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**THE REPUBLIC OF SOUTH AFRICA**

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

**Case No: 2025-073442**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED:  
.... DATE : 17/11/2025  
SIGNATURE

In the matter between:

**C[...] M[...] H[...] (born B[...])**

Applicant

and

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

Respondent

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**JUDGMENT**

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**NKOENYANE AJ**

**INTRODUCTION**

[1] This is an application in terms of Rule 43 of the Uniform Rules of Court for interim maintenance *pendente lite* for the parties' three minor children and a contribution towards the Applicant's legal costs. The matter was argued, but before judgment could be delivered, a significant supervening event occurred: the Respondent was retrenched from his employment. This necessitated the filing of further affidavits and heads of argument, which have placed the Respondent's financial means in a new light, central to which is the receipt of a substantial, once-off lump sum severance package.

[2] The core dispute now revolves around whether the Respondent's tender of R1,000.00 per child per month, based on his newly unemployed status, is reasonable, or whether the Court should, as argued by the Applicant, order a higher level of maintenance to be funded from his readily available capital resources, including his severance package and pension funds.

### **THE PARTIES' TENDERS**

[3] The Applicant's draft order seeks, inter alia:

- 3.1. Cash maintenance of R5,000.00 per child per month (R15,000.00 total);
- 3.2. The Respondent to bear 100% of the children's medical aid costs and 70% of uncovered medical expenses;
- 3.3. The Respondent to bear 100% of the educational costs not covered by the Applicant's  
75% bursary; and
- 3.4. A contribution towards legal costs of R127,818.50.

[4] Following his retrenchment, the Respondent's revised tender is significantly reduced:

- 4.1. Cash maintenance of R1,000.00 per child per month (R3,000.00 total);
- 4.2. Medical aid coverage for the family only until 31 December 2025, after which it will  
lapse, with uncovered medical expenses to be shared 50/50;
- 4.3. Educational expenses not covered by ring-fenced school fees child to be shared 50/50; and

#### 4.4. No contribution towards legal costs.

### THE LEGAL FRAMEWORK

- [5] The principles governing interim maintenance are well-established. In **Taute v Taute**<sup>1</sup>, the court held that maintenance is dependent upon the marital standard of living, the applicant's reasonable requirements, and the capacity of the respondent to meet such requirements, which are "normally met from income although in some circumstances **inroads on capital may be justified.**" (My emphasis).
- [6] This principle is not merely an exception but a necessary tool to ensure that children's needs are not sacrificed for the preservation of a parent's capital. In **J.E.R (Nee O) v B.E.S**<sup>2</sup>, the court affirmed that "the income and assets of the respondent's business entities fell to be taken into account in determining his ability to pay maintenance." Similarly, in **F.S v Z.B**<sup>3</sup>, it was held that "If the respondent is unable to pay based on his salary, then he cannot preserve his capital assets at the expense of his children's maintenance needs."
- [7] Most recently, in **K v K** (unreported, Case No. 2024-116399, Gauteng Division, Pretoria, 04 April 2025), the court emphasized that a parent who is unemployed is not exonerated from their legal obligation. The court must consider the parent's earning potential, assets, and efforts to find employment.
- [8] Paramount above all else is the constitutional imperative. Section 28(2) of the Constitution of the Republic of South Africa, 1996, provides that a child's best interests are of paramount importance in every matter concerning the child. This paramountcy cannot be subordinated to a parent's desire to avoid tax implications or preserve capital for their exclusive future benefit.

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<sup>1</sup> 1974 (2) SA 675 (E) at 676D-F

<sup>2</sup> [2023] ZAWCHC 291

<sup>3</sup> [2023] ZAWCHC 152

## **ANALYSIS**

[9] The Respondent's central argument is that he is now unemployed, his severance package is a finite capital resource, and the Court should not speculate on his future employment. He contends that his tender is lean and sustainable, designed to make his capital last for his and the children's essentials during his unemployment.

[10] The Applicant's case is that the Respondent's "poverty" is self-engineered and illusory. She argues that he is, in fact, in a better immediate financial position than when he was employed, given the large, liquid lump sums now available to him.

[11] I find the Applicant's argument more compelling on the facts before me. A proper assessment of the Respondent's "means" for the purpose of Rule 43 must extend beyond his current lack of monthly salary.

### **The Respondent's Immediate Financial Capacity**

[12] On the Respondent's own calculations, which this Court accepts for the purpose of this analysis, he has an immediate or near-term access the following:

12.1. Net severance package (after tax and debt settlement): Approximately R466,769.22.

12.2. Ring-fenced school fees: R95,470.64 This is a pre-emptive allocation for the eldest

child's need and thus forms part of his maintenance contribution.

12.3. Last salary (October 2025): R68,377.00.

12.4. UIF benefits: R6,730.00 per month for up to 12 months.

12.5. Accessible pension funds (two-pot system, net of tax): Approximately R257,358.45.

[13] This amounts to a total accessible capital pool, excluding monthly UIF, of at least R791,504.31 (R466,769.22 + R68,377.00 + R257,358.45). The ring-

fenced school fees (R95,470.64) are a direct contribution to the eldest child's essential need and demonstrate his capacity to use capital for maintenance.

- [14] The Respondent's refusal to countenance any use of his pension funds, based solely on a desire to avoid tax, is untenable in the face of his children's essential needs. As held in **Taute** and **F.S v Z.B**, inroads into capital are justified where income is insufficient. The Respondent's current income is zero. The children's needs for housing, food, medical aid, and education are ongoing and paramount. To deprive them of these essentials so that the Respondent can preserve his pension is contrary to established legal principles and the spirit of Section 28(2) of the Constitution.

### **The Respondent's Employability and Conduct**

- [15] While the Court cannot order the Respondent to get a job, it can and must consider his earning potential when assessing his capacity to pay maintenance. The Respondent is a qualified legal professional with approximately nine years of combined corporate and legal experience. The Applicant has provided evidence of numerous suitable vacancies in the market. The Respondent's assertion that he will be unemployed for a prolonged period lacks substantiation and appears to be a strategic posture in this litigation.

- [16] His conduct in immediately accepting a voluntary retrenchment package without exploring alternative positions within his company, and his failure to provide any evidence of a meaningful job search in the weeks following his termination, further supports the inference that his current unemployment is not a genuine financial crisis but a tactical manoeuvre to reduce his maintenance obligations.

### **The Reasonableness of the Tenders**

- [17] The Applicant, with a net income of approximately R21,277.00, faces a significant shortfall in meeting the children's most basic needs once she pays

the school fees for two of the children. Her budget, while subject to legitimate criticism on certain discretionary spends, demonstrates a genuine need.

- [18] The Respondent's tender of R1,000.00 per child per month is patently inadequate. It is incapable of meeting even a fraction of the children's proportionate share of groceries, utilities, and clothing, let alone contributing meaningfully to their overall well-being. It is a token amount that, if accepted, would force the Applicant and the children into severe financial hardship while the Respondent sits on substantial liquid capital.
- [19] A just and equitable order must bridge the gap between the Applicant's needs and the Respondent's undeniable, albeit capital-based, means.

## **CONCLUSION AND ORDER**

- [20] I find that the Respondent has ample liquid resources to meet a reasonable interim maintenance obligation *pendente lite*. His current lack of employment does not absolve him of his duty of support, and his capital assets must be utilised to fulfil this primary obligation.
- [21] The Respondent's revised tender is rejected as unreasonable and not reflective of his true financial capacity. The Applicant's claim, however, also requires moderation to reflect a fair and sustainable interim position that accounts for the Respondent's changed circumstances without impoverishing the children.
- [22] In respect of the legal cost contribution, the Respondent's financial position, while capable of funding maintenance, is now more constrained. A full contribution at this stage would be premature. However, some contribution is warranted to ensure equality of arms. A reduced contribution is just and equitable.
- [23] In the exercise of my discretion, and guided by the principles in *Taute v Taute*, the paramountcy of the children's best interests, and the need for a practical order, the following is granted.

## ORDER

1. The draft order regarding the care and contact of the minor children, to which the parties are ad idem, is made an order of court.
2. Pending the finalisation of the divorce action, the Respondent shall maintain the minor children as follows:
  - a. Cash Maintenance: The Respondent shall pay cash maintenance to the Applicant in the amount of R3,500.00 (Three Thousand Five Hundred Rand) per child per month, effective 1 December 2025, payable monthly in advance.
  - b. Medical Aid: The Respondent shall keep the minor children as dependants on an open medical comprehensive medical aid scheme until at least 31 December 2026. The parties are directed to engage in good faith before this date to agree on future medical cover for the children.
  - c. Medical Expenses: The Respondent shall be liable for 70% of all reasonable medical, dental, orthodontic, ophthalmic, and similar expenses for the children not covered by the medical aid scheme, payable within 7 days of presentation of an invoice.
  - d. School Fees: The Respondent shall be liable for 100% of L[...]’s school fees not covered by the Applicant’s bursary. The Respondent’s ring-fencing of funds for this purpose is noted and endorsed.
  - e. Other Educational Expenses: The Respondent shall be liable for 70% of all reasonable and agreed-upon educational expenses for the children, including but not limited to uniforms, stationery, books, levies, and one extramural activity per child.
3. The Respondent shall pay a contribution towards the Applicant’s legal costs in the divorce action in the amount of R50,000.00 (Fifty Thousand Rand), payable within 30 days of this order.

4. The Respondent is directed to provide written notification to the Applicant within 5 days of securing any form of remunerated employment.
5. The costs of this application, including the costs of counsel, shall be costs in the cause of the main divorce action.

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**NKOENYANE AJ  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION,  
JOHANNESBURG**

Date of Hearing: 10 October 2025

Date of Judgment: 17 November 2025

Counsel for the Applicant: Adv. R. Andrews

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