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HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.
SIGNATURE
Khumalo N V J
DATE
18/10/202

Case no: 43650/2018

In the matter between:

M[…] P[…] (born B[…]) Plaintiff

and

N[…] M[…] P[…] Defendant

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 17 October 2024.

In this matter the proprietary consequences of a foreign marriage were in issue due to the lex domicilii matrimonii (the law of the matrimonial domicile) that was in contention. The court had to establish on the facts presented whether the Defendant was lawfully present at the place of alleged domicile with an intention to settle for an indefinite period when the marriage was concluded. Furthermore, what lawful presence means in terms of the Act and if intention only and locality`can establish domicile.

JUDGMENT

N V KHUMALO J

Introduction

[1] This is a divorce action instituted by the Plaintiff, Ms M[…] P[…] on 28 June 2018 against Mr R[…] M[…] P[…], the Respondent, to whom she was married on 31 March 2006 in Germany. The parties are of German descent and no children were born from the marriage.

[2] The Plaintiff seeks together with the decree of divorce, an order in the following terms:

> [2.1] Division of the Joint estate:
>
> [2.3] That the Plaintiff be entitled to payment of an amount that is equal to 50% of the Defendant's net pension interest, calculated as at date of divorce and payable to the Plaintiff in terms of the provisions of s 37 (D) (1) of Act 24 of 1956 ("The Pensions Fund Act") and to the registration of an endorsement against the record of the aforesaid Pension Fund scheme to this effect;
>
> [2.4] The Defendant to make payment of a monthly maintenance amount of R15 000 towards the Plaintiff payable before or on the 1st day of the month. The 1st payment to be made on the 1st of June 2018 and monthly thereafter into the bank account of the Plaintiff;
>
> [2.5] The maintenance amount to increase annually by 10% on the anniversary of this agreement.

[3] In terms of the particulars of claim the Plaintiff is resident at Midrand and employed as a manager at a Lodge in Midrand whilst the Defendant resides in

Muldersdrift and employed as an Engineer and a partner in a Laser business called I[…] L[…] in Nooitgedacht. She further avers that the patrimonial consequences of the divorce are to be dealt with in accordance with the laws of the Republic of South – Africa, and that the parties are accordingly married in community of property.

[4] The Defendant does not oppose the divorce and that the marriage has irretrievably broken down. He however in his plea disputes the reasons for the breakdown of the marriage and that the laws of South Africa are applicable to the patrimonial consequences of their divorce. He further denies that:

[4.1] he is a partner in I[…] L[…] but a shareholder;

[4.2] the parties are married in community of property; in as much as the parties' marriage regime and the consequences thereof fall to be dealt with by the prescripts of the Burgeliche Gezetsbuchen ("the German Civil Code"), and in pursuant to the provisions of the German Civil Code, the accrued gains acquired by the parties during the subsistence of the marriage relationship must be equalised pursuant to the provisions of inter alia, sections 1373 and 1390 of the German Civil Code ("the equalisation"); which equalisation is to be determined and calculated as at the date of the granting of a final decree of divorce.

[5] According to the Defendant the patrimonial consequences of the parties' marriage are consequently to be dealt with in accordance with the prescripts of the German Civil Code as at date of granting of the divorce order.

[6] Furthermore he averred that it was upon Plaintiff's insistence that the parties marry prior to their joint decision to emigrate to South Africa.

Issues to be determined

[7] The dissolution of the marriage not being in dispute the following issues are to be determined:

[7.1] The Defendant's domicile at the time of the parties' marriage in

Germany, which finding will determine if the dissolution of the marriage between the parties is to be governed by the prescripts of German Civil Code Law or South African Law and therefore one in community of property, of which section 20 of the Matrimonial Property Act, 88 of 1984 is applicable;

[7.2] If the Plaintiff is entitled to an amount equal to 50% of the Defendant's pension interest;

[7.3] Whether the Plaintiff is entitled to maintenance and the amount thereof.

[8] During the trial, the Plaintiff 's testimony in support of her claim was that after they got married in Germany, the Defendant persuaded the Plaintiff to emigrate to South Africa. At the time the Defendant was domiciled in South Africa They already had been living together since 2005, having met in 2000. The Defendant was at the time employed by a company called Faro and was travelling a lot. One of the destinations the Defendant travelled to a year or two before their marriage was South Africa and he fell in love with the country. In December 2005 the Defendant received an offer for employment from I[…] L[…] a Company in South Africa. The Defendant took up his employment with the company in January 2006. By the time they got married in March 2006, the Defendant was already living at the Muldersdrift plot which is where I[…] L[…] had its operations. (the Plaintiff's Counsel therefore argued that the marriage regime applicable should be that of South Africa and the court should make a declaratory order to that effect).

[9] Between January and March 2006 she accompanied the Defendant on holiday to South Africa to see if she could see herself living there. She did see herself staying in the country and confirmed to the Defendant. **They then made a joint decision to move into the country together. Also that they would marry first so that she can be able to obtain a permanent residence visa.** The parties went back to Germany and the Plaintiff returned to her employment there. She resigned from her employment before the wedding as they had planned to come back together after the wedding.

[10] The Defendant then flew to Germany for the wedding on 31 March 2006. However, their plans changed and the Plaintiff could not come immediately after the

wedding due to the fact that the Plaintiff's son from a previous marriage suddenly decided two weeks before the wedding that he wanted to come and stay with the Plaintiff and the Defendant in South Africa. So they made a decision that the Plaintiff would remain behind until her son has finished school and found an artisanship or hopefully was willing to move with the Plaintiff to South Africa (contradictory). She withdrew her resignation and remained in her employment in Germany whilst the Defendant returned to South Africa. They kept contact electronically, through skype and visits to each other.

[11] She was referred to correspondence between the two of them in June 2006. During one of the contacts in June 2006 by email, they discussed the setting up of business, the preparations for bringing the parties' dog "Asko" to South – Africa, the arrangements regarding their snakes, and the preparations to obtain a Land Rover Defender that was to be provided to the Plaintiff. The Defendant was also discussing the preparations of the house which he and the Plaintiff would be living in whilst indicating that he still had to be furnished with a laptop. She said she would have followed the Defendant to South – Africa immediately had it not been for Sasha returning to her.

[12] She testified that when they got married, she, and the Defendant already regarded South – Africa as their place of residence, and that she was going where her husband was going. She explained that the Defendant remained registered on the database of the government health system in Germany as a precautionary measure as he had cancer in 2002.

[13] In terms of assets she said she had very little assets when they got married and the status remain the same except for a government pension. She is employed as an administrative clerk at the foreign office of a municipality in Germany and earns a net salary of EUR 2500 per month. In the last fourteen months had it not been for loans from her mother and friends in South – Africa, she would not have gotten by, since the Defendant had made no payments in respect of the existing Rule 43 order.

[14] In relation to the breakdown of the marriage she said she returned to Germany in July 2018, after the Defendant had repeatedly been unfaithful. She did not want to live in South – Africa alone.

[15] The Defendant asked for proof of her evidence and put to her that none of her allegations were substantiated. It was merely allegations without proof, and denied that he was ever domiciled in South – Africa. He put it to her that at the time of their marriage in March 2006 he was still employed by Fora Europa in Germany. The Defendant also put it to the Plaintiff that in Germany an amount of EUR 2500 was "more than a comfortable income."

[16] The testimony of the Defendant who appeared without legal representation, was that: At date of marriage on 31 March 2006 he was domiciled in Germany. They indeed met in 2000 when the Defendant was employed by Faro. The Defendant initially testified that he started his employment with I[…] L[…] in July 2006**,** and; as prior that date, he was still employed by Faro in Germany. He denied that he was already living on the plot in Muldersdrift in January 2006 as alleged by the Plaintiff. He denied flying into Germany when he got married, and submitted that the only reason why Plaintiff was alleging that he was domiciled in South Africa is to obtain a more favourable situation for herself. His evidence regarding their visit of January – February 2006 was that it was just a holiday, and that one week was in relation to the work and one week was for holiday. He denied that this was for the Plaintiff to see if she could see herself living indefinitely in South Africa.

[17] The Defendant was criticised for not alluding to a "possibility" of employment prior to the date of the formal employment offer. Also for not testifying to the fact that the wedding was at the demand of the Plaintiff, who insisted they do so prior to leaving Germany, as set out in his pleadings. He was unyielding and emphasised that he could not have been working for I[…] L[…] at the time he got married, as he was still working for Fora Europa in Germany. He remained adamant that the German Civil Code, was applicable to their patrimonial consequences, He was quizzed on the fact that he had testified that he started his employment on 1 July 2006, then June 2006, and that other documents referred to April 2006. He, after correcting himself several times persisted that he started employment on June 2006. The I[…] L[…] letter confirming his employment with effect from 1 June 2006 is dated 30 April 2006.

[18] He was pointed to paragraphs 4.1 – 4.2 of the letter of his previous attorneys JB Hugo, dated 22 June 2018, where they wrote: "4.1 We are still of the opinion that the parties can settle the matter and we record that division of the joint estate will not be in the best interest of either of our respective clients. We are sure that you are aware that in the event of the division of the joint estate granted, your client's assets and / or policies and / or life insurance policies will also be affected thereby."

[19] The Defendant was also quizzed about the fact that he signed a vehicle instalment sale agreement confirming that he was married in community of property.

His evidence was that the form was filled in by the Plaintiff, and that he only signed without reading it. In essence his reply was that he did not complete the form. The form was handed in as exhibit 6.

[20] He was also pointed to the letter (Exhibit 7)[1], being the letter from I[…] L[…] Sales to the Department of Home Affairs dated 4 April 2006. Initially the Defendant summarily denied the veracity of the letter, but later coming to the content of the letter he conceded to the veracity of the document, but only placed the date 30 April 2006 in dispute. The letter is the motivation for the transfer of his work permit to his newly obtained passport. In terms thereof he was in the employ of I[…] L[…] since 30 April 2006, which he denied and indicated that it was from 1 June 2006. He was asked about an e-mail he had written to I[…] L[…] on 2 February 2006[2], which ostensibly was from himself and the Plaintiff, thanking them for the visit and working together and looking forward to a successful future. Defendants' reply was that this was simply a courtesy mail and that nothing centred on it.

[21] He disputed the Plaintiffs' version that he started employment at I[…] L[…] in January 2006 and was already domiciled in South – Africa at the time of the parties being married. He denied that and asked for proof. Nothing was shown to him except reference to Plaintiff's allegation. It was also put forward to him that the only reason why the formal letter of employment came much later was due to him still working for Faro also, and he again asked for proof of those allegations. When cross – examined about the June 2006 e-mails he sent to the Plaintiff subsequent to the marriage, wherein he mentioned not yet being furnished with a laptop and the preparations for Plaintiff's relocation. The Defendant refused to answer questions, questioning the relevance of letters which post-date the date of the wedding. It was put to him that despite his demand for assistance by an interpreter at the previous appearance in February 2020, which was the sole cause for its' postponement, he was speaking fluent English without any assistance. His reply was simply that it was his right to get assistance.

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[1] Found on page 089 – 149

[2] found at 089 – 136 (trial bundle 1)

[22] In relation to his assets, he conceded that he had motor vehicles, a Renault Duster and a Land Rover referred to in the particulars of claim, and, inter alia, 35% shares in I[…] L[…], of which he became a shareholder on 12 July 2006.

Legal framework Matrimonial Domicile

[23] In terms of the common law the proprietary consequences of a marriage are governed by the husband's domicile at the time of the marriage *lex domicilii matrimonii,*[3] noted to be still as patriarchal and discriminatory as it was even three decades after our country's hard-fought constitutional dispensation.[4] It is one of the doctrines that still has to be revisited, that is based on the old discriminatory practices and laws that decreed or favoured land ownership only by men. Kuper AJ in Bell[5] opined as follows regarding:

"*It is clear beyond doubt and has been clear for more than 70 years that in the absence of an antenuptial contract the proprietary consequences of a foreign marriage must be determined in accordance with the law of the matrimonial domicile, which is to say the domicile of the husband at the time of marriage."*

[24] In *V v V*[6] (Mabuse J stated the following regarding what domicile means, that:

> "*Domicile is the place where, for legal purposes, a person is by law presumed present to be present at all times. As domicile constitutes a status determining factor, it becomes as clear as crystal that everyone must have a domicile at all material times. Equally no person can have more than one domicile at the same time. Therefore, generally speaking a person is domiciled in a place that is considered to be his or her permanent home. See in this regard Gunn v Gunn* ***191O TPD 423*** *at 427;Webber v Webber* ***1915 A D 239*** *at 242 and Eilon*

[3] *Brown v Brown* 1921 AD 478; *Frankel's Estate and Another v The Master and Another* 1950 (1) SA 220 (A) at 241; *Sperling v Sperling* 1971 (3) SA 707 (A) at 716F-G.
[4] *LE v LA* (1886/2018 [2024] ZAGPJHC 104; 2024 (5) SA 539 (GJ) (9 February 2024)

[5] *Bell v Bell* 1991 (4) SA 195 (W) at 196H—I and 197E
[6] 5881/17) [2017] ZAGPPHC 324 (6 July 2017)

v Eilon ***1965 (1) SA 703*** *A at 721. Domicile is not necessarily the same as the place of actual residence or a place where one eats, drinks and sleeps. In his book Conflict Of Laws, Private International Law, Seventh Edition, R H Graveson, quotes with approval the following definition of "domicile" by Lord Cranworth in Whicker v Hume [1858] EngR 991; (1858) 7 H.L.C. 124 160:"*

"By domicile" we mean home, the permanent home: and if you do not have a permanent home, I am afraid that no illustration drawn from foreign writers or from foreign languages will very much help you to it."

A place can therefore not be one's permanent home if the purpose of one's presence at such place is for work, no matter how long it is. Graveson himself had the following to write at page 185 that:

" *... domicile is a conception of law which, though founded on circumstances of fact, gives to those circumstances an interpretation frequently different from that which a layman would give to them. It is a conception of law employed for the purpose of establishing a connection for certain legal purposes between an individual and the legal system of the territory with which he either has the closest connection in fact or is considered by law to have because of his dependence on some other person." (my own emphasis)*

Domicile of choice

[25] A person can alternatively acquire a domicile of choice. In that regard s 1 (2) of the Domicile Act 3 of 1992, (in Amendment of the Divorce Act 70 of 1979 as amended), reads:

(2*) A domicile of choice shall be acquired by a person when he is lawfully present at a particular place and has the intention to settle there for an indefinite period.*

[26] Mabuse J further illustrated in *V v V supra* the domicile of choice as follows:

"*14] …. 'Domicile of origin' is therefore acquired automatically at birth. The 'domicile of origin' persists until it is replaced by a new domicile, a 'domicile of*

choice'. This 'domicile of choice' is acquired by a person having the legal capacity who, on his or her own free volition, establishes his or her presence in that particular country on his or her choice. I am guided by the following description by Lord Westbury in Udny v Udny ***(1869),LR. 1*** *Sc. &C Div. 441: 'Domicil of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place with the intention of continuing to reside there for an unlimited time It must be a residence not for limited period or particular purpose, but general and indefinite in its future contemplation.* " (my own emphasis)

[27] Acquisition of a domicile of choice therefore requires both residence and *animus manendi*. The requirements consequently are:

On residence

(i) a presence at a particular place, that means a wonted and physical presence at the place concerned,

(ii) that is lawful, legitimately obtained for that purpose;

Animus manendi

(iii) with an intention to settle (*animus manendi*), having formed an unconditional intention to reside at that place;

(iv) for an indefinite period or permanently, that is, not for a limited period or curtailed for a particular purpose.

[28] The standard of proof for acquisition or loss of domicile shall be on a balance of probabilities.[7] The duty to prove the allegations lies on the Plaintiff, as a party who alleges bears the onus. In order to discharge the onus of proving a change of domicile, the Plaintiff must prove that the Defendant abandoned his former *domicile animo ad*

[7] as provided in s 5 of the Act

factum or that the Defendant lost his German citizenship when he left Germany with the intention never to return to it. *He therefore had… a fixed and deliberate intention to abandon his previous domicile and to settle permanently in the country of choice".*[8]

[29] The applicant's *"state of mind or animus manendi must at least amount to an unconditional intention to reside in South Africa for an indefinite period, though an absolute intention to reside there is not essential"*[9]*. In Eilon,*[10] the following passage from Cheshire Private International was cited with approval at page 164;

"A hundred years ago an intention to reside indefinitely in a place was regarded as an intention to reside there permanently, notwithstanding that it was contingent upon an uncertain event. Nowadays, an Intention of indefinite residence is not equivalent to an intention of permanent residence, if It is contingent upon an uncertain event. Thus the English conception of domicil correspondence neither with what the ordinary man understands by his permanent home nor with the Continental criterion of habitual residence. This change of attitude lays the law open to criticism in several respects."

[30] By a lawful presence, it is meant a stay or residence for the purpose of obtaining permanent residence should have been legitimate in that it was authorised by the relevant Government Department conforming to the Immigration laws or Aliens Act[11]. As to the element of presence, it must denote presence as an inhabitant and not presence as a mere visitor or a sojourner.[12] So therefore not every kind of *de facto* residence will suffice.

Analysis

[31] The Plaintiff alleged that the Defendant made an election to abandon his domicile and was already domiciled in South Africa in January 2006 when they came to visit, as at the time he was already employed by I[…] L[…] and residing at Muldersdrift. However, in that instance the Plaintiff would not have said they were in

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[8] *Eilon v Eilon* 1965 (1) SA 703(A)
[9] *Eilon* Supra at
[10] Supra at
[11] Smith v Smith 1962 (3) SA 930 (FC) 1962 (3
[12] Compare *Ex Parte Minister of Native Affairs* 1941 AD 53 on 59

the country to visit and work if the Defendant was already domiciled in the country, so the allegation cannot be correct. Moreover, as employment does not establish domicile. Regardless, none of the occurrences or purposes of his or their presence, either to visit or work proves acquisition of domicile or intention to stay in a country indefinitely. Nevertheless, the Defendant has indicated that at the time he was not officially in the employ of I[…] L[…] and was still in the employment of his old employer, Faro Europa ("Faro"), an allegation that is more likely and was not disputed by the Plaintiff. The issue therefore of the letter dated April or June 2006 that only then confirmed his employment does not have even to be visited, unless the Plaintiff can debunk the fact that the Defendant was in the country for a visit and work between January and February, whilst he remained in the full employment of Faro, Europa.

[32] The Plaintiff further testified that they went back to Germany after the visit to South Africa, she then went back to her employment and presumably the Defendant would have continued in his employment with Faro with whom he was still employed. The Defendant's travels as well would not have been anything new as the Plaintiff has testified that the Defendant was always in continuous travels to different destinations and had lately at the time frequented South Africa. Also having business interest in the country, his frequent travels to the country can therefore not be a mark of his adoption of a domicile in South Africa. According to his communication after the South African visit he was also about to visit Rome as well South Africa again.

[33] Furthermore, the fact that at the time the Defendant had an offer for employment or accepted the offer, if followed by a stay or move at the business premises, which he denies, cannot be the determining factor of acquisition of a new domicile. A place can therefore not be one's permanent home if the purpose of one's presence at such place is for work, no matter how long it is.[13] In addition, domicile implies more permanence than just a mere residence in a dwelling place.[14]

[34] Furthermore, to acquire the new domicile, the Defendant would have been required to have left his country with an intention of completely abandoning his old

[13] See *V v V* supra
[14] LAWSA Vol 2 par 297 p314

domicile and settle in South Africa for an indefinite period. It is a fact that the Defendant had come to South Africa, officially commencing his duties as an employee of I[…] L[…] after the wedding, whilst he remained registered for the Government health system in Germany, exhibiting an intention to still go back hence a necessity of a precautionary measure in the occasion of his return to Germany since he had cancer in 2002. He therefore never officially abandoned his domicile in Germany. Equally no person can have more than one domicile at the same time.[15]

[35] After the holiday visit they both went back to Germany. The proposition that the Defendant was already domiciled in South Africa in January 2006 also contradicts the Plaintiff's allegation that coming back from their visit between January and February they as a pact took a decision to settle in South Africa after the wedding. She also testified that they had agreed to marry first. Specifically, as he was still working for Faro Europa in Germany and would have still been required to be doing their work during that period including the date when they got married until he took up his official appointment with I[…] L[…]. Therefore, generally speaking a person is domiciled in a place that is considered to be his or her permanent home until acquisition of a new domicile.

[36] In addition, it is evident from the Application the Defendant made in 2014 to the Department of Home Affairs for him to be or remain in the country, that although he was lawfully in the country, he remained on a temporary residence working Visa (special skills work permit) that obviously lacks permanency, which he had continuously renewed. He only applied, it seems for permanent residency on 26 March 2014 as confirmed in the email of the same date. It couldn't be that in 2014 he was still using a working visa/permit after allegedly harbouring since 2006, an intention to be in the country permanently, making it his domicile of choice. Which is also far off from the date of their marriage in Germany.

[37] A letter of support filed by I[…] L[…] addressed to the Department of Home Affairs dated 4 April 2013 alludes to the Defendant's employment being from 30 April

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[15] *Gunn v Gunn* **191O TPD 423** at 427;*Webber v Webber* **1915 A D 239** at 242 and *Eilon v Eilon* **1965 (1) SA 703** A at 721

2006 in that his work permit that was expiring on 26 April 2014 was issued on 26 April 2010. Plaintiff's Counsel argued that it is an indication that the work permit was initially issued on 26 April 2006. It is also however, an indication of lack of permanency of his stay, more so prior their marriage. For him to officially start working in the country he needed to be in the country legally with the relevant permit having been issued. The Plaintiff' disregarded that, her emphasis being more on Defendant's employment or work and alleged residence at the company premises rather than on the permanency of his residency and the abandoning of his domicile in Germany. No evidence in that regard was placed before the court. In actual fact there were no facts prior to their marriage from which it could be established or inferred on a balance of probabilities that the Defendant acquired a domicile of choice in South Africa. His unlikely alleged residence since January 2006 at the Company premises in Muldersdrift lacked any permanency.

[38] The Plaintiff's Counsel also referred to communication during the month of June 2006 between the Defendant and Plaintiff after the Defendant had taken up his appointment with I[…] L[…], on the arrangements that he was attending to or that needed to take place in anticipation of the Plaintiff joining him. The discussion or preparations cannot be proof that an abandonment or acquisition of domicile had taken place. Taking the point quoted as a guidance in *V v V*, where a paragraph in *Eilon*'s case was cited with approval by the court, that:

> *"The reference to Voet is 5. 1.98, translated in Gane, Selective Voet Vo/.2p. 115 as follows,· 7t is certain that domicil, ·is not established by the mere intention of design of the head of the household, nor by mere formal declaration without or deed,· nor by the mere getting ready of a house in some country,·nor by the mere residence without the purpose to stay there permanently (neque sola habitatione, sine proposlto illic perpetuo morandi)".*

[39] In any event the crucial time the change of domicile was supposed to have been established, was prior the parties getting married on 31 March 2006. In the circumstances the Plaintiff has failed to discharge the onus to prove or to make a case that the Defendant was at the time of their marriage domiciled in South Africa. The parties' marriage regime and consequences fall to be dealt with by the prescripts of

the Burgeliche Gezetsbuchen (the German Civil Code) as pleaded by the Defendant. The MPA does not apply to foreign marriages, unless expressly provided for by way of antenuptial contract, as South African law is not the *lex causae* of such marriages.[16]

[40] The Plaintiff's Counsel has also referred to the letter from Hugo Attorneys on behalf of the Defendant that the attorney would not have referred to a marriage in community of property unless the Defendant had told him about it. The letter was sent when negotiating a settlement, pointing out what would be the consequences of a division of a joint estate, not agreeing that it is applicable. It is trite that discussions that form part of genuine negotiations towards the settlement of a matter are privileged and inadmissible in court see *Millward v Glazer* 1950 (3) SA 547 (W), Gcabashe v Nene 1975 (3) SA 617 (A). There were no reasons presented to the court why in this instance the court was to ignore such a fundamental principle.

On Maintenance

[41] The Plaintiff has in her particulars of claim indicated that the parties' joint estate consists of the following:

[41.1] Motor Vehicles, Renault Duster and Landrover Defender; [41.2] Absa bank Limited, account number: 4[…];
[41.3] First National Bank Limited, account number: 6[…];
[41.4] Volksbank, Karlsruhe Eg, Germany, with bank account number: 6[…];
[41.5] Defendant's shares in I[…] L[…] Sales (Pty) Ltd and
[41.6] Life Insurance Policy in Germany, with AXA Lebensversicherungen AG, Colonia-Alice 10-20, 51067 Koeln, Germany with Policy Number: 3[…]
001.
[41.7] The Defendant and Plaintiff are both members of the Government Pension Fund, which is Deutsch Rentenversicherung Bund Ruhrstr.2 1074 Berlin
[41.8] The Defendant is a member of a pension Fund/retirement annuity Fund, which pension Fund interest the Plaintiff alleges is deemed to be part of the Defendant's estate as stipulated in terms of s 7 (7) &a) of the Divorce Act no 70 of 1979 as

[16] the x parte Senekal et Uxor 1989 (1) SA 38 (T) at 39 H.

amended;
[41.9] In terms of the German Law, the Plaintiff has to apply for the Divorce to be accepted in Germany and then to apply at the Deutsche Rentenversicherung to adjust the Pension Fund accordingly.

[42] The Defendant on the other hand conceded that his assets consist of 2 motor vehicles, a Renault Duster and Land Rover, 35% shares in I[…] L[…] acquired on 16 July 2006. He was still in full employment with I[…] L[…]. He made no further submissions with regard to the maintenance required by the Plaintiff except that the amount of EUR 2500 was “more than a comfortable” income in Germany. It is a fact that the Defendant provided accommodation and the Plaintiff had access to a vehicle when they stayed together even though she was employed.

[43] The Applicant still has the earning capacity and had remained employed all this time. She has how satisfied the need for a maintenance order to augment her earnings.The amount of R7 000 for maintenance is to be paid to her until she remarries.

Costs

[44] I am disinclined to grant outright costs to any of the parties, since each is partially successful in the matter.

[45] Under the circumstances the following order is granted:

1. The decree of divorce;

2. As at date of marriage, that is 31 March 2006, the Defendant was domiciled in Germany;

3. The patrimonial consequences of the marriage are to be dealt with in accordance with the prescripts of Burgerliche Gezetsbuchen (the German Civil Code), in terms of which the principle of community of accrued gains, with dissolution based on the accrual system, is applicable;

4. The costs arising from putting into effect the order as per paragraph 3 of the order to be payable from the accrued assets;

5. The Defendant to pay lifelong maintenance to the Plaintiff in monthly instalments of R7 000; which is to be discontinued immediately on Plaintiff's remarriage or death. The amount is to increase annually by 10% on the anniversary of the divorce order;

6. The costs in this matter to be costs in the divorce action (accrued assets).

N V KHUMALO J
JUDGE OF THE HIGH COURT GAUTENG
DIVISION; PRETORIA

For Plaintiff: Z F Kriel

Instructed by: Johan Du Toit Inc Email:aubrey@shapiro-ledwaba.co.za

Defendant: N[…] M[…] P[…]
n[…]
In person