

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA



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

CASE NO:

58127/2021

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| (1) | <u>REPORTABLE: YES / NO</u> |
| (2) | <u>OF INTEREST TO OTHER JUDGES:</u>
<u>YES/NO</u> |
| (3) | <u>REVISED.</u> |

.....
DATE

In the matter between:

V I V

Applicant

And

V A C

Respondent

JUDGMENT

MAKUME, J:

[1] This is an application in terms of Rule 43 of the Uniform Rules of Court in which the Applicant seeks the following order:

- 1.1 That the Respondent pay to her maintenance *pendente lite* in the sum of R60 000.00 per month.
- 1.2 That the Respondent keep the Applicant as a dependent in his medical aid scheme.
- 1.3 That the Respondent pay all medical dental and optometrist costs.
- 1.4 That Respondent be held responsible for payment of hospital, surgical costs when required.
- 1.5 That the Respondent contribute an amount of R50 000.00 (Fifty Thousand Rand) being a contribution towards the Applicant's anticipated legal costs.

[2] It is common cause that the parties married each other in community of property with the inclusion of the accrual system on the 8th August 1997.

[3] Because of marital problems the Applicant vacated the common home situated in Krugersdorp and proceeded to issue divorce summons against the Respondent.

[4] The Respondent in his Answering Affidavit to the Rule 43 application tenders the following:

- 4.1 He will retain the Applicant registered as a dependent on his medical aid
- 4.2 He will make payment of all reasonable medical, dental and optometrist

costs not covered by the medical aid.

4.3 He will pay maintenance to the Applicant in the sum of R17 0000.00 per month.

[5] The Applicant was employed as a Financial Manager at Probe Security which company belongs to the Respondent there is a dispute as to how she lost her job. She says she was unfairly dismissed as a result she has referred the matter to the CCMA. On the other hand, the Respondent says that the Applicant absconded and presently lives with her boyfriend in KwaZulu Natal.

[7] It is a fact that Applicant presently has no fixed income as she is unemployed however, it would appear that she left on her own volition and was not fired as she would like the Court to believe. The Court in the matter of **Nisson vs Nisson 1984 (2) SA 294 C at 295 F** said the following:

“Primarily Rule 43 was envisaged to provide temporary assistance for women who had given up their careers or potential careers for the sake of matrimony with or without maternity until such time as a child and after hearing evidence of maintenance claims could be properly determined. It was not created to give an interim meal ticket to women who clearly at the trial would not be above to establish a right to maintenance. The grey area between the two extremes causes problems.”

[8] What the Court meant in the paragraph cited above is that Rule 43 was designed to provide interim cover to a spouse who has been financially dependent on the other spouse because of their particular marital circumstances.

[9] When the Applicant issued divorce summons during December 2021 she had already left the common home or was preparing to vacate same. She did not in her particulars of claim ask for maintenance neither has she done so in her amended particulars of claim. She only five months later in June 2022

decided to claim maintenance *pendente lite*. The question to be asked is how has she been surviving since she left the common home.

- [10] What is also strange is that in paragraph 4.4.2 of her Founding Affidavit the Applicant says that on the 7th January 2022 her own attorneys threatened the Respondent with a Rule 43 application if the Respondent does not reinstate her to her previous position and yet they waited five months before launching this application. This in my view are not the steps of a woman desperately in need of cash to survive.
- [11] This Court must accept that the Applicant is presently living with another man in Umhlanga and has decided not to be open to the Court on amongst others how she has been surviving without income since January 2022. It could only mean that she has income one way or another in view of the fact that she is now living with someone.
- [12] As far as it concerns the application for a contribution to legal costs the Applicant has failed to make out a case. In paragraph 4.9 all that the Applicant could tell the Court is that "I submit that it can be estimated taking into account that we have only reached a point of the Respondent delivering his counterclaim that the legal fees will be in excess of approximately R100 000.00 (One Hundred Thousand Rand). This is speculation.
- [13] In **Griesel vs Griesel 1981 (4) SA 270 (O)** the Court held that a wife who is married out of community of property and who is able to finance her won litigation is not entitled to a contribution towards costs.
- [14] In this matter the Applicant has not deemed it necessary to attach a proforma bill of her attorney's fees and has chosen to rather speculate. I am of the view that she has at this stage not made out a case for contribution for legal costs.
- [15] In the result I have come to the conclusion that the following is appropriate as an interim arrangement.

ORDER

1. The Respondent is ordered to pay maintenance to the Applicant in the amount of R17 000.00 (Seventeen Thousand Rand) per month with effect the 15th November 2022 and thereafter on the 15th of each month until the division is finalised.
2. The Respondent shall retain the Applicant registered as a dependant on his medical aid.
3. The Respondent will make payment of all reasonable medical, dental and optometrist costs not covered by the medical aid.
4. Each party shall pay own costs of this application.

Dated at Johannesburg on this 03 day of November 2022

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

Appearances:

DATE OF HEARING	:	13 OCTOBER 2022
DATE OF JUDGMENT	:	03 NOVEMBER 2022
FOR APPLICANT	:	ADV NC LOUW
INSTRUCTED BY	:	
FOR RESPONDENT	:	ADV CJC NEL
INSTRUCTED BY	:	