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REPUBLIC OF SOUTH AFRICA



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

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

Case No: 27975/2018

In the matter between:

DOUGANS, TROY LANCE

Applicant

And

DOUGANS, GLENN GARY

Respondent

JUDGMENT

ANDRÉ GAUTSCHI AJ:

- 1 The applicant and the respondent are brothers, who are the registered joint owners of a certain immovable property, known as Portion 26 of Erf [...], Ridgeway Extension 4, Registration Division IR Gauteng and held under title deed T59793/992 (“the property”), and which they inherited from their deceased mother who died on 23 June 2016.
- 2 The respondent resides in the property with his family, having moved there during or about December 2016. It was originally intended that the respondent would buy out the applicant’s half share of the property from his inheritance, but there were insufficient funds available in their mother’s estate for this purpose. The applicant now wishes to terminate the joint ownership of the property, and to put in place an order providing for the sale of the property on a basis that would protect both their rights.
- 3 The respondent’s consent to the termination of joint ownership and the alienation of the property is not required. Under the *actio communi dividundo*, no co-owner is obliged to remain such against his will; in the event of a refusal on the part of one of the co-owners to divide, the other co-owner may approach the court to order partition; and the court has a wide discretion in making a division of joint property (Robson v Theron 1978 (1) SA 841 (A) at 854G-855E).
- 4 There was no appearance for the respondent at the hearing of this application. The applicant satisfied me that there had been proper and due service of the notice of set down for this week’s hearing, as well as the fact that the matter would be heard at 14h00 on 5 February 2019, on the respondent’s attorneys.

Despite the respondent's absence, I heard full argument from Ms Adams, who appeared on behalf of the applicant.

- 5 I am satisfied that the order sought by the applicant in the notice of motion is appropriate and fair to both the applicant and the respondent. I have made some adjustments to that order, so that the order which I grant in this matter is as follows:

- "1. It is declared that the applicant is entitled to terminate the joint ownership of the immovable property known as Portion 26 of Erf [...], Ridgeway Extension 4, Registration Division IR Gauteng and held under title deed T59793/992 ("the property").
2. I direct that the property be sold as follows:
 - 2.1 It shall be marketed by three estate agents who operate from offices within a twenty kilometre radius of the property and who are each to be appointed by agreement between the parties. If the parties are unable to agree to one or more of the three appointments within seven court days of the date of this Order, then the Chairperson of the Estate Agency Affairs Board for the time being, or any representative of that Board, shall, on request by the applicant's attorney, be authorised to forthwith appoint the estate agents required to give effect to the first sentence of this paragraph.
 - 2.2 The property shall be marketed and sold for not less than a minimum amount of R900 000.00, and the parties shall be obliged to accept the first valid offer of or above R900 000.00 provided the offer is not subject to unreasonable conditions. In the event of a dispute in this regard the parties are given leave to approach the court for directions.
 - 2.3 The respondent shall do and sign all things necessary to give effect to the aforesaid sale of the property as and when called upon to do so, failing which the Sheriff or Deputy Sheriff within whose jurisdiction the property is situated, shall be authorised to do so on the respondent's behalf.
 - 2.4 The parties shall be equally liable for any and all costs, fees, disbursement and commission payable in respect of the sale of the

property, which shall all be payable directly from the proceeds of the sale prior to those proceeds being released to the parties.

- 2.5 Although the property shall be marketed through the agents contemplated in paragraph 2.1, the applicant or the respondent may, notwithstanding their involvement, personally market and sell the property. In the event thereof, paragraphs 2.2 to 2.4 shall equally apply,
- 2.6 The respondent shall be obliged to give vacant occupation of the property to the purchaser/s of the property or his/her/their nominee, by no later than the date of registration of ownership into the name of the purchaser/s.
- 3. The taxed party and party costs of this application shall be borne by the respondent, and in the event that the respondent is unable or fails to satisfy same within seven days of being called upon to do so, then and in that event, same shall be payable to the applicant:
 - 3.1 from the remaining proceeds of the respondent's share of the sale of the property, after the deductions referred to in paragraph 2.4; and
 - 3.2 prior to such proceeds being released to the respondent."

ANDRÉ GAUTSCHI
ACTING JUDGE OF THE HIGH COURT

Date of Hearing: 5 February 2019

Judgment Delivered: 7 February 2019

APPEARANCES

Counsel for the Applicant: Ms R Adams

Instructed By: Edward S Classen & Associates
Johannesburg

No appearance for the respondent

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