

SOUTH AFRICA / JUDGMENT

T.J.M v K.J.M and Another (11409/2022) [2025] ZAGPPHC 253 (3 March 2025)

[2025] ZAGPPHC 253

COURT

North Gauteng High Court, Pretoria

BEFORE

Moshoana

CASE / FILE NUMBER

11409/2022

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

Number: 11409/2022

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: YES

DATE:

3/2/25

SIGNATURE

In

the matter between:	T[...] J[...] M[...] Plaintiff and K[...] J[...] M[...] First Defendant THE GOVERNMENT EMPLOYEES PENSION FUND Second Defendant
Delivered:	This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 3 March 2025.
Summary:	Divorce action. Counterclaim for forfeiture of pension benefits and immovable property. The plaintiff will benefit unduly and such is disturbingly unfair. The remaining issues in the divorce action are settled. Held: (1) The decree of divorce is granted. Held: (2) The settlement agreement marked X is made an order of Court. Held: (3) The plaintiff is to forfeit a benefit in respect of the pension benefits and the share of the immovable property. Held: (4) There is no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

- [1] This is a divorce action. Both divorcing parties are in agreement that the marriage has irretrievably broken down. Resultantly, the divorcing parties concluded a settlement agreement dealing with other issues relevant to this action. What then remained for determination was the issue of the maintenance of the minor child, which issue was abandoned during argument given the uncontested evidence that the plaintiff is currently unemployed and has no means of paying for any maintenance of the minor child, if so ordered. Given this uncontested evidence, a maintenance order would do nothing but to invite contempt

proceedings. The legal duty of maintenance remains even in the situation of unemployment. When evidence of means arise, the claim

for maintenance may be instituted. Following the abandonment of the maintenance claim, the only issue remaining for determination is a forfeiture claim in respect of the half share of the pension interest and the immovable property.

Background

facts and evidence tendered.

[2] On 31 March 2011, the plaintiff, Mr T[...] J[...] M[...] got married to the first defendant, Mrs K[...] J[...] M[...] by civil rights[1] in community of property and that marriage subsisted as at the time of the hearing of this action. Given the issue that remain for determination, the salient facts in this action are that about 8 years ago, the plaintiff and the defendant acquired an immovable

property situated at Erf 1[...] M[...] M[...] (“the property”). The property was bonded to Standard Bank of South Africa for a 20 years’ period. As at 30 January 2025, the outstanding amount of the bond was R366 124.72. The monthly instalment as at 30 January 2025 was standing at R7 042.90.

[3] Since the acquisition of the property, the plaintiff never paid a cent towards the monthly instalments of the bond account. The plaintiff held various employments during the subsistence of the marriage and in some of those employments, he cashed out his accumulated pension benefits without the consent and knowledge of the first defendant. Not once did the plaintiff pay any amount towards the Standard Bank loan. The loan account was serviced by the plaintiff alone for the past 8 years.

[4] The first defendant held employment in a government department, as a result of which, she became a member of the second defendant, the Government Employees Pension Fund (GEPF) and had, at the time of this

action, accumulated pension interests, the value of which was never disclosed to this Court. In his particulars of claim, other than praying for the division of the joint estate, the plaintiff prayed for an order that the GEPF be ordered by this Court to endorse that 50% or such lesser percentage of the pension interests is payable to him as contemplated in section 7 of the Divorce Act, 70 of 1979 (Divorce Act). On the contrary, the first defendant prayed for forfeiture of any percentage of the pension interest within the contemplation of section 9(1) of the Divorce Act.

GN MOSHOANA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Plaintiff: Mr T Mokgoatsane Instructed by: GN Sibuyi Attorneys, Pretoria For the 1st
Defendant: Mr M Marweshe of Marweshe Attorneys Date of the hearing: 20-21 February 2025
Date of judgment: 03 March 2025

- [1] A true copy of the marriage certificate was entered into evidence and marked exhibit “A”.
- [2] 1993
- (4) SA 720 (A)
- [3] (4411/10) 2013 (14 March 2013).
- [4] 2000
- (1) SA 1 (CC)
- [5] See also Absa Brokers (Pty) Ltd v Moshwana NO and others
- [2005] 10 BLLR 939 (LAC) at para 39-41.

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