

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

CASE NUMBER: 57991/2007

DATE: 10 MARCH 2010

In the matter between:

D[...] J[...] K[...]

PLAINTIFF

And

D[...] C[...] J[...] K[...]

DEFENDANT

JUDGMENT

PHATUDI J

[1] In this divorce action, the Defendant prayed in her counterclaim for a redistribution order in terms of Section 7(3) of Divorce Act 70 of 1979 on the basis that the Plaintiffs estate has been increased by

‘12.1 Die Verweerderes wat die Eiser by tye van klere, kos en nood-saaklike benodighede voorsien;

12.2 Die Verweerderes het by tye sekere uitgawes namens die Eiser aangegaan...’(counterclaim)

[2] The Defendant further pray for maintenance for herself in terms of section 7(2) of the Divorce Act 70 of 1979 and the amount allegedly contributed by her toward D[...]’s(child born of the marriage) maintenance for the period April 2005 up to April 2008.

[3] At the commencement of the trial I found the duty to begin to befall on the Defendant. She testified that she is married to the defendant out of community of property on 1 October 1983 which marriage still subsist. The marriage certificate was handed in and I marked it “X”. She said that at the time of their marriage, both of them were employed at the South African Railways and Harbors. At that moment the plaintiff had already applied for a home loan from their employer which was only approved after the marriage. The immovable properly situated at 15 S[...] Avenue, W[...] R[...], Boksburg, was as a consequent purchased and registered

in the Plaintiff's name. They then moved into the said property' on 1 August 1984.

[4] She further testified that various renovations, including the kitchen, were effected to the said property financed by additional loans obtained by the Plaintiff. She, as well, contributed towards the said renovations.

[5] D[...] K[...] K[...] (D[...]), a girl, was born of the marriage on [...]. On 6 May 1993 the Plaintiff left the common home for his "freedom". She helped him to pack his necessary necessities. She conceded that the Plaintiff promptly serviced the bond installment and kept both the defendant and the minor child as dependants on his medical aid scheme. The plaintiff further paid an amount of R400.00 per month towards maintenance of D[...] (then minor child) without fail up to 1999. He has since 2004 stopped paying the maintenance.

[6] The Plaintiff accepted the Schedule and annexures as proof setting out the expense incurred by the Defendant towards the maintenance of the minor child and the "common home". The figure of R379 170.50 is recorded as this amount so incurred as such expenses. On perusal of the Schedule, I noted that the Defendant incurred the expenses termed

‘Verbetering & instandhouding van woning’.

- Wendy house
- Teels in gang Matte
- Binne en Buite verf
- Dakwaaiers
- Fascia Boards
- Gebarste geyser.'

[7] Section 7(3) of the Divorce Act 70 of 1979 provides that

‘A court granting a degree of divorce may in accordance with a written agreement between the parties make an order with regard to the division of the assets of the parties or the payment of maintenance by the one party to the other.’

[8] Further thereto, Section 7 (4) provides that:

‘an order under subsection (3) shall not be granted unless the court is satisfied that it is equitable and

just by reason of the fact that the party in whose favour the order is granted, contributed directly or indirectly to the maintenance or increase of the estate of the other party during the subsistence of the marriage, either by the rendering of services, or the saving of expenses which would otherwise have been incurred, or in and other manner."

[9] Ms De Klerk, counsel for the Plaintiff, submits by referring me to **BEAUMONT V BEAUMONT 1987(1) SA 967 (A)** that:

‘What the measure was designed to remedy is... the inequity which could flow from the failure of the Law to recognize a right of a spouse upon divorce to claim an adjustment of a disparity between the respective assets of the spouses which is incommensurate with their respective contributions during the subsistence of the marriage to the maintenance or increase of the estate of the one or the other.'

[10] She further submits that the court held that "first and foremost is the contribution by the one spouse to the estate of the other, by which is obvioush meant the nature and extent of the contribution."

[11] Equally, on the other hand, Mr. Marx, counsel for the Defendant, also refers me to **Beaumont's** case with emphasis on qualification of Defendant contribution to plaintiff estate. He submits that there is no indication in the Act nor in the case law. that the coun counted Rands and cents.

[12] Section 7(4) of Divorce Act provides the court with the discretionary power to grant an order ifSatisfied that it is equitable and just by reason of the fact that the party in whose favour the order is granted, contributed directly or indirectly to the maintenance or increase of the estate of the other party..."

[13] Upon acceptance by the Plaintiff the schedule of expenses handed in by the Defendant, it is, in my view, clear that the Defendant contributed directly to the maintenance of and the increase of value to the property, being the estate of the Plaintiff.

[14] In an attempt to reach to a fair distribution of the asset, the court in Beaumont v Beaumont added:

‘Rather one must examine all the circumstances of the case and apply the provisions of Section 7(4) and (5)... and then attempt to achieve a fair and equitable re-distribution of assets'.

[15] Section 7(5) provides:

‘In determination of the assets or pan of the assets to be transferred as contemplated in subsection (3), the coun shall, apart from any direct or indirect contribution made by the party concerned to the maintenance or increase of the estate of the other party as contemplated in subsection (4). also take into account-

(a) The existing means and obligations of the parti's, including any obligation that a husband to a marriage as contemplated in subsection (3) (b) of this section may have in terms of section 22(7) of the Black Administration Act, 1927 (Act No 38 of 1927):

(b) any donation made by one part} to the other during the subsistence of the marriage, or which is owing and enforceable in terms of the antenuptial contract concerned:

(c) any order which the court grants under section 9 of this Act or under any other law which affects the patrimonial position of the parties: and

(d) any other factor which should in the opinion of the court be taken into account.'

[16] Currently the Plaintiff has limited income of R2000.00 notwithstanding a severance package of approximately R995 000.00 he took in 2006. The Defendant is employed and earns a nett salary of R7400.00.

[17] Counsel for the Defendant submits that the Plaintiffs income will substantially improve with time. On the other hand, counsel for the Plaintiff submit that the Defendant has a brighter future as she stand to receive pension benefits approximated at R 1,050, 000.00 in 10 years this year.

[18] It is undisputed that the Plaintiff continued without fail to pay the bond up to the year 2009. It is further undisputed that the Defendant maintained the house resulting in the value of the house being increased.

[19] Considering all these factors, including the adulterous relationship the Plaintiff engaged with one Ms V[...], I am of the view that the Defendant stand to be awarded a certain percentage of the value of the house which is the subject of this matter. Both parties contributed immensely towards the maintenance of D[...]. D[...] is now earning and above 18 years. She is not a party to these proceedings and may institute action against both her parents if she needs maintenance.

[20] Both parties' current position does not warrant an order for maintenance of either of them. I based on the above, make the following order:

1. Decree of divorce
2. The House situated at 15 S[...] Avenue, W[...] R[...]. Boksburg be sold.
3. The Defendant be paid 30% of the nett proceeds from the sale of the house situated at Boksburg.
4. No order as to costs.

JUDGE OF THE NORTH GAUTENG HIGH COURT

Heard on: 3 March 2010

For thePlaintiff: Adv M C de Klerk

Instructed by Plaintiff: Davel De Klerk Kgatla Attorneys

For the Defendant: Adv H E Marx

Instructed by Defendant: Roets & Du Plessis Attorneys

Date of Judgment: 9 March 2010