

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No: 3379/2013

In the matter between:

THEMBELA KABAGAMBE

Applicant

and

HERBERT KABA KABAGAMBE

Respondent

JUDGMENT BY: SESELE, AJ

HEARD ON: 17 OCTOBER 2013

DELIVERED ON: 24 OCTOBER 2013

- [1] This an application in terms of Rule 43 of the Uniform Rules of Court for:
- 1.1 maintenance *pendentelite* in respect of the minor child;
 - 1.2 maintenance *pendentelite* in respect of the applicant;
 - 1.3 interim order in respect of the parental rights and responsibilities for the case and contact with the minor child as contemplated in section 18(2)(a) of the Childrens Act 38 of 2005;
 - 1.4 contribution towards costs of a pending divorce action.
- [2] The applicant instituted divorce action against the respondent under case number 3378/2013 which action is still pending

- [3] The parties have not been living together since June 2013 and the respondent remains in the common home.
- [4] The applicant is currently unemployed. The respondent averred that the applicant had income for the year 2009 which income must be taken into account when her means are considered.
- [5] I am not persuaded that the income which was earned 4 years ago can be considered relevant in this application.
- [6] The respondent also speculated about some income which the applicant might have earned during June 2013 through her company known as Triple Options. The respondent, however did not give sufficient information to enable me to assess whether that income was in fact earned or not.
- [7] It is not in dispute that the respondent earns a gross salary of approximately R150 000,00 per month and a net salary in excess of R98 000,00 per month.
- [8] The respondent has two immovable properties and four cars, namely a BMWX5, an Audi TT, a Toyota 7-seater SUV and a Golf 3. The applicant used the Audi TT while she and the respondent lived together.
- [9] The applicant's case is that the respondent is in fact able to provide for her and the minor child *pendentelite*. The applicant bases her claim on their lifestyle during the time they lived together

in that the respondent gave her R9 000,00 per month spending money, to buy clothes and other luxuries for herself.

[10] I am persuaded that based on the respondent's income and the standard of living the parties enjoyed while they lived together, the applicant and the minor child are indeed entitled to reasonable maintenance *pendentelite* (**Botha v Botha** 2009 (3) SA 89 (W) at 105C – 106J.

[11] It is trite that the two most important considerations when maintenance is in issue are:-

- (1) the needs of the party that needs to be maintained and
- (2) the means of the party from whom maintenance is claimed.

[12] It was submitted for the respondent that if it is found that the applicant made out a proper case for maintenance *pendentelite* the amount of at least R10 000,00 should be deducted from the applicant's expenses to arrive at a reasonable amount. Given the parties lifestyle, I am not persuaded that the applicant's expenses are exorbitant.

[13] In my view the reasonable amount as maintenance *pendentelite* for the applicant is R12 000,00 per month.

[14] The respondent has been paying for the minor child's school and other educational fees in full as well as the medical expenses. The respondent in fact has undertaken to continue doing so. This clearly demonstrated that he has the best interest of the minor child.

ORDER

[15] It is therefore ordered as follows:

- 15.1 That the interim daily care and primary residence of the minor child is awarded to the applicant subject to the respondent's reasonable right of contact and more specifically:
 - 15.1.1 That the respondent is to take the child with him every alternative weekend from the end of his school day on Friday until 17:00 the following Sunday.
 - 15.1.2 That Public Holidays will rotate between the parties.
 - 15.1.3 That the short holidays will rotate between the parties while the long school holidays will be divided equally between the parties.
 - 15.1.4 That the respondent will be entitled to four (4) hours contact with the child on his birthday as well as on the child's birthday.
 - 15.1.5 That parental responsibilities and rights in respect of guardianship of the minor child remain jointly with both parties.
- 15.2 That the respondent shall pay maintenance *pendentelite* towards the minor child in the amount of R2 000,00 per month.
- 15.3 That the respondent shall pay maintenance *pendentelite* to the applicant in the amount of R12 000,00 per month.
- 15.4 That the respondent shall keep both the applicant and the minor child *pendentelite* as beneficiaries or dependants on his medical aid.

- 15.5 The respondent is ordered to pay all expenses related to the minor child's education.
- 15.6 That the respondent shall pay a contribution of R5 000,00 towards the applicant's legal fees.
- 15.7 That payment of all amounts in terms of this order shall be made on the 7th November 2013 and thereafter on the 7th day of each and every succeeding month.
- 15.7 That the costs of this application be costs in the divorce action.

L. M. S. SESELE, AJ

On behalf of the applicant:

Adv.W. Groenewald
Instructed by:
Symington & De Kok
BLOEMFONTEIN

On behalf of the respondent:

Adv.Van Aswegen
Instructed by:
Hill, McHardy&Herbst
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