to the pension money that the third respondent received 6(six) years prior to the divorce.
- [50] The applicant further avers that he has been making payments towards the bond on the matrimonial home and other expenses of the house since 2018 and the third respondent is not and has not been making payment of her 50% of the monthly bond instalments. He referred to the provisional report of the first respondent, subparagraph 3.1 where it is recorded that the third respondent has indicated that she cannot make payment of 50% of her monthly bond instalments. He claims that this puts him in a disadvantageous position as the report does not state the reasons for the third respondent's inability to make her monthly payments towards the bond.
- [51] While the respondents deny the allegations, they assert that the applicant resides in the matrimonial property. They attached annexure "AA3" to confirm that the applicant is also not making payments towards the bond and the bond is in arrears. They contend that this is prejudicial to the joint estate as the applicant's actions are causing harm to the third respondent and him.
- [52] In the replying affidavit the applicant denies that he does not make payments towards the bond. He disagrees that annexure "AA3" confirms that the bond is in arrears. He contends that annexure "AA3" merely confirms legal representation on behalf of Standard Bank on matters unrelated to the present application.
- [53] Annexure "AA3" is an email correspondence from Standard Bank Attorneys confirming that they act on behalf of Standard Bank because of the monthly bond instalments being in arrears. There is no indication on the email that this annexure relates to a matter unrelated to the current application. Although the applicant denies that the bond is in arrears, he has not attached any document to disprove the allegations made by the respondents.
- [56] The issue raised by the applicant is neither here nor there. It does not assist the applicant's case. It does not matter if the third respondent does not pay. The immovable property is part of the joint estate. The first respondent must deal with it as such.

## Conclusion

[57] In my view the first respondent did not do enough. He should have investigated the bank account of the third respondent. He should have approached the third respondent for a power of attorney to enable him to access her bank account(s). Consequently, the first respondent is ordered to do so. I therefore do not find any reasons to remove him as a liquidator and receiver of the joint estate of the third respondent and the applicant.

[58] In the result, the following order is made:

58.1 The application is dismissed.

58.2 The applicant is ordered to pay the costs of the application. These costs should not be paid from the joint estate.

58.3 The third respondent is ordered to give the first respondent more powers to access her account(s) from 1 May 2014 to date within a period of 30(thirty) days of receipt of this order.

58.4 The first respondent is ordered to access the account(s) of the third respondent and investigate what had happened to the pension money that she received in May 2014.

M J TEFFO

JUDGE OF THE HIGH COURT

Appearances

For the applicant

P A Mabilo

Instructed by

Steven Magoro Attorneys

For the first and second respondent J Prinsloo

Instructed by

Tony Clacey Attorneys

Heard on

14 August 2024

Handed down on

28 February 205

[1] Section 165(5) of Act, 108 of 1966 (the Constitution)

[2] See *Culverwell v Beira* 1992 (4) SA 490 (WLD) at page 494A

- [3] 2023
- (4) SA 421 (CC)
- [4] Ramakatsa and others v Magashule and others (CCT 109/12) [2012] ZACC 31; 2013 (2) BCLR 202 CC para 94. See also Plascon-Evans Paints (Pty) Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984
- (3) SA 623 (A) at 634E-635; NationaDirector of Public Prosecutions v Zuma  
[2009] ZASCA 1; 2009 (2) SA 277 (SCA) para 26
- [5] Ramakatsa and others v Magashule and others supra para 95
- [6] PMG Motors Kyalami (Pty) Ltd (in liquidation) v Firstrand Bank Ltd, Westbank Division 2015 1 All SA 437 (SCA); 2015 (2) SA 634 (SCA)
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