

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

Case No. 1337/2023

In the matter between:

T[...] V[...] W[...]

APPLICANT

and

RESPONDENT

C[...] J[...] V[...] W[...]

CORAM:

GUSHA, AJ

HEARD ON:

20 APRIL 2023

DELIVERED ON:

This judgment was delivered electronically by circulation to the parties' representatives by way of email and by release to SAFLII. The date and time for delivery is deemed to be at 12h00 on 28 April 2023.

JUDGMENT

[1] The parties were married to each other on the 22 September 2007 out of community of property and with the application of the accrual system, which marriage still subsists. Two minor boys, aged 11 and 8 years were born of the marriage. Their life-boat however, is on the verge of sinking and they are now headed for divorce. That action is pending before this court.

[2] As a sequel thereto, the applicant approached this court seeking relief under Rule

43 for maintenance *pendente lite* in respect of herself and the 2 minor children.

[3] There is no dispute, *pendente lite*, between the parties regarding the minor children's primary care and contact.

[4] In the notice of motion the relief sought is set out as follows;

1. That the parental responsibilities and rights with regards to the care of the minor children as contemplated in Section 18(2)(a) of the Children's Act, 38 of 2005, be awarded to both parties;
2. That the primary residency of the minor children be awarded to the applicant *pendente lite*;
3. That the specific parental responsibilities and rights in respect of contact with the minor children as contemplated in Section 18(2) (b) of the Children's Act, Act 38 of 2005, be awarded to the Respondent in the following manner:
 - 3.1. Contact on alternative weekends from 17h00 on a Friday to 17h00 on a Sunday;
 - 3.2. Public holidays to alternate between the parties;
 - 3.3. Short school holidays to alternate between the parties and all long school holidays to be divided equally between the parties on the basis that the minor children will spend an alternative December holiday for Christmas with the alternate party;
 - 3.4. At least three (3) hours of contact to be awarded to the Respondent on the birthday of a minor child and that of the Respondent.
 - 3.5. Contact on Father's Day from 09h00 to 17h00 if this day does not coincide with a normal access weekend;

3.6. Reasonable telephonic contact.

4. That the parental responsibilities and rights with regards to the guardianship of the minor children as contemplated in Section 18(2) (c) and 18(3) of the Children's Act 38 of 2005, be awarded to the parties jointly.
5. That the Respondent will pay maintenance pendente lite towards the Applicant in respect of the minor child at the rate of R7 000.00 per month per child.
6. That the Respondent be liable for all medical, dental, ophthalmic and pharmaceutical costs of the minor children not covered by the medical aid.
7. That the Respondent pays maintenance to the Applicant in the amount of R18 000.00 per month.
8. That the Applicant retains assets as set out in Annexure "B" as her sole property, alternatively, that the Respondent pays R150 000.00 towards the Applicant's furniture and household purchases within 7 days of this order:
9. Cost of this application to be cost in the main action.
10. Further and/or alternative relief.

[5] In addition she also seeks a contribution towards her legal costs in the divorce action in the amount of R10 000.000.

[6] It is common cause that the applicant is employed and earns a monthly salary of R17 208.86. She submits that she has no other income or savings to utilize in order to cater for her and her minor children's needs. Further that it is not in the interests of the minor children or herself to continue residing with the respondent in the communal home, as such she has to vacate the communal home.

[7] In her founding affidavit she stated the following expenses to be her and

the children's monthly expenses *pendente lite*;

8.1.1.	Lodging	R12000.00
8.1.2.	Water &Electricity	R15000.00
8.1.3.	Security	R456.77
8.1.4.	Short-term insurance	R600.00
8.1.5.	Groceries	R2000.00
8.1.6.	Meat, fish and chicken	R1200.00
8.1.7.	Fruit and vegetables	R1000.00
8.1.8.	Bread, milk and daily purchases	R1000.00
8.1.9.	Cleaning materials	R600.00
8.1.10.	Clothing - myself	R1000.00
8.1.11.	Clothing - children	R1200.00
8.1.12.	Hair care - me	R430.00
8.1.13.	Hair care -minor children	R200.00
8.1.14.	Skincare myself and the children	R400.00
8.1.15.	Pharmacy and toiletries	R1200.00
8.1.16.	Nails	R930.00
8.1.17.	Vehicle installment	R6750.24
8.1.18.	Fuel	R1000.00 R664.00
8.1.19.	Vehicle insurance	R530.00 R1550.00
8.1.20.	Cellphone	
5.1.21.	School activities	

5.1.22.	Books and stationery	R300.00
5.1.23.	Domestic worker	R4500.00
5.1.24.	DSTV	R900.00
5.1.25.	Annuities	R665.50
5.1.26.	Life insurance	R448.76
5.1.27.	Personal loan	R1325.07
5.1.28.	Credit card	R1500.00
5.1.29.	Pinn-African motor	R253.91
5.1.30.	Dinnguard motor	R121.00
5.1.31.	Banking costs	R303.00
5.1.32.	Au pair	<u>R3000.00</u>
TOTAL		R49 528.25

- [8] She submitted that the aforesaid expenses were her and the children's normal expenses and that none were exorbitant. In the founding affidavit she sketched a picture of a comfortable lifestyle enjoyed by the parties, as evinced, amongst others, by the use of an au pair and the applicant's regular grooming and or beauty treatments.
- [9] She further submitted that if regard is had to her income and the aforesaid monthly expenses, her monthly short-fall amounts to R32 328.25. Further that the respondent is a man of means and could afford the financial relief she seeks *pendente lite*.
- [10] The respondent opposes this application in so far as it relates to the financial relief sought *pendente lite*.
- [11] He submitted that he has always maintained his family, even after the main action was instituted and continues to pay for the monthly expenses. He placed the following financial position before the court; he is gainfully employed and earns

R43 848.70 per month. Additionally he owns an accounting business which generates an approximate monthly turn-over of R20 850.00. He also conducts a farming enterprise with his brother, which business is operating at a loss. He furthermore, in the interests of the minor children, offered to vacate the communal home and seek alternative accommodation.

[12] He made the following tender *pendente lite*,

- (a). R7500.00 per month in respect of maintenance for the applicant.
- (b). R3500.00 per month per minor child
- (c). continue to pay the monthly bond for the communal home in the sum of R19 632.20 per month, as well as pay for the rates and taxes.
- (d). continue to pay the insurance
- (e). payment of school uniforms, school books, extramural activities in respect of the children, if applicable.
- (f). payment of the applicant's monthly medical aid premium as well as all reasonable and necessary medical, ophthalmic and pharmaceutical costs not covered by the applicant's medical aid.
- (g). a contribution of R5000.00 towards the applicant's legal costs in the main action, to be paid in 5 equal monthly instalments.

[13] 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

[14] 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 proceedings¹.

[15] In **Taute v Taute**² 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 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.

[16] *In casu*, the respondent is not shirking away from his responsibilities, right off the bat he offered to continue carrying some of the communal expenses, vacate the communal home and even carry some of the applicant's own expenses. In fact the respondent went further than that and offered to pay maintenance *pendente lite* to the applicant when she by her own admission is gainfully employed. When regard is had to everything that the respondent has tendered, a picture that emerges is that the applicant would be left with minimal, if any, monthly shortfall.

[17] Having said that, I am alive to the fact that the respondent has more financial resources than the applicant, I am not persuaded that the tender made of R5000.00 would ensure that parity of arms in the divorce action would obtain, to

¹ B.R v D.R (14189/22)[2023] ZAWCHC 59 (17 March 2023).

² 1974 (2) SA 675 (E).

that end 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**³ 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."

[18] Having had regard to the applicant's stated monthly income and expenditure, the respondent's earning capacity and the tender he made, I hold the considered view that the tender made by the respondent reasonable in the circumstances.

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

IT IS ORDERED *PENDENTE LITE* THAT:

19 .1. The respondent shall monthly pay spousal maintenance to the applicant in the amount of R7500.00 with effect from 7th May 2023.

19.2. The Respondent shall pay maintenance in respect of the 2 minor children in the sum of R3500.00 per month per minor child with effect from the 7th May 2023.

19.3. The respondent shall continue to pay the monthly bond for the communal home in the sum of R19 632.20 per month, as well as pay for the rates and taxes.

19.4. The respondent shall continue to pay the monthly premiums for the short-term and vehicle insurance in the sum of R600 and R664 respectively.

19.5. The respondent shall pay for the school uniforms, school books, and extramural activities in respect of the children, if applicable.

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

19.6. The respondent shall pay the applicant's monthly medical aid premium as well as pay for all reasonable and necessary medical, ophthalmic and pharmaceutical costs not covered by the applicant's medical aid.

19.7. The Respondent shall make a contribution towards the Applicant's legal costs in the amount of R10 000.00.

19.8. Costs of this application shall be costs in the main action.

NG GUSHA, AJ

On behalf of the applicant Adv. J.C. Kotze

Instructed by: Honey Attorneys
BLOEMFONTEIN

On behalf of the respondent: Adv. J. Els

Instructed by: EG Cooper Majiedt Inc
BLOEMFONTEIN