
FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 3071/2011

In the matter between:

NTSOAKI MANIA MANKALEMENG
MJALEMOTHO SOPHY RAMATHE

Applicant

and

LENKA AZAEL RAMATHE

Respondent

JUDGMENT: LEKALE, AJ

HEARD ON: 9 JUNE 2011

DELIVERED ON: 23 JUNE 2011

[1] The applicant and the respondent have been married to each other in community of property since the 15 April 1998. They are currently going through a divorce process and the action is pending before this court.

[2] The parties are presently staying under the same roof together with one of their two minor children. The other child is in Bloemfontein where she attends school.

[3] The applicant now approaches this court in terms of rule 43 of the Uniform Rules of Court for relief *pendente lite* as follows, among others:

- 3.1 that the parental responsibilities and rights with regard to the care of the two minor children as contemplated in section 18(2)(a) of the Children's Act be awarded to her;
- 3.2 that the primary residency of the minor children be awarded to her;
- 3.3 that the respondent be ordered to pay an amount of R11 750,00 per month as maintenance in her favour;
- 3.4 that the respondent be ordered to pay school fees for the two minor children including school clothes, sport and other school related activities;
- 3.5 that the respondent be ordered to pay the necessary and reasonable medical costs of the applicant and the two minor children;
- 3.6 that the respondent be ordered to pay a contribution towards applicant's costs in the amount of R5 000,00;
- 3.7 that the respondent be ordered to pay the costs of the application.

[4] On his part the respondent prays for the following in opposition:

4.1 that the parental responsibilities and rights with regard to the care of the minor children be awarded to the parties jointly pending the divorce action;

4.2 that he be ordered to pay the following *pendente lite*;

4.2.1 water and electricity;

4.2.2 groceries in the amount of R2 500,00;

4.2.3 domestic worker's remuneration;

4.2.4 gardener's remuneration;

4.2.5 minor children's school fees;

4.2.6 minor children's pocket money, uniforms, books and civil clothing;

4.2.7 applicant's cellphone accounts;

4.2.8 applicant's retirement policy;

4.2.9 applicant's motor vehicle instalments and insurance;

4.2.10 allowance to the applicant in the amount of R1 200,00 per month;

4.2.11 petrol for applicant in the amount of R800,00 per month.

4.3 that the costs of the application be costs in the main

action.

[5] The applicant's claim is for anticipated monthly expenses in the event of her moving out of the matrimonial home together with minor children. On the other hand, the respondent feels that there is no need for the applicant to leave the common home. The respondent, effectively, approaches the present proceedings on the footing that the present arrangement should continue unaltered with the parties and the minor children remaining in the common home and eating from the same pot.

[6] The parties are, further, at variance with regard to primary residency of the minor children. The respondent does not deal with the issue directly and alludes to the disagreements between the applicant and the parties' daughter as indicative of the fact that it would not be in the best interests of the minor children for them to reside primarily with the applicant. Ms Reinders, for the respondent, points out that it is not in the best interests of minor children to be separated from each other.

[7] Ms Reinders, further, contends that the monthly expenses

claimed by the applicant are not actual and that no quotations are made available to the court in support of the same.

[8] Mr Heymans, appearing for the applicant, submits that the application is not premature and that it is clear from the applicant's supporting affidavit that the respondent spoils the minor children and, as such, is not suitable to have their primary residency. He, further, contends that it is necessary to award the applicant the relief she seeks in order to enable her to move out of the common home. In his view, the respondent seeks to retain control over the applicant in an old fashioned manner by manipulating the household purse.

[9] The determination of the present application, in my view, depends on the answers to the following cardinal questions:

9.1 whether or not the applicant is in actual need of maintenance;

9.2 whether or not it is in the best interest of minor children for parental responsibilities and rights in respect of their residency to be awarded to the applicant exclusively.

- [10] The purpose of interim maintenance is to supplement expenses which the applicant cannot meet. (See **BOTHA v BOTHA** 2009 (3) SA 89 (WLD) at 106C.)
- [11] The applicant in a Rule 43 application is entitled to reasonable maintenance regard being had to the parties' standard of living, the applicant's actual and reasonable requirements and the capacity of the respondent to meet such requirements. (Compare **TAUTE v TAUTE** 1974 (2) SA 675 (E) at 676D-E.)
- [12] It is effectively common cause between the parties that the expenses claimed by the applicant are not actual but are anticipated. The foregoing prevails because she still stays in the same house as the respondent and it is not her case that the respondent does not presently provide for her needs.
- [13] As correctly submitted by Mr Heymans, the fact that the expenses claimed are not actual does not *per se* disqualify a party, in the position of the applicant, from interim maintenance. In an appropriate case, where such expenses are motivated and are both reasonably foreseeable and imminent, an order

for maintenance on such basis may be justified. The question is whether or not the relevant expenses constitute the applicant's reasonable imminent monthly requirements and, if so, whether she would, most probably, not be able to meet the same.

[14] It is simply difficult, if not impossible, for the court to determine whether or not such anticipated expenses are the applicant's reasonable imminent requirements without supporting documents such as lease agreement setting out the rental. The court is, further, unable to assess the reasonableness of the applicant's anticipated needs without a yardstick against which to measure the same such as her present actual monthly expenses. An attempt on the part of the court to determine this issue would, in my judgment, be based solely on speculation and conjecture and not on probabilities.

[15] In determining the question relating to primary residency of minor children it is necessary to apply the standard of the best interest of the child insofar as the best interest of the child is of paramount importance in all matters concerning the care,

protection and well-being of the child. (See section 9 of Children's Act no 38 of 2005 ("the Act").

[16] The factors that must be taken into consideration in the application of the aforesaid standard include the nature of the personal relationship between the child and the parents or any specific parent. (See section 7 of the Act)

[17] The parties made allegations against each other suggesting that the other is not suitable to have the primary residency of minor children.

[18] Owing to the limited number of sets of affidavits permissible and filed in the present proceedings it is not possible for the court to investigate the issue, in my view, with the care and degree it deserves. The issue clearly calls for professional intervention aimed at getting to the bottom of the matter. It is, therefore, advisable, in my opinion, for the present position to continue unaltered until such time as the family advocate may have submitted a report on the matter.

[19] With regard to contribution towards the costs of litigation the respondent requests, in the alternative, that such a contribution be directed to be made by way of monthly instalments of R500,00. The court finds no reason to decline this request.

[20] The applicant requests, in the application, that the respondent be directed to pay the costs of the application. Mr Heymans, however, correctly does not persist in this attitude in his submissions. There is no cause shown for the court to depart from the established practice of ordering such costs to be costs in the divorce action.

ORDER:

[21] For the foregoing reasons the following order is made:

21.1 Parental responsibilities and rights with regard to the care of minor children are awarded to the parties jointly;

21.2 The respondent is directed to pay the expenses set out in paragraph 6.3. of the opposing affidavit;

21.3 The respondent is directed to pay R5 000,00 as contribution towards the applicant's costs in the divorce

matter at the rate of R500,00 per month commencing on or before the 7th July 2011 and continuing monthly thereafter on or before the 7th of each succeeding month until the full amount has been paid;

21.4 That the respondent shall pay the necessary and reasonable medical costs relating to the applicant and the minor children to the extent to which they may not be covered by a Medical Aid;

21.5 That the costs of the application shall be costs in the divorce action.

L. J. LEKALE, AJ

On behalf of the applicant:

Attorney A. S. Steyn
Instructed by:
Honey Attorneys
BLOEMFONTEIN

On behalf of the respondent:

Attorney N. C. Oosthuizen
Instructed by:
E G Cooper Majiedt Inc
BLOEMFONTEIN