

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



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

CASE NO: 5722/2023

In the matter between:

M[...] S[...]

Applicant

and

L[...] S[...]

Respondent

HEARD ON: 01 DECEMBER 2023

CORAM: JORDAAN, AJ

DELIVERED ON: 13 MARCH 2024

[1] This is an opposed application for maintenance *pendente lite* in terms of Rule 43 of the Uniform Rules of Court. The Applicant and the Respondent were married to each other on the [...] 2017 in community of property, which

marriage still subsists. From the marital relationship between the Applicant and Respondent one minor son was born on the [...] 2010.

[2] The application is consequent upon the Applicant having instituted an action for divorce with ancillary relief against the respondent on the 30th of June 2023, founded upon the irretrievable breakdown of their marriage. The action is pending before this Honourable Court.

[3] The Applicant in this application in terms of rule 43 of the Uniform Rules of Court, for maintenance and ancillary relief *pendente lite*, seeks an order in the following terms: -

“ 1. That specific parental responsibilities and rights with regards to the care of the minor child as contemplated in Section 18(2)(a) of the Children’s Act, Act 38 of 2005, be awarded to both parties;

2. That the primary residency of the minor child be awarded to the Applicant pendente lite;

3. That specific parental responsibilities and rights in respect of contact with the minor child as contemplated in Section 18(2)(b) of the Children’s Act, Act 38 of 2005,

be awarded to the Respondent in the following in the following manner: -

4. That specific parental responsibilities and rights in respect of contact with the minor child as contemplated in Section 18(2)(b) of the Children’s Act, Act 38 of 2005,

be awarded to the Respondent in the following in the following manner: -

4.1 Contact on alternative weekends from 17h00 on a Friday to 17h00 on a Sunday.

4.2 Public Holidays to alternate between the parties.

4.3 Short school holidays to alternate between the parties and all long school holidays to be divided equally between the parties on the basis that the minor child will

spend an alternative holiday for Christmas with an alternative party.

4.4 *At least three(3) hours of contact to be awarded to the Respondent on the birthday of the minor child and that of the Respondent.*

4.5 *Contact on Father's Day from 9h00 to 17h00 if this day does not coincide with a normal access weekend.*

4.6 *Reasonable telephonic contact.*

5. *That the parental responsibilities and rights with regard to the guardianship of the minor child as contemplated in Section 18(2)(c) and 18(3) of the Children's Act, Act 38 of 2005,*

be awarded to the parties jointly.

6. *That the Respondent will pay maintenance pendente lite towards the Applicant in respect of the minor child at the rate of R7 500,00 per month.*

7. *That the Respondent pay the amount of R4 345,00 directly to the Applicant for December 2023 whereafter the Respondent will be liable for 50% of the minor child's school payable directly to the school.*

8. *That the Respondent for 50% of the house bond with effect from November 2023.*

9. *Further and or alternative relief."*

[4] At the hearing it was submitted on behalf of the Respondent that no issue is raised in regard to the guardianship, access, contact, parental responsibilities and rights of the minor child and the Respondent admitted the extra school lessons and its costs. The Respondent requested that the application be dismissed as the Applicant is not open and truthful with court in her application and raised issue with the correctness of the Applicant's list of expenses, the fact his child maintenance contributions is denied and the fact that the Applicant is not giving the court a true reflection of the bond payment obligations.

[5] Rule 43 provides:

" 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.”*

- [6] Rule 43 was not created to give an interim meal ticket to an applicant who quite clearly at the trial will not be able to establish a right to maintenance.¹ The purpose of Rule 43 is to provide a streamlined and inexpensive procedure for procuring the same interim relief in matrimonial actions as was previously available under common law in regard to maintenance and costs.²
- [7] Turning to the facts of the case. The Applicant is employed at the Department of Health and earns a nett monthly salary of R28 637.86³, while the Respondent is employed at Transnet earning an average nett salary of R33 171,54 which was an average of the four months' payslips provided by the Respondent of which one payslip had a long leave cash pay-out.
- [8] The Applicant in her application submitted that her monthly expenses with that of their minor child amounts to R46 064.21⁴ and that she cannot maintain the house and their minor child without assistance from the Respondent. The Respondent takes issue with this, submitting that he is paying monthly maintenance for his minor son in the amount prayed for in the divorce summons of R1 500,00 per month with effect from October 2023.⁵ Respondent also submitted that he pays for his child's stationary⁶ and pocket money⁷ referred to as stipend.
- [9] The need for full and frank financial disclosure in Rule 43 applications cannot be over stated and it is trite that an applicant must approach the court with clean hands. It can however not be stated that the Applicant was not truthful in

¹Nilsson v Nilsson 1984 (2) SA (C) 294

²Zaphiriou v Zaphiriou 1967 (1) SA 342 (W)

³Founding Affidavit paragraph 6

⁴Founding Affidavit page6 paragraph 6.2

⁵Opposing Affidavit paragraph 7 and 22 and Annexure "AAA" page 13

⁶Opposing affidavit paragraph 22 and Annexure "AAA" pages 72,73 and 74

⁷Opposing Affidavit paragraph 22 and Annexure "AAA" pages 75, 76 and 77

regard to the child's maintenance and needs. Respondent indeed maintains his child in the amount of R1 500,00 per month, but that was only since October 2023, while the divorce summons was issued in June 2023 already. The Respondent indeed gave his son pocket money and it was indeed substantial, but it was sporadic.

[10] Both the Applicant and the Respondent are not earning incomes that allow for unbudgeted luxuries and therefor the Court recalculated the basic needs of the child all-inclusive consisting of:

- a. School fees R43500,00
 - b. School transport R1 000,00
 - c. Extra Classes. R1 600,00
 - d. School clothes R200
 - e. Sports clothing R100
 - f. Sports tours R125
 - g. School activities R100
 - h. Pocket money R150
 - i. Hair R100
 - j. Clothing R250
 - k. Food R1000
- TOTAL R8 975,00

[11] The duty to maintain the child rests on both parents, therefore the all-inclusive maintenance *pendente lite* payable by the Respondent in respect of the child amounts to is R4 487,50. The Respondent in his opposing affidavit state that he paid the stokvel money for his son school fees in January 2023 to the Applicant in the amount of R 15 000,00 to R18 000,00. This will account for his contribution of the school fees of 2023.

[12] The Applicant indeed did not make out a case that her bond payments are R 8 300,00⁸ as the Respondent submitted proof that the bond payment has been reduced in terms of a re-negotiation with ASA Bank Home Loans to

⁸Founding Affidavit paragraph 6.2.1

R4 188,90⁹. This the Respondent submits that this indicates that the Applicant is not *bona fide* and her application should be dismissed. The Applicant deposed to her affidavit in October 2023 while proof of a lesser bond payment by the Respondent shows November 2023, the Court cannot in the circumstances in the absence of proof find that prior to deposing to the affidavit the Applicant was paying R 4 188,90.

[13] The Respondent thus bears a responsibility to pay 50% of the bond which amounts to R2 094.45 per month.

[14] Notwithstanding that the Respondent has the responsibility to pay maintenance and to make payment towards to bond, the question remains whether he indeed can afford to make such financial contributions. In his opposing affidavit the Respondent does not state that he is making a bond payment or that he is paying rental, yet provision is made in Annexure "AAA" for R6 000,00 per month, that makes the R6 000,00 unaccounted for and available. The Respondent also shows in Annexure "AAA" that he is paying a Sanlam retirement annuity of R500,00 per month, a Capitec funeral policy of R240,55 per month, a B3 funeral policy of R233,50 per month and a FinnChoice funeral policy of R3889,66 per month. A Respondent cannot pay for funeral and investment policies when maintenance obligations for daily living has to be met, that would make a further approximate R4 850,00 available. In the circumstances the Court finds that the Respondent can afford and has the funds available to pay the maintenance and bond *contribution pendente lite*.

[15] In the result, the following order is made *pendente lite*:

ORDER

⁹Opposing affidavit paragraphs 10 to 11 and Annexure "AAA" page 31

1. Specific parental responsibilities and rights with regards to the care of the minor child as contemplated in Section 18(2)(a) of the Children's Act, Act 38 of 2005, are awarded to both parties *pendente lite*;
2. That the Applicant is awarded primary residency of the minor child *pendente lite*;
3. That specific parental responsibilities and rights in respect of contact with the minor child as contemplated in Section 18(2)(b) of the Children's Act, Act 38 of 2005, are awarded to the Respondent in the following in the following manner: -
 - 3.1 The Respondent shall have contact on alternative weekends from 17h00 on a Friday to 17h00 on a Sunday.
 - 3.2 Public Holidays shall alternate between the parties.
 - 3.3 Short school holidays to alternate between the parties and all long school holidays to be divided equally between the parties on the basis that the minor child will spend an alternative holiday for Christmas with an alternative party.
 - 3.4 At least three (3) hours of contact is awarded to the Respondent on the birthday of the minor child and on that of the Respondent.
 - 3.5 The Respondent shall have contact on Father's Day from 9h00 to 17h00 if this day does not coincide with a normal access weekend.
 - 3.6 The Respondent shall have reasonable telephonic contact.

4. That the parental responsibilities and rights with regard to the guardianship of the minor child as contemplated in Section 18(2)(c) and 18(3) of the Children's Act, Act 38 of 2005, is awarded to the parties jointly.
5. That the Respondent shall pay maintenance *pendente lite* in respect of the minor child at the rate of R4 487,50 per month to the Applicant with effect from the 31st of March 2024, thereafter on or before the last day of each succeeding month.
6. That the Respondent shall pay 50% of the bond in the amount of R2 094,55 per month to the Applicant with effect from the 31st of March 2024, thereafter on or before the last day of each succeeding month.
7. Costs of the application will be costs in the main action.

M.T. JORDAAN, AJ

APPEARANCES:

Counsel on behalf of the Applicant:

Adv Louw

Instructed by:

Honey Attorneys

BLOEMFONTEIN

Counsel on behalf of the Respondent:

Mr. Koenane

Instructed by:

Koenane Attorneys

BLOEMFONTEIN