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WHEN DOES A SPOUSE ENTITLED TO A HALF SHARE OF PROPERTY BECOME THE OWNER THEREOF?

In *Fischer v Ubomi Ushishi Trading CC and Others* 2019 (2) SA 117 (SCA), the question that had to be answered is if ownership vests upon the granting of a divorce order and settlement agreement or only when registration takes place in the Deeds Office?

Mr and Mrs Hayes' marriage was dissolved in 2012, and in terms of the settlement agreement, Mrs Hayes was entitled to the property they owned. Fischer applied for an order declaring Mr Hayes' half share in the property executable as his name was still on the Title Deed, and the half share transfer was not completed yet. Mrs Hayes raised the defence that she had full ownership of the property in terms of the settlement agreement.

The court considered the *Corporate Liquidators (Pty) Ltd and Another v Wiggill and others* 2007 (2) SA 520 (T) case where it was held that where parties enter into a settlement agreement regarding the division of their assets and it is made an order of court, ownership of immovable property vests immediately. The court followed this decision and dismissed the application.

The Supreme Court of Appeal, however, considered section 16 of the Deeds Registries Act, which stipulates that ownership only passes to a party on registration of a deed of transfer in the deeds office. Mrs Hayes' only obtained a personal right to enforce transfer in terms of the settlement agreement, and therefore a creditor may seek an order declaring the half share executable as she was not yet the full owner of the property. The only defence available to the spouse acquiring the property would be to prove that the personal right to ownership of the property preceded the creditor's claim.