

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 43860/2017

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE

SIGNATURE

In the matter between:

H: Y

APPLICANT

And

H: M

RESPONDENT

JUDGMENT

TWALA J:

- [1] The applicant in this case seeks spousal maintenance *pendente lite* in the sum of R20 000 together with a contribution towards her legal costs in the sum of R20 000.

- [2] It is common cause that on the 9th of March 2002 the parties were married to each other out of community of property in terms of an ante nuptial contract with the express exclusion of the accrual system and the marriage between them still subsists. There are no minor children born of the marriage between the parties.

- [3] It is contended by counsel for the applicant that the applicant has an income of R14 824 per month whilst her expenses amount to R34 709. Whilst she was living with the respondent, the respondent would pay for all the household necessities which were then about R25 000 per month. The respondent earns about R350 000 per month and pays some of his expenses through his business account. The respondent has a duty to maintain the applicant and the applicant does not have to liquidate her assets in order to maintain herself. The respondent is a man of means and has sufficient capital to pay the interim maintenance and to make the contribution towards the applicant's legal costs.

- [4] Counsel for the applicant further contended that the respondent has failed to take the Court into his confidence. He has been very economical with information relating to his earnings. He refers to tax returns which he submitted in 2015 and 2016. He presently does not know how much he earns and is awaiting his accountant to finalise his books whereafter he would be able to know his earnings.

- [5] Counsel for the respondent contended that the applicant has exaggerated the earnings of the respondent based on wrong information. The person alleged

by the applicant to have compiled the invoices of the respondent and made the calculations has denied having done so. The applicant, it so argued, is not truthful with the Court and has deliberately gave wrong information to bolster her case. She has failed to take the Court into her confidence and the Court should take a dim view of the applicant in this regard. Spousal maintenance is not just for the taking, the applicant has to show that she needs it and that the respondent has the means to pay it.

[6] It is contended further by counsel for the respondent that the applicant has inflated her monthly expenses in terms of the list attached to her affidavit. It cannot be said that, it is so argued, her water and lights account is R3 750, petrol R2 500, medication over and above medical aid R5 990 and groceries for R6 000. The applicant has testified in her affidavit that she is a pensioner but has not laid any basis for such a huge monthly medical bill and for the petrol. The respondent has not disclosed his earnings because he is still awaiting his accountant who is currently busy with his books. The profit he made in the one business is eroded by the other as he is operating same at a loss. The applicant has more assets than the responded and has not disclosed some of her investments including the tax rebates she is receiving from SARS every year.

[7] I am unable to disagree with counsel for the respondent that spousal maintenance is not for the taking but the party who applies for it must show the Court that she needs it. Further, that the other party has a duty to maintain and the means to do so.

[8] I applaud the responded for being a good citizen of this Country and paying his taxes. It is on record that he has an account which is dedicated to value added tax only. Although the respondent does not deny that whilst they were living together he paid all the household expenses, he insists in not committing himself to any particular salary per month. I have more than once asked counsel for the respondent to disclose the salary or amounts he had withdrawn from his business in the past three months without success.

- [9] I hold the view that, although the person alleged to have compiled the invoices of the respondent disputed that she had done so, the tax returns of 2015 and 2016 put the earnings of the respondent at about R30 000 per month. The amount of R30 000 does not take into account the profit made by his businesses and what he receives from his investments. In my view, the respondent has a duty and the means to maintain the applicant whose standard of living should more or less be the same as when she was living with the respondent. The respondent never disputed that he was responsible and he paid all household necessities whilst living together with the applicant. However, the applicant also has a duty not to be extravagant but to try and scale down within reason. It is my considered view therefore that a sum of R12 500 per month maintenance *pendete lite* is fair and reasonable under the circumstances.
- [10] It is accepted that litigation in the High Court is quite expensive. To be involved in protracted litigation in the High Court costs a fortune. However, there is a lot involved in this case. The parties have been married for fifteen years and have been living quite a decent lifestyle. It is on record that the divorce action was enrolled for hearing in August 2017 but had to be postponed because certain experts were necessary to determine certain issues including the financial position of the respondent as he has up to now failed to disclose his income. Experts do not come cheap in these situations.
- [11] It is trite that parties to a divorce action should have equal access to legal representation. I hold the view therefore that the applicant is entitled to the initial contribution to her legal costs and a sum of R10 000 appears to be fair and reasonable in this case.
- [12] In the circumstances, I make the following order:
- I. The respondent is liable to pay maintenance *pendente lite* to the applicant in the sum of R12 500 per month from the 1st March 2018 and on the 1st of every succeeding month. The amount of R12 500 shall be paid directly into the bank account of the applicant ;
 - II. The respondent is liable to pay a sum of R10 000 as a contribution towards the legal costs of the respondent. The amount of R10 000

shall be paid directly into the Trust Account of the attorney of the applicant within 15 days from the date of this order;

III. Costs to be costs in the course.

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG**

Counsel for the Applicant:

F. BEZUIDENHOUT

Instructed by:

YOSEF SHISHLER ATTORNEYS

TEL: 010 599 5950

Counsel for the Respondent:

R. ADAMS

Instructed by:

RAMSDEN SMALL ATTORNEYS

TEL: 011 615 1932

Date of Hearing:

30 January 2018

Date of Judgment:

05 February 2018