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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: A170/2024

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED.

(4) Date: 12 February 2026

Signature:

In the matter between:

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

Appellant

and

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

Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

- [1] This is an appeal against the judgment and final decree of divorce delivered by Regional Magistrate S.F. Ntlati on 26 March 2024.
- [2] The appeal concerns one issue only: whether the magistrate erred in dismissing the appellant's counterclaim for partial forfeiture of patrimonial benefits in terms of section 9(1) of the Divorce Act 70 of 1979.
- [3] The magistrate granted:
- 3.1 a decree of divorce,
 - 3.2 division of the joint estate, and
 - 3.3 an order directing that the appellant receive 50% of the respondent's pension interest.
- [4] The appellant contends that the respondent should forfeit benefits accumulated after the parties separated in approximately 2006, during which period he alleges she made no contribution to the joint estate.

B. BACKGROUND FACTS

- [5] The parties concluded a customary marriage in 1988, registered in 1995, in community of property.
- [6] The relationship deteriorated around 2005–2006, the appellant alleging desertion and lack of contribution; the respondent alleging infidelity involving a fellow-congregant, one Ms Eva Chauke.
- [7] The parties have lived largely separate lives since 2006, though both continued to utilise the Limpopo rural home periodically.
- [8] The appellant accumulated several assets—vehicles and an immovable property at Amandasig, Pretoria — after the separation.

- [9] The respondent maintained that the marriage broke down due to the appellant's extra-marital affair and denied receiving financial support or participating in financial decisions.

C. GROUNDS OF APPEAL

The appellant's key grounds are:

- [10] The magistrate erred by accepting the respondent's version despite her failure to put it to the appellant during cross-examination.
- [11] The magistrate failed to give appropriate weight to the appellant's uncontested evidence.
- [12] The magistrate erred in finding that the respondent would not be unduly benefitted.
- [13] The magistrate should have found that 16 years of separation constituted grounds for partial forfeiture.

D. THE APPLICABLE LEGAL PRINCIPLES

- [14] Section 9(1) of the Divorce Act empowers a court to order forfeiture only where:
- a) the duration of the marriage,
 - b) the circumstances of the breakdown, and
 - c) any substantial misconduct,
- justify the conclusion that one party would otherwise be unduly benefitted.
- [15] The party seeking forfeiture bears the **onus** (*Engelbrecht v Engelbrecht* 1989 (1) SA 597; *Wijker v Wijker* 1993 (4) SA 720 (A)).
- [16] The statutory criteria are exhaustive; fairness or contributions alone are insufficient grounds for forfeiture.

[17] A long marriage—even where parties later live apart—counts from date of marriage until divorce proceedings (*Matyila v Matyila* 1987 (3) SA 230 (W); *B.R.B.M v R.K.B.M* [2023] ZAGPPHC 403; 19279/19 (5 June 2023)).

[18] An appeal court may not lightly interfere with factual findings of the trial court unless material misdirection is shown (*R v Dhlumayo* 1948 (2) SA 677 (A); *Vodacom (Pty) Ltd v Makate and Another* [2025] ZACC 13).

E. ANALYSIS

1. Duration of the Marriage

[19] The magistrate correctly held that the marriage spanned 1988–2022, approximately 34 years.

[20] The appellant’s contention that the effective duration ended in 2006 is inconsistent with binding authority: physical separation does not truncate the legal duration of the marriage.

[21] This factor weighs significantly against forfeiture, as forfeiture is rarely granted in long-duration marriages.

2. Circumstances of Breakdown

[22] The magistrate accepted the respondent’s version that the breakdown was caused by the appellant’s infidelity, supported by:

- 1) repeated interventions by church elders,
- 2) the appellant’s conduct of travelling with and assisting Ms Chauke,
- 3) evidence that he distanced himself from the respondent and continued conduct she perceived as disrespectful.

[23] Although the respondent’s version was not properly put to the appellant in cross-examination, the magistrate carefully acknowledged this, but held—

correctly—that this did not render her entire testimony unreliable, especially where it is corroborated by probabilities and pleadings.

[24] The magistrate’s factual findings disclose no misdirection warranting interference.

3. Alleged Non-Contribution by the Respondent

[25] The magistrate correctly held that contributions (or lack thereof) cannot alone justify forfeiture.

[26] The respondent was employed, contributed domestically, and periodically assisted with laundry and household responsibilities despite marital strain.

4. Undue Benefit

[27] The appellant failed to quantify any specific undue benefit, nor did he demonstrate that assets acquired post-2006 should be excluded from the joint estate.

[28] The magistrate correctly concluded that the appellant:

- 1) failed to establish the respondent’s financial means to contribute,
- 2) failed to show undue enrichment,
- 3) sought effectively to use forfeiture to “balance contributions,” which the law prohibits.

5. The Pension Issue

[29] The appellant had already enforced part of the divorce order by claiming 50% of the respondent’s pension interest.

[30] This conduct is consistent with acceptance of the magistrate’s order and undermines his position on appeal.

F WHETHER THE TRIAL WAS UNFAIR

[31] Although the cross-examination of the appellant was inadequate, this defect did not deprive him of a fair trial:

- 1) his full version was before the court,
- 2) he closed his case without objection,
- 3) the respondent's version was contained in her pleadings and evidence-in-chief.

[32] No material misdirection or procedural irregularity resulted that would justify remittal or substitution.

G. CONCLUSION

[33] The magistrate applied the correct legal principles, made reasonable credibility findings, and correctly concluded that the appellant failed to discharge the onus of proving undue benefit.

[34] There are no grounds upon which an appeal court may interfere.

ORDER

[35] The following order is made:

1. The appeal is dismissed.
2. The order of the Regional Magistrate dated 26 March 2024 is confirmed.
3. The appellant shall pay the costs of the appeal.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

I agree

SK. HASSIM
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 29/04/2025

Date of Judgment: 12 February 2026

On behalf of the Appellant: Adv. Mukwevho

Duly instructed by: M.E. Makgopa Attorneys, Pretoria

On behalf of the Respondent: Mr. V. Mabe [right of appearance s4(2) of Act 62/1995]

Duly instructed by: V. Mabe Attorneys, Pretoria

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 12 February 2026.