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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 007044/22

DATE: 26 February 2025.

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED

DATE

SIGNATURE

M[...] A[...] M[...] (BORN M[...])

PLAINTIFF

And

M[...] D[...] M[...]

DEFENDANT

JUDGMENT

MABUSE J.

[1] This matter came before me as a divorce action. The Plaintiff issued summons against the Defendant on 28 July 2022 and claimed a decree of divorce together with some ancillary relief.

[2] According to the Joint Practice Minutes dated 21 August 2024:

[2.1] the jurisdiction of the court was not in dispute nor was the identity of and particulars of the parties.

[2.2] the parties were married to each other in community of property on 1 April 2000 and remain so married.

[2.3] two children were born of the said marriage, one of whom is a major while the other is a female minor.

[2.4] the parties' marriage relationship has completely fallen apart and therefore there exist no reasonable prospects for its normal restoration.

[2.5] that, in the circumstances set out in paragraph 2.4 supra, an order of divorce should be granted.

[2.6] that in the event of a divorce, the parties' joint estate should be divided.

[3] According to the said Joint Practice Note, the issues in dispute were:

[3.1] whether the Plaintiff was entitled to spousal rehabilitation maintenance.

[3.2] Whether or not the Defendant's loans taken out should be taken into consideration in the division of the joint estate as they were taken without the Plaintiff's signing or consent or knowledge. The Defendant disagrees with this statement. A common issue is the division of the joint estate.

[3.3] Who of the parties should bear the costs of the divorce action?

[4] The parties began dating in 1993. They were married to each other in community of property on 1 April 2000, according to the marriage certificate.

[4.2] At the time of their marriage, the Plaintiff was employed at Standard Bank of South Africa Ltd, as a Training Facilitator. In 2007 this department was moved to Johannesburg. She decided against going to Johannesburg with this department. She first discussed her department's move to Johannesburg with the Defendant. She made it clear to the Defendant that she did not prefer going to Johannesburg. They agreed that she should not move with the department to Johannesburg and furthermore that the Defendant would have to support the whole family. That is how the Plaintiff became unemployed since 2007.

[4.2] Even after she had become unemployed, the Plaintiff tried her hand at some projects without any success. She applied for work and was employed at the Defendant's place of work at Tshwane Municipality.

[5] She testified that she wants money:

[5.1] to start a business

[5.2] for maintenance of herself and the children.

[5.3] to study, and,

[5.4] for petrol to fetch the children from the child school.

[5.6] She has no money to buy or rent a house.

[6] The Defendant has been paying for her maintenance. He began with a monthly payment of R2000, which later increased to R3000. Still the sum of R3000 was not sufficient. In addition to providing R3000.00 monthly support for the Plaintiff, the Defendant has also been covering school fees and medical aid for the entire family.

[7] She has a health condition that requires regular medical treatment.

[8] If divorced, she would need money for:

[8.1] groceries.

[8.2] the minor child's clothing.

[8.3] entertainment for the minor child.

The family still stays together in Mountain View.

[9] She did not have any debts. Their house is paid up and so is the Honda Ballad motor vehicle that she uses. She knows that the Defendant has some debts whose details he did not disclose to her.

[10] She holds the following qualifications: matriculation, a diploma in Business Management, and an Advanced Certificate in Entrepreneurship. She also enrolled with University of South Africa to improve her qualifications but for financial reasons dropped out. She took the money that she was supposed to use for tuition fees and used it to assist her adult son. The pension fund and retirement annuity are not in dispute. The Defendant is prepared to share them with her.

[11] The Plaintiff was the sole witness for her case. She had no witnesses to call in support of her case. The testimony of the Defendant followed immediately after the Plaintiff had closed her case.

[12] The Defendant, led by Advocate Botes, testified that, having married the Plaintiff on 1 April 2000, two children, one a major already and the other still a minor, were born of the said marriage. The Defendant had filed a counterclaim against the Plaintiff in which he had claimed, inter alia, custody and primary residence of the minor child. In his evidence and on a question by Mr. Botes, the Defendant conceded

that it would be in the best interest of the minor child if its primary residence was awarded to the Plaintiff. Nevertheless, he agreed to abide by the court's decision on the issue relating to the child's primary residence.

[13] The Defendant was against paying a sum of R7500 spousal maintenance for the Plaintiff because of the conduct of the Plaintiff. From 2014 up to the day he testified he felt that he was no longer a husband at his house. He and the Plaintiff have been living in different rooms. Secondly, the Plaintiff never washed his uniform. This was one of the reasons he proffered why he was disinclined to pay the Plaintiff R7500.00 for spousal maintenance. He also testified that he will not afford to pay the children R4500.00 each.

WHAT THE DEFENDANT DID AFTER BEING SERVED WITH A COPY OF THE DIVORCE SUMMONS

[14] Ever since he was served with a copy of the combined summons initiating the divorce action, he never stopped maintaining his children and the Plaintiff. He earns two different amounts per month. He earns between R47,000 per month and R52,000 per month He pays:

[14.1] the Plaintiff R5000 per month for groceries for the whole family.

[14.2] the Plaintiff R3000 per month for her own use.

14.3] the two children R1000 each per month. This money is paid directly into each child's bank account.

[14.4] The whole family is still on his medical scheme.

He undertook to keep the children on his medical scheme. Quite clearly, the word "*children*" includes even the adult child. We have no evidence that this child will accept this arrangement. His voice on this subject has not been heard. It is better that he be omitted from these arrangements, in the absence of any input from him.

HIS TENDER

He is prepared to continue paying the minor children R1000.00 per month each. Sometimes he buys his daughter clothes. Seeing in this regard page 13-07 on case lines, the Plaintiffs Capitec bank account. He sends part of his registration fees to his mother to pay.

Since his wife stopped working in 2007, he has been responsible for paying the water and electricity bills. Of course, it is to be expected that because since the Plaintiff has not been working since 2007, he should be expected to pay all the municipality debts. The wife has not tendered any evidence that she has been paying and has also not denied that the Defendant pays for these utilities. He is prepared to retain his children on his medical scheme in accordance with the Rules and Regulation of his medical scheme.

[17] He pays for petrol for motor vehicles. In this regard the Plaintiff has admitted that she drives a Honda Ballade. She needs petrol for it. She has not testified that she puts petrol into the motor vehicle with her own money. She has not testified that she receives money for petrol from other sources. The court would accept that the Defendant covers petrol and maintenance costs for all vehicles. He also pays insurance covers for all the motor vehicles.

[18] He pays for the tracker and the insurance premiums for the motor vehicles. He also pays for the house insurance. The Plaintiff is not restricted to using the Honda Ballade. She has an unhindered right to use the other motor vehicles. He agrees to divide their joint estate equally between them.

He paid his son's tuition fees through his wife.

AFTER THE DIVORCE

[19] Concerning their position after divorce, the Defendant requests to stay in the common home for 3 months before moving out, allowing his wife and children to continue living there. During this period of three months, he will be expecting his employer to pay out the Plaintiff's one-half of her share of his R7.7 million pension. The Plaintiff is also entitled to 50% of his retirement annuity.

[20] He does not want to pay the costs of the divorce action. The Plaintiff claims spousal maintenance for the rest of her life. He resists this claim.

Since 2007, the family has had a housekeeper, even though the Plaintiff has been unemployed during that time. There is no evidence as to why it was necessary for the family to have a housekeeper while the Plaintiff was unemployed and available to

do household chores and why she did not do any household chores. According to him, if the Plaintiff receives half of his pension benefits, she should not be entitled to any spousal maintenance.

[22] Plaintiff asked to be retained in the Defendant's medical scheme. The Defendant was not against her wish. The issue was that granting the wish would be inconsistent with the rules of his medical scheme. According to the medical scheme rules, a member cannot retain, on his medical scheme, a person he is not married to, unless such a person is his descendant. Once it comes to the knowledge of the employer that he is divorced, the Plaintiff will be automatically removed from his medical scheme.

[23] Attempts to mediate in the parties' marital problems or to solve the parties' problems.

According to the Defendant, he and the Plaintiff tried all steps to find a solution to their marital problems. They first used counselling to resolve their disputes and then sought help from their parents to address their issues. By parents they mean each party's parents. Thirdly, they used church counsellors for that purpose too. The elders came and read the principles of marriage to them, but still the Plaintiff was unmoved in her resolve. He also tried to save their marriage by talking to his wife to solve their problems but doing that was like trying to drain water from a rock. All else failed because of the Plaintiff's determination not to solve their problems but to divorce him. The Plaintiff seemed to have been encouraged in this regard by the fact that she had an older sister who had divorced and had come back home. That is why she was not so keen on solving their marriage.

He allocated two bank cards to the Plaintiff to use. As far as he was concerned the Plaintiff had unfettered use of those cards.

SPOUSAL MAINTENANCE

[25] One of the issues that the parties requested the court to determine was whether the Plaintiff is entitled to spousal maintenance. One of the fundamental principles concerning spousal maintenance is that only a person in need can demand maintenance from someone capable of providing it. To receive maintenance, one

must claim it. After the divorce one spouse might have to continue providing financial support to the other, especially if there are disparities in their incomes or when one spouse sacrificed his or her career opportunities for the family. During the marriage spouses are obliged to adequately support the family through their work and assets. If one spouse is entrusted with household management, they usually fulfill their maintenance obligations through it and often the associated care of the children.

[26] In her particulars of claim, the Plaintiff has claimed maintenance for herself in the amount of R7500.00 per month. The Plaintiff has not specified the type of maintenance requested. In our law, there are four kinds of spousal maintenance, each one with its own characteristics. These four kinds of spousal maintenance are:

[26.1] token maintenance.

[26.2] interim maintenance.

[26.3] rehabilitative maintenance: and,

[26.4] permanent or lifelong maintenance,

and each one of these types is designed for a unique purpose.

Marriage per se does not, however, automatically entitle a spouse to support. I am satisfied that the Plaintiff neither requests token maintenance nor seeks interim relief. The Plaintiff does not seek token maintenance because the divorce has not been finalized. She does not seek interim relief either as it can only be requested in accordance with Rule 43 of the Uniform Rules of Court. She did not request interim maintenance during the case. The opportunity to do so has come and gone.

[27] Since there is no agreement under s 7(1) of the Divorce Act for the Plaintiff's maintenance, the Defendant's support of the Plaintiff should be determined based on the principles embodied in s 7(2) of the Divorce Act. The parties' failure to reach an agreement in terms of s 7(1) of the Divorce Act has left the door open for the court to exercise its powers in terms of s 7(2) the Act, which provides that:

"In the absence of an order made in terms of subsection (1) with regard to the payment of maintenance by one party to the other, the court may, having regard to the existing or prospective means of each of the parties, their respective learning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, their conduct in so far as it may be relevant to the breakdown of the marriage, and any

other factor which in the opinion of the court should be taken into account, make an order which the court finds just in respect of the payment of maintenance by one party to the other for any period until the death or remarriage of the party in whose favour the order is given, whichever may first occur”

[29] S 7(2) articulates the principles that a court should apply when it determines a defendant's support obligation to his wife. All objectives in s 7(2) must be considered when claiming spousal support. In most marriages, the wife is still economically disadvantaged. It would thus be perverse in the extreme to assume that the Parliament's intention in enacting the Act was to penalize the women. No single objective is paramount. With these objectives Parliament intended that support reflect the diverse dynamics of many unique marital relationships.

[30] The starting point in the application of the principles set out in section 7(2) of the Divorce Act No. 70 of 1979 (the Divorced Act) is the existing or prospective earning capacities of the parties. It is common cause between the parties that the Plaintiff is unemployed and has been so unemployed since 2007. Strictly speaking, it means that apart from working periods at Tshwane Municipality, the Plaintiff did not have any work, formal or informal. It therefore means that the Plaintiff has not had any income. There is no evidence on record about the income she made while working at Tshwane Municipality. In the circumstances, the conclusion is inevitable that she does not have the ability to support herself and secondly that she is entitled to maintenance by the Defendant.

[31] The Defendant himself recognized the fact that the Plaintiff had no source of income and that, in the circumstances, she needed maintenance from him. The following evidence manifests that recognition:

[31.1] he allowed the Plaintiff to use the Honda Ballade motor vehicle and bought her petrol. As she was unemployed, the Plaintiff could not put in petrol in the said motor vehicle. There is no evidence that the Plaintiff got petrol money from any other source.

[31.2] the Defendant admitted that he paid the Plaintiff R 8000.00 per month, in other words, R3000.00 for her own use and R5000.00 for groceries.

[31.3] furthermore he testified that he and the Plaintiff shared credit cards of which the Plaintiff had unfettered use.

[31.4] The Defendant can pay the Plaintiff some form of rehabilitation maintenance.

[32] Considering each party's earning capacity in determining spousal maintenance, it is evident that the Plaintiff has been unemployed since 2007 and thus has no income. At the same time the Defendant is and has been so employed.

[33] The Plaintiff was born on 7 October 1974, which means that she is 50 years and a few months old. No evidence has been placed before the court what influence this age may have on her chance of remarriage. Naturally, her prospects for remarriage are negligible. No evidence was tendered regarding the prospect of being employed again. She has no skill to rely on. No evidence by an Occupational Therapist about the prospect of ever been re-employed has been placed before court. In these circumstances, the Court is unable to determine the future ability of the Plaintiff to be employed again in the open labour market. The duty was on the Plaintiff to satisfy the court that she has no chance of ever being employed again and that she will need to be maintained indefinitely. She has some qualifications but seemingly, those qualifications have not assisted her in the past to secure any work. In response to a question from the Defendant's counsel, the Plaintiff informed the court that, following the divorce, she plans to engage in some form of business. She is confident about finding self-employment. Therefore, despite the divorce, all will not be lost. For as long as she remains a divorcee and unemployed she may need maintenance. That does not mean though that the Defendant must support the Plaintiff indefinitely. According to **EH v SH 2012 (4) SA 164 (SCA)**, a person who seeks maintenance must prove that she or he needs support from her or his former spouse.

[34] In **van Wyk v van Wyk (136/05, ECJ27/06) [2006] ZAECHC 15 (4 April 2006)**, the court stated that "a proper application of s 7(2) of the Divorce Act *"involves a balanced assessment of the maintenance needs and the ability to pay."* First, the court must establish whether the Plaintiff needs any maintenance and, if so, the next step is to determine the ability of the Defendant to provide the Plaintiff with any maintenance. As noted in paragraph [31] supra, the Plaintiff needs maintenance. It is also evident that the Defendant has the capability to provide such maintenance.

[35] The Plaintiff must acknowledge that the circumstances have now changed and furthermore that she cannot continue to live as she did during their marriage. In **Kroon v Kroon 1986 (4) SA 616 (E)**, the court emphasized this principle when it stated that:

“The parties are no doubt aware that in most cases persons who have become divorced will be compelled by necessity to reduce their standards of living, for where the available means of support are not adequate to maintain both according to their former scale of living, each must of necessity scale down his or her budget. In the case of most of us, divorce brings a measure of hardship or at least some degree of deprivation. To say that two can live as cheaply as one is not true. The fact of the matter is that two living together can live more cheaply than two living apart, for obvious reasons such as the need for residence plus rate, maintenance, service charges and all the rest it; two cars plus the concomitant expenses in: two lots of household goods to buy and maintain, and so forth. The problem of “indivisible” household expenses is a real one.....”

[36] Prior to this divorce action, the parties seem to have lived a simple life during which, as a family, they neither went on holidays nor visited restaurants. The family visited an eatery only when the Plaintiff took the children to purchase takeaways at Spurs restaurants and Cash Bar. There is no evidence that they visited cinemas or took the children to any cinema. As shown above, the Plaintiff drove a Honda Ballade sedan and other motor vehicles while the Defendant drove a Jeep and BMW motor vehicles. No evidence that these three motor vehicles were all or any of them were flashy motor vehicles, was placed before court. There is no evidence that these motor vehicles were purchased new or second-hand.

[37.1] The evidence by both parties has since established that after the divorce, the Plaintiff will not be left destitute. In the first place, the value of the Defendant’s pension benefits is R 7.7 million, and he is prepared to share it with the Plaintiff. In the result, the Plaintiff would be entitled to R 3.8 million of the said pension funds. According to his own evidence, it would take at least three months after the divorce for the same amount of our R3.8 million to be paid to her.

[37.2] Secondly, the property where the family resides is valued at R1.4 million. It is fully paid up. I must assume that the house instalments were all paid up by the Defendant. The parties were married for twenty-two years. The court must consider this under s 7(2) of the Divorce Act. The Plaintiff has expressed a desire to retain the house and to live in it with her children. Her intention is to pay out one-half of the value of the property to the Defendant so that she can retain it. With such a windfall of R3.8 million, the Plaintiff should be able to buy out the Defendant and still have a handsome balance remaining.

[37.3] The Defendant still has an annuity. The annuity's value is unknown. What is known, however, is that the Defendant is prepared to share the value of the annuity with Plaintiff.

[37.4] Moreover, the Defendant has tendered payment:

[37.4.1] of a sum of R5000.00 for groceries.

[37.4.2] of a sum of R3000.00 for the Plaintiff's own use.

[37.4.3] of a sum of R1000.00 deposited into the minor child's bank account.

[37.4.4] for the minor child's clothes.

[37.4.5] for the minor child's medical scheme; and,

[37.4.6] for the minor child's school fees.

[38] I am of the view that a rehabilitative maintenance order will be fair to both parties in this matter.

[39] No dispute exists between the parties about the maintenance of the minor child. It will be recalled that the Plaintiff claimed maintenance for the two children of the parties at R4500.00⁹ each. I already have pointed out that I cannot take their representations regarding the maintenance of the major child as his voice has not been heard. The only dispute between the parties is the amount of maintenance that is required for the maintenance of the minor child. The plaintiff claimed R4500.00 per month for the minor child's maintenance. There is no evidential support for this amount. No reason has been furnished by the Plaintiff why she claims that amount for the maintenance of the minor child.

On the other hand, the Defendant objects to paying the amount of R4500.00 claimed by the Plaintiff. The Defendant offers only R1000.00 per month. This is

understandable because the Defendant:[39.1] retains the minor child on his medical scheme.

[39.2] has undertaken to pay all the minor child's school fees.

[39.3] has undertaken to give the Plaintiff an amount of R5000.00 per month for groceries. This amount should also cover the minor child's groceries.

[39.4] has undertaken to pay an amount of R1000.00 per month into the minor child's bank account.

[40] In this case the parties have properly not suggested that the conduct of either of the parties in relation to the breakdown of the marriage is relevant to the maintenance issue.

I therefore make the following order:

[1] A decree of divorce is hereby granted.

[2] There shall be a division of the joint estate.

[3] Both parents share parental rights and responsibilities regarding the minor child.

[4] The primary care and residence of the minor child, as contemplated in section 18(2)(a) of the Children's Act 38 of 2005 are hereby awarded to the Plaintiff, subject to the following conditions:

[4.1] The Defendant shall have the right to remove the minor child every alternative weekend commencing at 17h00 on Friday and ending at 17h00 on Sunday afternoon.

[4.2] The Defendant may collect the minor child and take her to school and collect her after school at her school, if so, arranged between the parties.

[4.3] The Defendant may collect the minor child from school every Wednesday for her to stay over at the Defendant's home, in which case the Defendant shall see to it that the child's homework is attended to and that the Defendant takes the minor child back to school every Thursday morning.

[4.4] The short school holidays to alternate between the parties. For the purposes hereof, short school holidays shall refer to the school holidays which take place during March/April and September/October each year.

[4.5] The long school holidays to be shared equally between the parties with Christmas and New Year to alternate between the parties. For purposes hereof,

long school holidays shall refer to the school holidays which take place during June/July and December/January each year.

[4.6]. The long weekend and public holidays which do not form part of a school holiday to alternate between the parties.

[4.7] The minor child's birthday is to be alternated between the parties. Alternatively, the parties should arrange practical measures.

[4.8] The Defendant shall be entitled to regular, structural, predictable and unfettered telephonic/ electronic contact with the minor child.

[4.9] Any further contact can be mutually arranged between the parties, provided that such contact shall not interfere with the minor child's scholastic, religious and extracurricular and/or extra-mural activities.

[5] The Defendant is hereby ordered to pay the Plaintiff's spousal R7500.00 (Seven Thousand Five Hundred Rand) per month for a period of five years commencing from the date of this order.

[6] The Defendant is hereby ordered to pay an amount of R1000.00 (One Thousand Rands) per month into the minor child's bank account. Payment of this amount into the manual child's bank account shall cease on the said child becoming a major.

[7] The sums of R7500.00 and R1000.00 mentioned in paragraphs 5 and 6 must be paid by the 7th day of the month after the final divorce is granted, and then on the 7th day of every subsequent month.

[8] Payment of the amounts mentioned in paragraphs 5 and 6 supra shall be made directly into the bank accounts of the relevant recipient.

[9] The spousal maintenance for the Plaintiff, as set out in paragraph 5 above, shall increase by 8% a year as from the anniversary date of the final order of divorce and shall be discharged in terms of clause five (5) above.

[10] The Plaintiff shall obtain her own medical aid with the same plan and benefits of the defendant and the very liable to pay for such medical aid sweet for a period of five years from the date on which this Order is made.

[11] The minor child shall remain on the Defendant's medical aid until the minor child reaches the majority.

12] The Defendant shall be responsible for all school and tertiary costs for the minor child's education until the said child becomes a major.

[13] The Plaintiff is entitled to 50% of the Defendant's Tshwane Municipality Pension Fund Number(unknown) in terms of section 1 of the Divorce Act No. 70 of 1979. Tshwane Municipality Pension Fund is hereby ordered to pay the Plaintiff an amount equal to 50% of the value of the Defendant's pension interest calculated up to the date of this Order.

[14] The Defendant is a member of the Central Retirement Annuity Fund Plan Number: 0[...] The Plaintiff is, by virtue of the provisions of s 1 of the divorce Act 70 of 1979, entitled to 50% of the Defendant's Retirement Annuity with the Central Retirement Annuity Fund Plan. The Central Retirement Annuity Fund is hereby ordered to pay Plaintiff an amount equal to 50% of the Defendant's Retirement Annuity interest calculated as at the date of divorce.

**PM MABUSE
JUDGE OF THE HIGH COURT, PRETORIA.**

Appearances:

Counsel for the Plaintiff: Adv C van Der Merwe
Instructed by Messrs J W Wessels & Partners.

Counsel for the Defendant: Adv A Botes.
Instructed by : Messrs Shapiro & Ledwaba Inc;
Dates heard: 2-3 September 2024: 10 October2024.
Date of Judgment: 26 February 2025.