

**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED YES

**CASE NO: 2369/2013
7/2/2020**

In the matter between:

R. K[....]

Plaintiff

and

A. K[....] First Defendant

GLOBAL PLANTS AND DISTRIBUTORS CC

Second Defendant

QUELLAND ESTATE PTY LTD

Third Defendant

DELTROSIZE PTY LTD

Fourth Defendant

JUDGMENT

1. The plaintiff instituted a divorce action against the first defendant during January 2013 which was responded to by the defendant in the form of a plea and a counterclaim. The defendant joined the second, third and fourth defendants to the action. I shall refer to the first defendant as "the defendant" and to the other defendants by their respective names.

2. In the counterclaim the defendant pleaded the existence of a universal partnership between herself and the plaintiff and consequently claimed the appointment of a Receiver with the power to establish the assets obtained by the parties as a result of the operation of Wonderboom Kwekery, Arks Pty Ltd and Global Plants Pty Ltd and their involvement in the plant industry, submission of a distribution account to the parties, the debatement of the account and payment to the defendant of what is due to her. The defendant also claimed maintenance in the amount of R2 million in respect of resettlement plus R 30,000.00 per month together with medical expenses.
3. At the commencement of the trial the parties were ad idem that the three issues in dispute were the following: firstly, whether a verbal, alternatively, a tacit universal partnership was formed between the parties during August 1995 as claimed by the defendant; secondly, the issue of spousal maintenance, the principle, quantum and duration thereof, as claimed by the defendant; and, thirdly, the costs of the action.
4. The parties were in agreement that the onus of proof as well as the duty to begin, were on the defendant. The defendant herself testified and also presented the evidence of Mr M Malatjie and Mr D Hawthorne. The plaintiff testified on his own behalf. The trial lasted many days and it would serve no purpose to try and summarise each witness' evidence and evidence in cross examination. I shall endeavour to refer to the salient features relevant to the issues to be decided.
5. The parties were married to each other on 22 February 1997 with an antenuptial contract expressly excluding community of property and the accrual system. The relevant part of the antenuptial contract provided that the parties contracted with each other as follows:
 - "1. Oat daar geen gemeenskap van goed tussen hulle sal **wees** nie.
 2. Oat daar geen gemeenskap van wins en verties tussen hulle sal wees nie.
 3. Oat die aanwasbedeling waarvoor daar ingevolge Hoofstuk I van die Wet op Huweliksgoedere 1984 (Wet no 88 van 1984) voorslening gemaak word, uitdruklik uitgesluit word.

EN die genoemde RICARDO KUISIS en ANNELINE SWANEPOEL het belowe en ooreengekom om die voorgenome huwelik op bogemelde voorwaardes te voltrek, en om in die gees van hierdie kontrak te handel ender verpligting van hulle persona en eiendom volgens Wet."

6. Two children were born from the marriage between the parties and are already majors. The plaintiff has and will continue to contribute to the children's maintenance needs insofar as it might still be necessary. The parties were in agreement that no order in this regard needs to be made.
7. The plaintiff was married to his first wife during 1980 in community of property and they finally got divorced during the middle of 1996. The plaintiff grew up in the nursery and plant industry which he conducted with his father and has been involved in the plant industry for all his life. There is no doubt that he is an expert in the trade and more specifically in respect of instant garden plants which mainly involve large plants and trees. The bulk of his business relates to the exporting of big trees and other plants which he has been doing since 1983. This entails the sourcing of trees from over the country, the digging out, preparing and packing and treatment of the trees for purposes of transport or export and the replanting thereof. This is a specialised industry and it was not in dispute that the plaintiff is an expert in this regard. He exported products to countries in Africa, Cyprus and countries in the Far East.
8. Since 1981 the plaintiff had a 25% share in the company Quelland Estates Pty Ltd and since 1983, a 100% shareholding in Praetorium Pty Ltd. These were the companies through which he did his business. During 1985 the plaintiff had a 50% shareholding in Quelland and in December 1996 he purchased the other 50% shareholding which belonged to his brother. The defendant signed this contract as a witness. This purchase was funded with money which became available from a family trust after the passing of plaintiff's father and of which the plaintiff was a beneficiary. Since 1987 the plaintiff was involved in a similar business by the name of Belle Ombre. In respect of the one outlet of this business he had a 10% interest in turnover and stock and in respect of the other outlet he had a 30% interest

9. During approximately 1994 the plaintiff met the defendant. From 1990 to 1995 she had worked in her uncle's nursery until she resigned. During September 1995 the company Arks Pty Ltd was registered with the defendant as the sole shareholder. Arks was involved in bigger plants and trees. During December 1995 Arks purchased Wonderboom Kwekery. The defendant worked at Wonderboom Kwekery while the plaintiff continued with his other businesses.
10. Later during 1995 Arks purchased a Biscuit Kings business and sometime later a second one. During 1996 Arks also purchased a flat in Pretoria. On 22 February 1997 the parties were married. During the same year they moved to the farm Frischgewaad near Tzaneen. The farm had belonged to Quelland Estate since 1981. Quelland Estate sold the farm in 2014. Currently Quelland Estate has no assets.
11. According to the defendant the alleged partnership with the plaintiff came into existence during August 1995, i.e., one and a half years before they entered into marriage. According to the defendant the result of this partnership agreement was the registration of Arks during August 1995 which was the vehicle through which the assets of the parties were purchased and through which business was conducted. A further result was the purchase by her during December 1995 of Wonderboom Kwekery which she said was the origin and basis upon which all subsequent businesses and interests were obtained by the parties. She further stated that the purchase during December 1995 of the 50% shareholding in Quelland Estate was also funded by Arks. Furthermore the company which was registered during 1995 namely Global Plants Pty Ltd, of which the plaintiff was the sole shareholder, and which did similar business to Arks, was also the result of this partnership. Furthermore the company Deltrosize Pty Ltd was registered with the plaintiff as the sole shareholder and which also did similar business to Arks. The aforesaid was disputed by the plaintiff and I shall refer thereto below.
12. The plaintiff testified about the role that she played in the businesses. She did the invoices and especially after they moved to the farm, she saw to the operations when the plaintiff was away. According to her she was very involved with the businesses.

13. The defendant pleaded that a *universorum quae ex quaestu veniunt* came into being between the parties in respect of the business they and/or Arks and/or Global Plants conducted in the plant industry. It was consequently the defendant's case that she is entitled to half of the assets of the plaintiff and the aforesaid entities.
14. The four requisites of a partnership are trite. Firstly, each of the partners must bring something into the partnership or bind themselves to bring something into it, whether it be money or labour or **skill**. Secondly, it is essential that the business should be carried on for the joint benefit of both parties. Thirdly, the object should be to make a profit. Finally, the contract between the parties should be a legitimate contract.
15. It is also trite that the court must satisfy itself that there was indeed *animus contrahendi* between the parties and that the conduct from which a contract is sought to be inferred, is not simply that which reflects what is ordinarily to be expected of a wife in a given situation. There must be something to indicate that the parties intended to operate as a partnership. Especially where a tacit agreement is alleged, it must be clear that the conduct relied upon is not only unequivocally consistent with consensus on the issue of the contract alleged, but is consistent with no other reasonable interpretation. See *Muhlman v Muhlman* 1991 (4) SA 632 (WLD); *Joel Melamed and Hurwitz v Cleveland Estates Pty Ltd* 1984 (3) SA 155 (**A**).
16. The plaintiff testified that he is 64 years of age. He spoke about his passion for agriculture and the plant and nursery industry. He and his brother and two friends initially formed a company and bought a farm which was totally underdeveloped. This happened soon after he left school. They developed the farm and started off in the industry. His success resulted in him establishing a second company, *Praetorium Pty Ltd*, which belonged to him alone. It is not necessary to refer further to the history of the plaintiffs ventures save to say that he was very successful and also successful in landing extremely big contracts not only in South Africa but also abroad. That had been the case to the present.
17. He also became involved in *Belle Ombre*, a business for whom he did

consultancy work. He eventually also established a plant production line for this business and made them involved in exports. He obtained a percentage in this business as well as its stock. While he was doing this, Quelland Estate continued with its exports especially to the United Arab Emirates, China and Cyprus. He also acted as consultant to other nurseries. That was how he met the defendant who was working for Wonderboom Nursery.

18. According to the plaintiff Arks was registered in September 1995 to give the defendant an opportunity in the plant industry which he thought she understood and in respect of which he could also teach her a lot. The type of business envisaged for Arks would, in his view, have suited the defendant and she should have been able to make a success and have a very good income. According to him she had the ability but needed direction and financial control.
19. The plaintiff testified that 100% of the shareholding in Arks was registered in the defendant's name for the reason that the business was to belong to her alone. He had no loan account in the company and the defendant alone had signing rights. Although he assisted Arks in many ways he and his companies did not benefit from such assistance.
20. The plaintiff testified that having been married on, as he called it, a 50% 50% basis, and having lost so much in the divorce, he would under no circumstances have entered into a marriage in community of property or a marriage partnership or a shareholding with somebody who could be his future wife. The plaintiff went through a very long and acrimonious divorce with his first wife which lasted almost two years and was finalised during the middle of 1996. He had been married in community of property and his first wife obtained 50% of all his assets. He said that it was at all times his intention to make absolutely sure that there would in future be no mixing of his own assets and that of a new spouse. It was mainly for that reason that he remained the sole owner of his own businesses and that when he became married in 1997, he insisted that the regime of his marriage would be out of community of property and also with the specific exclusion of the accrual system. The antenuptial contract also specifically excluded any community of profits and losses and contained the rather unique provision that he and the

defendant had agreed and promised to be married on that basis and to act in the spirit of the agreement as far as their persons and property were concerned.

21. The formation of Arks was consequently to set the defendant up in business and to be hers alone. Regarding the purchase of Wonderboom Kwekery by Arks in Desember 1995 the plaintiff testified that it was the defendant's dream to manage a nursery and especially the one where she had worked for a long time. He said that he advised her and helped her where he could but that the business belonged to the defendant alone. That is why it was purchased by Arks. This purchase as well as the purchase of the flat in Pretoria early in 1996 was financed by money generated by Arks and Wonderboom Kwekery.
22. Regarding the purchase of his brother's 50% shareholding in Quelland Estate during December 1996 the plaintiff testified that he eventually paid his brother from money received after his father's death from monies due to him from the estate. The actual payment was made some years later. The defendant's evidence that Arks funded the purchase was simply not true. Furthermore, he also still had an income from his other businesses.
23. Regarding the signing of the antenuptial contract during January 1997 the plaintiff was adamant that he had been taught a very severe lesson with his previous marriage which had been in community of property. He also testified that his attorney explained every clause of the contract to him and the defendant and that everything was clear. He also testified that there was never any suggestion that the antenuptial contract would later be amended.
24. The plaintiff testified that by 1999 Arks was in serious financial difficulty. He said that the company was simply not run properly by the defendant who had the skill to do the work but who lacked the required financial knowledge. She also tended to be a spendthrift instead of understanding the need for building up savings. In order to prevent the loss of the flat in Pretoria he eventually caused Quelland Estate to secure the debt of Arks.
25. In respect of the defendant's evidence that Global Plants was just a continuation of Arks, the plaintiff denied this and testified that this close corporation was registered as a result of contracts which he had obtained and

because his experience taught him that he could not do his exports in the name of the property holding company. From that time on, sales and exports abroad were no longer done by Quelland Estate but by Global Plants CC.

26. The plaintiff denied that there was ever any suggestion that the defendant would have a share, or be a member, of Global Plants. The plaintiff said that the defendant did assist him and was helpful, but no more than would have been done by a secretary or anyone else. She sometimes helped with invoices and wages or helped when there was a crisis, or would sometimes give instructions to employees, but this was not on a continuous basis. He sourced clients and concluded contracts through Global Plants and Deltrosize. The plaintiff was emphatic that although the defendant did do a few functions of the business and assisted when he was not around, she did not administer and manage the businesses. She was not part of the administration and management of the businesses. The defendant conceded that she never participated in the decision-making processes in the plaintiff's businesses and that he was the one who took those decisions. He did all the paperwork and the defendant had no access to any of his accounts, including that of Global Plant and Deltrosize.
27. The defendant testified that she should have been a member of Global Plants but that the plaintiff said that he did not have her identity document when he went to the auditors to register the close corporation. She said that she trusted the plaintiff as they did everything together. This evidence of the defendant did not convince. If they had really regarded themselves as partners, and also as, according to her version, Global Plant was to take over the activities of Arks, one would not have expected the presence or not of an ID book to be relevant and the defendant would most certainly have taken the matter up with the plaintiff to see to it that the situation was rectified.
28. The plaintiff testified that the defendant had no knowledge of the growing of plants, the wholesale production of plants, preparation and relocation thereof. Her knowledge was in the retail nursery business. When asked whether Arks contributed anything to the other entities, the plaintiff said that the truck and trailer, which had very little commercial value, was used for a short period and then went to the defendant's brother. The plants belonged to Quelland. Other

plants required for his contracts, were sourced from outside. The plaintiff testified that it was in fact Quelland and Praetorium which assisted and supported Arks, and not the other way around.

29. The plaintiff also testified that profits were never shared with the defendant. She could also not make any drawings on any of the accounts of the businesses. She shared in an indirect fashion by sharing in the household. He would give the defendant money to purchase whatever was necessary or would make deposits into her account.
30. The plaintiff also denied the defendant's evidence that Wonderboom Kwekery gave the start to his subsequent businesses. He referred to his history and what he had done before. He described the defendant's evidence as nonsensical and said that Wonderboom Kwekery couldn't be and was not the start of his life. His vast knowledge and extensive contacts which had been developed since 1982, were the reasons for his success and his further business ventures.
31. The plaintiff also denied the defendant's evidence that the business of Global Plants CC was the same as that of Arks. He said it was similar but not the same. The idea was that on the long-term the defendant would do the work locally with Arks while he would handle exports with Global Plants. Unfortunately the defendant did not make a success of Arks and the plaintiff said that if he had to involve himself with Arks, he would probably have lost his exports and, in any event, Arks could hardly have been in competition with Global Plants.
32. During 2002 the parties' marriage went through a rough patch and the defendant commenced a divorce action. At the time there was no suggestion that there had ever been any sort of partnership between them. The parties did not proceed with that action.
33. Between 2002 and 2004 the defendant sold the flat which belonged to Arks. The defendant controlled the proceeds and the plaintiff had no knowledge thereof. In 2005 the defendant and her sister opened a retail nursery in Phalaborwa but that was not a success. The plaintiff had nothing to do with that venture.

34. Regarding the formation of Deltrosize Pty Ltd during 2011 the defendant explained that the scope of his work was such that he needed a company and not a close corporation and also a company that was BEE compliant. On the recommendation of his auditor, this new company was established. The plaintiff held 100% of the shares. From that time on he did his exporting through Deltrosize and is still doing so at present. The defendant was never any part of this company. She did assist with invoicing and some paperwork and marketing, but her input was minimal.
35. Regarding a stock list written by hand by the plaintiff apparently during November 1996 which, according to the defendant, showed the assets of Arks and what was taken over by Global Plants in 1999, the plaintiff testified that he can't really remember this document and it could have been scribbling for purposes of a budget. What he could say was that the assets on the list did not all belong to Arks. For example, the plants on the list belonged to Quelland Estate and not Arks. 80% to 90% of the plants were growing on the farm of Quelland Estate and some were approximately 10 years old. Others were on other premises. The trailer which was mentioned belonged to the defendant's father who allowed them to use his truck and trailer. The trailer remind behind. The tractor which was mentioned and the tools, all belonged to Quelland Estate. The 300 Cycads mentioned was obtained by the plaintiff in the 1980s. There was also no mention of the stock and plants of the Wonderboom Kwekery which belonged to Arks, except for the trailer. In any event, Global Plants was only established approximately three years later in 1999 and could not have been relevant at the time. It is not insignificant that it was unknown what the page referred to really was and the fact that there were obviously pages missing from the document of which it formed a part. No inferences can be drawn from this document.
36. According to the plaintiff his relationship with the defendant deteriorated during 2011 and 2012. It is not necessary to refer to his or her evidence in this regard. Regarding the defendant's evidence that during November 2012 the plaintiff had agreed to amend the antenuptial contract, the plaintiff denied this and said that he would never have done anything to that effect After all, according to the timeline, that would have happened approximately two days

before he moved out of the house for the last time, and it would have been highly unlikely for him to have done any such thing.

37. During 2014 the plaintiff registered a new company Onicasat Pty Ltd through which he purchased a farm in the Western Cape. The plaintiff testified about his experiences and his income and the bond in respect of the property which has to be serviced. He presently holds the shares in Deltrosize and Onicaset. All the other entities are either dormant or deregistered.
38. In order to determine whether a partnership came into existence between the parties during August 1995, either expressly or tacitly, the main question is whether the defendant had proven on the balance of probabilities that there existed an *animus contrahendi* to form such a partnership. It is undisputed that the parties never expressly decided to enter into a partnership agreement. The conduct of the parties consequently has to be assessed in order to decide whether such an agreement had come into existence. I shall now briefly refer to what I regard to be the salient features of the evidence in that regard.
39. It was submitted on behalf of the plaintiff that a number of incidents which occurred are so totally irreconcilable with the notion of a partnership between the parties that this court could not find that such had existed between them. I shall briefly refer to these factors chronologically for it is especially in their chronological sequence that the inferences to be drawn become clear.
40. Having regard to the defendant's evidence that the partnership with the plaintiff was established during August 1995, the first event thereafter that was referred to, is the establishment of Arks during September 1995. As mentioned, the defendant was made the sole shareholder and had total control over the business and accounts of this company. The plaintiff had none. These facts are not compatible with the suggestion that the parties have, only a month earlier, formed a universal partnership in respect of the very business that Arks was going to conduct.
41. The second event took place in December 1995 when Arks purchased Wonderboom Kwekery. Again, if it was the intention that this business would have belonged to both parties, one would have expected it to have been purchased by both. Yet, it was purchased by Arks of which the defendant was

the sole shareholder.

42. The third event relates to the purchase of the flat in Pretoria early in 1996, by **Arks**. Again, this action is incompatible with the notion that the parties had been in a partnership and would have shared equally in income generated.
43. The fourth event relates to the purchase of 50% of the shares in Quelland Estate from the plaintiff's brother during December 1996. It would be recalled that by this time the plaintiff owned the other 50% of the shares. If the parties had been in a partnership one would have expected this to be the perfect opportunity to register the shares of plaintiff's brother in the name of the defendant so that they would each have 50% of the shares. Yet, this was not done and the plaintiff purchased the shares. The defendant was in fact a signatory of this contract as a witness.
44. In what was obviously an effort to show her interest in the shares and to support her evidence that they were in a partnership, the defendant testified that the funding *for* the aforesaid purchase was done by Arks and Wonderboom Kwekery, which belonged to her. However, it turned out that this was not the case and that it was the plaintiff who personally paid the purchase price many years later from an inheritance from his father.
45. The fifth event was the conclusion by the parties of the antenuptial contract during January 1997. This occurred approximately one and a half years after the alleged formation of the partnership between the parties. The terms of this agreement is a total contradiction of the alleged partnership. The defendant said in evidence that the plaintiff had agreed that the antenuptial contract would be amended. However, considering the surrounding circumstances and the evidence as a whole, that version is so improbable that it must be rejected. On the other hand, the evidence of the plaintiff, especially regarding the reasons why he found it important to be married under the aforesaid marital regime, is probable and there is no reason why it should be rejected.
46. The sixth event relates to the formation of Global Plants CC during 1999. Hundred percent of the shareholding of this close corporation was registered in the name of the plaintiff and not 50% in his name and 50% in the name of the defendant as one would have expected if the parties had been in a partnership. The reason offered by the defendant why she did not get a 50%

membership did not convince and neither did her subsequent actions, or rather lack thereof, at the time and subsequent thereto.

47. The seventh event relates to the divorce action instituted by the defendant during 2002 and which was not proceeded with. At no stage during that process was there any suggestion from the part of the defendant that she and the plaintiff had been in a partnership as presently alleged by her. The defendant testified that the notion of a partnership was for the first time mentioned by her present attorney during the present proceedings.
48. The eighth event relates to the formation of Deltrosize during 2011. Again, 100% of the shareholding was registered in the name of the plaintiff and none in the name of the defendant. According to the plaintiff the defendant also had nothing to do with this company.
49. The aforesaid events were crucial events in the working career of the plaintiff. Consequently, if the parties had in any way been in agreement that they would conduct a business in the plants and related industry in a partnership, the outcome of the aforesaid events would have been vastly different. The conduct of the parties is not unequivocally consistent with consensus on the issue of the alleged partnership agreement, but is in fact consistent with a specific intention not to be in such a contractual relationship.
50. The fact that the parties did not conduct their businesses in a partnership is confirmed by the fact that on my consideration of all the evidence the assistance of the defendant and her contributions were not shown on a balance of probabilities to have been more than one would have expected from a spouse in similar circumstances. For most of their time together the parties resided on a farm with the plaintiff having to travel a lot. Under those circumstances it is understandable that the defendant would have given instructions to employees and would generally concern herself with the property itself and assist the plaintiff when necessary.
51. Furthermore, the businesses of the plaintiff were clearly not carried on for the joint benefit of both parties. Neither the defendant nor the company, **Arks**, received payments from the plaintiff's businesses and neither did the plaintiff or his businesses, receive any payments from the defendant or **Arks**.

Obviously the defendant benefited from the operations of the plaintiff's businesses but this occurred consequent upon the plaintiff deriving an income from his businesses with which he took care of his family, which included the defendant. Money was paid by the plaintiff to the defendant as and when it was required for the household or for her personally. Such payments were never regarded by any of the parties as remuneration to the defendant as a partner of the plaintiff or as an "equal sharing" in any income that had been generated. Only the plaintiff had signing powers on the business accounts and there was no sharing of powers or income. The defendant in fact testified that the plaintiff was in control of the finances of the other entities and that she was only in control of the finances of Arks when it was still in business.

52. I have considered all the evidence of the defendant and the aspects on which she relied for inferring the existence of a partnership. In my view those aspects in no way disturb the overwhelming inference that there was no partnership of any sort between the parties. From the conduct of the parties it cannot be inferred that a partnership had come into existence between them. The conduct of the parties contradicted any intention to form a partnership of any sort and in fact serves to prove a contrary intention. Every opportunity that arose over the years to provide the defendant with shares in any business, was refused by the plaintiff. This confirms the plaintiff's evidence that he had no intention to enter into any kind of partnership with the defendant and precludes any inference to that effect.
53. I shall now turn to the issue of maintenance for the defendant. Section 7(2) of the Divorce Act, Act 70 of 1979, provides that the court granting a decree of divorce may make a maintenance order in favour of one of the spouses after considering a number of factors mentioned in the section. The purpose of the court's enquiry is to determine what award would be just considering the circumstances of both parties. On behalf of both parties both counsel referred me to a number of decisions and extensively debated the principles discussed therein. It is not necessary to repeat them in this judgement.
54. At the time of the trial the defendant was 45 years of age and the plaintiff 64 years. The parties separated after approximately 16 years of marriage. At present she earns only a little income from her own means and is largely

dependent on maintenance paid to her by the plaintiff. The defendant testified that she is currently involved in a number of smaller projects but that she is not able to generate a sufficient income from them. She stated that she can still work and is interested in continuing a business in the plant industry. It is her wish to obtain a small piece of land from where she can conduct a nursery business. I am satisfied from her evidence that the defendant is indeed able to earn a proper income albeit not necessarily in the formal sector. For that reason it is necessary to consider awarding a lump sum to the defendant to enable her to establish such a business. This was indeed acceptable to the defendant. Furthermore, and to enable her to overcome the initial period, rehabilitative maintenance should be considered for a period of time. The defendant also accepted rehabilitative maintenance for a period of 18 months.

55. The only real question, and the one argued on behalf of the parties, was what this amount should be and what the amount of monthly maintenance should be. In the heads of argument submitted on her behalf the defendant submitted an amount of R2 400 000,00. During argument before this court it was, however, submitted that it appears that the plaintiff can raise the amount of R1 500 000,00 and that it would not be unfair for the court to award such an amount as rehabilitative maintenance to the defendant. In regard to her expenses the defendant had two separate lists before the court which differed extensively and were outdated. She submitted that her expenses were in the region of R 20 000, 00 per month. It was submitted on her behalf that an amount between R17 000,00 and R21 000,00 should be awarded to her as monthly maintenance.
56. On 21 October 2014 the plaintiff made an offer with prejudice to the defendant in order to settle the action. The relevant provisions of this offer was that he offered to pay maintenance to the defendant in the amount of R15 000, 00 per month for a period of nine months as well as her medical expenses. Furthermore that the plaintiff would immediately make available to the defendant 50% of the stock on the farm. On the defendant's own version at the time, the value of the stock was approximately R3 million. Furthermore the plaintiff offered to make available to the defendant a property of no less than

R1 million within nine months in the same area where the defendant was staying. This property would be obtained and registered in a trust paid for by the plaintiff. This property would also have a residential house which could house the defendant and the children. The defendant would be an income beneficiary of the trust and would have the right to live on the property for the rest of her life and to conduct business from the property and derive all the proceeds generated on the property for her own account. Other offers were also made including a contribution to the defendant's costs of suit.

57. A similar offer was made on 11 February 2015 except that the value of the property was increased to R 1,2 million. These offers were declined by the defendant. During the trial the plaintiff made another offer to the defendant which was not accepted. In terms of that tender the plaintiff would, inter alia, pay a lump sum to the defendant of R1 million.
58. The plaintiff gave evidence as to why the amount of R1 million was the maximum amount which he could afford to pay as a lump sum to the defendant. In brief the plaintiff's evidence was that the only money which he would be able to raise was by applying for a loan in the name of Unicasat. The maximum loan that this company could obtain according to a valuation made by ABSA Bank of the farm Wolwengat in the Western Cape owned by Unicasat, is the amount of R1 500 000,00. The farm Wolwengat is the farm that was purchased with money from the sale of the farm Frischgewaad in Tzaneen which Quelland Estates owned.
59. The plaintiff testified that he would not be able to pay more than R1 million of this amount to the defendant. He testified that during August 2019 an extreme cold front hit the area and Wolwengat experienced Black Frost. This caused him to lose 85% of the plants ready for export. The time for performing in terms of the existing contract expired and this left the plaintiff with no income but still having to pay expenses such as salaries, maintenance and the cost of depots for the storage of the plants.
60. The plaintiff testified in detail what the export of big trees and plants entailed. From the sourcing of contracts abroad a year before delivery, to the sourcing of the plants, preparation, treatment, packaging, transport and the obtaining of

official local inspection certificates as well as those abroad, to the loading of containers and shipping thereof to its overseas destination. From the start of the process to the point of export 23 phases have to be gone through and all this have to be funded by the plaintiff prior to receiving any payment. The input costs lost in respect of his previous contract as a result of Black Frost was R3,6 million which he had funded plus the costs of the plant material. In order to fund his operations for purposes of the next contract and as he had lost the income from the previous contract, the plaintiff required the loan from the bank referred to above. For that purpose, and to service the loan and cover his other expenses, the plaintiff testified that he could not afford to pay more than R1 million from the R1,5 million of the proposed loan to the defendant. The plaintiff was thoroughly cross-examined on his evidence and particularly on the need to retain at least R500 000,00 of the proposed loan. I am satisfied that on the probabilities the plaintiff would require at least that amount and that he has made a full disclosure of his financial affairs.

61. As far as his personal income is concerned the plaintiff testified that at a maximum he can allocate 5% to 6% to himself from the earnings of the business. That translates into approximately R50 000,00 to R60 000,00 per month. The plaintiff does earn additional amounts such as the lease of Fynbos on the farm but these amounts are negligible at this time. The plaintiff also gave full particulars of his expenses. That evidence was not really in issue and it is not necessary to refer to the detail thereof.
62. Regarding assets it is clear that most of the assets belong to Deltrasize and is used in the business. In his personal capacity the plaintiff owns a boat, a Bakkie to pull the boat, a four wheel motorcycle and a few trailers. The plaintiff also owns valuable fishing tackle. According to the plaintiff he has all his life been seriously involved in fishing as his sole hobby. It was submitted on behalf of the defendant that the plaintiff could liquidate these assets in order to pay the defendant a bigger amount.
63. On the evidence before this court I'm satisfied that it has been shown that with an amount of R1 million the defendant would be able to set herself up in an income generating business. The defendant failed to submit any evidence that

a higher amount would be required. Having regard to all the evidence I am also of the view that it would not be fair to expect of the plaintiff to pay a larger amount to the defendant.

64. Regarding the amount of monthly payments I am of the view that it would be fair and just to order the plaintiff to pay the amount of R15 000,00 to the defendant until the end of the period of 18 months after the amount of R1 million had been paid to her.
65. I am aware of the fact that the award I propose to make is less than what had been offered to the defendant approximately five years ago and which she had rejected. However, since that time the plaintiffs circumstances have changed and I am compelled to consider the facts and circumstances as they exist at present.
66. It was submitted on behalf of the plaintiff that if the defendant failed to convince the court to award larger amounts than those offered in settlement, the defendant should bear the costs resulting from her refusal. I agree with the submission that the plaintiff's offers in the past had been reasonable and that the defendant only has herself to blame for not accepting those offers. For approximately five years the plaintiff had paid the defendant a monthly amount of R27 000,00 and incurred the costs of the continuing proceedings. These could all have been avoided.
67. It is so that this court's award will be less than the offers made to the defendant in the past. The plaintiff has made out a strong case why that fact should be reflected in an order for costs. However, I have to consider each and every fact and circumstance and in that sense consider the events and changing circumstances in respect of the parties over many years and also during the course of the litigation. Costs, in a matter like the present, cannot be decided by having a rigid approach. Having said that, I also considered the final award made by me. Having regard to, inter alia, all the aforesaid, I am of the view that it would be fair and just to make an order that each party pays his or her own costs of the action.
68. In the result, the following order is made:

1. The marriage between the plaintiff and defendant is dissolved.
2. The plaintiff shall pay to the defendant the amount of R 1 000 000,00 within 90 days from date of this order.
3. The plaintiff shall from date of this order until the end of the period of 18 months from date of payment of the aforesaid amount of R 1 000 000,00, pay to the defendant the amount of R 15 000,00 per month, which payment is not susceptible to variation in terms of the Maintenance Act.
4. The plaintiff shall be responsible for the reasonable medical expenses of the defendant from date of this order until the end of the period of 18 months from date of payment of the aforesaid amount of R 1 000 000,00.
5. After the expiry of the aforesaid period of 18 months, the defendant shall have no further claims against the plaintiff.
6. Each party shall pay his/her own costs of the action.

C.P. RABIE

JUDGE OF THE HIGH COURT