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

Case no: 5462/2022

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

R[....] M[....] P[....] S[....]

Applicant

and

F[....] A[....] S[....]

Respondent

CORAM: OPPERMAN, J

HEARD ON: 1 December 2022

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 2 December 2022. The date and time for hand-down is deemed to be 2 December 2022 at 15h00

JUDGMENT BY: OPPERMAN, J

SUMMARY: Rule 43 – spousal maintenance

JUDGMENT

[1] The parties were married to each other out of community of property with the exclusion of the accrual system on 18 April 2014. Divorce proceedings were instituted simultaneously with this application.

[2] The Respondent directed the Court to an antenuptial agreement between the parties wherein, *inter alia*, the parties waived the right to claim any post - divorce maintenance and that the Respondent will pay R250 000.00 to the Applicant and provide her with a vehicle to the value of R125 000.00 or cash to the amount of R125 000.00.

[3] Both parties have adult children from previous relationships.

[4] Both parties resided in Welkom prior to their marriage and they relocated to Bloemfontein where they maintained an above average and luxurious lifestyle. This is proven beyond any doubt by the evidence of the Respondent. They reside in Woodland Hills Wildlife Estate in what is presumed to be a house of some luxury and size.

[5] The Applicant resigned her employment with an income of about R16 000.00 per month when they married and relocated to Bloemfontein. The reason for her unemployment for the duration of their marriage is in dispute.

[6] The Respondent contributed to the financial maintenance of the Applicant in full for the whole of the duration of the marriage. He paid her a household allowance of R23 000.00 per month to pay their domestic worker, gardener, water and electricity, groceries, her clothing accounts and other communal expenditures.

[7] He now offers to pay her the said R23 000.00 per month, maintain her on his medical aid, make a vehicle available for her use, pay her cell phone contract for about 24 months until the contract expires and R5000.00 for legal costs.

[8] A previous divorce action in 2016 was abandoned when the parties reconciled. Any comparison with the circumstances of the Rule 43 application and order in the 2016 - matter with the matter at hand, will be irresponsible; much time has lapsed and circumstances have changed.

[9] The Applicant suffers from some psychological disorders due to alleged abuse by the Respondent.

[10] Both parties are adamant that she must leave the communal home.

[11] The Respondent works abroad in Mauritania, North - West Africa. He also has other businesses and a property that contributes to his income. He resides in a house in Mauritania for a period of six weeks and then two weeks in Woodland Hills in Bloemfontein. A suggestion by the Court to let the Applicant remain in the house and for the Respondent to seek alternative accommodation when he is in South Africa for two weeks, pending the divorce, was rejected by both parties. This decision will have financial consequences for both parties.

[12] The general approach in Rule 43 - applications is this:¹

¹ Harms, D with reference to case law, Civil Procedure, *Civil Procedure in the Superior Courts*, Part B High Court, Last Updated: October 2022 - SI 75 at 43.3.

The applicant (who is normally the wife) is entitled to reasonable maintenance pending the finalisation of the divorce. This, in turn, is dependent upon the marital standard of living of the parties, her actual and reasonable requirements, and the capacity of her husband to meet her requirements. They are normally to be met from income, although in some circumstances inroads on capital may be justified. In this regard the factors set out in the Divorce Act relating to the award of maintenance provide a useful checklist. The quantum of maintenance payable must in the final result depend upon a reasonable interpretation of the summarised facts contained in the founding and answering affidavits. However, the person claiming maintenance must establish a need to be supported.

A claim supported by reasonable and moderate details carries more weight than one that includes extravagant or extortionate demands. Similarly, more weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligations than to one who is obviously, albeit on paper, seeking to evade them. The rule does not permit the award of a lump sum, but only of periodic payments.

[13] It is common cause that the Applicant has no income or assets and the Respondent is a man of substantial earnings and resources.

[14] The Applicant claims maintenance in cash to the amount of R43 000.00, use of the Mercedes vehicle, her cell phone to be paid for by the Respondent, to be retained on the Respondent's medical aid and R10 000.00 for legal costs. The list of expenditures that causes the claim of R43 000.00 shows that some expenses claimed are excessive. Important is the fact that the Applicant did not claim any amount to relocate. She must acquire furniture and household appliances and commodities that result from setting up a home from scratch; she claimed nothing for this. Given the evidence I will grant maintenance in the amounts and for the expenses specified hereunder and as follows:

1. Rental of a two-bedroom townhouse: **R13 000.00**
2. Water and electricity: **R2000.00**
3. Security: **R300.00**

4. Short term insurance: **R300.00**
5. Groceries: **R5500.00**
6. Clothing and clothing accounts: **R2000.00**
7. Haircare: **R800.00**
8. Skincare: **R800.00**
9. Pharmacy expenses and toiletries will be included in the expenditures in 5. above and the R700.00 claim is thus not allowed.
10. Nailcare: **R600.00**
11. Medication not covered by medical aid will not be allowed and included in an order that the Respondent retain the Applicant on his medical aid and he will be liable for any reasonable medical expenditures not covered by the medical aid.
12. Fuel expenses: **R1500.00**
13. Wi-fi & DSTV: **R1600.00**
14. Domestic Worker: **R3400.00**
15. The claim for payment of a gardener will not be allowed since the expenditure was not proven sufficiently in light of the fact that the Applicant will rent a townhouse.
16. Petfood: **R500.00**
17. Reading material and relaxation will be included at "holidays and entertainment".
18. Policies and life insurance: **R1600.00**
19. Holidays and entertainment: **R1200.00**
20. Church contributions, unforeseen expenses and pocket money are not granted in light of the vagueness of the claim therefor.

[15] The Respondent shall retain the Applicant as a beneficiary on his medical aid and he will be liable for the instalment payable in respect thereof as well as the reasonable and necessary costs not covered by the medical aid. He shall pay the cell phone expenditures of the Applicant. The Respondent will make the Mercedes Benz vehicle available for use by the Applicant *pendente lite* and pay the short-term insurance in respect of said vehicle. The Respondent shall ensure that the instalment of this vehicle is paid. The Respondent shall make a contribution towards the Applicant's legal costs in the amount of R10 000.00.

[16] The costs for this application shall be costs in the main action.

[17] **ORDER**

IT IS ORDERED *PENDENTE LITE* THAT:

1. The Respondent shall pay spousal maintenance to the Applicant in the amount of R35 100.00 (Thirty-five thousand one hundred rand) per month. The first payment to be made on or before the 7th of December 2022 and thereafter on or before the 7th day of each succeeding month.
2. The Respondent shall retain the Applicant as a beneficiary on his medical aid and he will be liable for the instalment payable in respect thereof as well as the reasonable and necessary costs not covered by the medical aid.
3. The Respondent shall pay the cell phone expenditures of the Applicant.
4. The Respondent will make the Mercedes Benz vehicle available for use by the Applicant *pendente lite* and pay the short-term insurance in respect of said vehicle. The Respondent shall ensure that the instalment of this vehicle is paid.
5. The Respondent shall make a contribution towards the Applicant's legal costs in the amount of R10 000.00.
6. Costs of this application shall be costs in the main action.

M OPPERMAN, J

APPEARANCES

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