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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: A162/2025

Reportable: YES

Circulate to Judges: YES

Circulate to Magistrates: YES

Circulate to Regional Magistrates: YES

In the matter between:-

I[...] P[...] V[...] N[...]

Appellant

and

N[...] V[...] N[...]

Respondent

CORAM: Manamela J et Reid J

Order:

- (i) *The appeal is upheld.*

(ii) *The order of the Magistrate's Court for the District of Tshwane North dated 8 January 2025 under case number 172/2022 is set aside and replaced with the following order:*

"1. The appellant shall pay maintenance in respect of the minor children as follows:

1.1 R2,000 (Two Thousand Rand) per month in respect of I[...] P[...] V[...] N[...] (I[...]); and

1.2 R2,500 (Two Thousand Five Hundred Rand) per month in respect of H[...] M[...] V[...] N[...] (M[...]).

a. Payment shall be made to the respondent on or before the first day of each month, with effect from 1 July 2026.

b. The maintenance amount shall increase with 10% per year from date of this order.

c. All medical expenses incurred for the minor children that are not covered by the respondent's medical aid shall be shared equally between the parties, provided that the respondent furnishes the appellant with proof of such expenses within a reasonable time."

(iii) *Each party shall pay their own costs of the appeal.*

This Order is made an Order of Court by the Judges whose names are reflected herein, duly stamped by the Registrar of the Court and is electronically handed down by being uploaded to the electronic file of this matter on Case Lines by the Judge's secretary.

The date of this Order is deemed to be 4 June 2026.

JUDGMENT

Reid J (with Manamela J concurring)

Introduction

[1] This is an appeal against a maintenance order granted by the Magistrate's Court for the District of Tshwane North ("the court *a quo*" or "the magistrate's court") on 8 January 2025. The court *a quo* dismissed the appellant's application for a reduction of his maintenance obligations and granted the respondent's counter-application for an increase, ordering the appellant to pay maintenance in the amount of R3,000 per month for the minor child I[...] and R6,000 per month for the minor child M[...], with all medical expenses not covered by the respondent's medical aid to be shared equally between the parties.

[2] The appellant seeks to have that order set aside and replaced with an order reducing his maintenance obligation to R1,500 per month per child.

[3] The respondent raises a preliminary point that the appeal has lapsed due to non-prosecution. On the merits, she contends that the magistrate exercised her discretion properly and that the appeal should be dismissed.

Factual background

[4] The parties were married on 5 December 2008 out of community of

property with inclusion of the accrual system. They are currently divorced. Two children were born of the marriage:

- 4.1. H[...] M[...] V[...] N[...] (M[...]), born on 10 June 2010, now approximately 15 years old; and
- 4.2. I[...] P[...] V[...] N[...] (I[...]), born on 1 July 2017, now approximately 8 years old.

[5] An interim order in terms of Rule 58 of the Magistrates' Courts Rules was granted on 6 October 2020, and a final decree of divorce was granted on 11 December 2020, which incorporated the parties' parental responsibilities and rights as well as maintenance arrangements.

[6] M[...] is a special needs child. She cannot communicate verbally and has the mental capability of a one-year-old child. She wears nappies and only started walking when she was nearly six years old. The evidence established that she requires assistance with daily routines such as changing nappies, bathing, and feeding. Intellectually, emotionally, and socially, she is developmentally below her age.

[7] In terms of contact arrangements, the appellant exercises contact with I[...] every alternative weekend, every Wednesday, and every alternative holiday. For M[...], he exercises contact only on

Wednesdays, and telephonically or by video call in the mornings and nights.

[8] In the court *a quo*, the appellant sought a reduction of his maintenance obligation, proposing a globular amount of R3,000 per month for both children. The respondent contended that R4,500 per child was required and presented a schedule of the children's needs totalling approximately R46,219 per month.

[9] After hearing *viva voce* evidence from both parties, the magistrate *a quo*:

- 9.1. Dismissed the appellant's application for a decrease in the maintenance amount;
- 9.2. Granted the respondent's counter-application for an increase;
- 9.3. Ordered the appellant to pay R3,000 per month for I[...] and R6,000 per month for M[...], with effect from 1 February 2025; and
- 9.4. Ordered that all medical expenses not covered by the respondent's medical aid be shared equally between the parties.

[10] This appeal against the maintenance order is initiated under the Maintenance Act 99 of 1998 and serves before us directly on

appeal from the magistrate's court.

The point *in limine*: whether the appeal has lapsed

[11] The respondent contends that the appeal has lapsed in terms of Rule 50(1) of the Magistrates' Courts Rules due to the appellant's failure to prosecute it timeously.

[12] The chronology of events is as follows:

- 12.1. Judgment *a quo* was delivered on 8 January 2025.
- 12.2. The notice of appeal was served on 5 February 2025, within the prescribed 20-day period. This is not disputed.
- 12.3. Application for a trial date was made on 4 April 2025 on Court Online, which is within 40 days of noting the appeal.
- 12.4. The record was filed on 7 April 2025, which is within 60 days of noting the appeal.
- 12.5. The notice of appeal was served on the respondent on 7 April 2025.
- 12.6. Heads of argument were served on 12 November 2025 and filed on 29 October 2025.

[13] Rule 50(1) of the Uniform Rules provides that an appeal shall be prosecuted within 60 days after the noting thereof, and unless so prosecuted it shall be deemed to have lapsed. In *Hall v Van Tonder*

and Another 1980 (1) SA 908 (C) at 910, the court held:

“An appeal must be noted within the period and in the manner prescribed by the Rules; but the Court of appeal may in any case extend such period. (See Magistrates' Courts Act 32 of 1944 s 84).

The 'Rules' mean the magistrate's court Rules made under s 25. (See Magistrates' Courts Act s 1 'the rules').

The procedure is that the appellant obtains a judgment from the magistrate if he wants one in terms of magistrates' courts Rule 51 (1). Within 14 days of getting this judgment appellant must note his appeal (magistrates' courts Rule 51 (3)). That is, having received his judgment on 30 November, he had to note an appeal within 14 working days (magistrates' courts Rule 2 (2)). He noted it on 15 December - within the prescribed period.

He then had to 'prosecute' the appeal in this Court within six weeks after noting, that is by the end of January 1979. (Supreme Court Rule 50 (1). 'Prosecuting' simply means applying for a date for the hearing; see Rule 50 (4).) He did not do so and the appeal was therefore deemed to have lapsed in terms of that Rule.

(own emphasis)

[14] The appellant applied for a hearing date on 4 April 2025. According to the transcript of proceedings before us on 12 February 2026, counsel for the appellant submitted that the Registrar indicated that a hearing date could not be allocated until heads of argument were filed. This is a matter of practice, not a requirement of the Rules.

[15] In *Molema and Another v Lethamakga Business Enterprises CC* 2024 JDR 4201 (GP), the court stated in paragraph [13]:

"The principle set out in the above paragraph is that an application for leave to appeal must be launched within the period set out in the Rules of court. Where that has not been

done the right to appeal lapses. A party who wishes to revive the lapsed right of appeal must only do so after applying for condonation. The right of appeal may only be granted after the court has heard and granted the condonation."

[16] The appellant *in casu* did apply for a hearing date within the prescribed period. The delay in filing heads of argument occurred after the application for a hearing date. The question is whether the failure to file heads of argument timeously, in circumstances where the Registrar would not allocate a date without the heads of argument, amounts to a failure to prosecute the appeal.

[17] The appellant submits that a practice directive cannot change the Rules of Court. I agree. If the Registrar requires heads of argument before allocating a date, it is an administrative practice and does not alter the fact that the appellant applied for a date within the period prescribed by the Rules of this Court. The appellant did what was required to prosecute the appeal in as far as the Rules are concerned.

[18] Moreover, the respondent was aware of the steps taken. Proof of service of the notice of appeal was provided on 7 April 2025. The respondent's attorneys were served with the heads of argument on 12 November 2025. No prejudice has been shown.

[19] In considering whether to grant condonation, the interests of justice

must be considered. As was stated in *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) at 532:

"In deciding whether sufficient cause has been shown, the basic principle is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success and the importance of the case."

[20] *In casu*, the children's interests are paramount. They would be prejudiced by not having the appeal heard on the basis of what is stated above, which outcome may lead to other lengthy processes. The children, and the parties, have an interest in finality and in a maintenance order that is properly grounded in the financial realities of both parents.

[21] The appellant has explained the delay as arising from the unavailability of former counsel, the volume of the record (approximately 1,000 pages), and financial constraints. These explanations, while not detailed in a formal condonation application, have been placed before this Court and in the record and was supported by argument.

[22] In these circumstances, and in the interests of justice, I hold the view that the late prosecution of the appeal should be condoned and that

this Court should proceed to determine the appeal on its merits.

Appellate intervention

[23] The principles governing appeals against maintenance orders are well-established. A court of appeal will not interfere with the discretion exercised by the court of first instance if the latter court duly considered all relevant factors and applied its judicial discretion correctly.

[24] The summarised grounds for appeal are set out as follows in the heads of argument of the appellant:

“[25] The issues for determination in this appeal is inter alia whether ‘good cause’ has been shown by the appellant to grant a reduction in his maintenance obligations and whether the Court a quo:

25.1. Erred in finding that the appellant is able to pay the maintenance so ordered (i.e. affordability); and

25.2. Erred in failing to have proper consideration to the minor children’s reasonable needs, the parties’ respective means and their proportionate contributions.”

[25] The appellant submits that the magistrate misdirected herself in several respects:

25.1. She placed undue weight on the appellant's attitude towards M[...] and insufficient weight on his actual ability to afford.

25.2. She failed to take into account additional sources of income available to the respondent, including charity golf day proceeds,

SARS refunds, Section 38A income, and financial assistance from her brother and parents.

25.3. She accepted the respondent's inflated list of expenses without proper scrutiny.

25.4. She failed to conduct a proper proportional analysis of the parties' respective means.

[26] The respondent, on the other hand, submits that the magistrate properly evaluated the evidence, that the additional income sources are not guaranteed and are supplementary to her income, and that the appellant failed to prove his alleged shortfall.

[27] In *R v Dhlumayo and Another* 1948 (2) SA 677 (AD) at 705-6, the Appellate Division (as it was then known) held:

"The trial Judge has advantages - which the appellate court cannot have - in seeing and hearing the witnesses and in being steeped in the atmosphere of the trial. Not only has he had the opportunity of observing their demeanour, but also their appearance and whole personality. This should never be overlooked."

[28] In *S v Pistorius* 2014 (2) SACR 314 (SCA) at paragraph [30], the court reiterated:

“[30] It is a time-honoured principle that once a trial court has made credibility findings, an appeal court should be deferential and slow to interfere therewith unless it is convinced on a conspectus of the evidence that the trial court was clearly wrong. R v Dhlumayo and Another 1948 (2) SA 677 (A) at 706; S v Kebana [2010] 1 All SA 310 (SCA) para 12. It can hardly be disputed that the magistrate had advantages which we, as an appeal court, do not have of having seen, observed and heard the witnesses testify in his presence in court. As the saying goes, he was steeped in the atmosphere of the trial. Absent any positive finding that he was wrong, this court is not at liberty to interfere with his findings.”

[29] These authorities establish that appellate intervention is not warranted simply because this court might have come to a different conclusion. There must be a clear misdirection, or the decision must be one that no reasonable court could have reached, and the judicial discretion should have been exercised wrongly. An appellate court may interfere where the court *a quo* misdirected itself on the facts or the law, or where it exercised its discretion improperly by having regard to irrelevant factors or failing to have regard to relevant factors.

[30] The appellant has remarried and bought a house with his new wife. The magistrate refers to this in her judgment. However, a parent's duty to support is in no way affected by remarriage after divorce. See: Hartman v Krogscheepers [1950] 4 All SA 124 (W), 1950 (4) SA 421 (W) 423. See also: MB v NB 2010 (3) SA 220 (GSJ).

[31] In her judgment, the magistrate made the following key findings:

- 31.1. M[...]’s expenses far exceed those of I[...] due to her special needs. Due to M[...]’s special needs, this is correct.
- 31.2. The appellant’s evidence that he could not afford R6,000 for both children was considered, but the magistrate noted that he lived with his mother on a farm and paid her for accommodation, while his mother had a sizeable bank balance. The appellant’s mother’s bank balance should not have been a factor in calculating the children’s maintenance.
- 31.3. The appellant does not assist or involve himself in M[...]’s upbringing and sees her as little as possible. He stated that it is difficult caring for her. The appellant provided many reasons and excuses regarding M[...]’s care, including that she is a grown child with pubic hair and he cannot change her diaper, and that neither his current wife nor his mother could assist. Although the respondent’s attitude to M[...] does not translate well, it is not something that the magistrate should have taken into account in the determination of maintenance.
- 31.4. During the period of the maintenance enquiry, the appellant

remarried and purchased a R1.5 million home with the assistance of his current wife. The fact that the appellant moved on with his life, is not something that the magistrate should have taken into account in determining maintenance, save for the financial implications thereof.

- 31.5. Both parties earned the same salary as teachers and both received R163,335.74 from the proceeds of the sale of their former matrimonial home. The respondent bought a home in a secure complex to raise the children.
- 31.6. The appellant gets paid *in lieu* of the labour he provides on his mother's farm. This is speculation by the magistrate *a quo* since no evidence was presented to support this.
- 31.7. The respondent organises golf days to raise funds and does extracurricular activities to raise more income. As M[...] grows, her needs increase, and the respondent cannot cope.
- 31.8. The respondent has a credit card that is used to the maximum monthly, and she relies on her brother who pays for school fees for the children.

31.9. The respondent's father contributes approximately R7,000 per month.

[32] The magistrate came to the conclusion that the appellant should pay R9,000 per month maintenance for both children from his salary of R21,000 per month.

[33] As the appellant correctly submitted, the duty of support falls on the parents, not on grandparents, unless the parents lack the means. See: *Petersen v Maintenance Officer, Simon's Town Maintenance Court* 2004 (2) SA 56 (C).

[34] The magistrate did not engage in any kind of proportional analysis as required by law. Her judgment does not calculate the parties' respective incomes, does not assess the children's reasonable needs with reference to the evidence, and does not apportion the contribution proportionately.

[35] After hearing arguments on behalf of the parties, and after taking into account the abovementioned factors, I hold the view that the magistrate *a quo* did concern herself with issues irrelevant to the question of maintenance. The magistrate *a quo* made a misdirection, or was clearly wrong in application of maintenance principles, which justifies

appellate intervention.

Legal framework for child maintenance

[36] Section 15 of the Maintenance Act 99 of 1998 (“the Maintenance Act”) codifies the common-law duty of parents to support their children. The duty of support is set out as follows:

“15 Duty of parents to support their children

(1) Without derogating from the law relating to the liability of persons to support children who are unable to support themselves, a maintenance order for the maintenance of a child is directed at the enforcement of the common law duty of the child's parents to support that child, as the duty in question exists at the time of the issue of the maintenance order and is expected to continue.

(2) The duty extends to such support as a child reasonably requires for his or her proper living and upbringing, and includes the provision of food, clothing, accommodation, medical care and education.

(3) (a) Without derogating from the law relating to the support of children, the maintenance court shall, in determining the amount to be paid as maintenance in respect of a child, take into consideration-

(i) that the duty of supporting a child is an obligation which the parents have incurred jointly;

(ii) that the parents' respective shares of such obligation are apportioned between them according to their respective means; and

(iii) that the duty exists, irrespective of whether a child is born in or out of wedlock or is born of a first or subsequent marriage.

*(b) Any amount so determined shall be such amount as the maintenance court **may consider fair in all the circumstances of the case.***

(own emphasis)

[37] A parent's duty to support his or her child arises by operation of law; it is a duty that arises *ex lege* and is *sui generis*. The amount of

maintenance does not depend on the wishes of the paying party but must be determined in accordance with the requirements of the child and the ability of the parent to pay.

[38] In terms of the common law, both parents must support their children proportionately according to their means. This principle is now codified in section 15(3) of the Maintenance Act, which requires the court to specifically take into consideration the duty of parents to support their children and to apportion the respective shares according to their means.

[39] Although the principle of proportionality has been codified in our law, there is a rather novel issue that complicates this appeal. *In casu*, both parties are teachers and receive a similar salary of approximately R21,000 per month. However, the respondent increases her income voluntarily and substantially by doing additional work, such as providing extra classes and arranging charity golf days to supplement her salary. The monthly income of the respondent (which amounts include her salary of R21,000) is approximately R61,000. This results in the appellant receiving an income which is about one third of that of the respondent. Much was made during argument of this issue, namely whether the additional income of the respondent (of approximately R40,000) should be calculated as part of her income or not. The

argument against including it as part of her income, is that she does the additional work voluntarily, and the income is not guaranteed, whilst the appellant is free to also do voluntarily work and increase his monthly income.

[40] A child is entitled to reasonable maintenance for housing, clothing, medical and dental care, education and training, and, where applicable, recreation. What is reasonable depends on circumstances such as the position of the family, the child's health, and, regarding education and training, the child's aptitude.

[41] The Constitutional Court has emphasised that the best interests of the child are paramount in all matters concerning the child. See: *S v M (Centre for Child Law As Amicus Curiae)* 2008 (3) SA 232 (CC); *Petersen v Maintenance Officer, Simon's Town Maintenance Court and Others* 2004 (2) SA 56 (C). This principle applies with particular force in maintenance proceedings, where the child's welfare and development are directly at stake.

[42] Section 10 of the Maintenance Act requires the court to conduct a proper enquiry into the financial positions of both parents and the needs of the children. The enquiry must be comprehensive and must take into account all relevant factors, including:

- 42.1. The income and earning capacity of each parent.
- 42.2. The reasonable expenses of each parent.
- 42.3. The reasonable needs of the children.
- 42.4. The standard of living to which the children are accustomed.
- 42.5. Any special needs of the children, including medical or educational needs.
- 42.6. The duty of both parents to contribute proportionately according to their means.

[43] The party seeking a variation of a maintenance order bears the onus of proving a material change in circumstances. However, the court retains a discretion to ensure that the order is just and equitable in the circumstances.

[44] A matter in which the facts were similar to this matter *in casu* is set out on appeal from the magistrate's court, in a judgment by two judges that originates from this Court's Local Division (Gauteng South, Johannesburg) in *Vilakazi v Ntshangase* 2016 JDR 1181 (GJ) (Vilakazi). In Vilakazi, both parties are medical doctors at Provincial Health Departments. The appellant's net salary from her employment with the Department is R39 500 per annum, and the respondent's income (including his net salary) is R87 000. The respondent supplemented his income by doing *locums*. On appeal, the High Court

found that the magistrate had erred by not taking into account the supplemented income. The court held that, because the father's financial means were **2.23 times greater** than the mother's, his contribution should reflect that *ratio*, and not an equal half. The court stated that the father must "cut his cloth accordingly" to meet his higher proportional obligation. The following was held in paragraphs [16] to [18] in Vilakazi:

"[16] This takes me to the question of the means of the parties. Did the Magistrate err in this regard, as submitted by the appellant?"

[17] As regards the respondent's earnings, the clear evidence of the respondent was that he earned an additional R40 000 per month doing locums. He did not claim that this was a once-off, or ad hoc arrangement. Indeed, his list of expenses demonstrates that he could not provide for his own needs unless he was able to depend on this amount as an additional monthly income. Further, he would not have been able to obtain finance from the bank for his motor vehicles and bonds unless he placed reliance on this extra income.

[18] I conclude in this regard that the Magistrate erred by failing to take this additional income into account. She ought to have assessed the respondent's means, in terms of his net monthly income, at the time of the inquiry, as R87 000 per month. Should the respondent's position change in this regard it is open to him (as it would also be open to the appellant) to seek a variation of the maintenance order based on his changed circumstances."

[45] The legal position is that all income that a parent actually receives, *regardless of its source*, should be taken into account in determining their ability to contribute to their children's maintenance. The fact that

some income is derived from charity or overtime work does not mean it should be disregarded.

[46] The respondent's bank statements show these additional income deposits; they are part of her financial reality. To ignore them would be to artificially inflate her needs and correspondingly inflate the appellant's obligation.

[47] The legal position illustrated in *casu*, can be compared to that of a businessperson who receives tenders or procurement contracts from public entities. To argue that the tenders are not guaranteed, and can be stopped at any stage, would be to ignore the reality of the income received from such tenders. Should the position change of the person receiving the additional (non guaranteed) income, and the income not be received any longer, the legal position provides therefore that the businessperson may approach the maintenance court on changed circumstances to adjust or vary the amount of maintenance he or she has to pay.

The children's maintenance needs

[48] Section 10 of the Maintenance Act requires that the children's needs be calculated. This requires a reasonable analysis that is calculated as an estimate of the maintenance needs of each of the children.

[49] I do not intend to make a detailed calculation of each of the items that in my view should be reduced or excluded. Suffice it to say that I am satisfied that the magistrate erred in overestimating the appellants ability to pay and she took cognisance of factors that she should not have taken into account in the calculation of maintenance.

[50] The maintenance needs of the children as projected by the respondent in the court *a quo* seem to be inflated or unreasonable. For example, the respondent's restaurant and take-away expenses are substantial—R2,000 to R3,000 per month. Her personal expenses average approximately R2,000 to R3,000 per month.

[51] The appellant also points out that M[...]’s school fees are R2,100 per month, and I[...]’ school fees are R1,850. The total is thus R3,950 per month for school fees, but the respondent claims R5,300 per month for school fees. The difference is unexplained.

[52] It is important to acknowledge that M[...] has significant special needs. Her care requires additional resources, including a caretaker, nappies, medication, and specialised attention. These needs must be met.

[53] However, the fact that a child has special needs does not absolve the

court from conducting a proper affordability assessment. The child's needs must be balanced against the parents' ability to pay. If one parent has limited means, the other parent may need to bear a larger share, or the family may need to access state resources or charitable assistance, if available.

[54] The appellant's submission that M[...]s schooling should be discontinued is severely misguided. Every child, regardless of disability, is entitled to education and development to the fullest extent possible. The fact that M[...] has significant disabilities does not mean she should be kept at home with no stimulation, only watching Mickey Mouse on her cell phone, as proposed by the appellant. The proposal is clearly in disregard of her interests.

[55] The appellant's proposed budget includes a caretaker who can provide stimulation and exercises for M[...].

[56] The appellant's calculation of the children's needs is set at approximately R16,000 per month. The respondent calculates the children's needs at R45,000 per month.

[57] After scrutinising the expenses of the children, I am satisfied that an amount of **R18,000** is a reasonable amount of maintenance for both

children.

[58] In my view this calculation is a reasonable assessment of the children's core needs. It takes into account M[...]s special needs through the caretaker expense, medication, and nappies (included in medication). It also, amongst other needs, allocates a reasonable amount for accommodation, which is the respondent's bond repayment.

Proportionate contribution of parents

[59] Section 15 of the Maintenance Act requires that both parents contribute proportionately according to their means. This requires a comparison of the parties' respective financial positions and the maintenance need of the children.

[60] The monthly income of the respondent is approximately **R60,000**, while the appellant's monthly income is approximately **R20,000**.

[61] On a proportionate basis, the appellant should contribute approximately 30% of the children's reasonable needs, and the respondent should contribute approximately 70%.

[62] I accordingly find that the parties' proportions to the children's

reasonable maintenance needs be calculated on the following basis:

62.1. The appellant's net income in the amount of R20,000 X R18,000 (reasonable expenses of the children) divided by R80,000 (being the joint income of the parties) amounts to **R4,500**.

62.2. The respondent's net income in the amount of R60,000 X R18,000 (reasonable expenses of the children) divided by R80,000 (being the joint income of the parties) amounts to **R13,500**.

[63] In order to cater for the special needs of M[...], the maintenance order of R4,500 to be paid by the appellant, is to be divided that R2,000 is for the maintenance of I[...] and R2,500 is for the maintenance of M[...].

Conclusion on the merits

[64] I am satisfied that the magistrate misdirected herself in several material respects, as detailed above, and that her order be replaced with a newly calculated maintenance order in order to protect the interests of the minor children.

[65] I conclude that a fair and appropriate maintenance order is R4,500

per month total: R2,000 per month for I[...] and R2,500 per month for M[...]. This amount is within the range of the appellant's proportionate share, takes into account M[...]s special needs, and is affordable for the appellant.

[66] The order for medical expenses not covered by medical aid to be shared equally should remain, as this is a standard provision and ensures that unexpected medical costs are shared fairly. It also appears reasonable under the circumstances of this matter.

Costs

[67] The appellant has been substantially successful in the appeal. The general principle is that costs follow the result. The granting of cost is at the discretion of the court, to be determined on grounds of fairness and reasonableness in the specific circumstances. In this case I deem it fair and reasonable to deviate from the general principle, for the reasons set out below.

[68] In this instance, the respondent acted in what appears to be her genuine belief in the advancement of the interest of the children. The parties are also bound in a life-long bond, being both parents of the children. An adverse cost order will probably be prejudicial to the relationship between the appellant and the respondent. Having

regard to the aforesaid, I find that it would be in the interest of justice and in line with the principles of fairness that each party should pay their own costs.

[69] As such, I consider it appropriate to order that each party be ordered to pay his / her own costs.

Order

[70] In the premise, I make the following order:

- (i) The appeal is upheld.
- (ii) The order of the Magistrate's Court for the District of Tshwane North dated 8 January 2025 under case number 172/2022 is set aside and replaced with the following order:

"1. The appellant shall pay R4,500 per month maintenance in respect of the two minor children as follows:

1.1 R2,000 (Two Thousand Rand) per month in respect of I[...] P[...] V[...] N[...]; and

1.2 R2,500 (Two Thousand Five Hundred Rand) per month in respect of H[...] M[...] V[...] N[...].

2. Payment shall be made to the respondent on or before the first day of each month, with effect from 1 July 2026.

3. *The maintenance amount shall increase with 10% per year from date of this order.*

4. *All medical expenses incurred for the minor children that are not covered by the respondent's medical aid shall be shared equally between the parties, provided that the respondent furnishes the appellant with proof of such expenses within a reasonable time."*

(iii) Each party shall pay their own costs of the appeal.

**FMM REID
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

I agree,

**KLM MANAMELA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

DATE OF HEARING: 17 FEBRUARY 2026

DATE OF JUDGMENT: 4 JUNE 2026

APPEARANCES:

**FOR APPELLANT: ADV H VAN ZYL
(ATS Attorneys Inc)**

**FOR RESPONDENT: ADV XT VAN NIEKERK
(Rianie Strijdom Prokureur)**