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

CASE NUMBER: **33544/2017**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

In the matter between:

T[…] K[…] L[…] **APPLICANT**

AND

G[…] A[…] L[…] **RESPONDENT**

JUDGMENT

OOSTHUIZEN-SENEKAL CSP AJ:

Introduction

[1] This is an application brought in terms of Rule 43 of the Uniform Rules of Court in which the Applicant seeks relief *pendente lite*, namely:

1. An order directing the Respondent to pay maintenance for herself and the minor child, D[...], aged 14;

2. A contribution towards her legal costs; and

3. An order confirming that the primary residence of the minor child vests with her.

[2] The Respondent opposes the application insofar as it relates to the claim for spousal maintenance, the contribution towards legal costs, and the costs of these proceedings. The relief sought in respect of the minor child's maintenance and educational needs is largely not disputed, save for quantum.

[3] The issues that fall for determination are therefore:

1. Whether the Applicant has established a *bona fide* need for spousal maintenance and whether the Respondent is in a position to pay same, and if so, the quantum;

2. Whether the Applicant is entitled to a contribution towards her legal costs; and

3. The issue of costs of the present proceedings.

FACTUAL BACKGROUND

[4] The parties were married on 18 November 2007 out of community of property with accrual. From this union, one minor child, D[...], was born. The Applicant and the minor child vacated the matrimonial home in May 2017. Divorce summons were issued in September 2017 and pleadings have since closed. The matter has, however, not yet been finalised despite mediation efforts.

[5] The Respondent has, since the separation, continued to contribute financially towards the Applicant and D[...]'s needs. He pays an amount of R10 000 monthly, contending that this is only in respect of the child; covers groceries, clothing for D[...], school fees and associated educational costs, medical aid for D[...], and motor vehicle instalments and insurance for the Applicant.

[6] The Applicant is presently unemployed and asserts that she is unable to sustain herself and D[...] on the Respondent's current contributions. She contends that her reasonable monthly expenses amount to R32 175 for herself and R21 824 for the minor child, over and above items directly covered by the Respondent. The Applicant further claims a contribution of R475 000 towards legal costs.

[7] The Respondent disputes the extent of these expenses and contends that the Applicant has not made full disclosure of her income and financial position. He points to inconsistencies in her bank statements, alleged cash rental payments, and her prior and current work as a personal trainer.

THE APPLICANT'S CASE

[8] The Applicant relies on the common cause fact that during the marriage and subsequent separation, the Respondent bore the primary financial responsibility for her and D[...]'s needs. She argues that such obligation continues and that the current contribution is inadequate.

[9] She further contends that the Respondent's financial means permit him to cut down on certain "luxury" expenses and that his opposition to her claim demonstrates an attempt to coerce her into abandoning her Rule 43 application.

[10] In respect of legal costs, she relies on the constitutional principles of equality before the law and the need for "equality of arms" in matrimonial litigation. This principle was emphasised in *AF v MF* 2019 (6) SA 422 (WCC), where the Court held that:

> *"The purpose of a contribution towards costs is to ensure that neither spouse is hampered in presenting his or her case due to lack of financial means. The principle of equality of arms must be upheld in order to achieve fairness in matrimonial disputes."*

THE RESPONDENT'S CASE

[11] The Respondent accepts responsibility for maintaining D[...] and does not seriously oppose orders relating to her schooling, medical aid, or associated costs. He opposes the claim for spousal maintenance on the basis that:

1. The Applicant has survived for seven years on his existing contributions without seeking interim relief;

2. She has been and remains capable of earning an income as a personal trainer;

3. Her financial disclosures are incomplete and inconsistent; and

4. At age 60, he is nearing the end of his working life, has no retirement savings, and already incurs expenses exceeding his income.

[12] In respect of the contribution to legal costs, he argues that the divorce has already consumed sums greater than the parties' combined estates, that the issues in dispute are narrow, and that any further financial burden would prejudice D[...]'s best interests.

LEGAL PRINCIPLES

[13] It is trite that both parents are obliged to support their minor child according to their respective means. With regard to spousal maintenance *pendente lite*, the applicant must establish a *bona fide* need. In *Nilsson v Nilsson* 1984 (2) SA 294 (C), the Court cautioned that:

> *"The purpose of interim maintenance <u>is not to maintain the applicant in the standard of living enjoyed during the marriage</u>, but to provide relief which is fair and just until the trial."*
> [My Emphasis]

[14] Similarly, in *EH v SH* 2012 (4) SA 164 (SCA), the Supreme Court of Appeal held that a spouse seeking interim maintenance must make full disclosure of her financial position and demonstrate genuine need.

[15] As to a contribution towards legal costs, the remedy is *sui generis*, arising from the duty of support. In *NV v CV* [2019] ZAWCHC 36, the Court reiterated that:

> *"The guiding principle is to place the financially weaker spouse in a position to present her case adequately, <u>bearing in mind the complexity of the matter and the relative financial positions of the parties</u>."*
> [My Emphasis]

DISCUSSION

Spousal Maintenance

[16] The Applicant claims R32 175 per month for her own expenses. However, her failure to make full and frank disclosure of her financial position undermines her credibility. Evidence of prior and current personal training work indicates that she retains earning capacity. The eight-year delay in seeking interim relief further weakens her case.

[17] While the Court accepts that she suffers from medical conditions, these factors must be balanced against the Respondent's limited financial means. He already contributes significantly and is close to retirement.

[18] The Applicant has shown that the Respondent historically assumed responsibility for her financial support. The Respondent's financial disclosure demonstrates that he already expends approximately 43% of his net income on the Applicant and D[...]. He is nearing retirement age and is servicing debt. The Respondent also scaled down his expenses by moving in with his parents.

[19] However, given the Applicant's chronic medical conditions, her role as the primary caregiver of the minor child, and the Respondent's historic assumption of responsibility for her needs, the Court is satisfied that a limited measure of spousal

maintenance is justified. Such maintenance is not intended to create a long-term dependency but rather to assist the Applicant in re-establishing financial independence.

[20] It must be emphasised that the Applicant is under a duty to take this Court into her confidence and to make every effort to secure gainful employment. In today's economic climate in South Africa, it is a reality that many mothers work while their minor children attend after-care facilities. The Applicant is expected, as a matter of urgency, to seek and obtain employment to contribute to her own and D[...]'s upkeep.

[21] In the circumstances, the Respondent shall pay the Applicant the sum of R5 000 (five thousand rand) per month as spousal maintenance, for a period of six months only, whereafter such obligation shall lapse. This period is intended to provide the Applicant with the opportunity and means to re-establish herself financially.

Maintenance for the Minor Child

[22] The Applicant claims R21 824 per month for D[...]'s expenses. The Respondent's commitment to D[...]'s maintenance is not in dispute, but it is in D[...]'s best interests that the Applicant, as primary caregiver, receives a portion of contributions directly in cash rather than at the Respondent's discretion.

[23] The Court must consider the practical day-to-day expenses of a 14-year-old child:

1. <u>Food and groceries</u>: While Respondent contributes to groceries, a teenager's nutritional needs are substantial, and it is reasonable to allocate at least R4/5 000 monthly towards daily meals, snacks, and household food consumed at the Applicant's home.

2. Clothing and footwear: Adolescents experience rapid growth and require frequent replacement of clothing, including school uniforms and casual wear. A fair monthly allocation is in the region of R1 500.

3. Transport and mobility: Even though the Respondent contributes to vehicle instalments and insurance, additional transport-related costs such as petrol, maintenance, and incidental travel expenses for D[...]'s activities are ongoing. A reasonable monthly allowance would be R2 000.

4. Extramural activities and social needs: Teenagers participate in sports, cultural activities, and social outings which form part of their holistic development. These costs, although variable, should fairly be estimated at R3/2 000 per month.

[24] On this breakdown, D[...]'s reasonable direct monthly expenses under the Applicant's care are no less than R10 500–R12 500.

[25] In terms of the principle set out in *F v F* 1987 (1) SA 525 (A), the Court must ensure that a child's standard of living is maintained in accordance with both parents' means. While the Respondent's financial capacity is not unlimited, D[...]'s best interests are paramount.

[26] Accordingly, a monthly cash contribution of R12 500 (twelve thousand five hundred rand) payable directly to the Applicant is both fair and justified. It falls short of the Applicant's claim of R21 824 but ensures that D[...]'s day-to-day needs are adequately met without imposing a disproportionate burden on the Respondent, who is already responsible for school fees, medical aid, and other major expenses.

Contribution Towards Legal Costs

[27] The Applicant claims a contribution of R475 000 towards her legal costs. She argues that without such relief she is unable to litigate on an equal footing with the Respondent, who has superior financial resources. The Respondent, on the other

hand, contends that the claim is excessive, disproportionate, and beyond his means, especially in circumstances where he is already indebted and approaching retirement age.

[28] The purpose of a contribution towards costs in matrimonial litigation is not to level the playing field entirely, nor to guarantee equality of financial resources. Instead, it is to ensure that the financially weaker spouse is not prevented from adequately presenting her case at trial. In *AF v MF* 2019 (6) SA 422 (WCC), the Court explained:

> *"The objective is to avoid a situation where one party is financially hampered in litigation, while the other is able to litigate without restriction. It is not a mechanism to create parity in resources, but rather to secure fairness and meaningful participation."*

[29] Similarly, in *Van Rippen v Van Rippen* 1949 (4) SA 634 (C), the Court noted that the contribution must be reasonable and necessary for the preparation and presentation of the applicant's case, taking into account the issues in dispute and the financial capacity of the parties.

[30] The factors guiding the Court in determining such a contribution include:

1. <u>The financial position of the parties</u>: The Applicant is unemployed and claims to have no independent means, whereas the Respondent continues to generate an income but has substantial financial commitments and limited savings.

2. <u>The complexity of the litigation</u>: While this divorce has been protracted, the remaining issues in dispute are relatively narrow namely, maintenance and patrimonial consequences. The case does not involve extensive commercial structures or complicated estates.

3. The scale of legal fees already incurred: The Respondent correctly points out that the litigation has already consumed amounts disproportionate to the parties' means.

4. The need for fairness: The Applicant cannot be expected to abandon her case or be out-litigated due to lack of funds. At the same time, an order must not cripple the Respondent financially.

[31] Measured against these principles, the Applicant's claim of R475 000 is excessive and unjustified. Such an amount would place an intolerable burden on the Respondent and is disproportionate to the scale of the remaining litigation.

[32] However, a reduced but meaningful contribution is appropriate. An award of R60 000 will enable the Applicant to cover counsel's preparation, attend consultations, and secure necessary expert input, if required. This figure ensures that she can participate effectively in the divorce proceedings while respecting the Respondent's financial constraints.

[33] The Court is mindful of the dictum in *Chapel v Chapel* 1979 (1) SA 1 (A), where it was stated that:

> *"The Court must strive to achieve fairness, which requires a careful balancing of the needs of the applicant spouse and the ability of the respondent spouse to pay."*

[34] Accordingly, a contribution of R60 000 strikes the appropriate balance between fairness, reasonableness, and proportionality.

Costs of the Application

[35] Both parties have achieved partial success. It is equitable that the costs of this application be costs in the cause of the divorce action.

ORDER

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

1. The Respondent is ordered to pay the monthly reasonable instalments of the Kia Picanto motor vehicle driven by the Applicant and the monthly insurance premiums relating thereto as and when they fall due;

2. That the Respondent be ordered as follows with regards to the maintenance of the minor child born of the marriage, namely D[...] P[...] L[...]a daughter born on 14 February 2011 ("the minor child"): -

2.1 Retain the minor child on a medical aid plan and make payments of the monthly premiums and all reasonable excess expenses not covered;

2.2 Payment of the minor child's current cell phone contract;

2.3 Pay cash maintenance for the minor child in the amount of R12 500,00 (twelve thousand five hundred rand) per month by the first day of every month, following the date of this order, which shall escalate annually at a rate equal to the Consumer Price Index on every anniversary of the date of the order;

2.4 Make payment of the minor child's school fees at King David Linksfield as and when they are due, as well as her educational expenses, including but not limited to school uniforms, books, stationery, tours and outings, extra murals, sports, sports equipment, and sports clothing.

3. That the Respondent be ordered to pay an initial contribution towards the applicant's legal costs in an amount of R 60 000,00 (sixty thousand rand) payable within 60 (sixty) days of this order.

4. The primary residence of the minor child shall remain with the Applicant;

5. The Applicant's claim for spousal maintenance *pendente lite* in the amount of R5 000 (five thousand) per month for a period of six (6) months form date of this order.

6. The costs of this application shall be costs in the cause.

CSP OOSTHUIZEN-SENEKAL
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING: 20 August 2025
DATE OF JUDGMENT: 22 August 2025

<u>APPEARANCES</u>:

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