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NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

In the matter between:

Case No: 4273/2017

C. R. B.

Applicant

And

H. T. B.

Respondent

Coram: **Chetty J**

Heard: **24 April 2018**

Delivered: **10 May 2018**

JUDGMENT

Chetty J:

[1] Rule 43 of the Uniform Rules of Court is intended to provide a streamlined and inexpensive procedure for maintenance *pendente lite*, a contribution towards the costs of a pending matrimonial action, interim custody of any child and interim access to any child. It has over the aeons generated inestimable judgments, where, in clear and lucid language, the objects and import of the rule are delineated, but, despite the caveats expressed therein, it continues to befuddle. The indexed and paginated papers number one hundred and sixty one (161). It spawned an application in terms of Rule 43(5) and a reply thereto of a further one hundred and thirty six (136) pages. The applicant's heads of argument and annexures number a further sixty six (66), in total a three hundred and sixty three (363) ream, pertaining to a marriage contracted during 2010.

[2] The introduction of the additional volume of papers is sought to be admitted pursuant to the provisions of Rule 43(5) which provides that “**a court may hear such evidence as it considers necessary and may dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision**” The applicant's contention that justice demands its reception is without foundation and requires no further deliberation. Both it, and the reply thereto, is struck out and the attendant costs are to be borne by the applicant.

[3] The applicant seeks tripartite relief, viz relocation costs of R60, 999.00, maintenance *pendente lite* of R60, 000.00 per month and a contribution towards her legal costs in the amount of R150, 000.00. Her entitlement to the latter, she contends, arises from the fact that given the span of the relationship between herself

and the respondent, i.e. twenty-seven (27), it gave rise to a universal partnership. Its exact parameters consequently require investigation and so too her co-trusteeship of a raft of trust deeds. I have grave doubt whether, given the adulterous nature of her relationship with the respondent that her claim is cognisable in law, but, given her impecuniosity, she is entitled to a contribution towards costs, albeit not on the inflated scale advanced.

[4] Although the applicant states that she is resident in the communal home, it is not in issue, despite her protestations to the contrary, that she no longer does so. Her reticence to reside in the Tinkerbell Trust property, 11 Swallows, is actuated by grandiosity and cannot be countenanced. It is common cause that she is a co-trustee of the Tinkerbell Trust, that the house is fully furnished and inhabited solely by her mother. There is no satisfactory reason advanced why she cannot reside therein pending the resolution of the divorce proceedings.

[5] The applicant's claim for maintenance *pendente lite* is tabulated under various heads in annexure "LB5" to her founding affidavit and, with reference thereto, she seeks, a globular sum of R60,000.00 per month. In argument before me, Mr *Swanepoel* conceded that certain of the expenses impelled reduced amounts but that given their lifestyle, the amount sought was not extravagant. The respondent's refusal to accede to the applicant's plea for any maintenance whatsoever establishes that he is a scrooge. His claim to penury is contrived and I am satisfied that the applicant is, given her current unemployment, entitled to an award of maintenance. In the result the following orders will issue:

1. The respondent is ordered to pay the applicant the sum of R35, 000.00 per month in respect of maintenance *pendente lite*.
2. The respondent is ordered to continue to maintain the applicant as a beneficiary on his medical aid and to pay all her reasonable medical and dental costs, *pendente lite*.
3. The respondent is ordered to permit the applicant the exclusive use of the Hilux Toyota bearing the registration letters and numbers [...] and to ensure its regular service.
4. The respondent is ordered to make a contribution to the applicant's legal costs in the sum of R50, 000.00.
5. The costs of this application are costs in the divorce.
6. The application in terms of Rule 43(5) is dismissed with costs.

D. CHETTY

JUDGE OF THE HIGH COURT

Obo the Applicant:	Adv M.G. Swanepoel SC / Adv S. Potgieter
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Obo the Respondent:	Adv M. Barnard
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