

HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO. 30112/09

In the matter between:

D O S

APPLICANT

And

J S

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 R10, 000. 00 for the maintenance of the applicant; 2. Contribution towards cost in the amount of R10, 000. 00 payable in installments of R1000. 00 per month;

[2] The parties were married to each other out of community of property with inclusion of accrual of benefits on 23 January 1993.

[3] The applicant states that he has no assets in his estate. The twincab Isuzu 1998 vehicle he is driving is registered in the name of the respondent. His estate had no growth during the marriage. On the other hand, according to the applicant, the estate of the respondent appreciated in value to an extent of R5, 000, 000. 00.

[4] The applicant further avers that the respondent has the following businesses: a guest house Palm Bed & Breakfast CC since 2008; Beads for You Trading CC since 2006.

[5] According to the applicant, he worked as an equal partner in both the aforesaid businesses. He helped with the management and the keeping of books. The beads shop had its own account and does only cash business. They drew from time to time as needs dictated cash from petty cash of the guest house.

[6] The applicant further avers that they had an FNB business account into which he estimates that about 40% of their clients paid deposits whilst 60% paid cash, which cash amounts was kept in a small cash box. He says that the beads shop generated R18 000. 00 per month and the guest house R22, 000. 00 per month. The total expenses of the guest house are about R9 000. 00 per month and of the beads shop is R13 000. 00 per month. They took money from these amounts as and when the needs arose. They also let out to the respondent's daughter a room in the guest house for an amount of R2000. 00.

[7] According to the applicant, the estate of the respondent consists of, inter alia, the following, namely: properties that are registered in her name, namely (a) property at [....] Rietfontein, Pretoria, estimated in the amount of R780 000, 00 with an outstanding bond of R350 000, 00; (b) property at [....] Rietfontein Pretoria, estimated at R780 000, 00 with an outstanding bond in the amount of R350 000, 00; (c) property at [....], the guest house, its estimated value of R2, 000, 000 with an outstanding bond of R720, 000. 00.

(d) The beads shop with estimated value of R432, 000. 00;

(e) the property where the guest house business is conducted from its estimated value is R2, 000, 000. 00. The estimated potential per month of the guest business is R45, 000, 00 per month and the business itself is estimated at R1, 000, 000. 00.

[7] According to the applicant, he received a severance package from SADF in 1999 in the amount of R630 000, 00, which money was paid into the respondent's personal account and utilized towards improving the businesses and the properties.

[8] The applicant has detailed his monthly expenses which consists of, inter alia, R3500. 00 for accommodation; grocery of R1750, 00 etc totaling an amount of R10, 375, 00. In respect of contribution towards legal costs , the applicant claims an amount of R10, 000, 00 per month, payable in installments of R1000. 00.

[9] The applicant further avers that he is unemployed and is without any income.

[10] The respondent in her opposing affidavit stated, inter alia, that the applicant is aware that the first National Bank has instituted an action against both the applicant and herself under case number 16784/2009 claiming payment of R354, 886. 28 in respect of [....] Rietfontein, Pretoria . In this regard she has attached a copy of the relevant summons as annexure A.

[11] The respondent further avers that first National Bank has instituted another action against both the applicant and herself under case number 16783/2009, claiming payment of R352,028. 253. In this regard, she has attached a copy of the relevant summons as annexure B. She further avers that summons have also been issued by Sanlam Life Insurance against Beads 4 U Trading CC for an amount of R28, 090. 07 plus rent and costs.

[12] The respondent further avers that the applicant accompanied her to a credit adviser to discuss rescheduling their financial commitments although the process was not successful as the result of the applicant having misrepresented that they owed the respondent's mother an amount of R125 00, 00.

[13] The respondent disputes that she is this successful business woman the applicant portrays her to be. She denies that her estate is worth R5 million as alleged by the applicant. She however concedes that she is a member of the Beads For U Trading CC which conducts its business at corner of [.... and] streets, Pretoria. She denies that this business is generating an amount of R18, 000. 00 per month. SH also denies that the guest house is generating an amount of R22, 000, 00 per month. She has attached annexure C which she avers that is the income statement of this business for May month. Has further attached annexure D which she says that it is a statement prepared by the applicant showing that the budget and expenses for the February 2009 month for Palm View Bed & Breakfast CC is a loss in the amount of -R4107.59

[14] The respondent has further attached annexure E, which is a list of her outstanding accounts amounting to R166 000 in January and R162 279. 63 in February 2009.

[15] The respondent further avers that the expenses and income of the closes corporations trading in the beads shop and the guest house are not her personal income and expenses but those of the respective close corporations. She has also detailed monthly expenses of the guest house totaling an amount of R14 886, 00, which includes a house loan in the amount of R3107, 33, an amount of R1900, 00 for business cell phone, ect.

[16] The respondent has detailed a list of her other financial commitments totaling an amount of R144, 069. 95. Some of these amounts are R6,804, 65 for Edgars, R7342, 10 for Woolworths, R58, 108. 00 for ABSA with an outstanding arrears of R11, 617. 41, R10, 723, 07 FNB credit card, to mention just a few.

[17] The respondent further denies that the profit of the guest house is R13, 000. 00 per month. She further denies that the estimate value of property situated at [.....] Capital Park is R2 million, she also denies that the beads shop is worth R432, 000. 00. She further contends that the applicant wants her to pay for him a two room apartment while she stays in a single apartment of R1500.00.

[18] I do not intend to repeat the submissions made on behalf of the respective parties. However that does not mean that I have closed an ear thereto. It suffices to state that each respective counsel gallantly tried to pursue me to find for their respective clients.

[19] It needs mention that maintenance pendente lite is intended to be a temporal relief. For that reason, the determination of whether or not maintenance pendente lite must be ordered cannot be determined in the same degree as the court would in a trial matter, vide Taute v Taute 1974 (2) SA 675 (E) at 676E. The Court will look at the financial means of the parties, and the needs of the party who seeks such an order.

[20] Both spouses in a marriage have a duty towards each other to maintain one another, depending on their respective means. In casu, it is not disputed that the applicant is unemployed. On the other hand the respondent has some commercial businesses from which she sustains herself.

[21] The respondent also pleads financial woes and has attached copies of summons that have been issued against both parties. She further says that her other financial commitments amount to R144 069, 96, but what is significant is she spends R68, 731.07 on credit cards and R32,194.59 on the four clothing stores, Foschini, Truworths, Woolworths and Edgars. The inference to be made is that she has been less than candid about her financial means.

[22] The respondent does not dispute that the applicant took a severance package from SADF in 1999 in the amount of R630 000, 00. She denies that this amount was utilized towards the purchase and improvement of the business and the properties. She says that the applicant

misused this money in cash loan business which he mismanaged. What she fails to disclose, however, is how she begot her businesses and properties. I am of the view that the probabilities are that the severance package money of the applicant was utilized in procuring her businesses and the properties.

[23] In view of the fact that she has properties, while the applicant, it would seem from the papers before me, has virtually nothing, it is just and fair that the respondent should be ordered to contribute towards the maintenance of the applicant from her estate. In the matter of Harwood v Harwood 1976 (4) SA 586 at 587H the court held that maintenance must be paid out of capital.

[24] I am of the view that the respondent should be ordered to pay maintenance for her poor husband, although she need not pay every amount claimed by the applicant. I am of the view that an amount of R7,000. 00 per month would suffice to provide some modicum of comfort to the applicant.

[25] With regard to contribution towards legal costs of the applicant, I am of the view that an amount of R3000, 00 will suffice. This amount should be paid in installments of R500. 00 per month.

[26] The respondent has stated in her papers that she is on the applicant's Military One medical fund and she request that the applicant be ordered to keep her on this medical fund. She is 49 years old. I find no reason why such an order should not be made, but besides there was no submission to the contrary made on behalf of the applicant.

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

1. That the respondent pays pendete lite towards the maintenance of the applicant in an amount of R17000.00 per month;
2. That the respondent pays contribution towards applicant's cost in an amount of R3 000.00 which amount is payable in installments of R5 00. 00 per month;
3. That the applicant keeps the respondent as his dependent on his Military One medical fund for her reasonable medical costs.
4. That the costs of this application shall be costs in the cause.

DATE OF HEARING : 09/09/2009

DATE OF JUDGMENT: 10/09/2009

N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

APPLICANT'S ATT : SILVA D, ALMEIDA ATTORNEYS

APPLICANT'S ADV : ADV D. KEET

RESPONDENT'S ATT : MASHOBANE KRIEL INC

RESPONDENT'S ADV : ADV CA. KRIEL