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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE: 14221/2017

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|-----|-------------------------------------|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED. |

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Date

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ML TWALA

In the matter between:

M: M

APPLICANT

Versus

M: L

RESPONDENT

JUDGMENT

TWALA J

1. The applicant in this case seeks a maintenance order for the minor child *pendente lite* against the respondent in the sum of R6 000 and a contribution towards her legal costs in the sum of R30 000.
2. It is common cause that on the 29th of October 2012 the parties were married to each other in community of property and the marriage still subsists. There is one minor child born of the marriage, namely S M who was born on the [...] of January 2013 and who presently lives with the applicant at the common home of the parties.
3. It is further not in dispute that both the applicant and the respondent have a duty to maintain the minor child. The respondent left the common home of the parties when they started to experience marital problems.
4. It is contended on behalf of the applicant that she is employed as a recruitment consultant and earns a salary of R9 200 per month and her expenses amount to R10 423, leaving her with a deficit of R1 423. Her expenses cover the child as well. Her husband lives alone in a rented place and is employed at a salary of about R30 000 per month. Her husband's monthly expenses are approximately R8 100 and that leaves him with extra cash in the sum of R21 500. He is in a position to maintain the applicant and the minor child with the sum of R6 000 and to make a

legal costs contribution in the sum of R30 000. Further, the respondent does not pay R3 500 for his petrol as same is paid for by his company as he uses a company vehicle.

5. Counsel for the responded contended that the applicant has not approached the Court with clean hands. She deliberately withheld relevant information to the Court that she earns some bonuses on top of her salary of R9 200. The respondent is paying a bond on the common home without the assistance of the applicant. His income has been overstated and his expenses understated by the applicant. He is prepared to maintain the minor child and tenders a sum of R1 500 per month.
6. It is further contended on behalf of the respondent that the applicant has failed to show the Court the reason why she requires R30 000 as contribution towards her legal costs. The divorce matter is not complicated and if the parties agree to sell the common home, a settlement agreement should be settled within a week.
7. It is trite law that the right to claim interim maintenance in terms of Rule 43 should be subjected to the principle of reasonableness, the parties' standard of living during the course of the marriage and the respondent's ability to pay the required maintenance. The maintenance *pendete lite* is not meant to place the other party in a better position that she was whilst the parties were living together but to put her in the same position as she was during the good times in the marriage.
8. Looking at the salary advice of the respondent, it is apparent that his salary varies from month to month. The Court therefore took the view that an average of his salary as they appear on his bank statement be used to determine his actual salary which came to a figure of R25 000.

9. I find myself in disagreement with some of the items listed as monthly expenses by the respondent. The respondent listed his petrol as R3 500, his food as R1 500, accounts R2 000 and father as R1 500.
10. Counsel for the applicant argued that the respondent drives a company vehicle for which fuel is provided for by his company. Further, that the first priority of the respondent is to maintain his minor child and not his father. The applicant is left with nothing after having paid her monthly expenses which include the minor child.
11. I am unable to disagree with the applicant in this regard. It does not sound right that fuel exceeds groceries or food in a month. It is absurd for the respondent to suggest that he incurs more expenses for fuel than for buying food for himself. Further, the R2 000 labelled as accounts does not disclose what kind of account it is and therefore in my view is an attempt to hide excess cash by creating this false expense. I cannot disagree with counsel for the applicant that the respondent has a duty first to maintain his child before he could consider anybody else.
12. It is my considered view therefore that the respondent has the ability to pay maintenance in this case. I am of the firm view that the tender made by the respondent in the sum of R1 500 is not sufficient to meet the needs of the child. I am satisfied that an amount of R4 000 per month as maintenance will assist the applicant in her monthly expenses with the minor child.
13. It is undesirable that a divorce case be unnecessarily prolonged when there are no real issues to be determined. Litigation in the High Court is quite expensive and to be engaged in protracted litigation comes at a

heavy cost. The parties have been involved in criminal litigation as well which must have cost them quite some money as well. However, nothing was placed before this Court to justify that the respondent should contribute a sum of R30 000 towards the legal costs of the applicant.

14. However, having regard to the disparities in the salary of the applicant and that of the respondent, I am of the view that the applicant is entitled to the initial contribution towards her legal costs and a sum of R10 000 appears to be justified and reasonable under the circumstances of this case.
15. In the circumstances, I make the following order:
 - I. The respondent is liable to pay maintenance to the applicant in the sum of R4 000 per month from the 1st of March 2018 and thereafter on the 1st of each succeeding month, which amount is to be deposited directly into the account of the applicant;
 - II. The respondent is liable to pay to the applicant a contribution towards legal costs in the sum of R10 000 within ten (10) days from the date of this order. This amount of R10 000 to be paid directly into the Trust Account of the applicant's attorneys;
 - III. Costs to be cost in the course.

TWALA J

**JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION**

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Date of hearing: 30 JANUARY 2018

Date of judgment: 05 FEBRUARY 2018