

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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: 1143/2023

In the matter between:

C[...] H[...] G[...]

Applicant

and

A[...] C[...] G[...]

Respondent

HEARD ON: 28 April 2023

CORAM: RAMDEYAL, AJ

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on **4 May 2023**. The date and time for hand-down is deemed to be **4 May 2023 at 15: 00**.

[1] This is an application for payment of maintenance *pendent lite* and contribution towards costs in terms of Rule 43 of the Uniform Rules of Court.

[2] Both parties were married to each other on 27 May 2006 out of community of property and with the exclusion of the accrual system.

- [3] The applicant seeks maintenance in the amount of R5 200.00 per month as well as R10 000.00 towards costs. She further requires medical aid and the continued use of the Corsa utility vehicle in her possession.
- [4] The respondent has no objection to the applicant's continued use of the vehicle and submits that she can keep same as her sole and exclusive property. He is willing to contribute towards the legal fees of the applicant in the amount required, being R10 000.00 He is further willing to pay her medical aid contribution as required. He is not in a position to pay the monthly maintenance amount of R5200.00 as he is unable to do so as he no longer has the means to pay.
- [5] Both parties have been separated for 2 years and their divorce action in most respects appears amicable. The respondent did pay maintenance to the applicant in the amount of R5000 per month and stopped paying this amount in February 2023 as his means changed.
- [6] The applicant's expenses are set out in paragraphs 7.1 and 7.2 of her founding affidavit. Her nett salary together with the rental she receives for a townhouse is a total of R15 460.38. Her deficit is approximately R8289.62; hence she seeks maintenance in the amount of R5200.00 and medical aid payment in the amount of R2 990.00 to cover the deficit.
- [7] Counsel for the respondent has submitted that the applicant could live in her townhouse to lower her expenses by R2500.00 Counsel for the applicant has submitted that applicant's expenses are reasonable and not exorbitant.
- [8] The purpose of interim maintenance is to supplement expenses which the applicant cannot meet but in terms of Rule 43 such maintenance must be reasonable in the circumstances, depending on the marital standard of living of both the parties, the applicant's actual and reasonable requirements and the capacity of the respondent to meet the requirements.¹

¹ Botha v Botha 2009 93) SA 89 (WLD) at 106 C.

- [9] The respondent paid maintenance in the amount of R5000.00 during their separation for about 2 years, he stopped paying that amount only about 2 months ago as he cannot afford to and his income and expenses show a huge deficit of about R33 000. He is, however, willing to pay legal costs for the applicant and her medical aid.
- [10] Counsel for the applicant submitted that if the respondent is willing to pay medical aid and legal costs of R10 000.00 then he does have money and can pay maintenance as well, as the respondent has not submitted actual proof of his inability to pay.
- [11] In this particular matter that comes before me there are no bank statements or documentation as such except for the list of income and expenses provided in the affidavits of both the parties.
- [12] What is before me on paper is a shortfall in respect of both parties in respect of their income and expenses. It does appear probable that the respondent is unable to pay the amount of R5200.00 as he did pay an amount of R5000.00 for some time and it is apparent that it was on his own will. However, the respondent is willing to pay the medical aid fee as well as provide the applicant with full use of the vehicle in question and contribute to her legal costs.
- [13] The only way to decide these issues is based on the papers before me which may be to draw inferences and to look to the probabilities as they emerge from the papers.²
- [14] The claim supported by the applicant is reasonable and moderate and does carry more weight than one which includes extravagant and extortionate demands-similarly more weight will be attached to the affidavit of the

² Levin v Levin and Another 1962(3) SA 330 W at page 331 D.

respondent who evinces a willingness to implement his lawful obligations and not seeking to evade them.³

[15] The applicant displays reasonable and moderate claims and so too the respondent evinces a willingness to implement his lawful obligation by agreeing to make certain contributions. It appears improbable that in light of these factors that the respondent would have stopped paying maintenance unless he actually could not afford to do so.

[16] It would have been preferable had the respondent produced a full financial disclosure explaining why he is unable to pay the required amount rather than showing a huge deficit on paper without any proof of same. The court too would have been in a better position to assess the respondent's financial position and to make an order based on an informed decision if there was transparency⁴ The same applies to the applicant, documentation and bank statements from her would have enabled transparency. Her pay slip, Annexure 'A' of the court papers, however, is noted.

[16] The applicant is employed and does receive further income from a rented property. In my view with some assistance from the respondent she will be able to find relief in the interim. Both parties have some expenses that they can reduce.

[17] I therefore make the following order:

1. That the respondent pay maintenance *pendent lite* to the applicant in the amount of Two Thousand Rand (R2000.00) per month;
2. The applicant *pendent lite* is to retain the use of the Corsa utility bakkie currently in her possession

³ Taute v Taute 1974 (2) SA 675 at 676 H.

⁴ Ts v Ts [2018] ZAGPJHC 29 at paragraph 22; and see also E v E 2019 (5) SA 566(GJ) paragraphs 56 to 57.

3. The respondent is to pay the monthly premium of the applicant's medical aid fee in the amount of R2990.00 *pendent lite*;
4. The respondent is to make a contribution to the applicant's costs in the amount of Ten Thousand Rand (R10 000.00) payable in instalments of Two Thousand Rand (R2000.00) per month.
5. The costs of this application are costs in the cause.

RAMDEYAL AJ

On behalf of the Applicant:
Instructed by:

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Honey Attorneys
BLOEMFONTEIN

On behalf of the Respondent:
Instructed by:

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