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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 18151/24

In the matter between

L[...] S[...] V[...] Z[...]

APPLICANT

AND

A[...] E[...] V[...] Z[...]

RESPONDENT

Date of Hearing: 28 October 2024

Date of Judgment: 12 November 2024 (to be delivered via email to the respective counsel)

JUDGMENT

THULARE J

[1] This is an application for maintenance pending divorce. Some of the claims are not disputed at all, whilst in some the claims remain in dispute, but the respondent made tenders. For the purposes of this judgment, I will deal only with the disputed claims. I record my appreciation for the effort put in by the parties and their legal representatives to narrow the issues and move closer to resolution of the disputes. The applicant's claim ran 4 pages. The issues that remain are only four. These are the cash payable per month. The applicant sought R73 250-00 per month and the respondent offered R27 500-00. The second is the payment of expenses in respect of rental at R30 000-00. The respondent tendered that the applicant continues to reside free of charge at the parties' common home or alternatively at a house in a security estate or in the family's holiday home. The third is the contribution towards costs at R450 000-00. The respondent tendered R100 000-00. The third is the costs of the application.

[2] The standard of living of the parties was not in dispute. The means of the respondent was also not an issue. The case only required an assessment of the applicant's needs. The nature and content of the expenses was also not substantially in dispute, save for arts and crafts. It is the scope and extent of the expenses that in the main course was disputed. The respondent preferred to pay for water and electricity, rent, multichoice, internet, cellphone, tv licence, and gym membership directly to the providers. For that reason, in his calculations, the amounts for these expenses should not be added to the total to assess the applicant's need. The respondent did not dispute the amounts claimed for lunches including with friends, clothing, clothing including shoes and accessories and for golf and gym, entertainment and eating out, presents, books and stationery, gold membership and games, ballet, personal care, toiletries and beauty products. There were also expenses for which the respondent paid or was prepared to pay for and did not take issue with the amounts claimed and these were groceries, cleaning materials, domestic worker, gardener, parking, appliances and repairs, pets, arts and crafts and over the counter purchases. I was able to trace only two items on general monthly expenses where the parties are very far apart. On groceries the applicant claims R15 000, and the respondent offered R7500. On fuel the applicant claimed R4500, and the respondent offered R1500.

[3] During the subsistence of the marriage the respondent provided the applicant with an amount of R25 000 monthly maintenance, and when necessary, the applicant made additional grocery purchases through Sixty Sixty which the respondent paid. In addition, the respondent paid for motor vehicle insurance, medical expenses, domestic worker and gardener services including refuse removal, koi and pond services, rates and taxes, water and electricity, car related expenses, multichoice, internet, tv licence, ballet, gym membership, fuel, parking, appliance and repairs, golf membership including games. It seems that in the main these expenses were paid directly by the respondent to the service providers, or through a credit card provided to the applicant. The respondent also provided accommodation.

[4] The applicant should be able to maintain an acceptable standard of living to which she was accustomed to as the marital standard of living, pending the divorce. The applicant was accustomed to the respondent making direct payments to service providers for some expenses and providing a cash amount for the other monthly expenses. There is therefore nothing untoward, on the facts, with the respondent making the payment for rental directly to the service providers. In my view, the amounts claimed by the applicant for the rent, fuel and groceries are reasonable. There is nothing wrong with the respondent continuing to pay for the other expenses for which he paid and those he also tendered to pay for. It will be up to the respondent to provide a credit card to the applicant as he previously did, or to elect to directly pay these expenses. What matters is that he pays for the expenses. I am not inclined to the view that the applicant's life, to which she was accustomed, should be limited or in some respects even come to a halt simply because a divorce is pending. It is not the moral watch or economic sense of an individual judge, but the need, means and standard of living of the parties that should determine whether a holiday, including overseas holidays, is manifest luxury or something that the parties were accustomed to during their marriage. I am unable to agree with the views expressed in *S v S* (7392) [2010] ZAWCHC 162 (24 June 2010) and *AL v LG* (9207/2020) [2020] ZAWCHC 83 (25 August 2020) to the extent that they sought to limit provision for holidays as a special item of

expenditure as unwarranted in rule 43 applications. I don't think the interim nature of a rule 43 application warrants such serious inroads into an applicant's maintenance claim. Affluence and extravagance are and should remain distinct including in rule 43 application.

[5] The applicant was 70 years old and had not worked for the past 20 years. Even when she was earning an income, she was not required to make any contribution to the expenses of the household. She had always been financially dependent on the respondent who took care of her financially at an affluent standard of living. She did not have an income and did not own sufficient assets to utilize towards her maintenance and costs of the divorce action. She held a Capitec fixed term savings account with R32 000-00 and had R225 764-51 in a savings account which she was from a small inheritance and pension payouts. The applicant claimed R450 000-00 for legal costs and the respondent tendered R100 000-00. There was a difference of R350 000-00. Where the respondent was a person of means, it was not expected of the applicant to utilize her meagre assets to fund litigation. The respondent was expected to support her fully including in relation to expenses necessary to put her case before a court [*Glazer v Glazer* 1959 (3) SA 928 (W) at 931 G-H]. The respondent's case was that the case should be mediated and that there was no need for counsel to be involved. In his view there was no need for a forensic accountant to be appointed and there was no need for interlocutory issues and that the applicant had inflated her contribution claim. The applicant's case was that the respondent did not provide her with full insight into his financial affairs. After a subpoena was issued and the accounts obtained, it appears that the respondent's financial affairs were inextricably linked to that of the Carpe Diem Trust and various entities owned by the Trust. The applicant was advised that it would be necessary to appoint a forensic accountant to conduct a preliminary investigation into the respondent's resources, access to funds and assets and liabilities. The applicant's stance was that mediation was premature. She declined the respondent's invitations to mediation only as a result of not having sufficient financial information in order to properly consider any settlement proposals made by the respondent. The proposals made thus far had been wholly insufficient to ensure that the applicant would be cared

for until her death, on a reasonable level. She was amenable to mediation only once full financial discovery was made. The applicant owed her attorneys R112 389-50 for fees and disbursements. A necessary forensic investigation came at a cost of R37 500-00. The costs to be incurred in the action has a total amount required at R467 979-50.

[6] I am inclined to the view that in matrimonial matters, the first push should be towards readiness to an effective mediation of the dispute. The proper resolution of the disagreement around the true financial position of the respondent will be informed by a forensic investigation. It is only an expert accountant who may assist the parties resolve the complexity of the relationship between the respondent, the Trust and its related entities. The costs for a forensic accountant are reasonable. The amount owed to the attorneys is allowed. The applicant will still require advise and where needs be counsel in perusal, consideration of the facts and the necessarily required route towards resolution of the divorce. I am persuaded that the amount of R250 000-00 as a contribution to costs, at this stage, is reasonable. For these reasons I make the following order:

1. Respondent is directed to maintain the Applicant *pendente lite* as follows:

- 1.1 By paying a cash maintenance amount of R 30 000-00 to the Applicant, the first such payment to be made within 7 calendar days of this order and thereafter monthly in advance on or before the first day of every month, such payment to be made by way of electronic bank transfer to reflect in the Applicant's bank account as nominated by her from time to time on the first day of each month, free of deduction or set-off;
- 1.2 By continuing to pay the Applicant's medical aid premiums and by paying her reasonable medical costs not covered by the medical aid, including all of the reasonable medical expenses incurred in private healthcare, such costs to include all reasonable medical, dental, pharmaceuticals (including levies), surgical, hospital, orthodontic and

ophthalmic (including spectacles and/or contact lenses), physiotherapeutic, psychotherapeutic, occupational therapeutic, homeopathic, chiropractic and further medical expenses not covered by her medical aid. The Respondent shall reimburse the Applicant for all expenses referred to above in respect of which she has made payment, or shall make payment directly to the service providers, as the case may be, within 7 calendar days of the Applicant providing the Respondent with proof of payment and/or the relevant invoice;

1.3 By continuing to provide the Applicant with the motor vehicle currently in her possession, free of consideration and further by paying all reasonable expenses in respect thereof including its instalments (if applicable), insurance premiums, its reasonable services and repairs (in the event of it not being covered by a motor plan), its yearly vehicle license fee and the cost of replacement of tyres when required;

1.4 In the event of the Applicant having to rent a property *pendente lite*, by:

1.4.1 paying the monthly rental in respect of a property of the Applicant's choice to the Applicant or to the rental agent or lessor, to a maximum amount of R 30 000,00 per month;

1.4.2 entering into a lease agreement in respect of such property in the event of the Applicant failing to qualify to do so herself;

1.4.3 paying a once off deposit to a maximum of two months rental, repayable to the Respondent upon cancellation of the lease agreement; and

1.4.4 paying the applicant's reasonable relocation costs.

- 1.5 By providing the Applicant with the use *pendente lite*, of the items of furniture listed in annexure “**LZ3**” to the Applicant’s Founding Affidavit.
- 1.6 By paying the following expenses of the applicant:
 - 1.6.1 water and electricity
 - 1.6.2 fuel to applicant’s vehicle to a maximum of R4500 litres per month
 - 1.6.3 multichoice, internet, tv licence, gym membership, reasonable cellphone costs and golf membership
 - 1.6.4 reasonable top-up to groceries and necessary domestic consumables reasonably required and purchased from Checkers via Sixty Sixty delivery service
 - 1.6.5 domestic worker
 - 1.6.6 gardener
2. Respondent is directed to make an initial contribution to the Applicant’s costs in the divorce action in an amount of R 250 000,00, which amount shall be paid into the Applicant’s attorney of record’s trust account, within 7 calendar days of this order, free of deduction or set-off;
3. Respondent shall pay the costs of this Rule 43 Application as taxed or agreed.

DM THULARE

JUDGE OF THE HIGH COURT