

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A56/2025

Court *a quo* case no: 28/2024

In the matter between:

A[...] M[...] B[...]

APPELLANT

And

J[...] F[...] D[...] B[...]

RESPONDENT

Neutral citation: *B[...] v B[...]* (A56/2025) [2026] ZAFSHC 253 (22 April 2025)

Coram: REINDERS et DANISO JJ

Heard: 4 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date for hand-down is deemed to be 22 April 2026.

Summary: Divorce – deed of settlement - spousal maintenance – maintenance court varying order of the High Court.

ORDER

- 1 The appeal succeeds with costs on Scale B.
- 2 The order of the maintenance court Bethlehem dated 9 December 2024 is set aside and replaced with the following:
'1. No order is made.'

JUDGMENT

Reinders J (with Daniso J concurring)

[1] This is an appeal against orders made by the maintenance court of Bethlehem on 13 December 2024 (the order/maintenance order). It is common cause that the bonds of marriage between the parties were dissolved on 12 November 2020 after a marriage of 32 years when a decree of divorce was issued by this Court.

[2] The appellant, Mrs B[...], had instituted the divorce action against Mr B[...] during September 2020. Included in the court order of 12 November 2020 was a deed of settlement signed between the parties on 5 September 2020. The parties agreed under clause 2 thereof that Mr B[...] would pay spousal maintenance (maintenance) to Mrs B[...], subject to termination thereof only in the event that Mrs B[...] ‘. . . is in a permanent cohabitation relationship with another man or re-marries . . .’ (the so-called *dum casta* condition), and further that such claim for maintenance shall not cease with the death of the defendant, but will continue against his deceased estate.¹

[3] The order of the maintenance court, which forms the subject matter of this appeal, is the outcome of an opposed application brought by Mr B[...] (as applicant) for the discharge or substitution of the existing maintenance order, brought in terms of s 6(1)(b) of the Maintenance Act 99 of 1998. Both parties enjoyed legal representation in the maintenance court.

[4] As mentioned, in terms of clause 2.1.1 of the Settlement Agreement, Mr B[...]

¹ Under the heading: SPOUSAL MAINTENANCE, clause 2.1.1 reads:

‘The defendant shall pay spousal maintenance to the Plaintiff in the amount of R 20 000,00 (twenty thousand rand) per month on or before the 1st day of each consecutive month until she is in a permanent cohabitation relationship with another man or re-marries, upon which the spousal maintenance shall terminate.’

With the remainder of the sub-clauses reading:

2.1.2 The maintenance shall commence on the 1st day of the month following the granting of the Decree of Divorce.

2.1.3 The maintenance shall annually increase according to the inflation rate.

2.1.4 The Plaintiff’s claim for maintenance shall not cease with the death of the Defendant, but will continue against his deceased estate.’ (Emphases added.)

agreed to pay maintenance to Mrs B[...] on a monthly basis as contracted between the parties. The maintenance court varied the maintenance order of the High Court by determining that Mr B[...] should pay to Mrs B[...] the amount of R350 000 in full discharge of his maintenance obligation towards her.²

[5] The appellant, represented by Mr Rautenbach, assailed the order of the maintenance court on several grounds in the Notice of Appeal. These grounds were captured and summarized by the appellant in her heads of argument under three headings, namely, that the trial court had erred in varying the terms of the deed of settlement as agreed upon between the parties; in allowing inadmissible hearsay evidence; and in its finding that the appellant did not prove a need for maintenance. Accordingly, Mrs B[...] moved that the appeal be upheld and the order of the maintenance court be set aside. However, according to the respondent, there is no merit in any of the grounds advanced, and this Court ought to dismiss the appeal with costs.

[6] As a general principle, a maintenance order made under the Divorce Act 70 of 1979 may be rescinded, varied or suspended at any time by a court having jurisdiction if the court finds that there is sufficient reason to do so;³ section 8 of the Divorce Act requires that sufficient cause be shown for a such variation.⁴ The Maintenance Act provides in s 6 for the lodging of a complaint for the substitution or discharge of an existing maintenance order on the basis that good cause exists for such substitution or discharge. Accordingly, the test to be applied for a substitution or discharge of a maintenance order is whether good cause exists for such relief. In terms of s 16(1)(b) and (c), the maintenance court may, in the case where a maintenance order is in force: (i) make a maintenance order in substitution of such maintenance order; (ii) discharge such maintenance order; or (iii) make no order. Section 16 confers a discretion on the court to make the orders as mandated in the Maintenance Act.

² The order reads:

1. The existing Maintenance Order is discharged and replaced with an order that the Applicant make(*sic*) one lump sum payment to the respondent in the amount of R 350 000-00 (THREE HUNDRED AND FIFTY THOUSAND RAND) within three months of this Court's Order, the monthly maintenance continued to be paid until the said lump sum is paid.
2. The court makes no order regarding the life insurance policy and leaves this within the Applicants (*sic*) discretion, should he wish to continue his goodwill towards the Respondent.
3. No costs."

³ *Reid v Reid* 1992 (1) SA 443 (E) (*Reid*).

⁴ *Roels v Roels* [2003] 2 All SA 441 (C)

[7] In *SMM v MSM*⁵ it was recognised by the court that the onus of showing good cause, as required by section 6(1)(b) of the Maintenance Act, rests upon the party who seeks the variation who must establish a real or substantial change in the circumstances, justifying the variation or discharge of the maintenance order. The court held further:

‘It should also be accepted that a variation order should not be granted as a matter of course, and that the discretion conferred upon the court to vary its order should not be too readily exercised.

. . . Thus it was held in the case of *Davis v Davis* 1993 (1) SA 293 (SE) that no invariable rule could be formulated in respect of the test to be applied when application was made for the variation of a maintenance order and that the Court always had to have regard to the circumstances of each case, but that the Courts were generally reluctant to vary orders for maintenance once given where difficulties to meet the obligations stemmed from a voluntary undertaking of extra commitments.’⁶

[8] In *Georghiades v Janse van Rensburg*⁷ the court equated ‘sufficient cause’ in terms of the Divorce Act, with the term ‘good cause’ in holding that:

‘Generally speaking, our courts accept that circumstances must have changed substantially and that it would be unfair to allow the order to stand in its original form before rescission, variation or suspension of an existing maintenance order will be granted. In *Havenga v Havenga*, however, Harms J pointed out that, although, in general, there will not be sufficient reason for the variation or rescission of a maintenance order in the absence of a real change in circumstances, changed circumstances are not a statutory prerequisite and there may sometimes be sufficient reason although circumstances have not changed.’⁸

[9] It is common cause that the parties are both entering their later years. Mr Pienaar submitted that ‘the essence of Mr B[...]’s testimony entailed that, due to adverse changes in his financial position, and because Mrs B[...] had no need for further monthly maintenance, good cause existed for the maintenance order to be set aside.’

[10] The magistrate, in her written judgment, dealt with the parties’ monthly income and expenses in the following few sentences: ‘. . . Mrs B[...]’s total monthly expenditure

⁵ *SMM v MSM* [2018] ZAGPPHC 607 (8 May 2018).

⁶ *Ibid* para 19.

⁷ *Georghiades v Janse van Rensburg* 2007 (3) SA 18 (C) para 15.

⁸ *Ibid* para 15. See also *Hancock v Hancock* 1957 (2) SA 500 (C) at 502; *Reid* fn 3 at 446-448.

is R30 912. She indicated that from the spousal maintenance which she gets, [she] makes 2 payments to charity organisations, although these are only about R2000 . . . Her medical expenses are included in the total monthly expenses of R30 912.’ It is not indicated by the magistrate what Mrs B[...]’s monthly income amounts to. In respect of Mr B[...], the judgment is completely silent on his income and expenses. It is mentioned that Mr B[...] is a farmer who ‘alleges that his business has declined due to a lack of focus and motivation, since the untimely divorce affected him psychologically’, with no further reference to his testimony on any income.

[11] In her reasoning for making the orders as indicated herein above, the magistrate held under para 6 of the judgment:

‘When Mrs B[...] received her share of the divided estate, it was sufficient for her to make a clean start so that she could live independently.

. . .

Even if the court were to disregard the documents/evidence about the failing business, it is compelling that the Applicant is being held at ransom for maintaining his ex-wife who is not in dire need . . . If the court applies the fairness principle, it would be a huge injustice towards the Applicant to continue a life-long obligation to the Respondent, especially where she has excess wealth and savings. Mr B[...] is in a much more impoverished state than Mrs B[...]. Despite the fact that the Applicant tenders R500 000-00 in full and final settlement, the court is considerate of the fact that he has to sell assets to obtain money. Spousal maintenance is not an entitlement. The means test apply(sic) and a party’s need for it is also applicable.’

The magistrate concluded: ‘In fairness, this court must apply the clean break principle which will enable the Applicant to move on with his life, and the Respondent to be more responsible with her finances in future.’

[12] Relying on *LDB v JSB*,⁹ the appellant contended that the trial court erred in not considering that the circumstances under which the court could amend the maintenance regime, had already been determined in the deed of settlement and that the parties agreed on what good cause for discharge or the amendment of the order would entail. The appellant submitted that the deed of settlement determined that maintenance should be paid subject to the normal *dum casta* condition, and that the respondent shall not be relieved from the payment of maintenance by his death, his estate to be charged

⁹ *LDB v JSB* [2023] ZAGPJHC 786 (13 July 2023) (*LDB*).

with complying with the payment of maintenance to the appellant. According to the appellant, the court a quo failed to refer to any of these conditions or the reasons why the agreement entered into between the parties should be varied on other grounds than those contained in the settlement.

[13] *LDB v JSB* concerned an appeal against an order of the maintenance court discharging the maintenance obligations of JSB which had been made in terms of a decree of divorce incorporating a deed of settlement. Wilson J (Kuny J concurring) held:

‘[6] LDB now appeals to us against the Magistrate’s order. An examination of the record reveals that none of the Magistrate’s factual findings has any reliable foundation in it. But the biggest difficulty with the Magistrate’s reasons (aside from their unexplained and, on the face of it, inexcusable lateness) is that they do not engage at all with the provisions of the settlement agreement that ended the parties’ marriage. The Magistrate, quite wrongly, approached the matter on the basis that the parties’ relative means could be considered afresh in a vacuum, and that there was no burden on JSB to justify the nature and extent of any departure from the agreement. In view of the provisions of the settlement agreement I set out above, which explicitly record the parties’ consensus that the maintenance obligations JSB assumed were “fair and necessary” and that they could only be departed from in defined circumstances, the Magistrate’s decision cannot stand.

...

[18] In order to vary the maintenance payable to LDB by substituting the settlement agreement for a new maintenance regime, the Magistrate had to be satisfied that there was “good cause” to do so in terms of section 6 (1) (b) of the Act. While the terms of the settlement agreement were obviously not binding on the Magistrate, any evaluation of whether there was “good cause” in this sense ought to have started with the terms of the agreement, because that is where the parties had decided for themselves what good cause entailed. If there was good cause to depart from the agreement’s terms, by completely extinguishing the cash maintenance obligation provided for in clause 3.1, that ought to have been identified and recorded in the Magistrate’s reasons.’ (emphases added)

[14] Although the facts of the matter might be distinguishable from the facts in *casu* (in the sense that the settlement agreement recorded that the maintenance was ‘fair and necessary’), I am of the view that the reasoning and conclusions expressed by the court in *LDB v JSB* find equal application in this appeal. There can be no doubt that the trial

court, in discharging the existing maintenance order and replacing it with a once-off payment, effectively ordered a new maintenance regime.

[15] Mr Pienaar submitted that it is evident from the content of the judgment that the court *a quo* duly considered the provisions of the deed of settlement, both in respect of the division of the assets and the effect of the maintenance order, in finding that if the court applies the fairness principle, it would be a 'huge injustice to Mr B[...]'. I am unable to agree with Mr Pienaar. The magistrate did not refer to the clause and content of the deed of settlement, including the *dum casta* condition and the fact that the parties had agreed that the maintenance obligation of Mr B[...] would not even have ceased after the passing of Mrs B[...]. Moreover, as alluded to in para 10 herein above, the court *a quo* did not deal with Mr B[...]’s income and expenses in her judgment, which is in my view essential for the determination of good cause. The record reveals that Mr B[...] received from his business two streams of income and he furthermore acknowledged that Mrs B[...] had a continued need for maintenance.

[16] It was submitted by the appellant that the respondent’s wish to achieve a clean break should have been achieved by way of a rescission application to the court which made the order of spousal maintenance. In *Rubenstein v Rubenstein*¹⁰ the full bench considered an appeal from a maintenance court’s decision that it had no jurisdiction to vary an order made in terms of a deed of settlement. The court held that whether the order of the high court was made in terms of s 7(1) [where the parties concluded a settlement agreement in respect of maintenance] or 7(2) [where the court, in the absence of any such agreement, considers it just to order the payment of maintenance, regard being had to the factors mentioned under this section] of the Divorce Act matters not and had no influence on the jurisdiction conferred on magistrate’s courts by the Maintenance Act. The deed of settlement included a *dum casta* condition. It seems therefore that, in terms of s 6(1) of the Maintenance Act, a maintenance order, whether it be in terms of a settlement agreement or not, may be varied or discharged if a complainant can demonstrate good cause to set the maintenance order aside. The essential question remains whether good cause has been shown for such relief to be granted.

[17] It is trite that a court of appeal does not readily interfere with a maintenance

¹⁰ *Rubenstein v Rubenstein* 1992 (2) SA 709 (T).

order awarded in a trial court. It will only do so if there is a misdirection or irregularity.¹¹

[18] The learned magistrate in her judgment and under the heading of 'Clean Break Principle' quoted case law, both matters which were dealt with by the High Court in determining maintenance. The magistrate then concluded: 'In fairness, this court must apply the clean break principle which will enable the applicant to move on with his life, and the respondent to be more responsible with her finances in future.' In my view, the magistrate fundamentally erred in assuming that she is obliged to apply the clean break principle. Nowhere in the Maintenance Act is any such obligation conferred on the magistrate. The fault line in the magistrate's judgment, in my view, had its origin in the magistrate's reasoning that '... When Mrs B[...] received her share of the divided estate, it was sufficient for her to make a clean start so that she could live independently.' The magistrate ostensibly decided that what Mrs B[...] had received in the division of the estate as agreed upon by the parties, ought to have dispensed with her need for maintenance. Apart therefrom, as mentioned, in the absence of the trial court having considered the terms of the deed of settlement and Mr B[...]’s acknowledgement of Mrs B[...]’s continued need for maintenance, coupled with non-consideration of his income, it is difficult to fathom how the trial court could have been satisfied that good cause had been shown for a discharge and variation of the existing maintenance order.

[19] In my view, therefore, the magistrate should not have made the orders which she did. In any event, Mr B[...] filled out the prescribed application form document at the Maintenance Officer of Bethlehem for the substitution or discharge of the existing maintenance order. Attached thereto was an affidavit attested to by Mr B[...] wherein he sought an order to discharge the existing maintenance order based thereon that the divorce settlement was 'a calamity of errors', in essence blaming his attorney for not having informed him of the clean break principle. I am reminded of *Reid*¹² where an ex-spouse applied to the maintenance court, two years after the consent paper had been made an order of court in a divorce, for reduction of maintenance based on what he described as an 'unjust' settlement. The court held that to allow a party to attack the justness of a divorce order could open the door to the abuse of the process of court.

[20] I mention in passing the following: Mr B[...]’s alternative to his request for an

¹¹ *Mentz v Simpson* 1990 (4) SA 455 (A) at 456E-J. See also: *Kirkland v Kirkland* 2006 (6) SA 144 (C).

¹² Footnote 3.

order discharging the existing maintenance order on the basis that he was to pay an amount to the appellant of R500 000, was met with the magistrate's order of an amount of R350 000. In this regard, the magistrate likewise erred by unilaterally deciding to decrease the amount. When the appeal was heard before us Mr Pienaar conveyed his instructions that Mr B[...] tenders an additional amount of R150 000 (the difference between the R500 000 prayed for and the R350 000 ordered by the maintenance court), to Mrs B[...]. In view of my finding that the magistrate could not have granted the orders as she did, the offer regrettably would in any event not have cured the court *a quo's* misstep in this regard.

[21] It follows for the reasons set out above that the appeal ought to be upheld and the orders of the magistrate set aside. Counsel for the appellant requested us to make an order that the appeal succeed with costs. However, no suggestion was made regarding an order replacing the order of the magistrate. In terms of s 25 of the Maintenance Act, we have the discretion to make such order as we deem fit. In view of the finding that the magistrate ought not have interfered in the maintenance order that was *in esse*, we are of the view that the maintenance regime should remain in place, and the magistrate ought to have made no order.

[22] In *LDB v JSB*, Wilson J in concluding that the complaint by JSB should have been dismissed in the maintenance court, held:

'While section 16 of the Act does not explicitly allow for the dismissal of a maintenance complaint, in the context of this case, that would have been the effect of the exercise of the power to "make no order" in section 16(1)(c) of the Act.'¹³ I align myself with the sentiments so expressed. In terms of the Maintenance Act the magistrate in my view should have made no order, which will be reflected in this court's order that follows below. Quite correctly in my view, the magistrate did not make any cost order in the maintenance application,¹⁴ and same will be reflected in the order below. In respect of costs of the appeal, I see no reason why the costs should not follow the event. Both counsel requested costs to be on Scale B in the event of success.

[23] I therefore would make the following order:

¹³ *LDB* fn 10 para 24.

¹⁴ Reflected in the order as '3. No costs.'

1 The appeal succeeds with costs on Scale B.

2 The order of the maintenance court Bethlehem dated 9 December 2024 is set aside and replaced with the following:

‘1. No order is made.’

C REINDERS
JUDGE OF THE HIGH COURT

I concur.

NS DANISO
JUDGE OF THE HIGH COURT

Appearances

For the Appellant:

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