IN THE NORTH GAUTENG HIGH COURT,

PRETORIA (REPUBLIC OF SOUTH AFRICA)

Case Number: 77672/2010

DATE:28/06/2012

In the matter between:

P C Plaintiff

and

T Y Defendant

JUDGMENT

The Plaintiff issued summons against the Defendant claiming a decree of divorce, and costs, only if the action is defended. The Defendant filed a plea and a counterclaim in which she also claimed a decree of a divorce and in addition thereto an order directing the Plaintiff to pay:

1. Maintenance for the Defendant in the amount of R15 000,00 per month until death or remarriage.

2. The Defendant's medical, dental, hospital and related costs and expenses;

3. A sum of R250 000,00 as relocation costs to enable the Defendant to resettle after the divorce; and

4. Costs of suit.

It is clear from the pleadings that the parties were in agreement that the marriage has irretrievably broken down and that a divorce should be granted. What remained in dispute was the relief claimed by the Defendant in her counterclaim.

The Plaintiff, who was 54 years old at the date of the trial, testified that he completed his military training in 1993, after having graduated with a BA LLB in 1991, and after having completed his clerkship was admitted as an attorney during June 1987. He started working in the office of the State Attorney in Pretoria in July 1987 where he is still presently employed as a Senior Assistant State Attorney. He met the Defendant during 1990 and they got married on 14 November 1992 out of community of property with the exclusion of the accrual system. He was living alone in a house in Mountain View, which he had bought in 1988 and which was fully paid up, at the time. After getting married he bought a new house in Wapadrand and he and the Defendant moved into that house together with the Defendant's two minor daughters from a previous marriage, which had been living with her at the time.

He was earning a constant salary at the time and he described the Defendant's earnings as "on-and-off". She was a conference coordinator, organising conferences for the previously TBVC, and self-governing countries in Southern Africa. During the course of their marriage, the Defendant was never formally employed but was nevertheless able to publish three booklets, i.e. Get Wise, Domestic Wise and Huiswerkers Wysheid during the mid-nineties and also coordinated a annexure to the Pretoria News during 2004. Prior to this, and during 1997

to 2000 the Plaintiff and the Defendant were engaged in cost consulting.
He testified that they decided during 2005 on a change of a lifestyle and decided to take up an opportunity to run a Guest House in Jeffrey's Bay. He said that he was considering leaving his position at the State Attorney at that stage and had applied for a "package deal" which was a possibility at the time. This application was not successful but they nevertheless decided to buy the Guest House which was for sale for approximately R6 million. The Guest house was registered in a private company known as Stratos Guest House (Pty) Ltd and they made an offer to buy its shares which were to be divided 50/50 between Plaintiff and the Defendant. They made an offer for R5 million which offer was accepted. The purchase price was financed by the Plaintiffs own efforts and the Defendant did not contribute anything. She was not earning an income at the time. The Plaintiff testified that he sold the house in Mountain View, obtained an additional bond on the property in Wapadrand and a new bond was obtained on the Guest House property from Standard Bank for R3.44 million. There was a nett shortfall of approximately R32 000,00. In order to finance the relocation to Jeffrey's Bay, as he intended to resign from his position at the State Attorney in any event be utilized, the proceeds of his life assurance policies, which he surrendered. The interim arrangement between the parties was that the Defendant would move down to Jeffrey's Bay permanently and manage the Guest House and he would go down as often as possible.

The Defendant started managing the Guest House in Jeffrey's Bay during October 2005. He testified that although they did reasonably well during the Festive Season from November 2005 to January 2006, it was already during March 2006, that they realised that, financially, the Guest House was in dire straits. By then, the house in Wapadrand stood empty, because all the furniture were moved to the Guest House, as they intended to rent out the Wapadrand property. He said that he returned to Pretoria after the Festive Season and temporary moved

into a colleague's house. The Defendant remained at the Guest House until May 2007 after which they decided to abandoned the project. The Defendant moved back to Pretoria and the parties moved back into the Wapadrand House. The Guest House stood empty, the furniture having been moved back to Pretoria, until October 2007 when it was re-opened again until April 2008, then being managed by a certain Marieta who moved her own furniture into the Guest House.

The Plaintiff testified that the final nail in the coffin as far as the financial viability of the Guest House was concerned, was the fact that could not service the bond of Standard Bank. It also became apparent during the course of 2006 that he would not benefit from the package deal at the State Attorney from which he hoped to get anything between R1,2 and R1,4 million which could have been injected into the Guest House. Towards the end of 2006 they defaulted on the Standard Bank bond. He testified that Standard Bank instituted action on the bond during 2007 but they withdrew the action in July 2008 and re-issued summons in the North Gauteng High Court, Pretoria during July 2008. This matter will go on trial during August 2012. He testified that the outstanding balance on the bond is between R6,4 and R6,8 million. There is presently also a case pending in Humansdorp for the arrear rates and taxes on the property.

From March 2008 he began defaulting also on the Wapadrand bond and the house was eventually sold on an auction during November 2008 for R800 000,00. The bond on the house was then R1,6 million. He testified that ABSA wrote off R500 000,00 and for the balance of R271 000,00 he and the Defendant signed an acknowledgement of debt which he is presently repaying in instalments of R2 710,00 per month. They left the Wapadrand property during March 2009 and since December 2009 they live in the property they were

occupying at the time of the trial. They have to vacate the property by 31 May 2012 when the lease was due to expire.

The Guest House was rented out to a certain Mr Roos from 1 February 2011 at R15 000,00 and he was also supposed to pay 50% of the rates and taxes. The lease agreement included an option to purchase and according to the Plaintiffs testimony the option was exercised and a sale agreement was concluded for a purchase price of R7,1 million.

The Plaintiff was adamant that the Defendant can procure an income to be self-supportive and said that he did not feel obliged to pay any maintenance towards the Defendant's subsistence. He also testified that he could not afford to make any contribution towards the Defendant's relocation costs and was of the view that the Court should order each party to pay his or her own costs.

The Plaintiff provided a schedule reflecting his income and expenditure as at the time of the trial. The income, apart from his nett salary, also reflected an amount of R1 500,00 as a contribution being made by the tenant, who is living with the parties at the common home. The expenditure reflects inter alia the living expenses of three people. According to this schedule his nett income was R29 243,00 and his total expenditure R29 522,00.

It appeared however, during cross-examination that his financial position will change drastically when he leaves the common home at the end of May. He should be able to save R2 000,00 a month, which is a penalty he pays to SARS because of his failure to file his income tax statements since 2006 to the present.

Further savings, which he conceded to and which seems reasonable could easily amount to R10 787,00. To this should be estimated saving of R4 000,00 on his medical aid contribution, once the Defendant is removed as a member.

The Defendant, who was born on 14 September 1955 and was therefore 56 years old at the date of the trial testified that after matriculating in 1972 she enrolled at the University of Pretoria for a course in Welfare but terminated her studies after 3 months because of a lack of financial support. She then attended a course in photography at the Technicon in Pretoria during 1973/1974 during which period she met a certain Mr G Newton whom she married in 1975. This marriage lasted only for a period of 1 year. She obtained employment as a secretary at ICI in Johannesburg during 1975 but resigned in 1979 to take up a position as a secretary at Claassen Auret & De Lange. During this period she met her second husband, Mr Y to whom she was married on 8 April 1980. She and Mr Y moved to Wilderness where she took up a position as household manager at the Holiday Inn Hotel for a period of 8 months. She resigned from this position when she fell pregnant with her first child which was born on 22 May 1982. Her second child was born on 22 September 1984. During this period she began doing pottery from her home.

She testified that she and Mr Y got divorced during 1985 and the custody and control of the two minor children were awarded to her. Mr Y paid maintenance for the two minor children but she herself received no maintenance. She then moved to Graskop where she continued her pottery activities from which she earned sufficient income, together with the maintenance received from Mr Y for the two minor children to support herself and the two children. She married her third husband during 1987 but the marriage lasted only one year and she obtained a divorce after discovering that he had made advances towards her two minor

daughters.

She then moved to Potgietersrus where she obtained a half-day work as a receptionist at Road Runners. She also became involved in publishing an advertising brochure. From 1990 she started arranging conferences for the old TBVC and self-governing countries. During this period she met the Plaintiff and after they got married she and the two minor children moved to Pretoria and they then moved into the Wapadrand home bought by the Defendant.

She testified that although she managed to arrange and coordinate six conferences during the period 1990 to 1994 the situation changed dramatically after the elections in 1994 when the TBVC and previously self-governing countries were again incorporated into the Republic of South Africa. By then, however, she had accumulated a significant amount of information and therefore decided to publish and distribute a booklet with the title "Get Wise". Since 1995 to February 2003 two additions of the booklet "Get Wise" were published as well as two editions of a booklet called "Domestic Wise". She also published an Afrikaans version called "Huiswerkers Wysheid" in November 2002. She testified that the market for these booklets virtually disappeared as more and more people gained access to the internet. She confirmed the Plaintiff's evidence that they were engaged in cost consulting during the period 1997 to 2000. She said that her two daughters left home in 2001 and 2003 respectively but she confirmed that even after they became self-supportive their father (Mr Y) continued to pay the maintenance in respect of them to her and that at the time of the trial he was still paying an amount of R3 500,00 every month. She said he was not obliged to pay the maintenance and she was unsure for how long he will continue to pay same.

She confirmed that they decided during 2005 to relocate to Jeffrey's Bay and to buy the Guest

House which they intended to run as a joint venture. She confirmed the Plaintiffs evidence regarding their move down to Jeffrey's Bay and their move back to Pretoria during May 2007 by which time it became clear that the Guest House business had turned into a financial disaster. A new account was opened for the Guest House at ABSA Bank and the rental received for the Guest House was paid into this account from which she paid herself a salary of R3 000,00 per month because she still did some marketing and bookings for the Guest House.

She testified that she suffered a stroke on 28 February 1998 and had a recurrence in January 2011 and again in February 2012. She testified that she had been trying to get gainful employment since 2009 and various applications and efforts in this regard were, to the date of the trial, unsuccessful.

The defendant in a document reflecting her projected monthly expenses after the divorce estimated that she would need an amount of R21 584,10 to be able to cater for her needs. It soon appeared however, during cross-examination that substantial savings can be made which brought the amount down to R11 869,00.

I have not dealt with the evidence or the cross-examination of the Plaintiff or the Defendant regarding their needs once the divorce has been finalised in detail, and I do not find it necessary to do so. Suffice it to say that if the evidence of both parties in this regard is scrutinized it would be fair to say, in my view, that after catering for his own needs, after the divorce, the Plaintiff would have approximately between R14 000,00 and R16 000,00 per month available from which he may well be financially able to pay maintenance, should he be ordered to do so.

The Defendant, in my view, on a consideration of her evidence as a whole, need no more than approximately R12 000,00 per month to cater for her needs. The mere fact however, that a person in the position of the Defendant can say "/ need and you can pay" is however, not sufficient in itself to justify an order directing the Plaintiff to pay maintenance for the Defendant.

Section 7(1) and (2) of the Divorce Act, 70 of 1979 set out when a Court can order a party on divorce to pay maintenance to the other party and also set out the factors which should be taken into account when making such a determination. The said section reads as follows:

"7(1) A Court granting a decree of divorce may in accordance with a written agreement between the parties make an order with regard to the division of the assets of the parties or the payment of maintenance by the one party to the other.

(2) In the absence of an order made in terms of sub-section (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 insofar as it may be relevant to the breakdown of the marriage, an order in terms of sub-section (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".

As pointed out by Botha JA in Beaumont v Beaumont, 1978(1) 969 (AA) at 987E:

"At this stage I would merely point to the very wide discretion which the sub-section confers upon a Court in deciding upon an order which the Court finds just..., which is underscored by the words 'and any other factor which in the opinion of the Court should be taken into account'".

See also Swiegelaar v Swiegelaar, 2001(1) SA 1208 (SCA) at 1211G and Botha v Botha 2009(3) SA 89 (WLD) at 95D etc.

THE EXISTING AND PROSPECTIVE MEANS OF EACH OF THE PARTIES:

At the time of the marriage the Plaintiff owned a house in Mountain View which had been fully paid off and had he purchased a new house in Wapadrand which he financed with a 100% bond. He also had a Honda motor vehicle which he bought as a previously owned vehicle and apart from that he had certain furniture and household effects. The Defendant had an Opel Monza vehicle at the time of the marriage which was eventually paid off by the Plaintiff after which she repaid him the amount of approximately R12 000,00. During 2005 however, she won a Toyota RAV motor vehicle in the lotto. It appeared during the trial that the parties between themselves have already divided the movable assets and it would seem that the bulk of the furniture and household effects will, after the divorce has been granted, belong to the Defendant. The items that the parties agreed the Plaintiff could remove from the common household were mentioned during the evidence but seemed barely enough to furnish a bachelor's flat. As a result of the unsuccessful joint venture in buying the Guest House in

Jeffrey's Bay the Plaintiff sold the house in Mountain View, lost the house in Wapadrand, in respect whereof he is still paying of an agreed outstanding balance at R2 710,00 per month.

The exact details surrounding the Guest House and the financial complications the parties got involved in leading to the bond in favour of Standard Bank obtained on the Guest House property being foreclosed, which is the subject matter of the High Court action due to be heard in August of this year, have never been disclosed to me and neither was it ventilated in detail. Suffice it to say at this stage that it would appear that, even should the sale of the Guest House property for a purchase price of R7,1 million eventually be implemented, the Plaintiff was adamant that after the full outstanding balance of the bond has been settled, which he estimated between R6,4 and R6,8 million, and after provision has been made for additional costs, notably the costs of the estate agent which would appear to be R410 000,00 as commission, there would be nothing left which could be shared between the parties as a profit. It will be remembered that there is also the pending case in the Magistrate's Court in Humansdorp by the Kouga Municipality for arrear rates and taxes.

It appeared from the evidence of the Defendant that the two time share properties in Cabana Beach, described as No. 426 and No. C11 were realised by her and after certain medical and other costs, including attorneys costs have been paid the remaining balance was R27 623,00. There is also the existing account at ABSA Bank in the name of Stratos Guest House, which account was opened after the Standard Bank account was closed when the parties closed down the Guest House during May 2007 and thereafter decided to rent out the Guest House, and the current available net balance in that account as at the time of the trial was approximately R35 000,00. The Plaintiff indicated to the Defendant, while she was under cross-examination, that he did not lay claim to that amount or any portion thereof and that the

Defendant should feel free to utilize the whole amount for her own account. The Defendant therefore would seem to have for her immediate financial needs an amount of approximately R62 000,00.

THE RESPECTIVE EARNING CAPACITIES OF THE PARTIES:

The Plaintiff is employed as an Senior Assistant State Attorney in the State Attorney's office in Pretoria and there is nothing to suggest that he will not remain to be so employed until retirement age which he, during his evidence in chief, stated to be 65 years. He will therefore continue to earn his salary with yearly increments until retirement age and upon retirement will receive a pension towards which he and his employer will contribute until he retires.

The Defendant however, at the time of the trial, was unemployed. It clearly appeared from the evidence that the last time that she was formally employed, and that she received a regular salary was when she was employed at Road Runners during 1989. Prior to that, she worked periodically from time to time and when she met, and got married to the Plaintiff, she was conducting and coordinating the conferences for the former TBVC and self-governing countries. She testified that she arranged approximately 6 of these conferences during a period 1990 - 1994 and as already stated earlier in this judgment, the bottom fell out of this market, when these states rejoined the new Republic of South Africa, created after the elections which took place in 1994. Her efforts to generate an income thereafter, consisted of the booklets that she published from which she received certain royalties. From the first issue she received approximately R22 000,00, from the second issue R20 000,00. For the last issue thereof she received nothing because the publisher went bankrupt. She also received R6 000,00 from the annexure that she compiled for the Pretoria News. From 2005 onwards,

and during the periods the Guest House had an income, she took R3 000,00 per month from that income as a salary for managing the Guest House and for doing certain related work. Since the Guest House was rented out to Mr Roos in January 2011 she also took a salary from the ABSA account of R3 000,00 per month for the administrative work and the bookings that she obtained for the Guest House from time to time, from which bookings she also sometimes received a 25% commission. As pointed out earlier in this judgment she also presently still receives an amount of R3 500,00 per month from Mr Y which he has been paying to her gratuitously in lieu of the maintenance he was obliged to pay towards his two minor children, who has since become independent. It is safe to assume that the R3 000,00 per month salary that she paid herself from the rental income from the Guest House will cease once the sale of the Guest House is finalised. Exactly when this will be is unsure as the Court was never fully apprised of the full facts surrounding the implementation of the sale agreement, but I think, one can safely assume, that the final implementation of the purchase price is some way or another linked to the finalisation of the Court case of Standard Bank against the parties which is due to be finalised in August this year. This will leave her with only the R3 500,00 per month that she is presently receiving from Mr Young.

Although the Plaintiffs future income therefore would seem to be secure, the same cannot, in my view, be said of the Defendant. Mr Botes, who appeared for the Plaintiff, cross-examined the Defendant at length on her potential to create an income and in developing his argument in this respect, he emphasized the various activities in which the Defendant was involved after she entered the labour market as a editions of a booklet called "Domestic Wise". She also published an Afrikaans version called "Huiswerkers Wysheid" in November 2002. She testified that the market for these booklets virtually disappeared as more and more people gained access to the internet. She confirmed the Plaintiff's evidence that they were engaged

in cost consulting during the period 1997 to 2000. She said that her two daughters left home in 2001 and 2003 respectively but she confirmed that even after they became self-supportive their father (Mr Y) continued to pay the maintenance in respect of them to her and that at the time of the trial he was still paying an amount of R3 500,00 every month. She said he was not obliged to pay the maintenance and she was unsure for how long he will continue to pay same.

She confirmed that they decided during 2005 to relocate to Jeffrey's Bay and to buy the Guest House which they intended to run as a joint venture. She confirmed the Plaintiffs evidence regarding their move down to Jeffrey's Bay and their move back to Pretoria during May 2007 by which time it became clear that the Guest House business had turned into a financial disaster. A new account was opened for the Guest House at ABSA Bank and the rental received for the Guest House was paid into this account from which she paid herself a salary of R3 000,00 per month because she still did some marketing and bookings for the Guest House.

She testified that she suffered a stroke on 28 February 1998 and had a recurrence in January 2011 and again in February 2012. She testified that she had been trying to get gainful employment since 2009 and various applications and efforts in this regard were, to the date of the trial, unsuccessful.

The defendant in a document reflecting her projected monthly expenses after the divorce estimated that she would need an amount of R21 584,10 to be able to cater for her needs. It soon appeared however, during cross-examination that substantial savings can be made which brought the amount down to R11 869,00.

I have not dealt with the evidence or the cross-examination of the Plaintiff or the Defendant regarding their needs once the divorce has been finalised in detail, and I do not find it necessary to do so. Suffice it to say that if the evidence of both parties in this regard is scrutinized it would be fair to say, in my view, that after catering for his own needs, after the divorce, the Plaintiff would have approximately between R14 000,00 and R16 000,00 per month available from which he may well be financially able to pay maintenance, should he be ordered to do so.

The Defendant, in my view, on a consideration of her evidence as a whole, need no more than approximately R12 000,00 per month to cater for her needs. The mere fact however, that a person in the position of the Defendant can say " I need and you can pay" is however, not sufficient in itself to justify an order directing the Plaintiff to pay maintenance for the Defendant.

Section 7(1) and (2) of the Divorce Act, 70 of 1979 set out when a Court can order a party on divorce to pay maintenance to the other party and also set out the factors which should be taken into account when making such a determination. The said section reads as follows:

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(2) In the absence of an order made in terms of sub-section (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 insofar as it may be relevant to the breakdown of the marriage, an order in terms of sub-section (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".

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At the time of the marriage the Plaintiff owned a house in Mountain View which had been fully paid off and had he purchased a new house in Wapadrand which he financed with a 100% bond. He also had a Honda motor vehicle which he bought as a previously owned vehicle and apart from that he had certain furniture and household effects. The Defendant had an Opel Monza vehicle at the time of the marriage which was eventually paid off by the Plaintiff after

which she repaid him the amount of approximately R12 000,00. During 2005 however, she won a Toyota RAV motor vehicle in the lotto. It appeared during the trial that the parties between themselves have already divided the movable assets and it would seem that the bulk of the furniture and household effects will, after the divorce has been granted, belong to the Defendant. The items that the parties agreed the Plaintiff could remove from the common household were mentioned during the evidence but seemed barely enough to furnish a bachelor's flat. As a result of the unsuccessful joint venture in buying the Guest House in Jeffrey's Bay the Plaintiff sold the house in Mountain View, lost the house in Wapadrand, in respect whereof he is still paying of an agreed outstanding balance at R2 710,00 per month.

The exact details surrounding the Guest House and the financial complications the parties got involved in leading to the bond in favour of Standard Bank obtained on the Guest House property being foreclosed, which is the subject matter of the High Court action due to be heard in August of this year, have never been disclosed to me and neither was it ventilated in detail. Suffice it to say at this stage that it would appear that, even should the sale of the Guest House property for a purchase price of R7,1 million eventually be implemented, the Plaintiff was adamant that after the full outstanding balance of the bond has been settled, which he estimated between R6,4 and R6,8 million, and after provision has been made for additional costs, notably the costs of the estate agent which would appear to be R410 000,00 as commission, there would be nothing left which could be shared between the parties as a profit. It will be remembered that there is also the pending case in the Magistrate's Court in Humansdorp by the Kouga Municipality for arrear rates and taxes.

It appeared from the evidence of the Defendant that the two time share properties in Cabana Beach, described as No. 426 and No. C11 were realised by her and after certain medical and

other costs, including attorneys costs have been paid the remaining balance was R27 623,00. There is also the existing account at ABSA Bank in the name of Stratos Guest House, which account was opened after the Standard Bank account was closed when the parties closed down the Guest House during May 2007 and thereafter decided to rent out the Guest House, and the current available net balance in that account as at the time of the trial was approximately R35 000,00. The Plaintiff indicated to the Defendant, while she was under cross-examination, that he did not lay claim to that amount or any portion thereof and that the Defendant should feel free to utilize the whole amount for her own account. The Defendant therefore would seem to have for her immediate financial needs an amount of approximately R62 000,00.

THE RESPECTIVE EARNING CAPACITIES OF THE PARTIES:

The Plaintiff is employed as an Senior Assistant State Attorney in the State Attorney's office in Pretoria and there is nothing to suggest that he will not remain to be so employed until retirement age which he, during his evidence in chief, stated to be 65 years. He will therefore continue to earn his salary with yearly increments until retirement age and upon retirement will receive a pension towards which he and his employer will contribute until he retires.

The Defendant however, at the time of the trial, was unemployed. It clearly appeared from the evidence that the last time that she was formally employed, and that she received a regular salary was when she was employed at Road Runners during 1989. Prior to that, she worked periodically from time to time and when she met, and got married to the Plaintiff, she was conducting and coordinating the conferences for the former TBVC and self-governing countries. She testified that she arranged approximately 6 of these conferences during a

period 1990 - 1994 and as already stated earlier in this judgment, the bottom fell out of this market, when these states rejoined the new Republic of South Africa, created after the elections which took place in 1994. Her efforts to generate an income thereafter, consisted of the booklets that she published from which she received certain royalties. From the first issue she received approximately R22 000,00, from the second issue R20 000,00. For the last issue thereof she received nothing because the publisher went bankrupt. She also received R6 000,00 from the annexure that she compiled for the Pretoria News. From 2005 onwards, and during the periods the Guest House had an income, she took R3 000,00 per month from that income as a salary for managing the Guest House and for doing certain related work. Since the Guest House was rented out to Mr Roos in January 2011 she also took a salary from the ABSA account of R3 000,00 per month for the administrative work and the bookings that she obtained for the Guest House from time to time, from which bookings she also sometimes received a 25% commission. As pointed out earlier in this judgment she also presently still receives an amount of R3 500,00 per month from Mr Y which he has been paying to her gratuitously in lieu of the maintenance he was obliged to pay towards his two minor children, who has since become independent. It is safe to assume that the R3 000,00 per month salary that she paid herself from the rental income from the Guest House will cease once the sale of the Guest House is finalised. Exactly when this will be is unsure as the Court was never fully apprised of the full facts surrounding the implementation of the sale agreement, but I think, one can safely assume, that the final implementation of the purchase price is some way or another linked to the finalisation of the Court case of Standard Bank against the parties which is due to be finalised in August this year. This will leave her with only the R3 500,00 per month that she is presently receiving from Mr Y.

Although the Plaintiffs future income therefore would seem to be secure, the same cannot, in

my view, be said of the Defendant. Mr Botes, who appeared for the Plaintiff, cross-examined the Defendant at length on her potential to create an income and in developing his argument in this respect, he emphasized the various activities in which the Defendant was involved after she entered the labour market as a young girl and stressed the supposition, throughout, that she is capable of generating an income, and, after making allowance for rehabilitative maintenance for a period of between 6 to 18 months on the probabilities she will be able to support herself.

I have already referred to the Plaintiffs evidence that she has been trying to obtain employment since at least 2009 and that despite various efforts in this regard she has to date, been unsuccessful. These efforts to obtain employment stand uncontradicted. There also remains the medical condition of the Defendant. Although no expert evidence was put before the Court in this regard, the Defendant testified that she suffered three strokes, the first of which was on 28 February 1998 and subsequently during January 2011 and February 2012 respectively. The Plaintiff did not dispute the fact that the Plaintiff did suffer a stroke in February 1998 but as far as the two subsequent events were concerned, preferred to refer to them as TIA incidents. The Defendant described how these events, and especially the last two of thereof, affected her day to day living experience and her confidence.

She stated that she will do anything in her power to obtain some form of employment but with her past experience in this regard, was doubtful whether she will be able to gain employment again. This she ascribed to her age (she described herself as being past her "sell by date") and to her medical condition, which, according to her, she was, as a matter of integrity and honesty, obliged to disclose in her application when applying for employment.

THE AGE OF EACH OF THE PARTIES:

The Plaintiff turned 54 on 19 February of this year and the Defendant will turn 57 on 14 September of this year.

THE DURATION OF THE MARRIAGE:

The parties were married on 14 November 1992 and have therefore been married for nearly 20 years.

THE STANDARD OF LIVING OF THE PARTIES PRIOR TO THE DIVORCE:

It is clear that the parties did not enjoy a lavish lifestyle, although it would seem that prior to the Guest House experiment, which tragically failed, they seemed to have enjoyed a comfortable lifestyle, with the Plaintiff, out of his salary, being able to provide not only for himself and the Plaintiff but also contributed towards the maintenance of her two minor children, which were living with them, as she only contributed a portion of the maintenance Mr Y paid for them towards the common household expenses. She, throughout the marriage never earned a regular income (apart from the R3 000,00 per month salary she received from the Guest House as and when she received it) neither was she apparently required by the Plaintiff to obtain employment from which she earned a regular and steady income. The income she did receive from the booklets that she published, the annexure that she compiled for the Pretoria News and the income from the Guest House can also in my view not be regarded as substantial, taking account of the nearly 20 years that the marriage lasted.

THE CONDUCT OF THE PARTIES INSOFAR AS IT MAY BE RELEVANT TO THE BREAKDOWN OF THE MARRIAGE:

Neither party blamed the other party for the irretrievable breakdown of the marriage relationship. The present case therefore leaves no room to allow the scales of justice to be tipped in favour of one or the other of the parties: Beaumont v Beaumont, supra at p994 et seq.

ANY REDISTRIBUTION ORDER MADE IN TERMS OF SECTION 7(3) OF THE DIVORCE ACT:

No redistribution order is sought or will be made in this case and this factor also therefore does not need further consideration.

ANY OTHER FACTOR WHICH IN THE OPINION OF THE COURT SHOULD BE TAKEN INTO ACCOUNT:

Although the Defendant is receiving the R3 500,00 per month from Mr Y, not as of a right but gratuitously she has been receiving an amount from him ever since the youngest of the two minor children became self-supportive. He has regularly paid this amount to her, apparently to utilize as she sees fit, and there was no indication that this will cease, once the divorce is granted. Although she is therefore not entitled thereto, it is nevertheless a factor which a Court should take into account when determining whether the Defendant is entitled to be paid maintenance and in determining what the quantum of the amount should be.

The Plaintiff in his testimony said that he does not feel obliged to pay any maintenance for the Defendant and he was adamant in proclaiming that she can generate a sufficient income on her own, to become self-supportive and that she is therefore not in need of any maintenance in any event. Mr Botes strenuously argued that in view of her past experiences the Defendant can easily obtain some kind of income and by making use of her entrepreneurship would become self-sufficient. He argue that no case was made out by the Defendant that she was in need of maintenance and even if I should find that a case was made out that she was in immediate need of maintenance, rehabilitative maintenance only should be granted for a period of between 6 and 12 months.

He relied on various cases in which the so-called "clean break principle" was stressed and submitted that this was a case where that principle should be applied. He informed me, during argument, that his instructions were to offer rehabilitative maintenance of R5 000,00 for a period of 6 months but, as the Plaintiffs counsel, he was of the view that an amount of R12 000,00 for between 12 and 24 months would not be inappropriate under the circumstances. This, so the argument developed, would allow the parties to make a clean break after the said period for the rehabilitative maintenance expired, allowing each of the parties to start a new life independently of one another. He also requested the Court to make no order as to costs with the effect that each party would have to pay its own costs.

Ms Veldsman, on behalf of the Defendant argued that a proper case was made out by the Defendant that she was in need of permanent maintenance (i.e. open-ended maintenance until death or remarriage) and not maintenance for a fixed period only as suggested by Mr Botes. She furthermore contended that because the amount of R3 500,00, being paid by Mr Y is an amount which he gratuitously pays to her and which payment he can stop at will, it

should not be taken into account in calculating the amount of the maintenance payable to the Defendant. She also referred me to a number of cases and submitted that in view of the facts, inter alia, that the Plaintiff is not employed at the moment, that she do not have a medical aid fund or a pension, that it is improbable she will ever be in a position to make provision for any form of pension whatsoever, the circumstances of this case does not make it a proper case to apply the so-called "clean break principle".

I respectfully agree with Botha JA where he stated in Beaumont v Beaumont, supra at 993B "...there is no doubt in my mind that our courts will always bear in mind the possibility of using their powers under the new dispensation in such a way as to achieve a complete termination of the financial dependence of the one party on the other, if the circumstances permit". I do not believe that, on the facts of this case, justice will be served if a final determination of the financial dependence of the Defendant is made.

After a careful consideration of the facts before me and taking into account the factors mentioned earlier in this judgment I am of the view that the Defendant has made out a proper case that it would be just under the prevailing circumstances at the time of the hearing to order the Plaintiff to pay maintenance to the Defendant.

I do not share Mr Botes' and the Plaintiffs optimism that the Defendant will be able to obtain employment or to generate an income to become self-supportive within a reasonable short time, or at all. I say this in view of the Defendant's age, the time that has lapsed since she has last been in formal employment (as a receptionist at the Road Runners in 1989) and also in view of her sporadic ability to generate any form of income during the last 20 years. It only remains to consider what a fair amount should be. Taking into account the "wants and the

needs" of the Plaintiff as well as the "wants and the needs" of the Defendant I am of the view that ordering the Plaintiff to pay maintenance to the Defendant in an amount of R8 500,00 per month until her death or remarriage will be fair and just under all the circumstances.

The Defendant also claimed an amount of R250 000,00 towards resettling and relocation costs following the divorce. This amount was reduced during the course of the trial to R43 990,00. It appeared, during cross-examination by Mr Botes that even this amount was in many respects rather optimistic and although his figure, put to the Defendant in cross-examination of R15 000,00 in this regard, may be on the low side, the amount of R43 990,00 also seemed to be on the high side. The more correct figure is probably somewhere in between these two figures, but I need not make a specific calculation thereof neither do I need to make a finding in respect thereof. As pointed out earlier in this judgment the Defendant, taking the R35 000,00 into account which at the day of the trial was the net credit balance of the Stratos Guest House account at ABSA Bank, has a cash amount of approximately R62 000,00 available, which, in my view, would be adequate for any relocation costs which the Defendant will have to incur when moving from the common home.

In my view no proper case was made out for a separate payment to be made in this regard. See Swiegelaar v Swiegelaar supra, at 1213D -F.

It was common cause that the marriage relationship between the parties has irretrievably broken down and that there are no prospects of the parties reconciling. A decree of divorce should therefore be granted.

It is clear, that the real dispute between the parties was the payment of open-ended

maintenance by the Plaintiff to the Defendant. This would

appear to be the only reason why the matter eventually went on trial and why the parties couldn't come to an amicable settlement. I am of the view that the Defendant was substantially successful in obtaining an order for payment of maintenance against the Plaintiff and I can see no reason why the normal rule should not apply that costs should follow the event.

I therefore make the following order:

1. A decree of divorce is granted;
2. The Plaintiff is ordered to pay maintenance to the Defendant in the amount of R8 500,00 per month, until her death or remarriage whichever shall occur first, payable as from 1 July 2012 and thereafter on or before the 1st day of every consecutive month;
3. The Plaintiff is ordered to pay the Defendant's costs.

VAN DEN HEEVER AJ

CASE NO: 77672/2010

HEARD ON: 14 May 2012 to 17 May 2012

FOR THE PLAINTIFF: ADV. F.W. BOTES

INSTRUCTED BY: Mr. Paul Cavanagh

FOR THE DEFENDANT: ADV. M. VELDSMAN

INSTRUCTED BY: Couzyn Hertzog & Horak

DATE OF JUDGMENT: 28 June 2012