

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 041781/2024

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **YES**

Date: 13 August 2024

Signature:

In the matter between:

G[...] **H[...]**

Applicant

And

B[...] **H[...]** **H[...]**

Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This is an opposed Rule 43 application. The applicant and respondent (“the parties”) were married on 07 May 2021 out of community of property with the inclusion of the accrual system in Pretoria.

[2] A minor girl child M.A.H. was born on 13 October 2022. She will be 2 years old on 13 October 2024.

[3] The parties are separated and are going through a divorce process now.

[4] The issues for resolution in this application are:

4.1 The applicant seeks the respondent to increase his maintenance contribution in relation to the minor child and the applicant.

4.2 The respondent should contribute to the applicant's legal fees in the pending divorce action.

4.3 The respondent seeks equitable access to the minor child pending finalization of the divorce action and rejects the applicant's claim for a contribution to legal fees.

[5] Despite having conflicting views on whether the applicant has referred the parties' disagreement regarding **sleep-over arrangements** concerning the minor child, it appears from the respondent has now taken it upon himself to refer the issue to the Family Advocate for investigation. I will therefore not decide this aspect herein. (my emphasis).

[6] The applicant is employed as an Aesthetic Therapist, she earns R50 162.53 per month according to her Financial Disclosure Form (FDF). Whilst the respondent is a Software Engineer with a stated income of R52 163.66 per month from employment and R13 400 per month from rental income from a second property as per his FDF.

[7] The main bone of contention between the parties are the need for equitable access to the minor on the part of the respondent and maintenance and contribution to applicant's legal fees by the respondent.

- [8] Counsel for the parties quite helpfully filed a joint practice note. The comparative table of relief sought which is incorporated therein highlight that whilst the applicant seeks R10 000.00 per month as respondent's contribution to the maintenance for the minor child, the respondent tenders R1 500.00 per month. I can at this stage only remark that it does not sound anyway close to the needs as tabulated by the applicant.
- [9] The respondent does not make any good faith tender in his response, save for a tit-for-tat response. For example, over and above the R1 500.00, he tenders to pay 50% of the child's medical aid costs and 50% of medical expenses not covered as well as 50% of the child's school fees and leaves it at that.
- [10] The applicant for her part, devotes the entirety of her affidavit in support of her application for the above stated relief to detailing allegations of abuse, ill-treatment and downright outrageous conduct by the respondent against her. This is quite a serious matter. The applicant does not let the court in on her legal costs and expenses to enable it to assess the quantum of such a contribution and if it is deserved. The court is not privy to any past or projected costs, even of the instant Rule 43 application. Her counsel also maintained the coyness, as such I am none the wiser.
- [11] Having said that, the legal principles governing contributions to legal costs are settled law by now. In divorce litigation, Rule 43 recognizes the principle of "equality of arms" in matrimonial litigation as part of the Constitutional dispensation to ensure equality before the law. This rule ensures that both parties can afford competent legal representation.
- [12] In this case the inequality between the parties is starkly displayed by the fact that the respondent earns slightly more than the applicant, and then over and above that he earns rental income for his own benefit.

- [13] The respondent has not been contributing in any meaningful way towards the maintenance of his minor child since the separation and/or launching of the divorce by the applicant.
- [14] A further undeniable reality is that the applicant has now incurred further expenses pertaining to accommodation for which she is solely responsible.
- [15] Determining the quantum of contribution towards legal costs lies within the discretion of the presiding judge. It underscores the judiciary's flexibility in determining appropriate contributions to legal costs, based on the specifics of each case.¹
- [16] In the earlier case of *Van Rippen v Van Rippen*² underscores the court's judicial discretion in matters of maintenance and contribution towards legal costs. The court emphasised the importance of enabling the financially weaker spouse to present her case adequately. The court laid emphasis on fairness and the equitable treatment of vulnerable parties in divorce proceedings.
- [17] The applicant is legally represented in the main action and was represented in this interlocutory application.
- [18] In the circumstances, the court has taken into account the amount of the contribution and the maintenance she is seeking as well as the application in its totality, it is indubitable that she has established an equitable, unexaggerated need for the maintenance and contribution.
- [19] The respondent in turn has an undeniable need and entitlement to have access to his minor daughter.

¹ A.F. v M.F. 2016 (6) SA WCC at para 27 to 48.

² 1949 (4) SA 634 (C).

[20] In the result, I make the following order:

1. That both parties retain their Parental rights and responsibilities and guardianship of the minor children as is contemplated in terms of Section 18 of the Children's Act, Act 38 of 2005, subject thereto:

- a. That the primary care and residence of the minor child be awarded to the Applicant.
- b. That the respondent have contact, as is contemplated in terms of section 18(2)(b) of the Children's Act, Act 38 of 2005, with the minor child and that the respondent's right to contact with the minor child be exercised as follows:
- c. Every Saturday from 07:00 to 17:00, the minor child to be removed by the respondent and to be returned to the residence of the Applicant;
- d. Every alternate Sunday from 09:00 to 15:00, the minor child to be removed by the respondent and to be returned to the residence of the Applicant;

Telephonic contact every second day between 18:00 to 18:30.

2. That the respondent be ordered to pay maintenance to the applicant in the amount of R10 000.00 per month for the minor child.

3. The respondent to retain the minor child on his medical aid and be liable to pay 50% of all medical expenses not covered by the medical aid.
4. That the respondent be ordered to pay an initial contribution to the legal fees of the applicant in the amount of R30 000.00.
5. Costs to be costs in the Divorce Action.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 05 August 2024

Date of Judgment: 13 August 2024

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Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 13 August 2024.