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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
HELD AT PRETORIA**

CASE NO: 7390/2018

DOH: 11 November 2025

DECIDED: 12 January 2026

1) REPORTABLE: NO

2) OF INTEREST TO OTHER JUDGES: NO

3) REVISED.

SIGNATURE

DATE 12 January 2026

In the matter between:

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

Plaintiff

And

U[...] A[...] M[...]

Defendant

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 12 January 2026.

ORDER

The following order is granted:

1. Decree of divorce;
2. The Defendant forfeits the benefits of the marriage in community of property;
3. The immovable property situated at 3[...] U[...] L[...], Eersterus, Pretoria, Gauteng, shall be the exclusive property of the Plaintiff and the Defendant has no claim thereto;
 - 3.1 The Plaintiff shall be responsible for all expenses relating to the immovable property, including the monthly bond repayments;
 - 3.2 The Defendant's 50% share in the property shall be transferred to the Plaintiff upon full settlement of the bond;
 - 3.3 Upon compliance with paragraph 3.2, the Defendant shall sign any and all transfer documents necessary to transfer his 50% share in the property to the Plaintiff, who shall be liable for all transfer costs;
 - 3.4 Should the Defendant fail to sign the transfer documents, the sheriff with jurisdiction in the area where the property is situated is authorized to sign such documents on his behalf.
4. Costs

JUDGMENT

Bam J

Introduction

1. The sole controversy between the parties is whether the defendant should forfeit the benefits arising from the marriage in community of property. The common cause facts are the following: The parties were married to each

other in community of property on 16 December 2000, and the marriage still subsists¹. One major child was born of the marriage. On 5 February 2018, the plaintiff issued a summons seeking, *inter alia*, a divorce decree and forfeiture of the benefits arising from their marriage in community of property. The parties accept that the marital relationship has broken down irretrievably and there is no chance of salvaging it. Both parties are adamant that they want a divorce. The parties testified in their own cases while the defendant called one witness. Only the plaintiff was legally represented during the proceedings.

Evidence of misconduct

2. The first person to take to the witness stand was the plaintiff. Her case for forfeiture, which was uncontroverted during cross examination, may be summarized thus: The parties ceased living together as husband and wife from 28 June 2014, following a vicious assault meted out on the plaintiff by the defendant, which resulted in an Interim Protection Order against him. Before this date, the defendant would come and go as he pleased. I will return to the assault shortly.
3. The defendant, according to the plaintiff, was used to staying out from Friday night and return home during early hours of the morning on Sundays. On those occasions, he would rape the plaintiff and call her vulgar names. During one such occasion, the defendant returned home in the early hours of the morning on Sunday, threw cold water over her, whilst she was still in bed, and at the same hurling abuse at her. During another one of the defendant's violent episodes, he found the plaintiff in the shower and put a toothbrush in her private parts.
4. Throughout the subsistence of their marriage, the plaintiff successfully applied for about four Interim Protection orders. The first order was granted

¹ The original marriage certificate was handed in from the bar and marked as Exhibit A.

on 12 April 2007, following a brutal assault, threats and intimidation. A copy of this order is filed on Caselines and marked as Exhibit B. On 6 February 2012, arising from yet another malicious assault and intimidation, the plaintiff was granted a further protection order. A copy of this protection order is filed on Caselines and marked Exhibit C. There was another Protection order on 8 April 2014 because of the defendant sexually abusing the plaintiff threatening and assaulting her. This order is marked Exhibit D.

5. Elaborating to the assault of 28 June 2014, which ultimately saw the defendant permanently leave home, the defendant came home in the morning, knocked on his son's bedroom window and asked for a jacket. At that point, the defendant had not been staying at home for about a year. The plaintiff and the parties' son decided to take the defendant home to his friend's house. As the vehicle was reversing out of the garage, the defendant suddenly pushed the plaintiff towards the passenger seat and drove off with her. While in the vehicle, he assaulted the plaintiff so severely with a gear lock, and strangled her with the seat belt, at the same time muttering murderous imprecations at her. As a result of that assault, the plaintiff had to undergo surgery to repair her eye. A colour photograph of the plaintiff's face taken by their son on the aftermath of this assault is filed on Caselines and marked Exhibit E. The defendant was subsequently convicted and sentenced to 5 years.
6. Financially, the plaintiff testified that she has been the family's sole provider. Throughout the existence of their marriage, the defendant abused drugs and alcohol. He could never hold on to a job. Although he once participated in a rehabilitation program, it appears that he did not take advantage of the opportunity to turn his life around. When the couple first met, he was employed by the Department of Home Affairs. Shortly thereafter he was dismissed or resigned and was paid a pension benefit of about R30 000 which he never accounted for. By bringing home small items such as milk and bread, the defendant failed to contribute towards the upkeep of the home and never paid their child's expenses. The plaintiff single-handedly

paid for the upkeep of the home and their son's expenses, serviced the mortgage and other joint estate debts.

7. At the start of their marriage, the parties agreed that the defendant would pay for the municipal charges, such as water, rates and electricity but he never paid a cent. At present, the debt owed to the municipality is in the standing at R 400 000, 00 (Four Hundred Thousand Rand) which the plaintiff is servicing at the rate of R 7000. 00 per month.
8. The plaintiff is currently employed by AVBOB and is a member of their Mutual Fund. Their home has a market value of R1 million with home loan of R 680 000.00 (Six Hundred and Eighty Thousand Rand). Thus, there is hardly any equity in the home. At some point, while the defendant was still living at home, the couple took an advance against their home of R 200 000. 00 From that amount, the defendant bought a car for R100 000, to set up a business of transporting school kids. He later informed the plaintiff that the vehicle was confiscated by the police in connection with a case of robbery. The plaintiff never saw the vehicle again. During one promising moment, when it looked like the couple were going to work together, the plaintiff testified that she took out a loan to pay for the defendant's training as cabin crew. He later secured a job with Mango as part of their cabin crew. It was not long before the defendant was asked to leave.
9. Cross examination was conducted by the defendant as an unrepresented litigant. Nothing shook the plaintiff's case. The plaintiff thereafter closed her case. I accepted the plaintiff's evidence and had no basis to question her credibility.
10. The defendant was the first to testify. Much of his evidence fell outside his pleaded case. In a soundbite, his evidence went along the following lines: He tried to be a good husband and a good father. He tried to provide a home but it did not work out. There was no cross examination. The next witness to testify was the defendant's sister, Ms Samantha Giselle Mash. Her evidence

too fell outside the defendant's pleaded case. That marked the end of the defendant's case.

Applicable legal principles

11. In *Mashola v Mashola*, the court summarized the principles relevant to the present enquiry as follows:

'[28] (a) The party seeking an order for forfeiture of benefits does not have to prove the existence of all three factors in s 9(1) cumulatively. The court needs to ask itself whether one party will be unduly benefitted if an order of forfeiture was not made, and in order to answer that question, regard should be had to the factors mentioned in s 9(1).

(b) Wijker advocates that when dealing with s 9(1) the following approach should be adopted: 'the first step is purely a factual issue. Once that has been established the trial court must determine, having regard to the factors mentioned in the section, whether or not that party will in relation to the other be unduly benefitted if a forfeiture order is not made. Although the second determination is a value judgment, it is made by the trial court after having considered the facts falling within the compass of the three factors mentioned in the section.'

(c) The court emphasised that when making a value judgment, applying the principles of fairness is not justified, as s 9(1) contains no provision for the application of such principle... It is only after the court has concluded that a party would be unduly benefitted that it is empowered to order a forfeiture of benefits, and in making this decision it exercises a discretion in the narrower sense.

(d) Furthermore, the Wijker judgment states that notwithstanding the introduction of the no fault principle in divorce, a party's misconduct may be taken into account in considering, in terms of s 9(1), the circumstances which gave rise to the breakdown of the marriage. Additionally, 'substantial misconduct may include conduct which has nothing to do with the breakdown of the marriage and may for that and other reasons have been included as a separate factor. Too much importance should, however, not be attached to misconduct which is not of a serious nature.' It must be found that it is so obvious and gross that it would be repugnant to justice to let the 'guilty' spouse get away with the spoils of the marriage.

(e) In *Engelbrecht v Engelbrecht* 1989 (1) SA 597 (C) the court held that it could never have been the intention of the legislature that a wife, who had for 20 years assisted her husband faithfully should, because of her adultery, forfeit the benefits of the marriage in community of property. This confirmed the principle that the finding of substantial misconduct does not on its own justify a forfeiture order.²

Analysis

12. The question that this court must first answer is whether the defendant will be benefitted if the forfeiture order is not granted. This is a value judgment. The evidence accepted by this court paints a clear picture that the defendant, from the early years of his marriage, made no contribution to the wellbeing of his family and upkeep of his home. He abused drugs and alcohol, physically, mentally and emotionally abused his wife, and allowed an untenable situation where his wife single-handedly supported the family. He evaded responsibility and never accounted for his pension resignation benefit. I conclude that he will certainly be benefitted in the event the court does not grant the forfeiture order.
13. The next question to answer is whether the defendant will be unduly benefitted in the event the court does not grant the forfeiture order. Although the parties have been married for 24 years, as at the date of the hearing, they have not been living as husband and wife since 2014. Even before that date, the defendant had not been living at home for a year. From the early years of the marriage, he was in and out of the marital home, sometimes staying away from home for weeks on end. Accordingly, the duration of the marriage is a neutral factor, given the circumstances.
14. On the reasons that led to the marital breakdown one can clearly identify the continual vicious assaults on the plaintiff; the emotional and mental abuse; the neglect of his family, his drug and alcohol abuse, and his financial

² (022/2022) [2023] ZASCA 75 (26 May 2023), paragraph 28.

delinquency. The defendant simply played no role in the life of his family. Throughout their marital life, the plaintiff obtained no less than 4 Interim protection orders. He undermined the plaintiff's efforts in financially providing for the family by taking away resources and refusing to account for them. I include in this regard, the refusal to account for his pension payout; the refusal to account for the car that was bought for him to run school transport business. The plaintiff paid for his training as a cabin crew member, but he undermined all those efforts when he was pushed out of Mango. He evaded responsibility throughout the duration of the marriage. As a result, the plaintiff is currently servicing a debt of R 400 000. 00 in favour of the municipality.

15. I find that all of these issues whether considered cumulatively or in isolation, amount to substantial misconduct. I conclude that in the event this court were to refuse the order of forfeiture, the defendant will be unduly benefitted. I am satisfied that the defendant must forfeit the benefits arising from the parties' marriage in community of property.

Costs

16. The plaintiff asked for costs. I can find no reason why she should not recover her costs from the defendant.

Order

1. Decree of divorce;
2. The Defendant forfeits the patrimonial benefits of the marriage in community of property;
3. The immovable property situated at 3[...] U[...] L[...], Eersterus, Pretoria, Gauteng, shall be the exclusive property of the Plaintiff, and the Defendant has no claim thereto;
 - 3.1 The Plaintiff shall be responsible for all expenses relating to the immovable property, including the monthly bond repayments;

3.2 The Defendant's 50% share in the property shall be transferred to the Plaintiff upon full settlement of the bond;

3.3 Upon compliance with paragraph 3.2, the Defendant shall sign any and all transfer documents necessary to transfer his 50% share in the property to the Plaintiff, who shall be liable for all transfer costs;

3.4 Should the Defendant fail to sign the transfer documents, the sheriff with jurisdiction in the area where the property is situated is authorized to sign such documents on his behalf; and

4. Costs

BAM J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA

Date of Hearing: 11 November 2025

Date of Judgment: 12 January 2026

Appearances:

Counsel for the Plaintiff:

Instructed by:

Adv R Britz

Brandon Swanepoel Attorneys,
Lynnwood, Pretoria

Defendant:

In person