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NOT REPORTABLE

IN THE NORTH GAUTENG HIGH COURT.

PRETORIA (REPUBLIC OF SOUTH AFRICA)

CASE NO: 8127/2013

DATE:02/07/2013

In the matter between:

R B

Applicant

and

ABB

Respondent

JUDGMENT

MOTHLE J

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

2The Applicant and the Respondent were married on 10th April 1999 out of community of property in terms of an ante nuptial contract, wherein the accrual system, was specifically excluded. From the marriage, one minor child was born, namely T B, a female, born on 31 October 2000. T presently resides with the Applicant in the erstwhile common home since,

according to the Applicant, the Respondent left the common home on 2 September 2011.

3. On 26 March 2012 the Applicant issued divorce summons under case number 17327/2012 against the Respondent. Attached to the divorce summons is a settlement agreement which was concluded and signed by the Applicant and the Respondent. In the summons, Applicant requests the divorce Court to incorporate the settlement agreement as part of the order sought as relief.

4. It is further common cause between the parties that two most important and relevant terms of the settlement agreement are that:

4.1 The Respondent would pay to the Applicant, an amount of R400 000.00 in lieu of maintenance. This is to be a once-off payment;

4.2 The Applicant undertook to make no further claims for maintenance from the Respondent.

5. It is further common cause between the parties that the Applicant has not been working and has been wholly dependent on the Respondent for her sustenance. To this end, the Respondent has retained the Applicant and the minor child in his medical insurance, and is paying for all the expenses of the common home in which they all lived together which is now occupied by the Applicant and the minor child. The Applicant further concedes that the Respondent does pay, as agreed, full maintenance for the minor child.

6. The essence of the Applicant's complaint is that she now wants to resile from the settlement agreement where she undertook not to claim any maintenance for herself. She institutes these proceedings after the Respondent had, in compliance with the settlement agreement, made part payment of R200 000.00 to her which she spent on various items,

including a payment of R94 000.00 towards legal fees.

7. At the commencement of the hearing, the Respondent raised a point in limine, objecting to the adjudication of the Rule 43 application, on the grounds that to do so, would cause the Court to ignore the terms of the settlement agreement which, according to the Respondent, is still binding on both parties. It is further argued by the Respondent that he intends to oppose the unilateral decision by the Applicant to resile from the settlement agreement, more so that the Applicant is not in a position to refund the advanced R200 000.00 which was part payment of the R400 000.00 agreed to, in the settlement agreement.

8. As pointed out above, the Applicant undertook in the settlement agreement not to claim any maintenance against the Respondent in lieu of payment of an amount of R400 000.00. Half of that amount has already been paid to her and she has already spent it. The Respondent further argues that he holds the Applicant to the terms of the settlement agreement and any attempt to resile therefrom will be challenged including raising the defence of estoppel, if need be.

9. Having considered the issues relating to this matter, it seems to me that the dispute concerning the settlement agreement is inextricably interwoven with the issues raised in this Rule 43 application. It is indeed so that before dealing with the merits of the claims by the Applicant for maintenance pendente lite, the dispute concerning the validity of the settlement agreement needs to be resolved. I am in full agreement with the Respondent that the Rule 43 application cannot be heard and properly adjudicated prior to the dispute concerning the settlement agreement is resolved. I am further informed by the parties that the pleadings have closed and what is left is to secure a date of trial where the dispute

around the settlement agreement will be the subject of adjudication.

10. There are, however, two issues that this Court needs to deal with. Firstly is the question whether pending the resolution of the dispute concerning the settlement agreement, the Applicant is properly maintained and has sufficient funds to engage legal representatives to prosecute her divorce action. In regard to maintenance, even without traversing the merits of her claim, it seems to me that by her own admission, the Applicant is being adequately maintained. The question whether she must enjoy the luxury of spending for example, R3 000.00 a month on fuel while she is unemployed is another matter. I get the sense in considering her affidavit that the whole application is not based on the need for the Applicant to be maintained but rather on the allegation that the Respondent is a wealthy man and therefore needs to pay for the excessive luxuries of the Applicant.

11. 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 (C) 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.”

12. In regard to contribution towards costs, I fail to understand how she could pay an amount of R94 000.00 to her legal representatives for pre-trial processes in a divorce

action. The matter has not been to Court as yet and she now wants an additional R50 000.00 as contribution towards legal costs.

13. It seems to me that the payment of an amount of R94, 000.00 towards legal fees is rather excessive, considering that the matter has not been to Court. In the agreement itself, in addition to the R400 000.00 the Respondent undertook to pay the legal costs of the Applicant. The Respondent concedes that the legal costs, for which no amount was stated, are not part of the R400 000,00. The payment of R94 000,00 for legal fees out of the advance payment of R200 000,00 was therefore not in accordance with the terms of the settlement agreement.

14. It would appear that the Respondent is still liable for payment of legal fees. In the absence of an agreement on what should be paid as legal fees, I am of the view that a contribution in an amount of R15 000,00 will be a fair and reasonable amount for legal fees, pending a final ruling by the divorce court: These are matters that will be tried in the court which will be seized with the dispute concerning the settlement agreement.

15. I am therefore of the view that the point in limine raised by the Respondent should partially be upheld and the question of the Applicant's maintenance be referred to the proceedings that will adjudicate the dispute concerning the settlement agreement.

16. In the premises I make the following order:

- i. The Applicant's claim for her own maintenance pendente lite is refused and the question of her maintenance is referred to the Court that will adjudicate on the dispute concerning the settlement agreement between the parties;
- ii. The Respondent is ordered to pay R15 000.00 contribution towards the Applicant's legal

costs;

iii. Each party is ordered to pay its own costs.

MOTHLE J

Judge of the North and South Gauteng High Court

PRETORIA.

9/07/2013