

REPUBLIC OF SOUTH AFRICA

IN THE NORTH GAUTENG HIGH COURT

PRETORIA

(REPUBLIC OF SOUTH AFRICA)

DATE HEARD: 06/06/2014

DATE DELIVERED: 13/06/2014

CASE NO: 71580/2013

In the matter between:

K[...] D[...]

APPLICANT

And

M[...] J[...] D[...]

RESPONDENT

J U D G M E N T

VILAKAZI, AJ:

(1) This is an opposed application in terms of rule 43 of the uniform rules of court. The parties were married in community of property on 5 July **2002**.

(2) The Applicant claims from the Respondent pendete lite:

(2.1) Maintenance for herself and the two minor children in the amount of R34 795.00.

(2.2) The primary residence of the children shall be with the Applicant.

(2.3) That the Respondent retain the Applicant and the minor children as dependants on is current medical scheme and that he bear the costs of all reasonable expenditure in respect of medical, dental, surgical, hospital, orthodontic and ophthalmological treatment needed by the Applicant and the children and not covered by the medical aid.

(2.4) A contribution of R25 000 towards her legal costs.

(2.5) That the Respondent places Applicant in possession of the BMW X5 motor vehicle and to pay all monthly instalments, insurance, and maintenance fees of the said motor vehicle.

(2.6) Departure from the provisions of rule 43(7) and 43(8) of the Uniform Rules of this Court

A divorce action is pending in this court.

(3) The Applicant (36 years old) is a housewife. The Applicant avers that the Respondent is an astute businessman. The value of the immovable property in which they reside is approximately R4 million. The Applicant avers that the Respondent drives a Porsche Cayenne, a Mercedes Benz SLK and a BMW M6 motor vehicle. She further avers that the Respondent has interests in two immovable properties in the Seychelles, the properties which cost an excess of US\$5 million each. He has interests in an immovable property at [Z.....] and [Z.....]. The Respondent has interests in a filling station in Groblersdal, a liquor store in [K.....] Park and [B.....] [D.....] boutique hotel in [M..... P...]. The Respondent admits he drives a Porsche Cayenne but averred that it is a company car which belongs to P.G.C. The Respondent earns R66 861.79 net per month as a group financial director. The Respondent also earns directorship fees in various companies. The Respondent says the values of the motor vehicles are accordingly irrelevant for the purpose of this matter.

(4) What is significant is that the Respondent has not placed any evidence reflecting his true financial means. The Respondent pays R11 282.05 monthly levies on fractional ownership of the Seychelles property. The Respondent must go an extra mile and place before the court evidence that gains the averments made by the Applicant with regard to the figures she has disclosed. If he does not do so, the court in my view, is entitled to infer from the evidence at hand that the Respondent is indeed a man of substance and can afford, vide *Levin v Levin* 1962(2) SA 330 (W).

(5) Counsel for the parties presented me with a draft order and requested the draft order to be made an order of court. The only issues that were in dispute was maintenance of the Applicant and the minor children, contribution of the Applicants legal fees and a claim of return of the BMW X5 motor vehicle.

(6) The Applicant's claim of possession of a BMW X5 motor vehicle is an aspect which cannot be resolved through a rule 43 application. It falls to be dealt with in the process of division of the joint estate.

(7) With regard to the contribution towards costs, no basis has been laid for a proper consideration. All the Applicant states is a bald allegation that the Respondent be ordered to make an initial contribution towards the applicants' legal costs in the sum of R25 000.00 in equal monthly instalments of R5 000.00 per month.

The Applicant has not informed the court of the unpaid costs that have already been incurred, the projected amount up to and including the first day of trial. There can be no better manner of placing such information before court than a draft bill of costs, or at the very least, a summary of fees schedule. Counsel for the Respondent submitted that the practice in this division is to allow an amount between R3 000.00 to R5 000.00 for contribution towards costs. I am of the view that a blanket proximate one size fits all approach erodes on courts discretion to consider each case on its own facts.

(8) Counsel for the Applicant submitted that Applicant is entitled to an amount that would enable her to litigate on equal footing with the Respondent. Respondent in this matter engaged the services of senior Counsel. The essential principle in determining this issue appears from various authorities. The fact that the Respondent may be wealthy does not entitle the wife to unlimited spending, there being a difference between what she wants and what she needs. What is "adequate" would depend on the nature of the litigation, the scale on which the husband is litigating and the scale upon which she intends to litigate, with due regard being had to the husband's financial position. The Respondent is not necessarily obliged to pay all costs of the Applicant even if he can afford to pay same. Not all her fees are payable but the amount must be adequate to enable her to conduct defence and prepare her case. The Applicant has submitted that she would have to cause a forensic investigation in respect of various trusts wherein the Respondent is enumerated as a trustee or beneficiary.

(9) The Applicant is entitled to a pendete lite order depending on the living standard of the parties, vide, Gramman v Gramman 1984 (3) SA 447 at 379E. In applications of this nature, the Applicant must show that she has insufficient means. She must also show that the Respondent can afford to meet the amount she seeks from the Respondent.

(10) In the circumstances of this case, I conclude that the Respondent is indeed a man of substance. In arriving at this conclusion I have further taken into account that according to his version he is a director in various companies.

In the result I make the following order pendete fite:

(1) Parental rights and responsibilities over the two minor children, [L.....] and [T.....] are awarded to both parents jointly, subject to the following:

(1.1) The primary residence of the children be with the Applicant

(1.2) The Respondent shall enjoy reasonable rights of contact to them

(1.3) The Respondent shall be entitled to remove the minor children on alternate weekends from

Saturday, 1 0h00 until Sunday, 17h00 and for this purpose the child minder presently in the employ of the parties shall accompany the children, if available

(2) That the Respondent pays pendete lite an amount of R6 000.00 per month towards applicants' maintenance and the 2 minor children.

(3) In addition to the maintenance amount of R6 000.00 per month, the Respondent pays the following further contributions:

(3.1) Water and electricity account for the common home	R3 900.00
(3.2) Municipal rates and taxes for the common home	R2 500.00.
(3.3) The gardener's salary	R800.
(3.4) The domestic - child-minder's salary	R2 200.00
(3.5) Crèche fees for T [...] -	R1 600.00
(3.6) Transport fees to and from crèche	R400
(3.7) L [...]’s school fees at Crawford College	R7 500.00
(3.8) DSTV x2	R1 000.00
(3.9) Premium on Old Mutual Policy for Applicant and two children	R810.00
(3.10) Mercedes Benz monthly instalments	R10 000.00
(3.11) Petrol allowance	R1 500.00
(3.12) Extra-mural golf L [...]	R650.00
(3.13) Extra-mural hip-hop L [...]	R200.00
(3.14) Extra-mural drama L [...]	R200.00
(3.15) Monthly bond repayments	R9 757.00

Total R43 027.00

- (4) The monthly contributions referred to in the amount of R43 027.00 to be paid by the Respondent directly to the service providers thereof as well as any increases that may be attendant thereon.
- (5) The Respondent retains the Applicant and the two minor children on his medical aid scheme and pays Applicant's and two minor children's reasonable and necessary medical costs.
- (6) That the Respondent pays contribution towards Applicant's costs in the amount of R15 000.00. Such payment to be effected directly to the Applicant's attorney of record.
- (7) That it be departed from the limitation prescribed in rule 43(7) and rule 43(8) of this court.
- (8) No costs order is made with regard to this application.

VILAKAZI AJ

APPEARANCES:

FOR APPUCANT: ADV N. ERASMUS

INSTRUCTED BY: SHAPIRO & LEDWABA INC

FOR RESPONDENT: ADV DA SMITH SC

INSTRUCTED BY: HOGANS LOVELLS SOUTH AFRICA