

NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH**

**Case no: 4171/2016
Date heard: 24th January 2017
Date delivered: 2nd February 2017**

In the matter between:

T M

Applicant

vs

K M

Respondent

JUDGMENT

TSHIKI J:

[1] In this matter, the applicant filed an application to the above Honourable Court for an order in terms of the provisions of Rule 43 for an order *pendente lite* in the following terms:

- “1. That the application be heard as a semi-urgent application in terms of Rule 6(12) of the rules of this Court and that condonation be granted to dispense with the forms and service provided for in Uniform Rules of this Court at the hearing of the application, for an order in the following terms:
2. An order directing the respondent to make payment towards the applicant’s reasonable maintenance requirements, *pendente lite*, by payment of the sum of R12 000.00 per month, without set-off or

deduction, the first such payment to commence on the first day of the first month following the granting of an interim order herein and thereafter on or the first day of each succeeding month, into such banking account to be nominated by the applicant in writing from time to time;

3. An order directing that the respondent shall retain the applicant as a dependant member on his medical aid scheme, alternatively cover the cost of retaining the applicant as a member of a medical aid scheme offering similar benefits as the respondent's current medical aid as well as by bearing all reasonable and necessary medical not covered by the medical aid scheme, including, *inter alia*, but not limited to all surgical specialist, hospital, physiotherapy, orthopaedic, radiological, inoculation, ophthalmic, including spectacles and lenses (pathological, dental (including orthodontics) anaesthetic services, pharmaceutical services, psychological and psychiatric services, *pendente lite*.
4. An order directing respondent to continue to make payment of the following monthly expenses:
 - 4.1 The monthly instalment in settlement of Sanlam loan, BHU5[...]K;
 - 4.2 The Telkom landline account and the Nelson Mandela Bay Municipality account, including water, rates and taxes and the electricity account in respect of the property situate at [...] P. Avenue, Morningside, Port Elizabeth.
5. An order that the respondent pays an initial contribution of R25 000.00 towards the applicant's legal costs.

6. An order that the respondents pays the costs of this application.
7. That this Honourable Court grants such further and/or alternative relief as may be appropriate.”

[2] According to the applicant, the respondent and applicant were married to each other out of community of property with the application of the accrual system at Port Elizabeth on the 3rd January 2004 and the marriage still subsists. There are no minor children born of the marriage. It also follows that the marriage relationship between the couple has irretrievably broken down such that there is no reasonable prospect of the restoration of a normal marriage relationship between them.

[3] In these proceedings the applicant seeks in the main a decree of divorce, maintenance of R12 000.00 and an order that the respondent retain her on his medical aid scheme or a similar aid scheme offering similar benefits until her death or re-marriage including medical expenses not covered by such a medical aid scheme. She has also request this Court to direct the respondent to transfer ownership of the Mazda 2 motor vehicle in her habitual use into her name. She also request the Court to order half of the difference of their respective estates and settlement of a Sanlam loan in the total balance of R13 384.94 as well as costs.

[4] The respondent has opposed or defended the action and requires to file his plea and counterclaim during the course of January 2017.

[5] According to the respondent who is her husband, he is an independent contractor for Discovery and runs his business practice under the name and style of Baysure Insurance Brokers CC from their property.

[6] She left the Department of Justice in February 2008 where she was working and has been employed as her husband personal assistant and office manager for the past six years since 2006 earning a gross salary of R12 000.00 per month.

[7] She has been booked off from work and have been on sick leave for the period 31st October 2016 to 31st December 2016 in accordance with the medical certificate annexed herein as "TM1" She suffers from bipolar disorder and after a recent bout of major depression and had attempted to commit suicide. According to her the major part of her depression was as a result of the marital problems she experienced in her marriage and her inability to emotionally and psychologically deal with the stress resultant from the stress. She has now decided to end her marriage and never returned home upon her discharge from the clinic. She is now temporarily staying at the home of her daughter of a previous marriage.

[8] From what I have gleaned from the applicant's Rule 43 request, she needs maintenance from her husband. The applicant has listed her monthly needs for her to be able to survive by way of annexure "TM10" in the sum of R11 185.00.

[9] The respondent has opposed the application and has also filed his opposing affidavit.

[10] I do not agree with the respondent that the applicant has not complied with Rule 43(2) of the Rules of this Court which reads as follows:

“The applicant shall deliver a sworn statement in the nature of a declaration, setting out the relief claimed and the grounds thereof, together with a notice to the respondent as near as may be in accordance with form 17 of the First Schedule. The statement and notice shall be signed by the applicant or his attorney and shall give an address for service with eight kilometres of the office of the registrar and shall be served by the Sheriff.”

[11] In my view, these proceedings are regulated by Rule 43 in that Rule 43 regulates the procedure to be followed in applications for ancillary relief of an interim nature in matrimonial matters. The object of the rule is that applications of this kind contemplated therein should be dealt with as inexpensively and as expeditiously as possible. Prolivity in averments and the unnecessary proliferation of papers and affidavits should be avoided. The rule applied to a pending divorce action between spouses.

[12] In my view, I do not see the reason why the order sought by the applicant should not be granted, even if it is not styled as the rules request should that be the case.

[13] In the result, I make the following order:

[13.1] That the respondent is ordered as follows:

[13.1.1] Pending the finalization of the divorce between the spouses the respondent is ordered to pay to the applicant *pendente lite* as follows:

[13.1.1.1] payment to the applicant the sum of R12 000.00 per

month without set-off or deduction payable from the 1st

December 2016 and thereafter on the 1st of each month;

[13.1.1.2] retaining the applicant as a member of his medical aid scheme, alternatively by payment of a medical aid scheme offering similar benefits and payment of all medical expenses not covered by the medical aid;

[13.1.1.3] payment of the applicant's Discovery short term insurance policy;

[13.1.1.4] that the respondent is prohibited from setting off any expenses from the salary of the applicant which is dealt with here below;

[13.1.1.5] that the applicant may use the Mazda 2 motor vehicle that was in her possession and habitual use.

P.W. TSHIKI
JUDGE OF THE HIGH COURT

For the applicant	:	Adv Veldsman
Instructed by	:	Greyvensteins Inc
		PORT ELIZABETH
		Ref: Moya Rossouw/Lauren/MAT78603

For the respondent	:	Adv Jooste
Instructed by	:	McLeod Tate & Delport Attorneys
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