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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA (MPUMALANGA DIVISION, MBOMBELA)

- (1) REPORTABLE:NO
(2) OF INTEREST TO OTHER JUDGES:NO
(3) REVISED: YES

10/05/2021

.....
SIGNATURE

.....
DATE

CASE NO: 185/2021

In the matter between:

N[....] V[....]

Applicant

and

R[....] V[....]

Respondent

JUDGMENT

SHABANGU-MNDAWE AJ

INTRODUCTION

[1] This is an application for relief *pendente lite* in terms of Rule 43 of the Uniform Rules of Court. The application is opposed. The Applicant seeks an order authorising maintenance for her and her two minor children and contributions towards costs.

[2] Apart from the interim contact arrangements, Applicant sets out the relief she requires in the following terms:

- a) Maintenance for herself and the minor children in the amount of **R15 000.00** per month.
- b) All educational expenses for the minor children which shall include school fees and registration fees including aftercare, schoolbooks and/or textbook, stationary, sporting and extra mural activities and equipment thereof.
- c) All costs of extra lessons and remedial lessons as required, together with all costs associated with therapy at Miss Christy Malan and also her outstanding statement of **R3 900.00**
- d) All costs for the purchase of school clothing for the minor children as required as well as the costs for school tours, and the costs of competitions and sporting events when applicable.
- e) **R18,796.00** for the costs to repair and maintain the Volkswagen motor vehicle in the possession of the Applicant and to replace tires from time to time when necessary.
- f) The Respondent to retain the Applicant and the minor children on his medical aid funds as dependents and to pay all expenses not covered by his medical aid fund.
- g) Contribution towards the Applicant's legal costs of **R40,000.00** to be paid in monthly installments of **R5000.00**.
- h) Payment of the costs of this application.

[3] The Applicant has annexed a schedule of expenses wherein she sets out her and the children's monthly expenses with the total amount of **R31,407 70**. She indicated that every month she has a shortfall of **R15,134.26**.

[4] The Respondent is a businessman and a director of the company known as Leading Edge Helicopters, Hanger H1, Mbombela Airfield. The Respondent is receiving a net income of **R50,824.53** per month. The Applicant is employed as a general administrator and a bookkeeper at Leading Edge Helicopters Pty Ltd. She is receiving a net income of **R16,273.44** per month.

[5] The Respondent in his papers accuses the Applicant for not only having inflated her expenses but also for being dishonest about her true expenses. He further indicated that he already pays an amount of **R18,148.36** plus **R6 780.31** totaling to an amount of **R24 928.67** towards home loan, electricity and levies, groceries, school fees, after care and medical aid for the children and the Applicant.

[6] It is common cause that the application in terms of Rule 43 must be shot and to the point. The purpose of the rule is to deal with applications of this nature as inexpensively and expeditiously as possible. However, in this application there are a number of disputes in the party's submissions which resulted in reserving judgment so as not to rush into making an order which might turn out to be inappropriate and cause harm to the parties and the minor children. In whatever conclusion that the court might come to, the interest of the children must be taken into utmost consideration.

BACKGROUND

[7] Applicant and the Respondent are married to each other out of community of property including the accrual system. The parties were married on the 1st of September 2007. From the marriage relationship two minor children were born, a girl age 11 years old and a boy age nine years old.

[8] On 21 January 2021 the Applicant issued summons for divorce. Subsequently on 27 January 2021 the Respondent moved out of the matrimonial home leaving the Applicant and the minor children. The Applicant in her papers submits that the

Respondent since moving out of the matrimonial home refused to contribute towards the reasonable monthly expenses of herself and the minor children.

[9] The Respondent disputes the Applicant's contention, arguing that he continued contributing towards the maintenance of the minor children. The Respondent's contention is that he is contributing towards the maintenance of the minor children in the amount totaling to **R24 928.67** per month. He further argued that the Applicant has no shortfall and that in fact she has money left at the end of each month.

[10] During the hearing Advocate Vermaak handed me a draft order as per the notice of motion. I am told that the dispute before me is maintenance for the Applicant and the minor children. Contribution towards legal fees in the amount of **R40 000.00**, repair and maintenance costs of the Applicant's motor vehicle as per the quotation totaling to **R18 796.00**. I now turn to deal with issues mentioned herein.

MAINTANANCE FOR THE APPLICANT AND THE TWO MINOR CHILDREN

[11] The Applicant is employed as a general administrator and a bookkeeper at Leading Edge Helicopters Pty Ltd. She is receiving a net income of **R16,273.44** per month. The Applicant states in her papers that the monthly reasonable expenses for her and the two minor children is in the amount of **R31 407.70** leaving her with a short fall of **R15 134.26**.

[12] Keightley J stated as follows in GB v DS¹.

"... this claim [for interim maintenance] must be evaluated against the purpose of Rule 43. The purpose has been stated as follows:

"Primarily Rule 43 was envisaged to provide temporary assistance for women, who had given up their careers or potential career for the sake of matrimony with or without maternity, until such time as at a trial and after hearing evidence maintenance claims ... could be properly determined. It was not created to give an interim meal ticket to women who clearly at trial would not be able to establish a right to maintenance. The grey area between the two extremes causes problems".

and further that:

“...the Rule is designed to provide interim cover to the spouse who has been financially dependent on the other spouse, because of their particular marital circumstances, and who thus has a genuine need for such support to continue until the matter is finally dealt with on divorce....”

[13] The Applicant in her divorce summons claim maintenance for herself in an amount of **R10 000.00** per month and **R3 500.00** for the minor children. The amount, according to the letter from her legal representative was to cover the shortfall between her salary and her reasonable monthly expenses when she relocates and obtains alternative accommodation. In her Rule 43 application she claims a maintenance in the amount of **R15 000.00** in respect of herself and the minor children. When reading the papers and also considering the submissions made by Advocate Vermaak on behalf of the Applicant I find no explanation as to why the interim relief is more than the maintenance claimed in the divorce proceedings whereas is clear from the papers that the Respondent is paying for other expenses.

[14] Advocate Willemse argued, which point is not disputed, that the Applicant is occupying the matrimonial home and the Respondent is continuing paying the bond, taxes and rates as well as electricity. The Respondent continues paying school expenses for the minor children.

[15] The Applicant annexed a schedule of monthly expenses for her and that of the minor children totaling to **R31,407 70**. During oral arguments it transpired that the Applicant also listed expenses that the Respondent is already paying for. Advocate Vermaak argued that the amount of **R800.00** per month per child and **R1000.00** for the Applicant for clothing is not unreasonable. I do not agree with that notion and I find it to be unreasonable and untrue that the Applicant is spending **R2600.00** per month on clothing.

[16] The Applicant's contention is that the shortfall started when the Respondent left the matrimonial home. It is on papers that the Respondent left the matrimonial home on 27 January 2021 and all expenses were paid for including groceries. However, the Applicant alleges that in that January her mother loaned her **R1000.00**, there is no proof as to what was that **R1000.00** used for.

[17] The Applicant further argued that the Respondent in addition to the salary that he receive in the amount of **R50,824.53** monthly there are other payments made into his Standard bank account and described as salary. It is clear from reading the papers that the amounts differ from month to month and not clear as to the source of that payments. There are other months wherein the amounts or payments are not reflecting. I am inclined to use the amount of **R50 824.53** as the basis for what is reasonable and within his means.

[18] In concluding the point on maintenance required for the children and the Applicant, there is evidence that the Respondent already pays a substantial amount towards the family expenses. The Applicant is employed and receiving a monthly income of which it is not evident from the papers as to her contributions towards the family. When reading the papers, the Respondent does not strike me like a rich man who created a certain standard of living for his family. The evidence is that the family has been living a normal standard of living. I am convinced that the Applicant has enough income for herself and therefore does not need a spousal maintenance.

CONTRIBUTION TOWARDS LEGAL COSTS

[19] The Applicant request contribution towards legal costs in the amount of **R40 000.00**. In support of her request, she attached an invoice from her legal representative totaling to **R21 313.70**. Advocate Vermaak submitted that the amount of **R21,213.70** does not provide for the legal fees that the Applicant will have to incur to prosecute the matter to trial. She further submitted that if one has regard to the financial position of the Applicant, it is clear that the Applicant does not have the financial means to pay her legal costs.

[20] Advocate Willemse on the other hand argued that the Applicant does not explain how the amount of **R40,000.00** is arrived at and does not provide a projected amount up to and including the first day of trial.

[21] It is trite that the quantum which an Applicant for a contribution towards cost should be given is something which has to be determined in the discretion of the court. The court should have regard to the circumstances of the case, the financial position of the parties and the particular issues involved in the pending litigation.

[22] Makgoka J in *MCE v JE*² said:

“the applicant has not informed the court the basis of the R10,000 she claims, e.g. how it is arrived at; what unpaid costs have already been incurred, the projected amount up to and including the first day of trial, etc. There can be no better manner of placing such information before court than a draft bill of cost, or at the very least, a summary of fees schedule. This is how courts considering applications for contribution towards costs have, over the years, approached the matter”.

[23] In considering what is in issue in the pending litigation, the Applicant in her affidavit indicated that the only dispute is the quantum of maintenance for herself and the minor children. Also the determination of the values of the estate and calculation of the accrual. It is on this basis that I come to the conclusion that the pending litigation is relatively a simple case. It is trite that what is adequate depends on the nature of the litigation.

[24] The Applicant also wants the Respondent to pay **R18,796.00** for the costs to repair and maintain the Volkswagen motor vehicle in the possession of the Applicant and to replace tires from time to time when necessary. In support of this request the Applicant attached a quotation from Triple A 1Stop Centre. The Respondent in his opposing affidavit alluded that he serviced and maintained the vehicle himself and did not take to a third party for service. If that worked why change now, I agree with the Respondent that the *status quo* should remain.

CONCLUSION

[25] In all the circumstances, and in light of the reasons aforesaid, I consider it appropriate to make an order in the following terms:

1. The Respondent is ordered to pay maintenance for the minor children in the amount of **R3500.00** per month, *pendente lite*, by way of direct payment into Applicant's chosen bank account. The first payment to be made within seven days after the granting of this order and thereafter on or before the first day of every month and every consecutive month thereafter.

2. Respondent is ordered to continue paying the bond repayments, electricity and levies of the communal home where the Applicant and minor children are currently staying.
3. The Respondent is further ordered to continue paying educational expenses for the minor children which shall include school fees and registration fees including aftercare, schoolbooks and/or textbook and stationary.
4. The Respondent is ordered to contribute 50% towards extramural activities of the minor children together with the purchase of equipment thereof and school clothes.
5. The Respondent shall retain the applicant and the minor children on his medical aid funds as dependents and be responsible for the monthly installment thereto.

In addition, it is further ordered that:

6. The Applicant and Respondent shall have full parental rights and responsibilities as envisaged by section 18(2) of the Children's Act 38 of 2005 with the primary residence of the minor children to be with the Applicant. The Respondent is awarded the following right of contact with the minor children:
 - a) The right to remove the minor children every alternate week from a Friday at 17h00 until the Sunday at 17h00. The Respondent will collect the minor children at the residence of the Applicant and return them to her residence.
 - b) The right to remove the minor children every alternative South African public holiday, long weekend and Easter from a time as arranged between the parties at least three days preceding the public holiday or long weekend until 17h00 on the public holiday or the last day of the long weekend.
 - c) Telephonic contact at all reasonable times subject to the minor children's routine, educational and extracurricular schedules.

- d) The right to remove the minor children during every alternative short school holiday (March/April and September/October are considered short holidays). The Respondent will receive removal contact rights during March/ April 2021 and the minor children will be with the Applicant during September/October 2021.
 - e) One half of each June/July school holiday, with each half alternating between the parties with the minor children to be with the Applicant for the first half of the June/July school holiday in 2021.
 - f) And one half of each December/January school holiday. The first half thereof shall commence on the day after the school closes and end on 27 December. The second half shall commence on 27 December and end at 17h00 on the day before the school commences before the following academic year. Each half of the December/January school holiday shall alternate between the parties, to ensure that the minor children will be with the parties every second Christmas portion of the holiday with the children to be with the Applicant during the first half of the school holiday in 2021.
7. The cost of this application will stand over for determination in the final divorce action.



SHABANGU-MNDAWE AJ
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 10 May 2021 at 10:00.

Heard on 22 APRIL 2021

Delivered on 10 MAY 2021

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1. Gauteng Division, case number 16158/16 (unreported)
2. (13495/2011) [2011] ZAGPPHC 193 (13 September 2011) para. 12