

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



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

**Case No: 2017/10240**

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

In the matter between:

**N[...] S[...] D[...]**

Applicant

and

**ALAN IAN JOSE N.O.**

First Respondent

**N[...] S[...] (born LALLOO)**

Second Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 26 January 2024.

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**JUDGMENT**

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**MALINDI J**

Introduction

[1] The applicant seeks relief in terms of the Notice of Motion which reads as follows:

*“1. That the revised final liquidation and allocation account of the joint estate of the Applicant and the Second Respondent dated 24 June 2022, as prepared by the First Respondent in his capacity as duly appointed liquidator and receiver under the above case number, be set aside and a new mutually agreed upon receiver and liquidator shall be appointed by the Applicant and the Second Respondent.*

*2. In the alternative to prayer 1 supra that:*

*The First Respondent be compelled to vary the aforementioned revised liquidation and allocation account by removing all the adjustments made in the account under the auspices of Section 15(9)(b) of the Matrimonial Property Act 88 of 1984 and other objections raised in the Applicant’s Notice of Objection dated 30 July 2022.*

...

*4. Costs to be paid by the Respondent/s, only if opposed.”*

[2] Mr Alan Ian José, the first respondent, is the current appointed receiver and liquidator of the joint estate that exists between the divorcees, Mr S[...] D[...] N[...], the applicant, and Ms S[...] N[...], the second respondent.

[3] Mr N[...] contends that Mr Jose exceeded his powers when he made adjustments in the account in terms of section 15(9)(b) of the Matrimonial Property Act 88 of 1984 (the Act).

[4] Mr Jose was appointed in terms of the decree of divorce dated 4 June 2021.

The relevant part thereof reads as follows:

*"12. An independent liquidator (two names of which shall be recommended by the Parties and to be appointed within fourteen (14) days of this Order) who specializes in accounting and forensic investigation shall be appointed as the receiver and liquidator to divide the joint estate of the parties as at date of the divorce and shall be granted the powers and duties as set out in Annexure "A" hereto which include but are not limited to:*

- 12.1. To realise the assets of the joint estate.*
- 12.2. To demand from the Plaintiff and the Defendant the true and correct account of any portion of the asset which either of the Plaintiff or Defendant may take possession of, or which the Plaintiff or Defendant may have dealt with.*
- 12.3. To investigate and attend to any reconciliations and adjustments in terms of section 15(9)(b) of the Matrimonial Property Act.*
- 12.4. To discharge the debts and liabilities of the joint estate.*
- 12.5. Thereafter, to divide the residue of the joint estate equally between the parties and to pay their respective half shares to the Plaintiff and the Defendant respectively.*
- 12.6. Alternatively, if a division of the residue of any parts of the joint estate cannot conveniently or advantageously be effected between the Plaintiff and the Defendant by agreement to sell the residue or part thereof to divide the proceeds thereof equally between the Plaintiff and the Defendant.*
- 12.7. The parties agree that save for the liquidator, no one else is allowed to handle*

*the joint estate for any purpose while the liquidator is attending to the dissolution thereof, unless the ordinary, normal and reasonable course of managing their affairs.*

*12.8. The liquidator shall have the express powers to attend to have the assets, which were frozen in terms of Court Order dated 19<sup>th</sup> December 2017, released and no longer frozen.”<sup>1</sup>*

#### The issues after the report

- [5] The section 15(9)(b) adjustments are powers that Mr Jose is endowed with in terms of paragraph 12.3 of the decree and paragraph 1.8 of annexure A thereto.
- [6] Mr N[...] filed an objection to the adjustments on 30 July 2022 on the basis that the adjustments were not subjected to interrogation by the Court granting that divorce, but merely effected by the liquidator without having heard evidence on the need and or legitimacy for such adjustments. He raises certain objections on the merits of the adjustments.
- [7] Ms N[...] had pleaded for the adjustments in annexure “C” to the particulars of claim. Mr N[...] objects to any adjustments outside of annexure “C”.
- [8] An example of the instances where Mr N[...] pleads exceeding of powers by Mr Jose is the inclusion of SYJN (Pty) Ltd transfer or loan account amounts in the account as the company does not form part of the joint estate. The shareholding thereof was transferred to a trust prior to the divorce in 2016.<sup>2</sup>

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<sup>1</sup> Decree of Divorce as at section 01-73 at paragraph 12.

<sup>2</sup> Founding Affidavit: CaseLines 01-16 para 23.3.3.

[9] Ms N[...] refers to extensive electronic communication between Mr Jose and the parties during his investigation. She asserts that this constitutes interrogation of the merits of the claims and the requested adjustments. It included a meeting on 27th January 2022, which had been postponed many times before.<sup>3</sup> The liquidator confirms his many interactions with the parties by correspondence in his report.

[10] After two provisional reports, a final liquidation and distribution report was furnished on 14 April 2022.<sup>4</sup> The parties were afforded 15 days to consider it. Mr Jose availed himself for a meeting on 30 May 2022 to consider any further comments or queries.

[11] In reply, Mr N[...] denies that the decree of divorce contained a settlement agreement, save for the fact that proprietary matters were to be dealt with by a receiver and liquidator. This is clutching at the straws because this was one of many aspects agreed upon, including the contact and welfare of the children and maintenance of Ms N[...] and the children. Instead of the Court undergoing the task of unravelling proprietary issues in a complex proprietary regime, such as this one, a receiver and liquidator became a most efficient manner to deal with this. It was agreed to by the parties. Thereafter the parties nominated persons to undertake the liquidation of the joint estate and Mr Jose was appointed.

[12] Mr N[...] relies on *M v M*<sup>5</sup> for the proposition that a receiver and liquidator appointed post-divorce does not have the powers to do section 15(9)

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<sup>3</sup> Answering Affidavit as at CaseLines section 03-12 paragraph 51.

<sup>4</sup> Answering Affidavit as at CaseLines section 03-15 paragraph 69; 03-20 paragraph 83.10-83.13.

<sup>5</sup> 82156/14 2017 ZAGPJHC.

adjustments without the divorce court adjudicating the matter and giving a specific adjustment order to be executed by the receiver and liquidator.

[13] It was stated in *M v M* as follows:

*“It is the duty of the receiver and liquidator to receive the assets and liabilities of the joint estate, liquidate same and distribute the free residue to the parties. What the receiver and liquidator, in such circumstances does, is to attain to the modus of giving effect to the court order of division of the joint estate. The receiver and liquidator must make the adjustments when he attends to the modus of dividing the joint estate, but he cannot decide on whether such an adjustment must be made or not. The latter is a triable issue and therefore the decision in relation thereto is a judicial function. In my view, whether a party is entitled to an adjustment in terms of s 15(9)(b) off the MPA must be properly ventilated in the pleadings and in evidence so that the court may pronounce thereon. It is for the court to order the adjustment and the receiver and liquidator to do nothing more than give effect to the order when he attends to the modus of dividing the joint estate.”<sup>6</sup>*

[14] Ms N[...] pleaded on adjustments in respect of annexure “C” and that is what the court ordered under section 15(9)(b). This was not a contested issue requiring ventilation in evidence so that the Court may pronounce thereon. It was pleaded and agreed to by the parties to be subjected to adjustments. The Court ordered that as held in *M v M*. Mr Jose was ordered to furnish a report by a specified date. For reasons that are apparent on the papers the report was only delivered on 22 June 2022, some five months late. In the circumstances, the receiver and liquidator conducted the adjustments in respect of annexure “C” properly and as ordered by the Court. It stands to reason therefore, that any

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<sup>6</sup> *M v M* at CaseLines 07-17 paragraph 30.

adjustments not covered by annexure C were not ordered or authorised by the Court. Those require setting aside before the report is adopted by the Court.

[15] The divorce court did not make an order that the report be referred to court for consideration. The utilisation of section 15(9) of the Act is analogous to section 38 of the Superior Courts Act which stipulates that a report by the court appointed referee has to be placed before the court for consideration and “the court may adopt the report of any such referee , either wholly or in part , and either with or without modifications , or may remit such report for further enquiry or report or consideration by such referee , or make such other order in regard thereto as may be necessary or desirable.”

[16] The report had to be referred to court for consideration. There is no reason why this Court cannot do so with appropriate orders as to items falling outside annexure “C”. The report stands to be revised by excluding all adjustments that were not authorised under Annexure “C”. Ms N[...] pleaded with the court to allow the adjustments that were made outside of Annexure “C” because the need to include them arose during the investigation by the liquidator. She alleges that adjustments were also made in items that were in favour of her before the investigation. This court has no powers to vary the divorce court’s order. Ms N[...] has a remedy against Mr N[...] for concealed assets post the divorce.

### Costs

[17] The applicant seeks costs against Ms N[...] in the event of any opposition. In my view such an order is not appropriate in these circumstances. Ms N[...] is

representing herself and believes that the adjustments that fall outside of Annexure "C" were justified as they include some of the assets that she was unaware of. Her opposition was therefore not unreasonable. Furthermore, the report is not final until it is adopted by the court.

[18] The following order is therefore made:

1. The First Respondent is ordered to vary the aforementioned revised liquidation and allocation account, dated 24 June 2022, by removing all adjustments made in the account under auspices of section 15(9)(b) of the Matrimonial Property Act 88 of 1984 which fall outside Annexure "C".
2. Objections will be entertained only to the calculations in respect of items contained in Annexure "C" to the particulars of claim.
3. The First Respondent is to deliver the final liquidation and allocation account within sixty (60) days of receipt of this order.
4. The Applicant's attorneys are to set the matter down for hearing in the family court on the first available date after receipt of the account. Notice shall be given to the second Respondent of the date of hearing for consideration of the final account.
5. There is no order as to costs.

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**MALINDI J  
JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION**



**JOHANNESBURG****APPEARANCES**

COUNSEL FOR THE APPLICANT:  
INSTRUCTED BY:

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COUNSEL FOR THE 2<sup>ND</sup> RESPONDENT:

Self-Represented

DATE OF HEARING:

24 January 2024

DATE OF JUDGMENT:

26 January 2024