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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

Case no: A31/2025

Court a quo case no: MAI/301/23/262

In the matter between:

T[...] M[...] -S[...]

Appellant

and

I[...] N[...]

Respondent

Neutral citation: *M[...] -S[...] v N[...]* (Case no A31/2025) [2026] ZAWCHC ____
(19/02/2026)

Coram: **PANGARKER J and DAVIS AJ**

Heard: 17 October 2025

Delivered: 19 February 2026

Summary: *Appeal in respect of an order of a maintenance court – time for noting a maintenance appeal differs from time for noting a civil appeal in terms of the Magistrates’ Court Rules – governed by regulations in terms of the Maintenance Act 99 of 1998 – approach to maintenance appeals – duplications and errors in calculations by magistrate justifying intervention on appeal – – need for magistrate to set out a reasoned basis for calculations and findings grounded in the evidence*

ORDER

- i. The appeal is upheld.
- ii. The order of the court *a quo* is set aside and replaced with an order in the following terms:
 - ‘1. T[...] M[...] S[...] (‘**Mr S[...]**’) is ordered to maintain the minor child S[...] N[...], born on 25/01/2018 (‘**S[...]**’), until she reaches the age of 18 or becomes self-supporting, whichever last occurs, by:
 - 1.1 making payment of the amount of R 2 000.00 (two thousand rand) per month to S[...]’s mother, I[...] N[...] (‘**Ms N[...]**’), on the first day of each and every month with effect from 1 March 2026;

- 1.2 increasing the amount referred to in paragraph 1.1 annually on 31 December every year, with effect from 31 December 2026 and thereafter on 31 December every year, by the percentage change in the Headline inflation rate (also known as the Headline Consumer Price Index ('CPI')), as notified by Statistics South Africa (or its equivalent) in respect of the Republic of South Africa for the preceding twelve months (which percentage shall, for purposes of convenience, be deemed to be equal to the latest index available from Statistics South Africa on 31 December each year);
- 1.3 reimbursing Ms N[...] on the first day of each and every month, with effect from 1 March 2026, for 50% of the contribution which she has to pay to keep S[...] covered on a medical aid scheme, provided that Ms N[...] shall provide proof to Mr S[...], on request, of the amount of S[...]’s medical aid premium;
- 1.4 reimbursing Ms N[...] for 50% of all medical expenses incurred for S[...] which are not covered by medical aid, within 7 calendar days her having provided Mr S[...] with copies of the relevant invoices and proof of payment, subject to the proviso that Mr S[...] shall not be liable for any one excess amount which exceeds R 2 000.00, without his prior consent to the incurring of the particular expense, which consent shall not unreasonably be withheld;

- 1.5 making payment directly to S[...]’s school of 25% of the cost of S[...]’s school fees, within 7 calendar days of receipt of an invoice from the school, provided that, in the event that Ms N[...] has already paid 100% of S[...]’s school fees to the school, Mr S[...] shall be obliged to reimburse Ms N[...] for 25% of the school fees, within 7 calendar days of her having provided Mr S[...] with a copy of the school invoice and proof of payment;
- 1.6 reimbursing Ms N[...] for 50% of the cost of S[...]’s school uniforms, within 7 calendar days of her having provided Mr S[...] with copies of the relevant invoices and proof of payment;
- 1.7 making payment in advance to Ms N[...] of 50% of the cost of books, stationery and equipment prescribed by the school for S[...], within 7 calendar days of her having furnished Mr S[...] with proof of the school’s requirement and the cost thereof;
- 1.8 reimbursing Ms N[...] for 50% of any *ad hoc* stationery purchases or other expenses necessarily incurred during the year in terms of school requirements, over and above the amounts referred to in 1.7 above.’

JUDGMENT

Davis AJ (Pangarker J concurring):

- [1] This is an appeal against a maintenance order granted by the Cape Town Magistrates' Court, sitting as a maintenance court, pursuant to an enquiry held in terms of s 10 of the Maintenance Act 99 of 1998 (**'the Maintenance Act'**). The appeal lies as of right in terms of s 25(1) of the Maintenance Act.¹

- [2] The appellant appeals against the order granted by the maintenance court on 24 June 2024, in terms whereof he was ordered to make certain contributions towards the maintenance of his child, S[...] N[...], born on 25 January 2018 (**'the minor child'**) until she is 18 or self-supporting, whichever last occurs (**'the order'**).

- [3] The parties are the parents of the minor child. They were never married.

- [4] Both parties appeared in person at the enquiry in the maintenance court. At the hearing of the appeal, Ms Janssen appeared on behalf of the appellant. The respondent was unrepresented in the appeal proceedings and appeared in person at the hearing.

Point in limine: late noting of the appeal

- [5] The respondent raised an objection *in limine* that the appellant's appeal had been filed out of time, and that no condonation had been sought for the late

¹ Section 25(1) of the Maintenance Act 99 of 1998 provides that:

'Any person aggrieved by any order made by a maintenance court under this Act may, within such period and in such manner as may be prescribed, appeal against such order to the High Court having jurisdiction.'

noting of the appeal. This objection had not been heralded in any way, and was raised for the first time at the hearing.

[6] It was not in dispute that:

- (a) the order was issued on 24 June 2024;
- (b) the magistrate's reasons for the order were furnished to the parties on 22 October 2024; and
- (c) the appellant's notice of appeal was delivered on 19 November 2024.

[7] Section 25(1) of the Maintenance Act deals with appeals against maintenance orders. It provides that the appeal may be made '*within such period and in such manner as may be prescribed.*' The section must be read with regulation 15 of the regulations published by the Minister of Justice in terms of s 44 of the Maintenance Act of 1998 ('**the Regulations**'), which deals with appeals against orders made under the Maintenance Act.

[8] Subregulation 15(1) prescribes that an appeal in terms of s 25 of the Maintenance Act shall be noted within 20 days of the date of the order appealed against.

[9] Subregulation 15(2) requires that an appeal be noted by delivery of a notice setting out the parts of the order appealed against, and the grounds of appeal, specifying the findings of fact or rulings of law appealed against.

[10] Subregulation 15(3) imposes a duty on the presiding officer to furnish reasons for an order, in the form of a written statement setting out:

- (a) the facts found to be proved;
- (b) the reasons for any findings of fact specified in the notice of appeal as appealed against; and
- (c) reasons for any ruling on any question of law or for the admission or rejection of any evidence specified in the notice of appeal as appealed against.

- [11] In terms of Subregulation 15(3), the presiding officer is required to furnish such written statement within 14 days of the noting of the appeal, or where the proceedings at the enquiry were recorded in shorthand or by mechanical means, within 14 days of receipt of a transcript of the shorthand notes or mechanical recording.
- [12] Subregulation 15(5) provides that after an appeal has been noted in terms of Subregulation 15(1), the appeal shall be prosecuted as if it were an appeal against the decision of a magistrate in a civil matter, and the rules of the High Court regulating the conduct of civil appeals from the Magistrates' Court shall apply *mutatis mutandis*.²
- [13] It should be noted that the provisions in the Regulations governing the noting of an appeal against a maintenance order differ from the rules which govern the noting of an appeal against a civil judgment of the Magistrates' Court in terms of the Magistrates' Court Rules.

² Rule 50 of the Uniform Rules of Court regulates the conduct of civil appeals from the Magistrates' Court.

- [14] Firstly, the Magistrates' Court Rules allow for the noting of an appeal to be deferred until after the presiding officer has furnished written reasons for judgment. Rule 51(1) entitles a party to request reasons from the presiding officer within 10 days after judgment has been given, and the presiding officer is obliged to furnish written reasons within 15 days, setting out the facts found to be proved and the reasons for judgment.³ In terms of rule 51(3) of the Magistrates' Court Rules, the time limit for noting an appeal is 20 days after the date of the judgment appealed against, or within 20 days after a copy of the judgment has been supplied to the party applying therefor.⁴
- [15] By contrast, Regulation 15 requires that an appeal against an order under the Maintenance Act be noted within 20 days of the date of the order appealed against,⁵ and before the presiding officer has furnished written reasons for the order, in terms of Regulation 15(3).⁶

³ Rule 50(1) of the Magistrates' Court Rules reads as follows:

"Upon request in writing by any party within 10 days after judgment and before noting an appeal the judicial officer shall within 15 days hand to the registrar or clerk of the court a judgment in writing which shall become part of the record showing –

(a) the facts he or she found to be proved;

(b) his or her reasons for judgment."

⁴ Rule 50(3) of the Magistrates' Court Rules reads as follows:

"An appeal shall be noted by the delivery of notice within 20 days after the date of the judgment appealed against or within 20 days after the registrar or clerk of the court has supplied a copy of the judgment in writing to the party applying therefor."

⁵ Regulation 15(1) of the Maintenance Act Regulations.

⁶ Regulation 15(3) of the Maintenance Act Regulations obliges the presiding officer to furnish written reasons within 14 days of the noting of an appeal, or within 14 days after the transcript of the proceedings has been placed before the presiding officer.

[16] Secondly, the time allowed for noting an appeal against a maintenance order differs because the word ‘days’ has different meanings in the Magistrates’ Court Rules and the Regulations. The word “days” in the Magistrates’ Court Rules refers to court days, that is, weekdays excluding public holidays.⁷ However, the word “days” is not defined in the Maintenance Act or the Regulations, and must therefore be interpreted in accordance with the provisions of the Interpretation Act 33 of 1957 (**‘the Interpretation Act’**).⁸

[17] Section 4 of the Interpretation Act deals with the calculation of the number of days. It provides that:

‘When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.’

[18] Days in terms of the Interpretation Act are calendar days, which include weekends and public holidays. Where the last day for doing something falls

⁷ Section 2(2) of the Magistrates’ Court Rules provides that:

‘A Saturday, Sunday or public holiday shall not, unless the contrary appears, be reckoned as part of any period calculated in terms of these rules.’

⁸ Section 1 of the Interpretation Act 33 of 1957 provides that the Act applies *‘to the interpretation of every law ... in force, at or after the commencement of this Act in the Republic or in any portion thereof, and to the interpretation of all by-laws, rules, regulations or orders made under the authority of any such law, unless there is something in the language or context of the law, by-law, rule, regulation or order repugnant to such provisions or unless the contrary intention appears therein.’*

on a Sunday or public holiday, the deadline is extended to the next business day.

- [19] To sum up, an appeal against an order under the Maintenance Act must be noted within 20 calendar days of the date of the order appealed against, and before the magistrate has furnished written reasons for the order. An appeal against a civil judgment of the Magistrates' Court must be noted within 20 court days after the magistrate has furnished written reasons for the judgment.
- [20] As mentioned above, the order appealed against was issued on 24 June 2024. The presiding officer's written reasons were only furnished on 22 October 2024, and the notice of appeal was delivered on 19 November 2024, which is 20 court days from the date of furnishing of written reasons. Thus, the appellant complied with the provisions of Rule 51(3) of the Magistrates' Court Rules, but not with the provisions of Regulation 15(1) of the Regulations.
- [21] However, Subregulation 15(5) states that it is only after an appeal has been noted in terms of Subregulation 15(1) that an appeal under the Maintenance Act shall be prosecuted as if it were an appeal against the decision of a magistrate in a civil matter. Thus, the provisions of the Magistrates' Court Rules do not apply to appeals under the Maintenance Act until such time as the appeal has been duly noted, and in order properly to note an appeal against an order under the Maintenance Act, one must comply with the provisions of Subregulation 15(1).

- [22] It is clear, therefore, that the appellant's appeal was not timeously noted. Nor was there an application for condonation for the late noting of the appeal. The appellant's legal representatives appear to have been under the mistaken impression that Rule 51(3) of the Magistrates' Courts Rules applied, as the appeal was noted within 20 court days of delivery of the written reasons for judgment.
- [23] As mentioned, the respondent was not legally represented. She did not file heads of argument or a practice note. She did not send an email notifying the appellant's representatives that she would be taking the point that the appeal had been noted out of time. Counsel for the appellant was taken by surprise at the hearing, when the respondent raised the point for the very first time.
- [24] Had the respondent been legally represented, heads of argument would have been filed on her behalf, and the point *in limine* would have been heralded. The appellant would have been alerted to the issue, and an application for condonation could then have been brought.
- [25] While courts generally afford latitude to unrepresented litigants, they cannot be allowed to prejudice the rights of the other party to a fair hearing. We were willing to overlook the respondent's failure to submit heads of argument, and to entertain her oral submissions. But we could not, in all fairness, allow the appellant to be ambushed by an unheralded technical objection, which could have been dealt with if the point had been timeously raised in heads of argument. The respondent caused prejudice to the appellant by raising the point at the eleventh hour, without warning, when it was too late for the appellant to seek condonation.

[26] On the other hand, the respondent clearly suffered no prejudice as a result of the late noting of the appeal. That is because, unlike the usual position when an appeal is noted, section 25(3) of the Maintenance Act specifically provides that an appeal against a maintenance order shall not suspend the payment of maintenance in accordance with the maintenance order sought to be appealed.⁹ If anything, the respondent has benefitted from the delay in noting the appeal, as the appellant has been obliged to make payment for a longer period of an amount which he seeks to have reduced on appeal.

[27] It appears from the record that the appellant made repeated enquiries with the clerk of the court as to when the magistrate's judgment would be made available. There was a delay of almost four months. Once the judgment was to hand, the appeal was noted within 20 court days, which suggests that the appellant's legal representatives were under the impression that Rule 51(3) applied. There is certainly no indication of any wilful default on the part of the appellant.

[28] Chapter IX of the Magistrates' Court Act 32 of 1944 (**'the Magistrates' Court Act'**) deals with appeals and reviews in respect of Magistrates' Court proceedings. Section 84 of the Magistrates' Court Act reads as follows:

'Every party so appealing shall do so within the period and in the manner prescribed by the rules; but the court of appeal may in any case extend such period.'

[Emphasis added]

⁹ Unless the appeal is noted against a finding that the appellant is legally liable to maintain the person in whose favour the order was made (for example, where paternity of a child is disputed).

- [29] In the particular circumstances of this case, given that the appellant was prejudiced by the respondent's failure to herald her objection to the late noting of the appeal whereas the respondent could not have been prejudiced by the late noting of the appeal, and given that a postponement of the appeal would only increase costs and waste judicial resources, it seemed to us that the interests of justice would best be served by allowing the appeal to proceed. In effect, we extended the time period for noting the appeal, as provided for in s 84 of the Magistrates' Court Act.
- [30] For all these reasons, we dismissed the respondent's objection *in limine* and allowed the appeal to proceed.
- [31] I should add that, in my view, the requirement in Regulation 15 that an appeal against a maintenance order be noted before the presiding officer has furnished reasons is problematic. As mentioned above, Sub-regulation 15(2) requires that an appeal be noted by delivery of a notice setting out the parts of the order appealed against, and the grounds of appeal, specifying the findings of fact or rulings of law appealed against. However, an appellant cannot be expected to specify the findings of fact or rulings of law appealed against if the magistrate has not yet provided written reasons setting out his or her findings of fact and rulings of law.
- [32] Reasons are an essential part of the appeal process. By requiring the noting of an appeal before receipt of reasons from the magistrate, Subregulation 15(2) frustrates the meaningful exercise of the appeal right. A notice of appeal lodged in the absence of written reasons will invariably need to be amended once the reasons are to hand, which will increase costs and cause

delays. I am therefore of the view that it would be desirable for the Minister to consider amending the Regulations to the Maintenance Act to bring them into line with the procedure in the Magistrates' Courts Rules so as to allow for the noting of an appeals after reasons for the order have been furnished.

The order appealed against

[33] The first part of the order is contained in the completed form E (printed form number J168E) in terms of the Regulations. It reads as follows in relevant part:

'... it is ordered that [appellant] shall pay with effect from 30/6/2024 on a monthly basis towards the maintenance of [the minor child] the sum of R 4 250.00 ... and ½ medical costs or medical aid on proof of medical invoice or upon prior agreement between the parties regarding the medical aid plan. The cost shall be paid by the [appellant] to [respondent] within 7 days of submitting the bill. See Annexure A (PTO).'

[34] The Annexure A referred to reads as follows:

'It is further ordered that:

- *The [appellant] shall pay 50% of all stationery and school uniform costs for the year 2025 and every year thereafter.*
The [respondent] shall ensure that she communicates the list of requirements, quotations and invoices to the [appellant] timeously.
The [appellant] is then to effect payment of his portion of the stationery and uniforms within 7 days of receiving the above requirements list, quotations and invoices.

- *As from 31/12/2024 the maintenance cash portion will increase from R 4 250.00 to R 7 500.00 per month which includes the amended school fees for the year 2025.*
- *As from 31/12/2025 the cash portion maintenance will increase by CPI and every year thereafter.*
- *This order will remain in place until the child is 18 or self-supporting, whichever last occurs.'*

[35] In short, the appellant was ordered on 24 June 2024 to pay 50 % of the minor child's medical aid expenses, stationery and school uniforms, plus cash maintenance in the amount of R 4 250.00 which was to increase to R 7 500.00 per month with effect from 31 December 2024, and thereafter to increase annually by CPI with effect from 31 December 2025.

[36] When the matter came before us, we were informed that the appellant was currently paying cash maintenance of R 7 500.00 per month (which includes school fees as per the order) in addition to paying 50% of the minor child's medical aid and stationery costs.

The grounds of appeal

[37] Although the appellant's notice of appeal contained numerous related objections, the grounds of appeal are essentially that:

- a) the magistrate erred in her assessment of the reasonable costs of the minor child;
- b) the magistrate erred in her assessment of the appellant's average earnings and income;

- c) by virtue of her incorrect assessment of the appellant's income, the magistrate also erred in her calculation of the pro rata share payable by the appellant in respect of the minor child's expenses.

[38] The appellant contended that, as a result of these errors, he was ordered to pay an amount which exceeded a true *pro rata* share of the minor reasonable child's maintenance needs, correctly calculated.

The relevant legal principles

[39] Section 15 of the Maintenance Act governs the making of maintenance orders by a maintenance court. It reads as follows in relevant part:

15 Duty of parents to support their children

- (1) Without derogating from the law relating to the liability of persons to support children who are unable to support themselves, a maintenance order for the maintenance of a child is directed at the enforcement of the common law duty of the child's parents to support that child, as the duty in question exists at the time of the issue of the maintenance order and is expected to continue.*
- (2) The duty extends to such support as a child reasonably requires for his or her proper living and upbringing, and includes the provision of food, clothing, accommodation, medical care and education.*
- (3) (a) Without derogating from the law relating to the support of children, the maintenance court shall, in determining the amount to be paid as maintenance in respect of a child, take into consideration-*
 - (i) that the duty of supporting a child is an obligation which the parents have incurred jointly;*
 - (ii) that the parents' respective shares of such obligation are apportioned between them according to their respective means; and*
 - (iii) that the duty exists, irrespective of whether a child is born in or out of wedlock or is born of a first or subsequent marriage.*

(b) Any amount so determined shall be such amount as the maintenance court may consider fair in all the circumstances of the case.'

- [40] Section 15 of the Maintenance Act confirms, and does not alter, the common law relating to parents' duty to support their children. At common law, both parents are under a duty to support their children, according to their respective means (*Lamb v Sack* 1974 (2) SA 670 (T) 671 F – H, and authorities cited there). The obligation attaches to both parents jointly but, *inter se*, their respective shares of that obligation are apportioned according to the financial resources and circumstances of each of them (*Van der Harst v Viloen* 1977 (1) SA 795 (C) 797 *in fine* – 798 A).
- [41] The proper application of section 15 requires that a maintenance court first determine, with reference to the evidence:
- a) what the child's reasonable living expenses are, including food, clothing, accommodation, medical care and education; and
 - b) what the parents' respective incomes and financial resources are.
- [42] Having determined the child's reasonable expenses, and the parents' respective means, the magistrate is then required to apportion the expenses between the parents, *pro rata* according to their means. Each parent's share of the child's expenses is calculated by applying a simple formula, which splits the child's expenses proportionately between the parents based on their respective incomes (where there are no other means involved, such as substantial assets). I shall refer to this formula, which is regularly applied in the maintenance court, as '**the maintenance formula**'. It gives expression

to the legal principle that the parents are liable for the support of their children *pro rata* according to their means.

$$\text{Parent's income} \div \text{Combined income of both parents} \times \text{Child's costs}$$

- [43] It bears emphasis that the determination of a reasonable maintenance award is not a matter of precise mathematical calculation; it represents an estimate based on the particular facts and circumstances of the case. As Olivier JA observed in *Douglas v Douglas*:¹⁰

'In deciding what, in the circumstances of a particular case, a reasonable amount to award as maintenance for a child would be, the trial judge has to consider a variety of factors, inter alia, the needs of the child, the social status of the parties, the ability of the father, and if need be, the means of the mother to pay maintenance. The amount arrived at must necessarily be an estimate.'

- [44] When it comes to the evaluation on appeal of the correctness or otherwise of a maintenance order, it has repeatedly been held that proper approach of the appellate court should be along the lines adopted in compensation cases such as *Bordihn v Bordihn*¹¹; *Mentz v Simpson*;¹² *Douglas v Douglas*.¹³

- [45] Therefore, the appellate court should not, in the absence of a misdirection or irregularity, interfere with the order of the court *a quo* unless:

- a) there is a substantial variation or striking disparity between the appellate court's estimate of the amount and that of the court *a quo*; or

¹⁰ [1996] 2 All SA 1 (A) 12 d-e

¹¹ 1956 (2) PH B32 (A) 9

¹² 1990 (4) SA 455 (A).

¹³ [1996] 2 All SA 1 (A) 12e

- b) the appellate court thinks that no sound basis exists for the award made by the court *a quo*; or
- c) there is some unusual degree of certainty that the estimate of the court *a quo* was wrong.¹⁴

[46] However, the appellate court is not required to defer to the judgment of the court *a quo*. As was emphasised in *Mentz v Simpson*¹⁵ and *Douglas v Douglas*:¹⁶

‘... it does not follow that a Court of Appeal must renounce its functions as a Court of Appeal by deferring to the estimate of the trial Court in a case of doubt or difficulty. ... Seeing that an appeal is a rehearing of all the questions involved in the action, including the quantum of damages, a Court of Appeal must necessarily decide upon the figure which it thinks should have been awarded. When it has done that, if the figure arrived at, considered from all aspects, differs substantially from the figure awarded, the Court of Appeal must give effect to it. If it does not do so, it is deferring to the judgment of the trial Judge and not carrying out its functions as a Court of Appeal by exercising its own judgment upon a matter which is before it on appeal.’

[47] In order to consider whether there are grounds for interfering with the order in the present case, I shall deal with the magistrate’s assessment of the reasonable maintenance requirements of the minor child, her assessment of the appellant’s income, and her calculation of the pro rata share payable by the appellant towards the minor child’s expenses.

¹⁴ *Mentz v Simpson*

¹⁵ *Supra* 457 B – C.

¹⁶ *Supra* 12j – 13b.

The magistrate's assessment of the reasonable costs of the minor child

- [48] In paragraph 13 of her reasons, the magistrate found that the minor child's reasonable expenses for 2025 were R 16 907.76 per month, excluding school uniforms, medical aid, and all once off costs for the child's school requirements for 2025, which costs were to be shared equally between the parties.
- [49] However, in paragraph 14 of her reasons, the magistrate stated that the minor child's expenses for 2025 were R 17 011.98. This figure included various living expenses for 2025 totalling R 9 824.28 per month, plus inflation of 7% on that amount, plus school fees of R 6 500.00.
- [50] While one can readily discern how the amount of R 17 011.98 is arrived at, it is not clear how the amount of R 16 907.76 was arrived at. This appears to have been an error.
- [51] On appeal, the appellant challenged a number of the amounts included by the magistrate in arriving at the amount of R 9 824.28 for the total living expenses for the minor child. While the magistrate set out the amount allowed for each expense making up the total of R 9 824.28, she omitted to indicate how she arrived at the various amounts, for instance by way of an estimate or by way of an apportionment between members of the household, and, if so, how she apportioned the expenses. That is regrettable. The magistrate should provide a clear and detailed account of how each amount was arrived at – even if it represents an estimate, and where she makes an estimate, the factual basis for the estimate should be disclosed in the reasons.

- [52] Firstly, the appellant disputed the amount of R 1 666.66 allowed in respect of groceries for the minor child. In her oral evidence, the mother alleged that she spent between R 5 500.00 and R 6 500.00 per month on groceries for her herself, the minor child and the live-in nanny/domestic worker. In her written list of expenses which formed part of the documentation submitted for the enquiry, she claimed R 6 100.00 per month for groceries and an additional R 1 500.00 per month for ‘lunches’, which she did not deal with in her oral testimony. Also included in the respondent’s documents was an Excel spreadsheet analysis of her monthly expenditure on groceries based on her bank statements, which showed that her average expenditure on groceries was R 5 183.46 per month.
- [53] During cross-examination, the appellant challenged the respondent with regard to her grocery expenditure. The respondent provided vouched proof of her grocery expenditure for three months, which came to R 4 898.96 per month.¹⁷
- [54] However, the magistrate did not include any finding in her written reasons as to the total amount of the respondent’s monthly grocery costs. Nor did she provide any indication as to how she arrived at a figure of R 1 666.66 for the minor child’s share of the groceries.
- [55] A child’s share of household expenses is usually calculated by allocating one part per child and two parts per adult. Applying this rule of thumb, the respondent’s household would comprise five parts – two parts for the respondent and the nanny, and one part for the minor child.

¹⁷ Transcript p 10.

- [56] It would appear from a comment made during the enquiry¹⁸ that the magistrate accepted that the respondent's grocery bill should be divided by five. However, in order to arrive at a figure of R 1 666.66 for the child's share of the groceries, the total amount would have had to be R 8 333.30, which is significantly more than the respondent claimed.
- [57] The appellant contended that the respondent's established actual average expenditure on groceries was R 4 898.96, and therefore the minor child's share should have been calculated at R 979.79 ($R\ 4\ 898.96 \div 5$).
- [58] It is impossible to fathom how the magistrate arrived at the amount of R 1 666.66. There is no justification for the figure to be found in the record or in her written reasons. In my view, there was no sound basis for this award, and this Court is entitled to interfere.
- [59] However, I cannot accept the appellant's argument that the amount allowed for the minor child's groceries should be based only on the total amount for which the respondent was able to provide vouchers. It is unreasonable, in my view, to expect the respondent to be able to provide receipts for every cent spent on groceries.
- [60] In her oral testimony, the respondent stated that on average she spent between R 5 500.00 and R 6 500.00 per month on groceries. Her excel spreadsheet, based on her bank statements, showed that her average grocery expenditure was R 5 183.46 per month. This is not an unreasonable amount

¹⁸ Transcript p 33.

for the respondent to spend on groceries for herself, the nanny and the minor child.

[61] In my view a reasonable estimate would be a rounded-up figure of R 5 200.00 per month for the respondent's monthly grocery bill, divided by five parts to arrive at a figure of R 1 040.00 for the minor child's share of the groceries.

[62] I would therefore reduce the amount of R 1 666.66 by R 626.66 and allow an amount of R 1 040.00 for the minor child's share of the groceries.

[63] Secondly, the appellant disputed the amount of R 600.00 allowed by the magistrate in respect of the minor child's travel to school, in circumstances where the respondent's evidence was that the school which the minor child would be attending, Parklands College, was two streets away from her home, and transport would not be required as the nanny could drop the child off and fetch her from school.

[64] In my view the magistrate clearly misdirected herself in including the amount of R 600.00 for transport to school, as it was clear that the cost of school transport would fall away when the minor child was placed in placed in Parklands college in 2025. The magistrate ought to have made provision in the order for this particular expense only to be paid in 2024, and to fall away with effect from 31 December 2024.

[65] I would therefore deduct the amount of R 600.00 from the amount of cash maintenance ordered to be paid for the minor child.

- [66] Thirdly, the appellant disputed the amount of R 1 650.00 allowed in respect of the minor child's share of the respondent's monthly motor vehicle instalment, in circumstances where the respondent's evidence was that she did not drive the minor child for more than 50 kilometres per month.
- [67] The respondent spent R 9 598.00 per month on her motor vehicle instalment. The magistrate did not explain how she arrived at the figure of R 1 650.00 per month for the minor child's share. It would appear that she divided the instalment by six (representing the respondent, the nanny and two children, being the minor child and the respondent's baby son by her new partner) and rounded the amount up.
- [68] In my view it is not appropriate to deal with the motor vehicle instalment in this fashion given that the evidence shows that the motor vehicle was used very little for the minor child, and primarily for the respondent's own transport. I consider that the amount allowed in respect of the minor child's share should bear some relation to the actual extent to which the motor vehicle is used to transport the minor child.
- [69] In my view, therefore, the magistrate erred in including an amount of R1 650.00, which far exceeds the reasonable cost associated with the use of the motor vehicle for the minor child. There was no sound basis for the order.
- [70] The South African Revenue Service ('SARS') tax-free vehicle reimbursement rate for business travel for the period 1 March 2024 to 28 February 2025 was R 4.84 per kilometer. The rate covers fuel, maintenance and other costs. To my mind, this would have been a fair basis for

calculating the minor child's share of the running costs of the motor vehicle.

[71] Based on the respondent's evidence that she drove the minor child for no more than 50 km per month, the minor child's share would amount to R 242.00 per month, which I would round up to R 250.00. There is a striking disparity between the amount of R 250.00 per month, which I consider fair and reasonable in the circumstances, and the amount of R 1 650.00 which the magistrate allowed. This court is therefore entitled to interfere.

[72] I would therefore reduce the amount of R 1 650.00 in respect of the minor child's share of the motor vehicle instalment by R 1 400.00 to R 250.00.

[73] Fourthly, the appellant disputed the amounts of R 100.00 and R 103.33 which the magistrate included for medication and stationery respectively, on the grounds that these were duplications inasmuch as the respondent was ordered to pay these costs separately.

[74] As has been mentioned, in terms of the order the appellant was directed to pay:

'½ medical costs or medical aid on proof of medical invoice or upon prior agreement between the parties regarding the medical aid plan' as well as '50% of all stationery and school uniform costs for the year 2025 and every year thereafter.'

[75] It is clear, therefore, that these costs had already been catered for in the order, and the magistrate misdirected herself in including these amounts.

- [76] Therefore, an amount of R 203.33 falls to be deducted from the cash maintenance ordered to be payable for the minor child.
- [77] Fifthly, the appellant disputed the amount of R 1 250.00 which the magistrate included in respect of the minor child's share of the nanny/domestic worker's salary of R 2 500.00 per month. The appellant argued that the magistrate erred in apportioning half of the cost to the minor child, instead of one third of the amount (being a child's share) which amounts to R 833.33.
- [78] The respondent testified that the domestic worker prepared the minor child in the morning and packed her lunch; she did the laundry and cleaned the house and cooked occasionally. Although the respondent later testified that the domestic worker was solely employed for the minor child, this statement contradicted her earlier evidence, which made it clear that the domestic worker did more than help with the minor child: she did the laundry and cleaned the house, as well as cooking occasionally.
- [79] It can however be accepted, in my view, that a large part of the domestic worker's function was to assist with the minor child. Therefore, I do not consider that the magistrate erred in apportioning 50% of the cost of the domestic worker to the minor child, as opposed to only one third. I am not certain that I would not have applied the same apportionment of this particular expense.
- [80] In my view the amount of R 1 250.00 allowed by the magistrate was reasonable, and I see no reason to interfere with the amount.

- [81] Sixthly, the appellant disputed the amount of R 625.00 which the magistrate allowed in respect of clothing for the minor child, without proof of what the respondent spent on the minor child's clothing.
- [82] The respondent testified that she usually purchased clothes for the minor child at the beginning of winter and summer. She stated that the amount spent on winter clothing was approximately R 3 400.00 to R 4 000.00, while the amount spent on summer clothing was approximately R 3 000.00.
- [83] The appellant requested invoices for clothing purchased for the minor child, but the respondent's response was that she did not have receipts for clothing purchases. The appellant did not, in cross-examination, challenge the respondent's evidence as to the amounts she spent on clothing for the minor child, and her evidence in this regard stands.
- [84] If one accepts that the respondent spends approximately R 7 000.00 per annum on the minor child's clothing – an amount which, in my view, can by no stretch be regarded as excessive – the average monthly expenditure is in the region of R 583.33. In the circumstances, I consider that the amount of R 625.00 allowed by the magistrate was reasonable, and I see no reason to interfere with the amount.
- [85] For all the reasons set out above I am of the view that the magistrate erred in her assessment that the minor child's reasonable expenses for 2025 (excluding school fees) amounted to R 9 824.28 per month, and I consider that the amount falls to be reduced by R 2 829.99 to the amount of R 6 994.29, which I would round up to R 7 000.00.

[86] The appellant furthermore disputed the inflation rate of 7% which the magistrate added to the figure of R 9 824.28 - which represented the amounts spent on the minor child in 2024 - in order to arrive at the figure of R 17 011.98 for 2025 (including school fees of R 6 500.00). Her calculation read as follows:

'Total excluding 2025 school fees = R 9 824.28 + 7% (inflation) = R 10 511.98 + R 6 500.00 (school fees) = Total: R 17 011.98.'

[87] The magistrate did not say where she derived the figure of 7% for inflation. One infers that she may have been thinking of the headline inflation rate reported in the Consumer Price Index ('CPI'), as she made provision in the order for the cash maintenance amount to increase annually by CPI as from 31 December 2025.

[88] However, if one consults the CPI published by Statistics South Africa, one sees that the annual consumer price inflation rate was 5.4% in June 2023, 4.7% in July 2023, in 4.8 % in August 2023, 5.4 % in September 2023, 5.9% in October 2023, 5.5% in November 2023, 5.1 % in December 2023, 5.3.% in January 2024, 5.6 in February 2024, 5.3 % in March 2024, and 5.2% in April 2024 and May 2024.¹⁹ If one takes the average of these figures over 12 months, one arrives at average CPI rate of 5.3% for the twelve months prior to the date of the order (24 June 2024).

[89] It is clear, therefore, that the rate of 7% applied by the magistrate was an arbitrary figure which bore no relation to the actual average CPI for the preceding twelve months. The figure of 7% far exceeded even the highest

¹⁹ <https://www.statssa.gov.za/CPIHistory>

figure of 5.9%%, recorded in October 2023. And one sees that the rate was not increasing as at June 2024 when the order was made. It had dropped to 5.3 in March 2024, and 5.2% in April and May 2024. There was therefore no justification for the magistrate to apply a rate of 7%, and she erred in doing so. In my view, the magistrate ought to have applied the average CPI rate for the twelve preceding months, which was 5.3%.

- [90] Accordingly, in the light of the foregoing, I consider the magistrate's assessment of the child's reasonable expenses for 2025 (excluding school fees) falls to be revised as follows:

*'Total excluding 2025 school fees = R 7 000.00 + R 371.00 (5.3% inflation)
= R 7 371.00'*

- [91] The figure of R 7 315.00 excludes school fees of R 6 500.00 per month.
- [92] The magistrate lumped the minor child's school fees and general expenses together in arriving at the amount payable by the appellant. In my view, it is preferable to keep general maintenance and educational expenses separate, as it is well-known that the rate of inflation for education expenses, the education price index or EPI, exceeds the CPI. The same goes for medical inflation. If education costs and medical expenses are included in a maintenance amount which only increases by CPI, the maintenance amount will be rendered inadequate as it does not keep up with education and medical inflation.

[93] For that reason, I consider it preferable to separate education costs and medical costs, and to order a parent to pay a *pro rata* share of education costs and medical costs, expressed as a percentage.

[94] In this instance, the minor child's school fees for 2025 were R 6 500.00. That amount will increase annually. I deal below with the percentage which the appellant should be ordered to pay towards the minor child's school fees.

The magistrate's assessment of the appellant's income

[95] The appellant's circumstances were that he had left his job in South Africa and relocated to the Netherlands to be with his wife, who was employed there, and that he was self-employed and in the process of '*working on something that might generate me more income in the future.*'

[96] The magistrate found that the appellant's average earnings for the ten-month period between August 2023 and March 2024 were R 22 000.00 per month.

[97] In this regard the magistrate clearly erred. It is plain from the appellant's uncontested evidence that he had earned R 34 800.00 in August 2023, R 40 000.00 in March 2024 and that he expected to earn R 60 000.00 in June 2024. The total of these amounts is R 134 800.00, which yields an average monthly income of R 13 480.00 over ten months.

[98] It is so that the appellant himself mistakenly testified that his average monthly earnings were R 22 000.00. He stated as follows:

'In terms of income I have just listed the cadence (sic) in which I have been paid. I received a payment for some work in August. I received another payment in March. I expect another payment by the end of the month hopefully, but probably in June of another 60 000 which gets me to my average monthly earnings of 22 000 ...'

[99] However, if one has regard to the amounts actually earned by the appellant, it is clear that the figure of R 22 000.00 per month was wrong. In my view,

it was incumbent on the magistrate to check the figures and calculate the appellant's average monthly income correctly.

[100] In addition, the magistrate erred in adding an amount of R 12 000.00 to the appellant's income on the basis that, when he sold his motor vehicle, which cost him R 12 000.00 per month, he would have an extra R 12 000.00. She assessed his income as R 34 000.00 per month.

[101] The magistrate's reasoning in this regard is erroneous. She confused an increase in income with a reduction in expenditure. The sale of the motor vehicle would result in a reduction of the appellant's expenses, when the instalment fell away, but it would not increase the appellant's income.

[102] This is important, because the calculation of the *pro rata* share payable by each of the parents for the minor child's costs is based on the respective incomes of the parents. Where the appellant's income was mistakenly inflated by R 12 000.00, the error would have a knock-on effect on the calculation of the appellant's proportionate share of the minor child's costs.

The magistrate's calculation of the appellant's pro rata share

[103] It appears from the record that the respondent earned a gross salary of R 68 651.50 per month and a nett salary of R 42 000.00 per month. As mentioned above, the magistrate wrongly assessed the appellant's income as R 34 000.00 per month, instead of R 13 480.00 per month. The appellant was self-employed and residing overseas. There is no evidence that any amounts were deducted from the income which he received in his bank account. His gross income and his net income were effectively the same.

[104] The magistrate then applied the so-called '*maintenance calculator*' to determine the pro rata share of the minor child's costs payable by each parent.

[105] The '*maintenance calculator*' is the maintenance formula referred to above, according to which the appellant's *pro rata* share of the minor child's costs would have been calculated as follows:

$$\text{Appellant's income} \div \text{Combined income of both parents} \times \text{Child's costs}$$

[106] For purposes of calculating the parent's respective shares of a child's maintenance costs, the magistrate used the parties' net incomes. This enables a comparison between the parties' respective disposable income.

[107] If one applies the maintenance formula to the parties' respective net incomes, the appellant's correct ratio is 25%, which yields an amount of R 1 842.75.

$$\begin{aligned} & \text{R } 13\,480.00 \div \text{R } 55\,480.00 (\text{R } 13\,480.00 + \text{R } 42\,000.00) = 0.25 \times \text{R } 7\,371.00 \\ & = \text{R } 1\,842.75. \end{aligned}$$

[108] Accordingly, the appellant's *pro rata* share of the minor child's monthly expenses, excluding school fees, amounts to R 1 842.75.

[109] If one takes into account the appellant's 25% share of the school fees of R 6 500.00 (R 1 625), the appellant's *pro rata* share of the minor child's monthly expenses amounts to R 3 467.75:

$$R\ 13\ 480.00 \div R\ 55\ 480.00 (R\ 13\ 480.00 + R\ 42\ 000.00) = 0.25 \times R\ 13\ 871.00 (R\ 7\ 371 + R\ 6\ 500) = R\ 3\ 467.75.$$

[110] But, as I have said, I consider it preferable to treat education costs separately from other maintenance expenses. Accordingly, the appellant should be ordered to pay cash maintenance of R 1 842.75 plus 25% of the minor child's school fees.

The order sought on appeal

[111] In his amended notice of appeal, the appellant asked that the order be replaced by the following order:

'1. The Appellant shall pay the following maintenance in respect of the minor child until the child is 18 years old or self-supporting, whichever event occurs last as follows:

1.1 Payment of the sum of R 3 801.00 per month on or before the last day of each [month];

1.2 Payment of 50% of the monthly medical aid premium or 50% or 50% of the medical costs on proof of relevant invoice and upon prior agreement between the parties regarding the medical aid plan and 50% of the child's stationery costs.'

[112] For the reasons given, I intend to treat the cash maintenance contribution separately from education costs and medical costs.

[113] The cash maintenance amount which the appellant should have been ordered to pay in June 2024 was R 1 842.75. That amount must be

increased by the average CPI for 2025, which is 3.2% (R 58.52), and I propose rounding the total amount up to R 2 000.00. The appellant will be ordered to pay 25% of the minor child's school fees, which will no doubt have increased from the amount of R 6 500.00 in 2025.

[114] It was common cause during the hearing that the minor child has now been placed on medical aid. At the enquiry, the appellant expressed the willingness to pay 50% of the medical aid premium, a stance which is borne out in the order requested on appeal. Since the appellant did not on appeal challenge that part of the order directing him to pay 50% of the medical costs and school uniforms and stationery, there is no reason to interfere therewith.

[115] In the circumstances, I merely propose revising the order in respect of medical expenses in order to eliminate the uncertainty in the magistrate's order, and to deal with excess medical expenses not covered by medical aid.

[116] I also propose revising the provision in the order with regard to the payment of stationery costs, so as to provide for payment in advance by the appellant of half of the cost of the school's annual prescribed stationery requirements, and for reimbursement within 7 days for all other stationery purchases, on production of proof of payment by the respondent.

[117] Ms Janssen argued that the appellant had incurred costs in bringing the appeal, and that he ought to be awarded costs. In my view it would not be fair to burden the respondent with the costs of the appeal in circumstances where she herself was not legally represented. The appellant, having

appeared in person in the maintenance court, exercised a choice to engage legal representation for the appeal. The respondent should not have to pay for his choice. All the more so since this would likely put financial pressure on the respondent, which could occasion hardship for the minor child.

Concluding remarks

[118] An unfortunate, but unavoidable, consequence of this appeal is that, if the appellant's earnings have increased in the interim, he will not be paying a fair portion of the minor child's expenses, as his *pro rata* share was calculated from a very low income base due to his particular circumstances at the time when the order was made. The appellant indicated at the time that he was working on projects and hoped to earn more income in the future. He also stated that he wished to pay a fair contribution towards the minor child's expenses, properly determined.

[119] One hopes, therefore, that, if the appellant's income has indeed increased between June 2024 and the present date – as one would expect – he will do the right thing and reach agreement with the respondent on a fair share of the minor child's current expenses, calculated on the basis of the parties' respective current incomes. The parties are sophisticated, and, guided by the principles set out in this judgment, they are more than capable of working out their respective shares of the minor child's expenses.

Order

[120] I would therefore make an order in the following terms:

- i. The appeal is upheld.
- ii. The order of the court *a quo* is set aside and replaced with an order in the following terms:

‘1. T[...] M[...] S[...] (**‘Mr S[...]’**) is ordered to maintain the minor child S[...] N[...], born on 25/01/2018 (**‘S[...]’**), until she reaches the age of 18 or becomes self-supporting, whichever last occurs, by:

1.1 making payment of the amount of R 2 000.00 (two thousand rand) per month to S[...]’s mother, I[...] N[...] (**‘Ms N[...]’**), on the first day of each and every month with effect from 1 March 2026;

1.2 increasing the amount referred to in paragraph 1.1 annually on 31 December every year, with effect from 31 December 2026 and thereafter on 31 December every year, by the percentage change in the Headline inflation rate (also known as the Headline Consumer Price Index (**‘CPI’**)), as notified by Statistics South Africa (or its equivalent) in respect of the Republic of South Africa for the preceding twelve months (which percentage shall, for purposes of convenience, be deemed to be equal to the latest index available from Statistics South Africa on 31 December each year);

- 1.3 reimbursing Ms N[...] on the first day of each and every month, with effect from 1 March 2026, for 50% of the contribution which she has to pay to keep S[...] covered on a medical aid scheme, provided that Ms N[...] shall provide proof to Mr S[...], on request, of the amount of S[...]’s medical aid premium;
- 1.4 reimbursing Ms N[...] for 50% of all medical expenses incurred for S[...] which are not covered by medical aid, within 7 calendar days her having provided Mr S[...] with copies of the relevant invoices and proof of payment, subject to the proviso that Mr S[...] shall not be liable for any one excess amount which exceeds R 2 000.00, without his prior consent to the incurring of the particular expense, which consent shall not unreasonably be withheld;
- 1.5 making payment directly to S[...]’s school of 25% of the cost of S[...]’s school fees, within 7 calendar days of receipt of an invoice from the school, provided that, in the event that Ms N[...] has already paid 100% of S[...]’s school fees to the school, Mr S[...] shall be obliged to reimburse Ms N[...] for 25% of the school fees, within 7 calendar days of her having provided Mr S[...] with a copy of the school invoice and proof of payment;

- 1.6 reimbursing Ms N[...] for 50% of the cost of S[...]’s school uniforms, within 7 calendar days of her having provided Mr S[...] with copies of the relevant invoices and proof of payment;
- 1.7 making payment in advance to Ms N[...] of 50% of the cost of books, stationery and equipment prescribed by the school for S[...], within 7 calendar days of her having furnished Mr S[...] with proof of the school’s requirement and the cost thereof;
- 1.8 reimbursing Ms N[...] for 50% of any *ad hoc* stationery purchases or other expenses necessarily incurred during the year in terms of school requirements, over and above the amounts referred to in 1.7 above.’

D M DAVIS
ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered

M PANGARKER

JUDGE OF THE HIGH COURT

Appearances:

For the appellant: Adv J Janssen
 Instructed by Ms S Mayedwa; Fairbridges Wertheim Becker

Respondent in person