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Circulate to Magistrates: Yes / No

# **IN THE HIGH COURT OF SOUTH AFRICA**

(Northern Cape Division)

Case No: 818/2004

Heard: 01/06/2006

Delivered: 23/06/2006

**RAMAILANE LCS**

**PLAINTIFF**

*versus*

**RAMAILANE MJ**

**DEFENDANT**

## **JUDGMENT**

**MOKGOHLOAJ:**

1. The parties were married to each other on the 25<sup>th</sup> December 1981 in community of property. Three children were born out of their marriage, two of whom are still minor namely: (1) F P R born on the 1986 and (2) P M R born on the 1992.
2. The plaintiff instituted divorce proceedings wherein he claimed a

decree of divorce; custody of F and that custody of P be awarded to the defendant, and that the parties to have reciprocal rights of reasonable access to the children; that plaintiff will pay maintenance in respect of P in the amount of R1 000.00 per month. He undertook to be responsible for P's school fees, school books, clothing and reasonable medical expenses; he lastly claimed forfeiture of the benefits arising from the marriage in community of property and costs of suit.

3. The Plaintiff enrolled the matter on an unopposed divorce roll and the matter was heard on the 22<sup>nd</sup> October 2004. However, the then presiding judge **Kgomo JP**, was not satisfied with the forfeiture issue and directed that the Legal Aid Board assist the defendant to resolve the communal property issue. The matter was then postponed sine die. The Justice Centre was then appointed as attorneys of record for the defendant, but she was not satisfied with their services, and terminated their mandate during April 2005. Magabane Inc was appointed as attorneys of record, but the defendant ran out of funds, and they also withdrew during May 2006.

4. The plaintiff amended his prayer for forfeiture in his particulars of claim and substituted it with a prayer for division of the joint estate. It was common cause on the pleadings that the marriage between the parties had broken down irretrievably and that there existed no reasonable prospects of the restoration of a normal marriage relationship between them. The parties have not been living together as husband and wife since the 1<sup>st</sup> July 2004.
5. The parties held a pre-trial conference on the 19<sup>th</sup> May 2006. The defendant advised the plaintiff's attorney that she believed that their marriage relationship had not broken down irretrievably, and that she is prepared to give the plaintiff a chance to save the marriage. She further requested that the plaintiff pay her maintenance in the amount of R2 500.00 per month for five years.
6. The matter started de novo before me in terms of section 4(4) of the Divorce Act 70 of 1979. At the commencement of the trial, I was informed by the defendant that she understood the proceedings and further that, although not legally trained, she will conduct her own defence.

7. The plaintiff testified that there were continual fights between them; the defendant stole the money from the family business and gave it to her family members and that he left the common home on the 1<sup>st</sup> July 2004 as he was under tremendous stress caused by the defendant's actions. He said that he tried to save the marriage by engaging elders in the family and family advocates, all in vain. He intended filing for a divorce during 1996, but decided against it, as the younger children were still very small and he did not want to traumatise them.
8. The Defendant testified that the Plaintiff is a good and responsible person, who is taking care of his children, and is presently paying for the bond, the water and electricity of a house where the defendant and the youngest child reside. She says that if the marriage was broken down irretrievably, the plaintiff would not be doing all these good things. She denied that she stole money from the family business. She confirmed that they did attend the Family Advocate's offices with the aim of saving the marriage, but this did not bring them together. She stated that she asked the plaintiff to forgive her, but he refused. She further asked that the plaintiff pay

her maintenance (alimony) in the amount of R1 000.00 per month for a period of one year and that P's maintenance be increased to R1 500.00 per month. The plaintiff at the pre-trial conference offered to pay alimony to the defendant for one year.

9. Although the defendant had not amended her pleadings wherein she admitted that their marriage was irretrievably broken down, I nevertheless allowed her to give evidence which conflicted with this admission, because she was not legally represented. I further allowed her to give evidence as this is a status matter and that the defendant may show that the marriage is not broken down irretrievably. In that event the Court will have a discretion to postpone the matter for 6 months.
10. It is clear from the evidence of both parties that attempts to save the marriage, has proved fruitless. It is also clear that the parties have not been staying together as husband and wife for more than 2 years. Section 4 of the Divorce Act 70 of 1979 provides as follows:

*“(1) A court may grant a decree of divorce on the ground of the irretrievable break-down of a marriage if it is satisfied that the marriage relationship between the parties has*

*reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them.*

*(2) Subject to the provisions of subsection (1), and without excluding any facts or circumstances which may be indicative of the irretrievable break-down of a marriage, the court may accept evidence-*

*(a) that the parties have not lived together as husband and wife for a continuous period of at least one year immediately prior to the date of the institution of the divorce action;*

*as proof of the irretrievable break-down of a marriage."*

11. I am therefore satisfied that the marriage relationship between the parties has broken down irretrievably.

12. On the question of costs: The plaintiff was successful and the opposition by the defendant was unnecessary, because the plaintiff essentially offered her every reasonable thing that she asked for. Defendant knew that the marriage had broken down irretrievable, and had admitted it in her pleadings. She must therefore pay half the plaintiff's costs.

## **ORDER**

**1. The marriage of the parties is dissolved.**

**2. The plaintiff is ordered to pay maintenance (alimony) to the defendant in the amount of R1 200.00 per month for a period of two years from date of divorce.**

**3. Custody of the minor child F P R is awarded to the plaintiff**

subject to defendant's right of reasonable access.

4. Custody of the minor child P M R (born 1992) is awarded to the defendant subject to plaintiff's rights of reasonable access at all reasonable times, which will include the plaintiff taking the minor child with him for one weekend a month, and every alternative long and short school holidays.
5. The Plaintiff is ordered to pay maintenance in respect of P M R in the amount of R1 500.00 per month for as long as he is legally liable to effect such maintenance.
6. The Plaintiff is ordered to pay all expenses and disbursements in respect of P as set out in paragraphs 7.3.1; 7.3.2 and 7.3.4 of Plaintiff's Particulars of Claim.
7. Mr JAN HENDRIK BOOYSEN is appointed as Receiver in order to liquidate the joint estate of the parties and he will have the following authority and powers:
  - 7.1 To take all parties' possessions into his custody and to administer, control and maintain same as he sees fit;
  - 7.2 To take out insurance on the assets of the communal estate and to pay all the outstanding premiums;
  - 7.3 To demand from the plaintiff and the defendant to pay over or to deliver to him all monies and assets in their possession and to pay to him the market price of any assets which may have been sold improperly;
  - 7.4 To dispose of all assets of the communal estate on such terms and conditions as he deems appropriate and in the event of either party wishing to keep any items, he will sell the said items to them at a reasonable market value;
  - 7.5 To pay all the debts of the estate including recovering

**his own fees and disbursements;**

**7.6 That the balance of the proceeds realised from the assets is divided equally between the parties;**

**7.7 The Receiver is authorised to approach the Honourable Court for assistance in the event of any problems arising in the execution of his authority and powers or if he is not satisfied with any information as received from the plaintiff for the defendant.**

**8. The defendant is to pay half the plaintiff's costs of the 1<sup>st</sup> June 2006 only.**

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**FE MOKGOHLOA**  
**ACTING JUDGE**

For the Plaintiff: Mr Pretorius  
For the Defendant: In Person

Instructed by: Haarhoffs Attorneys