

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

Case No: 3278/2019

In the matter between:

D[...] D[...] W[...]

Applicant

And

D[...] A[...] W[...]

Respondent

JUDGMENT

BESHE J:

[1] This is an application in terms of *Rule 43 of the Uniform Rules* of this court. The provisions of this rule are as follows:

43 Matrimonial matters

(1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

*(a) Maintenance **pendente lite**;*

(b) a contribution towards the costs of a pending matrimonial action;

(c) interim custody of any child;

(d) interim access to any child.

[2] The parties in this matter are married to each other out of community of property with inclusion of the accrual system since 15 June 2001. They are parents to a daughter who is ten (10) years old

[3] The applicant (wife) seeks relief in the following terms:¹

“21.1. That the minor child shall reside primarily with the applicant, who shall be her primary caregiver pendente lite;

21.2. That the respondent shall pay maintenance for the applicant and the minor child pendente lite as follows:

21.2.1. An amount of R20 000 per month, the first payment to be made within ten days of this order and thereafter on or before the 1st day of each subsequent month;

21.2.2. A relocation amount of R20 000, payable in two instalments of R10 000 each. The first payment to be made within ten days of this order and the second one month later.

21.3. That the respondent be ordered to make a contribution towards the applicant’s legal costs in the amount of R103 000.00, payable directly to the applicant’s attorney, ANNALI ERASMUS INC with banking account at NEDBANK, Newton Park (Branch number 198765), account number 103[...] using reference number: MAT12226 in instalments of R 15 000,00 per month until the full amount has been paid. The first payment to be made within 10 days of this order;

21.4. I have no objection if my undertaking to continue to pay the respondent’s medical aid until the finalization of our divorce is noted;

¹ Paragraph 21 of the founding affidavit, page 10 of the indexed papers.

21.5. That the respondent pays the costs of this application.”

[4] It is common cause that applicant has instituted divorce proceedings against the respondent. That respondent has filed a notice to defend the action. At the time of launching of this application the parties were residing at their matrimonial home. It is common cause that arrangements were underway for the applicant to move out of the house together with the parties' minor child.

[5] Even though the respondent is opposing the application and contending for the dismissal thereof, I did not understand him to be opposed to the minor child residing primarily with the applicant *pendente lite*.

[6] As regards the other prayers sought by the applicant, as is usually the case in applications of this nature, the disagreement is about the reasonableness or otherwise of the amounts sought by the applicant. This also has to do with the question whether respondent will afford the amounts claimed.

[7] According to the applicant, her Nett salary is R17 667 per month. She lists what is said to be essential expenses to be totalling R40 055.00. She contends that some of this can be divided by half resulting in the minimum amount required for essential expenses being R35 305. She further lists what is termed expenses that are not essential but which are in the minor's best interest which amount to R2 286.00. Those, even though they could be seen as luxury, but have been enjoyed by the applicant and the minor child amounting to R5 590.00. The difference between applicant's salary and what is said to be her reduced essential expenses is said to be R16 138.00. She accordingly asks for an order for an amount of R20 000.00 per month for her

maintenance and that of the minor child. Plus a relocation amount of R20 000.00 as indicated earlier. The latter prayer was later abandoned.

[8] The respondent does not deny that he earns a nett salary of ± R27 000.00 per month and receives bonuses which are dependent on the financial situation of the company for which he works. He lists his monthly expenses and points out that he has a monthly shortfall of ± R9 510.00. Included in his listed expenses is maintenance and upkeep for the applicant and their minor child. In her submission that respondent is in a position to pay maintenance *pendente lite* and make a contribution towards her legal expense, applicant makes the point that in addition to his monthly salary respondent has two bond free houses one of which is rented out for approximately R6 000.00 per month. He has an investment account with Standard Bank which, some time ago, had a balance of over R1 million. This is not denied by the respondent.

[9] According to the respondent, there is no need for the applicant to relocate as they have been sleeping in separate bedrooms for the past three years.

[10] Listed amongst the applicant's expenses are items in respect of repayment of loans. Respondent denies that these loans were obtained to keep the household afloat as applicant asserts. He attributes the loans to the applicant's unhealthy gambling habit. He also denies that the amounts claimed by the applicant are reasonable. This also applies to the contribution towards the applicant's legal costs of R103 000.00 which he says is unreasonable and excessive. He also complains that the applicant has not provided a *pro-forma* bill of costs. That the pleadings have just closed and no trial date has yet been allocated.

[11] The bulk of respondent's attack on the figures provided by the applicant is that she does not spend on those items because they stay in the same

house and he picks up the bill for those expenses. For example, she does not pay any rent because she stays at their matrimonial home. He pays for electricity and water. But the reality is that applicant has since moved out of the common home. Even from his say so, applicant was in the process of moving or preparing to do so at the time of the launching of the application.

[12] Applicant lists her monthly expenses, projected or actual as *inter alia*:

R7 000.00 for rent and water.

She spends ± R10 000.00 on groceries. I take it that would have been for the whole family at the matrimonial home.

Half of the minor child's school fees and aftercare fees: R1 300.00.

Electricity: R500.00.

Domestic helper: R2 460.00.

Medical aid: R7 598.00, which she tenders to continue paying until the divorce is finalised.

A ballpark figure of these amounts as the expenses that should be paid by the applicant or as her share of the expenses already amounts to approximately R17 500.00. This excludes applicant's motor vehicle expenses, the minor child's extra-mural activities, the minor's hair care, clothing, pet food, minor child's birthday parties, repayments of debts, cell phone, DSTV etc. I am of the view that the R20 000.00 sought by the applicant for maintenance in respect of her and the minor child is reasonable in the circumstances.

[13] I am also of the view that the respondent is possessed of means to be able to afford this amount. As indicated earlier, he does not deny that he has a substantial amount in an investment account held with Standard Bank.

[14] Respondent does not deny that the applicant is entitled to a contribution towards her legal costs which she cannot afford. It appears to be common cause or at least not denied that there is an amount of some R22 000.00 owing to her attorneys relating to the divorce action between the parties. She estimates that her attorneys' professional fees and disbursements up to and including the first day of trial will amount to approximately R50 000.00 and counsel's fee up to and including the first day of trial to be ± R30 000.00. Unfortunately these are mere estimates without any *pro forma* of the projected fees. In my view, a contribution of R70 000.00 towards applicant's legal fees will be appropriate. It is my considered view that granting the applicant the relief she seeks will contribute to ensuring that the best interests of the parties' minor child are catered for.² Not only that, contributing to applicant's legal costs will ensure her of the right to equality as provide for by *Section 9 of the Constitution* in particular *Subsection (1)* which provides that "*Everyone is equal before the law and has the right to equal protection and benefit of the law*".

[15] Accordingly, the following order will issue:

- 1. That the minor child shall reside primarily with the applicant, who shall be her primary caregiver *pendente lite*;**
- 2. That the respondent shall pay maintenance for the applicant and the minor child *pendente lite* in the amount of R20 000 per month, the first payment to be made within ten days of this order and thereafter on or before the 1st day of each subsequent month;**
- 3. That the respondent be ordered to make a contribution towards the applicant's legal costs in the amount of R70 000.00, payable directly to the applicant's attorney, ANNALI ERASMUS INC with banking account at**

² See Section 28 (2) of the Constitution.

NEDBANK, Newton Park (Branch number 198765), account number 103[...] using reference number: MAT12226 in two equal payments. The first payment to be made within 10 days of this order and the second payment to be made on or before the 30 July 2020;

4. The applicant's undertaking to continue to pay the respondent's medical aid until the finalisation of the divorce action, is noted;

5. That the respondent pays the costs of this application.

**NG BESHE
JUDGE OF THE HIGH COURT**

APPEARANCES

For the Applicant	:	Adv: Crouse
Instructed by	:	ANNALI ERASMUS INC 11 Bird Street PORT ELIZABETH Ref.: A Erasmus/DIV/MAT12226 Tel.: 041 – 820 0455
For the Respondent	:	Adv: Rossi
Instructed by	:	GREYVENSTEINS INC. St George's House 104 Park Drive PORT ELIZABETH Ref: T Labuschagne/sb/MAT106818 Tel.: 041 – 501 5500
Date Heard	:	2 June 2020
Date Reserved	:	2 June 2020
Date Delivered	:	9 June 2020