

✓✓ 20/04/2018



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 14836/2007

DELETE WHIC HEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO -

(2) OF INTEREST TO OTHERS/JUDGES: YES/NO

(3) REVISED

..20/04/18...
DATE

.....
SIGNATURE

IN THE MATTER BETWEEN:

M. A. M.

Plaintiff

M. P. M.

Defendant

JUDGMENT

LEDWABA, D.J.P

- [1] It is common cause that the parties herein were married to each other in community of property on 06 June 2005 and the marriage still subsists.

[2] No children were born from the marriage relationship between the parties. The plaintiff issued summons against the defendant in June 2007 praying for an in the following terms:

"1. A decree of divorce;

2. Maintenance for the plaintiff in the amount of R3000.00 per month for a period of three years;

3. An order that-

3.1 The plaintiff is entitled to 50% of the Defendant's interest of the GOVERNMENT PENSION FUND as at the date of divorce;

3.2 The plaintiff's portion of the defendant's interest in the aforesaid pension fund be paid to the plaintiff as and when the pension benefits become payable to the defendant.

3.3 The contents of prayers 3.1 and 3.2 be entered into the records of the pension fund.

4. Division of the joint estate.

5. Costs of suit, and

6. Further and/or alternative relief."

[3] The defendant filed a counterclaim wherein he prayed for an order in the following terms:

"1. A degree of divorce;

2. forfeiture of the benefit of the marriage from the defendant's side;
3. Cost of suit;
4. Further and/or alternative relief'

[4] It is not very clear from the file why did the parties not set down the matter for hearing earlier. On 8 November 2016 when the parties appeared before me the plaintiff was not legally represented and I postponed the matter to the following month, in the last week of the term, so that I could deal with it because if I was going to postpone the matter further to the next available date, the parties would have waited for at least about another six months.

[5] After postponing the matter for judgement on 14 December 2016, my Registrar misplaced the file and it only came to my attention in March 2018 that I reserved the Judgment on 14 February 2016. I regret the maladministration in my office that causes the delay in the delivering of the judgement. After receiving a letter from the plaintiffs attorneys enquiring about the judgment and I immediately requested the transcribed record of the proceeding.

[6] The parties agreed that the main issues to be determined by the court is whether an order of forfeiture of patrimonial benefits against the plaintiff

should be granted or not. The parties further agreed that the defendant would first lead evidence.

[7] Defendant's evidence can be summarized as follows:

[7.1] Defendant testified that he lived together with plaintiff from 2005 to 2007 during which period the plaintiff would leave him for about three days in a week.

[7.2] What caused their marriage to breakdown is because the plaintiff had an extramarital relationship with another man and when defendant confronted her about her adulterous relationship she said she loved the man she had an affair with.

[7.3] Defendant further testified that the plaintiff used to break the windows of the house, physically attacked him resulting that he sought a protection order against the plaintiff on two occasions.

[7.4] Regarding the property forming part of the joint estate and the contribution that the plaintiff made, he said the joint estate consisted of furniture, a shack that was on their stand at Hammanskraal, a house at Mamelodi purchased in 1990 on which a second bond was registered and the pension benefits he contributed to for 30 years. He said when they stayed together the plaintiff was not employed.

[8] Defendant testified that he issued summons against the plaintiff because

[8.1] She used to chase her out of the house and he also had an extra marital relationship with one R. M. and a relative of the plaintiffs mother. She said she was employed as a security officer at Peace Force for 2 years and defendant told her to leave her job to become a housewife.

[8.2] She said she purchased a room divider, wardrobe a bed which furniture she took when she left the defendant.

[9] It is common cause between the parties that they lived together for about 1 to 2 years, from 2005 to 2007.

[10] If the parties are married in community of property before an order of forfeiture of patrimonial benefits against the other party can be granted the legal position should be carefully analyzed.

- Sec 9(1) of Divorce Act 70 of 1979 reads as follows:

" When a decree of divorce is granted on the ground of the irretrievable break-down of a marriage the Court may make an order that the patrimonial benefits of the marriage be forfeited by one party in favour of the other, either wholly or in part, if the Court, having regard to the duration of the marriage, the circumstances which gave rise to the break-down thereof and any substantial misconduct on the part of either of the parties, is satisfied that, if the order for forfeiture is not made, the one party will in relation to the other be unduly benefited."

- In *Wijker vs Wijker* 1993 (4) SA 720 (A) 9(1) the Court said

- The parties lived together as husband and wife for a very short period.

- In Engelbrecht vs Engelbrecht 1989 (1) SA 597 (K)

[11] Both parties accuse each other of extra marital relationship. The defendant's evidence that the plaintiff threatened him with violence, that she obtained two domestic violence interdicts against her and that she also damaged the windows of the house was not disputed.

[12] The plaintiff's Counsel during cross examination put it to defendant that the defendant could not contribute financially to the joint estate because she was unemployed. However the plaintiff, when she testified she said she was employed

[13] It is common cause that the two immovable properties were acquired before the parties were married to each other and that the defendant had been contributing for his pension benefits for many years before the parties married. Even after the parties stopped living together as husband and wife the defendant has been contributing to the installments of the second bond.

[14] The plaintiff took the furniture that she allegedly purchased when she left the defendant.

[15] In carefully analyzing all the relevant facts set out in Sec 9 of the Divorce Act I am of the view that the plaintiff would be unduly beneficial, if I do not grant an order of forfeiture of the two immovable properties and the defendant' s pension benefits against the plaintiff.

[16] It was further argued by the plaintiffs Counsel that I should not make an order of forfeiture of patrimonial benefits against the plaintiff because the defendant did not set out properly that the plaintiff should benefit in the counterclaim. In my view there is no merit in the submission because the omission was cleared by the uncontested evidence of the defendant.

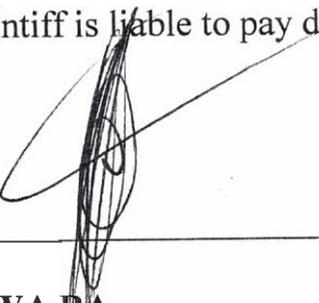
I therefore make the following order:

[1] Decree of Divorce is granted;

[2] An order of forfeiture in respect of two immovable properties at Mamelodi, Hamanskraal and the defendant's pension benefits is granted in favour of the defendant;

[3] Each party to keep the assets presently in their possession;

[4] Plaintiff is liable to pay defendant's costs.



APLEDWA BA
DEPUTY JUDGE PRESIDENT OF THE
HIGH COURT PRETORIA

APPEARANCES:

For the Applicant:

Ms Mathlati

For the Respondent:

Ms Green 012 327 1200
Instructed by:
Jaffer INC Attorneys