

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

CASE NO.: 2526/2016

In the matter between:

N. P. B.

Applicant

And

L. L. B.

Respondent

JUDGMENT: RULE 43 APPLICATION

BESHE J:

[1] This is an application wherein an order for interim maintenance as well as contribution to costs is sought in terms of *Rule 43 of the Uniform Rules* of this court. Some of the issues in the divorce action between the parties have been settled. Outstanding for determination later is the issue of the division of the parties' joint estate. Applicant who is the plaintiff in the divorce action seeks maintenance for the parties' three children, contribution to her costs of litigation as well as other ancillary orders pertaining to maintenance. Both parties presented me with draft orders for the respective orders they are contending for.

[2] From the said orders it is clear that parties are miles apart as to what will amount to reasonable requirements on the part of the applicant and the parties' children.

[3] Even though the capacity of the respondent to meet these requirements is one of the factors to be taken into account, I did not understand respondent's case to be based on an assertion that he is not possessed of means to meet the applicant's requirements. Respondents' case was characterised by an attack on the reasonableness / necessity of applicant's requirements. He also asserts that he takes care of some of items required by applicant for example, he gives the children pocket money, pays for aftercare. This is not common cause between the parties. Respondent also takes issue with applicant's claim for him to contribute towards rent for the house she and the children stay in, contending that they can move into the parties' townhouse which like the matrimonial home is situated in Summerstrand. It is common cause that at the time applicant moved out of the parties' matrimonial home the said townhouse was not available for occupation by her as it was tenanted at the time.

[4] It transpires that applicant is locked in a lease agreement in respect of the property she is renting. Indications are also that this townhouse is not nearly as spacious and anything close to the family home respondent remained in. In my view it would eliminate the dispute of whether or who pays for which items – i.e. aftercare, if same were to be included in the order for maintenance *pendete lite*.

[5] I am not persuaded that the attack on applicant's requirements for herself and the parties' children is justified or has merit.

[6] It is indeed so that papers filed in this application were prolific. This offends against what is envisaged in *Rule 43*. Apart from the brochure of 28 Melsetter Estate that was annexed by the respondent, in my view it

cannot be said that the allegations / averments contained in the parties' affidavits were irrelevant. Whilst courts frown upon proliferation of papers in applications of this nature, I am of the view that it was in the nature of this particular application that the information the parties placed before me be so placed and that it was relevant for proper adjudication of the matter.

[7] For the reasons stated above, it is my considered view that applicant has made out a case for the order that she contends for. Accordingly there will be an order in terms of applicant's draft marked 'X' dated 1 March 2017.

**N G BESHE
JUDGE OF THE HIGH COURT**

APPEARANCES

For the Applicant : Adv: S Potgieter

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For the Respondent : Adv: KD Williams

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Date Heard : 28 February 2017

Date Reserved : 28 February 2017

Date Delivered : 1 March 2017