

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 158730/2014

DATE: 2023-07-17

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<p>DELETE WHICHEVER IS NOT APPLICABLE (1) REPORTABLE: NO. (2) OF INTEREST TO OTHER JUDGES: NO. (3) REVISED. <u>DATE</u> 27 July 2023 <u>SIGNATURE</u></p>

In the matter between

D E T

Plaintiff

and

F T

Defendant

J U D G M E N T

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YACOOB, J: This matter was enrolled both on the unopposed roll and the opposed roll.

The unopposed enrolment was to compel the service of heads of argument. The respondent's heads were served last week and the application ought to have been removed from the unopposed roll once that had been done,

or else the Court ought to have been informed that the matter was on the unopposed role simply for the costs to be determined which could have been done during the hearing of the opposed matter.

Therefore, the application to compel was struck from the unopposed roll.

In the opposed application the applicant seeks the appointment of a liquidator for the matrimonial estate, where the marriage was dissolved in 2015. The respondent
10 contends that it is unnecessary for a liquidator to be appointed and that the issue should be dealt with by the Court.

At first blush the respondent's opposition appears to be unwarranted. The Court does not deal with the minutiae of liquidating a joint estate. However, there appear to be other disputes which cannot be dealt with by a liquidator.

Both legal representatives say that the matter can be settled if only other party agreed. Obviously if the other
20 party agrees there would be no dispute and there is no real value in those submissions. It appears to me that there are two categories of issues which need to be determined.

The first category includes whether each party has any pension fund which belongs to the joint estate. Also within this category falls the question of whether and to

what extend the applicant's pension fund was dissipated by payments she made into the bond after the marriage was dissolved.

As far as payments for the bond after the divorce date are concerned, the respondent concedes that the amount for which he ought to have been responsible should be deducted from his share and not the matrimonial estate. There is no real dispute there.

The second category is the issue whether the
10 applicant is entitled to have paid to her an amount from the matrimonial estate above the respondent's share of the bond payments because the respondent continued living in the matrimonial home after the divorce. She contends that she supported him, while he denies this.

This is not something that is within the purview of a liquidator. A liquidator's role is to receive assets and liabilities of the estate, to liquidate them and to distribute them. It is not the liquidator's role to decide the proportions of the distribution or the entitlement of the parties. For this I
20 rely on a judgment in this division *KM v TM 2018 (3) SA 225 (GP) 20*.

Where there is a dispute between the parties about what exactly, in principle rather than in numbers, each is entitled to, that is not within the purview of the liquidator. The liquidator deals with the estate where the parties

cannot agree on the mode of liquidation.

This was the *ratio* of *Revill v Revill 1969 (1) SA 325 (C)*, which the applicant relied on for authority that the applicant is entitled to the appointment of the liquidator. This is the case only when the parties cannot agree on the mode of liquidation or when it is a question of investigating the exact assets of the parties.

It seems to me therefore that appointing a liquidator would not resolve the dispute between the parties which is
10 not related to the factual question of whether there is a pension fund and to what extent it was dissipated and other questions of that nature.

Therefore the applicant has not made out a case for the appointment of the liquidator.

It seems to me also that this case is one that would benefit from mediation but the applicant's counsel indicates that his client is opposed to mediation. The respondent's counsel indicates that his client is not opposed to mediation.

20 The applicant then must seek a different way to resolve the dispute, either by bringing the actual dispute before the Court or by reconsidering mediation. In the absence of agreement from both parties the Court cannot order them to participate in mediation.

I therefore make the following order:

“The application is dismissed with costs.”

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YACOOB, J

JUDGE OF THE HIGH COURT

DATE: