

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 25394/2010

In the matter of:

WIFE

Plaintiff

And

HUSBAND

Defendant

ORDER

IT IS ORDERED THAT:

1. A decree of divorce is granted;

The maintenance claim

2. The maintenance waiver in clause 9 of the antenuptial contract concluded between the parties on 16 July 1992 in Hamburg, Germany is declared void and unenforceable;
3. Defendant is directed to pay maintenance for Plaintiff personally as follows until her death or remarriage, whichever event occurs first:
 - 3.1. Defendant shall pay to Plaintiff the sum of R30 000.00 per month in advance on or before the 1st day of every month, by way of debit order into such bank account as Plaintiff nominates from time to time.
 - 3.2. Subject to Defendant fully complying with all the terms of this order the

amount payable in terms of paragraph 3.1 shall be reduced by R1 000.00 for every R285 000.00 in excess of R4.4 million which Plaintiff is paid by Defendant in respect of the accrual set out below;

- 3.3. Defendant shall, on divorce, make available to Plaintiff for her exclusive use, the motor vehicle which she currently drives; and license it at his costs.
- 3.4. On 1 September 2016 and every six years thereafter on 1 August, Defendant shall provide Plaintiff with a new motor vehicle of her choice having the equivalent value of a new Subaru Outback 2.5i Premium, selected by Plaintiff, with air-conditioning and power-steering. Such motor vehicle shall have a comprehensive five-year motor plan funded by Defendant; and shall be licensed by Defendant at his costs.
- 3.5. The maintenance payable in terms of 3.1 above shall be increased annually on the anniversary date of the divorce order, by the percentage change in the Headline inflation rate (also known as the Headline Consumer Price Index), as notified by Statistics SA (or its equivalent) in respect of the Republic of South Africa for the preceding twelve months. Such percentage change shall for purposes of convenience be deemed to be equal to the latest index available from Statistics SA on the anniversary date;

The accrual claim

4. The accrual in Defendant's estate is held to be R22 259 702; as set out in the accrual calculation submitted by Plaintiff and annexed hereto.
5. Defendant shall pay to Plaintiff one half of this amount, being R11 129 851 ("the

accrual amount”), within 60 calendar days of date of divorce;

6. Defendant shall transfer to Plaintiff his half share in the property situated at 5 Woodlands Road, Rondebosch, Cape Town (“the Rondebosch property”) within 90 calendar days of divorce against payment of an amount of R2 million by Plaintiff, which payment shall be made via a reduction on the accrual amount due and payable. To avoid any doubt such property shall be bond free as Defendant has accepted liability for the existing bond;
7. Defendant may collect the movables specified in Exhibit 41 from the Rondebosch property 90 calendar days after divorce or within 15 calendar days after payment of the accrual amount to Plaintiff, whichever is the later period;
8. Defendant’s other counterclaims are dismissed.

Costs

9. Defendant shall pay Plaintiff’s costs of suit as between attorney and client (save as otherwise ordered) in respect of the following interlocutory applications, such costs to include the costs of two counsel where two counsel were engaged.
 - 9.1. Plaintiff’s application to compel Defendant to comply with a rule 35(3) notice and to provide full trial particulars dated January 2014;
 - 9.2. Plaintiff’s application in terms of rule 43 dated February 2014, save that the tariff prescribed by rules 43(7) and (8) shall not apply;
 - 9.3. Plaintiff’s application for leave to amend dated April 2014;
 - 9.4. Defendant’s application for a postponement dated August 2014.

10. Defendant shall pay Plaintiff's costs as between attorney and client in this action, such costs to include the cost of two counsel, and he shall pay the qualifying costs and their attendance fees of the following experts:

- 10.1. Ms Danielle Ladopoulos

- 10.2. Ms Liza Hofmeyr

- 10.3. Mr John van der Spuy

- 10.4. Dr Czech.

BY ORDER OF COURT

THE REGISTRAR

Accrual calculation :

a)	End value of Defendant's estate [per Greenbaum Exhibit 51]	R12 016 000
b)	<u>Less</u> Greenbaum valuation of Defendant's 25,1% interest in Blouvlei Landgoed (Pty) Ltd [note: value too low]	-R1 951 722
c)	<u>Plus</u> 100% interest in Blouvlei Landgoed (Pty) Ltd based on the valuation of the two farm properties by Mr Van der Spuy [note: see calculation of adjusted value in Plaintiff's heads para 180 and 184.1 & 184.2]	R10 924 786
d)	<u>Plus</u> Glacier living annuity [note: if held to be part of Defendant's estate per Kirkland case]	R3 270 638
e)	<u>Less</u> Defendant's legal fees [note: per Greenbaum's evidence]	-R2 000 000
f)	<u>Plus</u> Defendant's counterclaim [note: amount unknown]	-
g)	<u>Less</u> excluded assets [note: no nexus established between pre-marital assets and end value, amount unknown]	-
h)	<u>Less</u> commencement value [note: the parties agreed a Rnil commencement value]	-
i)	Adjusted end value in Defendant's estate	<u>R22 259 702</u>
j)	<u>Less</u> the accrual in Plaintiff's estate [note: Plaintiff's estate is insolvent and as such the end value is deemed to be Rnil as per Schedule B to Plaintiff's heads]	-
k)	The difference between the accrual in Plaintiff's estate and Defendant's estate	R22 259 702
l)	Minimum amount to which Plaintiff is entitled (being one half of the difference in the accrual of the respective estates)	<u>R11 129 851</u>