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IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable
Case no: A151/2025

In the matter between:

K[…] I[…] V[…] **APPELLANT**

and

C[…] J[…] V[…] **RESPONDENT**

Neutral citation: *K[…] I[…] V[…] v C[…] J[…] V[…]* (A151/2025) [2026] ZAFSHC 465 (15 October 2026)
Coram: DAFFUE, REINDERS *et* LOUBSER JJ
Heard: 18 May 2026
Delivered: 15 October 2026
Summary: Appeal against dismissal of application for declarator in relation to period of maintenance obligation – whether respondent's version in court *a quo* established a real, genuine and *bona fide* dispute of fact.

ORDER

1 The appeal is upheld.

2 The order handed down by the court *a quo* is set aside and is substituted with the following order:

'2.1 It is declared that the applicant's maintenance obligations towards the respondent in her personal capacity, arising from the divorce proceeding in this court under case number 157/2017, persisted only until the date of final payment of the respondent's claim for accrual, being 29 March 2021.

2.2 The respondent is ordered to pay the costs of the application on the party and party scale, including the fees of counsel on scale B.'

3 The respondent is ordered to pay the costs of the appeal on the party and party scale, including the costs related to the application for leave to appeal, and including the fees of counsel on scale B.

JUDGMENT

Loubser J (Daffue and Reinders JJ concurring)

[1] In our times, most divorce cases become settled between the spouses by means of a deed of settlement signed by both of them to avoid potential of protracted and costly litigation in a court of law. Such a deed usually outlines how assets, debts, maintenance and childcare will be dealt with when the marriage ends. The deed is then submitted to the court and incorporated into the final decree of divorce, making its terms legally binding and enforceable as a court order. The parties can thereafter go their own separate ways with the assurance that their respective rights and obligations post marriage are secured for the future by a binding court order.

[2] Unfortunately, this ideal situation did not avail itself to the parties in the present matter, despite them having entered into a deed of settlement which was incorporated in their decree of divorce. The parties are now still at odds in relation to the maintenance payable by the appellant to the respondent in terms of the deed of settlement and the subsequent decree of divorce. While the appellant insisted that his

maintenance obligation towards the respondent subsisted only for a limited period of time, the respondent maintained that the maintenance obligation was a lifelong obligation. This dispute prompted the appellant to launch an application in this Division, on 11 December 2024, for a declaratory order to the effect that his maintenance obligations have become discharged on 29 March 2021, and that he is no longer obligated to pay maintenance towards the respondent.

[3] The application, which was opposed by the respondent, came before Boonzaaier AJ. On 24 April 2025, the learned acting Judge dismissed the application with costs. The appellant thereafter made application for leave to appeal against the order. Dismissing his application with costs, Boonzaaier AJ granted him leave to appeal to a full bench of this Division on 7 August 2025. This Court is now seized with the said appeal.

[4] At this point, it is opposite to refer briefly to the relevant facts of the matter as set out by the appellant in his founding affidavit in the application before the court *a quo*. The parties were married to each other out of community of property but with the application of accrual system, on 14 September 1996. In the years that followed, the marriage relationship between them unfortunately began to fall apart to such an extent that the appellant initiated divorce proceeding in this court on 12 January 2019. This was followed by a rule 43 application filed by the respondent on 24 October 2018 for an order, amongst others, directing the appellant to pay maintenance to her in amount of R30 000 per month pending the outcome of the divorce action between them.

[5] The rule 43 application was heard by Chesiwe J of this Division. On 22 November 2018, she made the following order relating to the aspect of maintenance: '[t]he respondent is ordered to pay pendente lite maintenance toward the applicant in the amount of R25 000 per month'. To put it differently, the appellant was ordered to pay maintenance to the respondent in the amount of R25 000 per month until the divorce proceedings were concluded.

[6] The action for divorce itself came before the court on 4 December 2018. Before the matter was called on the day, the erstwhile attorney of the appellant presented a draft deed of settlement to him for his signature. After reading this document, he signed

it. In terms thereof, the respondent's claim for accrual would stand over for later adjudication. As to maintenance for the respondent, the deed of settlement stipulated as follows: '[t]he plaintiff shall pay maintenance to the defendant in respect of her personal maintenance …. in accordance with the existing rule 43 order'. The respondent also signed this deed of settlement, and it was presented to the court when the divorce case of the parties was called. Having read all the documents filed of record in the matter, the court then dissolved the bonds of marriage subsisting between the parties and made the deed of settlement signed by them an order of court.

[7] The appellant further pointed out in his founding affidavit that it was his understanding that the divorce proceedings would only come to an end once the respondent's claim for accrual was determined or agreed between the parties and paid by him. He therefore continued to pay the R25 000 per month maintenance to the respondent after the marriage was dissolved by the court on 4 December 2018 and the deed of settlement was made an order of court. The proceedings to determine the respondent's claim for accrual then turned out to be a protracted and very complicated process, which only became finalised during November 2020. It was determined that the respondent's claim for accrual amounted to the sum of R4 579 919, which sum the appellant proceeded to pay in separate payments as from January 2021. He eventually paid the last installment of the sum to the respondent on 29 March 2021.

[8] The appellant further mentioned that he had continued to pay the R25 000 maintenance to the respondent throughout the aforementioned process, because the divorce proceedings had then not yet come to an end. It only came to an end on 29 March 2021, when he made the last payment of the accrual, he submitted. On that date, his maintenance obligation became discharged in terms of the rule 43 order read with the divorce order incorporating the deed of settlement, he concluded.

[9] In her affidavit opposing the application in the court *a quo*, the respondent advanced the argument that it was never stated in the deed of settlement that the issue of maintenance would be revisited in future or that the appellant's duty to pay maintenance would cease to exist upon payment of the accrual. The issue of maintenance was settled as a final term, with no termination date, she contested. She further submitted that there was a foreseeable dispute of fact, but that the appellant still

elected to approach the court by way of motion proceedings. For this reason alone, the application should be dismissed, she stated. She reiterated that it was never the common intention of the parties that the appellant's maintenance obligations would cease once the accrual claim was paid to her.

[10] I now turn to the reasons provided by Boonzaaier AJ on the request of the appellant for her decision to dismiss the appellant's application. Firstly, she found that there was a material dispute of fact between the parties on the papers before her, which dispute could not be resolved on those papers. Secondly, she found that the appellant had failed to prove his case. The learned acting Judge further found that the dispute of fact was a genuine dispute in which the respondent raised a *bona fide* defence on the papers. She found that this dispute was foreseeable prior to the institution of the application proceedings, and that the appellant ought to have applied for a referral to oral evidence as soon as the dispute became evident and before full argument was heard by the court. Since the appellant bore the onus in the matter, he had therefore failed to prove his case, she concluded.

[11] This Court is now called upon to decide all these issues on appeal, and it can only do so by restoring to the clear and firmly established principles of our law relating to instances where a final order is sought in motion proceedings and where a respondent raises a real and genuine dispute of fact in opposing the final order. In such instances, the version set up by the respondent must prevail, unless the court is of the opinion that the version is not such as to raise a real, genuine or bona fide dispute of fact or is so far-fetched or clearly untenable that the court is justified in rejecting that version merely on the papers.[1] A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute, has in his affidavit seriously and unambiguously addresses the fact said to be disputed.[2]

[12] In the present matter, there can be no doubt that the appellant sought a final order in the court *a quo*. The question is then whether the court *a quo* was correct in finding that the respondent had established a real and genuine dispute of fact in her

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[1] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C; See also *Wightman t/a J W Construction v Headfour (Pty) Ltd* [2008] ZASCA 6; [2008] 2 All SA 512 (SCA); 2008 (3) SA 371 (SCA) para 12.
[2] Ibid para 13.

opposing papers. If the court *a quo* was correct in finding as such, then the respondent's version that she is entitled to lifelong maintenance, must prevail and must be accepted. The question whether the court *a quo* was correct in this respect, however, cannot be decided without reference to the specific terms of the deed of settlement entered into between the parties, and which was made an order of court. The terms must now be interpreted to establish what this parties really intended to agree upon.

[13] In *Natal Joint Municipal Pension Fund v Endumeni Municipality*,[3] the Supreme Court of Appeal stated in paragraph 18 of the judgment the following regarding the process of interpretation:

'. . . Interpretation is the process of attributing meaning to the words in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax, the context in which the provision appears, the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible, each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.'

[14] Applying this process of interpretation, the ordinary grammatical meaning of the language used in the deed of settlement must first be considered. The grammatical meaning of the words used in the deed is without any doubt clear and unambiguous. The appellant had to pay maintenance to the respondent *pendente lite*, which means pending the suit, according to the Trilingual Legal Dictionary of Hiemstra and Gonin. In other words, the payment of maintenance was a temporary measure existing until the conclusion of the divorce proceedings between the parties. The circumstances attendant upon the coming into existence of this temporary measure also attribute to the sense behind it, because the deed also provided that the respondent's claim for accrual would stand over for later determination. The divorce litigation would therefore only come to an end when the accrual claim was determined. To what extent the

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[3] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18.

respondent's claim for accrual would be successful, was uncertain at the time when the parties signed the deed of settlement. It would therefore make sense to provide for temporary maintenance until the amount of accrual becomes known, because that amount could be expected to have an influence on the amount of further maintenance to be paid by the appellant, if at all.

[15] As indicated hereinbefore, the appellant's case in the court *a quo* relied on this interpretation of the deed of settlement. On the other hand, the respondent contended in the court *a quo* that the issue of maintenance was settled as a final term with no termination date. It was never the common intention of the parties that the appellant's maintenance obligations would cease once the accrual claim was paid to her, she stated.

[16] By now it must be obvious that these contentions advanced by the respondent fly in the face of the clear terms of the deed of settlement. She relied on allegations that were not endorsed by the clear terms of the deed that she had signed. Her version in the court *a quo* therefore made no sense at all, and ought to have been rejected as far-fetched and untenable. On that basis, the court *a quo* should have found that the version set up by the respondent was not such as to raise a real, genuine and *bona fide* dispute of fact. Further, it should have been found that the appellant had succeeded in proving his case and that he had no reason to foresee that a real and genuine dispute of fact would arise in the motion proceedings initiated by him.

[17] In this respect, it also needs mentioning that while the divorce proceedings between the parties were still pending, the respondent's attorneys addressed a without prejudice letter to the attorneys of the appellant during August 2017 proposing that the matter could be settled. It was *inter alia* proposed that the appellant should pay rehabilitative maintenance to the respondent in the amount of R18 000 per month for 24 months from the date of divorce. In another without prejudice letter dated 10 September 2020, that is before the accrual had been finalised, the respondent's attorneys expressed the respondent's willingness to accept temporary spousal maintenance for a period of 12 months. In view of these proposals, it cannot be found that the appellant should have foreseen a real and genuine factual dispute arising when he approached the court on motion concerning the period of maintenance.

[18] In the premises, the appeal stands to be upheld. As for costs, I find no reason to deviate from the general rule that costs follow the result. We have been urged by the counsel appearing for the appellant to award costs on the attorney and client scale, but I am of the view that such a costs order is not called for in the circumstances of the matter. In the papers that were before the court *a quo*, it appeared that the relationship between the parties had become acrimonious because of a relationship that had developed between the appellant and a third party, and that this relationship was the main cause for the breakdown of the marriage between the parties. In my view, the likely emotional impact of these events on the respondent should not be underrated, and therefore she should not be blamed for opposing the application by imposing a punitive order of costs. In the circumstances, a party and party order of costs would be appropriate.

[19] The following order is made:

1 The appeal is upheld.

2 The order handed down by the court *a quo* is set aside and is substituted with the following order:

> '2.1 It is declared that the applicant's maintenance obligations towards the respondent in her personal capacity, arising from the divorce proceeding in this court under case number 157/2017, persisted only until the date of final payment of the respondent's claim for accrual, being 29 March 2021.
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> 2.2 The respondent is ordered to pay the costs of the application on the party and party scale, including the fees of counsel on scale B.'

3 The respondent is ordered to pay the costs of the appeal on the party and party scale, including the costs related to the application for leave to appeal, and including the fees of counsel on scale B.

P.J. LOUBSER
JUDGE OF THE HIGH COURT

I concur:

J.P. DAFFUE
JUDGE OF THE HIGH COURT

I concur:

C. REINDERS
JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:	A Jansen van Vuuren, with him M Pinder
Instructed by:	Van Zyl Johnson Inc, Johannesburg c/o Kramer Weihmann Attorneys, Bloemfontein
For the respondent:	W J Groenewald
Instructed by:	Dewar Attorneys, Claremont Strauss Daly Inc., Bloemfontein.