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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 _____

CASE No: **HCA 60/2023**
Court *a quo* CASE No: **LP/PLK/RC-1041/2019**

In the matter between:

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

APPELLANT

V

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

RESPONDENT

Delivered : 27 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 27 May 2026 at 13:00 PM.

Date heard : 13 February 2026

Coram : Muller J et Pillay J

JUDGMENT

PILLAY J:

INTRODUCTION:

[1] The Appellant before this Court sought condonation for the late prosecution of the appeal and to appeal the judgment and order of the Regional Court Polokwane dated 31 October 2023, wherein a decree of divorce was granted to the parties, who were married to each other in community of property. The appellant, aggrieved by orders 2 and 3 as contained in the final decree of divorce, approached the Appeal Court seeking to have these orders to be set aside on the basis that the Court *a quo* had erred in respect of the Judgment and Order. The appeal was not opposed by the respondent.

BRIEF BACKGROUND:

[2] The parties were married to each other in community property on 27 July 1999. 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. The appellant in the Court *a quo* sought forfeiture by the respondent of 30% of his share in the joint estate with specific reference to the immovable property and the appellant's pension interest. The respondent sought equal division of the joint estate. The Court *a quo* after hearing all the evidence, granted the decree of divorce inclusive of the following two orders which were the basis on which this appeal was being sought.

[2.1] “2. The proceeds of the immovable property that is situated at house number 1[...], Zone 3 Seshego, Limpopo Province, shall be shared equally between the parties.”

[2.2] “3. The Court orders that 30%(Thirty per cent) of the pension interest of the plaintiff held by the GEPF, under member number 9835179 shall be paid to the defendant within sixty days of this order, and an endorsement must be made by the administrator of the said Fund for such an endorsement.”

THE GROUNDS OF APPEAL:

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

[3.1] The Learned Regional Magistrate erred by finding that: “The application by the Plaintiff for partial forfeiture on the house is bound to fail” notwithstanding her finding of substantial misconduct on the part of the respondent together with the finding that “The matrimonial home was given or donated to the parties by the Appellant’s father”

[3.2] In this regard the learned Magistrate erred by failing to take into account alternatively afford due weight to the case of **Phuti Richard Mosomane v Tlou Itumeleng Mosomane, In the High Court of South Africa, Limpopo Division Polokwane, Case Number 3264/2023, date 8 June 2022, ADJP Semenya M.V.**, as she was bound to do by virtue of the doctrine of precedent.

[3.3] In the case of **Mosomane supra** it was, amongst others, held that:

“[32] The defendant in the matter desire to have share in Eco Park, Zandspruit Marula Heights and Noordhang. She was on the other hand unable to seriously dispute the allegations that those properties were acquired and paid for by his mother and sister-in-law and that the plaintiff paid nothing towards acquisition. Clearly, no resources or assets of the joined estate were spent in acquiring those assets...”

[3.4] Having regard to the Respondent’s substantial misconduct and the fact that the matrimonial home was given to the parties by the Appellant’s father and the fact that the Respondent’s contributions towards the matrimonial home were very minimal, the Respondent would be unduly benefited if a partial forfeiture order in respect of the matrimonial home was not granted in favour of the Appellant.

[3.5] It is respectfully submitted that the learned Magistrate was therefore guided by wrong principles, as she failed to exercise her discretion judicially.

[3.6] The learned Magistrate erred by finding that

“The Defendant physically abused the Plaintiff by virtue of the fact that he was convicted of such by a Court of law. That is substantial misconduct on the part of the Defendant but however, it is clearly not the only cause for the breakdown of their marriage.”

[3.7] It is respectfully submitted that the learned Magistrate lost sight of the case of **Wijker v Wijker 1993 (3) SA 720(A) p 727 D-F**¹ where it was held as follows in this regard:

“substantial misconduct may include conduct which has nothing to do with the breakdown of the marriage and may for that and other reason have been included as a separate factor...”

[3.8] The learned Magistrate erred in finding that “the parties have in whatever form jointly contributed to the joint estate over a long period of time” notwithstanding the fact that the Respondent’s contributions towards the matrimonial home were very minimal and zero towards the Appellant’s pension interest.

[3.9] The learned Magistrate erred in this regard by failing to take into account the testimony of the Applicant’s father that he gave the parties an amount of R 37 000.00 and R 17 000.00 respectively in 2002 to purchase their first two minibus taxi. Furthermore, that he paid for the Appellant’s training to become a traffic officer as a result of which the Appellant built up a pension interest of approximately R 753 589.00 over a period of approximately 15 years.

[3.10] The learned Magistrate erred in this regard by failing to take into account the Appellant’s testimony that the Respondent’s contributions towards the household expenses and maintenance needs of the

¹ The correct citation of this case is: 1993 (4) SA 720 (A) p 730 B

children were very minimal and that the Appellant and her parents had to shoulder these expenses alone, which evidence was confirmed by the Appellant's father and the parties' daughter.

[3.11] It is respectfully submitted that in regard the learned Magistrate ought to have found that on an overall conspectus of the evidence Respondent's contributions over the entire marriage have been minimal and not proportionate to his income as a taxi operator and member of the Seshego/Polokwane Taxi Association.

[3.12] The learned Magistrate erred by failing to take into account alternatively afford due weight to the evidence of the Appellant that the Respondent did not involve her in the taxi business, that she did not benefit from the income generated by the taxi business and that the Respondent, without the Appellant's knowledge, disposed of three of the minibus taxi's without accounting to the Appellant.

[3.13] The learned Magistrate further erred by failing to take into account alternatively afford due weight to the fact that the Respondent failed to pay tax on the income generated from the taxi business in respect of which he received a final demand from the South African Revenue Services (SARS) dated 23 May 2019 which conduct of the Respondent was to the detriment of the joint estate.

[3.14] The learned Magistrate erred by failing to take into account alternatively afford due weight to the fact that although the Respondent

purchased a BMW motor vehicle the Appellant was not allowed to use the said motor vehicle until the Respondent fell in arrears with the monthly payments and the Appellants had to take over the payments thereof.

[3.15] It is respectfully submitted that the following facts, amongst others, justified an order for partial forfeiture in respect of the matrimonial home and the Appellant's pension interest to wit:

[3.15.1] Substantial misconduct in the form of physical abuse and malicious desertion as well as financial mismanagement of, amongst others the income generated by the taxi business;

[3.15.2] failure to contribute meaningful and proportionately towards the joint estate and the running of the household;

[3.15.3] The donations received from the Appellant's father.

[3.16] The learned Magistrate erred by failing to take into account, alternatively afford due weight to the letter dated 2 May 2016 written and signed by the Respondent in the presence of the Appellant in which the Respondent apologized to the Appellant for his substantial misconduct e.g. extra marital affairs, physical abuse, exclusion from the taxi business and the money generated from it.

[3.17] It is respectfully submitted that the learned Magistrate ought to have found that the Appellant satisfied the requirements of Section 9(1) of

the Divorce Act, Act No. 70 of 1979 particularly that the Respondent would be unduly benefited if the order for partial forfeiture was not granted.

- [4] Before this Court, the appellant sought condonation for the late filing of the Notice of Appeal. The attorney for the appellant filed an affidavit in support of condonation indicating that the delay was beyond the appellant's control as there were issues in obtaining the transcribed record timeously. This Court considered the delay, the reason for the delay and the interest of Justice and accordingly the appellant's non-compliance was condoned.
- [5] The appellant argued that the Court *a quo* in ordering partial forfeiture of the appellant's pension interest, accepted that there were grounds justifying same, which would have applied equally to the joint immovable property, which was also sought by the appellant. That only on this narrow issue the appeal should succeed with costs.

COMMON CAUSE FACTS:

- [6] The following were common cause facts in respect of this matter;
- [6.1] The parties were married to each other in community of property on 27 July 1999 and that the marriage still subsisted at the time of the divorce.
- [6.2] Two adult children were born out of the marital relationship between the parties.

[6.3] The marriage relationship had irretrievably broken down in that they had not lived together as husband and wife since 2019 and that there were no prospects for the restoration of a normal marriage relationship between them. Both parties sought the dissolution of the marital estate.

[6.4] The respondent was convicted of a domestic related offence in Court.

ISSUES FOR DETERMINATION:

[7] The following crisp issues were identified to be determined;

[7.1] Whether the Court *a quo* erred in its application of the law to the facts of this matter, when adjudicating the issue concerning forfeiture of benefits as sought by the appellant.

[7.2] Whether the Court *a quo* erred in its finding that the respondent must forfeit 20% of the appellant's pension interest.

[7.3] Whether the Court *a quo* erred in its finding that the appellant failed to succeed in her claim for partial forfeiture, in respect of the immovable property.

[7.4] Whether the appeal should succeed with costs.

THE LEGAL PRINCIPLES AND ANALYSIS:

[8] From the outset it is noteworthy to highlight 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 wrong².

[9] In **S v Monyane and others**³ Ponnann 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, in my view, is certainly not a case in which a thorough reading of the record leaves me in any doubt as to the correctness of the trial court’s factual findings. Bearing in mind the advantage that a trial court has of seeing, hearing and appraising a witness, it is only in exceptional cases that this court will be entitled to interfere with a trial court’s evaluation of oral testimony (S v Francis 1991 (1) SACR 198 (A) at 204e).

[10] Having regard to the record of proceedings and within that perimeter this Court must 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.

[11] 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,

² 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*

³ See *2008 (1) SACR 543 (SCA) at paragraph [15]*

‘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.’*

[12] Moreover, 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 estate⁴. This joint estate belongs to both parties in the marriage in joint undivided and equal shares⁵.

[13] In ***Engelbrecht v Engelbrecht***⁶ it was held that:

“Joint ownership of the other spouse’s assets is a right that accrues to spouses married in community of property when the marriage is concluded. Unless the parties made precise equal contributions to the joint estate, the party who contributed the least during the existence of the marriage will benefit above the other when the marriage is dissolved. This is an inevitable consequence of the parties’ matrimonial property regime”.

[14] The entitlement of the respondent to a half share in the pension interest of the appellant is governed by section 7(7) and 7(8) of the Divorce Act which provides as follows;

⁴ See *Ex Parte Menzies et Uxor* 1993 (3) SA 799 (C) 808.

⁵ *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.

⁶ 1989 (1) SA 597 (C) at I.

“7(a) In the determination of the patrimonial benefits to which the parties to any divorce action may be entitled; the pension interest of a party shall, subject to paragraphs(b) and(c) be deemed to be part of his assets.”

[15] This is the default position in respect of parties married in community of property unless forfeiture is sought. Section 9(1) of the Divorce Act⁷ 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 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.” (my underlining)

[16] Amidst the fact that the Divorce Act provides for the dissolution of a marriage on the basis of “no fault”, when forfeiture is sought considerations of whether there was substantial misconduct on the part of one of the parties, is a factor to be considered with the other two factors as mentioned above.

[17] Regard was had to ***M v M***⁸ where the SCA made specific reference to the manner to adjudicate divorce proceedings where forfeiture is sought as follows;

⁷ See Act 70 of 1979

⁸ See (022/2022) [2023] ZASCA 75(26 May 2023) at para 28 pg. 11

“There are several seminal judgments which have clarified the legal principles in relation to the application of s 9(1). The principles stated by the Appellate Division in Wijker v Wijker (Wijker) are as follows:

- (a) The party seeking an order for forfeiture of benefits does not have to prove the existence of all three factors in s 9(1) cumulatively. The court needs to ask itself whether one party will be unduly benefitted if an order of forfeiture was not made, and in order to answer that question, regard should be had to the factors mentioned in s 9(1).*
- (b) Wijker advocates that when dealing with s 9(1) the following approach should be adopted: ‘the first step is purely a factual issue. Once that has been established the trial court must determine, having regard to the factors mentioned in the section, whether or not that party will in relation to the other be unduly benefitted if a forfeiture order is not made. Although the second determination is a value judgment, it is made by the trial court after having considered the facts falling within the compass of the three factors mentioned in the section.’ It further advocated the approach adopted in an unfair labour practice dispute, where the word discretion is used in a wider sense. A court will not be exercising a discretion in the narrower sense. Therefore, there will be no choice between permissible alternatives involved.*
- (c) The court emphasised that when making a value judgment, applying the principles of fairness is not justified, as s 9(1) contains no provision for the application of such principle. Not only is it contrary to the basic concept of community of property but there is no provision in s 9 for the application of such a principle. It held further that in considering the appeal the court is therefore not limited by the principles set out in Ex parte Neethling and Others 1951 (4) SA 331 (A) and it may differ from the court a quo on the*

merits. It is only after the court has concluded that a party would be unduly benefited that it is empowered to order a forfeiture of benefits, and in making this decision it exercises a discretion in the narrower sense.

- (d) *Furthermore, the Wijker judgment states that notwithstanding the introduction of the no fault principle in divorce, a party's misconduct may be taken into account in considering, in terms of s 9(1), the circumstances which gave rise to the breakdown of the marriage. Additionally, 'substantial misconduct may include conduct which has nothing to do with the breakdown of the marriage and may for that and other reasons have been included as a separate factor. Too much importance should, however, not be attached to misconduct which is not of a serious nature.' It must be found that it is so obvious and gross that it would be repugnant to justice to let the 'guilty' spouse get away with the spoils of the marriage.*
- (e) *In Engelbrecht v Engelbrecht 1989 (1) SA 597 (C) the court held that it could never have been the intention of the legislature that a wife, who had for 20 years assisted her husband faithfully should, because of her adultery, forfeit the benefits of the marriage in community of property. This confirmed the principle that the finding of substantial misconduct does not on its own justify a forfeiture order."*

[18] Based on the aforesaid it was clear that there would be a factual examination based on the facts before the Court *a quo* concerning whether the appellant had established compliance with Section 9 in respect of the three relevant grounds being the duration of the marriage, the reasons for the breakdown of the marriage, and whether there was substantial misconduct on the part of either of the parties.

[19] It was apparent from the record that the Court *a quo* whilst dealing with the three relevant aspects in respect of the factual finding process, considered the evidence before it in a piecemeal fashion, separating the immovable property from the pension interest. This was a misdirection on the part of the Court *a quo* as it failed to appreciate the two-step process and trite principles as laid out in *Wijker*.

[20] By ordering as aforesaid the Court *a quo* failed to appreciate that the appellant sought partial forfeiture of two specific assets of the joint estate. The grounds for forfeiture would have to first be proven from all the admitted evidence and once established, the value judgment of the undue benefit, that the respondent would have in relation to the appellant, if the forfeiture order was not made.

[21] From the Court Order, the Court *a quo* was satisfied that there were grounds for forfeiture which was ordered in respect of the pension interest of the appellant. It was therefore irregular to distinguish this asset from the immovable property as was done, for clearly if the Court *a quo* found that the respondent would be unduly enriched if forfeiture was not granted, then same would be applicable to the immovable property. It is for the above reasons that this Court is satisfied that the Court *a quo* had erred, therefore this Court can intervene and consider the matter afresh.

[22] The evidence before the Court *a quo* was from the appellant, her father, daughter, and the respondent. The accepted evidence was that the parties were married to each other in 1999. The appellant's father was instrumental in assisting them to build their marital estate. He had purchased the immovable property for the parties, provided them with financial assistance in respect of the Minibus Taxi business, and was responsible for assisting the appellant with her education. This resulted in her ultimate career as a Traffic Inspector. The pension benefit as of 30 September 2021 was an amount of R753 589,00. At the time of the divorce, he was still helping with the maintenance of the appellant and the children.

[23] The relationship between the parties was strained for a few years, with the respondent physically abusing the appellant. This was confirmed by the conviction against the respondent and through the confirmatory evidence of the appellant's daughter and father. The respondent had a career as a Taxi Owner and Driver, earning approximately R 1000,00 per fortnight. He left the marital home in 2019 and had not contributed to the joint estate since then. The Court *a quo* found his evidence to be unreliable in respect of the contributions made by the appellant's father towards the joint estate⁹ and the internal contradictions in the respondent's evidence¹⁰.

⁹ See para 42,43, 44 of the Judgment at pg 11.

¹⁰ See para 45 of the judgment at pg 11.

[23] The Appellant pleaded that the reasons for the breakdown of the marriage were as follows:

“6.1 The Defendant conducted various extra marital affairs.

“6.2 The Defendant attempted to kill the Plaintiff with a knife.

“6.3 The Defendant was a lazy person who sponged on the Plaintiff. The little he earned was dissipated by him.

“6.4 The Defendant vacated the erstwhile marital home of the Plaintiff and the Defendant in 2019, and the parties have not resided with one another as husband and wife ever since.”

[24] The evidence led by the appellant was to the effect that at the time of their marriage the Respondent was a Taxi Driver and she was unemployed. They stayed in a squatter camp near Seshego with their daughter Koketso. The appellant's father purchased the matrimonial home, situated at 1[...] Zone 3, Seshego, for an amount of R65 000.00 on the basis that they would pay him back, which they never did. The appellant's father also made certain improvements to the matrimonial home in respect of which the respondent purchased some of the building material during or about 2007.

[25] The appellant testified that the respondent's contributions towards the matrimonial home were minimal. The appellant's father also assisted them financially to purchase two Volkswagen Kombi Minibus taxis. In this regard, her father borrowed an amount of R37 000.00 to them during October 2001 and a further amount of approximately R17 000.00 later that same year,

which amounts were also not paid back to her parents. In 2006 the appellant's father paid an amount of approximately R17 500.00 for her training, as a Traffic Officer, which training the appellant successfully completed, and consequently she obtained employment as a Traffic Officer at the Limpopo Department of Transport on 1 April 2007. She received little to no support from the respondent in this regard. In addition to the aforesaid financial contributions by her parents, they also took physical and financial care of the parties' children. Her evidence in respect of the aforesaid contributions, was corroborated by her father and supported by documentary evidence.

[26] The appellant further testified that the respondent did not involve her in the Taxi business and that she and the children did not benefit from same. His contribution towards the household was minimal. The respondent sold both Volkswagen motor vehicles but failed to account to the appellant in this regard. The respondent thereafter purchased a Toyota Hi-Ace Siyaya and a Toyota Quantum, the financial details of which she only became aware of during the divorce proceedings. The respondent later also sold the Toyota Quantum, without informing the appellant.

[29] On 25 April 2015, the respondent purchased a second-hand Toyota Quantum motor vehicle for an amount of R90 000.00, the appellant paid R80 000.00. The balance was paid by the respondent. Both motor vehicles taxis

(the Toyota Hi-Ace Siyaya and Toyota Quantum) were not in working condition at the time the respondent left the marital home, leaving them behind. The respondent during or about 2014 purchased a BMW motor vehicle. The appellant was, however, not allowed to use the said motor vehicle. When the respondent fell in arrears with the monthly instalments, the appellant had to take the payments over and was only then allowed to use the said vehicle. This vehicle was thereafter registered in their daughter's name. It was therefore no longer an asset of the parties' joint estate.

[30] The appellant indicated that the respondent's contributions towards the household expenses, the needs of the children and the joint estate were minimal and not proportionate to his income as a Taxi operator or owner and member of the Seshego/Polokwane Taxi Association. The appellant relied on the assistance of her parents, to provide for the children's maintenance needs, the running of the household and the building up of the joint estate. The respondent did not pay the tax on the income generated from the Taxi business, which resulted in a tax debt exceeding R50 000.00 from the South African Revenue Services which was still outstanding at the time of the divorce.

[31] The appellant testified that the respondent was an absent father and that her parents primarily took care of the children. This was corroborated by the appellant's father and their daughter. The appellant testified that she endured

physical abuse, the respondent's alcohol abuse and his numerous extra marital relationships. The appellant testified that she only became aware that the respondent fathered a child in 1999, (when they were already married to each other in terms of Customary Law), on receiving the notice for the respondent to appear in the Maintenance Court. She testified further about other extra marital affairs. It was according to the appellant sufficient justification for the Court *a quo* to order partial forfeiture on account of the substantial misconduct by the respondent.

[32] The respondent confirmed that he had fathered a child prior to their civil union. He confirmed that the immovable property was purchased by his father-in-law but alleged that he had repaid this debt. He denied borrowing any other money from the appellant's father. He indicated that during the period that the appellant was training he was responsible for the upkeep of their home and children. He purchased groceries which the appellant took with her to College. He confirmed that the Toyota Hi-Ace Siyaya and Toyota Quantum, were left behind at the immovable property, according to him, only one was not operational, however, he was not aware of the vehicle's condition at the time he testified in Court.

[33] The respondent denied any substantial misconduct or any infidelity. It was his version that he contributed significantly towards the joint estate and the household expenses. He confirmed that he had purchased the building

material that the appellant's father used in the renovations of the immovable property. He did the fitting of the units, in the kitchen and dining room. He confirmed that the BMW was registered to and being used by their daughter. The respondent testified that he maintained his children who were staying with the appellant's parents. He indicated that he was staying with his father who was maintaining him as he was unemployed and did not have a source of income.

[34] He testified that he only took leave in winter when his co-workers were around, otherwise, he was consistently employed. He indicated that he approached the Domestic Violence Court for protection against the appellant due to her disposing of the motor vehicles at their residence. From the record, there was no final Court Order indicating that this matter was ventilated finalised in Court. The respondent indicated that this application was made, so that he could have something as well, on account of the many times that the appellant had made complaints against him with the police, concerning him breaching the Protection Order that she had. The respondent made no serious allegations of misconduct against the appellant. He disputed the evidence and proof of the appellant's father concerning the financial contributions made to the joint estate and indicated that the appellant falsely implicated him as an absent spouse and father, so that she could secure the assets of the estate only for herself.

[35] As previously highlighted the Court *a quo* rejected his evidence as false concerning the contributions made by the appellant's father and amidst this finding ordered only partial forfeiture in respect of the pension interest. In this Court, the appellant argued that this Court grant the prayers as sought in the Court *a quo*, in total as there was justification for such partial forfeiture by the Respondent.

[36] This Court took cognisance that the parties had been married to each other for several years. The marital estate was grown largely by the financial and physical contributions made by the appellant's father. Clearly, the appellant's father desired that his child live well and therefore, was actively involved in securing her a house and physically renovating it. He assisted in their financial progress in the Taxi business and as a Traffic Officer. The respondent's role was to help further the growth of this estate, however from the accepted evidence, he had failed in this regard. Not only was he an abusive spouse, but he also depleted the assets from the estate without the involvement or benefit of the appellant. A blatant example was the disposal of the BMW motor vehicle.

[37] From the accepted evidence the Respondent did not contribute to the education of the appellant on which the pension interest is based, nor did he contribute financially to the purchase of the immovable property. He was a poor witness whose version concerning his contribution to the joint estate

was questionable. The extension of the immovable property would not have materialized were it not for the physical involvement of the appellant's father. This occurred at the time the appellant was financed to study to become a traffic officer by her father. The appellant's father from 2019 to the time of trial was financially and physically supporting the appellant.

[38] The respondent's physical abuse of the appellant in the presence of his child was sufficient reason for the breakdown of the marriage. That is outside of the admitted child born outside of the marriage and the extramarital relationships that the respondent was accused of having. The respondent failed to maintain his family from 2019 which was a clear indication of financial abuse. This is outside of the sale of the motor vehicles without the appellant's consent. The respondent made minimal contributions for the benefit of the joint estate, leaving the appellant to rely on her salary and her father's financial help.

RULING:

[39] These are but some of the highlighted circumstances of the substantial misconduct committed by the respondent against the appellant and the joint estate. There is no doubt that the appellant satisfied the requirements of section 9 of the Divorce Act, particularly as the respondent would be unduly benefited, if the order for partial forfeiture, were not granted. The appellant and her father were the direct financial contributors to the joint estate whilst the respondent enjoyed the rewards of these investments. The respondent

eroded the value of the joint estate especially considering the debt owed to SARS and contrary to the proprietary regime of a marriage in community of property. The appellant's version is the more reliable version concerning the circumstances of what transpired in the marital home and corroborates and supports her claim for an order for partial forfeiture of benefits in respect of the immovable property and the appellant's pension interest. The respondent's evidence was contradictory, inconsistent and unreliable and failed to justify his claim for a half share in her pension interest and the immovable property. The authorities justify the granting of an order for partial forfeiture as sought by the appellant.

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

[40.1] The order of the Court *a quo* concerning the two issues is set aside.

The appellant succeeds in the prayer for partial forfeiture by the respondent of 30% of his share in the joint estate with specific reference to the property and the appellant's pension interest.

COSTS:

[41] As this is a matter involving marital disputes and Costs are at the discretion of the Court. This Court took cognisance of the fact that the respondent did not oppose the appeal. It is for the reasons highlighted above and in the interest of Justice that there be no order as to Costs.

ORDER:

[42] This Court makes the following order:

[42.1] Condonation for the late filing of the notice of appeal is hereby granted.

[42.2] The appeal is upheld.

[42.3] Paragraphs 2 and 3 of the Divorce Court Order of the Court *a quo* dated 31 October 2023 is set aside and substituted as follows:

[42.3.1] “The plaintiff’s claim succeeds.

[42.3.2] The defendant shall forfeit 30% of the patrimonial benefits of the marriage in community of property, in respect of the plaintiff’s pension benefits and interest held in the Government Employee Pension Fund and further in respect of the immovable property that is situated at house number 1[...], Zone 3 Seshego, Limpopo Province.

[42.3.3] It is ordered that each party shall pay his or her own legal 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

:

Mrs. M de Klerk

INSTRUCTED BY

:

DDKK Attorneys

FOR THE RESPONDENT

:

No Appearance

INSTRUCTED BY

:

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