

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**

CASE NO: 16305/2022

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

IN THE MATTER BETWEEN:

T[...] M[...]

APPLICANT

AND

N[...] M[...]

RESPONDENT

REASONS FOR JUDGMENT

Strijdom AJ

INTRODUCTION

1. This is a Rule 43 application whereby the Applicant seeks pendente lite primary residence of the minor child coupled with the determination of the Respondents' contact rights with the minor child by way of expert assessment and investigation, with interim arrangements until such time as the aforesaid investigation is concluded, interim maintenance for the minor child and maintenance for the applicant herself.

THE ISSUES IN DISPUTE

2.

- 2.1. Primary residence and contacts of a minor child;
- 2.2. Maintenance for the minor child;
- 2.3. Maintenance for the Applicant and
- 2.4. Contribution towards legal costs.

3.

- 3.1. The parties appear to be in agreement on the appointment of a suitably appointed psychologist whose mandate will be to conduct an investigation

and provide a report as to what is in the best interests of the minor child in relation to her primary residence and the Respondents' contact to her.

- 3.2. The parties agreed that the primary place of residence and care of the minor child shall vest with the applicant pending the outcome of an investigation into the best interests of the minor child.

TENDER BY THE RESPONDENT

4. The Respondent tendered the following contributions:
 - 4.1. Maintenance for the minor child in an amount of R6000.00 per month;
 - 4.2. A contribution to the applicants' legal fees in an amount of R15 000.00.

THE FACTS

5. The salient facts can be summarised as follows:
 - 5.1. The Applicant is a female Programme and Monitoring Evaluation Advisor in the employ of The Flemish Association for Development Cooperation and Technical Assistance, and temporarily residing with her mother as well as the minor child.
 - 5.2. The Respondent is a male quantity surveyor and businessman currently residing at M[...] Jhb.
 - 5.3. The parties were married to one another on 9 December 2016, out of community of property with the inclusion of the accrual system, which

marriage still subsists. From the marriage between them, one minor child was born on 22 April 2019, namely A[...] M[...], who is currently 4 years old.

- 5.4. The Applicant instituted a divorce action against the Respondent in March 2022 which action is pending.
- 5.5. During December 2021 the Respondent instructed the Applicant to vacate their matrimonial home in M[...] E[...] Gauteng. The applicant vacated the matrimonial home and went to stay with her mother. The Respondent let the matrimonial property to tenants and relocated to an apartment in M[...], Johannesburg during 2022.
- 5.6. The Applicant do not have the funds to secure a residence for her and the minor child. Applicant and A[...] share a bedroom in her mother's 2-bedroom apartment.
- 5.7. The Applicants' mother has been assisting the Applicant and A[...] financially since July 2022. From July 2021 to date the Applicants' mother has provided them with accommodation and has given them R100 000.00.
- 5.8. During the course of their marriage the parties enjoyed an affluent and extremely comfortable lifestyle.
- 5.9. The Applicant earn a nett income from her employment in the amount of R35 204.16 per month. She also operates a small business distributing / selling Aqua Air premium still water, which generates an average profit of R4000.00 per month in addition to her salary.

- 5.10. The Applicants' current and projected expenses are reflected in the Financial Disclosure Form attached as Annexure "TM 2" to her sworn statement¹.
- 5.11. The Applicant was forced to take out an FNB personal loan in the amount of approximately R51 000.00 in February 2022 to cope with all her and A[...]s expenses. The loan is repayable at an instalment of R1 800.00 per month.
- 5.12. The Respondent attached copies of his payslips marked annexure "NM-03" to his sworn affidavit showing his gross salary being R175 000.00 per month and his net salary being R112 262.61 per month². He also attached as annexure "NM-04" a spreadsheet detailing his monthly expenses³.

CONTACT RIGHTS

6.

- 6.1. The Applicant has sought that the Respondents' periods of contact rights with the minor child be kept shorter until a full investigation by an expert into the best interests of the minor child and the Respondents' future contact rights can be undertaken and concluded.
- 6.2. The Applicant has clearly indicated the Respondents' frequent and excessive consumption and use of alcohol as a primary reason to curtail the Respondents' contact rights.

¹ Vide: Caselines: 004-32 to 58.

² Vide: Caselines: 005-55 to 60.

³ Vide: Caselines: 005-61 to 63.

- 6.3. The Respondent denies that he abuses alcohol and possibly poses a risk to the safety and well being of the minor child.
- 6.4. I must agree with the Applicant that the Respondent's denial, is not supported by the content of his banking statements provided as part of his delivered Financial Disclosure Form. On 23 and 24 April 2022, the Respondent spent close to R6000.00 on liquor purchases. This amount is in addition to the over R10 000.00 spent by him at bars / clubs and restaurants. On 22 November 2022, over R4500.00 was spent at liquor stores in one day.
- 6.5. In my view the Applicants concerns in respect of the Respondents' drinking habits are valid concerns.
- 6.6. It is not appropriate under the circumstances to grant the Order sought by the Respondent in respect of his suggested contact rights.
- 6.7. Pending the recommendations of a relevant expert, the Respondent shall be entitled to contact rights in respect of the minor child as suggested by the Applicant in Draft Order that was made an Order of court on 15 July 2022 and marked "X".

MAINTENANCE

7.

- 7.1. Each case decided in terms of Rule 43 must depend upon its own particular facts.

- 7.2. Maintenance pendente lite is intended to be interim and temporary and cannot be determined with the same degree of precision as would be possible in a trial where detailed evidence is adduced.
- 7.3. An Applicant is entitled to reasonable maintenance, pendente lite, dependent upon the marital standard of living of the parties, the Applicants' actual and reasonable requirements and the capacity of the Respondent to meet such requirements⁴.
- 7.4. A claim supported by reasonable and moderate details carries more weight than one which includes extravagant and extortionate demands⁵.
- 7.5. In Casu:
- 7.5.1. If regard be had to the factors. In terms of Section 7 of the Divorce Act, 70 of 1979, a Court may make an order which the Court finds just in respect of maintenance by the one party to the other for any period until the death or remarriage of the party in whose favour the order is given, whichever event may first occur, having regard to the list of factors, as stated in Section 7 (2) of the Divorce Act. This relates to past divorce maintenance. However, I am of the view that such factors ought to be considered here too.
- 7.5.2. These are the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to divorce and any other factor which in the opinion of the Court should be taken into account.

⁴ Vide: Taute V Taute 1974 (2) SA 675 [E].

⁵ Vide: Taute V Taute 1974 (2) SA 675 [E]

- 7.6. The court has the widest discretion to take the listed factors and any other factors the Court may deem relevant, into account.
- 7.7. Having considered the stated facts and submissions made by counsel for the parties, I am of the view that the claims of the Applicant constitute reasonable amounts comprised of reasonable needs and expenses. I am also of the view that the Respondent has the financial capacity to meet such requirements.
- 7.8. I am persuaded to exercise my discretion in favour of the Applicant in respect of maintenance for herself and the minor child and relocation costs.

CONTRIBUTION FOR LEGAL COSTS

8.

- 8.1. The sum to be contributed is determined by the courts' view of the amount necessary for the Applicant adequately to put her case before the court. The contribution to the Applicant's costs may include the Applicant's attorney's fees. Before trial, the applicant is ordinarily entitled to be awarded a contribution only up to and including the first day of trial.
- 8.2. In determining the quantum of the contribution, the court will have regard to the circumstances of the case, the financial position of the parties and the issues involved in the pending litigation.
- 8.3. In exercising my discretion in the determination of the quantum of the contribution towards the costs to be awarded, I am bound by section 9 (1) of the Constitution of Republic of South Africa, 1996 of guarantee both parties the right to equality before the law and equal protection of the law.

8.4. In my view a reasonable amount to be awarded for legal costs would be R50 000.00

CONCLUSION

9.

9.1. The Draft Order uploaded by the Applicant marked "X" was made an order of Court on 15 July 2022.

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

Application heard on: 15 July 2022

Reasons for judgement: 3 AUGUST 2022

Counsel for Applicant: Adv K Groenewald

Instructed by: Tsihlas Inc Attorneys

Counsel for Respondent: Adv SA Nathan SC

Instructed by:

Witz Inc Attorneys