

SOUTH AFRICA / JUDGMENT

R.T.R v D.J.R (37229/2015) [2018] ZAGPPHC 606 (23 February 2018) [2018] ZAGPPHC 606

COURT

North Gauteng High Court, Pretoria

BEFORE

Davis

CASE / FILE NUMBER

37229/2015

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HIGH

COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

(1)

NOT

REPORTABLE

(2)

NOT OF

INTEREST TO OTHER JUDGES

(3)

REVISED.

CASE

NO: 37229/2015

23/2/2018

In

the matter between: R
T
R
Applicant
and
D
J
R
Respondent

JUDGMENT

DAVIS,J

- [1] This is a divorce action in which the current dispute centers around the patrimonial consequences of the divorce and, more particularly, whether what is colloquially known as a "redistribution order" should be granted and, if so, in what terms.
- [2] The parties were married to each other on 1 September 1989 in Rusape, Zimbabwe. ,There were three children born of the marriage, all who are already majors.
- [3] The Plaintiff resides in the Republic of South African and the parties are in agreement that this court has jurisdiction. They are further in agreement that the laws of Zimbabwe apply to the patrimonial consequences of their marriage and the impending divorce. In terms of those laws the parties were married out of community of property and the applicable law is the Matrimonial Causes Act No 33 of 1985 (as amended) of Zimbabwe. This Act provides for the exercise of a judicial discretion upon divorce to "re-allocate" matrimonial property. The relevant sections on which the Plaintiff relies (and which the Defendant has conceded are applicable), are Sections 7(1), and 7(4) which read as follows:

"7(1) Subject to the provisions of this section, in granting a decree of divorce, judicial separation or nullity of marriage, or at any time thereafter, the Court may make an order with regard to:-

- (a) the division, apportionment or distribution of the assets of the spouses including an order that any asset be transferred from one spouse to the other ...

7(4) In the making an order in terms of sub-section (1), an appropriate Court shall have regard to all the

circumstances of the case, including the following:-

- (a) the income-earning capacity, assets and other financial resources which each spouse and child has or is likely to have in the foreseeable

future;

- (b) the financial needs, obligations, and responsibilities which each spouse and child has or is likely to have in the foreseeable future;
- (c) the standard of living of the family, including the manner in which any child was being educated or trained or expected to be educated or trained;
- (d) the age, physical and mental condition of each spouse and child;
- (e) the direct or indirect contribution made by each spouse to the family, including contributions made by looking after the home and caring/or the family and other domestic duties;
- (f) the value to either of the spouse or to any child of any benefit, including a pension or gratuity, which such spouse or child will lose as a result of the dissolution of the marriage;
- (g) the duration of the marriage;

and in so doing the Court shall endeavor as far as is reasonable and practical and, having regard to their conduct, is just to do so, to place the spouses and children in the position they would have been in had a normal marriage relationship continued between the spouses. "

- [4] Reliant on the above sections, the Plaintiff claims that it would be just if the Defendant were ordered to transfer to the Plaintiff one half of his assets or such portion as the court may deem just alternatively if the Defendant were ordered to make payment to the Plaintiff of an amount equal to the half of the nett value of his estate. There is a similar counterclaim by the Defendant but this, although not formally abandoned, was not pursued with any vigour.
- [5] The parties were further *ad idem* that the issue of maintenance claimed by the Plaintiff would stand over or would be determined by a maintenance court as it could only properly be adjudicated on once the consequences and extent of any redistribution order has been determined.
- [6] Two further aspects pertaining to the litigation between the parties need to be mentioned:

6.1 The first is an order granted by this court on 10 September 2015 in terms of Uniform Rule 43 and the second is a settlement agreement

previously reached between the parties;

6.2 The Rule 43 order was granted after an opposed hearing of the application and *inter alia* dealt with aspects pertaining to the parental rights and responsibilities of care and contact of the youngest child and her maintenance. These have, for present purposes, fallen away;

6.3 Apart from these issues, the Defendant was to pay to the Plaintiff *pendente lite* an amount of R105 000,00 per month "free of deduction" and a further amount of R37 500,00 "for as long as the Applicant [the Plaintiff] participates in equestrian sport activities and /or has horses kept by her for horse-riding activities, serving as a contribution towards her costs relating thereto"

6.4 The Defendant initially complied with the court order but subsequently fell in breach thereof. The Plaintiff testified that he was at the date of the divorce hearing in arrears with his payments in an amount of some R2, 8 million and in recent months only paid as little as somewhere between R6 000 and R10 000 in a particular month. These figures and arrears were not disputed.

6.5 The Defendant had previously launched an application in terms of Rule 43(6) to amend and reduce the interim order but this application was enrolled and postponed and never pursued. This means that the Defendant is and has been for some time in breach of an order of this court. The further relevance of this breach, as will be more fully dealt with hereinafter, was that the Plaintiff had to sell assets to make ends meet.

6.6 The other aspect to be noted is the fact that when the parties initially contemplated a divorce, they in March 2015 negotiated with each other a written settlement agreement. The agreement featured as annexure A to the Plaintiff's particulars of claim and provides for a division of the various movable and immovable assets of the parties. The Plaintiff did not pursue reliance on this agreement and no evidence was led in respect of its contents except for an as-of-reference to some of the assets mentioned therein such as motorcycles and vehicles.

[7] Rather extensive evidence was led on the parties' various places of residence, the size and extent thereof as well as the acquisition of the primary places of residence from time to time. The chronology of the evidence became a bit muddled as the evidence meandered and sometimes shot off at tangents. The most relevant sequence of events pertaining to the patrimonial aspects in dispute, can however, be summarized as follows:

7.1 After the Plaintiff fell pregnant with the parties' first child the parties got married and lived in a small town in Zimbabwe. They had little or no assets each and only their matric o-levels as qualifications. The Plaintiff had done a 6 months stable management course in South Africa and the Defendant was busy qualifying as an electrician.

7.2 Shortly thereafter they moved to Harare in Zimbabwe. The Plaintiff worked for a well-known horse racing stud and later as a bookkeeper, having undergone a six months "Pittmans course". She later joined the business which the Defendant had started, being a successful electrical services company. From modest beginnings of only two crews, the company soon grew into a business which provided the parties with a comfortable standard of living. The parties worked as if in partnership, the Plaintiff seeing to the administrative side of the business and the Defendant to the operational side thereof. They each held 50% shares of the business which was operated as a private company. The company later merged with another whereafter also the Plaintiff stopped working there.

7.3 Due to a declining economy and other adverse factors prevailing in Zimbabwe, the Defendant sought greener pastures for the business

venture in neighbouring Mozambique. This caused him to travel a lot and be away from home. Seeking safer accommodation and more

beneficial schooling for the children, the matrimonial home was moved to White River, in South Africa. From their first home there (the "Plaston Road property") they progressed to a second home (where the Plaintiff is currently residing). They also acquired a house in Maputo, Mozambique where they stayed together for a while but, primarily due to the two sons, particularly the youngest, not coping well with being at boarding school in South Africa and also to rejuvenate their marriage relationship which had negotiated some proverbial stormy waters, they acquired a substantial property in a secure estate in White River and intended it to be a home where they could "be a family" (the Bayhill property). After the marriage relationship finally broke up some five years later, the Plaintiff moved back to the more modest property in White River which had previously been rented out (the Touyz Road Property). The Bayhill property in the estate was sold by the Plaintiff and the proceeds after paying the bond and some other ancillary costs were used, so the Plaintiff says, to defray living expenses for her and the children due to the Defendant being in breach of his maintenance obligations as ordered by this court.

7.4 I add to this brief narrative of the marriage the fact that, during the course of the marriage the Defendant was the one who provided the funds for the acquisition of the parties' assets, movable and immovable as well as for their maintenance as well as that of the various horses that they had. At one stage, there was a set of five horses with one for each of the three children to ride. The Plaintiff was an accomplished rider, participating in dressage and show events and training young riders. The Defendant also, at one state gave her a horse as a gift. Despite all her involvement with horses, the Plaintiff never made a business or a career thereof and was always dependent on the Defendant. There is a dispute as to whether she had been encouraged to become self-sufficient or whether the Defendant was content to have the Plaintiff create and maintain a comfortable domestic environment for the sake of the family and, primarily also the children. At the time when the parties moved to the estate property in Mpumalanga the Defendant also had a rented flat in Sandton which was used to generate business opportunities. He was otherwise (and still is) resident in Mozambique for most of the time, as necessitated by the business and returning home at bi-weekly or six-weekly intervals, depending on work requirements. The Plaintiff and the children, when they were still minors visited Mozambique during school holidays.

[8] I now deal with how these facts of the parties' marriage fit in with the requirements or not of Section 7 of the Matrimonial Affairs Act.

8.1 Ad Section 7(4)(a)

This section deals with the income-earning capacity, assets and other financial resources which each spouse is likely to have in the foreseeable future. The plaintiff has a limited residual or prospective income-earning capacity. Her bookkeeping skills are

limited and the ISO 9001:2000 Quality Leader Auditor Course she did for 5 days in 2006 for purposes of her helping with management

systems auditing in the Defendant's business is outdated and of little application in the absence of subsequent experience. Her

horse-training or stable management abilities also appear to be of limited income generating scope. She is presently pursuing some

photographic enterprises, having done some courses previously and is doing photographic work for local business in respect of which she also scans the local papers. The nature and extent of these ventures and the income to be obtained therefrom presently appear to be rather small. The Plaintiff was criticized by the Defendant's counsel for not having utilized the time and opportunity that she had during the course of the marriage to better her qualifications or to obtain gainful employment. The criticism is only partially justified as she did not need to seek employment or advance her income generating capacity as, during the bounty years, the Defendant's income from the business was sufficient to have the parties live in relative luxury. The Defendant accepted the fact that the Plaintiff was physically the primary caregiver and saw to the raising of the children while he saw to the making of the money. In fact, he testified as such. The fact that the Plaintiff had the assistance of domestic workers does not materially detract from this fact neither from the fact that during the Defendant's absence in Mozambique, she was the one who saw to the children's needs, care and schooling and everything that goes along with it. If she is criticized for not having prepared herself for divorce, then such criticism is misplaced.

8.2 On the other hand, and dealing with the Defendant's income generating capacity, he has worked himself up to being a director on the board of a holding company in the engineering and construction field with some four subsidiaries. Although the decline in Mozambican economy and the change in the political landscape has resulted in a loss of government contracts and the companies have downsized, both resulting in a substantial drop in his monthly income, the indications are that he will continue with these companies and retain an income generating capacity or opportunities which far outstrip that of the Plaintiff. Whilst the South African properties were all required in the name of the Plaintiff, they have all but for one been depleted and the only assets of real value are those in Mozambique. As I shall point out below, the evidence also indicates that the Defendant's assets far exceed that of the Plaintiff.

8.3 The defendant's asset position

The Defendant holds 45% of the shares in the Mozambican group of companies. Its property is worth US\$ 3million. It has debtors of US \$ 17 million and debt of US \$ 9 million, giving a net asset position of some US \$ 11 million. The Defendant says, however that this debt is due by the government and its payment is slow or even doubtful. Even if it is halved (as an extreme impairment of debt), this still leaves the Defendant with 45% in a net asset company of US \$ 2, 5 million. There are no finalized financial statements available however and the Defendant pessimistically estimated the net asset value at somewhere between US\$ 750 and US \$ 1 million. When the Defendant testified about a list of assets and liabilities previously drawn up by himself, it seems that he has furniture of some R70 000, joint ownership in Dream Vacation Club points of which his half is worth R44 000 and bank balances of some R78

000. His debt (including lawyers' fees) is just over R500.000, and he is as guarantor liable for the bond on the remaining property in Mpumalanga where the Plaintiff resides in the amount of R1, 4 million. In addition, the Plaintiff owns 15 stands in a prospective development in Mozambique. These currently have only a speculative value and will only have a value once a development can take place some time in the future when this investment will be worth something between R1, 5 million and potentially US \$ 1.5 million.

8.4 The Plaintiffs asset position

The Plaintiff is the registered owner of the immovable property on which she resides outside White River. Its value is approximately somewhere between R1, 9 million and R2, 2 million and the bond amounts to some R1, 4 million. She also owns Dream Vacation Club points valued at R44

000. These points attract annual levies of some R13 000. In her bank account (presumably pursuant to the sale of the property in the estate in White River) she has some R260 000. She has furniture of some R100 000 and a 15 year old horse worth approximately R30 000. She has in recent years incurred debts to family members of some R250

000. Her estimated net asset worth is therefore approximately R1 million.

8.5 Other property

The parties are the joint owners of a large residential property in Maputo in Mozambique. This appears to be worth between US \$ 405 000 and US\$ 633 000 (or US\$ 243 000 at a forced sale). The Defendant has conceded that he has, unbeknown to anyone, in the days preceding the trial attempted to have the Plaintiff removed as joint owner of this property. The property is unbonded and has substantial potential monthly rental income. The Plaintiff was also criticized for having sold some of the property registered in her name in South Africa and Defendant's counsel put it to her that these disposals already amounted to a distribution. However, the Plaston Road property was sold more than 12 years ago and when the parties still conducted their financial affairs jointly and with equal access to their bank accounts (save for those held by the Defendant in Mozambique). The Bayhill property (the estate property) was sold for R4, 8 million but the net proceeds, after payment of the bond, the arrears amounts due to SA Home Loans, estate agent's commission, rates, taxes and transfer fees amounts to just over R1 million. This sale, as the sale of other houses and vehicles of the Plaintiff, was necessitated because of the Defendant's breach of the Rule 43 - order and the fact that the Plaintiff could not afford the property or the assets any longer.

8.6 Ad Section 7(4)(b)

The financial needs, obligations and responsibilities of the parties have, save for the issue of the bond on the Plaintiffs property and financial assistance to the younger son regarding his post-graduate studies, not been touched on a lot in evidence, presumably because it mostly forms part of the maintenance issue, which is to be postponed. The impression the court got however, was that the Defendant is able to maintain himself and his lifestyle, despite a large drop in monthly income, while the Plaintiff has very little income from which to maintain herself and the

property on which she lives, apart from a modest rental income.

8.7 Ad Section 7(4)(c)

It is clear that the parties' standard of living has, to an extent declined from the life of reasonable luxury during the Mozambican

business heyday to the present. The Plaintiffs lifestyle has diminished primarily as a result of the separation and lack of maintenance and the Defendant's as a result of the business woes and decline of the Mozambican economy within which he operates,

8.8 Ad Section 7(4)(d)

This section refers to the age and physical conditions of the spouses. They are of the similar age, in their very early fifties and both in good health.

8.9 Ad Section 7(4)(e)

This section pertains to the direct or indirect contributions made by each spouse to the family, including contributions made by looking after the home and caring for the family and any other domestic duties. This aspect has already been touched on in the narrative summary of the parties' marriage. It is further summed up by the plaintiffs own evidence: "my job was to make money, her job was to look after it". The "looking after" the money also entailed the maintaining of the household, the managing of the maintenance of the property and the horses and stables, the looking after the children and their schooling needs and extra-curricular activities, ensuring they get to and from school and sport and other practices and their extra-curricular activities. The Defendant, very gallantly and truthfully praised the Plaintiff for having been a good mother. She continued with this role after the children had left school and supported the youngest son in his further studies. The youngest daughter is currently doing au pair work in Australia but will return to live with the Plaintiff after that (or until her circumstances later changes).

8.10 Ad Section 7(4)(f)

There are no pensions, benefits or gratuities which any of the parties would lose as a result of the divorce. No evidence was led as to any pension or retirement annuity forming part of either party's estate

8.11 Ad Section 7(4)(g)

The duration of the marriage. The parties have been married for more than 28 years, despite previous short periods of separation and the period since the institution of the divorce. It is a marriage of substantial duration which has also seen their offspring attain majority.

8.12 Taking all the above in consideration, I am satisfied that the Plaintiff has satisfied the onus in proving such circumstances as listed in Section 7(4) of the Matrimonial Causes Act which would entitle her to claim that a court should grant an order of division, apportionment or distribution of the assets of the Defendant as envisaged in Section 7(1) of the said Act. The difficulty now lies in the determination of the nature, extent and mode of any apportionment or distribution.

[9] The law and its application

9.1 The closing part of Section 7(4) of the applicable Act provides that in making an order in terms of Section 7(1), the court "shall endeavour as far as is reasonable and practicable and, having regard to their conduct, is just to do so, to place the spouses ... in the position they would have been in had a normal marriage relationship continued between the spouses".

9.2 Having regard to the facts of this case, it is not possible, let alone practicable to have the assets and income of the parties apportioned as before. The Defendant will proceed with his life, if not always being in Mozambique, then for the foreseeable future remaining with his businesses there. He no longer has any link to White River. Unless there is a maintenance order, then his profits and his dividends will exclusively be his own. Reliance has been placed by his counsel on the unreported judgment of *Kangai v Kangai*, High Court of Zimbabwe, HC 211/02 dated 20 June 2007 which confirm that in that country "a woman who has been divorced is no longer entitled as of right to be maintained by her former husband until remarriage or death". This statement is, of course, to be qualified by circumstances such as that of an unemployable elderly woman - see *Chiomba v Chiomba* 1992

(2) ZLR 197. Similarly, the Plaintiff will seek to pursue her own life in South Africa.

9.3 Counsel for the parties referred me to the well-known judgment in *Beaumont v Beaumont* 1985 (4) SA 171 WLD and on appeal in *Beaumont v Beaumont* 1987 (1) SA 967 AD. The latter judgment confirmed that there could be no qualification placed on the nature of the contribution required by a claimant for a redistribution order. The performance by the wife of the ordinary duties of looking after the household could constitute such a contribution. The wording of Section 7(4)(e) of the Matrimonial Causes Act of Zimbabwe in any event expressly provides for this and its wording goes further than Section 7(4) of the Divorce Act 70 of 1979 (of South Africa), being that under consideration in the *Beaumont*-judgments.

9.4 The *Beaumont*-judgments further deal with a "clean-break" principle. That is where a redistribution of assets can be of such a nature and extent that it obviates the need for a maintenance order. Although this might be both attractive and advantageous, it could only be done if the circumstances permit it. *Katz v Katz* 1989 (3) SA 1 AD warns that the issue of maintenance and redistribution are interrelated and the former can only be assessed once the latter has been determined. In the present instance there are so many as yet undetermined valuations in respect of, in particular, the Defendant's assets, that the value of any redistribution cannot be ascertained with such certainty that one could determine its impact on the Plaintiff's ability to maintain herself or not. It must follow that this aspect, as also, indicated by counsel, in the event of a redistribution order, will have to be postponed.

9.5 I interpose to state that I use the words "redistribution order" only in a loose or general sense as this is after all what results from an order as that claimed by the Plaintiff. Orders of this type are in writings on the subject referred to as "redistribution orders". See eg: Family Law Service, Lexis Nexis at D8A. What is actually envisaged in Section 7 of the Matrimonial Causes Act is an order "with regard to ... the division, apportionment or distribution of the assets of the spouses". This may include an order for the transfer of assets from one spouse to the other. Such a transfer would, result in a "redistribution"

of the distribution which would otherwise have flowed from the termination of a marriage out of community of property.

9.6 In considering such a "redistribution" or transfer of assets, it is now settled law that there is no "yardstick" with which to begin measuring or quantifying the percentage, portion or amount of distribution. Neither the one third yardstick applied in English courts at the time of the Beaumont-judgments (by, inter alia Lord Denning in *Wachtel v Wachtel* [1973] EWCA Civ 10; 1973 1 All ER 829 (A)) or the equal redistribution of assets between the parties as a yardstick (as in *Childs v Childs* 2003 (3) SA 138 (C) and in the a quo decision *Bezuidenhout v Bezuidenhout* 2003 (6) SA 691 (C)) constitute a proper starting point. On appeal in *Bezuidenhout v Bezuidenhout* 2005 (2) SA 187 SCA it was held that there should not be any shackles placed on the exercise of a court's discretionary power. The appeal

judgment

stated further that the traditional role of housewife, mother and homemaker should not be undervalued simply because it is not measurable in terms of money and further reaffirmed the principles set out in the Beaumont-appeal judgment. Last mentioned are the following: "Lord Denning thought that the court could not 'operate in a void' and that 'a start has to be made somewhere'. I do not see any real difficulty in starting with a clean slate, then filling in the void by looking at all the relevant facts and working through all relevant considerations and finally exercising a discretion as to what would be just, completely unfettered by any starting point' (at 998 F-G). In *Badenhorst v Badenhorst* 2005 (2) SA 253 CPD the court stated that it must, on the facts before it, attempt to balance the scales as far as possible. These pronouncements in the law are apposite to the present case.

9.7 The unfettered nature of a court's discretion is further enhanced by the wide authority granted to the court by section 7(2) of the Matrimonial Causes Act, a section which also speaks to practicalities and which provides as follows: "An order made in terms of subsection (1) may contain such consequential and supplementary provisions as the appropriate court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operated fairly as between the spouses and may in particular, but without prejudice to the generality of this subsection order any person who holds any property which forms part of the property of one or other of the spouses to make such payment or transfer of such property as may be specified in the order".

9.8 Had the parties remained married (as alluded to as a factor to consider in terms of Section 7(4) of the relevant Act), the Plaintiff would have retained the immovable property outside White River where she now stays as her own, as well as all the movables currently in her possession, which includes the horse and her bank accounts from which she would presumably have maintained herself and sought to partially, at least, repay her family debt. The Defendant would have continued to pay the bond on the property. Such a position would also have accorded with the legal position regarding registration of ownership and him being a guarantor of the bond.

9.9 The Defendant would have continued with his business in Mozambique and implemented such austerity measures as may be necessary but always with an eye to recovery of the US \$ 17 million debt owed by the state, realizing the erstwhile profits and generating income and dividends. As indicated earlier, these assets and the benefits attached to them far exceed those of the Plaintiff. Has the

marriage continued, she would have shared in those benefits and if no redistribution is ordered, she will not. In the circumstances of this case and on the application of the law as set out in paragraph 8 above and hereintofores, this would be unfair and inequitable.

9.10 Both parties, had their marriage continued, would have remained joint owners of the property in Mozambique and shared in the value and rental income thereof. If this status quo is not maintained and the Defendant not prevented from summarily terminating the Plaintiff's joint ownership, she would be equally unduly prejudiced.

9.11 As to the Defendant's shares in the various companies, his counsel argued that the Plaintiff should have no share in it or, if any, it should be limited to 20%. Plaintiff's counsel argued for an equal distribution. Having regard to all the facts of the case and the fact that, for the businesses to become profitable again in the future, the input to do so will come solely from the Defendant in a post-divorce scenario. Where it is difficult if not impossible to mathematically quantify the contributions of the parties in both pre- and post-divorce scenarios, it would be fraught with danger to accord any monetary value to any contribution. By the same token, I am of the view that an equal distribution is also not justified and, in similar vein as in the Bezuidenhout-case supra on appeal, I am of the view that a 40/60 apportionment should apply. In reaching this conclusion, I have also taken the accrued arrears maintenance into account, which was due in terms of the Rule 43 order which will now fall away.

9.12 As to the 15 stands in the undeveloped proposed township in Mozambique, these have currently a R nil value and would only be of any possible future value after enormous future investments and contributions, all of which would be post-divorce and these should be treated as falling outside any current redistribution. It is not as if the Plaintiff can claim joint-ownership of an existing asset which might through the passage of time increase in value, the income would be as a result of other factors to which she would not contribute and I exercise my discretion against redistribution of these assets.

9.13 Insofar as the issue of maintenance is to be postponed but the value and benefit of the redistribution order is as yet undeterminable,

particularly insofar as it may impact on the Plaintiff's ability to maintain herself, an interim order should be made, as least up to the amount recently paid by the Defendant.

9.14 Section 7(2) of the Matrimonial Causes Act is wide enough to encompass an order for such interim maintenance and, in the circumstances as already outlined, this is justified. Until such time as the issue of the Plaintiffs claim for maintenance for herself (including the maintenance of her assets) is finalized, this should also include the payment of the Dream Vacation Club points.

9.15 As to the issue of costs and the exercise of my discretion in relation thereto, I considered ordering that each party pay her or his own costs, having regard to the nature of the dispute rather than ordering that costs follow the event. Having regard to the effects of a costs order on the asset position of the parties however and, having regard to the concluding paragraph of Section 7(4) of the applicable act, one should bear in mind that the present dispute centres around the estates of the parties. Had litigation around these estates ensued whilst they were married or if treated as though they were to remain married, then the Defendant would have contributed to such an expense. I therefore deem it fair that he contributes in no less a proportion than the redistribution

percentage already determined in paragraph 9.4 above to the Plaintiff's costs.

Order

[10] Having considered all the above facts and findings, an order is granted as follows:

[1] A decree of divorce is granted;

[2] In terms of Section 7(1) of the Matrimonial Cause Act, of Zimbabwe, Act No 33 of 1985 (as amended) it is ordered as follows:

2.1 The Plaintiff shall retain as her sole property the immovable property known as [...], Mpumalanga;

2.2 The Defendant shall remain liable for the bond over the property and shall pay the instalments due in respect thereof;

2.3 Both parties shall remain joint owners of the property known as [...] Maputo, Mozambique which may not be sold or encumbered without prior written consent of both parties and who shall equally be entitled to whatever net rental income the property generates;

2.4 The Defendant shall transfer 40% (forty per cent) of his shareholding in his businesses in Mozambique to the Plaintiff within 60 days from date of this order, including but not limited to the shareholding in the Engco Group, Engco Limitada, Engco Electrica Limitada, Fleetco Limitada, Pierlite Limitada as well as in the South African company Engco Engineering Services (Pty) Ltd with registration number [...];

2.5 The Defendant shall retain as his sole property the 15 vacant stands in Costa del Sol, Maputo;

2.6 The parties shall each retain the movable property in their possession at the time of this order as their own, including half of the Dream Vacation Club points each;

2.7 Pending finalization of the issue of the Plaintiffs claim for maintenance, the Defendant shall pay the amount of R10 000 per month with the first payment before or on 7 March 2018 and each successive payment before or on the 7th day of each month as well as the levies and costs due in respect of the Dream Vacation Club points of the parties and, if the Plaintiff

has already made payment for 2018, the Defendant is to reimburse her.

[3] The Plaintiffs claim for maintenance for herself is postponed sine die and may be enrolled in this court or in a Magistrates or similar court with competent jurisdiction.

[4] The Defendant shall pay 40% of the Plaintiffs costs of the divorce action including the costs of the Rule 43 application, the costs of which have previously been ordered to be costs in the cause.

N DAVIS

Judge of the High Court

Gauteng Division, Pretoria

Date of Hearing: 15 and 21 February 2018

Judgment

delivered: 23 February 2018

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