NOT REPORTABLE

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

CASE NO.: 52040/2010

DATE:23/09/2011

In the matter between:

A E P APPLICANT

V

H ASP RESPONDENT

JUDGMENT

WEBSTER J

1. This is an application in terms of Rule 43 of the Uniform Rules of Court.

2. The applicant seeks maintenance pendente lite in respect of herself and three minor children born of their marriage, aged 15 years, 13 years and 4 ½ years, respectively. The total monthly expenses amount to R26 502.00.

3. The applicant gives her monthly income as follows:

Nett Salary R8 679.92

Annual Bonus	R723.33
(Monthly salary divided by 12)	
Dress making	R300.00
(Ballet costumes)	
Private dancing lessons	R2 000.00

(20 Students at R100 per student) Her monthly expenditure for herself and the children totals R26 502.00.

4. The applicant avers that the respondent's income is "...about R65 000.00".

5. According to her list of monthly expenditure her personal expenses which includes shared lodging with her children totals R23 095.00. She claims maintenance of R6 355.00 in respect of each child. In total, she claimed R29 450.00.

6. The applicant further claimed an amount of R31 450 for the replacement of household furniture and appliances since she moved out of the parties' common home, the reasonable medical expenses for herself and the minor children and a contribution of R5 500 towards her legal costs.

7. The respondent pleads figuratively speaking, the proverbial poverty. He states in his affidavit that his gross income is R25 000 per month and not the princely sum of R65 000 per month from a legal practice.

8. At the end of argument I requested counsel for both parties to provide me with revised monthly expenses as set out in their respective affidavits as amplified in argument before me. I thank both counsel for having done so.

9. In her revised monthly expenses the total amount claimed by the applicant exclusive of medical expenses, school fees, after school care and the replacement of furniture and electrical appliances totals R26 502.00.

10. The respondent lists what he considers to be the monthly needs of the applicant and the

children as well as the school fees and after school care expenses and comes to a total of R21 516.00. He then deducts R 11 703.00 being the "Applikant se inkomste" and comes to a figure of R9 813.00 being the "shortfall" in his calculations. He then offers to pay maintenance of R4 000 for each of the two boys aged 13 and 15 years, respectively, and R2 500.00 for the four and a half year old daughter, making a total of R10 500.00 leaving the applicant with a surplus of R687.00 per month. He offers no explanation of how he arrives at these figures.

11. The Rule 43 procedure is a robust procedure to ensure that a dependent spouse and dependent children of a marriage are provided for as a matter of urgency as the parties quibble and squabble over details.

12. I have considered the needs of the applicant and the children and save for the following items, viz:.

Parking R150.00

Holiday and entertainment Rl 000.00 I find her monthly expenses to be reasonable.

13. Save for the following monthly expenses the respondent has conceded the reasonableness of the expenses claimed by the applicant:

ITEM	AMOUNT CLAIMED	COUNTER-OFFER
Groceries	R5 800	R4 000
Cell phone	Rl 086	R600
Facials and manicure	R300	IL
Lunches	Rl 200	NIL
Petrol	Rl 400	Rl 200
Parking	R150	NIL
Life insurance	Rl 200	NIL

Holidays and entertainment	RI 000	R500
Religious contributions	R200	NIL
Toiletries and hair care	R500	R850

14. Having resisted the items set out above the respondent brazenly claims that on his figures the applicant will end up with a surplus of R687.00 instead of a shortfall of R6 036 [E&OE].

15. In her founding affidavit the applicant challenged the respondent to produce his income tax returns in support of proof of his income. That challenge was not met. Instead, the respondent admits to running farming activities be it as a hobby than as a source of income. He keeps some animals on a small-holding. His monthly expenses with regard to this "hobby" include the following:

Tractor	R5 524.08
Gadaffi Salary	RI 200.00
Animal feed	R200.00

16. In addition the respondent owns an apartment in Margate for which his monthly expenses are as follows:

Residence	RI 802.33
Levies	R866.50
Hibuscus Municipality	R441.98

17. In argument it was conceded that the apartment in Margate was in a holiday resort.

18. The respondent's lifestyle illustrates clearly that his alleged income, in the absence of cogent proof and failure to produce income tax returns from his practice, small-holding and

holiday cottage is, in all probability not a full disclosure. His lifestyle is not that of a family man with three children and a wife. That being so the court's duty is to consider life's needs before investments and hobbies. Secondly, there is no logic to impose the burden of maintenance on the applicant whilst the respondent is free to pursue his passions.

19. 19.1 In determining the respondent's contribution towards the applicant's maintenance and upkeep as well as those of the children the court is obliged to be robust but realistic.

19.2 I accept that the family's monthly needs can be reduced in respect of the following items to the respective corresponding amounts:

Cell phone	R500.00
Facials and manicure	R300.00
Petrol	R200.00
Parking	R150.00
Holidays.	R500.00

This would take care of the respondent's criticism of the applicant's spending.

19.3 The above amount must be deducted from R26 502.00 referred to in paragraph 9 supra, leaving a total of R24 852.00 rounded off to R25 000.00.

19.4 It was argued that an allowance has to be made for the school holidays when the income from private dancing lessons is not forthcoming. It seems fair to reduce the applicant's income three months in the year (i.e. R6 000). This adjustment reduces her income from dancing from R24 000 per annum to R18 000 or Rl 500 per month. Her adjusted salary is accordingly R11 203.25 per month.

20. The result of the above exercise is that the monthly maintenance and support must be shared proportionately by the parties. This works out as follows:

Applicant's pro-rata contribution R11 000

Respondent's pro-rata contribution R14 000

21. With regard to the issue of the replacement of household furniture and appliances the court was informed during argument that the respondent had undertaken to attend to this issue. My understanding was that the respondent had undertaken to attend this issue out of court. Nothing more therefore, needs to be said about this.

22. With regard to the contribution towards costs the practice in this division has been to award R2 500 at this stage of the proceedings. I was not persuaded to depart from such practice.

23. The court was further advised that the parties had reached agreement on the important issue of primary residence of the children, joint parental responsibilities and the respondent's reasonable rights of contact with the children. I see no need for an order in this regard.

24. The following order is accordingly granted: It is hereby ordered that:

1. the respondent pay interim maintenance for the applicant and the three minor children of the marriage, viz., E P, V P and W P, in the sum of R14 000 per month;

2. the respondent pay all reasonable medical expenses, including but not limited to dental, ophthalmic, orthodontic and prescribed medical expenses of the applicant and the minor children;

3. the respondent deliver alternatively replace the "necessary household furniture and appliances" viz., washing machine, tumble drier, microwave oven, toaster, kettle, iron, iron board, vacuum cleaner, 2 x beds and 2 x mattresses, 4 x bed linen and curtains;

4. the respondent pay the school fees, costs for extra-mural activities as well as sport equipment of the said minor children and after-care costs for the said minor children;

5. the respondent pay R2 500 as a contribution to the applicant's legal costs in monthly instalments of R800;

6. all monthly payments will commence on or before 30 September, 2011 and subsequent instalments on or before the last day of each and every succeeding month.

G. WEBSTER

JUDGE IN THE HIGH COURT