REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 28609/2020

(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED. NO

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SIGNATURE **DATE:** 26 November 2021

In the matter between:

GREENHILL, BEVERLEY **Plaintiff**

(born LAFFER)

and

DISCOVERY PRESERVATION PENSION FUND ADMINISTERED BY: DISCOVERY LIFE INVESTEMTS SERVICES LTD. **First Respondent**

GREENHILL, NOAH **Second Respondent**

JUDGMENT

MANOIM J

Summary

Whether a warrant of execution issued by the High Court, pursuant to an order to pay maintenance in a Rule 43 application can be issued to attach a pension benefit or whether same can only be done if a warrant is issued by a maintenance court. Provisions of the Pensions Act and section 26(4) of the Maintenance Act considered. The court adopted a textual, contextual, and purposive approach to the legislation.

Introduction

[1] This case raises the question of whether warrants of execution issued out of the High Court may be used to attach pension fund assets arising out of maintenance proceedings between spouses.

[2] The applicant and the second respondent (her husband) got married in December 1996 out of community of property. They have two children born of the marriage, one whom was a minor when the maintenance order that is the subject of this litigation was granted.

[3] The marriage relationship has broken down and in 2019, the applicant commenced divorce proceedings against the second respondent in this court. These divorce proceedings have not been concluded so the marriage still subsists.

Background

[4] In March 2019 the applicant succeeded in obtaining an interim maintenance order from the High Court, against the first respondent in terms of Rule 43 of the Uniform Rules of the High Court. The relevant terms of that order were:

1. The Respondent is ordered pendente lite to pay the applicant the sum of R25 000,00 per month in respect of the applicant and the minor child;

2….

3. The Respondent shall continue to pay for all costs in relation to the matrimonial home situated at 4 Kingfisher Lane, Sandton Country Club. (insofar as it is relevant to this warrant of execution, this relates to rates, taxes, water, electricity, and the mortgage bond instalment over the property.

4. ….

5. The Respondent shall continue to pay the monthly instalment of the vehicle driven by the applicant;

6. The Respondent shall make a once-off contribution towards the legal costs of R30 000.00"[1]

[5] According to the applicant the respondent has partially complied with paragraph 3 of the order but not with paragraphs 1,5 and 6.

[6] The applicant then had a warrant of execution issued out of this court to attach the second respondent's pension benefits which he has with the first respondent. The first respondent is described as the Discovery Preservation Pension Fund (Administered by: Discovery Investments Services Ltd). From now on I will refer to the first respondent as Discovery. Discovery initially paid out an amount in terms of the first writ, but later, due to opposition by the second respondent, reversed this decision.

[7] The applicant then issued a second warrant of execution, again to attach the second respondent's pension interest with Discovery. Since this writ covers the same claim required by the first writ, it is the only one relevant in this case.

[8] A lengthy dispute then followed between the applicant's attorney and various employees of Discovery in correspondence. It is the applicant's view that Discovery had at best flipped flopped on the issue and at worst, took sides in a dispute it is not a party to. Discovery in turn, feels much maligned by such an accusation. Whilst it now concedes that its position on the matter has not been consistent, it argues that it

[1] Terms not relevant to the dispute have been omitted.

cannot pay out on a warrant of execution that is not valid, lest it face liability to its client and cause him adverse tax consequences, as indeed happened when it attempted to partially pay out funds pursuant to the first warrant, a step it has since reversed.

[9] This impasse has led to this application.

Relief sought

[10] The applicant seeks an order declaring the High court's warrant of execution valid and that as such Discovery is obliged to comply with its terms without requiring a further order from a Maintenance Court.

[11] The position of both Discovery and the second respondent is that the applicant is not entitled to have issued a writ in this Court against a pension fund interest for want of compliance with the relevant legislation. That is the first dispute in this matter and involved both respondents; although the Discovery has borne the burden of making the case out on this point. Thus, the first and second respondent both oppose the relief sought in in the Notice of Motion that deals with the validity of the warrant and Discovery's obligation to make payment to the applicant pursuant to the warrant.

[12] The second dispute involves only the applicant and second respondent and that relates to whether the second respondent should still be held liable in respect of his maintenance obligations to the minor child and the payment of certain other expenses to the applicant pertaining to the car and her house. The argument here does not traverse the debate on the pension fund interest. The second respondent thus in addition opposed the balance of the relief sought.

[13] I will first consider the issue of the attachment of the pension interest.

Parties arguments on executability of pension benefit by High Court warrant

[14] It is best to start with the argument made by Mr. Lamplough on behalf of Discovery. His client's approach is to read the competence to execute, through the lens of the two relevant pieces of legislation that regulate pensions and maintenance.

[15] The argument commences by an examination of section of 37A (1) of the Pensions Funds Act, No 24 of 1956 which states that: -

Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act 58 of 1962), and the Maintenance Act, 1998, no benefit provided for in the rules of a registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall, notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor's financial position in terms of section 65 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and in the event of the member or beneficiary concerned attempting to transfer or otherwise cede, or to pledge or hypothecate, such benefit or right, the fund concerned may withhold or suspend payment thereof: Provided that the fund may pay any such benefit or any benefit in pursuance of such contributions, or part thereof, to any one or more of the dependants of the member or beneficiary or to a guardian or trustee for the benefit of such dependant or dependants during such period as it may determine.(My emphasis)

[16] As section 37(A)(1) is lengthy I have highlighted the relevant portion. For the purpose of the facts of this case this can be summarised as follows; pension fund benefits are not liable to be attached except in two circumstances – to the extent permitted in terms of the Income Tax Act and the Maintenance Act.

[17] There is also another provision in the Pensions Fund Act dealing with both the relationship to orders made in terms of the Divorce Act and the Maintenance Act and that is section 37D which states:

(1) A registered fund may-

(d) deduct from a member's or deferred pensioner's benefit, member's interest or minimum individual reserve, or the capital value of a pensioner's pension after retirement, as the case may be-

(i) any amount assigned from such benefit or individual reserve to a non-member spouse in terms of a decree granted under section 7 (8) (a) of the Divorce Act, 1979 (Act 70 of 1979) or in terms of any order made by a court in respect of the division of assets of a marriage under Islamic law pursuant to its dissolution; and

(iA) any amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, 1998 (Act 99 of 1998);

[18] It is notable that neither provision directly answers the question of whether High Court warrants can be used to execute against pension fund benefits. But they make it clear that one has to look to the provisions of the Maintenance Act to find the answer.

[19] The gateway from the Pensions Funds Act into the Maintenance Act is section 26(4) of the latter which states:

(4) Notwithstanding anything to the contrary contained in any law, any pension, annuity, gratuity or compassionate allowance or other similar benefit shall be liable to be attached or subjected to execution under any warrant of execution or any order issued or made under this Chapter in order to satisfy a maintenance order.

[20] Note that the reference to this Chapter is a reference to Chapter 5 of the Maintenance Act.

[21] Discovery's argument is that the reference to Chapter 5 must mean that enforcement measures in respect of pensions are confined only to the enforcement

mechanisms under that Chapter. But, Discovery argues, that Chapter provides for the enforcement of maintenance orders by '*maintenance courts'*.

[22] A High Court can issue a maintenance order. This is because a maintenance order is defined as an order given by *'any court'*. The Act defines a court as one including a High Court.

[23] But despite this power to issue a maintenance order, a High Court is not a maintenance court. This is because In terms of the definition section of the Maintenance Act, read with section 3 of the Act, the powers of a maintenance court are only conferred on Magistrate's courts.

[24] Discovery argues that since all the relevant powers pertaining to execution of orders are located in Chapter 5, and are expressly conferred on a maintenance court, it must mean that the power conferred in terms of section 26(4) is limited to maintenance courts, *a fortiori*, excluding from its ambit, the execution of orders against pension benefits by a High Court.

[25] Mr Greenstein who appeared for the applicant said this would lead to absurd inefficiencies in the system if a High Court order could not be enforced unless processed by a lower court.

[26] His argument is based on the inherent jurisdiction of the High Court. Then he sought to rely on a recent line of cases (with one exception which I discuss later) which have found that the High Courts have the power to enforce their own orders for maintenance matters.

[27] Granted none of these cases deal with pensions benefits. Nevertheless, he argues that High Courts have asserted their power to execute their own maintenance orders. This power is located in their inherent jurisdiction.

[28] He argues that there is no basis to contend for the exceptionalism of pension assets. If fixed movable and immovable property can be attached why shouldn't a pension fund?

[29] The debate between the two turns on approach. Mr Lamplough adopts a textual approach with a close reading of the specific statutory provisions although he does contend that his argument is not simply based on a "black letter" reading of the

sections, but a stated legislative policy to protect pension assets from premature realisation and hence the need for the added protection.

[30] Mr Greenstein eschews the close reading of the texts of the statutory provisions and appeals instead to a purposive approach to the texts founded on the High Court's inherent powers and the inefficiencies and absurdities that would result from Discovery's approach.

Analysis

[31] The first point of departure must be the text. Shorn of their verbiage the two provisions say this. Section 37A (1) of the Pensions Act creates a general rule prohibiting the attachment of pension benefits. Two exceptions to this general area allowed; the one we are concerned with is that for Maintenance Act.

[32] This provision works to close the door on execution other than when expressly permitted and then only to the extent permitted by the Maintenance Act. For want of a more formal characterisation, it is a provision that closes all doors except to those whose entrance is expressly permitted

[33] Section 26(4) of the Maintenance Act is by contrast an empowering provision. The sentence begins with the phrase "*Notwithstanding anything to the contrary…*".

[34] It is thus a 'door-opening' provision. It provides for the use of the Maintenance Act's machinery, to enforce against pension benefits and other named assets.

[35] Of course, the two can be given a reading that harmonises them and this is precisely the argument advanced on behalf of Discovery. The extent to which execution is permitted in the Pension Fund Act is limited to the narrow door opening afforded by section 26(4) of the Maintenance Act and hence, on this reading, only execution orders issued by maintenance courts.

[36] It is worth considering the terms of section 26(4) more closely.

"(4) Notwithstanding anything to the contrary contained in any law, any pension, annuity, gratuity or compassionate allowance or other similar benefit shall be liable to be attached or subjected to execution under <u>any</u> warrant of execution or <u>any</u> order

issued or made under this Chapter in order to satisfy a maintenance order." (My emphasis)

[37] The High Court order in this case is an order for interim maintenance made in terms of Rule 43 of the Uniform Rules. There is no dispute between the parties that this meets the definition of a maintenance order for the purpose of the Maintenance Act as I discussed earlier. But is the High Court excluded because it is not a maintenance court because the only sensible reading of section 26(4) is that it confines itself to maintenance courts?

[38] Section 26(4) taken on its own makes no reference to a maintenance court. It does explicitly reference at the end *"… in order to satisfy a maintenance order*" Taken in isolation from the rest of the sentence this seems to contemplate a High Court warrant as well. But Mr Lamplough argued that this would be to read into the sentence a comma after the words "warrant of execution". But there is no comma there. This observation is correct.

[39] But his reading also suggests, to avoid redundancy, that there should only be one '*any*' qualifying the word warrant of execution and not a second '*any*' that qualifies "*any order..."* For ease of reference this is why I have underlined the two. If the legislature had intended to confine both warrants and orders, to the rider that they are issued in terms of Chapter 5, it could just have used a single '*any*' to qualify both *warrant* and *order*. But it did not, it used two.

[40] Moreover, the fact the subsection is prefaced by the door-opening "*Notwithstanding…*" suggests a provision that was intended to empower the right to attachment despite possible contrary provisions of other statutes. Why would the legislature having given this Act priority over any other, then in the very same provision restrict its operation only to maintenance courts? On this reading the ambition and consequence of the provision are in stark contradiction

[41] I do not make this point to suggest that one reading is superior to the other. Only that language and syntax of the provision gives rise to two readings; and for that reason it is justifiable, given the ambiguity, to have regard to factors external to the text of the provision, to decide on whether it should be read to exclude High Court orders from its purview.

[42] As a point of departure, I refer to the oft cited decision of *Endumeni* where Wallis JA said this about the approach to ambiguity in a statute:

"In between these two extremes, in most cases the court is faced with two or more possible meanings that are to a greater or lesser degree available on the language used. Here, it is usually said that the language is ambiguous although the only ambiguity lies in selecting the proper meaning (on which views may legitimately differ). In resolving the problem, the apparent purpose of the provision and the context in which it occurs will be important guides to the correct interpretation. An interpretation will not be given that leads to impractical, unbusinesslike or oppressive consequences or that will stultify the broader operation of the legislation or contract under consideration."[2]

[43] In considering which interpretation might yield to consequences that are "*impractical, unbusinesslike or oppressive"* I turn to consider existing case law on the execution of High Court execution warrants in matrimonial matters.

[44] What case law we have demonstrates a decided trajectory in favour of treating High Courts processes in maintenance matters as being capable of being executed by that court and not requiring the need for them to be outsourced to a maintenance court to have validity.

[45] The question in these cases was whether there was an inconsistency between the Maintenance Act and the Superior Courts Act. If there was, the question was whether the legislature had intended that all execution of maintenance orders had been outsourced to maintenance court.

[46] In the majority of the decisions courts held that there was no such intention.

[47] The one outlier is a decision by Binn-Ward J in *PT v LT and another* where he took the view that because of an amendment to section 26(1)(a) of the Maintenance Act, in 2005, all maintenance orders had to be regulated using the provisions of that Act. [3] This led him to the conclusion that a Registrar of the High Court could no longer issue warrants of execution for the enforcement of maintenance orders obtained from a High Court.

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[2] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] 2 SA 262 (SCA) at paragraph 26.
[3] PT v LT and Another 2012 (2) SA 623 (WCC)

[48] The reason he considered the legislative history was because he sought to distinguish his approach from that followed by an earlier full bench decision in this division, in the case of *Thompson v Thompson,* where the court held that a maintenance order could be enforced by a High Court warrant of execution.[4] Binn-Ward J held that since *Thompson* had been decided before the 2005 amendment, he was at large to reconsider the matter. His reasoning was that the legislature would not have contemplated two systems of enforcement "… *in existence parallel to one another.*" [5] He noted that there were procedural differences between the two. His concern was that the parallel system would lead to arbitrariness which would be difficult to reconcile *"… with rationality and equality before the law*."[6]

[49] However, his decision was not followed by a subsequent decision in the same division by Savage AJ, as she was then, in *JM v LM and another*.[7]

[50] Savage AJ response was:

"The fact that a choice is introduced into enforcement does not 'introduce an arbitrariness that is 'difficult to reconcile with rationality and equality before the law'. The distinctions that exist in the enforcement mechanisms available between the courts in this regard, rather that introducing arbitrariness, rationality and inequality, are factors to be taken into account by a party in the exercise of their election. Were no such choice available, this would have the necessary consequence that all high court maintenance orders would in all circumstances be subject to the moratorium and enquiry provisions contained in the Maintenance Act upon steps being taken to enforce such orders. Not only would this necessarily diminish the value of the order obtained but it would have the potential to cause prejudice to the persons that such an order for maintenance seeks by its nature to protect where enforcement is pursued. Such a consequence could not have been intended by the legislature." [8]

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[4] Thomson v Thomson 2010 (3) SA 211 (W)
[5] At 623 H-F.
[6].Ibid.
[7] M v LM and another 2014 (2) SA 403 (WCC.
[8] Ibid paragraph 25.

[51] There were now two conflicting provisions in the same division on this point. However, in 2020 a full court of that division, in *MFI v NI and another,* followed the approach of Savage AJ.[9]

[52] There is now sufficient authority on this point that a High Court can enforce its own orders in respect of maintenance by way of a warrant of execution issued in terms of the Uniform Rules.[10]

[53] The approach in these decisions has been to locate the High Court's competence to execute its own orders in terms of both the Constitution and the Superior Courts Act 10, of 2013.

[54] The Constitution by virtue of section 173, gives High Courts the inherent power to *"… protect and regulate their own process*"

[55] I read this provision to empower courts to protect the process of execution of their orders and thus, by extension, warrants of execution issued in pursuance of those orders.

[56] The provisions of sections 42 and 43 of the Superior Courts Act, provide for the scope and execution of the processes of superior courts. There is no limitation placed on them in this regard. As was pointed out by Savage AJ in *M v LM,* this Act came into being in 2013, after the enactment of the amendments to the Maintenance Act, referred to by Binns-Ward J, which serves as a further indication that the statutes can be given a compatible reading.[11]

[57] Whilst one must be careful not to rely on section 173 to circumvent legislation that already provides for an issue, my approach is to use it in the context of *Endumeni* as a tool to resolve ambiguity. [12] This again results in an interpretation favouring the conclusion that a High Court warrant of execution can be used to attach a pension interest pursuant to a maintenance order of that court. That approach is the most sensible one because if a High Court can issue a maintenance order it would be anomalous if it could not execute it. Moreover, if courts in both this division and the

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[9] Unreported case number A431/2017 (WCC) 2018

[10] There is also academic authority for this approach. See Heaton and Kruger in South African Family Law (Lexis Nexis) Fourth edition, page 54, where the learned authors favour the approach adopted in M v LM by Savage AJ.

[11] See *M v LM,* supra, paragraphs 27-28.

[12] See *Phillips v National Director for Public Prosecutions* 2006(1) SA 505 (CC) at paragraphs 50-51

Western Cape have held that High Courts may issue warrants of execution in respect of maintenance orders in respect of other classes of assets logic dictates that this should extent to pension benefits unless there is a powerful textual and purposive indication to the contrary. As I have indicated the textual argument for treating pension benefits as an exception relies on an interpretation of the relevant section of the Maintenance Act that is ambiguous.

[58] I must also consider the purposive argument made by Discovery to support its interpretation. I accept that looking to purpose constitutes part of the interpretive enquiry in resolving ambiguity.

[59] Mr. Lamplough argued that the reference to Chapter 5 in section 26(4) is not confined to the criteria a clerk of a maintenance court must apply to issue a warrant of execution. (Note its criteria are no different to those required by the High Court Rules). Rather he argued it means a hearing before the maintenance court. This he argued is necessary so that the party against whom the order is sought can be heard. As I understood him this meant that the debtor could be heard to explain why the pension benefit should not be made subject to execution. Put in the context of this case it would mean that the second respondent, who had already been heard in the High Court during the Rule 43 application, as to whether an interim maintenance order should be granted, would now be given an additional hearing in the maintenance court to say why this class of asset should not be susceptible to execution to satisfy the maintenance order.

[60] But apart from the risk of such a process allowing further opportunities to delay by recalcitrant debtors, it invites an overlap between the enquiry that the court ran in terms of Rule 43 and what might open up again before the magistrate. The inferior court is then put into the position of second guessing the superior court.

[61] But it is also not correct that a party would not be heard. Rule 43 procedures at least in this division, require the parties to disclose their assets. If a spouse who owns a pension benefit wishes to protect it from possible execution to meet a maintenance payment, such an argument can be made to the court at the time the Rule 43 application is heard or later, by virtue of the provisions of Rule 43(6). As I will discuss

later in this decision this was a route open to the second respondent but which he has not followed.

[62] Second the argument that pensions require some special protection is unpersuasive. The Maintenance Act does not serve to protect these assets from attachment. At best on the first respondent's reading of the Act it makes them susceptible to attachment by virtue of a Maintenance Court process. This suggests the asset is not something unattachable in matrimonial disputes that must be considered above and beyond the affray between the two spouses.

[63] Third, the Pensions Act allows for a liquidation of a pension assets as part of an order in terms of section 7 of the Divorce Act. Since a Rule 43 is a process that is interim to the finalisation of a divorce, it is difficult to see why a policy of preserving the asset in the long term applies only to High Court maintenance orders, but not to those issued by a maintenance court and not to High Court divorce orders.

[64] Thus, I am not persuaded that there is a convincing purposive argument in favour of this interpretation of the provision, whilst there is a strong purposive argument in favour of the other; for reasons of efficiency, expedition, which after all underpin the rationale for the Rule 43 process, fairness to the creditor spouse who is trying to enforce a court order, and the integrity of the respective court processes.

Conclusion in respect of the pension benefit

[65] In conclusion I find that a textual analysis of section 26(4) of the Maintenance Act suggests two possible meanings. In terms of the first, a pension benefit is only liable for attachment if the warrant has been issued by a maintenance court. In terms of the second, it can be liable for execution if the warrant has been issued by any court that can grant a maintenance order and thus including a High Court. The context of the legislation as located in terms of the High Court's inherent powers, the trajectory of the existing case law, and the purpose of having the High Court able to execute its own orders against pension benefits. all suggest that the second interpretation is the correct one

[66] I thus find that High Court orders in terms of Rule 43 can be executed against pension assets by way of a warrant execution issued by the High Court and that section 26(4) of the Maintenance Act must be given this interpretation.

[67] As such I grant the applicant her declaratory relief in terms of prayers 2,3 and 4.

Second Respondent's Remaining Issues

[68] The second respondent adopted the approach of the first towards the warrant of execution in terms of the Pensions Funds Act.

[69] Separately, and this is not a dispute that involved Discovery, he opposed the relief concerning his payment of three other items of maintenance; they are (i) the order to pay R 25 000 per month, (the monthly maintenance) (ii) whether he was obliged to make payments in respect of the home and (iii) whether he was obliged to make payment for the applicant's motor vehicle.

[70] As his defence the second respondent raised two facts to demonstrate changed circumstances had occurred since the Rule 43 order was granted. First, the matrimonial home had since been sold and the appellant has received a net amount of R 1 million, after all outstanding payments have been made. He claims an entitlement to half the proceeds as he states he co-owns the property with the applicant.

[71] Second, he claimed that he had in any event paid the monthly maintenance, to the minor child although directly. The minor has since reached majority and is no longer resident in South Africa.

[72] The appellant's response to this is that: there is no proof he has made any payments to the minor child, second, she disputes he has any entitlement to half the proceeds of the house (which was registered in her own name). Third, and in any event, her claim for maintenance in respect of the house was limited, she states, to the period prior to the sale. Finally, he is obliged to make the payments in respect of the car. No discernible defence has been raised in respect of the latter.

[73] All the arguments raised by the second respondent relate to a material change in circumstances since the order was granted or are based on the assumption that he owned half the home and is thus entitled to some of its post-sale proceeds, or that he

has partially complied with the order. To the extent he says he has complied, he has not furnished any proof. Insofar as his other defences relate to changed circumstances are concerned, he ought to have applied for a variation of the order in terms of Rule 43(6). He has not done so; instead, he has adopted a supine approach to the various demands made of him for payment and then joined forces with the Discovery to contest the warrant of attachment

[74] I find he offers no defence to the claims made and the applicant is entitled to her relief in terms of the remaining prayer, namely 1.

Costs

[75] The applicant has asked for a punitive cost award against Discovery who are the first respondent. I don't consider this justified. Discovery was placed in the middle of a dispute between the married parties. It had to deal with what all now consider a unique legal situation. It was entitled to take the steps it did, albeit at times inconsistently to protect itself from liability. An ordinary costs award will suffice. Both respondents are jointly and severally liable for the applicant's costs incurred in respect of paragraphs 2-4 of this order. In respect of paragraph 1 of the order, only the second respondent is liable.

ORDER

I make the following order: -

1) That the Second Respondent is indebted to the Applicant in respect of arrear maintenance in the sum of R 701 227.29 as set out in annexure "B" to the Applicant's Founding Affidavit pursuant to the Rule 43 order of Malungana AJ under case number 08842/2019, annexed to the Applicant's Founding Affidavit as annexure NA".

2) That the sum of R 701 227.29 is liable to be attached and constitutes an amount payable in terms of a maintenance order as defined in section 1 of the Maintenance Act, Act No 99 of 1998, as provided for Section 37 A and Section 37 D(d)(iA) of the Pensions Fund Act, Act No. 24 of 1956.
3) The First Respondent is directed to pay to the Applicant's attorney of record the amount of R 701 227.29 within 7 business days of the grant of this order.
4) An order declaring that Annexure "X" to the Notice of Motion in respect of future arrear maintenance, duly issued by the Registrar of the above Honourable Court is competent, compelling, and binding on the First Respondent to comply therewith without the need for any other court order.
5) The First and second Respondents jointly and severally, the one paying the other to be absolved, are liable to pay the costs of the application insofar as it relates to their opposition to paragraphs 2-4 of this order on a party and party scale.
6) The second respondent is liable to pay the applicants costs on a party and party scale insofar as its opposition to paragraph 1 of the order is concerned.

N MANOIM
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 26 November 2021.

Date of hearing: 13 October 2021

Date of judgment:	25 November 2021

Appearances:

Counsel for the Applicant:	Mr. G Greenstein
Attorney for the Applicant:	Greensteins Attorneys
Counsel for the 1st Respondent:	Adv A J Lamplough S.C.
	With him Adv P Mthombeni
Attorney for the 1st Respondent:	Keith Sutcliffe & Associates Inc
Counsel for the 2nd Respondent:	Adv L Jeikser
Attorney for the 2nd Respondent:	Leigh-Ann Moulder Attorneys