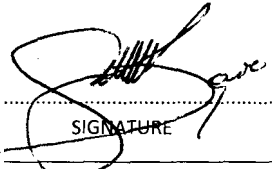




IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA) 14/7/2015

CASE NO: 19449/2013

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
??/?: :	
DATE	SIGNATURE

In the matter between:

L. A. O.

Applicant

and

K. O.

Respondent

JUDGMENT

Bagwa J

- [1] This is a Rule 43 application in which the applicant seeks an order for the payment, pendente lite of maintenance in the sum of R7 900.00 per month for the minor child M., and a contribution of R25 000.00 towards the applicant's legal costs.

- [2] The parties were married to each other on 7 February 2004 out of community of property and the marriage still subsists. A divorce is pending before this court, hence this application in terms of Rule 43.
- [3] There is one minor child born of this marriage, namely, M. O., a girl born [....] 2004.
- [4] The parties are no longer living together as husband and wife, the applicant having left the common home at no. [...], Silverlakes, Pretoria. The said property has since been sold and the respondent assisted the applicant to obtain alternative accommodation in Silverlakes where the applicant and the minor child, M. currently reside.
- [5] The applicant is currently employed as an office manager at Survival Tyre Safety, Waterloo where she earns a salary of R18 617.00 per month.
- [6] The respondent is employed by a company known as the Reclamation Group Scrap Metal Group earning according to his payslip a net income of about R50 000.00.
- [7] I do not propose to go into an analysis of the allegations and counter-allegations between the parties as I propose to be guided by the facts which are common cause and the law.

- [8] It is trite that the court when seized with such matters has to place the best interests of a child above all considerations. This is endorsed in the supreme law of the land, the Constitution of the Republic of South Africa Act 108 of 1996 which provides in Section 28 (2) that "*A child's best interests are of paramount importance in every matter concerning the child*". In other words any acrimony that may be prevalent between the parties should not be allowed to impact on the interests of the child.
- [9] The applicant's counsel has conceded that some of the amounts claimed in the applicant's income and expenditure statement may appear to be inflated but she submits that the applicant has also submitted 5 bank statements to facilitate a process of verification of the amounts claimed.
- [10] As against this, the respondent has submitted an illegible salary slip. He has not given any account regarding the existing Family Trust nor has he disclosed whether he receives any income therefrom. He has not submitted even a single bank statement to throw light into his financial state of affairs. Even though the respondent has seemingly conducted matters in a most reasonable manner, even to the extent of providing a R3 million house to the applicant for use by herself and the minor child, it appears that he has been less than candid in his disclosure to this court in this application.
- [11] Taking the evidence presented by the parties into account, the approach in Rule 43 proceedings was established in the well-known decision of **Levin v Levin and Another** 1962 (3) SA 330 0/11) at 331 D as follows:

"To decide the issue I am compelled to draw inferences and to look to the probabilities as they emerge from the papers. Obviously my findings are in no way binding on the trial court and indeed after hearing the evidence it may emerge that some or all the inferences I have drawn are wrong. On this basis I now turn to the issues as they emerge from the papers."

[12] I have accordingly tried to balance the scales not only from a maintenance for the child point of view but also from a litigation point of view in light of a claim for a contribution towards costs.

[13] Section 9 (1) of the Constitution guarantees both parties the right of equality before the law. Even though the economic circumstances of the respondent may have altered, he has and in my view still does enjoy a better standard of living than the applicant. He earns more than double the income of the applicant. The applicant has to see to the needs of the minor child of the marriage on a day to day basis even though she is now a working mother.

[14] As to the contribution towards costs the approach appears to be that the applicant is entitled, if the respondent has the means and she does not, to be placed in a position to present her case adequately. The obligation arises from the duty of support.

See **Chamani v Chamani** 1979 (4) SA 804 (W) at 806 F-H.

[15] The approach in the determination of the contribution is that set out in **Glazer v Glazer** 1959 (3) SA 928 (W) where it stated that:

"The scale upon which she is entitled to litigation in my view is a scale commensurate with the means of the parties.... If he is to employ the best possible legal assistance obtained by means of his wealth, she is entitled to be assisted upon a somewhat similar scale. I think that at this stage she is entitled to quite a considerable contribution towards costs. "

[16] Having considered the facts and the law applicable I have come to the conclusion that the draft order handed in by the applicant as amended be marked "X" and made a court order. I read only paragraphs 6, 7, 8 and 9 of that order which reads as follows:

- "6. The respondent is ordered to pay maintenance to the applicant in respect of the minor child in the amount of R5 000.00 per month, into a bank account appointed by the applicant.
7. The respondent is ordered to make a provisional contribution of R20 000.00 to the applicant's legal costs *pendente lite* in monthly instalments of R4 000.00.
8. The payments in 6 and 7 above will commence on or before the 7th day of August 2015 and shall thereafter be made on or before the 7th day of each succeeding month.
9. Prayers 2, 3, 4, 5, 6, 7 and 8 above shall be in force and effect *pendente lite*, pending the finalization of the divorce proceedings.



S. A. M. BAQWA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Heard on: 14 July 2015
Delivered on: 14 July 2015

For the Applicant: Wiese & Wiese Attorneys
For the Respondent: Van der Merwe Inc.