

SOUTH AFRICA / JUDGMENT

A.K (Born R) v P.B.K (093370/23)

[2024] ZAGPJHC 830 (8 August 2024)

[2024] ZAGPJHC 830**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Segal

CASE / FILE NUMBER

093370/23

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Policy**IN THE HIGH COURT OF****SOUTH AFRICA****GAUTENG LOCAL****DIVISION, JOHANNESBURG****CASE****NO: 093370/23****(1)****REPORTABLE: YES/NO****(2)****OF INTEREST TO OTHER JUDGES: YES/NO****(3)****REVISED:**

14 August 2024

In

the matter between:

A[...]

K[...] (Born R[...])

Applicant

and

P[...]

B[...] K[...]

Respondent

JUDGMENT

SEGAL AJ:

- [1] This is a Rule 43 Application in which the Applicant seeks an order for inter alia, maintenance for the minor child born of the marriage on 28 June 2022, currently 2 years old.
- [2] The Applicant also claims payment of 50% of the costs both arrear and present of the co-owned property, namely the former matrimonial home situate at 3[...] B[...] Road Bedfordview, ("The former matrimonial home") which arrear expenses the Applicant alleges that she has paid since the parties separation in May 2023.
- [3] There are numerous elements of this application that were resolved directly between the parties and I was called upon to determine only the following matters:-
 - 3.1 the quantum of cash maintenance to be paid to the Applicant in respect of the minor child;
 - 3.2 the payment of 50% of various direct expenses by the Respondent for the minor child;
 - 3.3 the identity of the registered social worker to be appointed to conduct an investigation and render a report in relation to the Respondent's extended contact to the minor child;
 - 3.4 the extent to which the Respondent should be ordered to contribute towards the past and future expenses of the maintenance and upkeep of the co-owned property.
- [4] From the papers, it appears that the former matrimonial home has remained unoccupied for a period in excess of a year. The Applicant resides with her family and the Respondent resides with his family at their respective family homes.
- [5] The former matrimonial home lies vacant.
- [6] The costs of maintaining the former matrimonial home according to the Applicant, are in the order of R 50 000.00 per month.
- [7] The Applicant's monthly income is a net salary of R25 840.56. In addition she receives rental income of 17 000.00 per month. The Respondent's monthly income is approximately R45 500.00 per month.
- [8] Both parties are salaried employees.
- [9] The Applicant contends that with the assistance of her father (to whom she is now indebted) she has made payment of the costs of maintaining the former matrimonial home, including making payment of the monthly mortgage bond, which amounts to approximately R38 000.00 per month.

[10] The parties contend that the former matrimonial home has been on the property market for a significant period of time, and they have not managed to sell it. I enquired as to whether the parties had endeavoured to procure a tenant and let out the property to cover the costs of maintaining the property, which costs appear to be a significant burden to them. The Respondent was willing

to procure a tenant for the house however the Applicant indicated that she was unwilling to do so. This court cannot force the parties to rent out the co-owned property.

[11] But in light of the Applicant's election not to let out the property (despite the Respondent's agreement thereto) I shall at this stage and in this forum limit the Respondent's contributions to the joint property. If it is sold or let out after this order is granted, then the parties will be able to reduce or possibly extinguish their respective liabilities and contributions to the property.

[12] In the circumstances I am inclined pendente lite to order the Respondent to make payment of 50% of the monthly mortgage bond instalment to the Applicant, and for the remainder of the expenses incurred in maintaining the co-owned property to be dealt with by the court dealing with the *actio communi dividundo*. This may well be the divorce trial court, or it could possibly be another court hearing the *actio* separately.

[13] I do not intend to bind any future court in this judgment, nor do I seek to compromise the parties' respective rights and obligations as co-holders of the property. The question of the payment of the parties' respective shares of the co-owned property and any adjustment in relation thereto is not for a Rule 43 Court to determine.

[14] I am however persuaded that the Respondent has been underpaying both maintenance and his contribution to the former matrimonial home. I consider the amount of R2000.00 which he has historically paid and tendered to continue to pay in respect of maintenance for the minor child and R 5000.00 in respect of the former matrimonial home, to be wholly inadequate. It is unclear how he considers these offers to be fair in circumstances where he allocates R20 000.00 per month to payment of his legal fees, R2 000.00 per month to his holidays and R2 000.00 to his lunches. The Applicant clearly had no option other than to bring this application in respect of which she has been largely successful.

Accordingly, I make an order pendente lite in the following terms:

1. The parties shall remain co-holders of full parental responsibilities and rights in respect of N[...] K[...] ("the minor child").
2. The primary residence of the minor child is awarded to the Applicant, subject to the Respondent's reasonable right of care and contact as follows:

2.1 Every Tuesday and Thursday from 13h00 to 16h00 with the Respondent to collect and return the minor child from the Applicant's residence;

2.2 Every Saturday or Sunday, as arranged between the Parties from 10h00 to 16h30 with the Respondent to collect and return the minor child from the Applicant's residence;

2.3 The Respondent to have telephonic and or video call access to the minor child between the hours of 18h30 and 19h00 on the days that no contact is exercised and depending upon the minor child's set routine or as agreed.

3.

3.1 A Private Registered Social Worker, nominated by the Chairperson of the Gauteng Family Law Forum is appointed to conduct an investigation and render a report upon the best interests of the minor child, in particular, the Respondent's phasing in of extended and or sleepover contact with the minor child;

3.2 The Parties shall be equally (50/50%) liable for the associated costs of the appointment of the Private Registered Social Worker.

4. The Parties are granted leave to re-enrol the application, duly supplemented should they wish to file a further affidavit, after delivery of the expert report.

5. The Respondent shall pay monthly maintenance pendente lite towards the minor child as follows:

5.1 R4000.00 (Four Thousand Rand) Cash Component;

5.1.1 Payable to the Applicant's nominated bank account, free of exchange, deduction or setoff, the first payment to be made within 3 days of the date of this order and thereafter on or before the first

day of each succeeding month;

5.1.2 The aforesaid amount of maintenance shall escalate annually according

to the Consumer Price Index for the preceding year commencing on the anniversary of the first maintenance payment becoming due;

5.2 The minor child shall remain a dependent on the Applicant's medical aid scheme and the Applicant shall remain responsible for administering the minor child's medical aid;

5.3 That Respondent is liable for and shall make payment of the 50% of the following expenses for the minor child:

5.3.1 Play Group, day care and or schooling and associated costs with

effect from the minor child's commencement at such play group, day care or school ;

5.3.2 Medical Aid premium to be paid to the Applicant;

5.3.3 Reasonable medical excess expenses not covered by the Applicant's medical aid scheme;

5.3.4 Reasonable extra-curricular and or sporting activities, including but not limited to swimming lessons and clamber club;

5.3.4.1

The Applicant shall electronically provide the Respondent with a monthly breakdown of the expenses stipulated in paragraph 5.3 supra, together with supporting documents and or invoices and proof of payments (“N[...]’s monthly breakdown”);

5.3.4.2

The Respondent shall reimburse (pay his 50% contribution) to the Applicant within 5 (five) days of receipt of N[...]’s monthly breakdown by making payment into her nominated bank account;

5.4 In the event that any educational need, extra-curricular or sporting activity, out-of-pocket medical expense (save for medical emergencies) exceeds R2000.00 (Two Thousand Rand), then the Applicant shall timeously notify the Respondent in writing of such intended expense, payment of which shall not be unreasonably refused.

6. The Applicant shall keep a record of all expenses paid in respect of the jointly owned former matrimonial home, in respect of which both Parties are obliged to contribute equally, which shall be dealt with in the appropriate forum and at the appropriate time. Pending resolution or determination of the dispute in relation to the former matrimonial home, the Respondent shall pay the following:

6.1 50% of the amount due in respect of the monthly mortgage bond

instalment which shall be paid directly to the Applicant.

7. The Applicant’s claim for reimbursement to her of 50% of the matrimonial property expenses paid by the Applicant from May 2023 onwards is postponed for determination by the court dealing with the division of the co-owned property.

8. The Respondent shall pay the costs of the application on the scale as between party and party on High Court Scale B.

SEGAL AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically 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 hand-down is deemed to be on August 2024

Heard on: 31 July 2024

Delivered on: 08 August 2024

Appearances:

T Cartens: for the Applicant L Norman: for the Respondent

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Prepared on 11 October 2026 · Esheria