

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

CASE NO: 2005/8128

REPORTABLE: YES / NO

OF INTEREST TO OTHER JUDGES: YES/NO

REVISED.

27/3/2015

In the matter between:

JEM (BORN DAVIS)

Plaintiff

and

DSM

First Defendant

STATTON, FIONA ROSE

Second Defendant

JUDGMENT

WINDELL J:

Introduction

[1] The plaintiff and first defendant were married to each other on 16 April 1977 out of community of property by Antenuptial Contract.

[2] All aspects pertaining to the disputes between the parties were disposed of previously bar two, namely, maintenance and damages for alienation of affection.

[3] This matter was allocated to me for hearing at roll call on the morning of 5 February 2015. I was informed later on in chambers that the plaintiff had abandoned her claim for damages for alienation of affection against the second defendant. Evidence was led and the parties presented me with oral argument and on request delivered heads of argument as well as other documents that could be of assistance to the court.

[4] This judgment therefore deals with the one outstanding issue, namely maintenance.

Factual Background

[5] The plaintiff was the second eldest of five children who enjoyed an idyllic childhood. On the brink of adulthood, the marriage relationship between the plaintiff's parents ended abruptly.

[6] The family home was sold and the plaintiff together with her siblings and mother moved into other accommodation. In austere circumstances, the plaintiff and her eldest brother contributed financially towards maintaining the household.

[7] The plaintiff met and fell in love with the first defendant as an aspirant second-year student at university. The plaintiff and first defendant completed their medical studies and qualified as medical doctors. Shortly afterwards, as young adults, they got married.

[8] Early married life was blissful despite the fact that the plaintiff and first defendant received meagre wages working as Interns. Attempts by the plaintiff to conceive a child over a six year period were unsuccessful until a daughter was finally born out of the marriage.

[9] Around the time of their daughter's birth, the plaintiff had just qualified as a specialist. The plaintiff was primarily responsible for caring for the young infant. After a six week period after their daughter was born, the plaintiff returned to work on a part-time basis. During the week, she divided her day in order to attend to her professional and personal responsibilities: mornings were spent at home caring for their daughter; in the afternoons, the plaintiff would be at her place of work for two and a half hours.

[10] Further attempts to grow their family failed even though the family unit relocated to move closer to a facility that offered superior infertility treatment to the plaintiff.

[11] At around this time, the plaintiff was approached by a firm with an offer of employment specifically in the plaintiff's field of medical expertise. The plaintiff accepted the offer of employment as their daughter was due to start attending pre-primary school during the mornings enabling the plaintiff to spend afternoons with their daughter.

[12] This arrangement continued for a period of four years until the plaintiff decided to return to university in order to obtain a science degree in genetics. The plaintiff obtained the requisite permission to have the prescribed minimum time period to complete the degree condoned from four years to a year. The plaintiff successfully completed her studies and obtained the further qualification. The intense and demanding nature of her studies, however, proved time consuming and taxing on the plaintiff. So gruelling were the demands made on the plaintiff during this time that she declined to return to work when requested to do so by her employer.

[13] The first defendant completed his military service between 1977 and 1978. He started practicing as a cardiologist in 1984. The first defendant began his practice at Flora Clinic in 1989. The first defendant continued to work and progress his career as a specialist physician during the time when the plaintiff returned to university. He was the breadwinner of the family and administered their finances.

[14] The plaintiff and first defendant mutually admired one another for their academic and professional achievements which were impressive. The relationship between them was sound although not always emotionally fulfilling as far as the plaintiff was concerned. They encountered challenges normal to any marriage relationship.

[15] The plaintiff and first defendant provided their daughter with a secure and comfortable environment in which to grow up in. The family enjoyed frequent holidays at the coast. As their financial status improved, the plaintiff and first defendant together with their daughter were able to spend vacations at luxurious game parks. Vacations were also spent skiing in Europe and America. The plaintiff and their daughter idolised the first defendant.

[16] The plaintiff was a deeply religious woman. The plaintiff's religious convictions were shared by their daughter. On one occasion, the plaintiff burnt African art belonging to the first defendant as she regarded the items to be associated with the practice of "voodoo". This act deeply angered the first defendant as it exhibited the plaintiff's lack of consideration for him personally, his possessions as well as her complete disregard for the value of material items.

[18] The first defendant became dissatisfied with the plaintiff. The plaintiff's family played a role in this, as the first defendant supported them financially at times. He felt that the plaintiff subjected him to emotional bullying and found that she became unreasonably aggressive towards him. The plaintiff's religious devotion bordered on fanatical. The first defendant became extremely concerned about their finances. He felt isolated as he carried the financial burden on his own. The plaintiff became aware of the existence of the first defendant's extra-marital affair with the second defendant which had commenced in 2000. The plaintiff asked the first defendant to attend marriage counselling but he declined to do so. At this stage in their relationship, the plaintiff experienced suicidal thoughts and attempted to commit suicide. Their relationship continued to deteriorate to the point where the plaintiff told the defendant to leave the marital home which he summarily did on 17 March 2000.

[19] During April 2002, the plaintiff and first defendant lost their only child who died after being involved in a motor vehicle accident. She was eighteen years old at the time of her death. The plaintiff consumed anti-depressants periodically for the following five years from 2002 in an attempt to alleviate her depressive state and as a measure to control her feelings of grief.

[20] The plaintiff issued summons against the first and second defendants during 2005 and the matter has been enrolled for hearing on six previous occasions over a nine year period.

Legal Proceedings

[21] 14 September 2006

The divorce action was enrolled for hearing by the first and second defendants. All the parties were legally represented at the time when the matter came before court. A draft order was made an order of court which contained several provisions. It provided for the appointment of a referee to determine the assets and liabilities of the plaintiff and first defendant and to provide the court with a report thereon. It is common cause that this valuation was conducted and that the value of the respective estates as determined by the referee, was agreed to by the plaintiff and first defendant. It is also common cause that a supplementary report regarding bank accounts held by the first defendant was submitted to court.

[22] 8 October 2007

The matter was set down for hearing by the plaintiff. All the parties were legally represented. On this occasion, the marriage relationship between the parties was dissolved, a division of the joint estate was ordered and cost of the suit were reserved. After the decree of divorce was granted, three outstanding issues remained in dispute, namely, the division of the pooled estate, maintenance and plaintiff's claim for damages for alienation of affection.

[23] 20 March 2009

The defendants applied for a trial date and set the matter down for hearing. Once again, all the parties were legally represented. Nonetheless, proceedings were postponed *sine die* and each party was ordered to pay their own costs in respect of the postponement. None of the outstanding issues were resolved on that occasion for reasons that are unclear to this court.

[24] 30 November 2010

The defendant's attorney of record applied for a trial date and set down the matter for hearing. On this occasion, the plaintiff was unrepresented. The defendants were legally represented by senior counsel and their attorney of record. As was the case previously, three issues remained in dispute. From a reading of the transcript of court proceedings on the relevant day, it is clear that the plaintiff drew the court's attention to the fact that she was an unrepresented litigant and, as a layperson, was not equipped to canvass the maintenance issue. She however implored the court to address the issue regarding the division of the property as the division was already granted in 2007 and she urgently needed money. The plaintiff submitted to the court that the referee's report was tampered with, but that she was satisfied that her half of the joint estate was correctly reflected as R 4,1 million in the report. The first defendant tendered the sum to the plaintiff, but the sum is made up of the value of the home that the plaintiff resided in, which was valued at R2,5 million together with the value of her estate which is R1 087 007 totalling R3 587 007. The first defendant tendered to pay the balance of R537 303.50 in cash to the plaintiff. The plaintiff however wanted the R4,1 million in cash and was not interested in the offer that was made to her by the first defendant. She was planning on using the cash she would receive from the first defendant to purchase the property she is currently living in.

The court postponed the maintenance dispute and the claim for damages for alienation of affection and dealt only with the division of the joint property. A draft order was subsequently made an order of court. In terms of the draft order it was ordered that :

1. The first defendant shall transfer the property described as Erf [...] and [...] N[...] bond free and unencumbered;

2. The costs of the transfer of the said property shall be borne by the plaintiff and the first defendant in equal shares;
3. The plaintiff and first defendant shall each retain their assets as identified in the report of the referee DA Sabbagh;
4. All the first defendant's household contents identified as an asset under the subheading movables in paragraph 17 of the referee's report are in the possession of the plaintiff. The household contents shall be delivered by the plaintiff to the first defendant within 30 days;
5. The first defendant shall pay the sum of R 537 303.50 to the plaintiff within 30 days after the registration of the property.

At the time the court granted the draft order it undertook to provide a written judgment in respect of the order made. According to the transcript of court proceedings on 7 December 2010, the court proceeded to hand down judgment in respect of the division of the pooled estate. Only the plaintiff was present in court on the relevant day. Despite this court's request for same, neither the litigants themselves nor their legal representatives have been able to furnish me with a copy of the written judgment. The plaintiff never applied to have the court order of 30 November 2010 varied or rescinded with the effect that the provisions of the relevant court order remain in operation and are binding on the parties.

[25] 2 September 2013

The outstanding issues pertaining to the issues of maintenance and claim for damages for alienation of affection remained unresolved for a period of almost three years until 2013. In 2011, a notice of appointment of attorneys of record on behalf of the plaintiff was delivered to court. In 2012, a notice of withdrawal as attorneys of record on behalf of the plaintiff was served on the offices of the correspondent appointed by the defendant's attorney of record. On 26 September 2012, the defendant's attorney of record applied for a trial date from the registrar's office. The matter was subsequently set down for hearing on 30 August 2013. The matter was ultimately heard on 2 September 2013. Unlike the defendants, the plaintiff was not legally represented when the matter came before court. Once again, proceedings were postponed *sine die* and the costs occasioned by the postponement were reserved.

Present circumstances of the plaintiff

[26] The plaintiff was 63 years old at the date of the hearing of this matter. She continues to reside in the former matrimonial home situated in N[....]. She resides alone except for her pet dogs kept on the premises. The plaintiff testified that she had access to electricity through exactly two working plug points and that she did not have a geyser. As a result, she bathed in cold water even in winter. She stated that the house, garden and swimming pool were in a state of neglect. According to the plaintiff, security at the house was poor to non-existent. She was being harassed by property developers who were keen on buying the vacant land adjacent to her home as she had rejected their offers to purchase the land. She stated that cement and rubble were being deposited into the drains situated on her premises. She said that she was no longer on a medical aid as the first defendant had ceased making payment of the monthly premiums during 2014. The plaintiff's motor vehicle and trailer were attached and removed on 4 February 2015 by the sheriff of the court on instructions of her previous attorney of record in order to satisfy her unpaid legal fees. The plaintiff now has no means of transportation. The plaintiff was currently unemployed but had recently completed two of three courses in cardiac and life support trauma. The plaintiff testified that she would write the examination for the third and last course during April 2015.

Present circumstances of the first defendant

[27] The first defendant was also 63 years of age when the matter was heard. He has continued to practice as a cardiologist. The first defendant resides in a home situated on a golf estate together with the second defendant. He testified that he had a problem with this back which would substantially impact on his ability to maintain his practice and perform surgical procedures as a cardiologist in future. The first defendant stated that his current motor vehicle was old.

Maintenance Enquiry

[28] The sole remaining issue which this court was seized with for determination was maintenance.

[29] It is common cause that maintenance enquiries are facilitated by the good practice of the production of an itemised list of the most recent income and expenses on a monthly basis supported by the relevant founding documentation by each party.

[30] These proceedings were set down by the first defendant's attorney of record. The actual notice of set down notifying the plaintiff and registrar of the relevant date of hearing was drafted on 2 December 2014. A copy of the notice of set down was served on the plaintiff by means of an e-mail on 3 December 2014. The original notice of set down was delivered to court on 14 January 2015. The plaintiff and first defendant had at least eight weeks within which to prepare a list of their income and expenses and collate copies of the corresponding tax invoices, receipts, bank statements and other founding documents.

[31] The court's task at hand would have been assisted by the provision of such a list of income and expenses and bundle of founding documents. It must be noted that the court therefore relied on the oral evidence of the plaintiff and first defendant under oath in absence of such documentation.

[32] Founding documentation that was available to court consisted of the following:

32.1 A copy of a Momentum policy schedule dated 21 July 2011 for the Dr David Marks Trust with policy number [...]confirming that the first defendant was to receive proceeds in the amount of R74 417.66. This document was handed up to court by the plaintiff and it was marked Exhibit "A";

32.2 A copy of a payslip dated 25 May 2012 in favour of the plaintiff issued by National Health Laboratory Service confirming her net salary in the amount of R74 417.66 per month;

32.3 A copy of a payslip dated 30 September 2012 issued in favour of the plaintiff by National Health Laboratory Service confirming her net salary in the amount of R69 880.98;

32.4 A copy of a payslip dated 15 February 2013 issued in favour of the plaintiff by the Gauteng Department of Health confirming her monthly net salary in the amount of R41 081.46;

32.5 An original valuation certificate issued on 11 September 2013 by the City of Johannesburg in respect of stand [...] N[...] (1981m²) and stand [...] N[...] (2238m²) in the amounts of R2 140 000.00 and R2 130 000.00 respectively;

32.6 A bank statement for the plaintiff's Standard Bank Gold revolving account with a closing balance of on 23 January 2015;

32.7 A bank statement for the plaintiff's Standard Bank current account with account number [...] with an opening balance of R1 708.65 on 18 February 2015;

32.8 A bank statement for the plaintiff's Capitec savings account with account number [...] with a current balance of R9 825.51 on 20 February 2015;

32.9 A copy of an Investec bank statement dated 31 December 2014 issued in respect of 465 Honeydew Manor owned by the first defendant confirming a monthly instalment payable by him in the amount of R24 809.86;

32.10 A copy of the annual financial statements prepared at 28 February 2014 on behalf of the first defendant by H. J. Venter.

[33] The plaintiff is the owner of three immovable properties, namely, Stand [...] N[...] and Stand [...] N[...] (current value R 4 270 000) as well as a vacant stand of land situated in George valued in 2003 at R 325 000. The plaintiff stated that, in her view, it was not fair that she was expected to sell any of her immovable assets because the first defendant had an affair. She went on to state that the property market had not sufficiently recovered after it imploded in 2008. The properties are her only security as she has no pension. She also testified that their daughter had grown up in the former matrimonial home and for sentimental reasons she did not wish to vacate her home. The first defendant, however, remained adamant that at least one immoveable property should be sold to provide the plaintiff with an income pending her employment.

[34] The plaintiff acknowledged that the first defendant paid her R 535 000 after the order for was granted in 2010 and that the N[...] properties were transferred into her name and that there is no outstanding bond over the properties. She also confirmed that she received an annuity of R 164 000 and R 700 000 from Ampath for a claim she instituted against them for unfair dismissal. The first respondent subsequently paid her another R500 000. The only money she is left with is an amount of R 500 000 which she invested in Alan Gray and R 500 000 in a Liberty account. The amount of her outstanding legal fees are in the vicinity of R 260 000.

[35] It is common cause that the plaintiff is a qualified haematologist and that her previous employment at Ampath, Johannesburg was terminated during 2011. Whilst working at Ampath, the plaintiff earned a net salary in the amount of R63 000.00 per month.

[36] The plaintiff testified that she was gainfully employed by the National Health Laboratory Services in Port Elizabeth from 1 August 2011 to October 2012. During this period, she earned an income of R112 120.62.

[37] The plaintiff testified that she had been unemployed for approximately a year since 2014. She stated that her age prevented her from securing employment. She said that medicine was “her life” and that she would accept any offer of employment for her professional services.

[38] She rejected any notion that she was voluntarily unemployed. In 2013, she was approach by personnel at Charlotte Maxeke Hospital to attend an interview which she subsequently did. She testified that she received no response from the Gauteng Department of Health. The plaintiff submitted her *curriculum vitae* to Coronation Hospital from whom she also received no response. The plaintiff investigated the possibility of a job opportunity with Vermaak & Partners situated in Pretoria in 2013. She was subsequently informed by Dr Vermaak that they did not have a place for her at their practice. The plaintiff confirmed that she had canvassed job opportunities at Pathcon situated in Cape Town but to no avail. In 2014, the plaintiff approached Lancet Laboratories for whom she had worked for previously in her career regarding existing vacancies. She was informed that there was none. The

plaintiff approached Ampath Laboratories for work. This was extraordinary given the fact that the plaintiff have received the amount of R700 000 from Ampath Laboratories in settlement of a claim for constructive dismissal against Ampath. The plaintiff mentioned that the Health Professions Council would not allow her to change her qualification in order for her to practice as a general practitioner which further prevented her from earning an income. She agreed that her qualifications are recognised abroad.

[39] Counsel for the first defendant put it to the plaintiff that the reason why she was unable to secure employment in her particular field of expertise was that she had a bad temperament and was rude to her colleagues and supervisors in the workplace. The plaintiff conceded that she was temperamental and that her conduct had negatively impacted on her professional inter-personal relationships at work. The plaintiff testified that she had undergone counselling and her behaviour had improved. Nonetheless, counsel for the first defendant suggested that the plaintiff should consider seeking job opportunities outside Gauteng, at least, initially. The plaintiff was not amenable to this suggestion as she testified that she owned immovable property in Gauteng, her support network of friends resided in Gauteng and that at the age of 63, she was not prepared to relocate to another province to start afresh.

[40] The plaintiff testified that her expenses were as follows:

40.1 Rates & Taxes

The plaintiff required an amount of R10 000.00 per month in respect of rates and taxes levied in respect of her immovable properties;

40.2 Pet Food

The plaintiff has two dogs one of which was a still a puppy. The plaintiff stated that she requires between R2000 and R3000 a month to feed the animals adequately;

40.3 Groceries

The plaintiff stated that she requires between R15 000 and R20 000 per month for groceries. This amount made provision for the purchase of meat.

40.4 Personal Expenses

The plaintiff said that the amount of R4000 per month would be sufficient to provide for her personal expenses. It is unclear exactly what expenses these entail.

40.5 Pharmaceuticals

The plaintiff consumes vitamins and other supplements in the amount of R4000 per month.

40.6 Clothing

The plaintiff testified that she required an amount of R6000 per month to purchase clothing. She said that she had become accustomed to buying clothing at boutiques and did not think that the amount was excessive.

40.7 Cell phones

The plaintiff has two cell phones and requires an amount of R3000 monthly.

[41] The plaintiff stated that she needed maintenance in the amount of R60 000 per month in order to provide for her reasonable expenses adequately. She repeated the fact that her house required a lot of maintenance and that carrying out such work would be costly. She also said that she required a motor vehicle. The plaintiff testified that the referee's report was incorrect in that it did not include a valuation of the Dr David Marks Trust as well as a yacht that belonged to the first defendant.

[42] The first defendant testified that he earned between R91000 and R97000 per month. He testified that his expenses per month were as follows:

- 41.1 Mortgage bond – R24 800;
- 41.2 Groceries – R10 000;
- 41.3 Water & Lights – R6000;
- 41.4 Golf estate levies – R2000;
- 41.5 Petrol – R2000;
- 41.6 Clothing – R500;
- 41.7 Golf subsidies – R10 000 per annum;
- 41.8 Savings – R40 000;
- 41.9 Insurance – R1800.

[43] Counsel for first defendant estimated his expenses at approximately R87 100.00 per month. The amount made provision for savings in the amount of

R40 000.00 per month which the first defendant required for reason of his medical disability. The expenses of the first defendant include those of his partner, the second defendant, as opposed to a single party.

The Law

[44] In terms of Section 7(2) of the Divorce Act 70 of 1979 (“**the Divorce Act**”), a court may award maintenance to a party upon divorce, either permanently or for a specified period (rehabilitative maintenance). In deciding whether to exercise its discretion, in favour of, or against an order for maintenance, the court, must consider whether such an order would be just, fair and equitable having regard to :-

- 44.1 the existing and/or prospective means and/or needs of each of the Plaintiff and the Defendant;
- 44.2 the respective earning capacities of the Plaintiff and the Defendant;
- 44.3 the existing and/or prospective financial needs and/or obligations of both the Plaintiff and the Defendant;
- 44.4 the respective financial needs and obligations of the Plaintiff and the Defendant;
- 44.5 the respective ages of each of the parties;
- 44.6 the duration of the marriage;
- 44.7 the standard of living enjoyed by the parties prior to the divorce;
- 44.8 the parties conduct, and insofar as it is relevant to the breakdown of the marriage;
- 44.9 the reasons that gave rise to the breakdown of the marriage; and
- 44.10 any other factor which this Court may deem appropriate.

[45] The reciprocal duty of support which is one of the invariable consequences of marriage comes to an end when the marriage ends. Section 7(2) of the Divorce Act makes provision for court orders relating to maintenance upon divorce. Having regard to the factors set out in paragraph 44 above, the court has a discretion to make an order which it deems just. The relevant question to be answered is whether the plaintiff is entitled to spousal maintenance and, if so, the quantum and duration thereof.

[46] The award of maintenance is determined by the requirements of need, on the one hand, and ability to pay on the other.

[47] Marriage is now widely regarded as a partnership of two economically independent individuals. The so called “clean break” principle has come to the fore in terms of which the parties should become economically independent of each other as soon as possible after the divorce. This “clean break” principle was affirmed in *Beaumont v Beaumont* 1987 (1) SA 48 (C).

[48] Rehabilitative maintenance may be awarded to a divorced woman for a limited period where she trains for a job or profession. This concept presupposes that the woman is capable of training. It is trite that no maintenance should be awarded to a woman who can support herself *Qoza v Qoza* 1989 (4) SA 838 (Ck) at 841.

[49] In *Joubert v Joubert* 2004 (1) All SA 426 (C) a 46 (forty-six) year old wife who had not worked for 17 (seventeen) years was awarded rehabilitative maintenance for a period of 18 (eighteen) months only.

[50] In *Chizengeni v Chizengeni* 1989 (1) SA 454 (ZH) at 456 the view was expressed that it would be superficial and unrealistic to suggest that the first wife must be maintained at the same standard even though her husband has subsequent commitments.

[51] In the matter of *Botha v Botha* 2009 (3) SA 89 (W) Satchwell J explored the question of the court’s general discretion to make a just award having regard to the provisions of Section 7 (2) of the Divorce Act. The Botha matter involved a divorce action in which the Plaintiff (Mr Botha) and the Defendant (Mrs Botha) claimed a dissolution of the marriage. At issue was the interpretation and application of Section 7 (2) of the Divorce Act which confers a discretion upon the court to make a maintenance order in favour of one spouse against the other. The learned Judge pointed out that the language of Section 7 (2) is clearly discretionary: the use of the word “may” allows for a positive exercise of the judicial discretion to grant maintenance and equally to allow for a negative exercise of judicial discretion, to not grant maintenance. In paragraph 43 Satchwell J stated that “*The purpose of the*

court's enquiry in terms of section 7(2) is to determine what award would be "just". The enquiry is necessarily directed towards the interest of both spouses and the impact which the order will have on each." At paragraph 46 Satchwell J said that *"what is thought to be a just order in the context of the divorce act must contain a moral component of what is thought to be "right" and "fair". Fairness envisages that the order is appropriate between the parties and when measured against all the factors specified in section 7(2) and those others which a court decides should also be taken into consideration."*

[52] In determining the quantum of maintenance Brassey AJ said in *MB v NB 2010 (3) SA 220 (GSJ)* para 33 that " *to postulate that the party should it continue, following divorce, to live in the style to which they have become accustomed for so long as this was permitted by the resources that the disposal. If, as so often happens, the capital and income was insufficient to meet the standard, then each should abate the requirements accordingly. In this limited sense the tombstone is subjective: the issue is not what people generally would regard as reasonable, standard far too amorphous to be useful, but what the parties have come to depend on, subject always to the criterion of affordability.* Brassey AJ also held that the potential income of the spouse who is claiming maintenance must be determined in order to establish whether he or she will be able to meet his or her maintenance needs from such income. If the answer is in the negative, the income of the other spouse must be determined in order to establish whether, with due regard to his or her own comparable maintenance needs, he or she earns enough to make good the shortfall in the claimant's income. In view of the facts of the present case, Brassey AJ concluded that the husband's income of R60 000 per month was sufficient to enable him to pay R5 000 per month to his wife, which would very nearly make good the entire shortfall of R6 500 in the wife's income. However, as he concluded that the wife was *'a person of considerable talent'*, who would be able *'to make good the shortfall by her own enterprise fairly soon'*, Brassey AJ restricted the duration of the payment of maintenance to three years. In restricting the duration of the payment of maintenance, he also took into account that the wife had capital resources and would acquire an additional R771 482 when her husband paid her accrual claim to her.

Conclusion

[53] The plaintiff and the first defendant separated in 2000 after 23 years of marriage, but the divorce order was only granted 7 years later, in October 2007. Effectively, they were married for 30 years. The court also ordered on this occasion, the division of the joint estate. After the decree of divorce was granted, three outstanding issues remained in dispute, namely, the actual division of the pooled estate, maintenance and plaintiff's claim for damages for alienation of affection.

[54] In terms of the order in October 2007 and the antenuptial contract the plaintiff was entitled to half of the value of the couple's joint estate. The plaintiff was given her share in the form of the properties in N[....] (valued in 2010 at R 2,5 million), retaining her assets as per referee's report (R 1 087 007) and cash in the amount of R 537 303.50. This is not what the plaintiff wanted. The plaintiff wanted cash. Her understanding of the legal position was that as the referee valued the combined estate at R 8,2 million, she must get R 4,1 million in cash. She believed that she was entitled to divide the estate as she wishes and that is why the matter was delayed for so long.

[55] The plaintiff has three unencumbered immovable properties which at current value is at least R 5 million worth. She received a total of R 1, 9 million in cash from different sources since the divorce was granted in 2007. She has invested R 1 million of that money in Alan Gray and Liberty. She earned a substantial salary and only lost her employment in 2012.

[56] The plaintiff was mostly unemployed during the period when she and the first defendant were still together. The first defendant was for most of the duration of the marriage the sole breadwinner whilst the plaintiff was looking after their daughter. The plaintiff only started earning a substantial salary when the first defendant moved out from the matrimonial home.

[57] The plaintiff is currently unemployed and only has an income sporadically. When she does earn she gets about R 3000 per session. She is struggling financially and

is currently living under poor conditions. She currently does not have sufficient means to support herself.

[58] The plaintiff has a poor work history. She is a perfectionist and very temperamental. Her conduct had negatively impacted on her ability to obtain employment. The first respondent's extra marital affair, the divorce and the untimely death of their only daughter has scarred the plaintiff deeply. The plaintiff testified that she had undergone counselling as she was aware of her shortcomings and that her behaviour had improved. She has applied at numerous institutions and has sent out dozens of Curriculum vitae without any success. She is a highly qualified person, but she is also 63 years old.

[59] The first defendant is gainfully employed, and has been his whole adult life. He earns a considerable salary and is able to save R 40 000 per month towards his retirement. He is financially in a position to contribute to the plaintiff's maintenance.

[60] Taking into consideration all the specific circumstances of the case and keeping in mind the principles of equity and fairness, I am inclined to exercise my discretion in favour of the plaintiff. However; the plaintiff is a person with high intellect, she has outstanding qualifications and she should be able to produce an income in the near future.

[61] The plaintiff's expenses are inflated and it is unrealistic to suggest that she must be maintained at the same standard she was accustomed to. She will have to cut down on her expenses. She needs to confront the realities of her position. She has assets she can dispose of. In keeping with the "clean break" principle, maintenance is awarded only for a period of 2 years.

[62] In the result the following order is made.

1. The first defendant is ordered to pay the plaintiff an amount of R 25 000 per month from 1 April 2015. All payments must be made before the 3rd of each month.
2. This order will automatically lapse on 31 March 2017.
3. No order as to costs.

L WINDELL
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION

COUNSEL FOR PLAINTIFF: Plaintiff appeared in person

INSTRUCTED BY: Not applicable

COUNSEL FOR FIRST DEFENDANT: Advocate H.P. Jefferys S.C

INSTRUCTED BY: Louw & Heyl Attorneys

DATE OF HEARING: 5 February 2015 & 25 February 2015

DATE OF JUDGMENT: 27 March 2015