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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2024-052782

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

21 May 2024

DATE

SIGNATURE

In the matter between:

Z[...] L[....] T[...]

Applicant/ Plaintiff

and

Z[...] I[....] N[....]

Respondent/ Defendant

JUDGEMENT

1. On 21 May 2024 an urgent application under the above case number was heard by me in the Family Court.
2. After hearing argument, I handed down an order which appears at Case Lines 033-1 to 03304
3. After making the order, I advised the parties' legal representatives that I would thereafter

provide written reasons. This judgement sets out my reasons for granting that order.

4. The parties are married to each other in community of property. They have two children aged 2 years and 6 years old respectively and the children reside with the Applicant (wife).
5. The Respondent (husband) vacated the matrimonial home in September 2023.
6. In November 2023, the Applicant issued a divorce summons and a Rule 43 application against the Respondent.
7. The Respondent delivered a plea and counterclaim in the divorce action and an answering affidavit in the Rule 43 application.

NO FINANCIAL DISCLOSURE FORMS:

8. Neither party has at any time uploaded his or her Financial Disclosure Form ("FDF") to Case Lines under the Rule 43 application.
9. The Applicant's explanation for her omission to upload her FDF is that during March 2024, the Applicant presented her attorney with emailed documents running to 1,5 lever arch files in response to her attorney's request that Applicant complete her FDF. In doing so, the Applicant swamped her attorney with a mountain of unnecessary documents, with the result that it was not possible for that overly voluminous version of her FDF to be uploaded and that it was necessary for the Applicant's attorney to sift through all these documents to produce a suitably sized FDF containing only the necessary information and documents.

10. In April 2024, the Respondent delivered his FDF. I have not been given sight of the Case Lines Rule 43 file, but my understanding is that his FDF was also not uploaded to the Case Lines Rule 43 file. No application was brought by the Applicant to compel the Respondent to deliver and upload his FDF to Case Lines for the Rule 43 application.
11. During April or May 2024, the Applicant informed her attorney of record that she and the parties' children were literally starving because the Respondent has simply been paying nothing for their food.
12. At this stage the Applicant's attorney, realizing that this crisis needed to be addressed urgently, brought the present urgent application seeking an interim urgent maintenance order to cover the period between the present day and the eventual adjudication of the Rule 43 application.
13. The reason why the Rule 43 application has not been allocated a hearing date is that neither party has uploaded a FDF to the Case Lines Rule 43 file and has therefore not been entitled to seek a hearing date for the Rule 43 application.
14. I do not agree with the submission by the Applicant's attorney to the effect that it was not reasonably possible to produce, deliver and upload an FDF to the Rule 43 Case Lines file. The fact that the Applicant swamped her attorney with 1,5 lever arch files did not, in my view, stop the Applicant's attorney from stepping in and taking charge of the situation by sitting around a table with the Applicant and together drawing up a fresh FDF with only the required information and documentation. It would in my view not have been necessary to plough through those 1,5 lever arch files in order to
15. produce a compliant FDF. The information sought in an FDF is straightforward and could in my view have been completed in the space of a few hours, especially in the present

case where the Applicant is not a woman of means, where her financial situation is simple and where she had already applied her mind to the questions in the FDF and obtained the necessary information.

16. There was in my view no excuse for the Applicant's failure to deliver and upload an FDF and setting the Rule 43 application down for hearing in the ordinary course. Had that been done in January 2024, then the Rule 43 application would by this time already have been heard in the ordinary course. The Respondent's delay in delivering his FDF could have been dealt with by way of an interlocutory application by the Applicant to compel the delivery and uploading of his FDF.

SHORTCOMINGS IN APPLICATION

17. There are important shortcomings in the papers in the Applicant's application:

17.1. The Applicant did not attach to her application (which she submits is an application under the common law and is not constrained by the volume- restrictions imposed by Rule 43) copies of her bank statements, nor a copy of the Respondent's salary advice which was an annexure to his answering affidavit in the Rule 43 application which was brought in November 2023.

17.2. The Applicant also did not attach to her urgent application a copy of the Respondent's FDF, even though it was served in April 2024.

17.3. The Applicant did not attach her own FDF, even though I saw (after it had been uploaded at my request) that it had already been deposed to in January 2024.

17.4. The Court was therefore not presented with readily available objective documentary evidence which would have provided the Court with corroboration of

the Applicant's allegation that she has no income at all and her allegation regarding the Respondent's salary.

17.5. It was only after I had called for the FDFs, the bank statements and Respondent's most recent salary slip that these were uploaded to Case Lines and placed before me. The Applicant's bank statements did reflect that she has no income and the Respondent's salary slip made it simple to determine the Respondent's current salary amount.

18. Had it not been for the fact that the present application deals with allegations that the parties' children are starving, I would have struck the application from the roll.

19. However, in my capacity as Upper Guardian of the children, I decided to adjudicate the application and to make the order that I did.

HOW MY AWARD WAS ARRIVED AT :

20. Most of the relief sought by the Applicant was conceded by the Respondent.

21. The only real dispute was about what monthly amount the Respondent should pay to the Applicant to cover her grocery bill for herself and the children.

22. Applicant contended for R7500 per month. Respondent in his answering affidavit offered R4 500, but during argument, Respondent's counsel argued that as little as R2 500 per month would suffice for the Applicant and both children.

23. During argument, it was agreed that:

23.1. the Respondent's current take-home pay is R57 356 per month;

23.2. the Respondent's current reasonable personal expenses amount to R24 180 per month;

23.3. the approximate current total monetary value of the relief that the Applicant is seeking in her Notice of Motion on an interim basis is about R30 156 (if R7500 per month is allowed for the food component) and that

23.4. if the Respondent were to lay out the aforesaid R30 156 for the Applicant and the children and pay the aforesaid R24 180 per month on his personal expenses, he would thereafter still have a surplus of R3 030 per month left over for himself to spend.

24. After canvassing all relevant aspects and hearing detailed submissions for both parties, I have decided to award R7 500 per month, but on the basis that the order I am making will come to an end on 1 September 2024.

25. I have limited the duration of the operation of my order with the express purpose of incentivizing the Applicant and her attorney to make urgent work of bringing the Rule 43 application to a state of being ripe for hearing by no later than 25 August 2024. I am advised that a Rule 43 application which is ripe for hearing can be heard with about 3 months of a formal request for a hearing date.

26. As a further measure to help ensure that the necessary up to date documentary evidence will be uploaded to Case Lines in time for the hearing of the Rule 43 application, I have

also given directions in my order regarding the timeous uploading of financial documents by both parties.

27. My order appears at Case Lines 033-1 to 033-04

GOODENOUGH AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **21 MAY 2024**

APPEARANCES:

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DATE OF ARGUMENT: 21 MAY 2024

DATE OF JUDGMENT: 21 MAY 2024
