

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

In the matter between:

Case No: 4487/2016

R. M. V. M.

Applicant

AND

H. G. V. N.

Respondent

Coram: **Chetty J**

Heard: **14 February 2017**

Delivered: **21 February 2017**

JUDGMENT

Chetty J:

[1] Judicial proceedings for the dissolution of marital relationships invariably engender acrimony transforming the wedded couple into bitter adversaries, quintessentially over matters, monetary. This application for

maintenance *pendente lite* and a contribution towards costs, is a classic example of the centrality of pecuniary issues in contested divorce proceedings. The protagonists to this preliminary skirmish, by all accounts, enjoyed an opulent lifestyle. Although their relationship became strained and cohabitation virtually ceased, the respondent's generosity towards the applicant never diminished. By his own admission he donated a R20 million home to her and fully maintained her by paying her R40, 000.00 per month in addition to covering all her household expenses. For reasons not apparent from the papers however, his largesse decreased hence this application in which she seeks monthly maintenance of R52, 600.00, payment of all household, insurance, motor and related expenses and a contribution towards costs in an amount of R350, 000.00.

[2] The application is resisted primarily by reason of the exorbitance of the cash component of the maintenance claimed and her alleged non entitlement to a costs contribution given the valuation of her residence. In determining the legitimacy of the competing submissions advanced on behalf of the parties, it is instructive to refer to the factors enumerated in s 7 (2) of the ***Divorce Act***¹. It provides as follows: -

“(2) In the absence of an order made in terms of subsection (1) with regard to the payment of maintenance by the one party to the other, the court may,

¹ Act No 70 of 1979

having regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, their conduct in so far as it may be relevant to the break-down of the marriage, an order in terms of subsection (3) and any other factor which in the opinion of the court should be taken into account, make an order which the court finds just in respect of the payment of maintenance by the one party to the other for any period until the death or remarriage of the party in whose favour the order is given, whichever event may first occur.”

[3] Apropos the foregoing, Van den Heever J articulated her approach hereanent in **Nilsson v Nilsson**², thus: -

“A proper weighing of all these factors is important to counterbalance the inherent immorality that could follow were the sole or even the main criterion for a claim for maintenance to be the plaintiff's need or ability to maintain herself. Had the Legislature intended to preserve the common law and limit maintenance in accordance with a wife's ability to maintain herself (cf Professor Andreas van Wyk THRHR vol 43 (1980) at 433) the Divorce Act could encourage immorality in many ways. It could then be the middle-aged libertine's charter of freedom. A man could throw out the woman who had shared his bed, ran his home, and reared his children, after twenty years or so, replacing her with something younger and prettier, and claim that his wife is not entitled to maintenance because during twenty years of minding his home and family she had also earned money outside that home (which

² 1984 (2) SA 294 (C) at 297B-F

she had, as in law and duty bound, contributed towards the maintenance of the home and its inhabitants) and could now that the children were off her hands work that much harder. On the other hand it would be equally unjust that an indigent woman unable to earn much money could marry a wealthy man, walk out of her wifely duties and try to use him as a meal-ticket for life. In short, where an order of divorce is now obtainable without regard to fault, the Courts can and should use s 7 to ensure that, where there can be no equitable division of capital assets because there was no community nor sufficient antenuptial settlements to ensure fairness, the parties are treated fairly vis-à-vis one another."

[4] The second scenario postulated in *Nilsson* is clearly not of application. In *casu*, the parties had been married for twenty-six years and her contribution to the upkeep of the common home is admitted. It is not in issue that the respondent is unable to pay the maintenance claimed or the contribution for costs sought. As adumbrated, the resistance is premised on the supposition that she is a spendthrift with an invaluable asset base. The difficulty I have with the submission made is two-fold – firstly, the respondent's generosity itself placed the applicant in a position where she would want for nothing. Consequently, she became accustomed to a lifestyle in conformity with their status and she is therefore entitled to be maintained *pendent lite*, consonantly, as the wife of a wealthy man. A perfunctory reading of the opposing affidavit reveals no rational basis for the unilateral reduction of the cash component of her

maintenance and an order that the *status quo ante* be restored will emplace the applicant in the lifestyle hitherto enjoyed. The increased amount now sought, is, regard being had to annexure "RM1", and in particular the expenses detailed therein under the rubrics, "**Entertainment**" and "**Holidays**", however, clearly exorbitant.

[5] Secondly, the mere fact that the applicant is the owner of a home of considerable value is a *non sequitur*. She is sixty-six years of age and has been happily ensconced in her home for almost a decade. To now contend that she realize her only asset to fund the litigation is iniquitous. It is common cause that the respondent's particulars of claim make no provision for payment of any maintenance to the applicant. This very issue will perforce fall for determination by the trial court and in order for her to properly present her case, she is entitled to be placed in a position to instruct her legal representatives, albeit not in the amount that she seeks. It is not in issue that her indebtedness to her attorney is substantial. Having due regard to the cost considerations enumerated in her founding affidavit, an award commensurate with the order I propose would be appropriate.

[6] In the result the following order will issue:-

1. The respondent is ordered, pending the finalisation of the divorce action, to maintain the applicant as follows:
 - 1.1 payment by electronic transfer of an amount of R40,000.00 per month into the applicant's nominated banking account,
 - 1.2 payment of her medical aid premium,
 - 1.3 rates and taxes on her immovable property,
 - 1.4 the monthly levies in respect of her immovable property,
 - 1.5 insurance in respect of her immovable property, household contents; and motor vehicle,
 - 1.6 electricity to the value of R3,000.00 per month,
 - 1.7 the domestic worker's salary, and
 - 1.8 life policies of which she is the owner.
2. The respondent is ordered to pay the applicant's attorneys of record an amount of R200, 000.00 as a contribution towards her legal costs.
3. The costs of this application are to be paid by the respondent.

D. CHETTY

JUDGE OF THE HIGH COURT

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