

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

CASE NO: 8958/2022

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.
DATE: 21/02/2023

In the matter between:

K[....]1 M[....] N[....]

Applicant

And

K[....]2 A[....] H[....]

Respondent

JUDGMENT

MAKUME J:

[1] This is an application in terms of Rule 43 in which the Applicant seeks the following relief:

- a) That *pendente lite* the Respondent pays to her maintenance in the amount of R45 000.00 per month.
- b) That pending the outcome of the divorce action the Respondent shall continue to make payment of the following expenses:
 - RSA Web internet service provider
 - The Applicants Vodacom contract
 - DSTV and TV Licence
 - 11 Monte levies, water and upkeep
 - Tabren Close-water, electricity and upkeep
 - That Respondent retain the Applicant on his medical aid
 - That Respondent be ordered to return the BMW coupe motor vehicle to her and pay for its maintenance including comprehensive insurance
 - A contribution to legal costs in the sum of R75 000.00.

[2] The parties have been living apart since 2020. The Applicant lives in Cape Town at premises that belongs to the Respondent. The Respondent lives in Johannesburg in a house that belongs to the Applicant.

[3] The Applicant is unemployed whilst the Respondent is self-employed as an insurance broker.

[4] In his Answering Affidavit the Respondent says that since 2020 he has been paying the Applicant R20 000.00 per month and also pays for all the item mentioned in paragraph 1 above.

[5] The Applicant has not filed a Replying Affidavit disputing what the Respondent has answered.

COMMON CAUSE ISSUES

[6] When the Applicant relocated to Cape Town in the year 2020 to live with the couples unemployed daughter the Respondent had since that period till now been paying R20 000.00 directly to the Applicant.

[7] That amount was sufficient for the maintenance requirements of both the Applicant and the parties' daughter. The parties' daughter moved out in December 2021. The Respondent continued paying R20 000.00.

[8] Besides payment of the R20 000.00 the Respondent also pays the following in respect of the premises occupied by the Applicant:

- i) Rates and taxes
- ii) Water levies
- iii) Insurance
- iv) Maintenance expenses
- v) DSTV
- vi) TV Licence
- vii) Cell phone expenses

[9] Over and above this the Applicant enjoys membership of the Respondent's medical Aid 100%.

IS A CLAIM FOR R45 000.00 MAINTENANCE PER MONTH *PENDENTE LITE* JUSTIFIABLE?

[10] In order to succeed with this claim the Applicant must prove a change of circumstances to justify an almost 100% jump from what she has been receiving during the time she stayed with Kaylie their daughter and now 18 months later.

[11] The R20 000.00 was sufficient for the 2 of them it goes without saying that she should now be spending less since she is all by herself. She is still

living in the same premises which are being fully paid for by the Respondent. This claim falls to be dismissed there are no changed circumstance.

PAYMENTS IN RESPECT OF: RSA WEB INTERNET, VODACOM CONTRACT; DSTV & TV LICENSE 11 MONTE LEVIES, WATER & ELECTRICITY, MEDICAL AID PLUS THE RETURN OF THE BMW MOTOR VEHICLE

[12] The claim in respect of the BMW motor vehicle is not competent in Rule 43 application and should be pursued elsewhere as there is also a dispute of facts in connection therewith.

[13] As far as it concerns the rest of the claim it is so that the Respondent has been taking care of that since 2020 and has undertaken to do all that. What the Applicant seeks is now confirmed in a court order for continuation of payment.

THE APPLICANTS CLAIM FOR LEGAL COSTS CONTRIBUTION OF R75 000.00

[14] A party seeking a contribution to legal costs in terms of Rule 43 must prove that he or she is unable to finance her own legal costs. Secondly he or she must provide a detailed account from the attorneys or a quotation supporting the basis of a claim for the R75 000.00.

[15] In this matter there is nothing in the Applicant's affidavit setting out how the amount of R75 000.00 is arrived at whether it is past expenses or future expenses. The amount of R75 000.00 is a thumbsuck.

CONCLUSION

[16] The Applicant has in my view failed to make a case for relief in terms of Rule 43 in the result I make the following order:

ORDER

1. The application is dismissed.
2. The Applicant is ordered to pay the Respondent's taxed party and party costs.

DATED at JOHANNESBURG this the day of FEBRUARY 2023.

M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances:

DATE OF HEARING: 25 JANUARY 2023

DATE OF JUDGMENT: 21 FEBRUARY 2023

FOR APPLICANT: ADV NATHAN SC

FOR RESPONDENT: ADV TANYA EICHNEN VISSER