REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO
(3) REVISED. **YES**

PILLAY J

SIGNATURE_____ DATE **22 May 2026**

CASE №: **HCA 29/2025**
Court *a quo* Case №: **LP/MAH/RC235/2021**

In the matter between:

M[...] P[...] C[...] APPELLANT

V

P[...] L[...] C[...] (NEE T[...]) RESPONDENT

Delivered : 22 May 2026
This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be 22 May 2026 at 10:00 am.

Date heard : 13 February 2026

Coram : Muller J *et* Pillay J

JUDGMENT

PILLAY J:

Introduction:

[1] The Appellant before this Court sought to appeal the judgment and order of the Regional Court Lebowakgomo dated 30 April 2025, wherein the parties who were married to each other in community of property, were granted a decree of divorce. The appellant who was aggrieved by the two specific orders, namely orders 6 and 12, as contained in the final decree of divorce, sought this Court's adjudication on whether the Court *a quo* had erred in respect of same.

Brief Background:

[2] The parties were married to each other in community of property. The appellant filed for divorce which was defended by the respondent. The parties agreed that the marriage had broken down irretrievably and both sought a decree of divorce with equal division of the joint estate. Both parties specified the way they sought part of the estate to be divided. The Court a *quo*, after listening to the evidence, granted the decree of divorce inclusive of the following two orders, which were the basis for this appeal.

[2.1] "6. The shares in M[...] C[...] Incorporated are to be valued and the net value of 50% of such shares are to be paid to the defendant within a reasonable period."

[2.2] "12. The plaintiff shall pay maintenance to the defendant in the amount of R2000,00 per month from 1st June 2025 until her death or remarriage. The maintenance in this regard shall immediately be referred to the Maintenance Court, by any one of the parties for variation should the need arise."

The Grounds of Appeal:

[3] The appellant indicated that the Regional Magistrate erred and misdirected itself as follows:

[3.1] Ad decree of divorce order 6 and Judgment paragraph 18(iv). The respondent in her counterclaim alleged that, "the shares in M[...] C[...] Incorporated shall be evaluated and the monetary value of the said shares be paid to the defendant." The above-mentioned allegation did not state that the appellant owns any shares in the company or the assets of M[...] C[...] Incorporated, therefore the shares or assets in that company formed part of the joint estate.

[3.2] The Honourable Regional Magistrate failed to apply the correct legal principles and overlooked the provisions of Rule 20(1)(a) of the Magistrates Courts Rule which provides that, "*a defendant who counterclaims shall, together with such defendant's plea, deliver a claim in reconvention setting out the material facts thereof in accordance with Rule 6 and 15 unless the plaintiff agrees, or if the plaintiff refuses, the Court allows it to be delivered at a later stage."*

[3.3] The respondent during the trial in the Court a *quo* did not adduce any evidence to prove her claim that, *"the shares in M[...] C[...] Incorporated shall be evaluated and the monetary value of the said shares be paid to the defendant."*

[3.4] The respondent failed in her heads of argument, to make any submissions with the relevant legal authority and facts regarding her claim as above-mentioned.

[3.5] The Honourable Regional Magistrate in her judgment and reasons thereof, did not pronounce herself or provide any legally justifiable reasons arising from the evidence led during the trial, for arriving at the decision that-*"The shares in M[...] C[...] Incorporated are to be valued and the net value of 50% of such shares are to be paid to the defendant within a reasonable period."* The Honourable Regional Magistrate erred and misdirected herself in this regard, with respect.

[3.6] The Learned Regional Magistrate failed to assess and evaluate the evidence properly adduced during the trial in that the respondent did not adduce any evidence with regard to her claim of 50% shares in M[...] C[...] Incorporated.

[3.7] There was no evidence led before the Court a *quo* with regard to the proven quantifiable value of the shares in M[...] C[...] Incorporated.

[3.8] The Learned Regional Magistrate erred in finding, "paragraph 6 of the judgment", that, "the plaintiff (appellant) was indirectly and in fact,

praying for a forfeiture in his favour in respect of the shares in M[...] C[...] Incorporated. He was obliged to satisfy the Court on a balance of probabilities that the defendant would be unduly benefited should the order not be granted."

[3.9] During the trial the Honourable Regional Magistrate reminded the parties that neither of them prayed for forfeiture of patrimonial benefits, however in her Judgment, she made a finding that the appellant had the duty to prove forfeiture of patrimonial benefits. It was submitted that it was fundamentally unfair and inherently unreliable for a Court to make findings against a party based on a theory of legal liability, not advanced by the opposing party. It is fundamental to the litigation process that the legal matters be decided within the boundaries of the pleadings. The parties to legal proceedings are entitled to have a resolution of their differences on the basis of the issues joined in the pleadings.

[3.10] The Honourable Regional Magistrate copied and pasted the respondent's heads of arguments which were wrong as the issue of forfeiture of patrimonial benefits, did not form part of the pleadings and no evidence was led to that effect.

[3.11] The Learned Regional Magistrate erred and misdirected herself in finding that the:

(a) “defendant confirmed in her evidence in chief the allegations contained in her counterclaim paragraph10(b)”.

(b) “That she conceded that she used to bake cakes for an income but stated that R3000,00 is not enough to survive on.” paragraph10(ix).

[3.12] The Learned Regional Magistrate failed to assess and evaluate the evidence properly in that the respondent alleged during her evidence in chief that she was not employed and during cross examination she admitted that the appellant had opened the employment opportunities for her and after her retrenchment, she opened a baking business from which she would sell cakes for R650,00 per customer, per month. Further, that she had opened a tuck shop at the nearby School which provided her income.

[3.13] Ad decree of divorce order 12 as per paragraph 18 (i)

> *“The plaintiff shall pay maintenance to the defendant in the amount of R2000,00 per month from 1June 2025 until her death or remarriage. The maintenance in this regard shall immediately be referred to the Maintenance Court by any of the parties for variation should the need arise.”*

[3.14] It was trite that the person claiming maintenance must establish a need to be supported if no such need was established it would not be just as required by law for a maintenance order to be issued. It was further trite that there was no automatic right to spousal maintenance and the respondent was obliged to prove her claim for maintenance

with full disclosure of her financial situation with more precision and detail to satisfy the Court of her right to maintenance.

[3.15] The Law stipulated clearly the financial position in that earning capacity and expenses as well as the affordability of both parties should be laid bare before the Court, in order for the Court to arrive at a just decision for maintenance.

[3.16] The Honourable Regional Magistrate failed and overlooked the fact that the respondent did not lead any evidence with regard to the maintenance claim and did not produce any evidence on the amount of R10 000,00 nor any other amount. The respondent did not lead any evidence as to how she arrived at the sum of R10 000,00 or any other amount thereof. This begged the question as to how the Honourable Regional Magistrate arrived at the lifelong maintenance amount of R2000,00 per month with effect from 1 June 2025.

[3.17] The Learned Regional Magistrate erred and misdirected herself in finding that the respondent was entitled to lifelong maintenance, whereas the respondent admitted that she was still of employable age and was self-employed by operating a tuck shop at a nearby School and had a baking business.

[3.18] The Learned Regional Magistrate failed to conduct an enquiry into the income the respondent received at the tuckshop per month and her baking business. There was only an empty statement made that the

appellant was an attorney while the respondent was unemployed. However, as to the income and expenditure of both parties, which was not addressed by both parties, and on that basis the Court a *quo* misdirected herself.

[3.19] The Learned Regional Magistrate failed to apply the correct legal principles that in order to arrive at a just decision of maintenance, a financial enquiry had to be conducted, which was a misdirection and on those basis the appeal had a reasonable prospect of success.

[4] Based on the aforesaid grounds the appellant sought that the appeal succeeds. Both parties filed heads of argument, the respondent sought condonation for the late filing of same, which was granted. At the hearing of the appeal, the parties were invited to consult with a view of settling the matter. This did not materialize and the parties elected that the Court of Appeal decide the appeal on the papers before the Appeal Court.

Common Cause Facts:

[5] The following were common cause facts in respect of this matter.

[5.1] The parties entered into a civil marriage, in community of property at Lebowakgomo on 31 March 2000, and the marriage still subsisted at the time of the divorce.

[5.2] Two children were born out of the marital relationship between the parties, one adult dependent child and a minor child.

[5.3] The marriage relationship between the parties had irretrievably broken down in that they had not lived together as husband and wife, for a period in excess of twelve months. There were no prospects for the restoration of a normal marriage relationship between them. Both parties sought the dissolution of the marital estate.

[5.4] That the respondent would have primary care and residence of the children and the appellant would have reasonable contact with the children. The appellant was liable for the maintenance of the children.

Issues for determination:

[6] The crisp issues for determination were the following:

[6.1] Whether the Court a *quo* erred in finding that the appellant sought forfeiture of the appellant's share in M[...] C[...] Incorporated.

[6.2] Whether the respondent had proved her claim in respect to spousal maintenance.

[6.3] Whether the appeal should succeed and the prayers sought be granted with costs.

The Legal Principles and Analysis:

[7] In considering the above, this Court is mindful that a court of appeal is not at liberty to depart from the trial Court's findings of fact and credibility, unless

they are vitiated by irregularity, or unless an examination of the record reveals that those findings are patently wrong.[1]

[8] In ***S v Monyane and others***[2] Ponnan JA stated as follows: -

> *"This court's powers to interfere on appeal with the findings of fact of a trial court are limited. ... In the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong (S v Hadebe and Others 1997 (2) SACR 641 (SCA) at 645e – f)."*

This Court is confined to the record of proceedings and must within that perimeter determine the issue of whether the trial Court has either misdirected itself as to the facts of the case or the application of the law to the facts. The appellant bears the onus of satisfying the Appeal Court, that there was such misdirection.

[9] In ***Ferris and another v FirstRand Bank Ltd 2014 (3) SA 39 (CC)*** *at para 28,* the Court noted the following concerning interference with the discretionary power of the Court of first instance,

> *'28 An appeal court may interfere with the exercise of a discretionary power by a lower court only if that power had not been properly exercised. This would be so if the court has exercised the discretionary power capriciously, was moved by a wrong principle of law or an incorrect appreciation of the facts, had not brought its unbiased judgment to bear on the issue, or had not acted for substantial reasons.'*

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[1] *See S v Francis 1991 (1) SACR 198 (A) at 198 J – 199A and S v Hadebe and Others 1997 (2) SACR 641 (SCA) at 645 E-F*

[2] *See 2008 (1) SACR 543 (SCA) at paragraph [15]*

[10] It must be borne in mind that an Appeal Court needs to first consider whether this threshold has been met for such interference. It is an established principle, that the Court a *quo* being involved in the hearing of the matter, was best equipped to determine issues of credibility, reliability, and corroboration. From the record of proceedings, both parties testified and based on the pleadings, evidence tendered, and exhibits received, the Court *a quo* was satisfied that the appellant was liable for 50% of the business interest and to provide spousal maintenance to the respondent, outside of the other orders made.

[11] It is an established principle that when parties are married in community of property, the assets and debts that they acquired before and during the subsistence of their marriage are merged and become one joint estate.[3] This joint estate belongs to both parties in the marriage in joint undivided and equal shares.[4]

[12] Section 9(1) of the Divorce Act[5] provides for the forfeiture of patrimonial benefits as follows:

> *"When a decree of divorce is granted on the ground of the irretrievable break-down of a marriage the court may make an order that the patrimonial benefits of the marriage be forfeited by one party in favour of the other, either wholly or in part, if*

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[3] See Ex Parte Menzies et Uxor 1993 (3) SA 799 (C) 808.
[4] D v D (15402/2010) [2013] ZAGPJHC 194 at para 14. See also H R Hahlo, The South African Law of Husband and Wife (5th ed, 1976) at pages 157-8; Lock v Keers 1945 TPD 113 at 116.
[5]See Act 70 of 1979

the court*, having regard to the duration of the marriage, the circumstances which gave rise to the break-down thereof and any substantial misconduct on the part of either of the parties, is satisfied that, if the order for forfeiture is not made, the one party will in relation to the other be unduly benefited."*

[13] Before the Court *a quo* could ventilate whether to grant forfeiture, in respect of the patrimonial benefits of the marital estate, same would need to be sought and pleaded by that party. In this matter from the particulars of claim the appellant sought equal division of the joint estate, however, the appellant sought to retain certain immovable properties, contribute to the maintenance of the children, and that each party pays their own legal costs. The respondent agreed with the manner in which the fixed property was to be shared and the maintenance of the children, however, the respondent sought spousal maintenance in the amount of R10 000,00 per month. The respondent also sought 50% shares of the M[...] C[...] Incorporated, which was to be evaluated, and the monetary value thereof be paid to her. The respondent also sought the costs of the litigation. It was on these specific aspects that the divorce proceedings were based and on which adjudication by the Court *a quo* was required.

[14] *Ex-facie* the particulars of claim the appellant did not seek forfeiture. There was no prayer sought for same and the provisions of the Divorce Act and

Case Law[6] clearly stipulates the three grounds to be pleaded and on which the successful party will rely upon for forfeiture to be granted in terms of Section 9 of the said Act. The Court *a quo* and the respondent approached the proceedings and evidence on the wrong premise, concerning the issues needing adjudication, with specific reference to the allegation that the appellant sought forfeiture of the respondent's right to share in M[...] C[...] Incorporated[7]. From reading of the record, it was clear that the appellant was opposed to the respondent succeeding in her claim for 50% of M[...] C[...] Incorporated, since the respondent had failed to appropriately plead facts relevant to prove her entitlement to succeed with this claim. The onus being on the respondent to prove the allegations and not on the appellant to prove forfeiture. As correctly noted by the Court *a quo* this was not pleaded nor sought by the appellant[8], especially as the issue of the respondent's half share in M[...] C[...] Incorporated was raised and sought by the respondent[9]. Amidst this conclusion, the Court *a quo,* proceeded with adjudicating the divorce on the basis that the appellant sought forfeiture in terms of section 9 of the Divorce Act.

[15] From the pleadings certain assets were identified by both parties to be retained outright by each party, an example being the immovable properties,

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[6] *See Wijker v Wijker [1993] 4 All SA 857 (AD) at para 19.*
[7] *See paragraph 6 of the Judgment of the Court a quo page 6 line 9*
[8] *See number (iii)paragraph 16 of the Judgment of the Court a quo page 13 line 20*
[9] *See number (xi)paragraph 3 of the Judgment of the Court a quo page 5 line 5*

but no mention was made of the other assets movable or otherwise which formed part of the joint estate. Neither party placed evidence before the Court *a quo* concerning the debts of the joint estate and therefore division of the joint estate, which was in community of property, would require a full disclosure of assets and debts of both parties, and only thereafter, could there be an equal division of the patrimonial estate.

[16] Further, amidst the desire of the parties to retain certain assets, same could not be disposed of in that manner before the Court *a quo* whilst the remainder of the estate was uncertain and not shared. The role of the Court *a quo* would have been better suited to adjudicate the dissolution of the marital estate based on irretrievable breakdown and order the division of the joint estate, rather than to adjudicate and allocate certain assets and not dispose of the entire joint estate. This piecemeal approach was to the detriment of the parties as the remainder of the estate was not identified and addressed, especially the debts. It is for this reason that this Court finds that there was material misdirection on the part of the Court *a quo* concerning the dissolution of the joint estate.

[17] It is an accepted fact that Divorce terminates the mutual duty to support each other which exists whilst the marriage subsisted. It is also important to aim for a clean break principle upon divorce and therefore, when spousal maintenance is sought, the Court is obliged to appropriately investigate if

spousal maintenance is "just" taking into consideration the age, means, earning capacity of both parties, and the duration of the marriage.

The appellant highlighted that the Court *a quo* erred in respect of the award for spousal maintenance, to the respondent. The appellant argued and referred to various caselaw concerning the fact that there was a duty on the Court *a quo* to hold an investigation into the need and affordability of the parties when spousal maintenance was to be adjudicated.

[18] Regard was had to ***S.T.H v A.T.H***[10] where the Court noted:

> *"Any or all of these factors, in so far as they may be relevant to a particular case would be regarded in order for Court to make a just order. This begs the question whether any party bears a specific onus to establish any of those factors. In EH v SH 2012 (4) SA 164 (SCA) at para 13, the SCA held that a person claiming maintenance must establish a need to be supported by the other spouse Should the need not be proven, it would not be just for a maintenance order to be made. On the strength of this authority, it must follow axiomatically that the claimant, in this instance, the plaintiff, bears the onus to show the need. It must be so that the onus lies on the claimant to adduce evidence in support of the claim for spousal support. For present purposes, the plaintiff was obligated to produce evidence in support of the order she seeks."*

[10] See: S.T.H v A.T.H (060610/22) [2024] ZAGPPHC 1237 (28 November 2024) at paras 27 and 32.

[19] From the accepted evidence there was no investigation done concerning how the amount of R 10 000, 00 was computed as claimed by the respondent. The onus rested on the respondent to produce evidence to the satisfaction of the Court *a quo,* for the need for spousal maintenance. The respondent merely highlighted R10 000,00 as her monthly maintenance requirement, without justifying the purpose and need for that amount. There were disputed allegations of R6000,00 being paid monthly to the respondent for maintenance. The Court *a quo* failed to hold an investigation into the financial means of the appellant, to afford to pay the amount of R10 000,00, which exceeded the R6000,00 as testified to, as being paid, by the appellant. The duty on the Court *a quo* was to investigate the income and expenditure of the parties and the affordability of the appellant to pay maintenance to the respondent, especially considering the various other orders in respect of maintenance for the children.

[20] This is a fundamental flaw in the reasoning and order made, by the Court *a quo,* as no explanation was forthcoming concerning the tabulation of the amount of R2000,00 per month from 1 June 2025, until the death or remarriage of the respondent. This material misdirection cannot be overlooked by this Court as it goes to the heart of the adjudication of the proceedings in the Court *a quo.* Since the onus rested on the respondent to prove her need for maintenance and same was not addressed, ventilated, and discharged, the order for spousal maintenance sought by the respondent

as granted by the Court *a quo* could not be easily identified on appeal for adjudication. From the record of proceedings, this too was a cursory approach adopted by the Court *a quo* without any real grappling with the issues at hand in determining how the amount of R2000,00 was tabulated. The respondent was silent in her heads of argument, in rebuttal of this ground of appeal, indicating a concession to the allegations raised by the appellant. This Court was satisfied that this claim for spousal maintenance was not proved in the Court *a quo,* and the order for spousal maintenance of R2000,00 to be paid by the appellant is without merit and is dismissed.

[21] Based on the findings above, this Court is satisfied that the order of the Court *a quo* with specific reference to the patrimonial consequences of the division of the joint estate and spousal maintenance needs to be set aside and the appeal succeed with reference to same.

Ruling:

[22] In light of the aforesaid, the appeal stands to succeed in respect of the following:

[22.1] The order of the Court *a quo* concerning the two issues is set aside and replaced by the following orders, being the division of the joint estate and there being no order proven for spousal maintenance and therefore the respondent's claim to spousal maintenance is dismissed.

Costs:

[23] As this is a matter involving marital disputes and Costs are in the discretion of the Court, it is for the reasons highlighted above and in the interest of Justice that there be no order as to Costs.

Order:

[24] This Court makes the following order:

[24.1] The appeal is upheld.

[24.2] The Divorce Court Order of the Court *a quo* dated 30 April 2024 is varied as follows.

[24.2.1] "Division of the joint estate.

[24.2.2] Both parties are to retain full parental rights and responsibilities in respect of the minor child, with primary residence awarded to the Defendant subject to the Plaintiff's right of reasonable contact.

[24.2.3] The Plaintiff is to pay maintenance in respect of the minor child in the amount of R 3 000 per month as from 1 June 2025 directly to the Defendant. The maintenance in this regard shall immediately be referred to the Maintenance Court by any one of the parties, for variation, should the need arise.

[24.2.4] The Plaintiff shall contribute towards the maintenance of the adult child, T[...] M[...] P[...] C[...], in the sum of R 6 000 per month as from 1 June 2025. The maintenance in this regard shall

immediately be referred to the Maintenance Court by any one of the parties, for variation, should the need arise.

[24.2.5] The Plaintiff shall pay the children, M[...] M[...] A[...] C[...] and T[...] M[...] P[...] C[...]'s school expenses, which include but are not limited to school fees, hostel fees, transport, school uniform, school stationary and any other school related expenses and tertiary tuition fees and expenses.

[24.2.6] The Plaintiff shall be responsible and liable for the medical expenses for the abovementioned children.

[24.2.7] The Plaintiff shall retain and keep the minor child M[...] M[...] A[...] C[...], on his Medical Aid Scheme and pay other medical, dental, pharmaceutical and other medically related expenses, including the costs of hospitalisation and prescribed medicine required by and incurred in respect of the minor child which are not covered by the Plaintiff's Medical Aid Scheme.

[24.2.8] There shall be no spousal maintenance payable to the Defendant.

[24.2.9] Each party to pay their own costs."

K.L. PILLAY J
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

I CONCUR,

G.C. MULLER J
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPELLANT	:	**Mr. MP C[...]** (In Person)
INSTRUCTED BY	:	**M[...] C[...] Incorporated** **c/o MT Ramabala** **Polokwane**
FOR THE RESPONDENT	:	**Adv. GK Rambu**
INSTRUCTED BY	:	**L.J. Rahlagane Attorneys** **c/o Buthane & Rasemana Attorneys** **Polokwane**