



IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 9360/2022P

In the matter between:

E[...] L[...] M[...]

PLAINTIFF

And

L[...] M[...]

DEFENDANT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Plaintiff instituted an action against Defendant claiming a decree of divorce and costs in the event of it being opposed. The action is opposed by Defendant on various grounds and a counter claim was filed directing Plaintiff to transfer to Defendant one half of the net asset value of his estate or such other part thereof as the court may deem just and equitable together with maintenance in an amount of R32 500.00 per month which will increase annually in accordance with the consumer price index and costs of suit. Plaintiff filed a plea to the claim in reconvention and sought that it be dismissed with costs such to be on an attorney and client scale.

[2] The parties were married out of community of property without the accrual system on 27 March 1999 and such marriage still subsists. It is also common cause that from 1993 until their marriage they lived together as husband and wife. This is an issue which I will refer to later. They separated during June 2023. They thus lived together for 6 years as husband and wife prior to this marriage and 24 years after their marriage until they separated in 2023.

[3] It is common cause that although the parties were married by antenuptial contract without the accrual system after 1984 a redistribution can however be granted in terms of section 7(3) of the Divorce Act 70 of 1979 as decided in *EB v ER N.O. and Others* 2024 (2) SA (CC).

[4] At the commencement of the hearing it was submitted by the parties that the reasons for the breakdown of the marriage are irrelevant as it is agreed that the marriage has broken down irretrievably. It was further submitted that as Defendant sought a redistribution order she had the duty to begin.

[5] The issues to be decided are whether Plaintiff should transfer a certain portion of his assets to Defendant and whether Defendant is entitled to maintenance from Plaintiff.

[6] Section 7(3) and further subsections of the Divorce Act 70 of 1979 deals with the requirements for a redistribution. The relevant subsections are as follows:

Section 7(4):

“An order under subsection (3) shall not be granted unless the court is satisfied that it is equitable and just by reason of the fact that a party in whose favour the order is granted, contributed directly or indirectly to the maintenance or increase of the estate of the other party during the

subsistence of the marriage either by the rendering of services, or the saving of expenses which would otherwise have been incurred or in any other manner.”

Subsection (5):

“In the determination of the assets or part of the assets to be transferred as contemplated in subsection (3), the court shall, apart from any direct or indirect contributions by the party concerned to the maintenance or increase of the estate of the other party as contemplated in subsection (4) also take into account:

(a) the existing means and obligations of the parties, including any obligation that a husband to a marriage as contemplated in subsection (3)(b) of this section may have in terms of section 22(7) of the Black Administration Act 1927.

(a)A – not applicable

(b) any donation made by one party to the other during the subsistence of the marriage or which is owing and enforceable in terms of the antenuptial contract concerned.

(c) an order which the court grants under section 9 of this Act or under any other law which effects the matrimonial position of the parties.

(d) any other factor which should in the opinion of the court be taken into account.”

[7] In respect to the issue of maintenance section 7(2) states:

“Having regard to the existing or perspective means of each of the parties, the respective earning 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, the conduct insofar as it may be relevant to the breakdown of the marriage, an order in terms of subsection (3) 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

the one party to the other for any period until the death or remarriage of the party in whose favour the order is given which every event may first occur.”

[8] The matter proceeded over many days with lengthy cross examination on payments made by each of the parties. Due to the length thereof it is not feasible to deal with such in detail as it is contained in various lever arch files. I will attempt to summarise such to the best of my ability to provide as much detail as would be required.

[9] Defendant testified that she commenced working for Plaintiff at the age of 18 after she had completed a standard 8 qualification. She was employed as a receptionist from 1987 to approximately 1990. When she commenced working for Plaintiff he was an attorney doing legal work and conveyancing and she did reception and typing. He was however thereafter sequestered and they then conducted a windscreen business for a period of about four months whereafter he again commenced practicing as an attorney. During 1990 she and Plaintiff went on their first date evening while he was still married. He had commenced divorce proceedings against his first wife. He thereafter moved into a property in Bryanston Johannesburg and she moved in with him during 1993. She thereafter lived permanently with him from 1993 until she left the matrimonial home in 2023. They married in 1999.

[10] There was no specific amount that he gave to her at that stage but he would give her cash to pay the electricity and water and the use of a motor vehicle. They were together 24 hours a day 7 days a week as they were together at work and at home. At one stage Plaintiff's son of approximately 5 years of age came to live with them. She then started working mornings only so that she could be available in the afternoon to look after his son. She would also cook at home, did washing and laundry, cleaned the house, did the ironing. He commenced skydiving as a hobby and she supported him in this endeavour and assisted him on each occasion he went skydiving. She also dropped off the minor child at school and for sports and

other social gatherings. His one daughter also came to live with them for a while. After their marriage in 1999 the children came to them every second weekend. In 1996 they went on a trip to the Maldives where she became ill and then established that she was pregnant. There was then objection from Plaintiff's counsel in this regard as he expressed the view that the reasons for the breakdown of the marriage were not in dispute and that evidence in this regard was not admissible. It was submitted on behalf of Defendant that it fell under the heading of abuse.

[11] I had ruled previously that the evidence relating to the minor child was admissible as this was also objected to by his counsel. I then ruled that the issue about the pregnancy was not relevant to the issues which had to be decided in the matter and ruled it inadmissible. She testified that she continued working in the mornings and caring for the son in the afternoons and had no hobbies or sport for herself as she spent all her time to be with Plaintiff and assisted him in his endeavours. Every second weekend the children would visit them. She learnt how to pack his skydiving equipment and did it for him on each occasion. She went with to the drop zone and assisted him all along.

[12] She had her hair done about four times a year. There was a domestic worker who cleaned the house but did not work over weekends and there was also a gardener. She was responsible for sorting out all the issues at the house and to give them instructions and supervise them.

[13] When the two daughters lived with them she assisted them in their homework and ensured that their clothing was ready for school. When she started working for Plaintiff it was only the two of them for the first year and she did everything but further staff were later employed. Her salary was a cash amount to cover the expenses for electricity and water. It was agreed between them that at the age of 65 he would retire and they would retire together to Leisure Bay in KwaZulu-Natal. She received an income of R2 500.00 to R2 700.00 per month and when he, some years later, took in a partner for whom she also had to assist her salary was increased to

R15 000.00 per month. However with this amount she had to pay the utility bill for the Leisure Bay home and also for their home in Johannesburg. She paid the rates and the electricity and water consumption as well as, the garden service and security and if there was a shortfall from what she was paid then Plaintiff would pay that amount into her account. She did not receive anything for herself. He informed her that there was money in his account and if she needed something he would buy it but he did not want her to have cash.

[14] When they went on holiday to Mauritius with all his family she assisted in caring for his half-sister. After their marriage in 1999 she went back to the office full time and his son at the age of 12 returned to his mother. She did not pay anything towards a retirement as she was unable to do so and he always informed her that she did not need it as he would look after her. He had a life policy of which she was the beneficiary. She assisted with everything during the marriage.

[15] The home her parents were residing in was not in her name but in 2016 when they purchased another house he was adamant that it had to be registered in her name. There was a shortfall and he said he would pay that as a gift for her caring for her parents which was an amount of R206 000.00. Her parents received an amount of R700 000.00 for their property and paid an amount of R949 000 for the property they purchased in Leisure Bay. Prior to her parents purchasing the property in Leisure Bay Plaintiff purchased a holiday home in Leisure Bay. It was registered in both their names. Her parents home will be referred to as Portabella Road and the other property as Barracuda Drive.

[16] After she left Defendant during June 2023 she moved into the Barracuda Drive property in Leisure Bay. Plaintiff then wanted to sell the property and she stayed there for about one year whereafter Plaintiff obtained a court order to sell the Barracuda Drive property. It went on auction and was then purchased by Plaintiff for the sum of R500 000.00. The liquidator was one Henny Eloff who worked with Plaintiff for about thirty years. Plaintiff then registered the property in the name of

Hackprop. Nobody attended the auction and he was the only bidder. She did not gain anything from the property. When she moved out she took some furniture from the house to have the necessary furniture in the property she rented. Plaintiff then laid criminal charges of theft against her. The prosecutor refused to proceed with the charges. He then brought an application in the High Court for the return of the items taken. The furniture and other items such as for example cutlery, hosepipes etc. was returned to him. It is not necessary to deal with these issues in detail.

[17] She had a 2004 Volkswagen Toureg V8 which he left with her. She cannot drive it as it is broken and it has been parked off for a period of three years. The beds that she has have been lent to her by the lady from whom she rents the home.

[18] During April 2011 Plaintiff purchased a house in Devonshire Road Johannesburg. They had previously lived in another property from 1993. He purchased furniture, cars and also the property at Leisure Bay as well as paintings and Kruger Rands and carpets. He further purchased 3 motorcycles and cars as this was his hobby. This was after he stopped skydiving. The paintings are off well known Artists such as by Dorkin, Klaarhout, Boonzaer and Tinus de Jong. They were all well-known South African artists. He bought some of them from an art gallery of Roy Ferrera in Johannesburg and also at the Rand Easter Show and from Artists. Payments were made by cheque or online banking as she was with him most of the times. She was told by him that the paintings were worth in the region of R2 000 000.00.

[19] The property in Devonshire Road was sold during 2025 for R8 000 000.00 and Plaintiff still has the V10 Volkswagen Toureg. The only property that she has is a cabinet that her father had made for her which is in her bedroom where she is residing. Plaintiff also continued purchasing Kruger Rands and a property in Simons Town which was later sold for R2 000 000.00. Plaintiff also had shares in a company that was worth about R6 000 000.00. He was a fulltime practicing attorney. He took out a policy of about 4 to 5 million rand which would pay out R50 000.00 per

months after five years. He also received a R2 000 000.00 payment from Discovery. Plaintiff started purchasing gold coins and at the time that she left as far as she knows he had 86 gold coins. She is aware that he purchased and sold coins after she had left. The Kruger Rands as far as she knew were worth about R4 000 000.00. She could not acquire any paintings, coins or any such things as she never had any money to do so. He always stated that she did not need any cash as he would take care of her. She had a hospital plan which he paid for but he stopped paying for it after she left the matrimonial home. It was then cancelled. Plaintiff does have certain policies also for his children. There is also a family trust and at one stage he informed her that the paintings were in the family trust.

[19] Both Defendant and Plaintiff retired in 2020 and the practice was taken over by someone else who owed Plaintiff certain book debts. There were also money market accounts and accounts for Leisure Bay. She had previously been a trustee of the trust but she was told by Plaintiff to resign as trustee on the day before he took her to Leisure Bay in June 2023. She never had access to any of the documents. One, Claude Barnes is one of the trustees. She presently receives maintenance in terms of a Rule 43 order.

[20] The only employment she has had in her life is working at Plaintiff's legal firm. She is unable to find employment in the Leisure Bay area. The further problem is that when she could obtain certain employment the distance from Leisure Bay would cause a high fuel bill which made it impossible for her to accept such employment as the salary was only R8 000.00 per month. She has to pay Eskom, water security and contributions to the neighbourhood watch and also to care for her dogs. She had to take a bond on the property in which her parents live and this was due to the fact that she was short of money every month. Her legal bills are being paid by her sister. She has no insurances. She requires a vehicle and also furniture for a house. The TV is from her sister. Her sister purchased her curtains, bedding, kitchen utensils etc. She turns 58 years of age this year. She has no access to any funds and her parents are 80 and 84 years of age and have no funds to assist her.

The property, although registered in her name as previously mentioned is the property of her parents.

[21] Plaintiff also started a company Depont Capital of which he was the Director. One Hennie Eloff who was the liquidator when the house in Barracuda Drive Leisure Bay was sold became a partner of Plaintiff in Depont Capital. He is a codirector. Claude Barnes was the chartered accountant for the practice as well as for Plaintiff but later only for the practice when another accountant took over but continued being the accountant for Plaintiff and Hackprop.

[22] Bundles in respect of bank statements were handed in and cross examined on. In my view it is not necessary to deal with it in detail at this stage as it does not take the issues any further. What does appear from the bank statements is that certain accounts were paid by Defendant and that at times certain amounts were paid to her by Plaintiff and Plaintiff made certain payments. Extra money which Plaintiff had would be paid into a money market account. Hackprop as far as she was aware was part of the Eugene Marais Family Trust.

[23] Defendant went through various documents indicating her financial needs and why she requires a certain amount of maintenance to enable her to maintain herself in the future. She testified as she has certain loans with FNB she had to take out insurances to cover those loans in the event of her death.

[24] During cross examination Defendant was questioned about the home that was purchased by her parents and that Plaintiff paid an amount of plus minus R200 000.00 which was the shortfall. She once again confirmed that it was at his request that the house was registered in her name. She also confirmed that Plaintiff was still married when she and Plaintiff commenced their relationship. She once again confirmed that as Plaintiff indicated that a Liberty Medical Policy was not to be paid by him any longer she had to surrender it and received an amount of

R68 000.00. She confirmed that she had brought a Rule 43 application and an interim payment was ordered. She testified that she could not include the property in Barracuda Drive Leisure Bay in her assets as it had been sold by the time the Rule 43 was brought and was purchased at the sale by Plaintiff for R500 000.00. She confirmed that she had jewellery which was valued in the region of about R45 800.00.

[25] Defendant was questioned at length about payments paid by her and payments made by Plaintiff. From the documentation it was apparent that various payments were made by her in respect of the Devonshire property, that there were certain reimbursements by Plaintiff but that there were also payments made by her to the uGu Municipality at Leisure Bay.

[26] It was not disputed that they moved in together during 1993 and that the minor son stayed with them for a period of about at least two years. There were questions about how often she had her hair done which she stated was four times a year. She stated that she was never allowed to go anywhere and was with Plaintiff 24/7. She further testified that there were assaults by him when they were alone and that he consumed alcohol in excess. She was further cross examined at length about what she stated in the Rule 43 application and as to the payments which she received which was not enough and where she had previously received a sum of R15 000.00 a month up to October 2022. She was further cross examined at length about payments which were made to her mother and refunds which were repaid to her. This cross examination lasted for a considerable period of time dealing with specific issues and I deem it unnecessary to deal with all of these items that were dealt with. She explained the payment to her mother was for looking after the Barracuda Drive property. It was put to her that Plaintiff paid all the payments in respect of the Johannesburg property which she disputed and this also appeared from the bank statements that payments were made by her and that there at times were refunds from Plaintiff.

[27] Defendant was adamant that the property at 949 Portobella was her parent's home. She does not regard it as one of her assets, although it is registered in her name, as it was purchased mainly with money from her parents and that it was only the contribution of R200 000.00 made by Plaintiff. She further stated that two vehicles that were registered in her name she included on her financial form and was then informed by Plaintiff that it was not her assets as he paid for them and was merely placed in her name. She stated that the amount she recorded as referring to the Johannesburg property, the Devonshire property, was all the amounts that she paid over the years. She stated that Plaintiff's estate would show a much larger accrual than hers. On the form she referred to the Portobella property as an asset as it was registered in her name and she did not want to hide anything. The amount of R207 000.00 which was paid by Plaintiff was a contribution he said that he made for her looking after her parents.

[28] She confirmed that in terms of the court order she had to return the items which she had taken when she left the Barracuda Drive home in Leisure Bay. She was questioned about the Rule 43 where she had indicated that she had more assets than she had disclosed in court. She explained why she placed an amount of over R690 000.00 for the value of the Barracuda Drive property as she was a 50 % owner at that stage and she took half of it less the amount that was still outstanding on the bond. She stated that she could no longer, in her evidence, claim that she had half share of it as it was sold and Plaintiff had purchased it for the sum of R500 000.00. She paid all the utility bills in respect of the property and that she has either a percentage or that there must be some value to her in the property that Plaintiff purchased for R500 000.00. She testified that there was a review application which still had to be finalised. Her sister was paying all her legal costs. She was questioned about her CV and what she had stated therein. She testified that she had gone to various places, legal firms to find employment, as well as to shops, Spar, anywhere but was unable to find employment. She stated that she also did not have a vehicle to get to certain places to be able to work there. The vehicle that she still had is not roadworthy.

[29] Defendant testified that any shortfall she had at present was paid by her sister. She was questioned why she did not reside with her parents and explained that she had three dogs and therefore could not reside there. Defendant testified that Plaintiff did do conveyancing work as he had Roger Price, who was an attorney and a conveyancer, working for him at the time. It was put to her that the windscreen business was not started by the two of them but by Plaintiff. She replied that she was with him every day at the said business. She was doing clerical work and secretarial work for him at the time. At the time they did not have the standard of living that they had before because he did not have a credit account or a cheque account. In 1993 he asked her to move in with him. Plaintiff at all times stated that he would look after her. If she needed something he would make sure that she would get it. When his practice started again it started under the name Eugene Marais Attorneys.

[30] Plaintiff was unhappy when their relationship commenced as he missed his children and she told him to go back. He would then go back for one night but then return and that this was done on a couple of occasions. It was put to her that it was only for a brief time that the son had lived with them. She testified that the son had started school at Brown Park Primary, that she took him to school every morning. She would dress him, make him lunch and she would pick him up in the afternoons and that was so for about two to three years until his mother came to stay in a Town House about 5 kilometres away and then did assist in picking him up in the afternoons. When the one child was approximately 1 year old she came to stay with them for weekends. It was put to her that it was 2 years old.

[31] Defendant conceded that there was a full-time worker from 1993. After Plaintiff entered into a partnership with a Mr. Stevens her salary was increased to R15 000.00 per month with which she had to pay the utility bills of Barracuda Drive Leisure Bay, GP Security and also the Johannesburg Municipality. When there was not enough he would pay the shortfall.

[32] An argument developed after she wanted to attend a Christening in her family. Plaintiff did not want her to attend with her family and when she returned from attending it there was another argument. Defendant was questioned at length about a letter that was written by Plaintiff's attorney and in my view it is unnecessary to deal there with. She stated that she was never allowed to visit her parents alone and always had to take somebody else with her. She denied supporting her parents and stated that she never had funds to do so. It was put to her that Plaintiff would testify that the salary was given to her so as to service the bond and so that she could have an asset. She stated that she got paid very little at the time and that the bills referred to had to be paid by her. She denied that he said so but always said that he would care for her. The property of her parents was registered in her name as that is what Plaintiff wanted and if he was not listened to then he would treat them badly and call them trailer trash.

[33] Plaintiff testified that when the property Portobella Drive Leisure Bay, where her parents reside was purchased Plaintiff paid an amount of approximately R207 000.00. She never laid criminal charges about the assaults as it was always done in a way that there were no visible signs. She always had to be with him. She testified about incidents of violence against her and that he would always deny it when he was questioned about it the following day. When the townhouse was purchased for her parents it was the first time that she obtained a bank account. She agreed that a bond was registered on the said property.

[34] The landlord where she was renting wanted to sell the property and a bond was taken on her parents property so that she could put up a Wendy House at the bottom of her parents property to live in. She could not take the order obtained for Barracuda Drive to be sold on appeal as she could not afford it. She referred to other properties which were owned by AG Props. Rental was paid for the offices to the said company. Her mom was paid R500 per month to look after the property at Leisure Bay, Barracuda Drive. She was shown certain payments which were made by Plaintiff to the Johannesburg Municipality during the year 2014 and 2015. She stated that it was not for the Devonshire home but that it was for 8 Beach Road.

Other amounts that were shown to her paid to the Johannesburg Municipality she stated was not for the Devonshire property but was for the other properties as the amounts owing in respect of the Devonshire property was never such low amounts.

[35] Defendant was cross examined at length about portions of her Rule 43 affidavit, especially with regards to payments made to her mother. She explained that if it was more than R500.00 it was for goods purchased to maintain the property for example the pool at Barracuda Drive. She was questioned about expenses that she had allegedly paid which she once again confirmed that she paid the monthly payments in respect of the Devonshire property as well as the Barracuda property. It was further put to her that on the bank statements it referred to refunds and she replied that it was payments that she had made and it was a shortfall that was paid back to her. She denied that there were any refunds and indicated that when these payments were made it was incorrectly referred to as refunds. She confirmed that they separated from 1 June 2023 and that she stayed at the Barracuda home until 23 June 2024. She confirmed that there was an order for her to return furniture, cutlery etc. but when she took such she regarded it as part of her furniture as they had purchased it when they were still together. That was the evidence of Defendant.

[36] Plaintiff testified that he was practicing law from 1980 to 1990. He and a client then purchased a granite mine and a transport company. Problems arose and the overdraft facilities of the transport company was used up. The granite mine had failed and he had stood surety therefore. He therefore surrendered his estate. Defendant started working when she was 18. He also started a windscreen business which was sold to one Basson. When he was sequestered he also got divorced and invited Defendant to join him in the glass business. They developed a relationship and she went with coke bottles to buy cigarettes for him. After his first year of sequestration he was able to acquire [...] L[...] Lane in Johannesburg. His practice flourished and they had various overseas holidays.

[37] She visited her parents in the Kruger's Dorp area and he stated that that area would become worthless in the future. They then purchased a town house for R790 000.00. She arranged for an access bond and paid the money to her parents. The property was registered in her name. When the property was sold the bond had not been reduced. He had the property at Barracuda Drive Leisure Bay and her parents then moved there a for couple months. The current home that the parents are residing in is registered in Defendant's name and he contributed R200 000.00 to it. He confirmed that they were married during 1999. He invested money into what was called Boss Scaffolding and took a loan to do so. It was successful and wages of over R1 000 000,00 per month had to be paid. A friend of his purchased 25 % for R3 000 000.00. He then sold it. Defendant worked from 1999 to 2014 as a secretary for him. In 2013 he entered into a partnership with Steven's and her salary was then increased to R15 000.00 per month. She then suggested that she would pay the city of Johannesburg's rates and taxes and they dealt with accounts as spouses normally do. He paid everything from 1999 to 2013. The property was cared for by gardeners and a domestic worker. She did however do the necessary phoning to obtain service providers etc.

[38] He confirmed that his son lived with them when he was in grade 2 and that Defendant took him to school and fetched him but this was only for about four months when the mother took over. He did not call her trailer trash but the area her parents lived was of such a nature.

[39] He is 70 years of age and on 1 June 2025 surrendered a liberty policy which gave him an amount of R283 119.25. A policy that was surrendered in 2004 paid out an amount of R263 740.00. There is a Momentum Policy where the beneficiary is L Marais but he is not sure if it is Defendant or his daughter. He never went back to his previous wife permanently. They lived at [...] L[...] Drive for twenty years until he purchased 6[...] D[...] Drive. There was always a full-time domestic worker. He presently resides at Barracuda Drive Leisure Bay. Defendant was mugged and thereafter and especially during covid he did not want her to go out alone and then went with her. Devonshire was purchased through a family trust. When he was in

partnership with Steven's there was also a property, Beach Street, which was bought in the trust. He paid rental of R25 000.00 per month and that was the amount of the bond. He bought various gold coins and Kruger Rands. He kept certain money for a Japanese gentleman in his trust account in an amount of R3 500 000.00. He took out a fixed term annuity which paid out R5 000 000.00. He used some of his money to buy gold. He gave Defendant R1 000 000.00 to take out of the country to pay the Japanese gentleman. He further paid another R1 000 000.00 at a later stage to this gentleman and bought and sold gold coins making a profit of about R900 000.00. He had to sell the coins to pay back the Japanese gentleman. He sold Kruger Rands in 2025 and then purchased a further 20 giving him a total of 38 at present.

[40] The Devonshire home was sold for R8 000 000.00 and the net he received was R5 872 736.95. He testified that since they were separated he has made monthly payments to her in terms of the Rule 43 order and is currently paying her an amount of R22 100.00 per month. He is seeking punitive costs order due to accusations which he sees as false and defamatory. Those are that he was abusive etc. That was his evidence in chief.

[41] During cross examination he testified that he was rehabilitated and then started practicing as an attorney again. He agreed that when he was divorced in 1991 in terms of the settlement agreement he gave all the furniture etc. to his wife and that he paid maintenance to her for herself and the three children as well as all medical bills. He paid in terms of the court order of the settlement agreement. He was asked why he paid maintenance for his ex-wife and his response was that he was married to her for thirteen years. He denied ever laying hands on Defendant. He denied ever assaulting Defendant. It was put to him that on 29 May 2022 after he assaulted her they called friends of theirs as she was hysterical. He agreed but denied that he assaulted her. He testified that he explained to Defendant that he did not want any children as financially he was constrained with his ex-wife, his children and his mother that he had to look after as well. He was in his mid forties and he did not want any children and he was not happy when she fell pregnant. She

decided to have an abortion and he denied that he had given her any tablet to assist with the abortion.

[42] He agreed he had substantial assets but stated he had made a full disclosure and at the moment has 3[...] K[...] Rands and the money from the Devonshire property of approximately R5 500 000.00. He testified it was bought in the name of the family trust, that the paintings are registered in the name of Hackprop, who owns them and the paintings are still in his Barracuda Drive property where he resides. He estimates the value of the paintings at R200 000.00. He admitted that he is a beneficiary of the trust with his children. He refunded Defendant all amounts that she had paid. She received a market related salary from him and paid no living expenses. The Title Deeds indicate that she is the owner of the property where her parents reside. Defendant stopped working at the age of 52 when he retired and he said that he would look after her. She had a Toureg motor vehicle when she moved to Leisure Bay.

[43] He and Mr. Eloff had a working relationship and worked together for about 35 years. He was asked whether this was disclosed in the affidavit when the order was granted by Seegobin J and he stated that there was no personal relationship between them. Defendant also did not object thereto. He and Eloff each owned 50 % in Dupont Capital and are co-directors. It was put to him that his attorneys were requested several times for documents relating to his financial affairs and what trusts etc. existed but that there was no response thereto, only an account of Dupont. It was put to him that in the Rule 43 application he stated that he would give her all the paintings as he disputed the value thereof. It was put to him that there was no savings account for Defendant, she had no investments and he stated that he disagreed. He stated that money was spent on the credit card as they were extravagant. He stated that he paid all the costs in respect of her dogs and that he loved her and treated her well. He took her on holidays and paid for it.

[44] His income received was about R30 000.00 from the practice and R40 000.00 from Boss. He admitted that they always went to the best restaurants. He admitted that he had a Rolls Royce motor vehicle and at one stage he took clients to lunch therein. He was also a director of a firm called Lintec's and that they lived in luxury and a comfortable lifestyle. This was accepted by him. He testified quite often on the way home they would stop at 16h00 at a restaurant and have dinner. He also admitted that he was into skydiving and that he received a bronze medal and that she always assisted him and was happy to go with him where he went. He stated that he owned 38 gold coins and it was put to him that they were worth about R8 200 000.00 which he did not agree with. He makes blades as a hobby, has equipment therefore which is in total worth about R6 500.00.

[45] He agreed that she did normal things as a wife would do but that they had full time servants. She would make coffee for him, pour him a whisky, if there was a garment that needed mending she would repair it. With skydiving she helped him and she enjoyed going there and she packed his parachute. They married in 1999 but have been in a relationship for 32 years. When asked if there is any reason why she would not get anything out from the marriage he stated that he explained to her that she has to work and ensure a pension. In 2013 she wanted to contribute and then commenced making certain payments. He gave her a sum of R400 700.00 in total and that has to be taken into account in the distribution of the estate. If she had followed his advice she would have had money. She misrepresented her position to him. His garage card had been used by her parents and sister and he would not tolerate such dishonesty. That was the evidence of Plaintiff.

[46] Counsel for Plaintiff submitted that the issues were whether Defendant was entitled to maintenance and or a redistribution order. He submitted that the possibility of the clean break principle between the parties should be considered. He dealt with the age of the parties, the duration of the marriage, their standard of living and that Plaintiff had maintained Defendant during the subsistence of the marriage. Further that Plaintiff is 70 years of age and Defendant 57 years of age. He submitted that Plaintiff's estate consisted of 38 gold coins valued at approximately

R2 200 000.00, and credit in his account of R4 218 627.49. Further that Plaintiff was a beneficiary of a family trust, that he resides in a modest home owned by a company by the name of Hack Prop which is owned by the family trust. His vehicle was 20 years old and he also had a 50 % share in a company called Depont Capital. Plaintiff has no other assets and has to provide for his retirement.

[47] He submitted that Defendant was the owner of the immovable property at 949 Portobello and that she made certain contributions towards the city council to the value of R694 000.00. She had jewellery valued at R45 800.00 and a claim for 50 % of the interest in Barracuda Drive.

[48] As far as their earning capacity were concerned that Defendant was an experienced legal secretary and personal assistant, is computer literate and that she could find employment. He stated that she did not answer questions directly and her CV was an afterthought. He submitted their respective needs and obligations and indicate hers was overinflated. The parties were married for 23 years and that not much weight can be attached thereto. He submitted that the parties had a good standard of living prior to the break up and that Defendant was obliged to cut her cloth according to her size. He dealt with the issue of payments made by Defendant in respect of the residential property and household expenses. The marriage was a partnership, the parties lived together, the went on holiday together, spent time out together and had a mutual duty to support each other. Defendant gave instructions for the repairs and domestic workers at the home. He was of the view, which he reiterated on various occasions, that I was bound by the decision of A V v C V 2011 (6) SA 189 KZP a full court decision of this court.

[49] It was submitted on behalf of Defendant that she started working for Plaintiff as a clerk and then later on progressed to a secretary. She also assisted him in the business which was called Boss Scaffolding and Southern Piazza. After he was sequestrated she also worked for him. She took care of Plaintiff's children as is set out in the summary of the evidence which I am not going to repeat again.

Plaintiff admitted that what she did for his son was not only for the son but also for him. It was submitted that since the age of 19 Defendant worked and lived exclusively for the benefit of Plaintiff. She did not enjoy any of her own hobbies or leisure activities and focused on assisting him with his activities. She took care of the home, with the assistance of a domestic worker, gardener etc. Plaintiff admitted that Defendant would phone and arrange for people to make repairs to their properties and made the arrangements for all of that had to be done at their home. Plaintiff always informed Defendant that he would fund her retirement and that he would care for her for the rest of her life.

[50] When Plaintiff was joined by John Stevens as a partner her salary was increased to R15 000.00. Plaintiff agreed that Defendant did pay the city of Johannesburg rates and taxes but said that he paid more than that. Counsel referred to payments made by Defendant during the subsistence of the marriage. Submissions were made in regard to the needs of Defendant and that the hospital plan which was in the name of Defendant, which Plaintiff stopped payment and that she then received an amount of R68 000.00. It was put to Defendant that she made payments in respect of Devonshire Avenue in an amount of R694 626.85 and in the Barracuda Drive a total sum of R244 917.47. Defendant submitted that she made all the payments and if there was a shortfall present in her salary of R15 000.00 then Plaintiff would pay that over to her. Defendant, when she moved out of the house in Barracuda Drive, took the furniture with her and Plaintiff then brought an application in the High Court for her to return all of the furniture after he had laid criminal charges against her.

[51] It was submitted that due to her age and limited skills, as well as lack of transport she could not find suitable employment which she had looked for. That from Leisure Bay to Port Shepstone is 40 km and the transport costs would be so high that from the salary of R8 000.00 which she could obtain it would be impossible to sustain herself. Plaintiff paid an amount of R200 000.00 in regards to the townhouse in Florida Roodepoort for her parents and the second amount of R207 000.00 at Leisure Bay and that that was as described by him a gift for her for

caring for her parents. There was never any agreement that rental would be payable by them.

[52] It was submitted that during the subsistence of the marriage both directly and indirectly she contributed to the increase of Plaintiff's estate through domestic care and looking after him and that this was also conceded by Plaintiff himself. It was submitted that Plaintiff was not an honest witness and that Plaintiff's full version was never put to Defendant when she testified. It was submitted that Defendant was a good and credible witness and that her evidence should be preferred. It was that there should be a redistribution of 50 % of Plaintiff's estate and that she should be granted life long maintenance in the amount of the Rule 43 order or higher.

[53] In the matter of GKR v Minister of Home Affairs and Others 2022 (5) SA 478 (GP) and EB v ER N.O. and Others a similar matter 2024 (2) SA 1 (CC) it concluded that no stricter grounds were imposed to prove a redistribution claim. Section 7(3) read with subsection (4), (5) and (6) prescribes the requirements and the test being whether the claimant spouse has made a direct or indirect contribution towards the maintenance or increase of the other spouses estate. The court must be satisfied that the person seeking the redistribution have contributed directly or indirectly to the maintenance or the increase of the estate of the other party by the rendering of services or the saving of expenses.

[54] In the present matter Defendant attended to the household over all the years of their marriage plus a term of approximately 6 years before marriage where they lived together as husband and wife and during which period she looked after Plaintiff's minor child and did things such as washing and cooking and maintenance and giving instruction to servants and workers to maintain and repair the matrimonial home. Further it is uncontested that Defendant was with Plaintiff at all times, that she accompanied him when he was doing skydiving. Defendant folded his parachute. Further that she would also during a period which he drove Harley Davidson's accompany him on motor bike rides and he himself stated that she would

attend to him and pour him whisky. When it was difficult times she went to the extent of selling bottles to obtain cigarettes for him. She spent the prime period of her life being with Plaintiff all the time.

[55] Although it became clear that at certain times during the marriage the parties did experience certain difficulties they continued to assist each other were together on a daily basis and lived together as husband and wife until Defendant left the matrimonial home during 2023.

[56] As set out in section 7(4) of the Divorce Act a party to the marriage could directly or indirectly increase the estate of the other party by rendering services or the saving of expenses. In *Beaumont v Beaumont* 1987 (1) SA 976 AD it was held at 996 C – D that it is the husband who out of his income provides his wife and family with support in return the wife's primary duty is to perform her traditional role as wife and mother while managing the household and looking after the children of the marriage. Performing these duties by necessity contributes indirectly to the maintenance or increase of the husband's estate.

[57] In the present matter it was undisputed that although there may have been servants Defendant cared for the home, cared for Plaintiff, went all over with Plaintiff, they went on holidays together she was with him all the time which he admitted. They had a luxurious lifestyle and that by caring for the home, caring for Plaintiff, assisting Plaintiff in his hobbies Defendant contributed to the increase of his estate. It is not necessary as was set out in *Beaumont* that the claimant spouse must have made a contribution in excess of her ordinary duties in a traditional marriage. In this case it is clear she also made various financial contributions and sacrifices. *Beaumont* at 997 F held section 7(4) includes the ordinary household and children duties, performing these duties by necessity contributes indirectly to the maintenance or increase of the husband's estate. It is not necessary that the claimant spouse must have made a contribution in excess of her ordinary duties in a traditional marriage.

[58] The salary which Defendant earned, which at times was very meagre was used to pay household expenses due to the municipalities. There was thus financial contributions by Defendant as well which Plaintiff admits.

[59] Counsel for Plaintiff, as I have already stated, submitted extensively that I was bound by the decision of AV v CV 2011 (6) SA 189 KZP a Full Court decision of this division. I have difficulty in understanding to what extent I am bound by this decision. On my reading of this judgment it sets out the normal requirements for a party to be entitled to maintenance and which the court must be aware of when considering the issue of maintenance. The decision in this matter was reached on the facts of that particular case. In that case Respondent was still employed and was computer literate. It stated that she had to cut her cloth to size. Respondent's estate was also double that of Appellant. What the court decided therein was that the finding of the court that she could not be rehabilitated to be self supporting was a misdirection. That is not the issue in this case. In this case what has to be decided is firstly whether Defendant is entitled to maintenance and secondly whether there has to be a redistribution of the estate. In the case of AV v CV the appeal succeeded because the court did not agree with the court *a quo* that Respondent had succeeded in providing a factual basis for maintenance in her favour and that this was a misdirection. In my view there is nothing in this decision which binds me as what has to be considered in the present case is to apply the legal principles set out in the divorce Act to the factual situation of this case and then to establish whether there is a need for maintenance and whether there is to be a distribution of the estate.

[60] Plaintiff has been paying maintenance to Defendant in terms of the Rule 43 order. At no stage was it contended that he could not afford to pay the said amount nor that he had financial difficulties. He still worked at times for which he was remunerated.

[61] I am further of the view that considering the fact that Plaintiff and Defendant lived together as husband and wife which is not disputed for a period of approximately six years prior to their marriage it is a factor to be taken into account. During this time she looked after his children for some time. She was with Plaintiff all the time, assisted him in his hobbies, assisted in caring for his estate and went to the extent of ensuring that he had cigarettes etc. In the case of *Ponelat v Schrephfer* 2012 (1) SA 206 (SCA) it was held at paragraph 19 as follows:

“The essentials of a universal partnership were succinctly summarised in the passages of the judgment of a trial court quoted hereunder. The essentials of a special contract of partnership were confirmed in the case of *Pewzuto v Dreyer* 1992 (3) 379A at 390 as follows:

‘Our courts have accepted Pothiers formulation of such essentials as a correct statement of the law. *Joubert v Tarry and Company* 1915 TPD 277 at 280; *Bester v Van Nie Kerk* 1960 (2) SA 779 (A) at 783H to 784A; *Purden v Muller* 1961 (2) SA 211A at 218P. The three essentials are:

1. that each of the parties must bring something into the partnership whether it be money, labour or skills;
2. that the business should be carried on for the joint benefit of the parties; and
3. that the object should be to make a profit.’

The essentials of a partnership set out above applies equally to a universal partnership. The contract of partnership may not necessarily be express, it could be tacit or implied from the facts, provided that they admit of no other conclusion than that the parties intended to create a partnership. Our courts have recognised that a universal partnership, also known as a domestic partnership, can come into existence between spouses and cohabitees where they agree to pool their resources.”

At paragraph 22 of the judgment it held it is apparent from the case law that a universal partnership can exist in a marriage as was the case in *Muhimann v Muhimann* 1981 (4) SA 632 W and *Fink v Fink and Another* 1945 (WLD) 336. It does not follow then that a universal partnership cannot exist between parties who are engaged to be married. A universal partnership exists with the necessary

requirements for its existence are met and this is regardless of whether the parties are married, engaged or cohabiting. See *V (also known as L) v De Wet* N.O. 1953 (1) SA 612O at 614B – E and 615F to 6156A.

[62] Considering what was held in the above matter I am of the view that during this period Plaintiff and Defendant lived together as husband and wife. That the requirement for a partnership was fulfilled and accordingly that this is relevant to the issue before court. I am therefore of the view that their cohabitation as husband and wife with the evidence as set out above being together 24/7 sharing expenses etc. is a factor which the court has to take into account in considering whether and to what extent there should be a redistribution of the estate's between the parties.

[63] It was submitted on behalf of Plaintiff that Defendant is the owner of the property in Portobello Drive Leisure Bay. It was however never disputed that the property was purchased with the majority of the money provided by her parents and that it was at the insistence of Plaintiff that it was registered in her name. Plaintiff made a gift in the sum of R200 000.00 which was the shortfall in the purchase price of the property. Although the property may be registered in her name it is common cause that the majority of the money used for the purchase of the property came from her parents in the sum of approximately R800 000.00. It was never the case of Plaintiff that that was a gift from her parents to her nor that it should not be a debt due to them. The fact that a bond was not registered for that amount is irrelevant. The amount remains owing to her parents. Plaintiff did not provide any proof that the money was not repayable to her parents.

[64] Plaintiff submits that the only property he owns is the property Barracuda Drive Leisure Bay which he purchased for R500 000.00 at an auction after he obtained an order that the property be sold which was registered in both the name of himself and Defendant. However he admits that there is a trust which controls various properties which also controls the property which he now resides in which I have just mentioned. We do not know what the present value of the property is.

There has been no further disclosure from Plaintiff about the trust. The paintings are in the trust as well as a company Hackprop. Accordingly although it is admitted that he is a beneficiary of the trust it not clear as to what extent or value he as beneficiary is entitled to in the trust. There has accordingly not been a full disclosure by Plaintiff of his assets.

[65] Defendant gave a full disclosure of what she owned, that there was certain monies that was paid out to her when he cancelled the medical aid, the contributions and the gifts that he made in the total sum of R407 000.00 and further that she does not own anything besides her jewellery and survives on the maintenance she receives in terms of the Rule 43 order. It is also difficult to understand how she had to provide for a pension when she had no money and especially as he maintained that he will care for her. It is also apparent that his estate is much larger than hers.

[66] An issue, which in my view is relevant, is the conduct of Plaintiff after Defendant had moved out of the Barracuda Drive home and took furniture out of the home. Plaintiff firstly laid criminal charges against (which the prosecution did not proceed with) against Defendant when the property at that stage was registered in both their names and then brought an application in the High Court for her to return every single item which she had taken from the home. It may have been his right to do so at that stage as they were then married out of community of property. He did obtain such an order in the High Court. In my view such conduct is not what one would expect of parties to a marriage where people have lived together for over 30 years. Plaintiff also stated he paid maintenance to his ex-wife as he had been married to her for 13 years. This marriage was more than double that time.

[67] Considering all these factors it would appear to me that this case indeed is one which would benefit from the appointment of a receiver to establish what the real position is and what the total assets in the estate's of both parties are. However having said that neither of the parties have requested the appointment of a receiver. It was submitted by Ms Lennard, during argument, that a receiver has to be

appointed but she did not request an amendment to her counter claim nor was there in any of the pleadings such relief claimed. Such relief can therefore not be granted.

[68] Considering all the facts of the case and applying the requirements for maintenance to be granted as set out in section 7(2) of the Divorce Act I am of the view that Defendant has made out a case therefore. It is difficult to understand on what basis after being together for 30 years as set out above Plaintiff expects Defendant to just walk away from the marriage with nothing and then still seek a cost order on an attorney and client scale.

[69] However considering the age of Plaintiff and of Defendant it would in my view not be advisable at this stage to make an order for permanent maintenance to be paid by Plaintiff to Defendant. It would be more equitable to apply the principle of a clean break and to consider a redistribution of the estate and rehabilitative maintenance. Defendant would require money to set herself up and acquire the necessities she needs. She would not be able to live the standard of living she was used to.

[70] It is without doubt, considering the figures which have been provided which as I have already stated I am not of the view is a full disclosure, that Plaintiff's estate has increased considerably more than that of Defendant. Plaintiff was married to Defendant during the prime of her life where she now at the age of 58, with the skills which she may have obtained but without any formal qualifications would find it difficult to obtain any reasonable employment. But as I have already indicated a long term payment of maintenance in my view would not be appropriate in the circumstances.

[71] However considering the time period which Plaintiff and Defendant were married and lived together which is a period of over 30 years where she assisted him in his daily life, was with him as they both agreed 24/7, that she poured him drinks in

the evening, they went on holidays as a family and leaving aside the reasons of the breakdown of the marriage, because the parties agreed it as not an issue Plaintiff's estate increased due to the assistance of Defendant. I also accept that Defendant made various payments to Johannesburg Municipality in terms of the Devonshire Property and to the uGu Municipality in respect of the Leisure Bay home. Counsel for Plaintiff referred to various payments made by Plaintiff and argued that these were in respect of the Devonshire property. The bank statement does not show that. Defendant stated that that was for the other properties which Plaintiff owned. I am therefore satisfied that not only did Defendant contribute by providing the normal family duties of a wife but further that she contributed financially to the common household. Accordingly considering all these factors and the facts mentioned in sections 7(4), 7(5) and 7(6) of the Divorce Act I am of the view that there should be a redistribution of the estate of Plaintiff to Defendant and also rehabilitative maintenance. A redistribution of 40 % of the net value of Plaintiff's estate appears appropriate taking into account all the relevant factors and the contributions which Plaintiff had made.

[72] It was argued on behalf of Plaintiff that costs should be awarded against Defendant on an attorney and client scale due to certain accusation which she made. It was agreed between the parties that the issue of the breakdown of the marriage would not be an issue at this stage. Further it was admitted by Plaintiff that he did not want to have children and he admitted that there was an abortion although he denied that he had anything to do with it. Considering all these factors I am of the view that the claim that Defendant pay the costs on an attorney and client scale is unsubstantiated and totally unnecessary. Defendant succeeded with her counter claim and costs must follow the result. As it was agreed that the marriage had broken down there will be no costs order in that regard. The counter claim of Defendant succeeds.

[73] The marriage certificate was handed in and it was agreed the marriage had broken down irreconcilably.

Accordingly the following order is made:

1. A decree of divorce.
2. Plaintiff is to pay to Defendant 40 % of the net value of his estate within 3 months of the date of this order.
3. Plaintiff is to pay maintenance to Defendant in the sum of R20 000.00 per month for a period of 12 months commencing on the 31 December 2025.
4. Defendant is to retain the property at Portobello Road Leisure Bay, KwaZulu-Natal.
5. Plaintiff is to pay Defendant's costs.

P C BEZUIDENHOUT J.

JUDGMENT RESERVED:

16 SEPTEMBER 2025

JUDGMENT HANDED DOWN:

5 DECEMBER 2025

COUNSEL FOR PLAINTIFF:

H P VAN NIEUWENHUIZEN

Instructed by: Paul Du Plessis Attorneys

Email: admin@pduplessislaw.co.za

Ref: P J Du Plessis/PE0754

c/o: Viv Green Attorneys

Pietermaritzburg

Tel: 033 342 2766

Email: venriga@vglaw.co.za

deseray@vglaw.co.za

COUNSEL FOR DEFENDANT:

U LENNARD

Instructed by: The Law Offices of Karen Olivier

Durban

Tel: 031 828 1535

Email: karen@durbanlawoffices.co.za

Email: admin4@durbanlawoffices.co.za

c/o: Austen Smith Attorneys

Pietermaritzburg

Email: cathhy@austensmith.co.za