

**IN THE COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

Date: 29/05/2009
CASE NO. 58485/2008

UNREPORTABLE

In the matter between:

M I J V V **APPLICANT**

And

A J J V V **RESPONDENT**

JUDGMENT

MAVUNDLA J,

[1] The applicant seeks a pendete lite order against the respondent, in the following terms:

- “1. Payment of an amount of R40 000. 00 for the maintenance of the applicant;
2. Payment of an amount of R10 000, 00, alternatively transportation of the return of the plaintiff’s furnisher from Bloubergsrand in Cape Town to Pretoria;
3. Reasonable and fair medical costs;

4. Contribution towards cost in the amount of R50 000. 00;
5. Departure from the provisions of Rule 43(7) and Rule 43 (8) of the Uniform Court Rules of this Court.

[2] The application was initially brought by way of urgency on 18 December 2008. However it was struck off the roll for lack of urgency and there was no costs order made. On the 7 May 2009 the matter was postponed to 25 May 2009, on which last mentioned date it appeared before me and I reserved my judgment.

[3] The applicant is 48 years of age. She describes herself as a suspended council member in the Kungwini City Council and a member of the Democratic Alliance Party. She receives an honorarium in the amount of R8 968. 50 per month. She also receives from Metsweding district Municipality an honorarium in the amount of R1 551. 37 per month. The total amount of the honorarium is R10 519. 87 per month. The respondent revealed that the applicant has a BCom and Bsc degrees in genetic.

[4] The respondent is a medical practitioner and a businessman whose estate according to the applicant, in 2006 was about R30 million. The applicant has attached to her papers annexure JVV1, a statement of assets and liabilities of the respondent as on 31 October 2006 to be about R31million. She has further averred that respondent has sold a hospital in

Benoni which belonged to one of his companies for an amount of R24 million.

- [5] The respondent denies that JVV1 is a true reflection of the value neither of his estate nor of his income. He further says that the moneys reflected in this annexure is money belonging to various trusts whose portfolios are listed under his name but the moneys are not his. The respondent, in respect of the R24 million, denies these allegations and further says that the information pertaining thereto is not necessary for purposes of this matter.
- [6] What is significant is that the respondent has however not placed any evidence reflecting his true financial means. However, that the respondent is not a man of straw, but of substance can be gleaned from various admissions, although he denies the figures. The applicant avers that he is paying an amount of R17 000. 00 per month for the house at Bully Bunion in Silverlakes; an amount of R15 000. 00 per month for a house in Bloubergstrand in Cape town; he pays toward the maintenance of his daughters an amount of R24 000. 00 per month. She further says that he drives Range Rover costing about R1 million. She further avers that the respondent has an investment at ABSA in his name amounting to R14 million and in this regard she has attached annexure "JVV2" which is a consolidated statement of the respondent. She further avers that the respondent purchased a R2 million house whereafter

he moved to another house he rented for an amount of R17 000. 00. She further says that they have a house in Silverlakes which is R15million.

[7] The respondent admits that he has proceeded to purchase a big house. He does not, however, disclose the amount he expended towards the purchase thereof nor what the value thereof is. Save for denying the amounts alleged by the applicant, the respondent admits that he is providing well for his daughters, he says in fact that he is paying R25 000. 00 per month for them over and above their education. He however, he fails to take the court into his confidence and disclose the amounts he is expending in towards the daughters. It needs noted that all the daughters are at tertiary studying senior degrees. The respondent admits that he is driving a Range Rover motor vehicle. He conveniently remains silent about its costs.

[8] In my view, it is not enough for the respondent to merely put in dispute the amounts it is alleged he is worth. The respondent must go an extra mile and place before the court, evidence that gainsays 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) 331D.

- [9] The applicant is entitled to a *pendente lite* order depending on the living standard of the parties, vide; Grauman v Grauman 1984 (3) SA 447 at 379E. In applications of this nature, the applicant must show that she has insufficient means, vide Greling v Greling 1959 (3) SA 967. She must also show that the respondent can afford to meet the amounts 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 in one way or another associated with various trust. He does not disclose, even if I for moment accept that the amounts mentioned by the applicant are not his but of the trusts, I would nonetheless have expected him to disclose what does he get for having his name employed to have the money belong to the trusts reflected under his name. The probabilities are that the moneys do not belong to the trusts but to him.
- [11] The applicant has stated that her net salary is R10 519-87 per month. She says that she would be having a shortfall of an amount of R40 000. 00. She says that she needs an amount of R13 000. 00 to R15 500. 00 for renting a house in Silverlakes; R10 000.00 for furniture. She has also detailed in paragraph 36

of her founding affidavit her monthly expenses totalling R49 000. 00 wherein she says that the shortfall is R37 030.13.

[12] In the matter of Senior v Senior 1999 (4) SA 955 (W) at 961H the court cited with approval what was said in Glazer v Glazer 1959 (3) SA 928 (W) at 932A and proceeded to state in regard to the quantum to be made towards contribution towards costs that:

“The essential principle in determining this issue appears from various authorities.... and I would summarise them as being the following:

- (i) ‘The test to be applied in considering the amount is that the plaintiff should be placed in a position adequately to present her case.’

Muhlmann’s case supra at 418G; Dodo’s case supra at 98C.

- (ii) 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.’

See Dodo’s case supra at 98D-E.

- (iii) 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. Dodo,s case supra at 98C.

- (iv) The applicant is not entitled to all here costs of the trial but merely a 'contribution towards' her costs up to, as previously stated. The first day of the trial.
- (v) There appears to me to be no reason in logic or equity that such a contribution should be limited to disbursements only and to exclude therefore attorney's reasonable fees."

[13] As stated herein above, the applicant is not entitled to every thing she wants but what she needs. I accept that the parties have been enjoying a luxurious life stile. The very fact that she has two degrees but has been living, according to the respondent, an indolent life spending most of her time sleeping, is indicative of such luxurious life stile. The probabilities are that the plaintiff countenanced such life stile, when the parties were still looking at each other with rose tinted glasses.

[14] I am of the view that the applicant cannot expect to enjoy the same life style she had become accustomed to while the marriage was at its optimum platonic warmth. In view of the fact that they have reached a point where they have since discovered that they were not meant to each other to be separated by death, but it is best that they walk away from each other, she needs to adjust her life style to the cold comfort that the source of that previous comfort was the respondent from whom she is divorcing. It can not be expected of the

respondent to still continue to keep her in that luxurious comfort she had gotten used to.

[15] I am taking into consideration the fact that the applicant would have to lease another place for herself. I am of the view that she does not need a R13 000. 00 accommodation when she is going to stay alone. I am also taking into consideration the fact that the respondent still provides her with a motor vehicle. The applicant earns R10 519. 87 as a councillor for the DA. I am consequently of the view that an amount of R25 000. 00 as maintenance *pendent lite* for herself, should be adequate.

[16] The applicant seeks also that the respondent be ordered to pay her reasonable medical. Having regard to the fact that the applicant's daughters are all at tertiary, it can be safely accepted that she is no longer a young person. I need not venture of her age. It suffices to state that it is, in my view, fair and equitable that the respondent should be ordered to pay the applicant's reasonable medical costs.

[17] The applicant seeks a contribution of R50 000.00 towards contribution of her legal costs. The respondent is not necessarily obliged to pay all the costs of the applicant even if he can afford to pay same. The applicant is, however, entitled to only a substantial contribution towards her costs, vide *Dodo v Dodo* 1990 (2) SA 77 (W) at 98F; *Nocholson v Nicholson* 1998 91) SA 48 (W) at 511. Not all her fees are payable but the

amount must be adequate to enable her to conduct defence and prepare her case.

[18] The respondent says that all the moneys reflected under his name belong to trusts. The respondent has submitted that she would have to cause a forensic investigation of all these trust. I am inclined to agree with this submission. It is not only the investigation that would have to be conducted with regard to the size of the respondent's estate. Preparation and consultation would have to be conducted before she goes to trial. However, the applicant has not placed any evidence how she arrives at the figure of R50 000.00. I am therefore of the view that an amount of R35 000.00 as contribution towards legal cost should adequate at this stage.

[19] In rule 43 applications, the parties are discouraged from filing prolix affidavits, which include supplementary affidavits, vide *Greenspan v Greenspan* 2000 92) SA 283 at 288 A-B.

[20] When the applicant launched these proceedings, she sought *inter alia*, certain relief in respect of the accommodation of their four daughters in Cape Town. Any relief relating to their daughters is no longer being pursued by the applicant. The filing of the supplementary affidavit resulted in the respondent also filing his supplementary affidavit. The filing of supplementary affidavits is not consonant with the practice relating to Rule 43 applications.

[21] The party who files additional affidavits, without the prior leave of the court having been obtained is generally mulcted with the costs order. However, *in casu*, notwithstanding the supplementary affidavit, the applicant has been substantially successful. In the premises I deem it not necessary to mulct her with the costs occasioned by the filing of the supplementary affidavit.

[22] I am of the view that the circumstances of this matter justifies a departure from the provisions of Rule 43(7) and Rule 43(8) of this Court.

[23] In the result I make the following order:

1. That the respondent pays *pendete lite* an amount of R25 000.00 per month towards the applicant's maintenance;
2. That the respondent pays applicant's reasonable and necessary medical costs;
3. That the respondent pays contribution towards the applicant's costs in an amount of R35 000.00;

4. That the respondent is ordered to pay the costs of this application on party and party scale save the costs occasioned by the supplementary affidavit of the applicant.
5. That it be departed from the limitation prescribed in Rule 43(7) and Rule 43(8) of this Court.

DATE OF HEARING : 25/ 05 / 2009

DATE OF JUDGMENT: 29 / 05/ 2009

N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

PLAINTIFF'S ATT : MARITZ SMITH MATSHIDISO INC

PLAINTIFF'S ADV : ADV J G W BASSON

DEFENDANT'S ATT : EFSTRATIOU & VISAGIE ATTORNEYS

DEFENDANT'S ADV : ADV G T AVVAKOUMIDES