

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 009562/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE: **17/08/2023**

SIGNATURE

In the matter between:

D.R

Applicant

and

T.V.R

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 17 August 2023.

JUDGMENT

PHOOKO AJ

INTRODUCTION

- [1] This is a Rule 43 application wherein the Applicant seeks interim relief against the Respondent for spousal maintenance and the maintenance of their two minor children pending the finalization of the main divorce action.
- [2] The issue of custody pertaining to the children is no longer in dispute as custody of the children is shared between the parties. In addition, the Respondent has agreed to financially assist the Applicant to move out of the Pretoria home and find reasonable and affordable accommodation. The parties agreed to execute arrangements related to the same through their legal representatives within a period of two months.
- [3] The Applicant had originally sought an amount of Nine Thousand Five Hundred Rand (R9 500,00) for maintenance per child monthly, and an amount of Nine Thousand Rand (R9 000,00) for her monthly spousal maintenance. However, she left the issue of children's maintenance in the hands of this Court as the residence of the two children is shared between the parties.
- [4] In the "alternative" the Applicant requested this Court to enforce the Respondent's "promise" of approximately Sixteen Thousand Rand (R16 000,00) per month for maintenance in respect of herself and the two minor children without being induced by the Respondent to sign the proposed settlement agreement.
- [5] The Defendant is offering Five Thousand Seven Hundred and Fifty Rand (R5 750,00) in respect of spousal maintenance to the Applicant and nothing for the children.

THE PARTIES

- [6] The Applicant is D.R¹ an adult unemployed female person residing at [...] in Pretoria.
- [7] The Respondent is T.V.R an adult male person residing at [...] in Centurion,

¹ The name of the parties and children has been concealed for the protection of the children.

Gauteng, and is employed by Henley Air (Pty)Ltd as a Helicopter Pilot and Training Instructor.

THE ISSUE

- [8] The issue to be determined by this Court is whether the Applicant has made out a case for interim maintenance for children and contribution towards her spousal maintenance.

THE FACTS

- [9] The Applicant and the Respondent entered into marriage on 1 December 2012 out of community of property. Their marriage still subsists. However, they are going through a divorce.

- [10] There are two minor children that were born from the marriage namely,

[10.1] A who was born on 26 December 2013 and

[10.2] B who was born on 26 November 2018.

- [11] Both A and B are still minors. Their residency is shared between the parties as per their agreement.

- [12] The Applicant and the Respondent own two properties. One of the houses is in Pretoria and the other is in Cape Town.

- [13] Both parties and their two minor children used to reside together in the common household in Pretoria.

- [14] The Applicant has not been employed for the better part of the marriage and remains unemployed. However, she has worked for some time such as briefly in 2019 and 2023.

- [15] The Respondent has been the sole provider for the family.

- [16] The parties have experienced challenges in their marriage since 2017 and

attempts were made to save it, however, were unsuccessful. In February 2022, the Respondent informed the Applicant that he wanted to file for divorce.

[17] In October 2022, an unexplained “incident” occurred, and the Respondent left the common household.

[18] According to the Applicant, since the Respondent left the common household, he has refused to contribute meaningfully “towards my spousal maintenance as well as the maintenance of the minor children”. This is disputed by the Respondent.

APPLICABLE LAW

[19] Rule 43 proceedings are aimed at providing quick and interim relief to litigants to put food on the table and a roof over their heads, including their children pending the finalization of the main trial.² However, the relief sought is not automatically granted but depends on the circumstances of each case.

[20] It was held in *Taute v Taute*³ that:

“a claimant *is entitled to reasonable maintenance pendente lite ... 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”.

[21] In light of the above, I now turn to consider both oral and written submissions of the parties to ascertain the means of the Respondent and whether the maintenance claimed by the Applicant is reasonable.

SUBMISSION OF THE PARTIES

Applicant

[22] Most of the Applicant's submissions *inter alia* stated that the Respondent is

² *Dodo v Dodo* 1990 (2) SA 77 (W) at 79B-D.

³ 1974 (2) SA 675 (E).

failing to contribute meaningfully towards supporting the Applicant as well as to the day-to-day- maintenance of the minor children.

[23] Counsel also submitted that the Respondent ate mostly takeaways and spent money on gambling whilst contributing less towards the upbringing of his two minor children.

[24] Counsel further submitted that the Respondent failed to explain his actual income and expenses and/or whether he had surplus.

[25] The Applicant further argued with reliance in the case of *Taute v Taute*⁴ that she was *inter alia* “entitled to reasonable maintenance *pendete lite* dependent upon the marital standard of living of the parties”.

[26] Relying on *inter alia Dodo v Dodo*⁵, counsel submitted that the Applicant was entitled to a contribution towards her legal costs to enable her to present her case.

Respondent

[27] The Respondent *inter alia* submitted that he was responsible for payment of his two minor children’s maintenance including payment of the bond for the two houses and a vehicle for the Applicant. Furthermore, counsel submitted that the Respondent is responsible for all the children’s school-related matters ranging from school fees to extra mural activities.

[28] Counsel disputed the Applicant’s version that the Respondent spends more of his money on gambling.

EVALUATION OF EVIDENCE

[29] It is in cases such as this that I agree with my sister, Kusevitsky J, in *B.R v*

⁴ 1974 (2) SA 675 € at 676D and 676H.

⁵ 1979 (4) S.A 804 (WLD) at 806 G-H.

D.R⁶ where she observed that:

“In recent times, and if the court roll is anything to go by, applications for interim maintenance have morphed into unrealistic, super-inflated claims by applicants, using the rule as a measure or yardstick to gain advantage in the main action. In certain instances, substantial interim maintenance has been awarded to applicants which has had, in some instances, the un-intended consequence of claimant’s not being inclined to finalise the main divorce action. In my view, the basic tenets of the rule have been forgotten and is more often than not, abused” (own emphasis added).

[30] This case is a clear example of such cases. It needs to be stated from the onset that the version which suggests that the Respondent is failing to contribute meaningfully towards the Applicant as well as the maintenance of the two minor children is difficult to comprehend.

[31] On the contrary, the Respondent’s evidence concerning his income and expenditure is quite detailed and there is nothing about it that strikes me as improbable or artificial. This Court has no reason whatsoever to doubt the version of the Respondent’s financial affairs. The income and expenditure clearly vindicated the Respondent’s contention that his income is insufficient to sustain his ability to pay additional maintenance as demanded by the Applicant. Unfortunately, I cannot say the same about Respondent.

[32] Contrary to the picture painted by the Applicant portraying the Respondent as an irresponsible father who spends less on his children and more on gambling, and someone who lives a lavish life including surviving on takeaways, the evidence before this court indicates otherwise.

[33] For example, the Respondent *inter alia* continues paying for children’s medical aid for approximately Two Thousand Rand (R 2000,00), paying for school fees

⁶ (14189/2022) [2023] ZAWCHC 59 at para 3.

in respect of both of their children Three Thousand Five Hundred and Ninety-nine Cents (R3500,99) and Two Thousand Two Hundred and Sixty Rand (R2 260,00), and bonds for both houses to the value of Thirty-Four Thousand Three Hundred Rand (R 34 300,00). There are other school-related expenses such as school camps, registration fees, etc that the Respondent pays for. The Respondent is also responsible for payment of the Applicant's vehicle.

[34] It is not enough to merely state that a claimant is entitled to more maintenance just because their spouse is earning more without giving due consideration to where those earnings go.⁷

[35] The more said about the Respondent's financial obligations towards his children and household expenses the more the Applicant's claim for interim relief becomes weakened. In the circumstances of this case, I cannot find any grounds which would entitle the Applicant to the full amounts claimed.

[36] Concerning the Respondent's argument that he will contribute nothing towards the children, I do not think that the Respondent fully appreciates the duty to maintain the children, especially in the context of this case when they are with the Applicant. To uphold the Respondent's contention will go counter the best interest of the child principle.

[37] Equally, the Applicant is entitled to some form of maintenance so that she may be able to look for employment and rebuild her life. However, it is not mandatory that she gets what she was used to get whilst living together with the Respondent in the same house.⁸ Things have changed. The Respondent also has to sustain his own life.

COSTS

[38] The general rule is that the costs should follow the results.⁹ However, having given the matter careful consideration it is my view that both parties have been

⁷ See *Strauss v Strauss* 1974 (3) AD at 83D.

⁸ *B.R v D.R* at para 4.

⁹ *Van Zyl v Steyn* (83856/15) [2022] ZAGPPHC 302 at para 2.

partially successful. The basis for this is that the Respondent has in all respects taken this Court into his confidence.

[39] It would therefore not be in the interests of justice to award costs against any party.

ORDER

[40] I, therefore, make the following order:

- (a) The Respondent is ordered to pay *pendete lite* Three Thousand Rand (R3000,00) maintenance per month per child, the first payment to be made within 7 days of granting of this order and thereafter on the 1st day of every conservative month, without set-off or reduction.
- (b) The Respondent is ordered to pay *pendete lite* Four Thousand Rand (R4000,00) maintenance per month to the Applicant within 7 days of granting of this order and thereafter on the 1st day of every conservative month.
- (c) The Respondent is ordered to retain the minor children on his medical aid scheme and to pay the contributions thereof.
- (d) The Respondent is ordered to continue to pay the two minor children's school fees, extra-mural activities, school camps, registration fees, and all other school-related expenses.
- (e) Each party is ordered to pay its costs.

PHOOKO AJ

**ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA**

APPEARANCES:

Counsel for the Applicant: Adv A Korf

Instructed by: Malan Hitge Nortje Inc

Attorney for the Respondent: Ms Anna-Mi Moorcroft
Attorney with Right of Appearance in the High
Court

Date of Hearing: 15 August 2023

Date of Judgment: 17 August 2023