

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



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GQEBERHA)**

CASE NUMBER.: 1219/2023

In the matter between:

N[...] G[...]

Applicant

And

O[...] G[...]

Respondent

JUDGMENT

Beshe J

[1] Rule 43 of the Uniform Rules of this court makes provision for interim relief in matrimonial matters. Subrule (1) states that:

'43 Interim relief in matrimonial matters

(1) This rule shall apply 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 of any child;

(d) Interim contact with any child.'

[2] In this matter applicant seeks an order that pendente lite, the respondent be ordered to (i) Pay R32 500.00 per month as and for maintenance towards her. (ii) The respondent be ordered to pay contribution towards applicant's legal costs in the amount of R300 000.00.

[3] In what appears to be a concession during argument, it was submitted on behalf of the applicant that a sum of R9 000.00 towards her maintenance will be a reasonable sum.

[4] It is common cause that there is a pending divorce action between the parties.

[5] Evidence reveals that both parties are employed; applicant as an Events Assistant and takes home approximately R7 000.00. Respondent is a pilot and takes home approximately R60 000.00 per month. Applicant lives in the party's marital home in Theescombe. Respondent vacated same in December 2022 to Gauteng in order to be closer to work. He is renting a +++ apartment. He is still paying for all the household expenses in respect of their marital home which includes serving a bond. As a result of not being able to work for ± 2 years between 2020 and 2021 due to the Covid pandemic, he incurred a debt of R181 000.00 in respect of arrears towards the Nelson Mandela Bay Metropolitan Municipality. He is repaying a bond of R200 000.00 towards SAA for compulsory training he was required to undergo. He no longer undertakes international flights with the result that he does not receive any international allowances. The trips he undertook with the applicant overseas were possible when he flew to overseas countries and such trips did not cost him anything. He did not have to pay for the applicant out of his pocket.

[6] Applicant is prepared to move to rented suitable reasonable rented accommodation but is not possessed of means to foot the bill for such accommodation. This will make it possible for their marital home to be placed on the market.

[7] Both parties have provided an estimate of what they expend on a monthly basis. I do not propose to go into detail and analyse each figure provided based on the parties' submissions. I will have regard thereto. I will also however keep the basis principles governing subrule 1 (a) inter alia that maintenance pendente lite cannot be determined with the same degree of precision as would be possible in a trial. That the applicant is entitled to reasonable maintenance depending on the parties' marital standard of living applicant's reasonable requirements and the capacity of the respondent to meet such requirements.

[8] Even though respondent does not seem to be in particularly good financial position, the tender he makes for R4 500.00 towards applicant's maintenance is totally unreasonable. Whereas the rental for his Gauteng apartment is R5000 00.00, electricity is R1 000.00 per month, R2 500.00 towards groceries already this total to R8 500.00. This excludes payment towards levies, fuel, car insurances, cell phones, entertainment etc. in respect of his Gauteng residency.

[9] Yet he expects applicant to be able to make with R4 500.00. Even with her additional income of ± R7 500.00, R4 500.00 is not a reasonable amount. It was argued that it would be just in the circumstances to find that applicant's reasonable monthly expenses amount to ± R20 000.00.

[10] In her list of monthly expenditure, applicant indicates that her total monthly income is R10 191.67. This is confirmed in the salary slip she provided. Her nett pay is given as R9 743.11. She estimates that she will require

R9 000.00 towards the rental of an apartment, R3 500.00 for food, R1 500.00 for clothing and shoes, R2 500 towards the maintenance of her motor vehicle excluding fuel, R2 000.00 for gifts amongst other items of expenditure. In my view, these amounts are not reasonable. Even more so, a prayer for R32 000.00 maintenance given the financial position of both parties. It is my considered view that in the circumstances that a sum of R8 500.00 towards applicant's maintenance is reasonable and fair to both parties.

[11] Regarding the prayer for a contribution towards applicant's legal costs, it was argued that respondent does not have funds from which to make a contribution in this regard. Further that applicant seems to be litigating on a level/scale that is not reasonable. That the estimate of costs appears to be inflated. It is trite that there should be equality of arm between the parties so that both parties can adequately and fairly present their respective cases. We unfortunately do not know how much respondent is likely to expend on legal costs or has already expended.

[12] I have taken into account that what appears to be a contention in the divorce action is whether applicant who is the defendant in the action is entitled to maintenance post-divorce. The parties are married out of community of property with the exclusion of the accrual system.

[13] There are no children born of the marriage.

[14] In light of what is likely to be in issue during the divorce action and the financial position of both parties, I am of the view that a contribution towards applicant's legal costs in the sum of R100 000.00 will be appropriate.

[15] Accordingly, the following order will issue:

1. Pendente lite, the respondent is ordered:

1.1 To pay R10 000.00 per month as and for maintenance to the applicant.

1.2 To make payment of the amount in 1.1 above into the applicant's nominated bank account, the first payment to be made on the first day of the month following the granting of this order, and thereafter on the first day of every following month.

2. The respondent is ordered to pay a contribution towards applicant's costs in the sum of R100 000.00 in two instalments of R50 000.00, the first instalment to be paid within 30 days of this order. The second R50 000.00 to be paid on or before 30 April 2024. These amounts are to be paid to applicant's attorney's Trust Account within the following details:

White & Williams Inc t/a Lexicon Attorneys

Bank: [...]

Account no.: [...]

Branch Code: [...]

Ref: [...]

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

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Date Heard : 13 February 2024

Date Reserved : 13 February 2024

Date Delivered : 20 February 2024