

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 LOCAL DIVISION, JOHANNESBURG

Case no: 2023/004861

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
	25 April 2023

	DATE
SIGNATURE

In the matter between:

S G N

Applicant

and

L J

Respondent

Neutral Citation: *G.N.S v J.L* (2023/004861) [2023] ZAGPJHC 336 (12 April 2023)

JUDGMENT

MAZIBUKO AJ

Introduction

1. The applicant approaches the court in terms of Rule 43, seeking interim maintenance and the contribution to her legal costs, pending the finalization of her action for divorce from the respondent.
2. On 24 January 2023, the Rule 43 application was served on the respondent together with the divorce summons. On 7 February 2023, the respondent filed his notice of intention to defend the divorce action. On 10 March 2023, the respondent filed his opposing affidavit.
3. Rule 43 applications are an enabler in ensuring that no party is substantially prejudiced and lacks resources to maintain a reasonable standard of living enjoyed by the parties during the marriage and in pursuing their cases in the main divorce action. They relate to the applicant's reasonable needs and the respondent's ability to meet them.

Condonation

Late filing of the opposing papers

4. The respondent did not file any opposing papers until 10 March 2023, when his opposing affidavit was filed just a court day before the application hearing. He seeks leave for condonation of the late filing of his opposing affidavit.
5. In his opposing affidavit, the respondent stated that he suffers from a severe medical condition that mostly renders him inoperable and, at times, not of sound mind. When he received the application, he was experiencing such episodes and did not recall receiving same. A family friend, Mr Graham Beuster(Mr Beuster), assisted him in locating the application and securing legal services. On 6 February 2023, he consulted with his attorneys at his house. On 15 February 2023, he furnished them with some information in relation to his financial position, whilst the rest was sent on 10 March 2023.

6. A note from Dr Daniel Israel and Associates, the family Medical practitioners, was attached to the respondent's opposing affidavit. Briefly, the note stated the circumstances of his ill health; they have known and treated the respondent intermittently since 2012. He had seen two psychiatrists and two general practitioners. In 2017, he was diagnosed with a bipolar mood disorder. He suffered intermittent episodes, as a result, had long periods of low functioning.
7. The family friend, Mr Beuster, deposed to an affidavit confirming the content of the respondent's affidavit as far as it concerned him.
8. On behalf of the respondent, it was argued that the respondent was bedridden. There was a consideration of appointing a curator to care for his affairs due to his erratic mental issues.
9. The applicant opposed the condonation application arguing that it was non-compliant, not *bona fide*, as it does not account for all the periods of delay.
10. The explanation is reasonable and acceptable in that the application was misplaced and later located. Further, that contributed to the late filing of the answering affidavit.

Issues for determination

11. The court is to determine the following;
 - 11.1. What expenses and amount must the respondent pay for the maintenance? and
 - 11.2. Whether the respondent will contribute to the applicant's legal cost.

Maintenance pendente lite

12. The applicant seeks an order directing the respondent to pay: (a) maintenance in the sum of R110 600 per month for her, (b) her fuel costs, insurance, and the annual license fee in respect of her vehicle. (c) applicant's mobile phone costs. (d) R 50 000.00 in respect of her relocation costs, a rental deposit and the first month's rental.

13. The parties have been in a relationship since 2010. They got married in community of property in 2017. No children were born of the marriage. The applicant has a major, dependent daughter from a previous relationship who lives with the parties. The applicant has been unemployed since 2010, and the respondent has always provided for the applicant and her daughter.
14. It is not in dispute that the parties' homestead has an average monthly expenditure of R202 300. The parties live in the same house, though in different rooms. The applicant is responsible for running the homestead, including buying groceries, whilst the respondent used to provide all the finances for same.
15. The applicant stated that the respondent, directly or via his family trust or businesses, used to effect monthly payment of her personal expenses in the amount of R117 200. She indicated that the respondent has different sources of income; sometimes, he carries cash. Money transfers and deposits are made into his bank accounts. She also indicated how the respondent had used the finances during their marriage, financing his extra-marital affair, including purchasing a property. Further, she mentioned the use of drugs by the respondent.
16. The applicant averred that they lived an above-average standard of living during the marriage. The respondent allowed her to use a credit card to run the household. However, currently, credit card often has a zero balance. For about eleven years, she also has had a credit card with which she could spend between R40 000 and R50 000 per month, which is now unpaid.
17. The parties live in a paid-up 4-bedroomed house valued at R5.8 million. She and the respondent drive a paid-up Mercedes Benz and BMW, respectively. The respondent pays for all the household expenses from the domestic services and insurance, including the vehicles and her cell phone.

18. The parties during their marriage would go on holiday, paid for by the respondent, to Capetown for a month, staying in a luxury hotel. They also have been to Mauritius and Maldives.
19. She resides with her daughter and the respondent at the matrimonial home. Between herself and the domestic worker, they cook and leave the respondent's food by his bedroom door. She intends to move out as the situation destroys her mental health. She seeks an order directing the respondent to effect payment of R50 000 towards her relocation expenses, rental deposit and the first month's rent.
20. The respondent stated in his opposing affidavit that he has severe bipolar disorder, causing anxiety, panic attacks and severe depression for which he has taken medication since 2010. His medical condition and medication caused his mental deterioration, which caused him to be mentally unstable, inoperable and bedridden since February 2022.
21. He averred that he is from a wealthy family. His parents acquired many successful businesses, for some of which he was made a director. When his parents were still alive, he would receive large sums of money and fund his exorbitant lifestyle. Since the passing of his parents, his financial position has changed drastically, as the wealth is managed through a Trust to which he is a trustee with his two siblings. He stated that his siblings are astute business persons who refuse to fund his exorbitant and irresponsible previous lifestyle despite his requests and demands.
22. He averred that he does not have any immovable property. He has one retirement annuity at Liberty. He owns three vehicles, one of which is the Mercedes Benz used by the applicant. He earns R55 000 per month and receives benefits, including cellphone allowances and medical aid for himself, the applicant and her daughter. The respondent does not intend to remove them from his medical aid as beneficiaries. He should not be held liable for the applicant's major daughter as he did not adopt her. The respondent is responsible for all the household expenses. He pays R25 000 towards the

monthly maintenance of his child. He also stated that he is indebted in an amount of R1.7 million and cannot afford the amount requested by the applicant.

23. He stated that the applicant has not made out a case for maintenance in the interim because she did not attach any financial disclosure form or supporting documents concerning her financial position. The applicant's estimated expenses are exorbitant to the extent that it renders the application mala fide. The application is another way of the applicant's attempts to gain access to his family wealth, as she has done that two times previously.

Discussion

24. The reasonableness of the claim to maintenance *pendente lite* is determined by; the standard of living of the parties during the marriage, the ability and affordability of the respondent to pay, assessing his needs, and the responsibilities that he has carried, including the ones the other party is to assume. Also, by considering the applicant's resourcefulness and the marriage's period.
25. During the marriage and as they lived together, the applicant had no source of income. The family enjoyed and lived an above-average standard of living.

Contribution to legal costs

26. Regarding the contribution towards legal costs, the applicant claimed R250 000 from the respondent and attached a pro forma invoice.
27. The law is settled that the contribution towards legal costs ensures that the applicant litigates on the same scale as the respondent and is not disadvantaged in the divorce action. She is not entitled to the entire legal costs but a contribution. In determining the contribution, the court must have regard to the circumstances of the case, the financial position of the parties and the issues involved in the pending litigation.

28. The respondent's contention in this regard is not clear from his opposing affidavit. Having regard to the circumstances of the pending divorce action, the financial position of the parties and the issues involved in the pending litigation, both parties need funds for their legal costs. There is a significant disparity between the parties' financial positions as the applicant has no source of income, whilst the respondent has an income from his family businesses and the family trust.

Conclusion

29. The parties have been together for about 13 years and married for about six years. In the context of their standard of living, their obvious means, and current responsibilities, it does not seem to me that these maintenance requirements are in any way unreasonable and exorbitant. It is not in dispute that the parties' homestead has a monthly expenditure of R202 300 funded by the respondent. The respondent has an ongoing duty of support towards his homestead.
30. The applicant stated that the situation at the marital home is affecting her mentally. There was no evidence that the applicant needed to leave the matrimonial home. Counsel conceded on behalf of the applicant that the applicant's complaint is that she cannot continue taking care of the homestead because the respondent is no longer allowing her access to the funds as before; her credit cards are declining due to lack of funds.
31. The Mercedes Benz the applicant drives is in the respondent's name, and he remains responsible for the licence fees, related costs, and any other fees. During the application, counsel on behalf of the respondent submitted that the respondent had no difficulty taking care of these costs, including fuel-related ones.
32. In determining the contribution to legal costs, the court must have regard for the circumstances of the case, the financial position of the parties and the issues involved in the pending litigation. In *casu*, only one party has an

income. Both of them are still to fund the pending litigation. Most of the assets involved, for instance, the matrimonial home, are under the family trust. There seemed to be no grounds that would cause delays in concluding the pending divorce proceedings, as submitted by the parties. Save for the determination to appoint the curator for the respondent.

33. The applicant will be disadvantaged if the respondent does not make a contribution towards her legal costs since she is not in a position to fund her litigation on the same scale as the respondent without the contribution paid by the respondent. However, considering the parties' financial position and issues involved in the divorce action, it is justifiable for the respondent to contribute R100 000 towards the applicant's legal costs.
34. Consequently, the applicant's application partly succeeds. The following order is made:

Order:

1. The late filing of the respondent's answering affidavit is condoned.
2. The respondent is to pay the applicant R200 000 (two hundred thousand) directly into her account, alternatively by ensuring her credit card facility has the said amount per month in respect of the maintenance, which is the running costs for the matrimonial home and the costs of the continuous usage of the applicant's vehicle, from the first day of the first month following the granting of the Rule 43 order, and thereafter on or before the first day of each and every successive month.
3. The respondent shall continue to retain the applicant and her daughter on his medical aid at his cost, pending the finalization of the divorce action.

4. The applicant shall have continued use of the Mercedes Benz C 200 AMG, a motor vehicle with registration number [.....GP] ("the applicant's vehicle").
5. The respondent shall continue to pay the applicant's mobile phone costs.
6. The respondent is to pay the applicant's attorneys an amount of R100 000 towards the applicant's legal costs.
7. The costs of this application shall be costs in the divorce action.

N. MAZIBUKO

**Acting Judge of the High Court of South Africa
Gauteng Local Division (Johannesburg)**

This judgment was handed down electronically by circulation to the parties' representatives by email being uploaded to Case Lines.

Representation

Counsel for the Applicant: Ms Liebenberg
Attorney for the Applicant: Pottas Attorneys

Counsel for the Respondent: Mr Van Vuuren
Attorney for the Respondent: Weavind & Weavind Attorneys

Heard on:

13 March 2023

Judgment revised:

25 April 2023