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IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No. 5150/2022

In the matter between:

J[...] M S[...]

APPLICANT¹

And

P[...] G S[...]

RESPONDENT²

CORAM:

GUSHA, AJ

HEARD ON:

20 APRIL 2023

DELIVERED ON:

This judgment was delivered electronically by circulation to the parties' representatives by way of

¹ Defendant in the main action.

² Plaintiff in the main action.

email. The date and time for delivery is deemed to be at 12h00 on 28 April 2023.

JUDGMENT

- [1] This is an opposed application in terms of Rule 43 of the Uniform Rules of Court for relief *pendente lite*.
- [2] The parties were married to each other in community of property on the 20th February 1999 which marriage still subsists. The couple share a 9 year old a boy. The respondent instituted divorce proceedings against the applicant. That action under case number 3678/2022 is still pending before this court.
- [3] In her founding affidavit the applicant sought financial relief *pendente lite* in respect of herself and the minor child as well as an order *pendente lite* relating to the parental rights in respect of the minor child. She seeks maintenance in the amount of R18 600.00 per month in respect of herself and R8000.00 per month in respect of the minor child. Further that the respondent retains her and the minor child as defendants on his medical aid scheme and that he be liable for all medical, dental, ophthalmic and pharmaceutical costs not covered by the medical aid. She also seeks a contribution in respect of her legal costs in the amount of R15 000.00.
- [4] It is manifest from the record that this matter has some history. It was originally set down for hearing on the 9th February 2023 and on the 23rd February 2023. On both dates Tsangarakis AJ postponed the matter and ordered the respondent to file his supplementary affidavit, this order however, to date remains unsatisfied.
- [5] On the 20th April 2023 it was allocated to me for hearing on the opposed roll. By agreement between the parties, the hearing proceeded on the financial relief sought *pendente lite* and the parental rights stood over for later adjudication.
- [6] It is common cause that the applicant is self –employed as a businesswoman and earns R10 000.00 per month. Due to the breakdown of the marriage she

vacated the matrimonial home and secured a rental property. Her monthly living expenses inclusive of the minor child's amount to R26 000.00 leaving her with a monthly shortfall of R16 000.00.

[7] The employed and earns a monthly salary of approximately R30 000.00 excluding production bonuses. He listed a monthly expenditure of R53 990.00 which leaves him with a monthly shortfall of R24 990.00. His listed income and expenditure, when objectively viewed against his bank statements paint a picture of someone who inflated his expenses and understated his income.

[8] Rule 43 of the Uniform Rules of Court provides as follows:

(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 matrimonial action, pending or about to be instituted;

(c) Interim care of any child;

(d) Interim contact with any child

[9] An application in terms of Rule 43 is interlocutory in nature and the purpose thereof is to provide relief in the interim pending the main action. It is common cause that the rule emanated from the position that a claimant, usually a woman, found themselves destitute when litigating against their spouse, who were often in a stronger, financial position than themselves in divorce proceedings³.

[10] In **Taute v Taute**⁴ the court held that there is no general principle upon which an application under Rule 43 can or must be based. Each case must depend on its own particular facts. The court further held that a claimant for maintenance *pendente lite* was not entitled as of right, and without more, to maintenance sufficient to keep him or her in the same lifestyle as that enjoyed during the

³ B.R v D.R (14189/22) [2023] ZAWCHC 59 (17 March 2023).

⁴ 1974 (2) SA 675 (E).

marriage. The applicant spouse, normally the wife, is entitled to reasonable maintenance *pendente lite* dependent upon the marital standard of living of the parties, her actual and reasonable requirements and the capacity of her husband to meet such requirements which are normally met from income although in some circumstances inroads on capital may be justified.

[11] The respondent is clearly in a far better financial position than the applicant and must make a financial contribution *pendente lite* towards her upkeep as well as that of their minor son. I am however not persuaded that that financial assistance, in respect of the applicant, amounts to R18 000.00 per month. I hold the view that that amount, objectively viewed against the backdrop that she also wants the respondent to keep her on his medical aid, is exorbitant.

[12] With regards to the minor child, I broached with counsel the subject of making an order for a globular amount seeing as the parties are embroiled in an acrimonious divorce. I held the considered view that this would mitigate the acrimony and friction between the parties, if only in respect of the wellbeing of the minor child. Both counsel were amenable to that and I am indebted to them.

[13] In conclusion, the respondent is clearly in a far better financial position than the applicant and must make a financial contribution *pendente lite* towards her upkeep as well as that of their minor son.

[14] I am satisfied that the amount sought as a contribution is not only reasonable but would also go a long way to ensure that the applicant, in the main action, litigates on a similar footing with respondent. In **Cary v Cary**⁵ The court held:

“...applicant will not enjoy equal protection unless she is equally empowered with 'the sinews of war'. The question of protecting applicant's right to and respect for and protection of her dignity also arises in the present situation, where a wife has to approach her husband for the means to divorce him.”

[15] In the circumstances I make the following order:

⁵ 1999 (3) SA 615 (C); [1999]2 All SA 71 (C).

IT IS ORDERED *PENDENTE LITE* THAT:

1. The respondent shall pay spousal maintenance to the applicant in the amount of R3 500.00 per month with effect from 7th May 2023.
2. The Respondent shall pay maintenance in respect of the minor child in the sum of R8 000.00 per month with effect from the 7th May 2023.
3. The respondent shall retain the minor child as a defendant on his medical aid and shall pay for all reasonable and necessary medical, ophthalmic and pharmaceutical costs not covered by the medical aid.
4. The respondent shall make a contribution towards the applicant's legal costs in the amount of R10 000.00.
5. Costs of this application shall be costs in the main action.

NG GUSHA, AJ

On behalf of the applicant

Instructed by:

Adv. GJ VAN RENSBURG

Anton Kruger Attorneys

VIRGINIA

On behalf of the respondent:

Instructed by:

Adv. MC PIETERSE

KRUGER VENTER ATTORNEYS

BLOEMFONTEIN