

**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE LOCAL DIVISION, MTHATHA**

**Case No. 2444/2015**

**In the matter between:**

**L. P. R.**

**Applicant**

**And**

**F. M. R.**

**Respondent**

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**JUDGMENT**

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**PAKADE J:-**

[1] This is a judgment consequent upon the hearing of a Rule 43 application brought by the applicant for an order against the respondent for contribution to her costs of the divorce action for an amount of (R 10 000) ten thousand rand plus maintenance of their ( 7 ) seven years old child.

[2] It appears from the statement of income filed by the parties that the applicant's income is more than that of the respondent and the applicant does not dispute this .

[3] The award in terms of any relief sought by the applicant *pendente lite* in a Rule 43 application is based on the need of the applicant and the means of the respondent to afford the amount ordered against him to pay. The issue for decision will be whether the applicant needs contribution towards the costs of divorce action or not and whether the respondent has means to pay those costs .

[4] In this application, the respondent does not dispute his obligation to maintain his child in accordance with the available means but dispute that the applicant needs his contribution towards the costs of the divorce action.

[5] There are no disputed issues in the divorce action. The only dispute concerns the joint estate which should be dealt with separately by the Receiver if jointly appointed by the parties. The real likelihood is that the divorce may be granted on an uncontested basis, thus obviating the need to incur the costs of the first day's appearance of counsel.

This is over and above the obvious fact that the applicant does not need financial assistance towards the costs of the divorce.

She earns sufficiently to be able to shoulder the litigation. All what she requires is to apply limitation on the non-essential expenditure. The salary slip dated 30 September 2015 reflects her monthly earning of R 67349.49 less deduction of R 26377 leaving her with a net salary of R 40472.49.

She has attached no vouchers to justify her monthly expenditure of R 60 770 plus a further expenditure of R 22 150 in respect of the child.

These figures are unreasonable and appear to be a quest to support a luxurious lifestyle which the respondent can ill afford. The applicant has not taken the court to her confidence and attach vouchers and bank statements to her application.

[6] The respondent earns a monthly salary of R 26866.03 and a rental income of R 2257.00 which total up to R 29123.03. His bank statements for August to November 2015 reflect an overdraft in his account revolving around an arranged limit. However, he has tendered R 5000 per month for the maintenance of the child plus an undertaking to pay 50% shortfall in her medical expenses. He has also a duty to maintain his other three children and pay school fees for them.

[7] Maintenance of the spouses to each other arise *stante matrimonia* and is reciprocal in accordance with their means. It is dictated by their need. In hoc casu non of the spouses needs support from the other. They are self sufficient. They, however, have a reciprocal duty of support towards their child, Imitha. None of them has denounced that duty. Their contribution is proportionate according to their means. There is no law I am aware of which requires the father to contribute more even if his income exceeds that of the mother of the child. In this case I accept the fact that the applicant had for a considerable time shouldered the maintenance responsibility of the child alone.

The respondent had not contributed to the support of his child for a period of between five and six years. That is not laudable. The respondent has been lax in this respect.

[8] In the circumstances, I make the following Order:

**ORDER:**

1. That the respondent pay a sum of R 6500 per month towards the maintenance of the minor child, Imitha, *pendente lite*, first payment to commence on first March 2016 and subsequent payments to be made on or before first of each month.
2. That the respondent pay 50% shortfall on the medical expenses of the minor child, Imitha as and when incurred.
3. The relief sought for contribution towards costs of the applicant *pendente lite* is dismissed.
4. The costs of the application shall be costs in the divorce action.

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**PAKADE J**  
**JUDGE OF THE HIGH COURT**

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|---------------------------|----------|-------------------------------------|
| <b>For the Applicant</b>  | <b>:</b> | <b>Adv Hobbs</b>                    |
| <b>Instructed by</b>      | <b>:</b> | <b>c/o Keightley Inc.</b>           |
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| <b>For the Respondent</b> | <b>:</b> | <b>Adv Botma</b>                    |
| <b>Instructed by</b>      | <b>:</b> | <b>c/o Smith Tabata Inc</b>         |
|                           |          | <b>Attorneys for the Respondent</b> |
| <b>Heard on</b>           | <b>:</b> | <b>16 February 2016</b>             |
| <b>Delivered on</b>       | <b>:</b> | <b>18 February 2016</b>             |