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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

CASE NO: 623/2025

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO
DATE 30/07/2026
SIGNATURE

In the matter between

B[...] E[...] M[...]

PLAINTIFF

and

G[...] H[...] M[...]

DEFENDANT

*This judgment was handed down electronically by circulation to the parties' representatives by email.
The date and time for the hand-down of the judgment is deemed to be 30 July 2026 at 10h00*

JUDGMENT

MONENE AJ

Introduction

- [1] The plaintiff instituted divorce action proceedings against the defendant in the backdrop of their civil marriage which had been concluded, as per their marriage certificate, on 13 January 2016.
- [2] In her particulars of claim the plaintiff pleaded that post the marriage the parties had sought to change their marital regime to one out of community of property with accrual per post-nuptial contract executed on 19 January 2016 and registered with the Deeds Registry on 26 January 2016.
- [3] Pleading that the marriage continued to be one in community of property on account of the post-nuptial contract not being valid, according to the plaintiff, for want of compliance with section 88 of the Deeds Registry Act 47 of 1937, the plaintiff prays for a decree of divorce, division of the joint estate and spousal maintenance for a year.
- [4] In his plea, the defendant admitted the marriage date of 13 January 2016 as well as the marital regime as pleaded by the plaintiff but posited that their marriage had since become out of community of property with accrual on account of the post-nuptial notarial contract which he held out as valid. He agreed that the marriage cried out for dissolution but contested equal division of the estate on the basis that

there was no joint estate while also denying there to be a basis for the plaintiff to be granted spousal maintenance.

- [5] The aspects of maintenance of the parties' two minor children, their primary care and related parental rights was not a live issue before this court as the parties have already struck an agreement on that duly endorsed by the family advocate.
- [6] The issues for determination therefore are whether there was, post the marriage, a lawful and valid change of the marital regime and whether the plaintiff is entitled to spousal maintenance.
- [7] Both parties testified before this court pursuant to assisting this court to untie the two knots identified immediately above, the gravamen of which evidence will be briefly stated *infra* prior identification and application of relevant legal instruments to the factual matrix.

The parties' oral evidence in brief

- [8] Thirty-four-year-old plaintiff confirmed the parties' marriage date and regime as stated *supra* and also evinced by the marriage certificate admitted into evidence with the defendant's consent. Confirming the post-nuptial notarial agreement and its intended change of their marital regime and her participation therein, she stated that it remained invalid

for want of compliance with legal instruments the effect of which was that their marriage remained in community of property.

[9] She confirmed that maintenance of the minor children and related parental rights and obligations were not issues before the court as the parties had found each other thereon. She testified that she had no source of income and because during the marriage's subsistence she was maintained by the defendant she was entitled to rehabilitative maintenance in the amount of R5 000.00 per month for a year.

[10] Cross examination of the plaintiff elicited that the parties had, during their courtship stage, agreeably discussed marriage out of community of property, that the defendant had on their marriage date at the home affairs offices enquired about marriage out of community of property and been advised that a lawyer's intervention was needed for that. She was made to concede that post the marriage date of 13 January 2016 the parties had attended to the home affairs offices again for "solemnization" of the marriage or something to that effect. It sounded to this court, at this stage, that the defendant was insinuating further that the marriage was not concluded on 13 January 2026 but was rather some part-heard ceremony which was only finalized on a subsequent visit to the marriage officer's offices on 15 January 2016. It was further intimated, in somewhat challenging the spousal maintenance prayer,

that the plaintiff had ignored improving herself academically for purposes of being able to earn a living independent of the defendant.

[11] The defendant testified that he was a 50-year-old senior laboratory technician earning an average salary of R24 000.00 per month. He stated that he had always sought to be married out of community of property so as to protect his pre-marriage acquired assets, had had positive discussions about his views with his then girlfriend, the plaintiff, prior marriage and that on 13 January 2016 he had in the process of getting married been advised that to facilitate a marriage out of community of property he needed the services of a lawyer. According to him the officiation of their marriage ceremony on 13 January 2016 had not been completed as it had been put on hold for them to get the services of a lawyer to assist with a notarial contract aimed at making their marriage out of community of property. Thus, they only got married, as per his evidence, on 15 January 2016 after signing the said notarial contract on 14 January 2016. That, his version went, made the contract an ante-nuptial one and not post-nuptial.

[12] The defendant testified further that he was financially in dire straits as he was stretched by child maintenance and other financial obligations already. He thus, his evidence proceeded, was not in a position to afford payment of spousal maintenance.

[13] He stated further that he only became aware of the date of his marriage and the in community of property regime stated on the marriage certificate upon being served with divorce summons and that according to him the home affairs office had mistakenly recorded his marriage as being dated 13 January 2016 instead of 15 January 2016. He stated rather innocently and with obvious sincerity, *“I honestly knew myself to be married out of community of property throughout my marriage.*

[14] Cross-examination of the defendant elicited, in the main, that the defendant’s evidence contradicted his plea which accepted the marriage certificate captured date of marriage and marital regime, that he was until trial date not privy to what he admitted in his plea and that he did not recall whether he had informed the attorneys who assisted with drafting the notarial agreement that they had already been to a marriage ceremony at home affairs prior approaching the attorneys.

Application of the relevant legal instruments

Ad whether the marital regime was lawfully changed

[15] While I found the defendant to have testified with credible about his intentions to be married out of community of property, about his ignorant belief that the marriage ceremony on 13 January 2016 had been held in abeyance until 15 January and about his mistaken belief that he was married out of community of property, I have to, sentiments aside, state

that, parties being bound by their pleadings and the marriage certificate being properly admitted evidence before this court, a finding that the parties got married on 13 January 2016 is inescapable. The defendant cannot in our law plead admission of the marriage certificate details and testify contrary to that admission. About that, the law is trite and needs no belaboring. Whether or not the defendant made an honest mistake and/or was poorly advised at pleading stage and/or was honestly ignorant in not perusing his marriage certificate for once during the subsistence of the marriage and whether the plaintiff is evincing some levels of opportunism on the facts or not is, of no legal moment. We owe fidelity not to sentiment but to the law which captives us all in precedence and assures us justice is served.

[16] I then must determine the question of the validity of the intended change of marital regime as having been carried in a post-nuptial agreement as it was entered into after the marriage date, to wit, 13 January 2016.

[17] In that regard the law is free from complications and needs no legal gurus to help unravel. Section 21(1) of the Matrimonial Property Act 88 of 1984 ("Matrimonial Property Act") provides that parties which aspire to change their marital regime must jointly apply to court praying for such a change. There are a few procedural essentials which must be satisfied such as giving notice to creditors of the spouses to obviate

them being prejudiced and proof of solvency on the part of the spouses. It is only once a court has ordered a change of a marital regime that a post-nuptial contract is registered with the Deeds Office to formally effect the change. A registration of a contract by a notary after the marriage date as *in casu* is of no force and effect. It does not change a matrimonial property regime. It is a different matter if the notarial contract is entered into pre-marriage. That is, on the pleaded case, not the case *in casu*.

- [18] As recently as 21 January 2026 the apex court in the land, in declaring a contract which purported to change the marital regime post marriage without employing section 21 of the Matrimonial Property Act invalid, stated in no uncertain terms as follows in **VVC v JRM and Others 2026 (3) SA 1 (CC)**(“VVC”) at para 50:

“[50] ...The default position for matrimonial property in our country is universal community of property. Parties who wish to deviate from that norm must enter into an ANC prior to their marriage...in terms of section 21, spouses may jointly apply to court for authorization to execute a postnuptial notarial contract...Any extra-judicial agreement entered into by parties that effectively alters the spouses’ matrimonial property system will be invalid...”

[19] At paragraph 77 of **VVC** the Constitutional could not have been clearer about the position in our law that outside the provisions of section 21 of the Matrimonial Property Act there is no other mechanism in terms of which a matrimonial property regime can be changed.

[20] In that regard therefore the fact that the plaintiff was a willing participant in the signing of a notarial agreement post the marriage date of 13 January 2016 is of no moment at all because as reasoned by the apex court in **VVC** at para 67, an authority to which I was correctly and ably referred by counsel for the plaintiff, that “...*It is inconceivable that parties’ intentions must be favored over the statutory regime applicable...*”

[21] In the pleadings both parties sought to somehow argue for the validity of the post nuptial contract invoking section 88 of the Deeds Registry Act 47 of 1937. I am unable to understand that reasoning at all seeing that the said statutory provision deals expressly with post-nuptial execution of antenuptial agreements and in that context, what is post being the execution and not the entering into the agreement. Whether that reasoning was informed by a misunderstanding or conflation of what is *ante* and what is *post* or whatever, I find it manifestly unsustainable in the light of the law on admissions made in pleadings and **VVC**, both referred to *supra*.

Ad spousal maintenance claim

[22] Since many moons ago in ***Strauss v Strauss 1974 (3) SA 79 (A)*** it is established law that at divorce there is no inherent right to spousal maintenance due to any spouse nor corresponding inherent duty. What must obtain in the determination of a spousal maintenance claim at divorce is a balancing act between the needs and the abilities of the two spouses factoring into the matrix, inter alia, the earning capacities, ages, duration of marriage, the existing or prospective means of each of the parties and the standard of living during the subsistence of the marriage.

[23] Save for indicating that she is unemployed and has been so unemployed for the duration of the marriage, the plaintiff has not really engaged the basics of proving a need for spousal maintenance at all. All she has stated is that because the defendant was the only one with a source of income during the marriage he must maintain her at R5 000.00 per month for a year. She failed to testify and prove that that amount or its value in kind was in fact what was given to her during marriage nor did she prove that given the financial engagements of the defendant with regard to children's schooling, clothing, shelter and food, his R24 000.00 income can afford a spousal maintenance deduction of R5 000.00 per month for a year. No proper compelling factual basis has

been laid to persuade this court to exercise its discretion in favour of the plaintiff's claim at all.

[24] The defendant testified, on this score, that he was earning R24 000.00 a month and was solely financially responsible for the two minor children's upkeep, the house the kids and plaintiff reside in and his own rented place. His evidence that the plaintiff has over the marital years intermittently been able to do informal types of jobs for some income was not countervailed. Equally uncontroverted was his evidence that he had over the years of married life sustained and maintained his family by sending money to the children's banking accounts so that he could monitor the proper utilization thereof by the plaintiff on account of him being electronically linked to those accounts as opposed to sending money directly to the plaintiff whose spending habits and financial prudence he was not a fan of.

[25] Applying the above-stated tools on the determination of spousal maintenance at divorce, particularly as reflected upon in **Grasso v Grasso 1987 (1) SA 48(C)** at para 52 and by the SCA in **EH v SH 2012(4) 164(SCA)** at para 13 and in general, I am persuaded that, given the heavy and important financial obligations of the defendant, particularly with regard to the upkeep of the two minor children, the meagre income he generates monthly and the financial lifestyle of the parties during the duration of the marriage, an order for spousal

maintenance against the defendant will be unjust and misplaced. The defendant simply does not have the financial ability to pay spousal maintenance over and above his other financial obligations. Despite his ignorance of matters legal and casual approach to his matter regarding what was pleaded on his behalf, he struck this court as a very responsible parent over his children who, having now agreed to the plaintiff being granted primary care of the children, has not and will leave neither the children nor their mother to struggle economically. Whole families in this country are known to survive with child support grants far lesser than what the defendant would and will advance for the upkeep of his children. The defendant does not need to be ordered to maintain the plaintiff and, I reiterate, cannot, on the facts before me, afford to so be obligated. Beyond that, the plaintiff can always subsist, like millions of others in this country, on intermittent informal jobs as she has done before or on social security grants or avail herself to the benevolence of kith and kin as she probably did prior marriage. These are tough economic times for everybody in this country and hardly do we see anybody starving in the streets owing to divorce. The plaintiff, having been able to afford legal representation for this matter, can and should be able to be resourceful under this difficult economic environment to fend for herself. Above all, whatever the plaintiff gets from the division of the joint estate ought to be sufficient to assist her to 'rehabilitate' herself post the divorce.

[26] In the result the plaintiff's spousal maintenance claim must fail.

Costs

[27] I see no reason why any of the parties in this matter deserves to be mulcted with costs. No party is ever successful in divorce proceedings as, having entered the institution with much hope for a bright future pregnant with all manner of gains, they both lose at divorce. Additional thereto, none of the parties conducted themselves in any manner attracting this court's frown.

[28] Thus, I am inclined to exercise my discretion in favour of each party paying its own costs.

Order

[29] Resultantly, the following order is made:

29.1. The post-nuptial contract entered by the parties after their marriage is declared invalid.

29.2. A decree of divorce dissolving the bonds of marriage between the parties is granted.

29.3. The marital joint estate shall be divided equally between the parties.

29.4. An endorsement into the records of the SAPPI Pension Fund for payment of fifty(50) percent of the defendant's pension interest held with the pension fund under Identity number 7[...] in favour of the plaintiff is ordered to be made within fourteen (14) days of this order and consequent payment thereof to be paid directly to the plaintiff within sixty(60) days of the pension fund becoming aware of this order.

29.5. The plaintiff's claim for spousal maintenance is dismissed.

29.6. Parental rights and responsibilities as contemplated in section 18(2) of the Children's Act 38 of 2005 in respect of the parties' two minor children are awarded to both parties with primary residence awarded to the plaintiff subject to the defendant's rights of access and contact.

29.7 Each party must pay its own costs.

Malose S Monene
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)

APPEARANCES

Heard on : 29 April 2026

Judgment delivered on : 30 July 2026

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