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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: **A2024-122591**

Court a Quo Case Number: 2021/32083

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
	<u>24/08/2026</u>
DATE	SIGNATURE

In the matter between:

A[...] R[...] B[...]

Appellant

and

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

Respondent

Coram: Mali *et* Modiba JJ *et* Mitchell AJ

Heard: 04 March 2026

Delivered: This Judgment was handed down electronically by circulation the parties/their legal representatives by email and by uploading to the electronic file on CaseLines. The date for hand-down is deemed to be 24 August 2026.

ORDER

On appeal from: The Gauteng Division of the High Court, Johannesburg (Ford AJ sitting as Court of first instance):

1. The appeal against the decision of the trial court as regards the Redistribution Order succeeds. Order 2 of the trial court is set aside and replaced by the following order-

“(2) A redistribution order is hereby issued in favour of the Plaintiff, directing the Defendant to pay the Plaintiff R1 000 000 within 3 months of the grant of this order.”

2. Order 3 of the trial court is amended by the addition of the words “should the Defendant predecease the Plaintiff; this order shall survive the death of the Defendant” as follows –

“(3) The Defendant is ordered to pay spousal maintenance to the Plaintiff in the amount of R18,000 per month (in line with CPI) until he reaches retirement age, whereafter spousal maintenance shall be paid to the Plaintiff in the amount of R25,000 per month; should the Defendant predecease the Plaintiff, this order shall survive the death of the Defendant.”

3. There is no order in respect of the costs of this appeal.

JUDGEMENT

MALI J (MODIBA J et MITCHELL AJ concurring)

Introduction

[1] This is an appeal against the judgment and order of Ford AJ delivered on 26 July 2024. The court *a quo* granted a redistribution order in favour of the respondent amounting to 35 per cent of the appellant's estate, together with an order

directing the appellant to pay spousal maintenance. The appeal is before the Court with the leave of the court *a quo*, granted on 3 October 2024.

[2] For convenience, the parties are referred to as they were cited in the court *a quo*. The appellant is therefore referred to as "the defendant" and the respondent as "the plaintiff".

[3] The court *a quo* granted the following orders –

- “1. a decree of divorce is granted effective 31 January 2024, as previously confirmed;
2. a redistribution order is hereby issued in favour of the plaintiff, directing the defendant to pay to the plaintiff 35% (thirty-five percent) of the defendant's estate. In the unlikely event of a disagreement between the parties in respect of the value of the defendant's estate, an actuary shall be appointed, at both parties' costs, to undertake such a calculation (the “Redistribution Order”);
3. the defendant is ordered to pay spousal maintenance to the plaintiff in the amount of R 18,000 per month (in line with CPI) until he reaches retirement age, whereafter spousal maintenance shall be paid to the plaintiff in the amount of R 25,000 per month (the “Maintenance Order”);
4. the defendant is ordered to pay the plaintiff's costs of suit, and counsel fees shall be at Scale A.”

Application for the reinstatement of the appeal

[4] At the commencement of the appeal, the defendant sought condonation for the late prosecution of the appeal and for its reinstatement on the roll. It was submitted that the non-compliance with the Uniform Rules resulted from administrative and logistical difficulties encountered in preparing and filing the voluminous appeal record. The defendant contended that the default was neither wilful nor contumacious, that the appeal enjoys reasonable prospects of success, and that any prejudice to the plaintiff would be minimal and capable of being

remedied by an appropriate costs order, and that the interests of justice favour a determination of the appeal on its merits.¹

[5] Although the application for condonation was duly served, the plaintiff filed no opposing affidavit. In the respondent's supplementary heads of argument, no submissions were made opposing the application. The plaintiff merely indicated that she persisted in opposing the appeal and sought leave to deliver supplementary heads of argument.

[6] In the circumstances, the condonation was granted and the appeal reinstated and the plaintiff was granted leave to file supplementary heads of argument.

[7] The evidence before the court *a quo* is that the parties were married to each other on 19 April 1984 at Ermelo, Mpumalanga, out of community of property, in terms of a duly registered antenuptial contract whereof community of property, profit and loss, and accrual system in any form has been excluded. The marriage took place before 1 November 1984.²

[8] No minor children were born of the marriage relationship between the parties. The marriage relationship had broken down irretrievably and had reached such a state of disintegration without any reasonable prospect of a restoration of a normal marriage relationship. Hence, the court *a quo* granted a decree of divorce.

[9] The plaintiff's case in the court *a quo* was that she worked for 27 years during the marriage between the parties and disbursed her monthly income on the acquisition of household necessities, maintaining the parties' minor children, and improving the parties' common home, as a result of which the plaintiff saved the defendant expenses which the defendant would otherwise have had to incur. The plaintiff further submitted that for the first 13 years of the marriage, she took care of all household duties without the assistance of a maid; thereafter, a maid was employed whose salary was paid by the plaintiff and the defendant, and who assisted the plaintiff only two days per week, as a result of which the plaintiff saved

¹ *Grootboom v National Prosecuting Authority and Another* [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC) at para 51; *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)* [2007] ZACC 24; 2008 (2) SA 472 (CC); 2008 (4) BCLR 442 (CC).

² *Matrimonial Property Act 88 of 1984*.

the defendant expenses which the defendant otherwise would have had to incur by acting *inter alia* as a maid, launderess, and cook.

[10] The plaintiff took care of the parties' children during subsistence of the marriage, assisted the children with homework, transported the children to and from school, and transported the children to after-school activities, thereby saving the defendant expenses he would otherwise have had to incur. The plaintiff further created a home environment in which the defendant could enjoy all comforts which he was entitled to as her husband, and which enabled him to devote his energy and time to his career, as a result of which the plaintiff indirectly contributed to the growth and the increase of his estate.

[11] The defendant denied that the plaintiff was the only one attending to household necessities and the maintenance of minor children. From the time of entering into the marriage relationship, the plaintiff was employed as a bank official and continued working until approximately November 2011, when the parties jointly decided that the plaintiff would stop working. Prior to that, the plaintiff contributed directly towards the parties' household expenses on many levels, including but not limited to paying towards general household expenses, children's expenses, accommodation, municipal expenses, groceries, clothing for the defendant and the children, and many other ordinary expenses, which in effect saved the defendant many expenses which the defendant would have had to incur.

[12] The plaintiff resigned from permanent employment during or about November 2011. Prior to this, the plaintiff repeatedly had to terminate employment for transfer to new employment, which curtailed her growth within the workplace, and which prevented the plaintiff from furthering her career, which was done on instructions from the defendant on each occasion that a relocation was necessary for the defendant to obtain alternative employment.

[13] Even after the plaintiff stopped working during 2011, the plaintiff continued paying towards the general household expenses monthly with the effect that the defendant did not have to incur such expenses and assisted the defendant to grow his estate.

[14] According to the defendant, the plaintiff failed to discuss her decision to go on early retirement during or about November 2011 with him. The plaintiff was only 51 years old when she decided to go on early retirement, i.e. 14 years before the expected retirement age for women in the banking industry. The defendant also contributed to household expenses and attended to the needs of the children when they were still minors. The defendant did not dispute that the plaintiff contributed towards some of the general monthly household expenses after she went on early retirement. However, the defendant testified that his expenses had in fact increased as a direct result of the plaintiff's early retirement.

[15] The plaintiff's estate consists of the following, with approximate values indicated:

- a) An immovable property situated at No 1[...] P[...] [...], No 1[...] C[...] Road, W[...] Park, Roodepoort – R 1 400 000;
- b) an endowment policy – R 178 028;
- c) a retirement annuity – R 399 035;
- d) a retirement annuity – R 589 012; and
- e) annuity – R 1 512 000.

The total value of the plaintiff's estate was therefore R 4 256 103.

[16] It was submitted on behalf of the defendant that it would be unjust for the court *a quo* to order the defendant to forfeit 50% of his estate, as the plaintiff had multiple assets mentioned above and was a woman of substantial financial means.

[17] The defendant's estate consists of the following, with approximate values indicated:

- a) an endowment policy – R 565 794;
- b) a retirement annuity – R 399 677;
- c) a provident preserver – R 3 371 206;
- d) a retirement annuity – R 1 326 306;

- e) a retirement annuity – R 226 496.00;
- f) an investment builder – R 2 432 941.00; and
- g) a provident fund – R 1 454 466.00.

The total value of the Defendant's estate was therefore R9 776 886.

Appeal

[18] It is contended on behalf of the defendant that the trial court erred in granting both a redistribution order and a maintenance order. It was submitted that, if the redistribution order is upheld, or is not substantially reduced, the plaintiff will have no need for maintenance. Alternatively, the court *a quo* erred in granting any redistribution order at all, on the basis that such an order was neither just nor equitable.

[19] Accordingly, the challenge to the maintenance order is conditional. The defendant seeks to set aside or vary the maintenance order only if this Court declines to set aside or substantially reduce the redistribution order.

Redistribution

[20] A redistribution order under s 7(3) of the Divorce Act³ (the Act) entails a two-stage inquiry. The first stage asks whether the claimant spouse has made a direct or indirect contribution to the maintenance or increase of the other spouse's estate and, by reason of that contribution, whether it is equitable and just to grant redistribution relief. If that jurisdictional threshold is met, the second stage concerns the extent of the redistribution, determined with reference to the factors set out in s 7(5) of the Act.

[21] It was common cause that the plaintiff made both direct and indirect contributions to the maintenance and increase of the defendant's estate. At the very least, she fulfilled the traditional role of homemaker throughout the marriage, thereby enabling the defendant to pursue his career and accumulate substantial wealth. The existence of qualifying contributions was therefore not in issue. The dispute concerns the proper weight to be accorded to those contributions in determining the extent of the redistribution.

³ 70 of 1979.

[22] In determining what constitutes a just and equitable redistribution, a court must have regard to the considerations enumerated in s 7(5) of the Act. These include the nature and extent of the contribution made by the claimant spouse, the existing means and obligations of the parties, any donations made between them, and any other factor which, in the opinion of the court, ought properly to be considered. The enquiry is an evaluative one directed at achieving overall fairness between the parties. Where a maintenance order is granted contemporaneously with a redistribution order, that order constitutes one of the relevant circumstances to which proper regard must be had in determining the extent of any redistribution.⁴

[23] Although the court *a quo* correctly found that the plaintiff had established the jurisdictional requirements for a redistribution order, it appears from the judgment that the redistribution enquiry and the maintenance enquiry were undertaken separately. There is no indication that the court *a quo* considered the effect the maintenance order would have on the parties' overall financial position when determining the quantum of redistribution.⁵ This constituted a material misdirection.

[24] Once the court had ordered lifelong maintenance designed to meet the plaintiff's ongoing financial needs and to preserve, as far as reasonably possible, the standard of living enjoyed during the marriage, it was required to take that order into account in determining what additional capital redistribution would be just and equitable. Failing to do so resulted in an award which effectively compensated the plaintiff twice: first by way of a substantial transfer of capital, and secondly by means of continuing maintenance for life. The combined effect of the two orders exceeded what was necessary to achieve the equitable objectives of s 7(3) of the Act.

[25] Where a court has materially misdirected itself in the exercise of the discretion conferred by s 7(3) of the Act, an appellate court is entitled to interfere and to substitute the discretion of the trial court with its own.⁶ In the present matter the failure to consider the maintenance order as part of the overall equitable assessment materially affected the exercise of the court's discretion. This Court is therefore at large to determine afresh what redistribution would be fair and just.

⁴ *EB v ER NO and Others and a Similar Matter* 2024 (2) SA 1 (CC) at para 137.

⁵ *Beaumont v Beaumont* 1987 (1) SA 967 (A) at 993C–E.

⁶ *Buttner v Buttner* [2005] ZASCA 86; 2006 (3) SA 23 (SCA) at paras 20 and 24.

[26] The evidence accepted by the court *a quo* established that, at the time of trial, the plaintiff's estate had a value of approximately R4,05 million. By the time judgment was delivered, that value had reduced marginally to approximately R3,95 million, largely because cash reserves had been depleted to meet legal expenses.

[27] Her estate consisted principally of a fully paid immovable property situated at W[...] P[...], registered in her sole name and valued at approximately R1,585 million; a Honda Jazz motor vehicle valued at approximately R 70 000; a one-half share in the household contents valued at approximately R 25 000; cash and bank balances of approximately R 101 263, later reduced by approximately R 91 000, retirement and investment assets comprising an ABSA Pension Fund of approximately R 1,7 million, a Liberty Life Guaranteed Investment Plan valued at proximately R 416 590, a living annuity valued at approximately R 402 132, and an ABSA investment account of approximately R 280 062, from which she derived a modest monthly income.

[28] The plaintiff therefore had a substantial estate of her own when the parties divorced. The court *a quo* accepted the defendant's estate as having a value of approximately R 14,7 million. The court expressly rejected submissions that the estate should be valued at a lesser amount.

[29] The estate consisted predominantly of pension interests, investment portfolios, insurance products and accumulated savings generated during the defendant's lengthy corporate career. Those assets were built largely from the defendant's substantial earnings, bonuses and disciplined long-term investment strategy. Although the defendant owned no immovable property forming part of his estate, the court correctly observed that the former matrimonial home had been registered solely in the plaintiff's name notwithstanding the defendant's substantial financial contributions towards its acquisition. The court treated those contributions as donations rather than retained assets.

[30] The court *a quo* correctly recognised that the defendant's estate could not be viewed in isolation from the plaintiff's contributions throughout the marriage. Her support, both direct and indirect, enabled the defendant to devote himself fully to his employment and to accumulate an estate of considerable value.

[31] The practical effect of the redistribution order granted by the court *a quo* was significant. An award of 35 percent of the defendant's estate entitled the plaintiff to receive capital of approximately R 5,1 million. Her estate would thereby increase from approximately R 3,95 million to almost R 9 million, while the defendant's estate would correspondingly reduce from approximately R 14,7 million to approximately R 9,6 million. This substantial capital transfer would be in addition to the lifelong maintenance awarded in the plaintiff's favour.

[32] It is readily accepted that the plaintiff did not enjoy the same employment opportunities as the defendant and that her career progression was considerably more limited. Accordingly, there was a marked disparity between the parties' earning capacities, both during the marriage and thereafter. That disparity properly justifies both a maintenance award and an appropriate redistribution order.

[33] However, the object of s 7(3) of the Act is not to equalise the parties' estates, nor to confer upon the claimant spouse a windfall. Its purpose is to achieve equity by recognising contributions made towards the accumulation of the other spouse's estate. The practical effect of the order approaches an equal division of the parties' estates; a consequence more closely associated with a marriage in community of property than with the discretionary redistribution contemplated by section 7(3) of the Act. This is not what is legally envisaged.

[34] Having regard to the duration of the marriage, the plaintiff's substantial direct and indirect contributions, the disparity in the parties' earning capacities, the plaintiff's existing estate valued at approximately R 3.95 million, the defendant's substantially larger estate, and the lifelong maintenance awarded in her favour, justice and equity are best achieved by a once-off redistribution payment of R 1 million. Such an award appropriately recognises the plaintiff's contribution without conferring a windfall or duplicating the financial benefit already secured through the maintenance order.

[35] Taking all these factors into account, a fair approach is to recognise the plaintiff's contribution by way of a single capital payment that reflects her past contribution. On this basis, a once-off payment of R 1 million is a fair and just

redistribution under section 7(3) of the Act, as it properly balances the value of each party's estate and each party's contribution.

The Maintenance Order

[36] The plaintiff claims spousal maintenance in the amount of R 25 000 (as discussed below). The defendant, as per his evidence, tendered an unequivocal contribution to lifelong maintenance in the amount of R 18 000.00 per month, with a CPI increase every year, until she passes away, remarries or cohabits with another man.

[37] It was argued further that the plaintiff's claim for spousal maintenance stems from s 7(2) of the Act, which reads thus:

"In the absence of an order made in terms of subsection (1) 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 capacities, 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 in so far as it may be relevant to the break-down of the marriage, an 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 may first occur."

[38] It is common cause that the total amount of expenses that the plaintiff incurs per month is R 23 502.00. The plaintiff testified further that she was concerned that she would in future be responsible for expenses not paid by the medical aid, in addition to the above premium, and that she would not be able to afford such expenses.

[39] It is also not in dispute that the plaintiff receives a monthly income in the total amount of R 7 247 (from her pension fund, living annuity, and investment plan). The defendant submitted that the plaintiff simply alleges that she is entitled to maintenance in the amount of R 25 000 on the basis that the defendant can afford it, and that the plaintiff wants to build up capital resources. Having regard to the above, the plaintiff can survive with the maintenance amount of R 18 000.00 per month.

Costs

[40] The trial court was satisfied that the marital relationship between the parties had reached such a state of disintegration that there was no reasonable prospect of the restoration of a normal relationship between them. The trial court found that the parties had ceased to live together as husband and wife, that consortium and intimacy had ended by 2019, that they no longer shared a bed from mid-2020, and that the defendant vacated the matrimonial home in April 2021. On these facts, viewed cumulatively, the court concluded that the marriage had irretrievably broken down and granted a decree of divorce on that basis, without determining the matter on considerations of fault or blame.

[41] The trial court went on to order that the defendant is to pay the plaintiffs' costs of suit, and counsel fees on Scale A.

[42] Section 10 of the Act provides as follows:

“In a divorce action the Court shall not be bound to make an order for costs in favour of the successful party, but the Court may, having regard to the means of the parties, and their conduct insofar as it may be relevant, make such order as it considers just, and the Court may order that the costs of the proceedings be apportioned between the parties.”

[43] In awarding costs, a trial court exercises judicial discretion, and an appeal court will not readily interfere with that discretion. The power of interference on appeal is limited to cases of vitiation by misdirection or irregularity, or the absence of grounds on which a court, acting reasonably, could have made the order in question. A court of appeal cannot interfere merely on the ground that it would itself have made a different order.⁷

[44] The proceedings before the trial court dealt with the decree of divorce, the Maintenance Order and the Redistribution Order. It is only on the Redistribution Order that this court differs with the trial court's judgment by reducing the amount payable. In all the circumstances, in making the costs order, it cannot be said that the trial court misdirected itself or committed an irregularity or acted unreasonably. This court will therefore not interfere with the costs order made by the trial court.

⁷ *Attorney-General, Eastern Cape v Blom and Others* 1988 (4) SA 645 (A).

[45] As regards the appeal, I believe this is an appropriate case in which to make no order as to costs in respect of the appeal.

Order

1. The appeal against the decision of the trial court as regards the Redistribution Order succeeds. Order 2 of the trial court is set aside and replaced by the following order –

“(2) A redistribution order is hereby issued in favour of the Plaintiff, directing the Defendant to pay the Plaintiff R 1 000 000 within 3 months of the grant of this order.”

2. Order 3 of the trial court is amended by the addition of the words “should the Defendant predecease the Plaintiff; this order shall survive the death of the Defendant” as follows –

“(3) The Defendant is ordered to pay spousal maintenance to the Plaintiff in the amount of R 18,000 per month (in line with CPI) until he reaches retirement age, whereafter spousal maintenance shall be paid to the Plaintiff in the amount of R25,000 per month; should the Defendant predecease the Plaintiff, this order shall survive the death of the Defendant.”

3. There is no order in respect of the costs of this appeal.

MALI J

Judge of the High Court

Gauteng Division, Johannesburg

Modiba J

Judge of the High Court

Gauteng Division, Johannesburg

Mitchell AJ

Acting Judge of the High Court

Gauteng Division, Johannesburg

HEARD ON: 4 MARCH 2026

DECIDED ON: 24 AUGUST 2026

FOR THE APPLICANT: Dr G J Ebersöhn
INSTRUCTING ATTORNEYS: Gerrie Ebersöhn Attorneys Inc.

FOR THE RESPONDENT: Adv. G Olwagen-Meyer
INSTRUCTING ATTORNEY: DPS Attorneys