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

Appeal: A335/2024

First Court: 15781/2015

Reportable: No

Of interest to other Judges: No

Revised: No

SIGNATURE

Date: 4 December 2025

In the matter between:

C[...] W[...] M[...]

Appellant

and

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

First Respondent

MARI HAYWOOD NO

Second Respondent

RETHA STOCKHOFF NO

Third Respondent

MASTER OF THE HIGH COURT – PRETORIA

Fourth Respondent

SANLAM LIFE INSURANCE LIMITED

Fifth Respondent

JUDGEMENT

MOOKI J (Swanepoel J and Mjnnaar AJ concurring)

1 The appeal concerns disputes between former spouses. Malatsi-Teffo AJ (the First Court) made a finding in favour of the first respondent (the ex-wife). The First Court granted the ex-husband (the appellant) leave to appeal to the Full Bench. It is necessary to first set out the background to this matter for a proper appreciation of the issues raised in the appeal.

2 The appellant and the ex-wife (the parties) were divorced on 23 May 2018. Three claims in the divorce proceedings, namely accrual, maintenance and costs, were postponed to 29 October 2018. The order of divorce also provided that the maintenance obligations in terms of a Rule 43 order granted on 31 March 2017 would remain in effect pending the determination of the three claims. The Rule 43 order provided in part that the appellant was liable to pay his ex-wife maintenance in the specified amount.

3 The parties did not attend in court on 29 October 2018. They had agreed to have the three claims dealt with in arbitration proceedings. The arbitration was conducted from 15 to 18 October 2018. An award was made in favour of the ex-wife. The ex-wife later received advise that the three claims could not, by law, be determined in arbitration proceedings but could only be determined by a court.

4 The ex-wife caused a warrant of execution to be issued, on 25 August 2019, against the appellant for arrear maintenance. The warrant was met with a *nulla bona* return. The ex-wife contended that the arrear maintenance as at June 2021 amounted to R1 085 033.00. She instituted sequestration proceedings against the appellant, leading to the appellant's estate being placed under provisional sequestration. The second and third respondents were appointed joint provisional trustees (the trustees) of that estate on 15 July 2021. The appellant's estate was placed under final sequestration on 8 October 2021.

5 The first meeting of creditors took place on 11 November 2022. The ex-wife proved a claim in the amount of R1 085 033.00 at this meeting. A second meeting of creditors was held on 3 March 2023. The trustees recorded two notes in the minute

of the meeting, including a note reading as follows: 'Dispute in respect of maintenance.'

6 The ex-wife subsequently launched three applications before court. These applications are the genesis of the appeal. She launched the first application on 30 November 2021. She sought a declarator that she be allowed to re-enrol the three outstanding claims. She also sought to have the Rule 43 order of 31 March 2017 to continue to operate pending the determination of the three claims. She cited the trustees as respondents.

7 The ex-wife launched a further application on 18 May 2023. She sought the same relief as in the application of 30 November 2021. She included the Master of the High Court as a further respondent. She then launched a third application on 7 June 2023. She cited the joint trustees, the appellant, the Master of the High Court, and Sanlam Life Insurance Limited as respondents. She sought the following declaratory relief in the 7 June 2023 application:

1. That it be declared that [Sanlam Life Insurance Limited] is entitled to in terms of Section 37D(d)(i) & (iA) of the Pension Funds Act number 24 of 1956 to make certain deductions from the [appellant's] pension benefits, the details of which is set out hereunder, in terms of the Act being an amount owing in terms of an order made by a court of a maintenance order as defined in Section 1 of the Maintenance Act 1988, to a maximum of R1 085 033-00 (ONE-MILLION, EIGHTY-FIVE THOUSAND AND THRITY-THREE RAND) together with interest at a rate of 10.25% from the respective dates wic(h)sic is due and payable in respect of court orders dated 31 March 2017 and 23 May 2018.

The [appellant's] pension benefits:

Sanlam Life Insurance Limited and a member of its Professional Provident Society Retirement Annuity Fund (PPS Retirement Annuity Fund) with the following membership details:

Plan number: [details supplied]

Product Type: Retirement Annuity (434P)

Product Name: The Renaissance Plan for Retirement.

2. Payment of the deductions from the [appellant's] pension benefits be made to the [first respondent's] Attorneys of record [...], within 30 (thirty) days of granting of this order;
 3. That those respondents opposing this application be ordered to pay the cost of the application;
 4. That such further and/or alternative relief as the Honourable Court may deem to be appropriate be awarded to [the first respondent].
- [...]

8 The applications were called before Davis J. He made an order on 21 August 2023, on the terms sought by the ex-wife, namely:¹

1. That a *rule nisi* is issued calling upon the Third Respondent to show cause on the return day of 2 OCTOBER 2023, as to why the following order should not be made final:
 - 1.1. That it be declared that the Applicant . is authorised to enrol for adjudication thereof, her accrual-, maintenance- and cost claims, which were previously postponed to 29 October 2018 under the abovementioned case number;
 - 1.2. That it be declared that, pending finalisation of the claims referred to in prayer 1 *supra*, the Rule 43 order dated 31 March 2017 shall remain in full force and effect.
 - 1.3. That it is declared that the Fifth Respondent is entitled to in terms of Section 37D(d)(i) & (iA) of the Pension Funds Act number 24 of 1956, to make certain deductions from the Third Respondent's pension benefits (the details of which is set out hereunder), in terms of the Act being an amount owing in terms of an order made by a court in terms of a maintenance order as defined in Section 1 of the Maintenance Act 1998, to a maximum of R1 085 033.00 (ONE MILLION EIGHTY-FIVE THOUSAND AND THIRTY-THREE RAND) together with interest at a rate of 10.25% from the respective dates which is

¹ Caselines 0014B-2

due and payable in respect of court orders dated 31 March 2017 and 23 May 2018.

The Third Respondent pension benefits:

Sanlam Life Insurance Limited and a member of its Professional Provident Society Retirement Annuity Fund (PPS Retirements Annuity Fund) with the following membership details:

Plan Number: 0[...]

Product Type: Retirement Annuity (434P)

Product Name: The Renaissance Plan for Retirement

1.4. Payment of the deduction from the Third Respondent's pension benefits be made to the Applicant's Attorneys of record Seymore Du Toit & Sasson Inc Attorneys, Nelspruit, within 30 (thirty) days of granting of this order.

2. That the *rule nisi* be served upon the Third Respondent personally.

9 The order was in the form of a *rule nisi*. The order had to be served on the appellant in person. This was done. The *rule nisi* came before Malatsi-Teffo AJ on the return day. She made an order on 29 April 2024, essentially confirming the *rule nisi*.

10 The order by the First Court was as follows:

1 The following order is hereby made final

1.1 That it be declared that the Applicant is authorised to enrol for adjudication thereof, her accrual-, maintenance- and cost claims, which were previously postponed to 29 October 2018 under the abovementioned case number.

1.2 That it be declared that, pending finalisation of the claims referred to in prayer 1 *supra*, the Rule 43 order dated 31 March 2017 shall remain in full force and effect.

1.3 That it is declared that the Fifth Respondent is entitled to in terms of Section 37D(d)(i) & (iA) of the Pension Funds Act number 24 of 1956, to make certain deductions from the Third Respondent's pension benefits (the details of which is set out hereunder), in terms of the Act being an amount owing in

terms of an order made by a court in terms of a maintenance order as defined in Section 1 of the Maintenance Act 1998, to a maximum of R1 085 033.00 (ONE MILLION EIGHTY-FIVE THOUSAND AND THIRTY-THREE RAND) together with interest at a rate of 10.25% from the respective dates which is due and payable in respect of court orders dated 31 March 2017 and 23 May 2018.

The Third Respondent pension benefits:

Sanlam Life Insurance Limited and a member of its Professional Provident Society Retirement Annuity Fund (PPS Retirements Annuity Fund) with the following membership details:

Plan Number: 0[...]

Product Type: Retirement Annuity (434P)

Product Name: The Renaissance Plan for Retirement

- 1.4 Payment of the deduction from the Third Respondent's pension benefits be made to the Applicant's Attorneys of record Seymore Du Toit & Sasson Inc Attorneys, Nelspruit, within 30 (thirty) days of granting of this order.
2. The 3rd Respondent shall pay to the applicant the cost of this application.

11 The appellant seeks to have the orders in paragraphs 1 and 2 in the judgement by Malatsi-Teffo AJ set aside and replaced with an order dismissing the applications of 30 November 2021, 18 May 2023 and 7 June 2023 with costs. The appellant raised the following as grounds of appeal:

11.1 By not finding that the ex-wife did not comply with her obligations to disclose full facts and relevant evidence in her three applications, which were also not served on the appellant.

11.2 By not finding that order obtained on an ex-parte basis on 21 August 2023 should be reconsidered and discharged because the ex-wife's failure to comply with her obligations to disclose facts and relevant evidence.

11.3 By not finding that there was no evidence that the divorce action was enrolled for hearing in the Gauteng Division, Pretoria, on 29 October 2028.

11.4 By not finding that the ex-wife did not meet the requirements for the granting of declaratory relief, including relief to reinstate the Rule 43 Order of 31 March 2017 and for the reinstatement of the three claims.

11.5 By not finding that ex-wife did not meet the requirements for the grant of declaratory relief in relation to the making of monetary deductions in terms of Section 37D of the Pensions Funds Act no 24 of 1956; alternatively, that there were disputes of fact necessitating a referral to trial.

11.6 That the Rule 43 Order of 31 March 2017 could not be reinstated, as that order had been substituted by an order by the maintenance court on 14 March 2022.

11.7 That the court could not make an order that monies be deducted in terms of Section 37D of the Pensions Funds Act No 24 of 1956, because no arrear maintenance was claimable; alternatively, the court ought to have found that there was a dispute of fact and referred the matter to trial.

12 The appellant contends that the First Court did not have regard to the law on *ex parte* applications. That was because the ex-wife did not serve the applications on the appellant in person, failing to comply with the strict disclosure requirements in such applications.

13 The appellant raised the following as the fundamental basis for objecting to the First Court re-enrolling the outstanding claims by way of a declaratory order. He contends that the ex-wife had no basis to approach a court for declaratory relief because she could simply have re-enrolled the claims through the office of the Registrar and by complying with the rules of Court on the enrolment of matters.

14 The First Court, having considered the issues raised by the parties, held that it was in the interest of justice to re-enroll the claims and to have the issues adjudicated to finality.

15 Counsel for the ex-wife accepted during the hearing of the appeal that the ex-wife could have re-enrolled the three claims without seeking declaratory relief to that effect. Counsel submitted that the ex-wife approached the court out of abundance of

caution. That was because much time had passed since 29 October 2018 when the three claims were to have been before court, and that there were other developments too. The ex-wife considered that the circumstances were such that it was prudent to re-enrol the claims by way of a declarator to that effect, and that the First Court exercised the required discretion in granting relief.

Revival of the Rule 43 order

16 The appellant contends the First Court should have dismissed the relief sought in prayer 2 of the 30 November 2018 and 18 March 2023 applications. That relief was that the Rule 43 order be declared to remain extant pending determination of the outstanding three claims. The appellant says that the relief was incompetent because an order by the Maintenance Court on 14 March 2022 had nullified the Rule 43 order. This was known to the ex-wife who failed to disclose this fact to the First Court. There was therefore no basis for a declaratory order to revive the Rule 43 order.

17 The appellant also submitted that the First Court erred in granting relief that was not sought. This was because the relief sought in the 30 November 2018 and the 18 March 2023 applications referenced a revival of a Rule 43 order, not an order by the maintenance court. Prayer 1.2 of the order by the First Court referenced a revival of the order by the maintenance court.

18 The First Court did not accept that the ex-wife sought to mislead that court in relation to the notice of motion seeking relief referencing the Rule 43 order. The court held that it was apparent that the ex-wife had made a mistake which was rectified by moving an amendment, and that such amendment did not prejudice the appellant. The First Court held that the evidence showed that what happened "was a mere human error."

19 The ex-wife submits that she did not mislead the First Court in relation to referencing a revival of the Rule 43 order. She explained that the 18 March 2023 notice of motion ought to have referenced the order by the maintenance court,

not the Rule 43 order. Mention of the Rule 43 order in the 18 March 2023 notice of motion was thus an oversight that was explained to the First Court.

20 Counsel for the ex-wife submitted that the oversight came about as follows. The Rule 43 order was in operation on 30 November 2021. The notice of motion in this application was struck from the roll because the trustees were not properly appointed when this notice was issued. The ex-wife should have removed reference to the Rule 43 order when she issued the 18 March 2023 notice of motion, because that order had been superseded by an order by the maintenance court.

Arrear maintenance and pension deduction

21 The appellant submits that the First Court erred in making an order for the recovery of money from the Sanlam product. The appellant pleaded that the relief for payment from his pension was not competent because the product referenced was neither a pension nor an annuity, but was an insurance policy. He contended that Sanlam could not be ordered to pay monies held in terms of the product in lieu of arrear maintenance.

22 The appellant contended that he had, in any event, no outstanding payments for maintenance. He submitted that he provided evidence of payments made to the ex-wife, showing that there were no arrear maintenance payments. The ex-wife, according to the appellant, did not dispute averments that the appellant had paid and that there were no outstanding payments for maintenance. The appellant further submitted that the trustees accepted that there was a dispute in connection with the payment of maintenance.

23 The appellant submits that the First Court ought not to have granted the order authorising the deduction of pension benefits. That is because there was a dispute as to the existence or not of arrears for maintenance. The First Court, according to the appellant, ought to have determined this point in favour of the appellant, on account of the Plascon-Evans rule; by determining that the ex-wife had not proven that the maintenance was in arrears.

24 The appellant further submitted that the First Court failed to consider the factual dispute in relation to the issue of arrear maintenance. That was the case notwithstanding the court referencing the existence of a dispute between the parties as to whether arrear maintenance was payable or not. The First Court, according to the appellant, ought to have adjudicated the dispute, instead of making a finding that the trustees must accept or reject the claim. The appellant submits that "it is undoubtedly so that the trustees have not made decision (sic) on the disputed claim", and that the trustees recorded in their report to the Master that "there is a dispute in respect of maintenance, i.e. the claim by first respondent for arrear maintenance."

25 The appellant submitted that the existence of a dispute of fact as to whether the appellant was in arrears in relation to his maintenance obligations militated against the First Court granting the declaratory relief sought by the ex-wife.

26 The ex-wife's primary contention is that she proved a claim for arrear maintenance against the appellant's insolvent estate. This was the basis for the relief sought in the 7 June 2023 application. She further pointed out that the trustees accepted her claim.

27 The ex-wife maintained that the First Court was competent to authorise Sanlam to pay her from the fund referred to in her application. An official from Sanlam confirmed that the ex-wife could claim against the fund, should a court authorise the making of a payment. The ex-wife thus maintained that the appellant failed to show that monies in the identified account were incapable of being paid to satisfy her claim for arrear maintenance.

Analysis

28 The *rule nisi* is, in substance, about two applications: namely those of 18 May 2023 and of 7 June 2023. The 30 November 2021 was replaced by that of 18 May 2023. This is made clear by the fact that the notice of motion in the two applications seek the same relief. The 30 November 2021 application was struck from the roll for seemingly citing trustees who had not been appointed, and for not citing the Master

of the High Court. The appellant does not take issue with the finding by the First Court that the 30 November 2021 application was struck from the roll.

29 The contention that the First Court had no regard to the requirements for *ex parte* applications lacks merit. The appellant filed answers to all the applications that were before the First Court. The First Court determined those applications with reference to all material, including the various defences raised by the appellant as to why the *rule nisi* had to be discharged.

30 The appellant does not raise any cogent grounds for disturbing the First Court's confirmation that the three claims be re-enrolled. The appellant's submitted that the ex-wife ought to have enrolled the claims much earlier, but was busy with other applications including instituting sequestration proceedings against the appellant. Ultimately, the appellant conceded that this complaint is academic and that the real issue was the subject of costs.

31 Counsel for the ex-wife accepted during the hearing of the appeal that the ex-wife could have re-enrolled the three claims without seeking declaratory relief to that effect.

32 The First Court held that it was in the interests of justice that the three claims be re-enrolled. The court also determined that the appellant was not prejudiced by the claims being re-enrolled. This finding cannot be impeached. The court had regard to the circumstances and the background to the dispute between the parties, before holding that the relief was warranted.

33 The appellant's submission that the First Court, in granting relief referencing a maintenance order, did so in relation to relief that was not asked, is unmeritorious. Counsel for the appellant submitted that the relief was not asked for because the notice of motion referenced a revival of the Rule 43 order. The appellant cannot credibly make this argument. First, the point was not raised as a ground of appeal. Second, the appellant knew that the ex-wife gave notice to amend her notice of motion. The First Court, in granting this relief, did so based on an issue that was

raised with the court. The appellant variously complains (without merit) that the ex-wife misled the First Court. It is a surprise that the appellant argues that the First Court gave relief that was not asked for, when the appellant knows that the ex-wife mentioned expressly in her papers that she would seek to amend her notice of motion by removing reference to the Rule 43 order. There is no basis to attack paragraph 1.2 of the order by the First Court.

34 The appellant says he was not in default on payment of maintenance to the ex-wife and that the First Court erred in authorising deductions from the appellant's benefits with Sanlam. The appellant also says that section 37D(d)(i) and (iA) barred the ex-wife from seeking payment of monies from the Sanlam product to defray arrear maintenance payments.

35 The First Court correctly accepted that the ex-wife had made out a case for payment of the arrear maintenance from the Sanlam product. This finding cannot be faulted. The First Court was also correct that the product was subject to section 37. Sanlam accepted that the ex-wife could claim against the product.

36 The First Court was aware of the contention that the appellant was not in arrears in relation to maintenance. The First Court correctly rejected the appellant's assertions that he had paid, in its finding that the appellant did not substantiate his allegations that he had paid. The First Court had regard to the fact that the ex-wife had proven a claim against the insolvent estate in the amount of R1 085 033.00. The trustees accepted that the claim was proven. The First Court was alive to the fact that whether the insolvent estate can pay that amount depended on proceeds that can be realised. The First Court was not, in any event, called to determine whether the estate or the Sanlam product had sufficient funds to meet the ex-wife's claim for arrear maintenance.

37 The appeal ought to fail. The First Court was satisfied that the rule nisi be confirmed. It considered the defences raised by the appellant. It exercised its authority to grant the declaratory relief that was sought, having satisfied itself that a case was made for such relief.

38 The appellant brought an application to introduce new evidence on appeal. He sought further relief that a party opposing the application be ordered to pay costs on the scale as between attorney and client, on scale C. The first respondent opposed the application, filing papers in that regard.

39 The appellant did not persist with his application. Counsel for the appellant did not mention the application in his address. The application was raised for the first time when counsel for the ex-wife was making his address. The court then requested the appellant's counsel to indicate the appellant's attitude in relation to the application. The court was informed that the appellant did not persist with the application. The ex-wife had prepared on this application. She was thus put to unnecessary expense.

40 I propose the following order:

- (1) The appeal is dismissed.
- (2) The appellant is ordered to pay the costs of the first respondent, such costs to include the costs of the appellant's application to introduce new evidence.
- (3) The costs referred are to include the costs of both Senior Counsel and Junior Counsel, with the costs of Senior Counsel at Scale C and those of Junior Counsel at Scale B.

O MOOKI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

I agree:

C SWANEPOEL

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

I agree:

**J MINNAAR
JUDGE (acting) OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Counsel for the appellant: J C Klopper

Instructed by: Innes T Steenkamp Attorneys

Counsel for the first respondent: G F Heyns SC (together with M Jacobs)

Instructed by: Semore Du Toit & Basson Attorneys

Date heard: 9 October 2025

Date of judgment: 4 December 2025