REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 2023-079189

(1) REPORTABLE: no

(2) OF INTEREST TO OTHER JUDGES: no

(3) REVISED: NO

DATE 2 May 2026

SIGNATURE

In the matter between:

M[...] I[...] B[...] (born H[...])	Plaintiff
And	
D[...] B[...]	Defendant

JUDGMENT

SMIT AJ

[1] The parties were married to each other on 13 December 2003, out of community of property. One child, namely D[...] B[...] ("D[...] jnr.") was born to the parties on 9 September 2004. D[...] jnr. is a student and resides in the erstwhile communal home with his mother when not at university.

[2] The parties entered into an antenuptial agreement in accordance with Chapter 1 of the Matrimonial Property Act, No 88 of 1984 *("the Act")* in terms of which the parties agreed:

[2.1] there would be no community of property or community of profit and loss between them;

[2.2] their marriage would be subject to the accrual system, as provided for and envisaged in the Act, specifically chapter 1 thereof;

[2.3] the commencement values of their respective nett estates were declared as nil.

[3] The plaintiff issued summons for divorce against the defendant which summons was served on the defendant on 15 August 2023.

[4] The parties are *ad idem* that the divorce should be granted.

[5] The issues before this Court is:

[4.1] The amount and period of rehabilitative maintenance to be paid to the plaintiff by the defendant;

[4.2] the period that the defendant needs to continue with the payment of the bond of the erstwhile communal home;

[4.3] the circumstances, process and conditions upon which the immovable property (erstwhile communal home) is to be sold;

[4.4] the liability of the defendant in respect of the medical aid of the plaintiff, if any, as well as the period of such liability;

[4.5] Costs

[6] The parties have agreed between themselves:

[6.1] that the plaintiff will have the right to 50% of the defendant's pension fund interest.

[6.2] that the defendant will continue to pay the bond of the erstwhile communal home;

[6.3] that at the time of the sale of the erstwhile communal home the parties will each be entitled to 50% of the proceeds from such sale;

[6.4] that the defendant will continue to pay the university and related expenses of D[...] jnr.

[6.5] the defendant will continue to pay to D[...] jnr. a stipend of R 5500.00 per month.

[7] The provisions of Section 7(2) Of the divorce act 70 of 1979, as amended and added to by section 36 of the Matrimonial Property Act 1984:

> *"(1) A court granting a decree of divorce may in accordance with a written agreement between the parties make an order with regard to the division of the assets of the parties or the payment of maintenance by the one party to the other.*

(2) in the absence of an order made in terms of a subsection one with regard to the payment of maintenance by the one party to the other, the court may, having regard to the existing or prospective means of each of the parties, their respective earning capabilities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, their conduct insofar as it may be relevant to the breakdown of the marriage, and order in terms of subsection 3 and any other factor which in the opinion of the court should be taken into account, make an order which the court finds just in respect of the payment of maintenance by the one party to the other for any period until the death or remarriage of the party in whose favour the order is given, whichever event a first occur. "

[8] The plaintiff claimed in respect of rehabilitative maintenance for herself, the amount of R45,000 per month for a period of 10 years. It was the evidence of the defendant that he will be retiring from his occupation in 2030 and would thereafter not be earning an income as such.

[9] In the matter of S.T.H. v A.T.H.[1] the Court found that the onus of proving their need for maintenance would fall on the party claiming such, which in this case would be the plaintiff.

"Any or all of these factors that are set out in section 7(2), in so far as they may be relevant to a particular case, would be regarded in order for the court to make a just order. This begs the question whether any party pays a specific onus to establish any of these factors. In EH v SH my 2012(4) SA 164, 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

[1] S.T.H. v A.T.H. 060610/22 [2024] ZAGPPHC

must follow axiomatically that the claimant, in this instance, the plaintiff, bears the onus to show the need."

[10] In the matter of Taute v Taute[2] the Rule 43 Court stated that the Court will be far more inclined to allow an application for maintenance made on reasonable grounds than one that contains extravagant demands. The Court further stated that a respondent/defendant who shows a willingness to maintain his spouse will be heeded with greater sympathy than one who avoids his obligations.

[11] In Kroon v Kroon 1986 (4) SA the Court found that "Financial needs and obligations" means the amount of money each party needs for day-to-day living and how much of the income or resources of each has to be spent obligatory purposes. The court further found that maintenance will be awarded to a wife who can support herself, but rehabilitative maintenance may be awarded to a woman who has for years devoted herself to full time management of the household and the care of the children. Such maintenance will be awarded for a period sufficient to enable them to be trained or retrained for employment, provided she can be trained or retrained. Where a woman has no such ability no such notional earning capacity shall be attributed to her.

[12] In Beaumont v Beaumont[3] it is established that the Concept of rehabilitative maintenance, is rooted in the 'clean break' principle. It is stated further that:

"Our contains no corresponding provision, but in this instance I do not consider the concept underlying it to be foreign to our law. On the contrary, there is no doubt in my mind that our courts will bear in mind the possibility of using their powers under the new dispensation in such a way as to achieve a complete termination of the financial dependance of the one party on the other……The advantages of achieving a "clean break" between the parties are obvious………there will no doubt be many cases in which the constraints imposed by the facts (the financial position of the parties, their respective

[2] Taute v Taute 1974 (2) SA 675 (E)
[3] Beaumont v Beaumont 1987 (1) SA 967 (A)

means, obligations and needs, and other relevant factors) will not allow justice to be done between the parties by effecting a final termination of the financial dependance of the one on the other. In the end everything will depend on the facts and the court's assessment of what would be just……"

[13] In the matter of MB v NB[4] the court emphasized the importance of both parties maintaining a standard of living comparable to that enjoyed during the marriage, subject to affordability constraints. While acknowledging that maintaining the pre-divorce living standards is often impossible, the court have noted that a valid maintenance claim should not be aimed at regaining a former lifestyle but rather at maintaining the spouses current, reduced standard of living.

[14] The plaintiff in evidence told the Court that she was employed in a position as a Marketing Advisor at Momentum Insurance during the period 2000 to 2018. She described herself as dynamic. According to her it was a joint decision between her and the defendant that she would leave her occupation during 2018 when their son was in grade 8 and who was exceptionally talented. The decision was so that she could support their son in realising his full potential. She also testified that she was tired of the corporate environment. This is important to mention as it was not the intention of the parties that the plaintiff leave her employment to support the defendant in his occupation, rather it was a joint decision that both parties supported as being in the best interest of their son. It seems at the time the plaintiff earned around R77 427.00 per month gross. She also received a total amount in respect of her pension fund in the amount of R 1 376 615.00 during June of 2018. She paid an amount of R 900 000.00 into the bond of the erstwhile communal home by mutual agreement between the parties. In November of 2018 the defendant started paying her monthly in the amount of R 40 000.00 which she utilised for personal care, fuel, utilities, groceries etc. This amount was increased during 2021 to R 45 000.00 per month. The plaintiff at various times during testifying remarked that the defendant was a good and kind husband that provided well for the family and took them on holidays

[4] MB v NB 2010 (3) 220 (SGJ)

regularly and even paid for holidays for the plaintiff and their son alone. It seems the main reason for the breakdown of the marriage was the alcohol abuse of the defendant. According to the plaintiff she found the alcohol abuse embarrassing and worrying. The defendant would drink and then not talk to her, nor eat his dinner and then go to sleep.

[15] The plaintiff testified that the agreement between them since the start of their marriage was ‘dop en krop’ which she explained as the defendant would pay for anything home related i.e. bond etc (“dop”) and she would pay all the rest, like utilities, groceries etc.(“krop”) After the plaintiff stopped her employment, the defendant, at least from November 2018 had to pay everything, either directly or through the monthly stipend of R 40 000.00 and later R45 000.00 that the defendant paid to the plaintiff.

[16] The plaintiff started employment again on 1 July 2023 at a monthly salary of R 15 129.00 nett per month. Her salary has now increased to R19 000.00 per month.

[17] The defendant did not deny that he had an alcohol abuse problem before the institution of divorce proceedings, but testified that it has been resolved and that he has been sober for the past two years. The defendant further testified that he paid R 5500.00 per month to D[...] jnr. as a stipend for petrol, fast food etc. He further pays all the university related expenses of D[...] jnr. And some of the erstwhile communal home expenses like the domestic and gardener, bond, repairs and maintenance on the erstwhile communal home. The defendant paid maintenance to the plaintiff pendente lite in an amount of R 45000.00 per month, which was reduced to

R 25 000.00 by Order of Court on 26 February 2025, in which the plaintiff was the applicant. The plaintiff further testified that the defendant paid a bonus from his yearly bonus in the amount of R85 000 during 2019, R25 000 during 2020, R 30 000 and R 40 000 during 2021 and R50 000 during 2022. This was paid to the plaintiff over and above the R 40 000.00 per month stipend.

[18] The plaintiff has thus been a stay-at-home Mom for a period of some 5 years. During this time and after the plaintiff had paid the R 900 000.00 of her pension

monies into the bond of the erstwhile communal home, the parties had decided to erect a flat on the premisses for the use of their son. It was put to the court by the defendant that a fair amount of the monies needed for the erection of the flat was obtained from the bond of the erstwhile communal home. It was the evidence of the plaintiff that after she had paid her pension monies into the bond the outstanding balance of the bond was R1 149 315.00 and currently the outstanding balance is R 2 707 598.00, with the defendant being the only person that had access to the bond for withdrawals. Thus, the amount with which the bond had increased is R1 558 283.00. According to the defendant the costs for the erection of the flat was close to R2 000 000.00 and the erstwhile communal home's value was increased due to the erection of the flat, of which the plaintiff would be entitled to a 50% share at the sale of the erstwhile communal home.

[19] The plaintiff further testified that she has a financial need in total of R57 265.21, in this is included a R10 000.00 per month lawyer fee, R 2000.00 per month charity/church, groceries, cleaning materials and toiletries for herself in the amount of R 7550.00 per month and for D[...] jnr. In the amount of R 5250.00, water and sanitation in the amount of R 4653.97. it also includes inflated car maintenance in the amount of R36 842.04 per year. I am of the view after considering all the evidence that a more realistic amount of the expenses of the plaintiff would currently be in the region of R42000.00 per month. Taking her current salary of R 19 000.00 per month into account, that would leave the plaintiff with a shortfall of R 23 000.00 per month. The plaintiff also called an industrial psychologist namely Ms Kelly-Moraj to confirm her employability.

[20] I am further of the view that the plaintiff's claim for rehabilitative maintenance for a period of 10 years is excessive, especially considering that the defendant is due to retire some time in 2030. The defendant testified that he currently earns a salary of R 125 974.52 per month nett. He also earns bonusses from time-to-time dependant on various factors. This will all seize upon the retirement of the defendant. I also considered the 50% share in the defendant's pension fund, the plaintiff's share which seems to be an amount of some R 6 500 000.00, that the parties have agreed the plaintiff is entitled to.

[21] In the premisses I make the following judgment:

1. The bonds of marriage are dissolved and a decree of divorce is hereby granted.

2. The Defendant is ordered to pay maintenance to the Plaintiff in the sum of **R30 000.00 (THIRTY-THOUSAND RAND)** per month, which amount shall increase annually on date of divorce as per the CPI and shall continue monthly from the 7th day of May 2026.

3. The Plaintiff shall be removed as a dependent on the Defendant's Discovery Health Medical Aid Classic Comprehensive Standard Plan under membership no. 0[...]. The Defendant is ordered to contribute R11 000.00 (Eleven- Thousand-Rand) as medical aid contribution to the Plaintiff per month, which amount shall increase annually on date of divorce as per the CPI and shall continue monthly from the 7th day of May 2026.

4. .

4.1 The Plaintiff shall be directly responsible to any service providers for all other medical expenses related to herself which are not covered by the aforesaid Medical Aid Plan.

4.2 The maintenance obligations as stipulated in paragraph 2 and 3, shall terminate upon:

4.2.1 The Defendant's retirement, alternatively;

4.2.2 the date of the sale of the Parties' immovable Property as referenced and recorded in paragraph 5 *infra,* alternatively;

4.2.3 the remarriage of the Plaintiff, or the Plaintiff entering a relationship; alternatively;

4.2.4 Upon the death of either of the parties.

5 The Defendant is ordered to pay the bond which is registered in respect over the immovable property (Erf 1[...], B[...] M[...] Estate, Olympus, City of Tshwane, held by virtue of Title Deed T144834/2005, also known as No1[...] C[...] Street, Boardwalk Meander Estate, Olympus, City of Tshwane, Gauteng (hereinafter referred to as *"the immovable property"*) under the following conditions:

5.1 Only the Plaintiff and D[...] B[...] Jnr are entitled to reside and to remain in occupation of the immovable property until the immovable property has been sold and finally transferred into the name/s of the new purchaser/s, as provided for and envisaged in paragraph 5.3, 5.4 and 5.5 *infra*.

5.2 until the immovable property has been sold and finally transferred into the name/s of the new purchaser/s, as provided for and envisaged in paragraph 5.3, 5.4 and 5.5 *infra*:

5.2.1 The Defendant is ordered to pay the applicable estate levies and community schemes levies in respect of the property, directly to the management agent of the estate.

5.2.2 The Defendant is ordered to pay the following specific items at the immovable property:

5.2.2.1 Maintenance in respect of the wooden window and door frames in June/July every second year;

5.2.2.2 Minor reparations in respect of the solar system if any;

5.2.2.3 Pruning of all the trees during September every second year**;**

5.2.2.4 Maintenance and upkeep of the plumbing infrastructure, electricity infrastructure, irrigation system and roof leaks, if any;

5.2.2.5 Service of the generator as necessary and due;

5.2.2.6 Property insurance;

5.2.2.7 Internet / Wi-Fi / Fibre line connection and consumption;

5.2.2.8 Reasonable electricity consumption as top-up to the solar system, limited to R1500 per month;

5.2.2.9 Payments to the gardener and domestic servant (“workers”) which shall.be paid to the aforesaid workers directly each month.

5.2.3 The Plaintiff is ordered to pay all other utilities including but not limited to property taxes, water consumption, garbage removal, sanitation services and all other amounts and or taxes stipulated as per the municipal account(s) in respect of the immovable property.

5.2.4 The Plaintiff shall maintain the pool and gas appliances at the immovable property.

5.3 Upon the occurrence of any of the conditions as set out in paragraph 4.2 *supra*, the parties are ordered to sell the immovable property, whether the mortgage bond is settled or not. The immovable property shall be sold for a price to be agreed upon between the parties in writing, or by the surviving party and the executor of the estate of the deceased party, in case of the death of one of the parties, at a market value to be determined by an independent valuer. The nett proceeds derived from the sale of the immovable property be shared between the parties equally.

5.4 Should the property not be sold within 4 (four) months from being put on the market for sale, the property must be sold on a public auction, unless both parties or their representatives in title agree, in writing, to an extension of the aforesaid period.

5.5 In the event of the death of one of the parties, the surviving party shall have the first right of refusal to buy-out the deceased party's 50% stake in the immovable property, at a price equal to 50% of the total market value of the immovable property as determined by an independent valuer which amount, minus an amount equal to 50% of the outstanding bond amount, shall be payable to the estate of the deceased party.

5.6 Save as aforesaid, the parties shall have no further or additional claims against each other either in respect of the immovable property or in respect of the accrual in their respective estates.

6 The following motor vehicles are registered in the Defendant's name and will remain the property of the defendant:

6.1 BMW X1 with registration number H[...] 3[...] B[...] G[...], used by D[...] jnr.;

6.2 Chevrolet LDV with registration number C[...] 6[...] F[...] G[...];

6.3 Nissan Micra with registration number H[...] 7[...] F[...] G[...]; and

6.4 Toyota Corolla Cross with registration number L[...] 3[...] J[...] G[...].

7 The Plaintiff remains the owner of a Toyota Hilux 2.8 GD Raider 4 x 4 Double Cab bakkie with registration number H[...] 7[...] G[...] G[...].

8 The Parties shall have no further or additional claims against each other in respect of the aforementioned motor vehicles.

9 Each party shall pay of his/her own expenses in respect of the aforesaid motor vehicles including instalments, services and license fees.

10 The Defendant is a member of the GEPF, with salary number 1[...], employer code 0[...]; and member number 9[...].

10.1 The Plaintiff or the Plaintiff's attorney is ordered to apply for the endorsement of the Plaintiff's entitlement of 50% of the Defendant's pension interest in the GEPF, as provided for and envisaged in Section 7(8)(a)(i) of the Divorce Act, No 70 of 1979, calculated as on date of this Order.

10.2 It is hereby ordered that the Plaintiff is only entitled to a maximum of 50% of the Defendant's pension interest, as full and final settlement of the accrual calculation as at date of divorce, held in the GEPF, in terms of Section 7(8) of the Divorce Act, No 70 of 1979, and that the GEPF is directed to pay this amount to the Plaintiff less any statutory deductions and/or taxes, as the case may be, into a bank account as nominated by the Plaintiff in writing alternatively into a pension fund nominated by the plaintiff in writing within 30 from date of this order.

10.3 The Plaintiff is ordered to attend to the application for payment or transfer of a maximum of one half (50%) of the Defendant's pension interest or benefit in the GEPF, within a period of 30 days from the date upon which the bonds of the parties' marriage have been finally dissolved.

10.4 The parties shall have no further or alternative claims against each other in respect of insurance policies, annuities or pension fund interests or benefits.

11 The Defendant is ordered to pay R100 000.00 (One Hundred Thousand Rand) contribution toward the Plaintiff's legal cost in the trial proceedings.

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ACTING JUDGE OF HIGH COURT
GAUTENG DIVISION
PRETORIA

Date of hearing: 22 October 2025, 23 October 2025, 24 October 2025, 8 December 2025, 9 December 2025 and 11 December 2025

Date of judgment: 2 May 2026

For the Plaintiff	: Adv SM Stadler
Instructed by	: Dawie de Beer Attorneys
For the First Respondent	: Adv N Breytenbach
Instructed by	: Brits Law