

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

CASE NO: 25020/2020

REPORTABLE: No

OF INTEREST TO OTHER JUDGE: No

REVISED:

3/05/2022

In the matter between:

BEAUTY NOMBUYISELO LETSOKO

Applicant

And

JABUANE HECTOR MONTHANGA

Respondent

JUDGMENT

LENYAI AJ:

[1] This is an application brought by the applicant seeking an order in the following terms:

(a) That the partnership existing between the applicant and the respondent in respect of the fixed property situated at[....] [....] Street, Oaklane Estate, Brakpan being Erf [....] Brakpan-Noord Extension 10 be and is hereby dissolved;

(b) That Maryna Symes of Zebra Liquidators (Pty) Ltd be appointed as liquidator in respect of the partnership that exists between the applicant and the respondent;

(c) That the liquidator shall have the powers as stipulated in the draft order annexed to the applicant's founding affidavit.

(d) Costs of the suit on an attorney and client scale.

[2] The common factors between the parties are as follows:

(a) The parties are the joint owners of the fixed property;

(b) Both parties want to terminate the joint ownership of the fixed property;

(c) Both parties contributed financially directly to the purchase and maintenance of the property;

(d) The parties cannot reach an agreement on the manner and price at which the fixed property must be disposed of.

[3] The respondent denies that there was a partnership and he has brought counter application in terms whereof he seeks an order:

(a) that the joint ownership in the property be terminated;

(b) That the parties be authorised to sell the property ;

(c) If the property cannot be sold, that the property be sold by way of public auction and;

(d) If the counter application is opposed, the applicant pays the costs of the counter application.

[4] At the heart of this matter is whether there was a partnership entered into between the parties when they bought the property. It is trite that for a party to succeed with a claim for a partnership, there are three essential elements that must be proven namely:

- (a) that each of the partners brought something into the partnership such as money, labour or skill;
- (b) that the partnership was carried on for the joint benefit of the parties and
- (c) that the object of the partnership was to make a profit.

[5] Turning to the matter before me, it is common cause between the parties that they both brought something into the partnership. They both contributed financially to obtain the property and the applicant because she was an employee of the bank that financed the transaction, received a staff interest rate which enabled the parties to afford to buy the property. Their combined efforts to ensure that they bought the property, was for the joint benefit of both of them. When you become a property owner, it is a well-known fact that fixed property usually appreciates in value and would generate profit if later sold. Both the respondent and the applicant have averred that they cannot agree on the amount to put as the purchase price of the property. What is crystal clear is that the parties bought the property for R199 000 and today they cannot agree on whether to sell the property at R1 000 000 (as contended by the respondent) or R1 200 000 (as contended by the applicant), this satisfies the third element of a partnership. I am satisfied that the applicant has proven all the essential elements of a partnership and in my view there is a partnership between the parties.

[6] Having decided that there is a partnership between the parties, it is unnecessary to deal with the counterclaim, which stands to be dismissed.

[7] In the premises, the following order is made:

- (a) That the partnership existing between the applicant and the respondent in respect of the fixed property situated at[....] [....] Street, Oaklane Estate, Brakpan being Erf [...] Brakpan-Noord Extension 10 be and is hereby dissolved;

(b) That Maryna Symes of Zebra Liquidators (Pty) Ltd be appointed as liquidator in respect of the partnership that exists between the applicant and the respondent;

(c) That the liquidator shall have the following powers:

- (i) To take control over the estate of the partnership between the parties and assume all powers as administrator thereof;
- (ii) To accumulate details of all the assets, movable or immovable, tangible or intangible which forms part of the partnership;
- (iii) To accumulate details of all liabilities of the partnership;
- (iv) To make all investigations necessary and in particular to obtain from the parties all information with regard to the assets and liabilities of the partnership;
- (v) To obtain information regarding the financial affairs of the parties from bank managers and/managers of the other financial institutions with regards to the assets and liabilities of the partnership;
- (vi) To obtain information from auditors and any other person who may have knowledge of the financial affairs of any companies, close corporations, trusts or businesses in which either party and/or the partnership may have an interest;
- (vii) To obtain copies of the financial records of any companies, close corporations, trusts or businesses in which either party and/or the partnership may have an interest;
- (viii) To inspect the books of account of companies, close corporations, trusts or businesses in which either party and/or the partnership may have an interest;
- (ix) To interrogate and demand from the applicant and respondent a true and correct account of any portion of the assets which either the applicant or respondent may have taken possession of, or which the applicant or respondent may have dealt with;
- (x) To physically inspect the assets of the partnership, to compile an inventory of assets and to obtain sworn valuations of the assets;

- (xi) To subpoena the parties or any other witness for the purposes of interviewing and/or interrogating such person to ensure that effect is given to this order;
- (xii) To sign and execute any document or deed in respect of the immovable property of the partnership thereby enabling transfer of the immovable property situated at[....] [....] Street, Oaklane Estate, Brakpan being Erf [....] Brakpan-Noord Extension 10;
- (xiii) To realise the immovable property situated at[....] [....] Street, Oaklane Estate, Brakpan being Erf [....] Brakpan-Noord Extension 10 and to sell any other assets of the estate of the partnership for a price that she deems to be the true market value of the asset;
- (xiv) To distribute the nett assets of the partnership in accordance with the powers of the liquidator on such a basis that may be agreed upon between them, alternatively if no such agreement can be reached, to sell the assets of the partnership by public auction or private treaty and thereupon to divide the net proceeds between them in accordance with the powers of the liquidator;
- (xv) To engage the services of any suitably qualified person(s) to assist in determining the proper value or whereabouts of any asset of the partnership and to pay such person(s) the reasonable fees which may be charged by her;
- (xvi) To afford both parties the opportunity to personally make recommendations about any matter relevant to her duties and to this order and to identify any purchaser as well as the purchase price of any asset, including but not limited to:
 - The time and/or manner in which any asset shall be realised;
 - The price for which any asset should be realised; and
 - The sequence in which any asset should be realised
- (xvii) To give due consideration to the wishes of the parties pursuant to the representations and to make such decisions in respect thereof as she may deem fit;
- (xviii) To sell any asset to either of the parties for a price that she deems to be the true market value of such asset;

- (xix) To sign any document as may be necessary to effect the transfer of any asset sold from the person in whose name it is registered to the purchaser thereof;
- (xx) Not to realise any moveable assets, excluding shares, unit trusts and insurance policies, without giving both parties 10 days' notice of intension to do so and to give both parties a first right to purchase any such assets by treaty at the same price she is able obtain from a *bona fide* party, or in the case of a public auction, at a better price than that offered by a *bona fide* third party;
- (xxi) To apply to this court for any further directions as she shall or may consider necessary;
- (xxii) To institute legal proceedings against any person for the delivery to her of any assets, deeds or documents of the partnership in whatever court it shall be appropriate to bring such proceedings;
- (xxiii) To instruct and appoint attorneys and/or counsel to institute proceedings on her behalf for the purpose of obtaining delivery of any such assets alleged to be vested in the partnership and to obtain such other or alternative relief as the circumstances may require, the costs of counsel and/or attorneys to be paid by the partnership in accordance with the principles enounced in *Muller v The Master and Others*, 1992 (4) SA 277 (T);
- (xxiv) To collect debts due to the partnership unless the same be disposed of by sale;
- (xxv) To defend any action launched against the partnership;
- (xxvi) To pay the liabilities of thee partnership;
- (xxvii) To pay her reasonable fees and to apportion such fees between the parties in the same proportion as they are entitled to the assets of the partnership;
- (xxviii) To obtain full particulars of all the parties' insurance policies, life policies, endowment policies, annuities, retirement policies and the like from the underwriters thereof and to deal with such policies in her direction in order to enable her to give effect to the provisions in terms of the powers of the liquidator;

- (xxix) To instruct banks and/or financial institutions to deal with investments and bank accounts as she may in her discretion deem necessary in order to protect the rights of one of the parties or both parties to give effect to the provisions thereof;
- (xxx) To allocate, in her discretion, both assets and liabilities between the parties.
- (d) The division of the net assets shall be subject to the protection of the rights and claims of secured and preferent creditors of the partnership.
- (e) The division of the net assets referred to above shall be in equal proportions between the parties but subject to the above provisions.
- (f) Any losses suffered by the partnership as a result of the wrongful behaviour of either of the parties or any liquidator in dissipating the assets (if applicable), shall be borne exclusively by such party and a distribution and division of the assets of the partnership or the proceeds thereof, as the case may be, shall accordingly be subject to adjustment in accordance with her discretion.
- (g) The costs of the application are to be borne by the partnership.

M.M.D LENYAI
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

Counsel for the Applicant:

CF Janeke

Instructed by:

Chris Janeke Attorneys

the Respondents:

Adv AP Bruwer

Instructed by:

Kitching Attorneys

Date of hearing:

02 February 2022

Date of judgment:

03 May 2022