



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

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

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**DATE**

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**SIGNATURE**

CASE NUMBER: 27391/12

DATE: 27 February 2015

A[...] P[...] S[...] A[]

Applicant

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J[...] L[...] C[...] A[]

Respondent

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JUDGMENT

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MABUSE J:

[1] This matter came before me in an unopposed motion roll as an application in terms of Rule 43 of the Uniform Rules of Court. It was opposed by the respondent. In this application the applicant seeks the following:

1. arrear costs in the sum of R180 422.41

2. future costs in the sum of R434 106.30 and
3. further ancillary relief.

- [2] The applicant is an adult female who resides currently at 11 W[...] P[...], North Lakes, Australia. The respondent is an adult businessman who works as a sole managing member of Ventac CC, situated at 39 Gunib Street, Erasmuskloof, Pretoria. The applicant and the respondent were married to each other in community of property on 19 December 1992 and the said marriage still subsists. There are two children born of the aforementioned marriage, one R[...], a minor boy who is aged 15 years, and R[...], a daughter, who has just become a major, but who depends entirely on her parents as she is a full time university student.
- [3] On or about January 2009 the parties' family relocated to Australia with the intention of residing there permanently. Although all the members of this family moved to Australia in anticipation of residing there permanently the respondent remained in South Africa with the intention of later following his family in Australia. With the passage of time his intention to move to Australia did not materialize and as a result he remained in South Africa. He never relocated to Australia, although on some occasions he visited his family in Australia, some times to withdraw money. Accordingly the applicant stays there with the children while the respondent stays in South Africa.
- [4] By 2011 the relationship between the applicant and the respondent had completely fallen apart as a result of which the applicant instituted divorce proceedings against the respondent on 17 May 2012. The aforementioned proceedings are pending in this Court.

- [5] The applicant contends that for her entire life she was a bank clerk. She did not have any specialised training or qualifications which would make her as an asset in the Australian labour market. She is 45 years of age which, according to her, is a disadvantage for a prospective employment in Australia. She has however been able to obtain or secure part-time position and she is available in the afternoons to assist the children. She works at North Lakes State College where both their children attended school at the time and work at the tuck shop as an assistant. She earns AU\$928.25 (nine hundred and twenty eight Australian Dollars and twenty five cents) fortnightly, amounting to AU\$1,856.50 (one thousand eight hundred and fifty six Australian Dollars and fifty cents) which according to the late exchange rate amounts to R18 000.00 (eighteen thousand rand) per month. As a consequence she is at home when the children return from school around 15h00 and she is able to assist them with their homework, do the housework and garden maintenance.
- [6] The amount of R18 000,00 which she receives is, according to her, not sufficient. The cost of living in Australia is ten times the average cost in South Africa. Her monthly expenditure are R70 000.00. When the respondent left Australia the parties had two investment accounts, one in Commonwealth Bank and the other in the Bank of Queensland. After the commencement of the divorce proceedings, the applicant's attorneys of record contacted the respondent's attorneys and informed them that she had instructions to bring an application for maintenance *pendente lite*. In response thereto, the respondent's attorneys advised that an application in terms of Rule 43 was not required in light of the joint account at the Bank of Queensland. Consequently she has been using the proceeds of the two bank accounts in Australia, for the purposes of maintaining the two children and herself. With the respondent's consent she has been using the proceeds of the parties' joint account at the

Bank of Queensland for the purposes of maintaining the children and herself and for nothing more.

[7] The applicant contends that the remaining amounts in the said banks as at 27 June 2014 was AU\$234,000.00 (two hundred and thirty four thousand Australian Dollars), and furthermore that the said amount was being eroded by the maintenance of the children and herself. She anticipates that by the time the divorce matter is disposed of there will be little left in these accounts and that will leave her feeling vulnerable in respect of future security of maintenance for the children and herself, in a foreign country where she has no family to whom she could turn to in the event of financial emergency. And for that reasons she needs a contribution towards legal costs. The applicant contends that compared to the overall wealth of the joint estate which is under control of the respondent as at date of institution of the action the amount that is remaining in the aforementioned bank account in Australia is insignificant. The reasons why she requires contribution in the sum of R180,442.40 (one hundred and eighty thousand four hundred and forty two rand and forty cents) is that on 30 June 2014 her attorney of record had sent her a statement for the said amount. After she paid her attorneys the amount of R106,840.00 (one hundred and six thousand eight hundred and forty rand), there was still the outstanding balance of R180 442.40 (one hundred and eighty thousand four hundred and forty two rand and forty cents). In addition she contends that her counsel has not been paid and that provision for her fees should be provided for.

[8] The respondent opposes the application as indicated earlier and contends that the applicant has sufficient money at her disposal which will enable both of them to finance their litigation. During the course of the argument counsel for the respondent submitted a schedule of cash monies which are available to the applicant. The total of the said amount in terms of the

South African rate of exchange is R6,532,628.23 (six million, five hundred and thirty two thousand six hundred and twenty eight rand and twenty three cent). The applicant was unable to contest this schedule of cash monies.

[9] Counsel for the applicant referred the Court to two authorities according to which it was stated that a litigant was entitled to litigate against her spouse on a scale commensurate with the parties' means. These two authorities are **Glazer vs Glazer 1959(3) SA 928(W) at page 932A** and **Nicholson vs Nicholson 1998(1) SA 48W at 52B**. It is clear from the evidence that both parties are possessed of sufficient financial muscle to pay for their litigation. The amount brandished in the abovementioned schedule was sourced from the applicant's own evidence. In my view it is clear that the applicant has assets which could be used to meet the cost of her litigation. The parties' funds are held in Australia. For this reason the applicant enjoys the advantage of the Australian Dollar to the South African Rand exchange rate. Secondly she has unfettered access to the funds which she jointly owns with the respondent. Thirdly the respondent has no objection to the applicant using such funds. Fourthly the applicant has a piece of land in Portugal which she could realise in order to enable her to meet her financial obligations.

[10] I am of the view that the applicant is currently possessed of sufficient means to enable her to finance her own litigation. In the premises there seems to be no justifiable reason why this Court should grant her application to be financed because she has sufficient means with which to pay her legal fees. I therefore make the following order:

- (1) The application for contribution is refused;
- (2) The costs of this application should be costs in the action pending between the parties.

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P.M. MABUSE  
JUDGE OF THE HIGH COURT

Appearances:

*Counsel for the Applicant:*

*Adv. K Foulkes-Jones (SC)*

*Instructed by:*

*Roxo Law Offices*

*Counsel for the respondents:*

*Adv. D Smith (SC)*

*Instructed by:*

*De Oliveira Serrão*

*Date Heard:*

*13 February 2015*

*Date of Judgment:*

*27 February 2015*