

SOUTH AFRICA / JUDGMENT

A.C.J.S v A.S (4216/2018) [2025] ZALMPPHC 147 (31 July 2025)

[2025] ZALMPPHC 147**COURT**

Limpopo High Court, Polokwane

BEFORE

Mashifane

CASE / FILE NUMBER

4216/2018

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Source record**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****LIMPOPO****DIVISION, POLOKWANE****Case:**

4216/2018

(1) REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED: Yes

DATE:

31 July 2025

SIGNATURE:

In

the matter between:-

[A.....[

[C.....] [J.....] [S...]

PLAINTIFF

AND

[A

.....][

]

DEFENDANT

Delivered:This was handed down electronically by circulation to the parties
legal representativesby email. The date and time for hand down of
the judgment is deemed to be 31 July 2025 at 10:00 am.

JUDGMENT

Mashifane AJ

1. The plaintiff A.C.J.S issued divorce summons against the defendant A.S claiming a degree of divorce and primary care and residence of the minor children. The defendant filed her plea and counter claim pleading for decree of divorce, spousal maintenance, primary care and residence of the minor children, medical aid contribution and R500

000.00 for a motor vehicle.

The counter claim was later amended and the defendant pleaded among others for rehabilitative maintenance and a motor vehicle similar to the Suzuki Jimmy 2021 model and medical aid contribution.

2. The parties have since partially settled their dispute and before the trial could commence the settlement agreement entered between the parties was presented to the Court and now forms part of record as annexure B. In their settlement agreement the parties agree that the primary care and residence of the minor children be awarded to the plaintiff and the defendant be afforded reasonable contact. The only outstanding issue upon which this Court is called upon to decide is rehabilitative spousal maintenance of the defendant, the claim by the defendant that the plaintiff buy her a motor vehicle of similar standard as Suzuki Jimmy 2021 model and to contribute towards her medical aid.
3. For purpose of this judgment, I find it necessary that I give brief litigious background of the matter moreover in the same form part of the evidence presented before the Court.
4. On 11 July 2018 the plaintiff brought an application in terms of Rule 43 of the Unfirm Rules claiming the primary care and residence of their three minor children and other ancillary relief not necessary to mention for the purpose of this judgment. The application was opposed by the defendant and in addition she brought a counter claim

for maintenance pending divorce. On 08 November 2018 the plaintiff's application was successful and in addition he was ordered to contribute the sum of R15240.00 as interim spousal maintenance. Is common cause that the plaintiff volunteered to contribute this amount before the court order was granted and by the time of the order, he was already contributing the said amount.

5. In her counter application for interim maintenance defendant averred that she had been unemployed since 2011. The plaintiff gave her a bank card linked to his account which she was permitted to use on daily basis. She went further to say that she had no income and used to run a guesthouse from 2017 and managed to make approximately R15

000.00 per month. Since the separation she could not do manage the guesthouse further because the house was then occupied by the

plaintiff and their children.

The allegation that she was unemployed since 2011 was denied by the plaintiff and he alleged that the defendant was employed as teacher at Heuwelkroon School in Polokwane earning the sum of R8500.00, she resigned after her father who was an employee there was dismissed. He alleged further that she also gave part-time classes for remuneration but stopped about June 2012. His father subsidized them in the amount of R10 000.00 per month to make a living.

6. In her affidavit the defendant alleged that they went on luxurious holidays in Canada, Austria and Mexico and that this happened in 2003, 2012, 2013 and they also went twice on local holidays a year. The plaintiff did not deny these allegations but alleged that all their international expenses were sponsored by his father and that most of their local vacations were in Southern Cape at his parents' own house in which they stayed free of charge.
7. On 23 June 2022 the plaintiff brought an application in terms of Rule 43 (6) to vary the order granted on 08 November 2018. The grounds for the variation application was that the defendant had disclosed to the Family Advocate that she was employed as an estate agent by Property Boutique. The defendant confirmed that she has been employed since 18 October 2018, a month before the interim order was granted. The plaintiff's application was not successful, and he continued to pay the defendant interim spousal maintenance pending the divorce.
8. In her answering affidavit to the plaintiff's founding affidavit the defendant estimated her monthly expenses at R35 000.00. Her expenses included R 2830 paid to the domestic worker, R600.00 paid to the gardener, R4592 for rent, R1340 for medical expenses, R3128.00 for cell phone, and R2000.00 fuel, to mention the few.
9. In her evidence in chief before the Court and as per financial disclosure statement dated 10 March 2025 the plaintiff estimated her monthly expenses to be in the sum of R64 775.74. During the cross-examination it was established that most of what she referred to as expenses were not paid by her or not paid at all. It then came down to R30604.00.
10. She testified that she needs rehabilitative maintenance for her to settle her debt, and to complete her post graduate certificate in teaching which is a prerequisite for her to qualify for benefits such as provident fund and medical aid. The debt included her litigation fees. She needs a more reliable motor vehicle so that she can be able to drive with her children when exercising her right to contact. She is currently on medical aid of which the monthly premiums are paid by the plaintiff. She is currently employed as a teacher by Curro and her net salary is R20500 .00 and when she add R15240.00 from the plaintiff her monthly net income is R35839.00. resulting with surplus of R5235.00. per month.
11. The plaintiff that is taking care of their children and solely paying for their school fees and personal needs. He is assisted by his father, and the assistance includes payment of the interim maintenance towards the defendant. He testified that his family never lived an extravagant life. They have always been assisted by their relatives, particularly the plaintiff's

father. He bought a motor vehicle, Suzuki Jimmy 2021 model, for their son who is at tertiary as a gift for his 18th birthday. He is currently residing with his parents in Pretoria and pay rent for his accommodation. Most of his expenses are paid from his business account as he is a sole proprietor.

12. The parties were married to each other out of community of property with the accrual system on 17 April 2003 and by then the plaintiff was still a student at Medunsa and the defendant employed Glenrand MIB. Three children were born from the marriage and only two are still minors. The eldest child is studying at the University of Free State.
13. The two minor children are at boarding school known as Afrikaans High School in Pretoria and the plaintiff is solely responsible for their school fees and general maintenance.
14. Since 2018 the children have been living with the plaintiff and the defendant has never contributed to their maintenance or provided any form of financial support.
15. On 23 November 2018 the plaintiff was ordered in terms of Rule 43 to pay the defendant interim spousal maintenance in the amount of R15240.00 per month and as at the time of the order the defendant was employed as an estate agent earning commission. She resigned for this employment in 2023.
16. The defendant was offered a fixed term employment as a teacher at Curro commencing 01 August 2024 until 30 July 2025 renewable at the discretion of the employer and her salary in the sum of R24 0000. 00 before deductions and her take home is R20500.00. in addition to this income, she is receiving a monthly maintenance contribution from the plaintiff in the sum of R15240.00.
17. The defendant graduated with a B.Com degree in marketing and did in the past register with UNISA to further her studies but did not complete.
18. In 2006 the plaintiff graduated, and the following was offered internship at Polokwane Provincial Hospital. He is currently self employed as a dentist and residing in a four-bedroom house in Pretoria together with their children.
19. Rehabilitative spousal maintenance refers to a temporary type of maintenance ordered by the divorce court upon dissolution of the marriage in favour of the financially weaker spouse for a limited period aimed at giving the spouse an opportunity to become self-supportive by either skill, education and training. This type of maintenance is not provided for in a legislation and is granted purely on the discretion of the divorce court considering the financial dependency of the financially weaker spouse during the marriage more particular in circumstance where the spouse had to take care of the children and household responsibilities.
20. The duty rests on the spouse claiming rehabilitative maintenance to prove that it was due to her commitment to the marriage that she failed or was prevented from acquiring skills, education, training or to participate in the labour market for her to be financially self-

supportive. The requirements for rehabilitate maintenance do not differ from those of spousal maintenance, the only difference is the purpose and duration of the maintenance. It therefore stands that before enquiring into the general requirements of the maintenance the Court should consider first the requirements for s rehabilitative

maintenance.

21. The requirements for spousal maintenance are outlined in Section 7

(2) of Divorce Act 70 of 1979 which provides that:

"the court may, having regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs an obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, the conduct in so far as it may be relevant to the breakdown of the marriage, an order in terms of section 7 (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 death or remarriage of the party in whose favour the order is given, which ever may first occur."

22. The section itself does not create a right to be maintained after divorce. It empowers the Court with a discretion after having considers the factors listed in the section and any other factor which in the opinion of the Court will be just to make order for spousal maintenance. It therefore stands that the Court is also empowered to consider factors which in its opinion would render the order unjust.

23. The SCA in *EH v SH*[1] said that "the person claiming maintenance must establish a need to be supported by the other spouse and that if no such need is established, it would not be just for a maintenance order to be issued". It is therefore an essential requirement that the party claiming maintenance must prove there is need not a want for such maintenance

and its only after the has been established that the Court will enquire into the affordability of the other spouse. The parties at divorce enjoy no statutory right to maintenance simply by reason of marriage that there is no right of maintenance on divorce and once the need has been proven then the court should determine the other spouse's affordability.

24. It is well established that during the marriage the parties have reciprocal duty of support towards each other which terminates upon divorce or death unless at the end of the marriage by divorce the Court makes a maintenance order which it finds to be just having regard to the factors set out in Section (7) (2) of the Act. Each case must be decided on its own its merits.

25. Lekale J stated as follows: "Marriage, as a social institution, is not a business enterprise and parties thereto do not generally regard each other with calculated prudence as shrewd business individuals would each other when engaged in business transactions. They do not keep precise records of the favours they extend to each other, nor do they, as a matter of

course and practice, reduce their daily undertakings to each other to writing. They are guided, in their dealings with each other, by trust and unquestioning acceptance that they would be together as husband and wife until "death do [them] part". They generally remain gullible towards each other until their love for each other loses its flame and only then do they start to gaze around and tread with care and suspicion as against each other."[2]

26. The parties got married to each other on 17 May 2003 and stayed together as husband and wife sharing same residence until they separated in January 2018. In their 22 years of marriage they for a period of 14 years. During the seven years of separation the defendant depended on the interim spousal maintenance and the income she derived from different sources.
27. During their first 14 years of their marriage, it can be concluded that the parties lived a normal standard life which cannot be classified as extravagant. They used to go on holiday twice a year. They initially shared residence with relatives or provided with free accommodation before moving into their own house. They appeared to have been surviving with the assistance of their immediate relatives.
28. When it comes to the parties existing or prospective means of earning capacity in her own evidence the defendant testified that when making application for interim maintenance in 2018, she was unemployed with no means of income but shortly thereafter she secured employment as an intern property agent. Since then, she managed to gain employments and currently employed by Curro as a teacher. This is not for the first time she secures employment with this institution. She also has no reason to believe that her contract would not be renewed.
29. The defendant's amended counter claim reads as follows:
 7. "Having regard to the existing and prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the standard of living of the parties prior to the divorce, the age of the parties, the duration of the marriage and any other factor which in the opinion of the Honourable Court should be

taken into account, it would be just and equitable should the plaintiff be ordered to:

7.1 pay rehabilitative maintenance to the defendant in the amount of R15 240.00 per month, which amount shall escalate annually in accordance with the Consumer Price Index, from the first day of the month following the granting of decree of divorce and thereafter on or before the first day of each successful month for a period of 5 years from the date of the divorce.

7.2 Pay the monthly premiums in respect of the defendant's Medical Aid Scheme, as well as all reasonable medical expenses not covered by the said Medical Aid Scheme for a period of 5 years from the date of the divorce.

7.3 Purchase a vehicle for the Defendant similar to the 2021 Suzuki Jimmy that the plaintiff is currently driving." (My Emphasis).

30. In her own evidence the defendant claims rehabilitative maintenance for a period of five years from the date of divorce to enable her to settle her debt and to obtain a post graduate certificate in teaching which is required for her to be offered permanent employment as a teacher by Curro. She testified that she already registered for PGCE certificate in March 2025, and it will cost her R4216.00 per month for the next ten months. Surprisingly despite the surplus she has been having on monthly basis for almost a year she did not pay even a cent towards her tuition fees.
31. The plaintiff denies that the defendant is entitled to the claim for rehabilitative maintenance and argue that she had enough time to better her qualification. She enrolled for the same qualification twice in the past and did not complete it. During the period of separation, the defendant received proceeds of the sale of their house in Polokwane but she did not use part of the money to further her studies or settled her debts.
32. The defendant's pleading for the rehabilitative maintenance and her evidence falls short of the requirements for rehabilitative maintenance. Her grounds for this claim is basically general ground for spousal maintenance. As I have indicated above this type of maintenance is for specific purpose and a short fixed period and the rest of the other factors stated in the Act are to be used in support thereof.
33. The submission on half of the defendant that her current reasonable and necessary monthly expenditure amount to R34075.00 should not be viewed in isolation of her the whole evidence before the Court. She recently moved into a two-bedroom house which and her rental increased with almost 100 percent per month. She is residing alone and opted to retain a full-time domestic worker at the cost R2500.00. Her grocery is R6000.00 per month and R1666.00 paid towards her holiday savings is unreasonable. It doesn't appear from her evidence that she ever tried to reduce her expenses and live within her means. In her initial application for spousal maintenance the defendant listed her expenses and calculated them to the sum of R20640.00. which has now increased.
34. Though a motor vehicle can be part of rehabilitative maintenance order, the evidence in support of such a claim should satisfy the requirements for a rehabilitative maintenance. The motor vehicle should be necessary to assist the financially weaker spouse to become self-sufficient or financially independent from the other. In her particulars of claim the defendant demand that the plaintiff purchases her a motor vehicle similar to the one he drives. She testified that she needs a motor vehicle with enough space to be able to transport herself and the children when she exercises her right of contact.
35. Her grounds do meet the requirement for rehabilitative maintenance. In my opinion she wants to be at the same standard of living as the plaintiff. The evidence before this Court does not show that the defendant is burning inside with a desire to exercise her right to have contact with the children. She is currently driving motor vehicle, which is still in good

conditions, she does not need a more reliable motor vehicle to go to work, training or further her studies. Rehabilitative maintenance is a selfish type of maintenance as it focuses only on the claimant and nobody else.

36. The defendant, as part of her rehabilitative maintenance claim that the plaintiff should retain her on his medical aid plan for a period of five years. She is not suffering from any medical condition which without medical aid she would not be able afford and that same would affect her ability to earn a salary or be self- sufficient.
37. It was argued on behalf of the defendant that the plaintiff is not be honest and candid with the court about his financial position. The explanation by the plaintiff is reasonable, he is a sole proprietor and some of his personal needs are taken care of by the business. That he was able to go on holiday with the children twice in a short period of time is not indicative of someone who is wealthy but rather a father who is going extra mile to make life worth living for his

own children. The defendant herself had been on holiday in Mozambique and on number of occasions on a weekend away by herself in the Lowveld. I'm not convinced that the plaintiff's expenditure depicts someone who is reckless with his earnings.

38. This court is also not satisfied that the defendant had been honest with Court including the Court that decided on her interim maintenance. She kept quite about her changed financial position when the order was granted. She claim that the plaintiff maintained the family at high standard of living which includes luxuries holidays overseas. It is evident that the plaintiff would not have afforded a trip to overseas before 2007. Is either the defendant or someone else sponsored the trip and I must accept that it was the plaintiff's father. She portrays herself as someone who always needed financial assistance from other people but not even once did she requests the similar assistance to be able to exercise her contact rights with her minor children.
39. The circumstances of this case do not require of me to enquire into the plaintiff's financial position saves to say, with the evidence before this Court the plaintiff is assisted by his father to make meet his financial obligations including spousal maintenance in favour of the defendant. The financial assistance from the plaintiff's father did not only commence after separation.
40. The duty is on the defendant to prove that she her circumstance meet the requirements for rehabilitative maintenance. On balance of probabilities, I am not convinced that defendant has satisfied the requirements for rehabilitative maintenance. On the contrary with her salary, she can take care of her own financial obligations and daily needs without the assistance of the plaintiff.
41. The plaintiff has been pulling very hard, taking care of the children and the Defendant to the extent that he must from now and then borrow from his father. In application of a "clean-break "principle the reciprocal duty of support existing between the between during the

marriage end at the dissolution of the marriage. With this principle in mind and the fact that it does not follow axiomatically that by virtue of marriage the party has a right to maintenance post-divorce the defendant's claim for rehabilitative maintenance is bound to fail.

42. Costs are in the discretion of the Court, but Courts are generally reluctant to order costs in divorce actions. I'm also of the view that costs order in divorce matters should be reserved for exceptional cases.

Order

- a. The decree of divorce is granted.
- b. The settlement agreement between the parties marked annexure "B" is made the order of the Court.
- c. The defendant's claim for rehabilitative maintenance is dismissed.
- d. The defendant's claim for a motor vehicle is dismissed
- e. The defendant's claim for medical aid contribution is dismissed.
- f. Each party to pay for its costs.

RS MASHIFANE

ACTING JUDGE OF THE HIGH COURT,

APPEARANCES

For the Plaintiff: Adv N Van Niekerk

Instructed by Labuschagne Attorneys

For the defendant: N De Klerk

Instructed by DDKk Attorneys Inc.

Date of hearing: 02-03 June 2025

Judgment:

31 July 2025

[1] EH v SH 2012 (4) SA 164 (SCA) para 13

[2] PGJ v AEJ Case No: 4949/2013 page1 paragraph1 (19 May 2026 Free State Division)

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