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

CASE NO. 53401/08
DATE: 8 JUNE 2009

In the matter between:

C. C. P. **APPLICANT**

and

P. J. P. **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 R11 650. 00 for the maintenance of the applicant;
2. Contribution towards cost in the amount of R30 000. 00 payable in installments of R5000. 00 per month;
3. the respondent be ordered to pay all applicant's reasonable medical cost and towards this end to register her as his dependant,
4. costs of this application are to be costs in the cause,

[2] The parties were [….] to each other out of community of property on […..]There is one child, a […..], born of the [……], who is now […..] years old.

[3] The applicant avers in her affidavit that, for a period of 22 years she contributed towards the finances of their common house hold until she stopped in 2006 at the behest of the respondent. She says that since 2006 the respondent cut her completely off from accessing funds and as the result she was obliged to bring this application.

[4] She says that subsequent to her instituting a divorce action against the respondent, the latter brought a winding up application against CJ Voster Boerdery BK, which both herself and the respondent were members of. She says that one of her woes, is that Standard Bank has summons her for payment of a credit card debt in the amount of R79 579, 52, which amount she is liable for 50% thereof, in particular an amount of R39 789. 76, and 50% of the interest and costs. She has also received a letter of demand from the Standard Bank's attorneys in respect of a so-called 'Blue Bean" card. She says further that she has brought an application for the appointment of a liquidator to divide their joint property where she is presently staying, and to have this sold and divide the proceeds thereof between herself and the respondent.

[5] The applicant further states that her monthly income is an amount *of* R400 00 from so called out door horse rides, a hobby she does on ad hoc basis. She says further that she derives no income from horse "telery" as the result of the economic climate

[6] The applicant has tabulated her expenses as follows: bond payment for the residence at Ifafi in Hartbeespoort an amount of R27 000, 00 for the first 3 (three) months and thereafter R11 700. 00 per month; water and electricity R1 500: Multi-choice and internet R800; medical aid R1 700; food and grocery R2 000; domestic helper R1 400: swimming pool expenses R400: petrol R1500; cell phone R500; clothes R500, personal care and artifacts R300; hair cut R300, magazine and news papers R200 and relaxation R500, totaling R39 450. 00 for 3 (three) months and thereafter R24 150. 00. However, in the notice of motion, the total amount she claims for maintenance *pendete tite* is R11 650 00

[7] According to the applicant she receded an amount of R64 000. 00 from a Sanlam policy in January 2009. From the aforesaid amount, R45 000. 00 was immediately utilized by Standard Bank to defray her overdrawn facility. Since then she has been living from the balance of R19 000. 00 of the aforesaid amount

[8] She says that the respondent is a successful attorney who derives his income from:

i. his [……] legal practice:

ii. Transport business ‘Iron Horse Trucking (Pty) Ltd";

iii. Various properties; and

iv. shares held in a residential golf development in [……..].

[9] The applicant has attached annexure "CP1" which is headed ' Detailed Income Statement for the Year Ended 28 February 2007" which is the respondent s legal practice. She says that this statement reveals that the respondent received as the directors' allowance from his legal practice an amount of R360 000. 00. She has also attached annexure CP2 which is the bank statements of the respondent's legal practice, from which it is clear that large deposits of moneys are made. Annexure "CP3" is the respondent's statement of assets and liabilities as at 31 January 2007. This statement reveals that his net assets are R5, 180 million; Annexure “CP4" is an Income Statement for the Year Ended 2006/7/8 of the Iron Horse Trucking business, showing the following amounts; end year 2007 R2.2 million; end year 2008 R4.8 miilion; end year 2009 R7.8 million.

[10] The respondent has filed his answering affidavit in opposing the application. He says that the applicant has had three adulterous relationships with three persons whose names he has mentioned, but J prefer not to repeat these for purposes of this judgment, The applicant further says that, friends and neighbours would from time to time phone him and tell him where the applicant was seen with her boyfriends.

[11] The respondent further states that he left the common home on 12 August 2007 The applicant assaulted him and his son during 12 September 2007. He says that the applicant rammed her car in the back of his car and proceeded to assault him and his son and they laid attempted murder charges against the applicant as the result of this incident. He further says that he obtained a protection order against the applicant. He says that the damage to his car was R98 252. 20.

[12] The respondent further accuses the applicant of having arranged with a Mr. N. to assault him. In this regard he has attached pictures to show the extent of his injuries. He says that the said N. is the applicant s [……]. The respondent says that he and the applicant subsequently reconciled, but the applicant again resumed her adulterous relationship with the said N. in December 2007. He further accuses the plaintiff of having faked a suicide attempt by sticking a horse injection in her chest.

[13] The respondent further accuses the applicant of forgery. He contends that, because of the applicant’s adulterous, *inter alia* conduct she is not entitled to be granted the relief she seeks.

[14] The respondent states that during November and December 2007 he paid an amount of R40 000. 00 towards the applicant's seven credit cards. He further the applicant derives income from eight studs, and that the monthly expense of each horse is R3 000. 00 per month. He says that he is a partner in the horses and gives his consent to her to sell the horses, whose fair market value is between R35 000. 00 and R30 000. 00.

[15] The applicant further critic the individual amounts of the alleged monthly expenses of the applicant. I have no intention of detailing these amounts made by the

respondent.

[16] The respondent admits that he has a legal practice. He admits that some of his expenses are being paid from this business. He has however not attached his financial statements relating to his practice. He says that a moratorium has been placed on the instructions he used to receive from Ekurhuleni Local Authority, and that his clientele has dwindled.

[17] He says that Iron Horse is running at a loss of R225 487. 06. In this regard he has attached annexure “PP7”which shows the aforesaid loss I must immediately comment that this statement is not prepared by an auditor. The respondent says that Iron Horse has one truck in respect of which an amount of R900 000.00 is still owed to the bank. Because of the poor financial business of Iron Horse he is paying an amount of R21 656 52 towards the installment of this truck as well as its insurance of R6 740. 00 per month.

[18] The respondent says that over and above the 50% share in the common home, he owns a 50% share in a [……] property he co-owns with his sister. The monthly bond towards this property is R4 480 per month. He denies that he owns any share in the development in […….]. The applicant further says that, although he paid an amount of R70 000. 00 towards the said development, he has not heard anything from the person he had paid the amount to and suspects that the relevant individual has stolen his money.

[19] The respondent has listed his own monthly expenses, and these total an amount of R62 676. 11. Included in this total amount, are two credit payments of R5 000. 00 and R6 500 00 totaling R11500. 00. The respondent has, however, not included in his monthly expenditure list the amount of R21 656. 52 which he pays towards the installment of the truck as well as its insurance payment of R6 740. 00 If regard is had to these two amounts as well as the amount of R62 676.1, it means that the respondent's monthly expenses are by far in excess of the R 62 676. 11. It logically means that the respondent has by far more resources than what he has disclosed In fact, the respondent further says that the directors remuneration of R360 000. 00 equates to R30 000. 00 per month. Even if I were to accept that he earns R30 000.

00 per month, this amount is by far less than his disclosed expenses. I therefore conclude that the respondent's income is by far more than what he wants this court to believe.

[20] The respondent contends that the applicant is not entitled to maintenance pendent lite, because of her alleged adulterous relationships. In Dodo v Dodo 1990 (2) SA 77 (WLD) at 88 the Court said:

> 'In Carstens case supra it was held to be against public policy that a wife should be entitled to claim maintenance *pendente lite* from the husband whilst she is flagrantly and deliberately living as man and wife with another man." At page 89 E-F the Court proceeded to say;
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> > "In Hahlo *(ibid* 5th ed at 38) it is stated that clearly there are cases where the conduct of one of the parties has been so outrageous that to ignore it would be repugnant to one's sense of justice. See the discussion therein at 359-61 on Swarf *v Swart* 1980 (4) SA 364 (O) at 368C-D, that adultery may cause the marriage breakdown in one case: it may, in another case, be merely a symptom of other features leading to the breakdown: and in *Singh v Singh* 1983 (1) SA 781 (C), that misconduct of a party must be gross' before it may be taken into account in order to disentitle that from maintenance. The misconduct may be merely one of many features in which both parties contributed to the breakdown of the marriage: in which event a fair sum may be allowed as maintenance.

[21] The respondent for his contention that the applicant is not entitled to maintenance *pendent lite,* relies primarily on the alleged adultery of the plaintiff. He has however, save for hear say evidence, not produced a shred of the alleged adulterous relationship. In the absence of admissible evidence regarding the alleged adultery on the part of the plaintiff, *I* am unable to find that the applicant committed any adultery.

[22] According to the respondent during 2007 the parties reconciled after he forgave her for her adulterous conduct. If indeed there was such adultery on the part of the applicant, and he could still find in his heart, space to forgive the applicant it means that the respondent did not find such conduct to be so much reprehensible The alleged adulterous conduct on the part of the applicant, at best for the respondent, can be

regarded as symptomatic of other features within their marriage.

[23] The respondent has also attached photographs showing his face with bruises and the right hand in plaster. However, these injuries, on his version, were not caused by the applicant, but by one N. On the evidence which the applicant has placed before me. I am unable to find that the applicant has so grossly conducted herself that she must be disentitled to maintenance *pendete lite.*

[24] The parties have been […..] to each other for more than [……] years. The applicant further avers that she has contributed financially towards their joint common household. The fact that the applicant has contributed as she avers, where parties have been married for over […….] years should, in my view, not brook any argument and can be assumed, as I do. I am also of the view that, although it has not been so stated, it can be accepted that the applicant has contributed in also bringing emotional stability, comfort and companionship in the life of the respondent. These commodities which I have just mentioned herein above, in my view; are priceless but certainly have directly or indirectly contributed to the respondent's present wealth. When considering whether or not the applicant and in general women, are entitled to a *pendete lite* maintenance should be taken into consideration.

[25] The applicant is entitled to a *pendente life* 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 Greyling v Greyling 1959 (3) SA 967. She must also show that the respondent can afford to meet the amounts she seeks from the respondent.

[26] The amount the applicant seeks as contribution towards her maintenance is only R11 650. 00, which is not, in my view, that much, considering what the respondent expends per month on himself. The applicant cannot be called upon to sell whatever she has in her possession, and only claim for maintenance after she has exhausted whatever proceeds she may get, before she can approach the court for a *pendete lite* maintenance order. I am of the view that the applicant has demonstrated that she is in need of and I find as such, that she is entitled to an order for maintenance *pendete*

lite. I am, however, of the view, that an amount of R10 000. 00 per month should be adequate for the applicant s maintenance *pendete lite*.

[27] With regard to the contribution towards the applicant's legal costs, she claims an amount of R30 000 In Dodo v Dodo (supra) at 98 D- E the court said: “According to the decision of Micklem v Micklem 1988 (3) SA 259(C) at 262H-263A, she is entitled to be put in the position of being able ‘adequately to place her case before the Court’. See Van Rippen v Van Rippen 1949 (4)SA 634 (C) at 639. 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. She is entitled to essential disbursements, and what are essential is to be adjudged against the background of the depth of the respondent's purse and is own scale of litigation." I need mention that the respondent has tendered, *inter alia,* to retain the applicant on medical aid.

[28] The applicant has not shown how she arrives at the amount of R30 000. 00 as contribution towards her cost. With regard to depth of the purse of the respondent, as I have indicated herein above. I am of the view that the respondent's income is much more than the amount he has declared. He has cut the applicant completely off of any financial means. It would be proper that he should be ordered to make a contribution towards the cost of the applicant, so as to place her on almost semi equal financial, position as himself to litigate in the divorce proceedings.

[29] The respondent has suggested that an amount of R5 000. 00 would be adequate for the plaintiff's legal costs, I am, however, of the view that an amount of R5 000. 00 is rather too the low, having regard to the fact that the applicant will have to investigate the true financial position of the respondent. I am of the view that an amount of R25 000 would be a fair amount in the circumstances of this case.

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

1. That the respondent pays *pendete lite* towards the maintenance of the

applicant an amount of R10 000.00 per month:

2. That the respondent pays contribution towards applicant's cost in an amount of R25 000,00 which amount is payable in installments of R5 000 00 per month;

3. That the respondent pays all applicant s reasonable medical costs and towards this end, to register the applicant as his dependent in his medical aid;

4. That the costs of this application shall be costs in the cause.

DATE OF HEARING: 29/ 05/2009

DATE OF JUDGMENT: 08/06/ 2009

N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

APPLICANT'S ATT : BHM ATTORNYS
APPLICANT 'S ADV ; ADV J GOUWS
RESPONDENT'S ATT : EUGENE MARAIR ATTORNEYS
RESPONDENT'S ADV : ADV L FRANK