

SOUTH AFRICA / JUDGMENT

D[....] v D[....] (22683/2012) [2021] ZAGPPHC 320 (15 March 2021)

[2021] ZAGPPHC 320**COURT**

North Gauteng High Court, Pretoria

BEFORE

N V Khumalo

CASE / FILE NUMBER

22683/2012

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Policy
IN THE HIGH COURT OF SOUTH
AFRICA
(GAUTENG DIVISION, PRETORIA)
CASE NO: 22683/2012
D[....]
PLAINTIFF
And
D[....]
DEFENDANT
DATE
OF HEARING: 22 AND 23 FEBRUARY 2021.
DATE
OF JUDGMENT: This judgment was handed down electronically by
circulation to the parties' representatives by email. The date and
time of hand-down
is deemed to be 15 MARCH
2021.

JUDGMENT**KHUMALO J****Introduction**

- [1] This is a divorce action instituted by the Plaintiff, Ms Natalie De Vries on 20 August 2012 against her husband Colin Michael De Vries, the Defendant. They got married at Krugersdorp on 28 July 2004 and two children were born of the marriage, a girl now aged 16 years and a boy aged 13 years old.
- [2] According to the Plaintiffs particulars of claim, the parties were married to each other out of community of property. On 21 July 2004 at Johannesburg, the parties, both represented by Mr Mkhombo, entered into an Antenuptial Contract (ANC).
- [3] In terms of the ANC there was no community of property, or profit and loss applicable to the marriage. The accrual system as provided in Chapter 1 of the Matrimonial Property Act 1984 would also not be applicable to their marriage. If the marriage was to be dissolved by divorce after the expiry of a period of 4 years of the marriage, the Defendant donated an amount of R400 000 to the Plaintiff. The marriage certificate and the ANC, form part of the pleadings.
- [4] The Plaintiff seeks the decree of divorce in the following terms:
- [4.1] Payment of the donation amount.
- [4.2] Both parents to retain full parental rights and responsibilities of the minor children,
- [4.3] The primary residence of the minor children shall be with the Plaintiff, in whose primary care they shall remain. The Defendant shall be entitled to reasonable contact at all reasonable times.
- [4.4] The Defendant be ordered to pay maintenance of the minor children in the amount of R10 000 per month per child.
- [4.5] In addition the Defendant was to make payment of the costs relating to primary and secondary education of the minor children, the costs of uniform, reading material and stationery as required by the school, costs of extra lessons that might be recommended by the teachers and any extra mural activities undertaken by the child.
- [4.6] The Defendant to retain the minor children on his medical aid scheme and to pay for any medical expenses incurred in connection with the minor children that is not covered by a medical scheme.
- [4.7] The Defendant to contribute to the maintenance of the Plaintiff by making payment of a sum of R30 000 per month.

[4.8] The Defendant to retain the Plaintiff in his medical aid scheme and to pay for any medical costs in connection with the Plaintiff that are not covered by the medical aid scheme.

[5] The Plaintiff furthermore alleges that:

[5.1] the Defendant had subjected her to different forms of domestic abuse, physical, verbal, emotional and financial abuse including aggressive behaviour and assaults on some occasions throughout the marriage, which sometimes caused injury physically and to her dignity.

[5.2] the Defendant abuses alcohol and has made false allegations that she abuses alcohol and drugs.

[5.3] The Defendant spends much time away from the matrimonial home unreasonably without proper explanation, he likes socialising with friends at places where patrons use a lot of alcohol.

[6] The Defendant opposed the Divorce and filed a Plea and Counterclaim. In his Plea he admitted that the marriage has irretrievably broken down and there were no prospects of restoration of a normal marriage. He however denied all the wrongdoings the Plaintiff was accusing him of. He also opposed the minor children's residence and primary care to be vested as prayed for by the Plaintiff, but with him with reasonable contact to be exercised by the Plaintiff on the basis that:

[6.1] she abuses and continues to abuse alcohol and prescription medication and other substances.

[6.2] she will more often leave the minor children with the domestic worker or Defendant without furnishing a plausible explanation of her whereabouts.

[6.3] she is irrational and verbally and emotionally abused and abuses the Defendant and the minor children.

[7] He agreed to the payment of the costs of the minor children's school fees and retaining them and the Plaintiff as his beneficiaries

in his medical aid scheme, and to pay excess costs that are not covered by the medical aid on condition the Plaintiff pays maintenance to the Defendant for minor children in the amount of R2000-00 per month per child.

Factual

background

[8] After the institution of the Divorce proceedings the Plaintiff vacated the matrimonial home with the minor children which is confirmed by the Defendant in his plea that as a result they do not share the common bed or interests anymore. Subsequently, on 29 October 2012, an interim order in terms of Rule 43 was made pending litigation that the Plaintiff will have

primary residence and care of the minor children. The Defendant was ordered to pay to the Plaintiff an amount of R28 500.00 for maintenance of the Plaintiff and the minor children, a further amount of R16 800.00 for accommodation, R4 000.00 for fuel, R2000.00 for the cellphone and pay for the Plaintiff's DSTV subscription plus was to continue to be responsible for all school and educational expenses as outlined in the prayers sought by the Plaintiff. The Defendant was also to keep the Plaintiff and the minor children on his medical aid and pay for any access payments not covered by the medical aid. He was also to make a contribution towards Plaintiff's legal costs of an amount of R7 500 and thereafter a monthly amount of R1 500 until finalisation of the divorce.

- [9] The interim order was effective until 21 June 2014 when it was amended by an order of the Maintenance Court whereupon the total amount payable for maintenance for both the Plaintiff and the minor children was reduced to R32 000.00. The amount was made up of R14 000.00 for both Plaintiff and the children's accommodation, R16 000.00 for general maintenance needs of the Plaintiff and the

children and R2 000 for repayment of the loan that was taken by the Plaintiff. At the time the Plaintiff was still staying alone with the children. On 18 August 2017 the Plaintiff and the minor children moved back with the Defendant at the matrimonial home at Hoogenhout Road, in Lonehill, the order remained effective. After a year, that is from 1 November 2018, the Plaintiff started staying alone and the children continued staying with the Defendant till to date.

- [10] Due to allegations made by the parties against each other, specifically by the Defendant that the Plaintiff is an alcoholic and a substance and prescription medicine abuser and by the Plaintiff that the Defendant is also an alcoholic, the parties were subjected

to tests by social services and the matter referred to the Family Advocate for an enquiry and report on the primary care and residence

of the minor children with regard to what would be in the best interest of the minor children. The parties also engaged their own

experts to assess the situations of the parties and report on their respective perspective with regard to substance abuse and employability of the Plaintiff.

- [11] The parties failed to hold a meaningful pre-trial conference going to trial. The Plaintiff failed to attend a pre-trial conference

on 6 April 2015. Same was arranged with her prior knowledge. The Defendant failed to attend a pre-trial conference set down for 14 November 2018 by the Plaintiff. On the same date the Plaintiff filed a Notice to amend her particulars of claim. No application was ever set down, even though there was a notice to oppose that was filed. The trial set down on 20 November 2018 was postponed sine die.

- [12] Leading to the trial, both parties were agreed on the Divorce and the only issues remaining to be decided upon being that of the

minor children's primary care and residence and maintenance for both the Plaintiff and the minor children to be paid to the Plaintiff. The matter was as a result set down for trial on 4 September 2020.

- [13] On 4 September 2020, same as it was previously, the Plaintiff was not ready to proceed. A new legal representative, Mr Marx, appeared on her behalf and indicated the Plaintiff's intention to proceed with the disputation of the matrimonial property regime applicable to their marriage. He indicated that the Plaintiff would like to proceed with an Application to nullify the matrimonial regime as referred to in her particulars of claim, where after she will proceed with the Application to amend. Mr Marx therefore applied for a postponement from the bar. Ms Bedekeron behalf of the Defendant opposed the Application for postponement of the whole matter and counter applied in terms of Rule 33 (4) for an order for separation of the issues of the matrimonial property regime and the concomitant pronouncement on the parties' estate plus maintenance of the Plaintiff from that of Dissolution of their marriage, primary care and residence and maintenance of the minor children. Having taken into account, inter alia, that the issue of nullifying the marital regime involves other third parties and the duration it might take to be resolved, the delay in the finalisation of the matter and the effect thereof on the parties and the minor children, an order for separation was granted. The issue of the marital regime and Plaintiff's maintenance were postponed sine die. The trial on the issue of Divorce, the minor children's primary residence and care and maintenance was postponed to 23 November 2020.
- [14] On the 23 November 2020, prior to commencement with the trial, the Plaintiff applied for consolidation of the separated issues alleging to have placed the Application for the invalidation of the ANC on the roll on the date of the trial appropriately. The Application was for various reasons found not to be properly before the court. The Plaintiff applied for a postponement again and leave to appoint a Curator Ad Litem so that the wishes and voices of the minor children on the issue of their primary residence and care can be heard without the interference of the parents. Mr Marx also indicated that the Plaintiff has doubt about the report that was filed by the Family Advocate on Plaintiff's request and order of the court. The Application was granted. Various name choices were subsequently submitted by the parties to the court which endorsed and ordered the appointment of Advocate Eichner-Visser. The Family Advocate was also directed by this court to update its report which was compiled more than a year ago. The Family Advocate and the Curator Ad litem were directed to both file their reports on or before the 22 January 2021. The trial date was set down on 22 and 23 February 2021. Both the family Advocate and the Curator Ad Litem's reports were filed on time.
- [15] During the trial the Defendant continued to be represented by Ms Bedeker and Mr Marx on behalf of the Plaintiff. Both the family

Advocate and the Curator Ad Litem attended the trial to present their reports. A further attempt to apply for the consolidation and the hearing of the Plaintiff's Application that was still not properly before court was refused.

[16] At the beginning of the trial it was common cause that the parties' marriage had irretrievably broken down and consequently the dissolution of the marriage inevitable. The liability of the Defendant for the minor children's maintenance and upkeep was also not put in dispute. The only contested issue to be determined was whose primary care and residence would be in the best interest of the minor children. Who between the parties was the fit and proper parent to be the primary care giver.

Evidence led

[17] In her evidence in chief, the Plaintiff testified that she indeed instituted the proceedings in 2012, although she had already taken a decision to divorce the Defendant a year before, but decided to give it a try. Still things did not work out and stayed the same. They were not compatible. The Defendant was very abusive mostly verbally, mentally and financially. The verbal abuse was most often not pleasant. He drank a lot. He will drink himself to a stupor at night and the next day would not remember what happened. She also drank at the time but stopped when she left the Defendant. The children were

also growing up. In 2018 the abuse became physical and he would push her around, as a result there was an incident of domestic violence. The Defendant one day came home late. She, their son C and a friend were in the kitchen. She couldn't get the Defendant off her so she scratched him on the nose. The Defendant ended up in hospital. The police came and told her to go and open a case and C was going to be a witness. She never did.

[18] When she moved out of the matrimonial home in 2012 she stayed at Redberry Hill, in Douglasdale. She thereafter rented and occupied

another place at the Williams Complex, in Dainfern. She stayed there for three years. It was a bigger and a secured place. After her lease expired in August 2017 she moved back to the matrimonial home for 2 years. After she moved out of the matrimonial home in 2012 she was receiving maintenance, but everything was stopped and later dealt with at Rule 43. Under the Rule 43 order, which was effective since 2013, everything was stipulated, moreover that she was to look after the children. The Defendant was ordered to pay +-R95 000, which included school fees. He paid for the lease and paid her maintenance. The Defendant later applied for reduction of the amount at the maintenance court. The amount was reduced to a cash amount of R32 000. R16 000 of that was stipulated to be for her maintenance, R14 000 was for her accommodation and R2000 was payment towards her loan debt. The Defendant was not paying her the full amount because he thought he was not supposed to be paying that amount. For the past two years the Defendant has been paying her R15 000 and then paying the other amount for rent. The cash amount of R15 000 he is paying her is not the amount ordered by the court. Therefore, he is supposed to pay her the full R32 000.

[19] She indicated that where she is staying presently the place is too small and the lease expired on 15 March 2020. In terms of the

Rule 43 Order they were supposed to stay at the matrimonial home. The Defendant sold the house at end of 2018 and she was evicted. However,

the Defendant denies having evicted her and alleges that the new owners wanted to take possession. The new owners took the mattress

she was sleeping on and threw her out. On that night they evicted her they changed the locks and she slept at Douglasdale Police Station. The Defendant took the children to Forest Drive in Lonehill and his staff was kept in storage. The Defendant told her to stay in that room at the Guest House in Forest Drive, Lonehill. The Defendant started staying with the children alone since 1 November 2018 after he kicked her out and left the matrimonial home to stay at Forest Drive. The children have not been in her care since then. She afterwards found a room near the Defendant's place in Forest Drive and she asked to stay there. So after November 2018 she stayed in close proximity to the Defendant's place until 2019. Defendant paid for the room. Whilst they were staying there she passed by the Defendant's place every day, to make food for the children and make sure that they are dressed for school. She also cooked at Defendant's place every evening. The Defendant still went out and will stay out for some time. They had a good relationship until 2019 when the Defendant moved with the children. Since then she has not had the children for approximately a year.

[20] According to the Plaintiff her children love her dearly as she is the one who kept the balance. The problem started when her authority was taken away during the period they were again staying together at the matrimonial home. After the Defendant and the children moved away the children now started lying to her about having to do their homework, making up excuses if they have to see her and complaining about seeing each other at the Malls. She therefore needs a place where there can be some dignity. When she instituted the divorce the children were in Grade 3 and 6. She had primary residence and the children saw Defendant every 2nd week. She helped J with projects and schoolwork in general and exam. The Defendant did assist as well giving some of his input. When she left the matrimonial home in 2019, they had a meeting with the children's teacher. She was asked to help since they were in the same complex. Now she is getting more complains after the Defendant and the children have moved out of Forest Drive. She got tutors for the children and they passed. During the period of lock-down they were at the Vaal doing lessons through e-learning. When the teachers complained about C, tutors got in to help again. She has no idea as to who is helping them with homework now. However, there was an incident with J, one day she phoned her crying saying she was not coping. She phoned the Defendant and he was at a pub. J wanted more time with the exams. She afterwards realised that there are more underlying things than they thought the problem was. J gets anxiety attacks and she is trying to help but she does not see the children more often. They are still waiting for J's report. They do speak on Whatsapp. J will send her something and she will translate. That does not happen with C for whom she has got tutors to help. She presently does not get to see the

children that often as there is no place to see them. C does not like shopping centres. They complain about not having time for homework.

[21] She confirmed regarding her accommodation that the rental at the guest house where she presently stays is paid by the Defendant,

and is approximately R6 500 although he was ordered to pay R14 000 for accommodation. It is however according to her not a good place to stay. She said the room is at a guest house. She was asked that if she did receive R32 000 from the Defendant was she going to be able to give primary residence to the children as it was supposed to be initially. Also asked why the Defendant had chosen to put her at a lesser and cheaper accommodation and was receiving no maintenance. She said even if the Defendant pays her the R14 000, he is still required to sign the lease. The Defendant and his attorneys have been trying to force her to sign a settlement agreement. They told her to sign before she can get her furniture or stuff back, she is therefore without her belongings. When she asked them to take out the amount in the agreement they refused. Her attorney advised her not to sign the settlement. The maintenance matter is still outstanding. She said if awarded primary residence, she will look for a studio apartment. She does not mind to be told where to live and what to eat, but at the guest house there is no place to put chairs and therefore no place for the kids to sit.

[22] She indicated that she had issue with the interview that was conducted by the Family Advocate with her and Defendant together, since if she spoke the Defendant would have gotten angry with her. They were interviewed by Ms Langeveldt and Hatting. She was not asked

anything about the children. Ms Langeveldt basically told her that she does not have a house and an income. The children chose the Defendant because it is about her not having a roof over her head. The Family Advocate asked her what she did for the past two years, that is 2019 and 2020. They were horrible to her and did not treat her well. She disputed that J would have chosen the Defendant over her. It is also hard for her to understand why the children were cross with her because they are teenagers. Langeveldt and Hatting told her that even if she had a house it was not going to happen, they had already made a decision. They asked her a few questions. They did not ask anything about the alcohol. They asked her about her parents and asked the Defendant why the children were lying or disrespectful to her. She was made to feel like she has never done anything in her life. She did not have a car.

[23] Under cross examination she confirmed that there was no domestic violence case opened. She was a housewife when she instituted the action in 2012 and since then until 2020 she has remained unemployed. She explained that according to how she understood the Rule 43, she was supposed to be looking after the children and the Defendant to provide for all of their needs. She did however, at some stage from 2015 to 2017 own a butcher which was bought over by somebody. She then was involved in the remodelling of the Randburg Children's Court. The Defendant was in terms of the Rule 43 ordered to look after the finances and pay even her loan. She confirmed that presently even when the Defendant is living with and

looking after the children, he is still paying her maintenance, and for all school related costs for the children, their everyday upkeep, expenses relating to medical, clothing and food. She said it is in terms of the court order. It was pointed to her that as a result the Defendant is seeking primary residence and care to be vested with him. She replied that the Defendant has been looking after the children because in October 2018 he sold the matrimonial home they were staying in. She however agreed that the Defendant at the time did offer her to look for a 3-bedroom apartment so that she can move in with the children prior to the Defendant moving with the children from the marital home but was not made aware of the offer at the time, because of her attorney's failure to show her the letter in time. The tender to that effect was made for an amount of R14 000 which could pay for accommodation similar to that at Williams, where the children could have had their own bedrooms. It was also put to her that subsequent to the letter in December 2018 she is the one who approached Defendant for signing of the lease at Forest Drive where

she has moved in now, in the one room. She confirmed that she phoned the Defendant when he was on holiday with the children in December 2018 and asked him the Defendant if she can stay there. She elected to move into the guest house instead. It was because she could then come and go at the children and Defendant's place. She said she prepared food at their place everyday. It was put to her that Defendant left because she was constantly interfering. She said she did, because she still had her right of primary residence with the children and was complying with that.

[24] Furthermore, Plaintiff indicated that she refused to re-sign that lease as they had decided that she needed a bigger place because

that was a small duplex. There was no plan with her that the children will see the Defendant. She said she had concluded a lease for three years at Williams and it expired on 20 August 2017. Before expiry of the lease at Williams, she and the children moved in at the marital home with the Defendant as there was a fire that occurred due to a faulty plug in the kitchen. As a result, the owners did not want to renew the lease. The landlord was paid from the insurance. They were anyway offered to stay in the matrimonial home by the order of the court. She said the domestic violence incident happened when she was staying at the matrimonial home as ordered by the children's court that she should stay there. There was also at the time when she was at the matrimonial house an incident about the cellphone. The Defendant asked her where C's phone was. She said she just pushed him and she then phoned 911. The children did not confirm that she pushed him but confirmed that the Defendant pushed her. So there was no court order issued and they did not pursue the matter.

[25] When she was confronted with the blood tests that were taken which proved that she was using drugs she disputed that. She also said she stopped using alcohol after she left the matrimonial home and she did not have any problem of another substance abuse. She was

referred to a report discovered in the papers of a test done by social services in 2018 whereupon traces of drug abuse were found.

She disputed the results or that the test was done through the Family Advocate's Office. She said on the same date she went to her Doctor and the test was negative. It was put to her that even the children's court one of their concerns was that she was using drugs. She said she actually does not have a problem with the Family Advocate's report but with that of the Curator Ad Litem, as the latter did not have any extended powers. She as a result is never ever going to have a house. In relation to the appointment of the Curator Ad Litem she confirmed that she wanted a voice to be given to the children. It was put to her that the children in all the reports have indicated that they want to stay with the Defendant, who has accepted the reports. She disputed that. She was asked that with the contribution of R30 000 that is paid to her by the Defendant why couldn't she get her own decent accommodation. She said she can't get a house as she cannot live in it without her furniture.

[26] Plaintiff closed its case.

[27] The Defendant called the Curator Ad Litem to present her report. Mr Marx requested that it be recorded that the Plaintiff objected to her appointment and therefore would seek to cross exam her. Ms Eichner-Visser confirmed that she followed the specific mandate she was given by the court. She had appointments with the two minor children and never met with the adults. She only made sure that

she only speaks to the children. It was deliberate and she would do it again. She wanted to be able to only focus on the children and not the whole matter which was not before her. They did not talk about the workings in the house. Even if the Plaintiff asked again. Her mandate was very narrow. Also the issue of the father being an alcoholic or the mother on narcotics was not raised by them. However, their silence of not talking about any of what was going on between their parents was telling. She therefore was not going to do it in any other way. In relation to her report and her indication that overall, the children would like to stay with the Defendant, she was asked if the situation would be different if they were staying with the Plaintiff. She said J's initial response was that she would have liked to also stay with her mother, preferably a shared residence. Obviously mothers are also very important to boys but they would rather like time to spend time with their fathers therefore C is Dad's little boy and which is a normal thing. She emphasised that she did not make the statement that the relationship is riddled with conflict as she is not a Psychologist. The children want to live with their father and love their father. According to Mr Marx, it seems money was an issue or played a role. He therefore asked her what she would have thought if the Plaintiff had more money and a house and the Defendant had neither of the two. She pointed out that she was there for the voice of the children to be heard. The children are

tired of the situation and also of being over assessed. They would like to live a normal life. In her report she also noted that J said the acrimonious relationship has a negative effect on her school work. J was also worried that her voice has been ignored. She would like shared residence that not being practical she would like to stay with her father and be able to see her mother. Recommendation in her report restated that a structured contact with the Plaintiff be agreed upon or formulated in accordance with Mr Hatting's report which requires a Parent co-ordinator

to have an input in the contact.

[28] On Mr Marx's unprecedented approach to demand to cross examine the Family Advocate regarding her report, Counsel's attention was

brought to the provision of s 4 (1) of the Mediation in Certain Divorce Matters Act 24 of 1987 that the Family Advocate is an officer of the court. She/He gathers information to assist the court and not partisan, therefore is not appointed the representative of any party to the dispute. The court agreed, taking note that the Family Advocate got involved at the request of the Plaintiff. However, she is expected to stay neutral in approach. The Defendant accepted the Family Advocate's report. As a result Mr Hatting, the Family Counsellor that assisted Ms Langeveldt, the Family Advocate, in compiling the report testified.

[29] Mr Hatting's testimony under cross examination by Mr Marx was briefly that their investigation started with an enquiry. The Plaintiff did indeed try to give them information after the interview and it was refused. The information was nevertheless irrelevant. Also

the position of the other party in respect of information given without his or her knowledge should be obtained. It was put to

Hatting that the Family Advocate was not nice to the Plaintiff during the interview. She felt that she was not treated fairly. Hatting confirmed that it is not uncommon for the parties to feel that way especially if they are asked uncomfortable questions. He said he believed that both parties were afforded the same time to respond or reflect on the question/s that were posed to them. Also they were guided to stay within the confines of the dispute. It was put to him that Plaintiff was asked as to what she was going to do now, not what is she going to do about her position. Hatting could not remember and couldn't find his notes and said he therefore did not know what the Plaintiff was referring to. It was put to him that Plaintiff was prejudiced as she was unemployed and does not have proper housing. Hatting said they had to look at Plaintiff's position currently. The Plaintiff had received R30 000 per month maintenance from the Defendant whilst he was looking after the children and what she was doing with it not explained. Hatting indicated that as the report was already done, to compile an updated report they were focussing on the relevant facts and therefore on the current situation, which has not changed much from the previous situation. Mr Marx complained to Hatting that the Plaintiff's role of assisting the children with their school work was not put in the report.

[30] With regard to the Defendant's drinking Hatting confirmed that they had a discussion about the Defendant's drinking. The Defendant

told them that he drinks only two glasses a day. One child told them that the Defendant will drink more after fighting with the Plaintiff. Hatting said they had focused on what would be in the best interest of the children and not saying that was not a concern, but the children assured him that their safety and life is not placed in jeopardy by their father's use of alcohol. He said the children seem to have a better relationship with the father than the mother and with their circumstances being taken into consideration their preference had to be considered. It was put to him that they

were told by the Plaintiff that the Defendant is abusing her financially and it impacts on her ability to look after the children. He said in their investigation they always look at the status quo for the last year because they also don't want to disrupt the children's status as currently C likes being with the Defendant and going with him to their home at the dam. The Plaintiff does not have proper facilities for her to be with the children. It is also concerning to them what the Plaintiff has done so far for herself up to this point and of the future as well. They have taken into consideration that she ran a butcher at some point and the issue of a vehicle. However, with a supplementary report they had to look at what she was going to do about her life. The fact that she says she helps with homework is not the only factor that they are looking at when they make a recommendation. Ideally parents should help and continue doing so. C voiced a wish to see his mother on ad hoc basis. J wanted personal assistance with her homework. She had no difficulty with the compilation. The recommendations were discussed. The recommendations made for the minor children to the Plaintiff on alternative weekends mother and alternative Wednesday.

[31] The Defendant's testimony was that indeed they separated in 2012 and their two children are currently residing with him. How it came about that the children end up living with him was because the Plaintiff and the children came back to the matrimonial home in August 2017 when her lease at Williams expired. He was forced to repair the house the Plaintiff vacated at Williams because there was a fire at the house. The children moved back first and the Plaintiff followed later. The Plaintiff stayed on the ground floor at the matrimonial home continuously until end of October 2018 when he had to sell the house. After he sold the marital home as he could not afford to pay the bond, he asked the Plaintiff to get a three-bedroom apartment or town house where she can move in with the children and she did not do it or confirm in time. He therefore had to find a place to move in with the children, which was at 18 Forrestown, Pineslope. Then the Plaintiff later moved in the same complex. He was on holiday with the children in December when the Plaintiff phoned him to tell him that she has secured a place in the complex and he must pay for the place, which he did. They had a 1- year lease so they resided in that place for a year until October

2019. The children were not happy there because the place is small and he had to find a bigger place for him and the children. The Plaintiff was also interfering at his place searching his property and taking his papers. She would keep him at the restaurant and go through his emails.

[32] When they were staying at the Plantation in Broadacres, he used to take the children to school everyday. C would have his breakfast first and J does not eat in the morning. He will then do the dishes as well. He confirmed that he is seeking primary residence of the children. In so far as children's contact with the Plaintiff is concerned, the Plaintiff normally phones the children and during the week she takes them to the mall for 1-2hrs and she tries to see them on Saturday or Sunday mainly at the Fourways Mall. Regarding the recommendation in relation to the structured contact as made by Hoffman he is satisfied as sometimes it puts pressure on the children. He confirmed that he will continue with their schooling expenses and taking care of all the maintenance requirements as far as the

children are concerned.

[33] He indicated during cross examination that he was previously involved in the mining company and is now making money only through

consulting work. He confirmed that he is paying for the accommodation at the Plantation Estate and also has a property at the Vaal dam. The Vaal property is under Airbnb and the children enjoy going there. J does not like going there too often. C and him go more often. Every time they go there they don't utilise the house as it is under the Airbnb rental. They use the garage that they have converted into a living area. When they were at 18 Forrest Drive, J used to sometimes stay behind with her mother. The part of the income he gets from the Airbnb goes to a trust. The children and the Plaintiff are beneficiaries of the trust. He intended removing the Plaintiff as soon as possible. For the last couple of months, he has been paying the Plaintiff more money. The Plaintiff must blame herself, she is the reason why she does not have proper accommodation. She has been receiving the R30 000 even when she was living with him in the marital home, but refused to share in the groceries or rent or any responsibilities.

[34] On his drinking he said he only realised what he has said about drinking 2 glasses of wine everyday, but what he meant was when he goes out. He would be usually at home by 18h00 in the evening. When he is with the children he does not drink. He also cooks dinner for the children nearly everyday, it would be chicken and sometimes roast beef. They eat proper meals during the week and sometimes proper meals even during the weekend. On J suffering anxiety panics when he was not at home He said he was visiting a friend and did not even touch his dinner because he was called back home. He is with the children every time and for once, he was visiting a friend and usually would have cooked them dinner early. He was asked why besides offering the 3 -bedroom apartment he has not helped the Plaintiff. He pointed out that she was being paid an amount of nearly R30 000 and she had stored her goods in the storage or garage and does not need to get any new furniture. In his opinion Plaintiff could afford with the R30 0000 she is getting. For the past three years that is what she has been getting even without any responsibility towards the children. He confirmed that he has been paying her an amount of R30 000 less the amount of rent that he is paying for her leased property. He also since three years ago has been trying to settle as he has been struggling in trying to keep up to date with the payments and it has been hard. They are also aware of the lump sum that is to be paid to the Plaintiff but it has been very difficult for him. [35] On this evidence the court had to determine with which of the spouses would it be to the best interest of the children to bestow primary

residence and care of the children.

Legal framework

[36] The Children's Act 38 of 2005 governs the laws relating to the care, contact and the protection of children. It defines the parental responsibilities and rights. The Act also defines the standard of the best interest of the child that is applicable in every matter that involves the child's care, contact and protection. Section 7 of the Act provides what is

referred to as the 'best interest checklist'; see *FS v JJ and Another* 2011 (3) SA 126 (SCA) which every Judge is implored to consider when the Constitutional imperative 'best interest of the child' standard is applied in any matter governed by the Act. They are:

"(a) the nature of the personal relationship between-

The child and the parents, or any specific parent; and

(ii)

(b) the attitude of the parents, or any specific parent towards —

(i) the child; and

(iii) the exercise of parental responsibilities and rights in respect of the child;

(c) the capacity of the parents, or any specific parent or of any other caregiver or person, to provide for the needs of the child, including emotional and intellectual needs;

(d) the likely effect in the child of any change in the child's circumstances, including the likely effect on the child of any separation from —

(I) both or either of the parents; or

any brother or sister or other child, or any other care-giver or person, with

whom the child has been living;

(e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;

(f) the need for the child-

(i) to remain in the care of his or her parent, family and extended family; and

(ii) to maintain a connection with his or her family, extended family, culture or tradition;

(g) the child's

(i) age, maturity and stage of development;

(ii) gender;

(iii) background; and

(iv) any other relevant characteristics of the child;

(h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;

(i) any disability that a child may have;

- (j) any chronic illness from which a child might suffer;
- (k) a need for a child to be brought up within a stable family environment and; where this is not possible, in an environment that resembling as closely as possible a caring family environment;
- (l) the need to protect the child from any physical or psychological harm that may be caused by-
 - (i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behavior; or
 - (ii) exposing the child to maltreatment, abuse, degradation, ill treatment, violence or harmful behavior towards another person;
- (m) any family violence involving the child or a family member of the child; and
- (n) which action or decision would avoid or minimize further legal or administrative proceedings in relation to the child".

[37] Chapter 10 of the Act provides that where a child is of 'such an age, maturity and stage of development as to be able to participate 'in any matter concerning him or her, that child has a right to do so 'in an appropriate way.' The child's expressed views must be given "due consideration." The section is said to reflect the test set out in *King J in McCall v McCall* 1994 (3) SA 201 (C) that:

"If the court is satisfied that the child has the necessary intellectual and emotional maturity to give in his expression of a preference a genuine and accurate reflection of his feelings towards and relationship with each of his parents, in other words to make an informed and intelligent judgment, weight should be given to this expressed preference." (my emphasis)

[38] The manner/method in which a child is to be heard and regarded as

appropriate is to be determined in consideration of the proceedings. The fundamental question being whether the appropriate way chosen would be in the child's best interest, that being of paramount importance in every matter concerning the child. The methods used in general and regarded as appropriate would be through the Office of the Family Advocate or appointment of a Curator Ad Litem or by allowing the appearance of the child in the proceedings. A divorce is naturally traumatic to a child and the courts would not like to exacerbate the trauma by subjecting the child to a stressful process by insisting that the child appear. In the main, courts will only allow a child's appearance as the last option if special circumstances exists and it being in the best interest of the child that the child appears, especially in divorce circumstances where the proceedings have been prolonged and acrimonious.

[39] Section 28 (1) (h) of the Constitution, 1996 entitles a child to

legal representation at State expense in 'civil proceedings affecting the child's interest. This is viewed as different from "the

appropriate way" that is suggested by the provisions of s 10, in that the child becomes part of the proceedings, whilst participation

in an appropriate way is said to suggest the possibility of various means of allowing the child to be heard, bar being part of the litigation. A typical example is the appointment of a legal practitioner as a Curator Ad Litem where the child's interests are at issue. In *Legal Aid Board v R* 2009 (2) SA 262 (D), Willis AJ suggested that the legal representation would inevitably be required in disputes between the parents in which a child's "voice" has been "drowned out." Also where substantial injustice would result if a separate legal representative is not appointed for the child. In *Soller NO v G* 2003 (5) SA 430 (W), Satchwell J concluded that neither parent of a fifteen-year-old, nor the Family Advocate, were able to represent his interests adequately, in consequence an attorney was appointed. The differences in the respective roles of the Family Advocate and the child's

representative was explained by Satchwell J in the following terms:

"the family Advocates provides a professional and neutral channel of communication between the conflicting parents (and perhaps

the child) and the judicial officer). The legal practitioner stands squarely in the corner of the child and has the task of presenting

and arguing the wishes and desires of the child. 2008 (6) SA 50 T

[40] In casu the main focus being the primary care of minor children of parents who have been involved in a long and acrimonious divorce, and had levelled serious allegation against each other, it became imperative that the children be heard through the legal representation by a Curator- Ad- litem. I find the parallel appointment of the Curator Ad Litem, Advocate Eichner-Visser to have been the catalyst for the realization of the fundamental constitutional imperative that the issue be decided in the best interest of the child. The mandate was to focus on the children's wishes and how they perceive their situation, which she did very well and clearly to the best of her ability, even though she was subjected to cross examination by Mr Marx, the Plaintiff's Counsel (which is unprecedented). She remained determined and focused not only presenting the minor children with a voice on the issue but also providing her insight into the wishes and desires confided to her, as well as apply legal knowledge and expertise to the children's perspective; see *Soller NO v G* 2003 (5) SA 430 (W) ta 438.

[41] In determining the issue I had to look at the individual situation of the parties each in relation to the minor children's emotional and physical needs. Their willingness and capacity to provide an environment where both needs can be satisfied, taking into account the factors to be considered to reach the best interest of both children.

[42] It is the testimony of the Plaintiff that although she is willing, she is hamstrung due to her situation, being unable to provide a stable accommodation where she can stay with the children and be able to provide the emotional care that they require. She exonerates herself from any responsibility to provide for any of the children's needs except for emotional support and assistance with their school work. She backs her stance by insisting that, that is in accordance with the order of the maintenance court. She alleges that according to the said order she was instructed to stay in the matrimonial home and the Defendant ordered to look after her and the children by paying her the amounts indicated in the order.

[43] The interim maintenance order referred to above, nowhere does it stipulate that the Plaintiff be accommodated at the matrimonial

house and the Defendant provide everything else. Instead it is an interim order and the amount of R32 000 that the Defendant was

ordered to pay to the Plaintiff, R14 000 was for accommodation for her and the children and R16 000 was maintenance for her and the children. The extra R2 000 was payment towards the Plaintiff's loan debt which has been paid in full. It is obvious that the Plaintiff was coping and seem to have understood the application of the Order all along, until she vacated the Williams accommodation and moved back to the matrimonial home whereupon this convoluted way of understanding the Order had its roots. She did not need to pay rent, or use the money she got for the maintenance of the children, they were being taken care off. Notwithstanding, the Plaintiff has not given an explanation on how she used the money during the period September 2017 to November 2018 when she did not need to pay rental. The Defendant explains that even though there was no accommodation paid for at the time, since they were staying together at the matrimonial home from August 2017, the Plaintiff insisted on keeping the R30 000 to herself and refused to assist in providing for their households requirements or their children's needs. The situation made it difficult for him to be able to sustain all those responsibilities alone whilst paying the Plaintiff the R30 000.00. It seems neither of them understood that the payment in lieu of accommodation cannot be enforceable where the Defendant is providing accommodation for her and the children and that maintenance for the children was payable to her also for the purpose of providing for the upkeep of the children.

At that stage she was providing none of those.

[44] In in addition it became apparent from the testimony of the Plaintiff that she was expecting the order to be applicable forever with nothing changing, including post- divorce. This explains her reluctance to get employment or to improve her employability status

by obtaining further qualifications even though it was suggested by the experts and a full payment of the fees offered by the Defendant.

She also blames her inability to provide for the children or to afford a decent place where the children can visit her, solely on the Defendant. The Defendant has indicated in terms of correspondence that the Plaintiff's not being able to provide for the children was of her own

doing. Defendant made an offer to pay and urged her to find a three-bedroom apartment where she could be accommodated with the children which offer she failed to take up. The Plaintiff was furthermore not honest during her evidence in chief in explaining how she got to stay in that small room. Her narrative and that of Mr Marx was to blame the Defendant for it. She later confirmed that staying at the small place or in the one room apartment was of her own choice. She must have known that it was not going to be possible to accommodate the children in that small place, when she asked the Defendant to commit to the lease and pay for the room instead of a three-bedroom apartment. It had resulted in the Defendant having had to continue to provide primary care to the children. She had insisted on the payment of the same amount post her being divested of the primary residence and care of the children. She also clearly and deliberately misrepresented the application of the maintenance court order that clearly stipulated the purpose of the amounts that are payable to her. She nevertheless failed to improve or to indicate how

she planned to improve her circumstances not only for her children but for herself. When she was asked why she could not use the R30 000 to rent, an apartment. She asked where was she going to get furniture indicating reluctance rather than commitment towards making it possible to stay with the children. The Defendant has indicated that the furniture that she used at Willows was at storage.

[45] However all being said the indication is that she loves her children and would certainly want to be there in their lives. She certainly enjoys being able mainly to help J with whatever emotions she might be going through due to their family situation and through her teenage years. Although she also has a motherly relationship with C, he seems to be ok all round with his father but would not mind spending some time with his mother, albeit occasionally. The Plaintiff has also raised more concern about J and what she might be going through. Even though she has failed to be able to convince the court that she is the best parent to be vested with the primary care of the minor children, it would be to the best interest of the children that she certainly keeps a closer relationship with the children especially J however it should not be detrimental to their school work and to the enjoyment of the safe and stable family environment offered by the Defendant.

[46] The Defendant on the other hand has indicated that he has assimilated to the role of being the primary care giver seamlessly, since the Plaintiff moved back to the marital home. He continued with his responsibility to also provide for their scholastic requirements.

He confirmed that he has maintained the role of taking and fetching the children to school, extramural activities and providing a well-balanced family environment for the children. He would also take them on holiday and spend quality time with them on their weekends away. He continued even after the Plaintiff was no longer residing with them or close to their residence. He confirmed that since they left the place in Forrestown, he stays home with the children, occasionally would go out but he would have made sure that he has cooked, the children are well fed in time before he does that. He also provides them with well-balanced cooked meals that he prepares himself. He, prior to that, was prepared to let the Plaintiff find a place suitable for her

and the children. On her failure to do so he then continued to play a major role in the primary care of the children, providing a stable and a protected environment for them which they seem to enjoy and appreciate and got accustomed to, hence would want to maintain. The Defendant in the meantime has not complained about any hardships he has encountered since staying with the children. Instead he has shown a high degree of commitment towards the children. The children have indicated that they don't want to lose that even if they also want to spend some quality time with the Plaintiff.

[47] The Defendant fulfills the need for a child to be brought up within a stable family environment or an environment that resembles

as closely as possible a caring family environment; In addition, the Defendant has committed to continue being responsible for all the minor children's schooling and educational expenses including for extra lessons that might be recommended by the teachers and any extra mural activities undertaken by the child plus all their maintenance requirements.

[48] The main issue of concern with regard to Defendant is the proven allegations of drinking. He had told the Family Advocate that he drinks two glasses of wine per day. He however does not drink when he is with the children. In his testimony he corrected that to say that what he meant is that when he goes out he usually would drink not more than two glasses of wine. He only realized the impact of his statement now on trial. It therefore raises a question as to whether the children are exposed to any physical or psychological harm as a result of the Defendant's drinking. The children have however informed the Family Advocate that they have never felt to be in any imminent danger. The Defendant also used to drink a lot after arguments with the Plaintiff. The recent results of blood tests done not less than 9 months ago confirm that the Defendant is clear from the abuse of alcohol. No evidence has been led of the Defendant ever been abusive to the children or them being scared to be around the Defendant because of his drinking. In addition, there are no allegation that he has ever put their safety at risk. He however

requires constant checkups to make sure that he remains negative to alcohol abuse.

[49] The Office of the Family Advocate has echoed the same sentiments having taken into account the situation of the parties at the present moment, the history of their relationship with the children, the needs of the children, the ability of the parties to provide for the children and the capacity to understand what is expected of them as parents. Mr Hatting was of the view that the children seem to have a better relationship with the Defendant, than the Plaintiff and with their circumstances being taken into consideration, their preference had to be considered. In their investigation they always look at the status quo for the last year because they also don't want to disrupt the children's status. Currently C likes being with the Defendant and going with him to their home at the dam. J has indicated also wanting to be included in the visits to the Vaal but sometimes spent her time with her mother. The Plaintiff's alleged inability to provide was assessed against her access to the amount of R30 000 for the period she was staying in the marital home till to date and her

lack of enthusiasm to look for work or give a reasonable explanation.

[50] Furthermore, the Curator Ad Litem indicated that the minor children are tired of the awkward situation that the long and acrimonious divorce has put them. They now yearn for stability. As a result, she supports the recommendation made by the Office of the Family Advocate with regard to the primary residence vesting in the Defendant with reasonable access to be exercised by the Plaintiff,

and that a structured contact be agreed upon or formulated in accordance with the Family Advocate's report. The process of divorce

started when they were 5 and 8 years old. They are now 16 and 13 years of age. I am satisfied that the children as per report of the Curator Ad Litem have the necessary intellectual and emotional maturity to express their preference, thereby were able to give a genuine and accurate reflection of their feelings towards and relationship with each of their parents, in other words to make an informed and intelligent judgment. As a result, weight should be given to the expressed preference they have made to the Curator Ad Litem, to stay with the Defendant but also their desire to continue seeing the Plaintiff albeit not under stressful circumstances. Such access to be structured.

[51] I am satisfied that a case has been made that it would be in the best interest of the minor children for their primary residence

and care to be vested with the Defendant with reasonable access to be exercised by the Plaintiff.

Maintenance to Plaintiff

[52] As only the issue of decree of divorce has been finalised and the issue of the marital regime in relation to the pronouncement on

the parties' estate and maintenance of the Plaintiff is still to be finalised, the Plaintiff is entitled to interim maintenance pending finalisation of the two issues; see *Carstens v Carsten* (2267/2012)

[2012] ZAECPHC 100 (20 December 2012); *KO v MO* 2017 JDR 1839 (WCC) at 1851. This flows from the fact that a married couple have generally the obligation/responsibility to take care of each other. In terms of the law it does not matter that the marriage ends up in divorce, the obligation to take care of each other does not cease to exist where the need remains, sometimes until divorce or other times until at a certain time postdivorce. All this being determined by a need and the concomitant affordability; see *EH v SH* 2012 (4) SA 164 (SCA) at [13].

[53] Section 7 of the Divorce Act 7 of 1979 with regards to spousal maintenance provides that Divorce does not mean termination of financial dependence of one spouse on the other if circumstances do not permit. In this matter the divorce action has not yet been exhausted since the propriety rights of the divorced couple and maintenance of the Plaintiff are yet to be finalised, following the separation of issues and a need for interim maintenance also identified. In *KO v MO supra*, Loots AJ held that: -

"[60] It cannot be the correct position that, in a pending divorce action, following the granting of a decree of divorce, the fact that the parties are no longer married would disentitle a person who, until the decree of divorce (which is but one part of the divorce action), was entitled to the relief set out in Rule 43, *pendente lite*, would no longer be entitled thereto due to an unnecessarily strict interpretation of the word "spouse", for the purposes of the Rule." [61] Accordingly, I find that, pending the finalisation of the divorce action, an extant order in terms of Rule 43 survives a decree of divorce to the extent that the issues regulated thereby remain unresolved. [62] The finding that an existing order in terms of Uniform Rule 43 does not lapse with the granting of a decree of divorce in circumstances where the remaining issues in the divorce action remain pending in terms of Uniform Rule 33(4), follows ineluctably."

[54] In the matter of *NK v KM* 2019 (3) 571 (GJ) the Court refused to grant a separation in terms of Rule 33 (4) of issues to be decided by the court on the basis that there cannot be an application for Rule 43 interim maintenance after the decree of divorce. The court held that there would be no basis in law for KM to institute a Rule 43 application once a decree of divorce is granted, following the separation of the divorce from the other issues. It found in the

premises, that the Applicant's application for a Rule 33 (4) separation stands to fail because it would not be convenient for the respondent if the issue of divorce was to be separated from the other issues, since Rule 43 does not survive a divorce action.

[55] The matters followed were those of *Beckley v Beckley* GJ01098/2015 - at the time there was no pending divorce action between the parties as provided for in Rule 43. It was held that there was no matrimonial action pending between the parties or about to be instituted and that being so, there was no existence or a contemplated *lis* such as is referred to in Rule 43. Once a decree of divorce is granted, the provisions of Rule 43 would find no place. Hence the applicant was said to lack the right to claim interim maintenance where there was no matrimonial action or where none was pending or was about to be instituted; see *Gunston v Gunston* 1976 (3) SA 179).

[56] The conclusion that a Rule 43 does not survive a divorce action is correct. The event however that needed to be addressed in *NK v KM* is; where certain issues in the divorce action were to be decided separately from the issue of dissolution of the marriage, the granting of the latter, prior to finalization of the separated issues in the action cannot render the divorce action finalized. *Joubert v Joubert* Unreported. Case number 67591/2013, Gauteng Division, Pretoria Opperman J stated as follows in paragraph 21:

"The applicant's claim for spousal maintenance can be nothing else but a dispute arising from a matrimonial action and/or proceedings incidental to such action." .2. She continues at paragraph 26 and states further that:

"Where the issue of spousal maintenance is expressly kept alive (like the present case), the lis contemplated in Rule 43 has not come to an end. Such lis is clearly a matrimonial one in respect of the proceedings incidental to an action for divorce. However, I need not go that far in this matter as in this case the respondent expressly invited the court to separate out the issue of spousal maintenance and undertook to be governed by the rule 43 relief which had already, by the time the undertaking was made, been granted."

[56] In casu, the spousal maintenance and patrimonial consequences of the dissolution of the marriage as part of the divorce action remain in dispute. The Defendant, by extending a 'with prejudice offer' on the interim maintenance to the Plaintiff, the Defendant indicated his concession that the Plaintiff is entitled to interim payment of maintenance until finalization of the issues in the action that have been separated. The separation was also granted at the behest of the Defendant.

[57] It is common cause that the interim maintenance order of 20 June 2014 that the Plaintiff has used as a benchmark of what is to be paid to her, was issued by the maintenance court order in substitution of the High Court Order, when the Plaintiff had primary residence and care of the children, to whom she was required to provide accommodation and was responsible for their upkeep and day to day maintenance. The Plaintiff no longer had that responsibility since August 2017 and therefore there was no justification for her to continue receiving the total amount of R32 000.00 post that date. In scrutinizing the amount payable, I have also taken into account the Plaintiff's potential earning capacity that was identified, to find employment by the latest 2020. In addition, had regard to the existing means of each of the parties, their financial needs and obligations.

[58] As a result the amounts of R14 000.00 and R16 000.00 that the defendant was ordered to pay for the Plaintiff and minor children's accommodation and maintenance, respectively, were reassessed and considered to be fair and just that the amounts be split into equal halves between the two children and the Plaintiff. The Plaintiff would therefore be entitled to R7 000.00 contribution for her accommodation and R8 000 for her upkeep. The payment of an amount of R15 000.00 for her interim maintenance would under the circumstances be fair and reasonable. An extra R2000.00 is to be payable to her for in the instance when she exercises her visitation rights. The amount is payable pending finalisation of the disputes in the divorce action that have been postponed sine die.

[59] I therefore make the following order:

1. The marriage between the plaintiff and defendant is dissolved;

2. Both parents to retain full parental rights and responsibilities of the minor children; as envisaged by Section 18 of the Children's Act, Act 38 of 2005 (as amended) including, but not limited to the responsibility and right to care for the minor children; maintain contact with the minor children; act as co-guardians of the minor children; and contribute towards the maintenance of the minor children;
3. The primary residence of the minor children shall be vested with the Defendant, in whose primary care they shall remain.
4. The Plaintiff shall be entitled to reasonable contact rights at all reasonable times to be exercised as follows:
 - 4.1. Contact with removal rights for a full day visit on a Saturday and Sunday from 08h00 to 17h00, every alternative weekend;
 - 4.2. Telephonic contact on a Tuesday and a Thursday, between 18h30 and 19h00;
 - 4.3. Telephonic contact on the Sundays that do not fall on the contact weekend referred to in clause 4.1 above, between 18h30 and 19h00;
 - 4.4. Contact with removal rights on Mothers' Day;
 - 4.5. Contact with removal rights on the Plaintiff's birthday;
 - 4.6. Contact on every alternative birthday of the minor children, alternatively a part of every birthday of the minor children;
 - 4.7. Contact during holidays to be extended with a right of removal exercised also from Friday 10h00 on every alternative weekend that the Plaintiff has a right of visitation.
 - 4.7. The contact referred to in clauses 4.1 to 4.7 shall be exercised subject to the minor children's educational, religious, social, recreational, extra-mural and sporting activities and further taking into account the minor children's daily routine.
5. The Defendant shall pay maintenance for the minor children as follows:
 - 5.1. The Defendant shall bear the cost of the minor children's day-to-day living;
 - 5.2. In addition the Defendant was to make payment of the costs relating to primary and secondary education of the minor children, the costs of uniform, reading material and stationery as required by the school, costs of extra lessons that might be recommended by the teachers and any extra mural activities undertaken by the child.
 - 5.3. The Defendant to retain the minor children on his medical aid scheme and to pay for any medical expenses incurred in connection with the minor children that is not covered by a medical scheme.

[6] The Defendant shall in the interim pending finalisation of the issue of the marital regime and of Maintenance to the Plaintiff:

[6.1] pay to the Plaintiff an amount of R17 000, as Maintenance from 7 April 2021 and thereafter on the 7th of each month until the date an order in respect of such maintenance is made after which the Plaintiff will have no further maintenance claims in respect of this order.

[6.2] retain the Plaintiff on his medical aid scheme and shall make payment of the monthly subscriptions in respect thereof, for a period

of twelve months from the date of the granting of this order.

[7] Both parties to continue to be tested for alcohol and substance or drug abuse every 4 months for the next 12 months from the date of the granting of this order.

[8] This order shall supersede any and all previous orders that have been granted in respect of maintenance for the Plaintiff and/or

the minor children, by any Court.

[9] Costs are reserved to be decided on finalisation of the pending issues.

Electronically signed

N V KHUMALO J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

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