

SOUTH AFRICA / JUDGMENT

A.J.K v J.J.L.K (3831/2023) [2024]

ZAFSHC 52 (19 February 2024)

[2024] ZAFSHC 52

COURT

Free State High Court, Bloemfontein

BEFORE

Jordaan, AJ

CASE / FILE NUMBER

3831/2023

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Reportable:

NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

Case Number: 3831/2023

In the matter between: A[...] J[...] K[...] Applicant and J[...] J[...] L[...] K[...] Respondent

HEARD ON: 19 OCTOBER 2023

CORAM:

JORDAAN, AJ

DELIVERED ON: 19 FEBRUARY 2024

- [1] This is an opposed Rule 43 application. The parties were married to each other on the 02nd of July 1993, in community of property, which marriage still subsists. One child was born into this marital relationship who has since attained majority.

- [2] The Parties purchased a company, KM Engine Remanufacturers (Pty) Ltd, in which the Applicant was employed and she received a net salary of R20,000.00 per month from KM Part Services.
- [3] As a result of the irretrievable breakdown of the marital relationship, the Applicant moved out of the communal home and instituted an action for divorce with ancillary relief which is pending before this Court.
- [4] The Applicant instituted this application for maintenance pendete lite as she no longer received a salary from KM Part Services.
- [5] The succinct issues for the determination by this Court are: -

5.1. Whether or not the Applicant is entitled to maintenance pendete lite;

5.2. Whether the Respondent pendete lite should be ordered to pay the applicant maintenance in the sum of R27,000.00 per month;

5.3. Whether or not the Respondent should retain the Applicant as a beneficiary on his medical aid and be liable for all medical, dental, pharmaceutical and ophthalmic costs of the Applicant;

5.4. Whether or not the Respondent should be ordered to make a contribution to the Applicant's legal fees in the amount R10,000.00 payable within seven (7) days from the date of the order.

- [6] Rule 43 is a self-contained rule which regulates the procedure to be followed in applications for ancillary relief of an interim nature in matrimonial matters.
- [7] The purpose of Rule 43 was elucidated by Trollip J in *Zaphiriou v Zaphiriou*[1] wherein he stated: -

"It is designed merely to provide a streamlined and inexpensive procedure for procuring the same interim relief in matrimonial actions as was previously available under common law in regards to maintenance and costs."

- [8] Theron J I *Colman v Colman*[2] concisely captured the procedure of the Rule 43 application as: -

"The whole spirit of Rule 43 seems to me to demand that there should be only a very brief statement by the applicant of the reasons why he or she is asking for relief claimed and equally succinct as to what order should be made pendente lite."

- [9] In *Nilsson v Nilsson*[3] in regard to Rule 43 it was stated: -

"It was not created to give an interim meal ticket to a woman who quite clearly at the trial will not be able to establish a right to maintenance."

- [10] It is the Applicant's case that on the 08th of May 2023 the Respondent sent a letter to all their suppliers and clients that she is no longer the contact person at KM Engine Remanufacturers (Pty) Ltd, a company which she views as being a co-owner of. The Applicant then later moved out of the communal home on approximately the 19th of May 2023, the Respondent stopped paying her salary from May 2023 and also refused to pay for her medication.
- [11] The Applicant grounded her application on a tabulated list of monthly expenses.[4] It is common cause that the Applicant is a diabetic and on medication for same.
- [12] The Respondent refuted these contentions by stating that the Applicant was simply a co-signatory to the purchase of the company by virtue of their marital regime and was not a director. The Respondent further contended the Applicant received a salary for "merely assisting with businesses admin,... Applicant did not come in every day and work at the business premises, she had her own business ventures,..that kept her busy as well"[5] and the Applicant was absent from work for a prolonged period after she underwent an operation in Bloemfontein thus the no work no pay principle was applied as would be applied to any other employee.
- [13] The Respondent further contended that once the Applicant returned to Louis Trichardt he indeed paid for her medication. He further contended that the Applicant is not destitute she had a driving school business and upholstering business in Louis Trichardt, she created her situation by moving to Bloemfontein.
- [14] Notwithstanding the contentions of the Respondent, it is clear that the Applicant was not like any other employee of the company, having regard to Respondent's own papers. According to the Respondent, the Applicant did not come into the business premises every day, she carried on other business ventures that kept her busy and she merely assisted with the business admin for which she received the established "salary".
- [15] If one has regard to the letter[6], it identified the persons who will deal with those queries, they are the directors of the companies and a consultant, all existing in-house staff already serving within the business or on the board of directors of the business.
- [16] No ordinary employee will not come in to the business premises every day as other business ventures keep her busy and yet receive an established monthly salary for merely assisting with administration. This indicates that her established salary was not based on any set hours of merely assisting with business admin.

- [17] It was the Respondents case that he earns a salary of R25 000.00 per month from KM Engine Remanufacturers Pty Ltd and could not afford to pay maintenance pendente lite in terms of the application but tendered six thousand rand per month towards the Applicant's rental and that he would retain the Applicant on his medical aid, but that she should pay 50% towards any additional medical costs not covered by the medical aid. The Respondent further contended that the Applicant have income streams from her various business ventures.
- [18] Both Applicant and the Respondent's bank accounts indicate additional deposits into their accounts from their children and other sources. The Applicant explains that it is her daughter and family members and friends who assist her and whom she repays, while the Respondent explains that his children reimburse him for the car payments he makes on their behalf and he moves money into and out of his credit card in order to have funds available in his account when the need arises.
- [19] Parties are in agreement that the Applicant is on chronic medication, that Applicant had a medical procedure in Bloemfontein according to the Respondent it was an operation, that their marriage has irretrievably broken down, that their daughter lives in Bloemfontein and that the Respondent had a letter sent to clients that Applicant is no longer the contact person at KM Engine Remanufacturers (Pty) Ltd.
- [20] The Court finds that the Applicant indeed receive financial and moral care from her daughter and other family members and friends as well as business venture income for different services, however they are inconsistent and not sufficiently substantial to enable maintaining the basic indispensable needs of the Applicant. There was further no evidence that the Applicant is indeed currently in receipt of an established income in the form of a salary from an employer, or derived from her giving driving lessons or doing upholstery or refurbishing.
- [21] In the circumstances, this Court finds that the Applicant has made out a clear case that there is a need for maintenance and ancillary relief, that such need was in the circumstances not self-created, but due to the irretrievable breakdown of the marriage and health issues coupled with her losing her salary. The Respondent submitted that he receives a salary of R25 000.00 (Twenty Five Thousand Rand) salary per month per month, however this Court finds that the Respondent in addition to his R25 000.00 (Twenty Five Thousand Rand) salary per month is receiving an additional payment of R 8 500.00 (Eight Thousand Five Hundred Rand) as salary from KM Engine Salary, with a further additional R3 900.00 (three thousand Nine Hundred Rand) salary on the 14th of March 2023.[7] The Court thus finds that the Respondent has the ability to receive and indeed does receive additional salary payments from the company and can on the basis of his income maintain the Applicant pendente lite.

- [22] Having established the need of the Applicant to maintenance, does not denote that all the tabulated expenses of the Applicant are accepted as basic needs or that they have to be fulfilled to the extent that the Applicant requires. The list of expenses contains certain luxuries and excessive expenses which are not sustainable having regard to the authorities mentioned herein.
- [23] The Court found that the unforeseen expenses, reading and relaxation, Wi-Fi, DSTV, skin and hair care are luxuries and, in the circumstances, not granted by this court. Having regard to the areal outlay of Bloemfontein traveling in Bloemfontein does not require petrol at R2 000,00 per month, the Court thus halved the amount. The estimated water and electricity costs projected for one person was also halved by Court. On the basis of the evidence submitted by the Respondent, the rental needed was reduced to an amount of R6 000,00. The meat fish and chicken for one person was read into the R3 500,00 grocery per month for one person, fruit and vegetables of R800,00 per month, bread and milk and daily purchases of R1000,00 and cleaning materials of R500,00 per month. The Respondent offered medical aid to the Applicant, that leaves the Applicant's accepted basic needs per month at R17 450,00 (Seventeen Thousand Four Hundred and Fifty Rands).
- [24] The Court has regard to the fact that the Respondent projected to Court that his income is R25 000,00 (Twenty-Five Thousand Rand) salary per month, his expenses is R11 317.34 (Eleven Thousand Three Hundred and Seventeen Rand and Thirty-Four Cents) per month and he offered to pay the Applicant R6 000,00 (Six Thousand Rand) per month towards her rental. Thus it was the Respondent's intention to have approximately R7 000,00 available after his projected expenses.
- [25] The Court finds that Respondent's actual income from the company indicates an established income of R33 500,00
- (Thirty-Three Thousand Five Hundred Rands) per month with one additional occasional salary payment of R3 900, 00 which amounts
- to R325,00 (Three Hundred and Twenty-Five Rands) per month. The total monthly salary of the Respondent thus amounts to R33 825,00
- (Thirty-Three Thousand Eight Hundred and Twenty-Five Rands) deducting his listed expenses leaves a surplus of R22 508,00 (Twenty-Two
- Thousand Five Hundred and Eight Rands) per month. Should the Respondent be ordered to pay the Applicant R17 450,00 (Seventeen
- Thousand Four Hundred and Fifty Rands) per month it would leave the Respondent with a surplus of R5 058,00 (Five Thousand and Fifty-Eight
- Rands) per month.

[26] The Respondent indicated that the company pays for the medical aid that he belongs to in addition he has gap cover on the medical aid and he offered to retain the Applicant on the medical aid, but that she must pay 50% of the additional expenses not covered. This, the Respondent contend, in circumstances where he always nonetheless paid all the medication the Applicant needed and medical/dental procedures the Applicant had while earning a salary and after not earning a salary he refused to pay for it in Bloemfontein, but he paid for the same medication and more when she returned to Louis Trichardt. This indicates to Court, that the Respondent does not have a lack of means to provide in the Applicant's medical needs, but that it is about control. This in circumstances where the Applicant was already rendered financially vulnerable when her salary was stopped.

[27] The Applicant being unemployed means she is not in a financial position to pay her legal fees and thus claimed Respondent to make payment in the amount of R10 000,00. The Respondent on the other hand has an income and in the manner indicated has means to a further additional income that he received once off on the bank statements submitted from the same company the Applicant submitted belong to both of them. In the circumstances an order for the payment of the Applicant's legal fees in the amount claimed is not unfounded.

[28] Having regard to the papers and bolstered by the authorities mentioned herein the Court finds that the Respondent has the means to pay the maintenance and ancillary orders pendente lite and accordingly makes the following order:

28.1. The Respondent shall pay maintenance pendente lite to the Applicant in the amount of R17 450,00 per month with effect from the 29th of February 2024 and monthly thereafter on or before the 30th day of each succeeding month;

28.2. The Respondent shall retain the Applicant as a beneficiary on his medical aid and is liable to pay for all medical-, dental-, pharmaceutical- and ophthalmic costs of the Applicant;

28.3. The Respondent shall pay R10 000,00 towards the Applicant's legal fees within seven (7) days from the date of this order;

28.4. The Costs of the application shall be costs in the main action.

M.T. JORDAAN, AJ

APPEARANCES: Counsel on behalf of the Applicant: Adv M.C. Louw Instructed by: Honey Attorneys BLOEMFONTEIN Counsel on behalf of the Respondent: Adv. S.S. Green Instructed by: Venter Attorneys C/O Handre Conradie BLOEMFONTEIN

[1] 1967

(1) SA 342 (W).

[2] 1967

(1) SA 291 (C).

- [3] 1984
- (2) SA 294 (C).
- [4] Paginated Bundle pages 8 to 9 paragraph 6.2.
- [5] Respondent's Opposing Statement page 21 paragraph 9.4.
- [6] Paginated Bundle: Founding Affidavit page 28 Annexure "C".
- [7] Paginated Bundle pages 88, 89, 93, 94, 95, 98, 99, 101, 102, 104, 105, 106, 107.
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