

Spousal Maintenance

Neither spouse has a right to spousal maintenance upon divorce. South African law favours the “clean break” principle. This basically means that after a divorce the parties should become economically independent of each other as soon as possible. The Court does however have the discretionary power to make an award for spousal maintenance if necessary.

The Court will consider the following factors before deciding whether to award spousal maintenance:

1. The existing or prospective means of each party
2. Their respective earning capacities
3. Their financial needs and obligations
4. Their age
5. The duration of the marriage
6. Their standard of living prior to divorce
7. Their conduct, if relevant, to the breakdown of the marriage
8. An order for the division of assets
9. Any other factor which in the court’s opinion should be taken into account.

If the Court decides to award maintenance, the factors mentioned above will also determine the quantum of the maintenance.

Let us discuss some of these factors in more detail.

The Court favours the “clean break” principle as mentioned above but will also consider the NEED FOR MAINTENANCE by the one party on the one hand and the ABILITY TO PAY MAINTENANCE by the other party on the other hand.

The Court appears to award little or no maintenance where one or more of the following factors are present: The woman is young or reasonably young; she is well qualified; she has no children or no young children; she has worked throughout her married life; she is working at the time she applies for maintenance; she is in good health; and the marriage was not of long duration. On the other hand, older, unqualified women who have been married for a long time are likely to be more sympathetically treated by our Courts.

If the wife has not worked for a while, the Court may consider rehabilitative maintenance. Rehabilitative maintenance is awarded to a woman for a limited period while she trains or re-trains for a job or profession.

When considering the existing or prospective means of each party, the Court will look at how much money and how many assets each party has, including any property that can be used to produce income.

When considering the standard of living, it is generally recognised that neither spouse is entitled to maintain the same standard as during the marriage unless money is not an object. Where money is no object, it has been argued that there is no reason why a divorced wife and her minor children should not continue to enjoy the same standard of living as during the marriage.

When considering conduct, spousal maintenance is no longer considered as a penalty for misconduct like it was in the past, the Court may look at and identify the real cause of the breakdown and make a finding on what is just in the circumstances of that particular matter.

The duration of a spousal maintenance award is usually until death or remarriage.