REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 027686/2022
NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

PP Applicant

and

VP Respondent

JUDGMENT

Mia, J

[1] The applicant brought an application for interim maintenance in terms of Rule 43. The respondent opposed the application because he is already making payment of interim maintenance based on a protection order granted to the applicant in the Family Court. The applicant filed a supplementary affidavit, which the respondent previously sought to have struck out, as only one set of affidavits is permitted. The parties are not permitted to file multiple affidavits in opposing or reply. I have considered all of the affidavits based on considering all of the relevant available information. The matter was previously postponed and there appears to be no reason. The reserved costs are payable by the respondent. I must thank both counsel for their helpful submissions.

[2] The background facts are as follows:

The applicant and the respondent were married in the community of property in July 1985. The applicant worked intermittently to supplement the family income as an administrator at a public school. She underwent surgery related to her spine and was not able to work from July 2012 until February 2017. The plaintiff maintains that her back pain is debilitating, and she is unable to walk for significant periods. The respondent's medical, which covers her medical expenses, does not cover the full extent. As a result of her injuries, the respondent suggested that she stop working, and he would assume full financial responsibility for the home. He has been the primary breadwinner for the duration of the marriage.

[3] The parties drifted apart, and in March 2021, the respondent left the family home and moved in with a new partner. The plaintiff indicates that the respondent started withdrawing financial assistance toward the applicant and their adult daughter, who was studying at a tertiary institution. The parties' adult son, his partner, and their minor child moved into the family home with the applicant. At this time, the applicant claims that the respondent's contributions were not substantial, were paltry and did not cover the cost of maintaining herself, their adult children and their grandchild. She resorted to securing loans from her family and has received R 7000 as contributions from her family and friends.

[4] The applicant has no material assets that she can realise. She has liquidated her pension interest to pay for their son's medical expenses. Their daughter is not fully self-supporting either. The applicant requests a contribution toward the adult daughter's tertiary education fees and seeks relief as follows:

"4.1. R40,000.00 per month in respect of costs of accommodation, sustenance, personal care, travel and related care items;

4.2. R7,000.00 in respect of arrear debts incurred as a result of the respondent's abandonment of myself and his other dependant;

4.3. R100,000.00 in respect of arrear maintenance reckoned at approximately R5,000.00 per month from date of the respondent leaving the matrimonial home up to and including September 2022 being the anticipated date of issuing of this application.

4.4 . R25,000.00, once off, towards tertiary studies towards our daughter born of the marriage Nikita alternatively in such monthly or other instalments as permitted by the relevant educational institutions

4.5. A contribution towards legal costs in the amount of R50,000.00.

4.6. The respondent shall make the aforesaid payments without deduction into the banking account of the applicant as follows: BANK: First National Bank ACCOUNT NUMBER: XXXXXXXXXXX BRANCH: Sandton City CURRENT / CHEOUE ACOUNT REF: Maintenance

4.7. The aforesaid maintenance shall be paid monthly on the 25th day of each respective month, but by no later than the last day of the same month, without offset or deduction of any nature whatsoever.

4.8. Costs of the application."

[5] In *Eke v Parsons*[1], the Court stated that "the object of court rules is twofold. The first is to ensure a fair trial or hearing. The second is to secure the inexpensive and expeditious completion of litigation and to further the administration of justice." I consider the application against this background.

[6] The applicant claims her expenditure is as follows:

[1] *Eke v Parsons* 2016 (3) SA 37 (CC)

EXPENDITURE DESCRIPTION

Total Lodging (bond repayment, levy, rental, board)	R0.00
Food, Groceries & Cleaning Materials & Toiletries	R8,600.00
House Expenditure: Rates, Electricity & Water	R4,000.00
Insurance (Householders and car)	R2,000.00
Cell-phone	R1,500.00
Domestic Worker	R3,000.00
Gardener	R600.00
Transport Fuel and car maintenance	R2,500.00
Clothing and shoes	R3,000.00
Personal Care Hair Care	
(cuts, colours and treatment)	R1,100.00
Medical Expenditure: Medical aid	
Medical Aid Premium, medication and excess	R8,000.00
Insurance:	
Life	R68.25
Funeral policy	R95.00
DSTV	R1,300.00
wifi	R1,000.00
Entertainment and recreation	R1,000.00 .
Allowances	R5,000.00
Personal loans to maintain the household	R4,000.00
Credit card instalments	R8,200.00
Religious contributions / charities / gifts /	
Reading material	R1,000.00
Security	R650.00
Pets Food	R600,00
Vet	R300.00

Total	R57,413,25

[7] The parties' reality is that they do not live together and their expenses will be doubled. Whilst it was feasible for the respondent to cover the costs as the main breadwinner, this will not be possible on the respondent’s income of approximately R80 000. Both parties must adjust their lifestyle to continue living within reasonable comfort. Certain expenses will, of necessity, not be within their reach and will need to be adjusted, or the applicant may need to find alternative employment that is either home-based or accommodates her health condition to support the lifestyle she seeks. The income derived from her home business was not disclosed and no bank statements were attached to show the respondent’s limited cash contribution as indicated by the applicant. The respondents' income will not sustain both homes on the level to which the parties were accustomed. Both the children are adults. The adult daughter is entitled to have her education and tertiary fees paid to the extent that she is not financially independent. I note the daughter has a limited income and that the respondent supports both adult children financially.

[8] In addition to the above, certain expenses, such as fuel, appear unwarranted, where the applicant indicates that she has no vehicle. It is also not apparent why her fuel cost is so substantial. There may be a duplication in entertainment expenses. The DSTV and entertainment expenses may be within the applicant’s reach, where she contributes to the income, but it is unrealistic on a single income. The applicant pays for the DSTV in any event. The cost of books can be mitigated by using public resources such as the library. The amounts claimed for clothing also appear unrealistic based on the respondent’s income if it was a single-income home. This is, in any event, disputed by the respondent.

[9] It is not clear how the applicant has credit cards based on her not receiving an income. It will be impossible for the applicant to be granted credit without a declared and proven income. The credit card expense is not clearly explained, and no statements are attached. The amount claimed for personal loans at R4000 per month suggests that the applicant's claim is excessive and

unrealistic concerning the parties' financial position. In total, the amounts due to repay loans monthly amount to R12 500 in loan repayments. The vet bill at R300 per month is also not explained and no invoices or receipts are attached.

[10] I move now to the respondent's income and expenses. The respondent states that he covers many of the items listed under the applicant's claim for interim maintenance and has done so since he moved out of the family home. The WhatsApp communication attached to the applicant's affidavit bears a response where the respondent undertakes to continue paying for the expenses regarding the family home and medical expenses of the applicant and their daughter. Regarding the expenses claimed, the applicant claims payment for items the respondent has already paid for. Whilst I appreciate that there is a possibility that the respondent may stop paying for certain expenses, the applicant failed to disclose relevant information, such as the income she and their daughter earn from a business they conduct and that the respondent does pay significantly towards their living expenses.

[11] I agree that the parties are married in a community of property, and their estate is not complicated. The only issue is the respondent's pension, which prevents the applicant from settling. This information has limited relevance for the present application. Withholding such information indefinitely will only delay the finalisation of the divorce, resulting in the respondent being responsible for the applicant's expenses for a more extended period. It will benefit the parties to attempt to settle the matter earlier rather than later.

[12] The applicant also failed to disclose a protection order for urgent financial relief in place, which was around the same period the applicant applied for interim maintenance. The applicant also indicates in her reply that she paid for medical expenses. The respondent's income is R 79 786.69, and the applicant's claim for monthly expenses amounts to R57 413.25, not including a bond or vehicle repayment. The purpose of an interim maintenance application is not to exhaust the respondent's income but for the applicant to have reasonable interim maintenance covered. As indicated above, the

amounts claimed by the applicant have not been proven, and the respondent's income and expenses are not affordable.

[13] Regarding the claim for spousal maintenance, this is not an absolute right. The duty to provide and receive spousal maintenance depends on the applicant's need, which is not unqualified.[2] I have considered the applicant's and the adult daughter's reasonable needs and ensured the payments are continuously received every month. The applicant is not entitled to fifty per cent of the respondent's income. The amount requested for interim maintenance must be reasonable and required. The applicant is not entitled to the R 7000 claim as there is no proof regarding the amount, and no supporting affidavit is attached to support the amount. The applicant is also not entitled to arrear maintenance. In any event, it appeared from the applicant's affidavit that the respondent was covering specific expenses. It is not evident from the papers, as argued by counsel for the applicant that the applicant was not making an appropriate contribution. It is not evident that the respondent evaded his maintenance obligation. The purpose of an interim order is to cover the costs of interim maintenance. Considering the respondent's indication that he paid specific amounts every month and the applicant's indication that amounts were paid every month, I cannot conclude that the applicant and their daughter were left destitute and without a monthly contribution towards their living expenses. For this reason, I am not persuaded concerning the lump sums requested.

[14] The applicant has not attached proof of the attorney's fees, and I have considered the guiding principles in *Van Rippen*[3] in determining the interim order for a contribution towards costs, as well as considering that there be an equity of arms[4] in the litigation between the parties. The applicant is not in a position to contribute to her costs to the extent that the respondent may have access to funds for litigation purposes. I agree with the court's view in *AF v MF*[5]. The respondent's contribution should not be limited to a portion of the

[2] *Reyneke v Reyneke* 1990(3) SA 927(E)
[3] *Van Rippen v Van Rippen* 1949 (4) SA 634 (C)
[4] *Cary v Cary* [1999] 2 All SA 71 (C)
[5] *AF v MF* [2020] 1 All SA 79 (WCC)

legal costs and should depend on how much the applicant can contribute herself.

[15] For the reasons above it is ordered *pendente lite* that:

Order

1. The respondent shall continue paying the electricity, rates, insurance related to the property situated at […], Lenasia every month.

2. The respondent shall pay a monthly amount of R 10 000.

3. The respondent shall keep the applicant and their daughter registered on his medical aid.

4. The registration fee applicable to the tertiary institution and R3,000.00, monthly directly to the tertiary institution at which the daughter is registered to cover her annual fees, alternatively a monthly or other instalment as permitted by the relevant educational institution.

5. A contribution towards legal costs of R30,000.00, payable in monthly amounts of R 3000 per month as well as the costs of the previous postponement.

6. The respondent shall make the payments as mentioned earlier without deduction into the banking account of the applicant as follows:

BANK: First National Bank

ACCOUNT NUMBER: […]

BRANCH: Sandton City

CURRENT / CHEOUE ACOUNT

REF: Maintenance

7. The aforesaid maintenance shall be paid monthly on the 25th day of each respective month, but by no later than the last day of the same month, without offset or deduction of any nature whatsoever.

SC MIA
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:	Adv. LCM Morland Instructed by Manitha Naran Attorneys Inc
For the Respondent:	Adv. Gi-Gi Meyer Instructed by Joselowitz & Andrews Attorneys

Heard:	03 August 2023
Delivered:	21 November 2023