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

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

[redacted]

SIGNATURE DATE: 16 September 2024

Case No. 2024-066890

In the matter between:

EST Plaintiff

and

HT Defendant

JUDGMENT

WILSON J:

1 The plaintiff, EST, sued the defendant, HT, for divorce. The parties entered into a settlement agreement, which was placed before me in my unopposed divorce court on 30 August 2024. Ms. Gordon, who appeared for the Plaintiff, asked me to grant a decree of divorce, incorporating the settlement agreement.

2 On the papers placed before me, it appeared that EST and HT had been married in community of property since 4 January 1968. EST is 78 years old. HT is 81 years old. EST said that the parties wished to divorce because they had lost love and affection for one another; that there was no longer any meaningful communication between them; and that they no longer shared any common interests.

3 After 56 years of marriage, that summary of affairs seemed a little terse. In addition, the settlement agreement placed before me appeared to assign almost all of the marital estate to EST. Ownership of the marital home was to be given solely to EST. HT was obliged to make a further payment of R4.1 million to EST. HT was also required to move out of the house within 48 hours of my approval of the agreement, taking only a small Suzuki hatchback with them.

4 It is neither competent nor proper to make a settlement agreement an order of court unless the Judge who has been asked to endorse the agreement has been satisfied that the agreement is concluded freely and voluntarily in the full knowledge of the respective parties' rights. The apparent inequity in the disposition of EST's and HT's marital estate raised the real possibility that the settlement agreement had not been freely struck in this sense.

5 I adjourned the action for divorce with a direction that the parties place before me additional material which dealt with the breakdown of the marriage relationship and the division of the marital estate, and which tended to show that the agreement was freely concluded.

6 That material was produced on 13 September 2024. HT explained in an additional affidavit that, while they had lived together until the end of August 2024, the parties had not shared a bedroom for 15 years. They now lead separate lives. They no longer have any intimacy or affection for one another, and no longer communicate on any matters of substance. In short, EST's and HT's marriage has irretrievably broken down, and they wish it to end.

7 In addition, HT revealed that the marital estate was much bigger than the settlement agreement suggests. The R4.1 million payment to be made to EST, together with the marital home, in fact represents half the true value of the marital estate, the other half of which HT would retain for themselves. HT submitted supplementary documentation confirming the value of the estate, and that the parties had signed the original settlement agreement voluntarily.

8 The role of a Judge in considering whether to grant an uncontested divorce in which the parties have settled their affairs between themselves is obviously limited. Where there are no minor children involved, the substantive requirements for granting such a divorce will seldom be more onerous than compliance with section 4 of the Divorce Act 70 of 1979 and the production of material sufficient to satisfy the presiding Judge that the settlement agreement was freely and voluntarily concluded in the full knowledge of the parties' rights.

9 Where the marriage involved is one in community of property, the voluntariness of an otherwise properly executed agreement can usually be inferred from an even or close to even division of the marital estate. Accordingly, consensual petitions for divorce ought, in appropriate circumstances, to deal with the division of the marital estate more thoroughly

than EST and HT initially did. Where there is an apparent disparity in the division of a marital estate formed in community of property, it should be explained.

10 In eschewing that approach, Ms. Gordon originally contended that I need not worry about the apparent inequity in the division of EST's and HT's marital estate. She submitted that the parties may agree to whatever terms they choose, and that a court ought to respect the parties' autonomy to do so.

11 That submission was pressed too far. Where the division of the estate itself suggests such a disparity as to call into question whether it was really agreed to, "whatever the parties choose" might, legally speaking, be no true choice at all.

12 In any event, the additional material the parties supplied demonstrated that the estate is much larger than was disclosed in the papers initially submitted. HT's additional affidavit reassured me that the parties had in fact agreed to an even division of the marital estate.

13 That was sufficient to dispel my concern that the settlement agreement was not freely struck. I shall accordingly grant a decree of divorce incorporating the settlement agreement, including its two addenda. That decree will be uploaded to this court's electronic registry forthwith.

S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 16 September 2024.

HEARD ON:	30 August 2024
ADDITIONAL EVIDENCE RECEIVED ON:	13 September 2024
DECIDED ON:	16 September 2024
For the Plaintiff:	C Gordon Malherbe Rigg and Ranwell