

SOUTH AFRICA / JUDGMENT

A.S.L v H.R.L (20482/21) [2021] ZAGPPHC 695 (13 October 2021)

[2021] ZAGPPHC 695

COURT

North Gauteng High Court, Pretoria

BEFORE

Baqwa

CASE / FILE NUMBER

20482/21

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

REPORTABLE:

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

13/10/2021

Case

number: 20482/21

In

the matter between: A[....] S[....]
 L[....]
 Applicant
 And
 H[....]
 R[....] L[....]
 Respondent

JUDGMENT

Baqwa J

Introduction

- [1] In this application the applicant seeks spousal maintenance as well as a contribution towards legal costs pending the finalisation of the divorce action between them.
- [2] The respondent opposes the application on the basis that she has not made out a case for the relief sought and that he cannot afford the maintenance and legal contribution sought by the applicant.
- [3] The parties were married to each other on 3 July 1982 in community of property.
- [4] Three children were born of the marriage and all of them are over the age of 18 and self reliant.
- [5] It is common cause that the relationship between the parties has irretrievably broken down and that the parties are no longer co habiting as husband and wife, the applicant having vacated the erstwhile matrimonial home on 1 September 2020.
- [6] Both parties are gym instructors at the same gym.
- [7] The respondent has disclosed his income as follows:
 - 7.1 An average of R40 000.00 as a personal trainer.
 - 7.2 Approximately R7 000.00 from selling supplements in the gym.
- [8] The applicant discloses an income of R18 000.00 per month as a gym instructor.
- [9] From the above, it is common cause that the respondent earns more than half what the applicant earns. Also common cause is the fact that the respondent has been solely responsible for most of the joint estate expenses which he undertakes to continue to pay pending the finalisation of the divorce. In that regard the respondent disputes that he has stopped payments in respect of the parties medical and shortterm insurance as alleged by the applicant.

- [10] The applicant submits that the respondent has twice as many clients as she has and that he is in a better financial position than she is due to the health shop he runs at the gym. She alleges that she has a shortfall between her income and expenses of approximately R8 700.00.
- [11] She further submits that respondent is able to contribute to her legal costs in the of R10 000.00 payable in amounts of R2 000.00 per month.
- [12] It is trite that the facts to be considered in applications of this nature are the standard of living of the parties during the marriage, the income of the respondent and sometimes the utilisation of assets and the applicant's actual and reasonable requirements. See *Taute v Taute*[1].
- [13] The respondent submits that the applicant's success or lack thereof is a result of her own doing. He submits that respondent must not be punished for his attempts to yield more income where possible in order to meet his expenses.
- [14] What needs to be accepted however is that in a Rule 43 application the weighing of issues does not involve consideration of whether to punish one spouse or the other. The court has to take a dispassionate and objective view of the facts in order to decide what is just in the circumstances. What the court is dealing with is the right to maintenance which arises out of the marriage and terminates at the time of granting of the divorce.
- [15] The court approach was summarised in the of *Levin and another*[2] as follows:
- "To decide the issue I am compelled to draw inferences and to look to the probabilities as they emerge from the papers. Obviously my findings are in no way binding on the trial court and indeed after the hearing of the evidence it may emerge that some or all of the inferences I have drawn are wrong. On this basis I now turn to the issues as they emerge from the papers."
- [16] In the present case, whether it be for lack of industry or initiative on the part of the applicant or not, it is a fact that the respondent earns a higher income than her. Whilst the respondent must be commended for continuing to shoulder his responsibilities in the joint estate, that does not, in my view relieve him of his obligation to pay maintenance to the extent necessary to his spouse.
- [17] I have, in the circumstances tried to balance the scales not only from a maintenance point of view but also from a litigation angle. Section g (1) of the Constitution guarantees to both parties equality before the law.
- [18] In *Cary v Cary*[3] it was held that:

" The claim for the contribution towards costs in a matrimonial suit was sui generis. The basis of such claim was the duty of support which the spouses owed each other. In assessing the quantum of the contribution to enable the party seeking the contribution to present her case adequately before court, the court had to have regard to the circumstances of the case, the financial position of the parties and the particular issues pending in the litigation..."

[19] In weighing the circumstances of the parties herein I am satisfied that the relief sought by the applicant is not extravagant or spiteful or a quest to enrich herself as suggested by the respondent. It is of a temporary nature. Whatever order is made by this court terminates at the end of the divorce.

[20] The respondent undertakes to continue with his current responsibilities including the applicant's medical aid and short term insurance. To that extent therefore paragraphs 2 and 3 of the order below merely reinforce the status quo to the extent necessary in terms of the Plascon Evans rule. In light of the respondent's concession the maintenance claim has to be reduced pro rata.

[21] I have considered all the facts presented before me and the submissions by counsel and in the result, I make the following order,

Order:

21.1 The respondent is ordered to pay to the plaintiff the amount of R5 000.00 per month in respect of maintenance for herself pendent lite, escalating CPI yearly.

21.2 The respondent is ordered to keep the applicant on his medical aid at Discovery a classic core hospital plan with membership no 407 723 112 and the respondent shall solely be liable for the payment of the membership fees.

21.3 The respondent shall pay the insurance on the applicant's Tata motor vehicle registration no [....].

21.4 The respondent is ordered to pay an amount of R10 000.00 as contribution to the applicant's legal costs which amount is payable in instalments of R2 000.00 per month into the trust account of the applicants attorneys, F VAN WYK INCORPORATED, ABSA TRUST ACCOUNT, NR [...], BRANCH CODE 632 005, REF AJ 681, from 1 November 2021.

21.5 The respondent shall pay the costs of this application.

SELBY BAQWA

JUDGE OF THE HIGH OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Appearances:

For the Applicant: Adv M de Meyer

Instructed by: F van Wyk Attorneys

For the Respondent: Adv T Ellerbeck

Instructed by: Schoeman Attorneys

[1] 1974 (2) SA 675 (E) at 675 BD

[2] 1962 (3) SA 330 (W) at 331 D

[3] 1999 (3) SA 615 (C)

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