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**FREE STATE HIGH COURT, BLOEMFONTEIN**  
**REPUBLIC OF SOUTH AFRICA**

Case No.: 1997/2011

In the matter between:

**ANNA SUSANNA VAN WYK**

Applicant

and

**JOHN VAN WYK**

Respondent

**JUDGMENT:**

LEKALE, AJ

**HEARD ON:**

9 JUNE 2011

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**DELIVERED ON:**

23 JUNE 2011

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[1] The applicant approaches this court in terms of Rule 43 of the Uniform Rules of Court for interim relief pending divorce as follows, among others:

- 1.1 payment of maintenance in the amount R39 000,00 in her favour;
- 1.2 payment of medical and associated costs which are not covered by the medical aid in respect of the minor child of the marriage;
- 1.3 payment of her medical costs which are not covered by

the medical aid;

1.4 contribution towards her legal costs in the amount of R20 000,00.

[2] The parties are married to each other out of community of property and are currently engaged in a divorce action which is pending before this court.

[3] The respondent opposes the application on broadly the grounds that he is not financially in the position to pay and that the applicant's expenses are exorbitant and not reasonable.

[4] On the papers before the court there was a dispute over payment of maintenance for the minor child as well as her primary residency. At the commencement of the proceedings the parties, however, announced that agreement had been reached on all aspects relating to the minor child save for the issue pertaining to medical and related costs not covered by the medical aid.

[5] The real issues for determination are, therefore:

5.1 whether or not the applicant is entitled to claim, as maintenance, amounts of money which she disburses to third parties for the benefit and on behalf of the various businesses in which the parties have interest;

5.2 whether or not the applicant is in need of maintenance from the respondent regard being had to the fact that it is common cause that she recently received about R87 000,00 out of the sale of a common property after the respondent waived his right to part of the proceeds in her favour.

5.3 whether or not the applicant does not have sufficient funds of her own to finance the divorce action.

[6] 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.)

[7] Mr Heymans, for the applicant, submits that the parties have agreed that the R87 000,00 received by the applicant shall be used by the applicant to improve her living conditions at her father's property.

[8] The said amount of money is still available. Some of the applicant's monthly expenses relate to the expenses of the businesses which the parties run. The parties are in agreement that the said businesses are legal entities with separate legal personalities.

[9] As correctly submitted by Mr Pienaar for the respondent, it can hardly be said that the applicant cannot meet her alleged monthly requirements of R39 000,00 when she is sitting on R87 000,00 in cash. In my view, any claims that the applicant may have against the business entities in question cannot be enforced against the respondent simply on the basis of the duty of support which he owes to the applicant. The said entities may be sued *eo nomine* by the applicant.

[10] An applicant for contribution towards the costs of the divorce action must show that she is defending in good faith and that she has insufficient means of her own to present her case to the divorce court. (See **GRIESEL v GRIESEL** 1981 (4) SA 270 (O)).

[11] There is no acceptable reason, in my view, advanced for the applicant with regard to why the money at her disposal should be used to effect improvements on her father's property and not to finance her own litigation. Mr Heymans correctly and voluntarily concedes that a reasonable approach would be to use available funds to pay debts.

### **ORDER**

[13] In the result the following order is made:

13.1 The applicant's claim for maintenance and contribution towards costs is dismissed.

13.2 The primary residency in respect of the minor child is awarded to the applicant subject to the following parental responsibilities and rights with regard to contact in favour of the respondent as agreed between the parties:

13.2.1 the respondent may take the minor child with him every second weekend of the month from 17h00 on Friday or as otherwise agreed between the parties until 15h00 on Sunday;

13.2.2 the respondent may take the minor child with him

for one week every school holiday;

13.2.3 the respondent shall, however, not be entitled to take the minor child to his workplace;

13.2.4 the respondent shall, furthermore, exercise his right of contact with the minor child personally and shall not leave the minor child with any other person;

13.3 The respondent shall pay R4 000,00 per month towards the maintenance of the minor child commencing on or before the 7<sup>th</sup> July 2011 and continuing monthly thereafter on or before the 7<sup>th</sup> day of each succeeding month until the divorce matter has been finalised;

13.4 The respondent, shall, further pay those medical and associated costs of the applicant and the minor child that are not covered by the medical aid;

13.5 Costs of the application shall be costs in the divorce action.

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**L. J. LEKALE, AJ**

On behalf of the applicant:

Adv. Heymans  
Instructed by:  
E G Cooper Majiedt Inc  
BLOEMFONTEIN

On behalf of the respondent:

Adv. Pienaar  
Instructed by:  
Maree & Ferreira  
BLOEMFONTEIN

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