



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

**Case No: 2023 / 042690**

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

In the matter between:

**AYANDA MTSHIZANA**

**PLAINTIFF // APPLICANT**

**And**

**MATIVENGA MAHACHI**

**DEFENDANT // RESPONDENT**

**Delivered: This judgment was prepared and authored by the Judge whose name is reflected herein and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for handing down is deemed to be 01 December 2023.**

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**JUDGMENT**

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**PHAHLAMOHLAKA A.J.**

**INTRODUCTION**

- (1) This application, in terms of *Rule 43*, seeks the following order pending the finalization of the divorce action:
  - 1.1 Spousal maintenance *pendente lite* in the amount of R127 122.51 per month.
  - 1.2 Maintenance *pendente lite* in respect of the parties' minor children, in the amount of R19 999.32 per month, per child.
  - 1.3 A contribution to the application's legal costs in the amount of R140 000.00.
  
- (2) The application is opposed.
  
- (3) At the outset, the parties agreed as follows:
  - 3.1 The Respondent pays an amount of R15 500.00 per month for the maintenance of both minor children;
  
  - 3.2 The Respondent pays school fees for the two minor children;
  
  - 3.3 The Respondent pays the domestic worker's salary in the amount of R4 500.00 per month;
  
  - 3.4 The Respondent pays access (this is supposed to be "excess") on the medical aid provided the Applicant furnishes him with proof of the excess amount.

- (4) The dispute regarding the two minor children involves their holiday contribution, the Respondent's contact with the children, and the Respondent's contribution to lodging.
- (5) The Applicant disputes spousal maintenance entirety. There is also a dispute concerning costs.
- (6) The Applicant asserts marriage to the Respondent under "*Shona and Xhosa*" rights, with two minor children.
- (7) The Applicant claims a customary marriage in community of property since *27 April 2019*, but the Respondent disputes this. However, this matter isn't under consideration by this court.
- (8) The Applicant issued divorce summons on *08 May 2023*.
- (9) Since about *27 April 2019* the Applicant and the Respondent lived together with their two minor children at a house that was rented by the Respondent. The Applicant believes that the house was rented for the family's use, while the Respondent argues it was for the minor children only.
- (10) The Applicant asserts that due to the Respondent's polygamous relationship, his time was divided between her and his first wife in Glen Marias and Boksburg, spending two days and three nights alternatively.
- (11) The Applicant and the minor children lived in a four bedroomed house which rented by the Respondent. In *March 2023*, the Respondent ceased paying the rent, seeking a more affordable place for them.

- (12) My role is not to determine the validity of the Applicant and Respondent's marriage, but to ascertain if they're entitled to maintenance pending divorce. And if so, the amount.
- (13) It is common cause that the Respondent was paying a rental amount of R30 000.00 monthly for the house in which the Applicant and the two minor children stayed until *March 2023* and now pays R 9 500.00 for a smaller house in Glen Marais.
- (14) The Respondent moved the Applicant and minor children due to an interim protection order, termination the previous lease.
- (15) The Respondent asserts that he solely covered household expenses, and the Applicant managed her income independently.
- (16) The Respondent listed monthly expenses he covered during their cohabitation.
- (17) The Respondent agrees to pay certain expenses but disputes the rental amount.
- (18) The Respondent paid for the following monthly expenses during the period the parties had lived together at the Glen Eagle property:
- 15.1 Rental in the amount of R30 000.00 per month;
  - 15.2 Salary/Remuneration of the domestic employee;
  - 15.3 Prepaid electricity until *March 2023*;
  - 15.4 School Fees for the minor children;
  - 15.5 Groceries;

15.6 Other household necessities including gas for stove.

(19) *Rule 43* provides interim relief for maintenance pending a divorce action.

(20) In *Taute v Taute*<sup>1</sup> Hart AJ remarked as follows

'The Applicant spouse (who is usually the wife) is entitled to reasonable maintenance *pendente lite* dependent upon the marital standard of living of the parties, her actual and reasonable requirements and the capacity of her husband to meet such requirements which are normally met from income although under some circumstances inroads on capital may be justified'.

(21) The Respondent has not pleaded unaffordability and therefore if the Applicant proves that she is entitled to reasonable maintenance of whatever amount, the Respondent would be able to afford that. In *Levin v Levin*<sup>2</sup> the following was said:

"A claim supported by reasonable moderate details carries more weight than one which includes extravagant and extraordinary demands. Similarly, more weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligation than the one who is obviously albeit on paper, seeking to evade them."

(23) Much of the quantum of maintenance the Applicant claims for herself is for entertainment and luxury. She is claiming relatively very little for the two minor children. She avers that the respondent has introduced her to a lavish lifestyle and she wants to maintain that lifestyle. However, the evidence that she presents in support of her case does not match the exorbitant amount of money that the Respondent used to give to her.

(24) In *LM v GJM*<sup>3</sup> Steyn J said the following at paragraph 5:

"There is no statutory right to maintenance by reason. If the marriage and no act proclaims that maintenance in any amount for any period will be ordered by reason solely of the marriage and

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<sup>1</sup> 1974(2) SA 675(E)

<sup>2</sup> 1962(3) SA 330 (W) at 331D

<sup>3</sup> [2011] CA/12/10] ZAWCHC 28 (28 February 2011)

the in ability of one party to maintain the standard of living to which he or she become accustomed.”

- (25) The Applicant earns 17 812.55 monthly, and its unclear why additional maintenance is needed, and/or why she cannot survive on that salary. The Applicant complains about the size of the house she is currently staying in with the minor children, but she does not explain in the papers why the smaller house is not suitable except to say the Respondent was paying the rental in the amount of R30 000.00 before and now he moved her and minor children to a house where rental is in the amount of R9 500.00 monthly.
- (26) It is common cause that the Respondent was depositing money in the Applicant’s bank account, but the deposits do not equate to the amount the Applicant is claiming for spousal maintenance, especially on entertainment and lavish lifestyle.
- (27) The Applicant I am of the view that the applicant has not succeeded in making out a case for the relief sought on spousal maintenance *pendente lite*. As intimated earlier, the applicant is gainfully employed at the Office of the Public Service Commission and earns a salary of R 17 812.55 per month. She avers that the Respondent was paying for her motor vehicle monthly instalments. There is no proof of that and it is denied by the Respondent. The Applicant, as a gainfully employed individual, can survive on her income pending divorce.
- (28) The Applicant has not been candid with the court in respect of her monthly expenses. For example, she lists as her monthly expenses, among others, R20 000.00 for clothing and shoes for herself, R 10 0000.00 pocket money for herself, R 35 000.00 pocket money for herself as well as an amount of R 20 000.00 for gifts. This is not supported by any evidence and therefore I find it unrealistic that the respondent was spending such a lot of money only for

luxuries. As espoused in *Nilsson v Nilsson*<sup>4</sup>, a *Rule 43* order is not meant to provide an interim meal ticket to a person who quite clearly at the trial will not be able to establish a right to maintenance.

- (29) I now turn to the claim for payment towards the children's holidays. The Applicant contends that the respondent must be ordered to make payments for the children's holidays, but the Respondent be not allowed to take the children on holidays alone. The Applicant cites two incidents that occurred where the Respondent apparently became violent in front of the children. On this aspect too, my view is that the Applicant has not succeeded in making out a case for the relief sought.
- (30) The Applicant also seeks an order that the Respondent must have supervised visits to the children over the weekends. It is unfortunate that I cannot deal with this aspect without the report of the Family Advocate who is having the capacity and the expertise to investigate what is in the best interest of the minor children.
- (31) On the issue of contribution to legal costs, in the notice of motion the Applicant is seeking an amount of *R 140 000.00*. However, during argument Counsel on behalf of the applicant sought a reduced amount of *R 81 000.00* as contribution to the Applicant's legal costs. In my view the Applicant could not justify the exorbitant amount of legal costs. However, the Applicant was partially successful, especially on maintenance *pendent lite* for the two minor children and therefore the Respondent must pay costs on party and party scale.
- (32) Consequently, I find that the Applicant failed to make out a case for the relief sought in the Notice of Motion in respect of spousal maintenance, and therefore that application should fail. However, the Respondent has agreed to pay maintenance for the two minor children in the amount of *R 15 500.00* per month,

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<sup>4</sup> 1984(2) SA 294 (C) at295F

school fees for both children, domestic worker's salary in the amount of R 4 500.00 per month as well as excess on medical aid provided the applicant furnishes her with proof of excess amount.

(33) In the result I make the following order *pendente lite*:

33.1 The Respondent shall pay an amount of R 15 500.00 per month for the maintenance of the two minor children. The first payment to be made on or before the 15<sup>th</sup> December 2023 and thereafter on or before the 30<sup>th</sup> of every month.

33.2 The Respondent shall pay school fees for both the minor children.

33.3 The Respondent shall pay the domestic worker' salary/remuneration in the amount of R 4 500.00 per month.

33.4 The Respondent shall pay excess on medical aid provided the applicant furnishes him with proof of access excess amount.

33.5 The Respondent shall continue to pay rent for the property where the Applicant stays with the minor children.

33.6 The Respondent is ordered to pay the costs of this application.

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**KGANKI PHAHLAMOHLAKA**  
**ACTING JUDGE OF THE HIGH COURT**

**DATE OF JUDGMENT: 01 DECEMBER 2023**  
**FOR THE APPLICANT: ADV K MAGAGULA**  
**INSTRUCTED BY: MATOJANE MALUNGANA INC.**



**FOR THE RESPONDENT: ADV Y VAN DER LAARSE**

**INSTRUCTED BY: MPHELA MNGADI & ASSOCIATES INC.**