

T S v M S (5483/2022) [2024] ZAGPPHC 308 (19 March 2024)

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06 August 2024

INTRODUCTION

In matters pertaining to divorce, the various benefits that each party is entitled to at the time of divorce ought to be determined based on the circumstances specific to each matter. In the case of **T S v M S (5483/2022) [2024] ZAGPPHC 308 (19 March 2024)** (“the case”), the wife as the Plaintiff in the matter requested a decree of divorce and a forfeiture order against her husband as the Defendant in the matter. The court was tasked to determine if forfeiture order would be applicable in the divorce as well as whether the Defendant was entitled to spousal maintenance.

BACKGROUND

TS (the Plaintiff) and MS (the Defendant) got married in community of property in the year 1999 and remained married until the institution of the divorce proceedings. The marriage resulted in the birth of two children who are now adults. The Plaintiff issued divorce summons against the Defendant in 2022.

The Plaintiff requested a decree of divorce and a forfeiture order stating that the Defendant would unduly benefit if the forfeiture order were not granted because the Defendant abused her and furthermore was unfaithful to her. The Defendant defended the matter stating that he was entitled to an equal share of the assets and prayed for payment of maintenance to the amount of R15 000.00.

It was stated in evidence that the Defendant assaulted the Plaintiff in 2006. The Defendant pleaded guilty and was accordingly sentenced. The Plaintiff conceded in evidence that the Defendant showed remorse and that she had forgiven him. She further added that there was continuous financial and emotional abuse after 2006, however it was not reported. It was also stated in evidence that the Defendant was engaged in extra-marital activities and had brought another woman into the marriage without the knowledge or consent of the Plaintiff.

The Defendant prayed for maintenance in the amount of R15 000.00 from the Plaintiff and stated that he was working at a Non-Governmental Organisation and was getting paid R4 000.00 a month which would not be enough to sustain him due to the lifestyle he had become accustomed to during the subsistence of the marriage.

The court found that the Plaintiff could not rely on the ground of assault as the incident occurred a while ago and the Plaintiff conceded that the Defendant showed remorse. The court further said that the allegations raised of further abuse experienced at the hands of the Defendant were not initially stated by the Plaintiff in her particulars of claim. The court found that a claim must be properly pleaded and proved and where a party failed to prove substantial misconduct, then a forfeiture order could not be granted.

CONCLUSION

It is clear from this finding that the courts are very strict when it comes to the granting of forfeiture orders. A person cannot rely on events that occurred more than 10 years ago as a ground for forfeiture. The forfeiture order was denied, and the court stated that they were not satisfied that the Defendant would unduly benefit if the divorce order were not granted¹.

Furthermore, being accustomed to a certain lifestyle is not a sufficient ground to justify maintenance of the other spouse. The court held that the Defendant’s claim lacked evidence and had to be dismissed².



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¹T S v M S (5483/2022) [2024] ZAGPPHC 308
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²T S v M S (5483/2022) [2024] ZAGPPHC 308
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