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

CASE NO: 076638/2023

(1) REPORTABLE: **NO**

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

(3) REVISED: **YES**

(4) Date: 17 March 2025

Signature:

In the matter between:

M[...] M[...] V[...] Z[]

(Identity Number: 7[...])

Applicant

And

R[...] T[...] D[...] M[...] V[...] Z[]

(Identity Number: 7[...])

Respondent

JUDGMENT

NYATHI J

A. Introduction

[1] The applicant is seeking relief in terms of the provisions of Uniform Rule 43 pending the finalization of a divorce in which she is the defendant. The respondent opposes the application.

[2] The parties are married out of community of property with the exclusion of the accrual. They are joint owners of the immovable property whereat the respondent resides.

[3] Two children were born from the marriage. They are:

- 3.1 RVZ a major dependant male, born on the 22nd of April 2006, currently 18 years old, and
- 3.2 CVZ, a minor male born on the 21st of September 2007, currently 17 years old.
- 3.3 Both children are in the primary care of the respondent. The applicant has no objection to an interim order confirming same.

B. Disputes between the parties:

[4] The following issues remain in dispute between the parties:

- 4.1 Spousal maintenance, the Applicant is claiming an amount of R5 500.00 per month which remains contested;¹
- 4.2 Payment of the bond instalments;
- 4.3 The applicant seeks an order in relation to a motor vehicle which remains contested;
- 4.4 Insurance contributions (in respect of the home and motor vehicle) which remains contested;
- 4.5 Maintenance in relation to the children which remains contested;
- 4.6 Legal cost contribution(s) in the amount of R50 000.00 (Fifty thousand Rand) which remains contested.

[5] At the commencement of the hearing the applicant sought an indulgence to have her supplementary affidavit admitted into evidence. The applicant

¹ As per the applicant's supplementary affidavit.

submitted that the document was necessary due to changes in circumstances as a result of her obtaining employment after institution of the Rule 43 application. The respondent did not object to the application, the supplementary affidavit was accordingly admitted.

[6] In the supplementary affidavit, the applicant confirms that on or about the 20th of August 2024 Combrink & Jamneck Attorneys offered her a receptionist position. She accepted the offer and commenced with the employment on Friday the 23rd of August 2024 and was paid a pro rata amount of R 2181.82 for the month of August 2024. Her monthly salary for September 2024 was an amount R 8000.00 (EIGHT THOUSAND RAND).

[7] Because she has obtained employment, she is no longer able to devote her full attention and time to the Africa Condiments cottage industry which she disclosed in her founding affidavit.

[8] She confirms that the communal home is currently placed on the open market for sale. She therefore continues to reside in the flatlet situated on the property pending the sale.

[9] The applicant then lists her expenses totalling R 13 215.00 less her income of R 8000.00, this leaves a shortfall of R 5 215.00.

C. Common cause facts and what the respondent tenders:

[10] The vesting of the children with the respondent subject to reasonable access by the applicant.

[11] The need for the appointment of a Clinical Psychologist has been identified.

[12] The respondent has expressed a willingness to continue payment of the bond until the sale of the house is achieved, he has however, arranged for a

payment holiday with the bank due to his financial constraints. The respondent's Financial Disclosure Form ("FDF") provides for the bond payments.

[13] The respondent offers to continue payments for the bond and to give his co-operation to efforts to sell the house. Each party has a 50% share of the property.

[14] The applicant alleges that the respondent receives big amounts of cash which are not disclosed in his FDF. On his version, the respondent earns R42 000.00 per month. This is as per his salary slips.

[15] Once the bond amount of R11 000.00 is deducted, together with the R5 500.00 prayed for by the applicant, then the respondent is left with R25 500.00 per month. The applicant in her submissions considers this to be not unfair.

D. The legal position.

[16] In *Taute v Taute*² it was held that a claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands. Similarly, more weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligations than to that of one who is seeking to evade them.

[17] The concept of a spouse being ordered to contribute towards the other spouse in a matrimonial suit is unique in nature and is a product of constitutional and common law fairness in litigation arising from the duty of support the spouses owe each other. The aim is to afford the spouse who is financially

² 1974 (2) SA 675 SA 675 (E) at 676H.

disadvantaged in relation to the other “an equality of arms” to present their case adequately before the court hearing their divorce.³

E. Discussion

[18] Spousal maintenance arises out of the duty to maintain each other that spouses owe each other. Their standard of living during the subsistence of the marriage and their earning power and ability to afford it are cardinal considerations.

[19] In this case, the applicant has always endeavoured to make a meaningful contribution to the household finances by applying herself to home-based industries such as the family business of breeding dogs for sale⁴ and Africa-Condiments. She has while this application was pending, obtained employment and filed a supplementary affidavit as a result.

[20] One of the applicant’s prayers relates to her need to gain access to the respondent’s Chevy Spark motor vehicle. The respondent in his answering affidavit responds as follows:

“...83.3 I wish to make it clear that I have not denied the Applicant access to the newly purchased vehicle (Chevrolet Spark). She is free to use it during the day (when I am at work), yet over weekends and after working hours we need to share the vehicle. It is however unnecessary for the Court to make an order to this effect. I will continue to pay the insurance instalment on this vehicle insofar as my finances allow.”

[21] This ought to be a resolution of this conundrum, pending the finalization of the main application.

³ See amongst others: B.J.M v W.R.M (unreported, GJ case No. 2022/9405 dated 26 April 2023) at paragraph [43] and the cases referred to therein.

⁴ SA Labradoodles. Para 4.3 respondent’s FDF.

- [22] The respondent counters the application for maintenance in respect of the minor child by seeking a declaration that the applicant be ordered to pay maintenance to him in respect of the minor child, CVZ as well as the major dependent child, RVZ, in the amount of R3 500,00 (Three thousand five hundred Rand) per month per child. This needs a resolution.
- [23] It was argued on behalf of the respondent that the applicant did not attach the report of the Family Advocate to this application solely because it did not suit her.
- [24] The parties agree that the respondent shall be the custodial parent of the two children. Therefore, the issue of maintenance for the boys needs no further pronouncement. Nothing stops the applicant whenever she can, to contribute thereto.
- [25] Legal costs: the respondent disputes that the applicant is entitled to any contribution towards her legal costs. He pleads poverty. Similarly, the court is called upon to resolve this.
- [26] The issue of primary residence of both sons being awarded to the respondent, subject to the applicant's right to contact the minor child at all reasonable times, such contact to be arranged directly with the minor child directly, is from the papers and submissions already a settled matter.

F. Conclusion

- [27] 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.⁵

⁵ A.F. v M.F. 2016 (6) SA WCC at para 27 to 48.

[28] In *Van Rippen v Van Rippen*⁶ the court's judicial discretion in matters of maintenance and contribution towards legal costs was confirmed. The court emphasised the importance of ensuring that the financially weaker spouse is enabled to litigate on an equal basis with her/his spouse. The court underscored the need for fairness to both parties and the just and equitable treatment of vulnerable spouses in divorce proceedings. These are usually but not exclusively the housewives.

[29] In *Nilsson v Nilsson*⁷, the court stated the following: *"Primarily Rule 43 was envisaged to provide temporary assistance for women, who had given up careers or potential careers for the sake of matrimony with or without maternity, until such time as at a trial and after hearing evidence maintenance claims and, if children had been born, custody claims could be properly determined. It was not created to give an interim meal ticket to women who quite clearly at the trial would not be able to establish a right to maintenance. The grey area between the two extremes causes problems."*

[30] There is a residual awkward situation that arises in the event that the court orders the sale of the house, the applicant will have a need for accommodation.

[31] The respondent submits that the applicant has moved into a flatlet/cottage outside the main house, this caused the respondent to endure a loss of rental income of R7000 per month. In the final analysis the parties may agree and co-operate in the sale of the house, but this is an issue best left for the final adjudication by the divorce court in the main trial.

[32] The respondent insists that the applicant's dog breeding business is still ongoing and earning applicant income.⁸

⁶ 1949 (4) SA 634 (C).

⁷ 1984 (2) SA 294 (C) at 295F.

⁸ Para 15, respondent's answering affidavit.

[33] The applicant and respondent have made numerous accusations and counter accusations regarding incomplete and inaccurate information concerning their finances. These are taken on board, though not repeated herein.

[34] In *Du Preez v Du Preez*⁹, it was held that:

“...there is a tendency for parties in rule 43 applications, acting expeditiously or strategically, to misstate the true nature of their financial affairs. It is not unusual for parties to exaggerate their expenses and to understate their income...To my mind the practice is distasteful, unacceptable, and should be censured. Such conduct, whatever the motivation behind it, is dishonourable and should find no place in judicial proceedings...Should such conduct occur in rule 43 proceedings at the instance of the applicant, then relief should be denied.”

[35] In the totality of the evidence before me, the application cannot succeed at this stage. The following order is made:

The application is dismissed. The costs of the application to be costs in the divorce.

J.S. NYATHI

Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 23/10/2024

Date of Judgment: 17 March 2025

On behalf of the Applicant: Ms. C. Spangenberg

⁹ 2009 (6) SA 28 (T) at 32C-H

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On behalf of the Respondent: Ms. T. Ellerbeck

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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 17 March 2025.