Maintaining Your Standard of Living After Divorce: The Truth About Spousal Maintenance

More often than not, spouses' standard of living changes after they get divorced. Could this have been the intention of our family law system? In the writer's opinion, definitely not. The ideal circumstances would be that both ex-spouses maintain a similar standard of living to what they had during the subsistence of the marriage.

The Divorce Act explicitly allows for spousal maintenance to be paid when one spouse requires financial maintenance. In the Act, the standard of living before divorce is a determining factor in deciding the amount of maintenance payable. The court, as far as possible, thus attempts to maintain the same standard of living that the parties had prior to the divorce.

For example, suppose you lived a middle-class life with all your expenses covered and a small amount of spending money available every month. In that case, the court will grant you the maintenance covering your expenses and pocket money. The court would not give you the maintenance that buys you a luxurious standard of living if you have not had that standard of living during the subsistence of your marriage.

We can, however, not ignore the aspect of affordability. The ex-spouse paying the maintenance must be able to pay for their ex-spouse's standard of living. It is more expensive to pay the costs of two separate households; therefore, keeping the same standard of living is sometimes unaffordable. If it is not affordable, both parties' standard of living will have to decrease.

Thus, it is true. The Family courts focus on maintaining the same standard of living after a divorce but only in circumstances where it is practically possible and affordable.

In support of the above, the High Court of Johannesburg recently dealt with an interesting spousal maintenance matter where the husband and wife had two different ideas of their standard of living. After the wife received her 50% of the

joint estate valued at approximately R11 million, she proceeded with her spousal maintenance claim of R53 546.00 per month, basing her claim on the luxurious standard of living that existed during the marriage. The husband opposed her claim and averred that they only had an average middle-class lifestyle.

On trial, the wife proved to the court that the parties travelled to various overseas destinations annually. She proved they stayed in 5-star hotels and shopped at the most expensive stores. She proved that they never counted a penny.

The husband's financial position also indicated that they did live a lavish lifestyle. The affordability of the wife's claim was also not an issue. The court thus made an order that the wife should maintain her standard of living and that the husband should pay the maintenance as claimed. [1]

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[1] *CEF v JFF 2022 A3026-2022 (GJ)*