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

CASE NO: 17095/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED: YES

DATE: 17 October 2024

SIGNATURE:

In the matter:

J.C

APPLICANT

and

C.A.J.C

RESPONDENT

REVISED JUDGMENT AND ORDER

AMIEN AJ

Introduction

[1] On 2 October 2024, I delivered a judgment with corresponding orders in respect of this matter.

[2] On 11 October 2024, a memo drafted by Respondent's legal representatives was brought to my attention, advising that aspects of my judgment and order conflicted with an order that was granted by my brother Mbongwe J, which

was delivered on 6 June 2024.

[3] I have had regard to Mbongwe J's judgment of 6 June 2024 and confirm that the issues relating to care and contact of the parties' minor child have been addressed in his judgment.

[4] To resolve the said conflict, I accordingly revise my judgment and order as follows:

[5] This is an application in terms of Rule 43 of the Uniform Rules of Court for interim relief pending a divorce action between the parties.

[6] The parties were married to each other on 14 December 2019 out of community of property with the exclusion of the accrual system.

[7] The parties are in the process of divorce and the pleadings have closed.

[8] The interim relief being claimed relates to maintenance *pendente lite* for the Applicant and the minor child, return of household items to the Applicant, and a contribution to the Applicant's costs in respect of the matrimonial action.

Maintenance pendente lite

[9] The Applicant contends that for her to relocate to Pretoria, the Respondent needs to pay *interim maintenance* for her and the minor child.

[10] While the parties are still married to each other, they owe a legal duty of support to one another and towards their minor child.

[11] To determine maintenance *pende lite*, this Court must consider the standard of living of the parties during the marriage, the Applicant's actual and reasonable needs, and the Respondent's means.¹

¹ *Taute v Taute* 1974 (2) SA 675 at 676D-G.

[12] The Applicant is a payroll administrator, and her net monthly income is R13 408.25. Should the Applicant relocate to Pretoria, she estimates the reasonable maintenance needs for her and the minor child to be R36 692.00 per month. The Applicant asks that the Respondent be ordered to pay the sum of R23 285.00 as maintenance for her and their minor child.

[13] The Respondent is an accountant and businessman. His financial disclosure form indicates that he owns: a 100% business interest in M[...] B[...] and is owed R278 485 by the business; 100% business interest in Taxsolve (an accounting firm) and is owed R14 665.00 by the business; 100% business interest in Cloud Payroll and is owed R119 950.00 by the business; and 100% business interest in Lakefield Plant Hire and is owed R432 619.00 by the business. For all these businesses, the Respondent claims that the total current value of what is owed to him by the businesses is R1 042 399.00.

[14] At the same time, the Respondent claims that he only earns a net salary of R43 872.56 from TaxSolve.

[15] The Respondent lists his total monthly expenditure as R42 979.97 per month, which includes the minor child's school fees and extra-curricular activities. The Respondent continues to live in the marital home, in respect of which he pays the bond instalment, rates, taxes, and municipal account. The Respondent also pays the medical aid premiums for the Applicant and the minor child, and short-term insurance for the Applicant's motor vehicle. The Respondent contends that he further pays for the minor child's winter and summer clothing when necessary.

[16] The Respondent indicates that he is prepared to continue paying the above expenses in respect of the minor child should a shared residence regime be adopted. The Respondent is currently paying for these expenses. I see no reason why he should not continue to do so. Furthermore, payment of maintenance for the minor child is not conditional on the Respondent's care and/or contact rights.

[17] Despite the business interests listed above and the amounts provided by

the Respondent in respect of his net salary from TaxSolve and his expenses, the Respondent claims that he has just over R5 000.00 left at the end of any given month and tenders that amount per month as rehabilitative spousal maintenance for the Applicant for a period of six (6) months from the date that the divorce is granted.

[18] Yet, if one deducts the Respondent's listed expenses from his disclosed net income (R43 872.56 – R42 979.97), he should only have a total of R892.59 left at the end of a month. How then is the Respondent able to afford to pay the Applicant an amount of R5 000.00 per month in respect of spousal maintenance?

[19] In light of the above, the Court is of the view that the Respondent is being less than candid about his actual income while the Applicant remained consistent about hers. From the Respondent's declared business interests, it appears that he can afford to pay more than just R5 000.00 per month.

[20] The Applicant contends that her standard of living has dropped since she and the Respondent separated from each other. The Applicant is not asking to be maintained at the same standard of living that she became accustomed to during the marriage. The fact that she is planning to move into an apartment / townhouse as opposed to a house confirms this.

[21] The contribution that the Applicant is thus asking for from the Respondent towards her and the minor child's maintenance in the amount of R23 285.00. is more than reasonable.

Delivery of household items or payment in lieu thereof

[22] The Applicant requests the delivery of certain furniture and household effects listed in Annexure 'H' to her founding affidavit. Should the Respondent refuse to deliver the household items, the Applicant seeks payment of R65 000.00 from the Respondent as relocation costs.

[23] In *Van der Spuy v Van der Spuy*,² the Cape High Court (as it then was)

² 1981 (3) SA 638 (C).

held that the High Court has the power to order delivery of household items in a rule 43 application especially where the interests of a minor child are involved.

[24] In this matter, the Applicant seeks to relocate with the minor child to a new home and needs to furnish their new home for the benefit of her and the minor child.

[25] Respondent does not wish to give the household items to the Applicant but is willing to pay her R65 000.00 for them even though he initially offered R100 000.00 in his with prejudice settlement offer.

[26] It is bizarre that the Respondent claims that he cannot afford to pay more than R5 000.00 per month as spousal maintenance, but he is willing to give the Applicant a significant sum, and a much larger one, than the Applicant herself has asked for, in lieu of the household items requested by Applicant. This is a further indication that the Respondent is not being forthright about his net worth.

[27] Since the parties appear to agree on the sum of R65 000.00 as payment in lieu of the furniture and household items listed in Annexure 'H' to the Applicant's founding affidavit, an order in this regard appears to be in order.

Contribution towards the Applicant's costs of litigation

[28] A contribution to the costs of litigation is meant to enable the parties to litigate on an equal footing so that their right to a fair hearing is protected.³

[29] In *Nicholson v Nicholson*,⁴ my learned brother, Wunsh J held that to determine if the Applicant has a right to a contribution to her legal costs, the means of the Applicant and Respondent must be determined, the scale upon which the Respondent is litigating and the scale upon which the Applicant intends to litigate must be ascertained, and the complexity of the matter must be considered.

[30] It is clear from the Applicant's financial disclosure that she cannot afford to

³ *AF v MF* 2019 (6) SA 422 (WCC) para 41.

⁴ 1998 (1) SA 48 (W) at 50C-E.

pay for the legal costs of a divorce action from her own pocket.

[31] The Applicant advises that her estimated bill of costs up to day one of the divorce trial is R436 865.92. The Applicant seeks a contribution to these costs in the amount of R200 000.00. This is for the costs of senior counsel.

[32] The Respondent refuses to make any contribution to the Applicant's legal costs on the basis that she refused to accept his settlement proposal; his legal representatives are cheaper than hers; and he cannot afford to pay for the Applicant's legal costs. The Respondent avers that his estimated legal costs are R197 786.33.

[33] In light of the Respondent's financial disclosures, only one of the Respondent's reasons is accepted by this Court namely, that he appointed less expensive counsel. Furthermore, a contribution to the Applicant's legal costs cannot be conditional on her accepting a settlement proposal by the Respondent.

[34] The nature of the divorce action is not of such a complex nature to warrant the appointment of senior counsel.

[35] A reasonable contribution by the Respondent to the Applicant's legal costs would therefore be R100 000.00 up to day one of the divorce trial.

Order

[36] In the result, the following order is made:

- 36.1. The Respondent is ordered to pay maintenance to the Applicant in respect of her and the parties' minor child in the amount of R23 285.00 (twenty-three thousand and two hundred and eighty-five rand) per month, payable into the Applicant's nominated bank account. The first payment is to commence on 15 October 2024 and thereafter on/before the first (1st) of every month.

36.2. The Respondent is ordered to retain the Applicant and the minor child as beneficiaries on his medical aid fund and to maintain them on the same plan with the same benefits that they enjoyed previously while the parties were still living together. Additional to the payment of the medical aid premiums, the Respondent shall be responsible for payment of all reasonable medical expenses of the Applicant and the minor child that are not covered by the medical aid fund.

36.3. The Respondent is ordered to pay the following expenses in respect of the Applicant and/or the minor child directly to the respective service providers:

36.3.1. The minor child's pre-school fees, inclusive of any registration fee.

36.3.2. The minor child's extra-mural activities.

36.3.3. The medical aid fund premium in respect of the Applicant and the minor child, and their reasonable medical expenses that are not covered by the medical aid fund.

36.3.4. The short-term insurance of the Hyundai I20 motor vehicle used by the Applicant.

36.5. The Respondent is ordered to continue payment of the monthly bond instalment, municipal levies and municipal charges in respect of the parties' former matrimonial home, situated at 1[...] F[...] Street, Northville, Benoni, Gauteng Province.

36.6. The Respondent is ordered to pay the sum of R65 000.00 (sixty-five thousand rand) to the Applicant in lieu of handing over certain

furniture and household items, payable into the Applicant's nominated bank account.

36.7. The Respondent is ordered to make an initial contribution of R100 000.00 (one hundred thousand rand) towards the Applicant's legal costs, such amount to be paid in equal monthly instalments of R25 000.00 (twenty-five thousand rand), payable on/before the first (1st) day of every month, except for the first payment, which is to be made on/before 15 October 2024.

36.8. Each party to bear their own costs in this application.

W AMIEN
ACTING JUDGE OF THE HIGH COURT
PRETORIA

APPEARANCES:

Counsel for the Appellant:	I Vermaak SC
Instructed by:	Arthur Channon Attorneys
Counsel for the Respondent:	N Smit
Instructed by:	Albisini Attorneys

Judgment number: 17095/2024

Date heard: 21 August 2024

Date of revised judgment: 17 October 2024

This judgment has been delivered by uploading it to the court online digital data base of the Gauteng Division, Pretoria and by e-mail to the attorneys of record of the parties. The deemed date and time for the delivery is **17 October 2024**.