REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO: 41659/2017

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:

I D (NEE H) **APPLICANT**

And

J D **RESPONDENT**

JUDGMENT

TWALA J:

[1] The applicant in this case seeks maintenance for the minor child born of the marriage *pendente lite* in the sum of R17 500 together with other ancillary orders pertaining to the school and extra mural activities of the minor child. Further, she seeks and order for 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, profit and loss in terms of an ante nuptial contract which includes the accrual system and the marriage between them still subsists. There is one minor child born of the marriage between the parties, a daughter, Z, born on the 7th of September 2000 and who is presently living with the applicant.

[3] It is not in dispute that the respondent currently pays for all the minor child's school fees and extra mural activities. Further, it is not in dispute that the respondent pays a sum of R7 000 towards maintenance of the minor child.

[4] It is contended by counsel for the applicant that the applicant has an income of R28 257.79 per month whilst her expenses amount to R45 327. The applicant has a shortfall of R16 400 every month. Whilst living together with the applicant, the respondent, so the argument goes, paid for all the household expenses. The respondent is living a lavished lifestyle spending more than R14 000 per month on restaurants and pubs.

[5] Counsel for the applicant further contended that the respondent's earnings, as calculated from his bank statements dating from June 2016 to April 2017 average a sum of R118 000 net per month. The respondent does not earn R79 600 as he alleges in his answering affidavit. He is a man of means and can afford to pay the maintenance of the minor child in the sum of R16 400. The applicant, so it is contended, is not litigating on the same level as the respondent due to her income. She needs a contribution towards her legal

costs and a sum of R20 000 is fair and reasonable in the circumstances of this case.

[6] Counsel for the respondent contended that the applicant has not taken the Court into its confidence. The applicant earns three more bonuses per annum other than her salary and receives tax rebates from SARS every year as the respondent does her tax returns. The respondent, so it is argued on behalf of the respondent, is paying everything that relates to the minor child including for her horse riding lessons and for her horse. The applicant seeks maintenance for herself under the guise that it is for the minor child. The respondent is paying R7 000 towards maintenance of the minor child. The applicant has failed to show why she needs an extra R9 000 since the respondent is paying all the other expenses relating to the minor child.

[7] The respondent paid R30 000 to the applicant at the start of the divorce to assist her in instituting the divorce proceedings. There are no issues to be determined in this divorce and the minor child is reaching the age of maturity in September 2018. There is nothing contentious that justifies a further contribution towards her legal costs.

[8] 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 than 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. Both parties are equally liable for the maintenance of the minor child and their contribution is dependent on their respective incomes.

[9] I am unable to disagree with counsel for the respondent that the applicant has not shown why she has a shortfall of R16 400 with regard to maintenance of the minor child. The applicant has, in terms of her list of expenses, postulated to share certain expenses with the minor child at 50%. For example, she stated the rental amount for her accommodation as the sum of R11 000 and allocated a sum of R5 500 to be contribution of the minor child. The same

applies to her credit card which is said to be R4 000 and 50% thereof is allocated to the minor child at R2 000.

[10] It is my respectful view that the applicant is also obliged to contribute 50% to each of the above amounts. She cannot expect the respondent to be liable for 100% of the minor child's maintenance. She should contribute 50% to the costs associated with the minor child as stated above that both parties are equally liable for the maintenance of the minor child depended on their respective incomes. I am therefore persuaded by counsel for the respondent that the shortfall shown by the applicant in her list of expenses is her own creation meant to mislead the Court to benefit her.

[11] However, I agree with counsel for the applicant that the income and the list of expenses compiled by the respondent do not make any sense. If the respondent is able to spend R14 000 per month in restaurants and pubs, which has not been disputed by the responded as it appears on his bank statements, then his earnings are far more than R79 600. The respondent paid for the minor child's school fees in advance in the sum of R102 000 and this was never disputed by the respondent. Further, the respondent has failed to disclose the income he receives from his third business, being Tank Containers. I am accordingly satisfied that the respondent has failed to take this Court into his confidence in this regard. I can therefore not disagree with counsel for the applicant that the respondent, as an accountant, has created his own document showing his income and expenses with a clear intention to mislead the Court. I am of the view therefore that the respondent earns more than R79 600.

[12] It is uncontroverted evidence that the respondent paid the applicant a sum of R30 000 when the divorce started as a contribution towards her legal costs or as an amount to enable her to start the divorce proceedings. It is on record that there are no issues in this divorce and it could be settled very soon. I hold the view therefore that the applicant, having regard to her salary, has not shown the need for assistance with legal costs.

[13] It is undesirable for litigants not to be honest with the Court in order to get more money from the other or to deprive the other the benefit she/he

deserves. The applicant in this case made an attempt to obtain maintenance for herself from the respondent. The respondent, in turn presented fictitious figures with regard to his income to avoid paying maintenance to which the minor is entitled to.

[14] It is my considered view that the minor child has been living a good life with her parents being provided for by the respondent. The respondent still provides for the minor child with all of her necessities. The respondent is a man of means and the minor child should not suffer because of the problems her parents are having. I am of the view therefore that the respondent is able to pay maintenance of the minor child and a sum of R10 000 is fair and reasonable taking into account that the respondent will continue paying for the other necessities of the minor child.

[15] In the circumstances, I accordingly make the following order:

I. The draft order marked “X” annexed hereto as amended is made an order of Court.

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TWALA J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

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Date of Hearing: **30 January 2018**

Date of Judgment: **08 February 2018**