

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

**CASE NO: 15804/2017**

**DATE: 15804/2017**

In the matter between:

**H. T. B.** Applicant

and

**C. B.** Respondent

**JUDGMENT**

**MOTHLEJ**

1. Harmatien Brits (*"the Applicant"*) launched an application against C. B. (*"the Respondent"*) for payment of maintenance and contribution towards legal costs, *pendente lite* in terms of Rule 43 of the Uniform Rules of Court.

2. The Applicant and the Respondent were married to each other on 13 December 2003 out of community of property. No children were born of the marriage relationship between them. The Respondent left the common home on 9 March 2016. A year later on 6 March 2017, the Applicant delivered the divorce summons, together with this Rule 43 application.

3. The Applicant alleges that prior to their marriage; both were employed as members of the South African Police Service. She held the rank of Warrant Officer, while he held the rank of Assistant Director. The Applicant further alleges that she was convinced by the Respondent to retire from the SAPS and claim her pension of approximately R500 000.00 to invest in a Guesthouse, called Tree House and registered in the name of the Respondent.

4. It is further alleged by the Applicant that she worked at the Guesthouse until 2011 when the parties moved to Pretoria. The Applicant's son took over the business until 2016 when it was leased out by the Respondent to a third party, at a monthly rental of R27 000.00 which the Applicant contends is being paid to the Respondent.

5. The Respondent denies the Applicant's allegations. He contends that the Respondent resigned from SAPS on her own accord and he does not know what she did with her pension pay-out. He further alleges that the Guesthouse business was badly managed to the extent that the banks intervened with foreclosure. The Respondent further adds that the Applicant has not been looking for work when they arrived in Pretoria and she presently occupies a three bedroomed house rented at a cost of R8 000.00 per month.

6. The essence of the Applicant's claim is a demand for payment of monthly maintenance of R18 665, 59; a payment of R10 000.00 into her bank account and costs of all reasonable medical expenses. The Applicant further demands relief which includes payments for her monthly life insurance policy, instalments of the vehicle with its insurance as well as transfer of the vehicle, a Mercedes Benz A 200 in her name and thereafter replace it with a similar vehicle of no less than R350 000.00 in value. She further claims for contribution towards legal costs.

7. The Respondent contends that he is no longer employed and only earn an income as an independent consultant. He can only afford R13 000.00 per month as maintenance payment to the Applicant. He further submits that the Applicant resides alone in a three bedroomed house at the costs of R8000.00 rental and R900.00 water bill per month. She refuses to move to a cheaper dwelling.

8. It is common practice for parties in a rule 43 application to provide the courts with disputed versions on the papers. Such is the position in the case. In ***Taute v Taute 1974 (2) SA 675*** the Court held that a claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands.

Similarly, ***Van Den Heever J in Nilsson v Nilsson 1984 (2) SA 294 (CJ*** writes as follows:

*"Primarily Rule 43 was envisaged to provide temporary assistance for women, who had given up careers or potential careers for the sake of matrimony with or without maternity, until such time as at a trial and after hearing evidence, maintenance claims and, if children had been born, custody claims could be properly determined. It was not created to give an interim meal ticket to women who quite clearly at the trial would not be able to establish a right to maintenance."*

9. At the hearing of this Application, the Applicant conceded that certain amounts claimed were more than reasonable. The revised claim came to R26 000, 00 per month, including accommodation, maintenance, transport and contribution towards legal costs.

10. However, the Respondent offers half of that amount, being R13 000, 00 all inclusive and submits that the Applicant should move to a cheaper residence.

11. The Applicant alleges in the founding affidavit that the Respondent was a director of ten companies, from which he resigned the same day on 10 March 2017, after she told him that she will be filing for divorce and a rule 43 application, which she did on 6 March 2017. The companies from which the Respondent resigned his directorship are listed in the affidavit.

12. In reply, the Respondent starts off in paragraph 27 of his answering affidavit by denying that he resigned from the ten companies on that date. He then proceeds to provide what I can only describe as a convoluted explanation as to his intention to resign, (meaning in future), due to the credit record he has and also corporate governance compliance issues. On the contrary, the majority copies of the search from the companies records attached to the founding affidavit, clearly contradicts his statement and denials that he has resigned but intends to do so.

13. It would appear that the Respondent is not entirely candid with the court. Except to plead that he has no sufficient income and that the Applicant must vacate the residence for

a cheaper dwelling, the Respondent is failing to persuade this court that he is genuinely unable to pay the revised maintenance amount claimed. He has failed to make out a case in support of his contentions.

14. I am therefore of the view that the Respondent must be ordered to pay maintenance pending the conclusion of the divorce proceedings. The Applicant cannot be expected to have a different life style now that the Respondent has left the common home. I find that her revised claim for maintenance *pendente lite* is fair and reasonable.

15. In the premises I make the following order:

1. The Applicant's claim for her own maintenance *pendente lite* is granted with effect from April 2017 as follows:
2. Pending the conclusion of the divorce proceedings between the parties, the Respondent is ordered to pay to the Applicant
  - 2.1 a monthly maintenance of eight thousand rand (R8 000.00) to the Applicant;
  - 2.2 an amount of eight thousand five hundred rand (R8 500.00) per month for the Applicant's accommodation;
  - 2.3 a contribution of three thousand five hundred rand (R3 500.00) for the Applicant's transport;
  - 2.4 all medical costs of the Applicant;
  - 2.5 seven thousand rand (R7 000.00) contribution towards the Applicant's legal costs; and
  - 2.6 the costs of this application on a normal party-party scale.

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**JUDGE SP MOTHLE**

**Judge of the High Court**

**Gauteng Division, Pretoria.**

