

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 DIVISION, PRETORIA

CASE NO:63604/2021

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

Date: 2 August 2023 E
van der Schyff

In the matter between:

V[...] D[...] APPLICANT

and

V[...] J[...] RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

- [1] In this Rule 43 application, the reality of the hard economic times middle-class South Africans are experiencing, comes to the fore. The impact that dragged-out divorce proceedings have on parties' financial well-being is also emphasised.
- [2] The parties are married out of community of property with accrual. Their minor daughter suffers from developmental challenges, and their son is a university student.
- [3] Realities cannot be ignored when a court considers the question of maintenance in Rule 43 applications. On the one hand, it is a reality that the applicant and the two dependent children need to be maintained. The applicant has not been active in the labour market since 2003. She has, however, since commenced employment as an intern sales associate and is in the process of qualifying as an estate agent. Her current income is negligible and does not exceed R5 000.00 per month.
- [4] The respondent, on the other hand, is employed. He had an interest in a company through which he earned an additional income to his salary, but due to a possible conflict of interest with his employers, he sold his interest in the company. As a result, this family of four must make do with the respondent's income, not something that can easily be accomplished if two households must be maintained. It is not disputed that the respondent earns a net income of R57 000 per month. After the respondent has paid the bond installment of the immovable property wherein the applicant and the parties' minor child reside, and the adult dependent child's study expenses, he is left with approximately R26 300 per month. Other fixed monthly expenses, which include vehicle installments, insurance, etc., amount to approximately R23 800.00. The matrimonial home is on the market, but no potential buyer that can obtain the necessary finances has yet shown up.
- [5] The respondent currently makes a financial contribution of R3 500 per month to the maintenance of the applicant and the minor daughter. This financial contribution must, however, be seen in the context that he is also paying the bond of the erstwhile matrimonial home, as well as the rates and taxes. He also solely carries the expenses relating to the parties' son's studies and their daughter's school fees

and aftercare, the applicant's vehicle installment and insurance, and retained the applicant and children on his medical aid.

- [6] The applicant referred to the fact that the respondent earns an annual bonus and receives a tax benefit due to the parties' daughter being disabled. The implication of these can be fully canvassed during the hearing. In this application that deals with interim maintenance, the court must work with the finances that are currently available. It is a trite principle that maintenance *pendente lite* is intended to be interim and cannot be determined with the same degree of precision as would be possible in a trial.
- [7] The applicant also seeks a contribution towards the costs of the divorce. The applicant seeks a contribution towards costs in the amount of R100 000.00. It was indicated that her legal costs to date exceed R400 000.00. She receives financial support from her parents, although she explains that she loans the money from them and must repay them in future. It is trite that a husband's duty of support includes the duty to provide the wife with costs for her litigation, and that she should be placed in a position adequately to present her case,¹ and, I must add, as far as the available resources allow.
- [8] Whatever these parties' living standard was before their marriage breakdown, is irrelevant. It is evident that their financial position has changed dramatically. The extended divorce proceedings are further rapidly depleting available resources.
- [9] The applicant's income, together with the amount she currently receives for maintenance, amounts to R8 500.00. The parties need to make hard choices which include reconsidering their son studying away from home and the possibility of him studying at a distance university while earning an income. In coming to the order that I make below, I was restrained by the respondent's capacity to meet the maintenance requirements of the applicant and the parties' minor daughter, taking into consideration that it is common cause that the respondent and the parties' adult dependent son will make a suitable arrangement *inter partes*.

¹ *Micklem v Micklem* 1988 (3) SA 259 (C).

[10] As for the request that the parties' daughter be cared for only by the applicant during specific times when she needs female care, the respondent demonstrated satisfactorily that he, as assisted by female family members, has in the past been able to take care of the child.

ORDER

In the result, the following order is granted:

1. Both the applicant and respondent retain full parental rights and responsibilities of C[...] v[...] (C[...]), as provided for in section 18(2) of the Children's Act 38 of 2005 (the Act);
2. The applicant retains primary residence of C[...] subject to the respondent having reasonable rights of contact on the following basis:
 - 2.1. Every alternative weekend from Friday at 17:00 to Sunday at 17:00, unless otherwise arranged between the parties;
 - 2.2. Every Wednesday from 17:00 to 19:00, unless otherwise arranged between the parties;
 - 2.3. Long holidays to be shared equally, with the proviso that the Easter and Christmas holidays alternate between the parties;
 - 2.4. Public holidays and short holidays to alternate between the parties;
 - 2.5. C[...]’s birthday to alternate annually to coincide with the December holidays. The party not having contact, to have telephonic contact with C[...], the time to be arranged between the parties;
 - 2.6. Father’s Day is to be spent with the respondent, and Mother’s Day with the applicant, from 9:00 to 17:00;
 - 2.7. The respondent is entitled to contact with C[...] on his birthday if it falls in the week from 17:00 to 19:00, and if on weekend from 9:00 to 17:00;
 - 2.8. Should the applicant’s birthday fall on a weekend when the respondent exercises contact, the applicant shall have contact with C[...] from 09:00 to 17:00 if on a Saturday, if on a Sunday, from 9:00.

3. The respondent's interim maintenance obligation towards the applicant and C[...] is the following:
- 3.1. A cash contribution of R5 000,00 per month;
 - 3.2. C[...]’s after-school care, school fees, and all reasonable school-related expenses, inclusive of but not limited to school uniforms, stationary, reasonable school activities;
 - 3.3. The respondent is to retain the applicant and C[...] on a comprehensive medical aid and paid all their reasonable medical expenses not covered by the medical aid;
 - 3.4. The respondent is to provide the applicant and C[...] with reasonable accommodation and pay all the direct expenses related thereto e.g., rates and taxes;
 - 3.5. The respondent must pay a contribution towards the applicant's legal costs in the amount of R6 000.00 (six thousand rand) in monthly instalments of R750.00;
 - 3.6. The costs of this application are costs in the appeal.

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicant:	Adv. T Eichner-Visser
Instructed by:	Van Der Smit Attorneys
For the respondent:	Adv. L van der Westhuizen
Instructed by:	VZH Inc.
Date of the hearing:	18 July 2023

Date of judgment:

2 August 2023