

**IN THE HIGH COURT OF SOUTH AFRICA  
LIMPOPO DIVISION, POLOKWANE**

**CASE NO: 6427/2020**

**(1) REPORTABLE: NO**

**(2) OF INTEREST TO THE JUDGES: NO**

**(3) REVISED.**

**DATE: 13 MARCH 2023**

**AJ MTHIMKULU S**

**SIGNATURE:**

In the matter between:

**M[...] J[...] T[...]**

**APPLICANT**

**ESTATE LATE M[...] G[...] M[...]**

**1<sup>st</sup> RESPONDENT**

**MATHEBULA RHULANI BRIDGETTE**

**2<sup>ND</sup> RESPONDENT**

**THE MASTER OF THE HIGH COURT POLOKWANE**

**3<sup>RD</sup> RESPONDENT**

**GOVERNMENT EMPLOYEE PENSION FUND**

**4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**AJ MTHIMKULU S:**

[1] The Applicant brings an application for an order to appoint a liquidator/receiver of joint estate of the Applicant and the first Respondent, with the power to:

- Realize the assets of the joint estate as from date of marriage to date of divorce;
- Demand from the Applicant and the 2<sup>nd</sup> Respondent a true and correct account of any portion of the assets as at date of divorce which either the Applicant or the 2<sup>nd</sup> Respondent may have taken possession of, or which the Applicant and 2<sup>nd</sup> Respondent may have dealt with;
- Demand from the Applicant and the 2<sup>nd</sup> Respondent the payment or delivery of any such portion of the assets of the joint estate which the Applicant or the 2<sup>nd</sup> Respondent may have dealt with;
- Discharge the debts and liabilities of the joint estate from the date of marriage to the date of divorce alternatively their cash equivalent in the event that they are fully paid;
- Thereafter, to divide the residue of the joint estate equally between the Applicant and the 1<sup>st</sup> Respondent, alternatively the 2<sup>nd</sup> Respondent and to pay the half shares to the Applicant and 2<sup>nd</sup> Respondent respectively.

[2] The 4<sup>th</sup> Respondent be ordered to provide records of the Applicant and the 1<sup>st</sup> Respondent's pension contributions from date of marriage to date of divorce to enable the liquidator/receiver to divide the estate accordingly.

[3] The 3<sup>rd</sup> Respondent's finalization of the 1<sup>st</sup> Respondents estate file be set aside and that the file be reopened to enable the liquidator/ receiver to divide the joint estate in line with the order of this court.

[4] The difference between the distribution and what should have been, be borne by the 3<sup>rd</sup> Respondent as a punitive for allowing the deceased's estate to be distributed under the unique circumstances of this nature.

[5] Costs of suit against 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

### **Common Cause Facts:**

[6] Despite passage of time, many of the facts in this application are common cause, even though there is a dearth of detail regarding the main events.

[7] It is common cause that the Deceased was married to the Applicant on 9 April 1996. The said marriage was dissolved by a decree of divorce. The joint estate between the Applicant and the deceased however was never divided up until the deceased untimely death.

[8] The Applicant pursuant to the death of the deceased was appointed executor of the deceased estate. Shortly thereafter she was removed and was replaced with the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent then became the executor of the deceased estate in question.

### **Submissions by the Applicant and the reasons for the application**

[9] The Applicant avers that after the dissolution of the marriage between the Applicant and the deceased, the order for division of the joint estate was never complied with that she should have been a priority before the 2<sup>nd</sup> Respondent divided the estate of the deceased.

[10] The Applicant sets out the steps she took to ensure that compliance with the order for division of the joint estate and it is her submission that the steps she took did not assist in any manner.

[11] This has led her to approach this court in order to seek the relief sought in the notice of motion.

### **Submissions by the 2<sup>nd</sup> Respondent**

[12] At the outset I hasten to point out that the 2<sup>nd</sup> Respondent raised points in *limine* in this application and on the strength of the points in *limine* raised submits that the Applicant's application should fail. This court has considered the points in *limine* raised by the 2<sup>nd</sup> Respondent and none of the points in *limine* raised go to the crux of this application. This court is of the view that the points in *limine* raised are

raised merely to divert this application from the course it should follow. The points in limine raised by the 2<sup>nd</sup> Respondent are dismissed.

**Consideration of the main Application.**

[13] The application before this court is a simple application for an order to appoint a liquidator/receiver of the joint estate of the Applicant and the first Respondent with the power to exercise the duties set out in the notice of motion.

[14] The deceased passed away and pursuant to his passing the 2<sup>nd</sup> Respondent was appointed executor of the deceased's late estate. The Master of the High Court ordered the 2<sup>nd</sup> Respondent that in dealing with the said deceased estate she should comply with the divorce order of 22 October 2013. Although the 2<sup>nd</sup> Respondent was directed to comply with the divorce order by the Master of the High Court, it would appear she did not do so in the distribution of the deceased estate.

**Conclusion**

[16] The court having considered the documents filed as well as the submissions by counsel is satisfied that the Applicant is entitled to the order sought. The Applicant's application is granted as prayed for in the notice of motion.

[17] In the event that the 2<sup>nd</sup> Respondent has distributed the assets in contravention of section 35 of the Administration of Estates Act- the court directs that section 50 should be invoked.

**APPEARANCES:**

**COUNSEL FOR THE APPLICANT: ADV. MALULEKA**

**INSTRUCTED BY: CHAUKE AND MAZIBUKO ATTORNEYS**

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**COUNSEL FOR THE RESPONDENT: ADV. T.P MATLALA**

**INSTRUCTED BY: Ntshempo Manganyi Inc**

**EMAIL ADDRESS:**

**DATE OF HEARING: 20 FEBRUARY 2023**

**DATE OF JUDGMENT: 13 MARCH 2023**