

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



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

CASE NO: 24248/2021

Heard on: 12 June 2023

Judgment: 7 August 2023

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

IN THE MATTER BETWEEN:

R, T V D

APPLICANT

AND

R, J A

RESPONDENT

JUDGMENT

STRIJDOM AJ

1. In this matter the applicant seeks an order for maintenance *pendente lite* of the main divorce action and a contribution towards legal costs.
2. The applicant is a 54-year-old business woman. She, from time-to-time occupies one of the former matrimonial homes situated at 227 Maple Road, Kyalami Agricultural Holdings ('Hollyberry') and commutes between Hollyberry and the Karoo, more particularly, Hoek van die Berg, in die Montagu district, the farm of Mr André Loots, where she spends most of her time. Mr Loots has publicly and in other litigation between the parties held himself as the applicant's 'benevolent protector'.¹
3. The respondent is a 69-year-old attorney and a director of R Incorporated. He lives in the former matrimonial home in Westcliffe and from time-to-time visits Letta's Kraal, a farm in the district of Touws River.
4. Respondent and applicant were married to each other on 4 April 2010, out of community of property with the exclusion of the accrual system, in terms of the provisions of Chapter 1 of the Matrimonial Property Act, No. 88 of 1984, as amended. The marriage relationship still subsists.

¹ Case number 21609/2021, 003 – 106 annexure C27, 003 – 107 annexure C28 and 003 – 108 annexure C29

5. The respondent instituted the divorce action under the above case number.

6. The applicant seeks an order, *inter alia*, that:
 - 6.1 the respondent shall pay a monthly cash contribution to her maintenance in the sum of R 75 067,00;

 - 6.2 respondent is liable for all reasonable medical costs of the applicant and her mother, Lady Margot Stockil, and retain them on his current medical aid at Discovery;

 - 6.3 respondent shall pay the rental of a residence for the applicant at Kyalami Estate in an amount between R 25 000,00 and R 30 000,00 per month, alternatively make payment of R 30 000,00 per month, directly to the applicant;

 - 6.4 respondent is liable for the maintenance and repair of the motor vehicle being used by the applicant, a Toyota FJ Cruiser, with registration number: DL 48 PP GP;

 - 6.5 respondent shall deliver, or cause to be delivered, applicant's horse-riding gear, three jumping saddles, engagement ring and jewellery;

 - 6.6 respondent shall pay R 8 000,00 per month towards the maintenance of Lady Stockil; and

6.7 respondent to make a contribution towards the applicant's legal costs in the amount of R 500 000,00 (five hundred thousand rand).²

7. The applicant states that prior to their marriage, she was employed, on a part-time basis, at Remax Estate Company and did freelance work for a number of advertising agencies. She also ran a partnership, known as Weather Beater, building, *inter alia*, barns, stables and paddocks, mainly for horses. She resigned from the freelance part-time work during 2008 and 2009, and the Weather Beater partnership was wound-up.³
8. The applicant further states that the respondent essentially prevented her from pursuing her own career, as it did not suit his lifestyle, and he undertook to pay for all her financial needs and obligations – which he did.
9. She states that she does not generate any other income or have any other source of income, except for as was provided for by the respondent. She has been out of the labour market with respect to her field of work for approximately 13 years and can no longer find employment in her field. She had used all the funds she had saved before her marriage to the respondent and have now had to make use of an overdraft facility and loans to cover her personal expenses.

² Caselines: 011 – 657 to 661: Amended notice of motion

³ Caselines: 011 – 9: Founding affidavit

10. The applicant has confirmed her current monthly expenses in the total amount of R 47 900,00.⁴

11. The applicant states that the respondent retains her mother as a dependant on his medical aid, pays for her medication and her vehicle insurance. The respondent also pays her R 8 000,00 per month for living expenses.

12. The respondent states that since their separation in April 2021, he continued to contribute extensively to the maintenance needs of not only the applicant, but also her mother, Mrs Margot Stockil, to whom he owes no duty of support.⁵

13. The respondent denies that the applicant is unemployed and / or unemployable and states that the applicant is the sole proprietor of a business of dog kennels and a small animal rehabilitation centre, which she conducted since 2016 to early 2020 under the name and style of Royal Pet Rehab. This business was conducted from a property owned by the applicant and situated at 229A Galantus Road, Kyalami, which property is directly adjacent to Hollyberry. This property is appropriately zoned, and is fully developed with all buildings and improvements required for the successful conduct of the pet rehabilitation centre. It is fully equipped with sophisticated equipment for the purpose of conducting the business of pet rehabilitation.⁶

⁴ Caselines: 011 - 10: Founding affidavit

⁵ Caselines: 011 - 143

⁶ Caselines: 011 - 144

14. The applicant further states that he derives his income from his practice as an attorney and make a monthly contribution of R 46 136,00 towards the applicant's maintenance requirements.⁷ He also makes a contribution of R 20 390,00 in respect of Mrs Stockil's maintenance requirements.⁸
15. Up to 31 August 2021, the applicant had the use of the respondent's Investec credit card account through a credit card issued to her, subject to a limit of R 25 000,00 per month, which he had introduced from or about 1 June 2021. The respondent made monthly payment to the applicant by electronic bank transfer on the first day of every month in advance, of an amount of R 25 000,00. With effect from 1 February 2022, the respondent ceased direct transfer to Mrs Stockil of the R 8 000,00 and increased his monthly payment to the applicant by an amount of R 8 999 to R 33 000,00.
16. The respondent denies that the applicant is entitled to more than his current contribution towards her maintenance needs. As sole proprietor of Royal Pet Rehab, and as the owner of the Galantus property, it was submitted that the applicant is imminently capable of earning an immediate monthly income of not less than R 35 000,00 per month. The applicant is the owner of the Galantus Road property, which is unencumbered and on her own version has a value of R 3.85 million.

⁷ Caselines: 011 - 151

⁸ Caselines: 011 - 152

17. It was further submitted by the respondent that the applicant can earn a passive income from the property by renting out the cottages as accommodation, for between R 5 500,00 (for a single bedroom cottage) and R 10 000,00 (for a two-bedroom cottage) per month. Thus, a passive income of approximately R 11 000,00 to R 20 000,00 per month. The entire unencumbered Galantus property is standing vacant and unutilized.
18. The respondent has tendered to make the following contributions *pendente lite*:

AD THE APPLICANT

- 18.1 Retain the applicant, at his cost, in her medical scheme;
- 18.2 pay all reasonable medical expenses not covered by the medical aid;
- 18.3 pay maintenance in the amount of R 27 000,00 per month;
- 18.4 payments of R 75 000,00 as a contribution towards the applicant's legal costs until the first day of trial.

AD MRS MARGOT STOCKIL

- 18.5 Pay, directly to the creditor concerned, her monthly medical aid premium, in respect of her medical aid, being Discovery;
- 18.6 pay all reasonable medical expenses not covered by the medical aid;

18.7 pay the levies and expenses in respect of her prescription medication not covered by her medical aid scheme.

19. Rule 43 provides for specific and clearly defined relief. This rule is clear and unambiguous:

'43 Interim relief in matrimonial matters:

(1) This rule applies whenever a spouse seeks relief from the court in respect of one or more of the following matters:

(a) Maintenance *pendente lite*;

(b) A contribution towards the costs of a matrimonial action, pending, or about to be instituted;

(c) Interim care with any child;

(d) Interim contact with any child.'

20. The respondent submitted that he has no legal duty of support in respect of the Lady Margot Stockil. I agree that no such duty exists in law and that the order sought by the applicant in par 7.1 of the amended notice of motion falls outside the scope of Rule 43 as it relates to maintenance for an unrelated third party, who is neither a spouse or a child of the respondent.

21. This court also does not have the required jurisdiction to grant the orders sought by the applicant in prayers 6.1 to 6.3 of the amended notice of motion as it constitutes, *inter alia*:

21.1 declaratory orders;

21.2 restitution orders of assets, ownership of which is disputed;

21.3 an order that seeks to override the interdict by, *inter alia*, directing access by the applicant to Westcliff and Leta's Kraal, the two former matrimonial homes in respect of which the applicant has been interdicted by a court order from accessing.

22. In terms of a court order of 13 June 2022, the applicant has the right to occupy the main house at Hollyberry, and the use of all amenities. She has had such right of use and occupation since 13 June 2022, when the interdict was granted.

23. The applicant has raised various issues pertaining to her comfort and safety at Hollyberry. The respondent states that more than R 400 000,00 has been expended since mid-2021, when the applicant took occupation of Hollyberry. He has, *inter alia*, increased the security at the property, attended to remedial work and provided her with a washing machine.

24. The applicant, in her amended notice of motion, now seeks a monthly contribution towards holiday and travel costs. She seeks a contribution towards two local, as well as international holidays *per annum* – a sum total of four holidays per year.

25. The applicant increased her claim for a cash contribution from R 33 055,16 per month to R 75 000,00 per month.

26. When determining a claim for spousal maintenance, a court, in exercising its judicial discretion afforded to it in section 7(2) of the Divorce Act, 1979, should have regard to all factors contained in the sub-section which, *inter alia*, provides:

‘...with regard to the payment of maintenance by the one party to the other, the court may, having regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, an order in terms of subsection (3) and any other factor which, in the opinion of the court, should be taken into account, make an order which the court finds just in respect of the payment of maintenance by the one party to the other...’

27. In my view, a claim supported by reasonable and moderate details, carries more weight than one which includes extravagant or extortionate demands. Similarly, more weight will be attached to the affidavit of a respondent who

evinces a willingness to implement his lawful obligations, than to that of one who is seeking to evade them.’⁹

28. I concluded that the applicant does not require alternate accommodation as:

28.1 She is predominantly in the Western Cape where she lives with Mr Loots;

28.2 she has suitable accommodation at Hollyberry for the brief periods as she may be in Gauteng;

28.3 should she not wish to stay at Hollyberry or Galantis, she can let the cottages and premises at Galantis. She can then utilise the income derived from letting her property to pay for temporary accommodation for the brief periods that she may be in Gauteng.

29. The respondent has placed before court a detailed analysis of the applicant’s expenses¹⁰. The applicant’s accommodation needs and reasonable and necessary medical needs are fully provided for. The applicant failed to take this court into her confidence by disclosing the full extent of the respondent’s contributions to her maintenance needs.

⁹ Taute v Taute 1974 (2) SA 675 [E]

¹⁰ Caselines: 011 – 196 to 198

30. The sum to be contributed towards the legal costs is determined by the court's view of the amount necessary for the applicant adequately to put her case before the court. The applicant is not entitled to all her anticipated costs, even though the respondent can well afford to pay them, but only a substantial contribution towards them. Before trial, the applicant is ordinarily entitled to be awarded a contribution only up to, and including, the first day of trial.
31. On a conspectus of all evidence before me, I concluded that the applicant has failed to make out a case for any increased maintenance payments, other than the maintenance tendered and paid by the respondent.
32. I am of the view that a reasonable amount for the applicant's legal costs would be R 150 000,00.
33. In the result the draft order marked 'X', as amended, is made an order of court.

STRIJDOM JJ
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA GAUTENG DIVISION
JOHANNESBURG

Appearances:

For the Applicant: **Adv S Nathan, SC**

Instructed by: **Michael Kravitz & Co.**

Respondent: **Adv Adele de Wet, SC**

Instructed by: **Deanne Kahn Attorneys**