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

JUDGMENT

**Not Reportable
Case No: 17492/2023**

In the matter between:

P[...] A[...] L[...]

Applicant

And

R[...] J[...] T[...]

Respondent

Coram: DA SILVA SALIE, J

Heard on: 4 March 2026

Delivered on: 4 March 2026

Summary:

Practice - Interim maintenance pendente lite - Permanent life partnership of 29 years - Parties cohabiting and raising two children - Historical financial maintenance by respondent including post-termination support - Alleged express undertaking to maintain alternatively reciprocal duties of support - Rule 6(5)(d)(iii) objections without answering affidavit – Respondent is a peregrinus - Ancillary jurisdiction established - Not necessary at interim stage to determine whether enforceable life partnership with maintenance obligation in fact existed, such issue reserved for trial court - Prima facie right established on uncontested facts - Balance of convenience favouring preservation of status quo - interim relief granted pending action

ORDER

1. The respondent's jurisdictional objection is dismissed.
2. Pending the finalisation of the action under case number 17492/2023, the respondent shall effect payment in terms of the order attached hereto and marked as "X":

JUDGMENT

DA SILVA SALIE J:

Introduction:

[1] This application concerns interim maintenance pendente lite arising from the termination of a long-standing life partnership of some twenty-nine years. The applicant seeks interim relief pending the finalisation of an action instituted under the same case number in which she claims, inter alia, maintenance and patrimonial relief arising from the parties' life partnership and an alleged undertaking by the respondent to maintain her.

[2] The respondent has not delivered an answering affidavit. Instead, he filed a notice in terms of Rule 6(5)(d)(iii) raising various legal objections. Those objections include jurisdiction, the alleged absence of a legally cognisable maintenance claim following termination of a life partnership, and the submission that the application is academic in light of a contemplated amendment to the particulars of claim.

[3] The matter accordingly requires this Court to determine, first, whether the objections raised are sustainable and, secondly, whether the applicant has established the requirements for interim relief.

FACTUAL BACKGROUND

[4] The material factual averments, in the absence of an answering affidavit, stand largely uncontested for purposes of this application.

[5] The parties commenced a romantic relationship in 1984. In 1991 they entered into a life partnership. Two children were born of the relationship. The applicant avers that throughout the duration of the partnership the parties conducted themselves as spouses: they cohabited, raised their children jointly, referred to one another as

husband and wife, and the respondent described the applicant as his “lifelong partner” in his will and as his wife in various documents.

[6] The respondent was the primary breadwinner. The applicant did not engage in full-time employment and devoted herself largely to the care of the household and children. The respondent supported the family financially for decades, including through regular cash payments and direct payment of household expenses.

[7] The parties’ life partnership terminated in October 2020. The applicant alleges that at the time of termination the respondent undertook, in writing, to continue maintaining her as he had during the subsistence of the partnership. She further avers that for approximately three years thereafter the respondent continued to provide maintenance in accordance with historical patterns.

[8] The respondent subsequently reduced and then ceased certain payments. The applicant instituted action proceedings in which she seeks, inter alia, maintenance pursuant to the alleged undertaking and alternatively on the basis of reciprocal duties of support arising from a permanent life partnership.

[9] Pending the outcome of that action, she now seeks interim maintenance.

[10] An interim order was granted by agreement on 2 December 2025 providing for certain payments pending the return date. The respondent now resists the continuation and expansion of that relief.

ISSUES FOR DETERMINATION

[11] The issues are:

- (a) Whether this Court has jurisdiction to entertain the application.
- (b) Whether the respondent's reliance on Rule 6(5)(d)(iii) is procedurally competent in circumstances where no answering affidavit has been filed.
- (c) Whether the applicant has established the requisites for interim relief, namely:
 - (i) a prima facie right.
 - (ii) a well-grounded apprehension of irreparable harm.
 - (iii) that the balance of convenience favours the granting of relief; and
 - (iv) the absence of an alternative satisfactory remedy.

JURISDICTION

[12] The respondent contends that he is a peregrinus (residing in Tanzania) and that this Court lacks jurisdiction.

[13] The application is incidental to the main action instituted under the same case number. It is common cause that the respondent has participated in the main proceedings including filing of a counter-claim and has consented to the terms of an interim order previously granted.

[14] It is trite that where a court has jurisdiction in the principal action, it retains jurisdiction in ancillary or incidental matters arising therefrom. A litigant who submits to the jurisdiction of the court in the main proceedings cannot approbate and reprobate by seeking to avoid jurisdiction in respect of interlocutory or ancillary relief.

[15] On the papers before me, the jurisdiction objection is without merit and falls to be dismissed.

RULE 6(5)(d)(iii)

[16] The respondent elected not to deliver an answering affidavit but instead raised legal objections by way of a Rule 6(5)(d)(iii) notice.

[17] That Rule is intended to permit a respondent to raise a point of law. It does not provide a mechanism to avoid engaging with factual allegations central to the dispute.

[18] The applicant's claim is founded on a 29-year life partnership, reciprocal support, and an alleged undertaking to maintain. Whether such an undertaking was made and whether the life partnership attracted reciprocal duties of support are factual questions. In the absence of an answering affidavit, the applicant's factual averments stand for purposes of interim relief.

[19] The respondent's objections, save for jurisdiction, are in substance directed at the merits of the applicant's claim and the development of the common law. Those are matters more appropriately ventilated in the main action.

[20] The respondent further contends that the present application is rendered “academic” by virtue of the applicant’s indication that she intends to amend her particulars of claim. That submission cannot be sustained. Until such time as an amendment is formally effected in accordance with the Rules, the pleadings stand as they presently exist and the Court is obliged to determine interlocutory relief on that basis. A stated intention to amend does not suspend proceedings, nor does it deprive this Court of jurisdiction to grant interim relief. In any event, the respondent has not demonstrated that the contemplated amendment would extinguish the applicant’s cause of action or occasion him prejudice. The enquiry before this Court remains whether, on the case as currently formulated, the applicant has established a prima facie right warranting interim protection pending trial. During the hearing of this matter, counsel for applicant indicated that the intended amendment would be in respect of the respondent’s pension fund proceeds.

PRIMA FACIE RIGHT

[21] The applicant relies on two bases:

- (a) An express maintenance undertaking; alternatively
- (b) Reciprocal duties of support arising from a permanent life partnership.

[22] Our courts have recognised that the common law may, where constitutionally required, be developed to afford appropriate protection to permanent life partners. The jurisprudence of the Constitutional Court confirms that the existence of reciprocal duties of support within permanent life partnerships is capable of legal recognition. In **Bwanya v The Master of the High Court 2022 (3) 250 (CC)** the Constitutional Court recognised

that permanent life partnerships may attract reciprocal duties of support. The Court affirmed that the common law may be developed where constitutionally required to afford appropriate protection to partners.

[23] The applicant's averments, uncontested for present purposes, establish:

- (a) a relationship of nearly three decades.
- (b) shared children.
- (c) shared residence.
- (d) financial interdependence.
- (e) public presentation as spouses.
- (f) continued maintenance post-termination.

[24] At this interim stage, the applicant is not required to prove her claim on a balance of probabilities. It is though only at the pending trial that she must prove facts establishing that the duty of support existed. The trial court is the correct forum to determine whether the evidence placed before it sustains a factual finding which entitles her to maintenance. See: ***E W v V H 2023 (4) SA 123 WCC***. However, in the application before me, she only need show that she has a prima facie right, though open to some doubt. On the undisputed papers, she has done so.

IRREPARABLE HARM

[25] The applicant avers that she is financially dependent and that the cessation of maintenance places her at risk of hardship and inability to meet ongoing obligations.

[26] The respondent has not placed evidence before the Court to dispute either his historical pattern of support or his capacity to pay.

[27] The deprivation of established maintenance in circumstances of dependency constitutes sufficient apprehension of harm to justify interim protection.

BALANCE OF CONVENIENCE

[28] The balance of convenience favours the preservation of the status quo pending trial.

[29] The respondent historically maintained the applicant. An interim order was previously granted by agreement. There is no evidence that compliance with interim maintenance would occasion him irreparable prejudice.

[30] By contrast, refusal of interim relief may expose the applicant to immediate financial vulnerability.

ALTERNATIVE REMEDY

[31] The main action will determine the parties' rights finally. That process may take time. Interim relief exists precisely to bridge that period.

[32] There is no satisfactory alternative remedy available to the applicant pending trial.

CONCLUSION

[33] This Court is not called upon to determine finally whether a terminated life partnership gives rise to a legally enforceable duty of maintenance. That question remains for trial.

[34] The Court is called upon to determine whether, on the present papers, the applicant has established entitlement to interim relief.

[35] She has.

ORDER

[36] The respondent's jurisdictional objection is dismissed.

[37] Pending the finalisation of the action under case number 17492/2023, the respondent shall effect payment in terms of the order attached hereto and marked as "X":

G. DA SILVA SALIE

JUDGE OF THE HIGH COURT

WESTERN CAPE DIVISION

Appearances

For Applicant: Adv. L Buikman SC
 Adv. L Bezuidenhout

Instructed by: Catto Neethling Wiid Attorneys

For Respondent: Adv. P Jooste

Instructed by: K Roberts Attorneys