

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



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

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 9 January 2023

Case No. 2019/26732

In the matter between:

JJW

Applicant

and

NVW

Respondent

JUDGMENT

WILSON J:

1 On 18 October 2022, I granted an order suspending the obligation of the respondent, Mr. VW, to pay interim maintenance to the applicant, Mrs. VW. That obligation was imposed in terms of a court order granted by my brother

Budlender AJ on 29 November 2019. I gave Mrs. VW the opportunity to file financial disclosures which would allow me to assess Mr. VW's claim that she was no longer in need of the maintenance payments Budlender AJ ordered.

2 On 17 November 2022, Mrs VW filed her financial disclosure forms. On 23 November 2022, I ordered Mr. VW to show cause why, in light of the contents of those disclosures, I should not lift the suspension I placed on Budlender AJ's order.

3 Mr. VW filed his supplementary affidavit on 30 November 2022. On 14 December 2022, having read the allegations made in Mr. VW's affidavit in light of the contents of Mrs. VW's financial disclosures, I ordered that the suspension of Budlender AJ's order be lifted with effect from 1 December 2022. I also refused Mr. VW's application for the return of a motor vehicle of which Mrs. VW had use in terms of Budlender AJ's order.

4 I indicated that my reasons for making the 14 December 2022 order would follow in due course. These are my reasons.

5 Mr. VW's case from the outset has been that Mrs. VW is no longer in need of the maintenance provided for in Budlender AJ's order, because she is working as an escort, and making anywhere between R88 000 and R153 000 per month doing so. While there has never been any real dispute that Mrs. VW has taken up work as an escort, Mrs. VW has always denied that her income from being an escort exceeds a few thousand rand a month.

6 In his application to vary Budlender AJ's order, Mr. VW's allegations about Mrs. VW's earnings were not based on Mr. VW's personal knowledge, or on documents directly evidencing Mrs. VW's income. They were instead based on a series of inferences drawn on a private investigator's report and a set of internet advertisements for Mrs. VW's services. Mrs. VW met these allegations with bare denials.

7 Ms. De Wet, who appeared for Mr. VW, urged me to apply the *Plascon-Evans* test, as amplified in *Wightman t/a J W Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA), paragraph 13, to reject Mrs. VW's version, and to accept Mr. VW's calculations as undisputed. I was not inclined to do this, primarily because Mr. VW's case was reliant in large part on inferences drawn from a private investigator's report that had not been confirmed under oath. This was unsteady ground on which to make a finding. I was also reluctant to make an order that would result in undue financial hardship for Mrs. VW, especially as that hardship could only harm the prospect of her being able to strengthen her relationship with Mr. and Mrs. VW's minor child, SA.

8 It was for those reasons, recorded in my judgment of 18 October 2022, that I suspended Budlender AJ's order, and gave Mrs. VW the opportunity to file her financial disclosures.

9 Those disclosures provide no indication that Mrs. VW earns a regular or substantial income from being an escort, or from any source other than Mr. VW's maintenance payments. In his supplementary affidavit of 30 November 2022, Mr. VW could not really take the matter any further. He continued to

rely on the private investigator's report to press a series of inferences that Mrs. VW is being dishonest about her income, and is hiding additional bank accounts and sources of income from the court.

10 That may be true, but Mr. VW's case that it is true is speculative and unsupported by any direct evidence placed under oath. In order to succeed in being finally relieved of his maintenance obligations, Mr. VW had to allege and prove, on a balance of probabilities, a material change in Mrs. VW's circumstances in the form of a substantially increased income. When read in light of Mrs. VW's financial disclosures, Mr. VW's case, the evidentiary foundation of which was never expanded beyond the private investigator's report and the internet advertisements, ultimately falls short of that standard.

11 It was for these reasons that I lifted the suspension on Budlender AJ's order, and refused Mr. VW's application for the return of the motor vehicle made available for Mrs. VW's use in terms of that order.

S D J WILSON
Judge of the High Court

This judgment was prepared and authored by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 9 January 2023.

DECIDED ON: 9 January 2023

For the Applicant: A A De Wet SC
Instructed by Moumakoe Clay Inc

For the Respondents: LK van der Merwe
Instructed by Malan Kruger Inc