

SOUTH AFRICA / JUDGMENT

B.D.S v G.M.D.S (38773/21) [2023] ZAGPPHC 1780 (4 October 2023)

[2023] ZAGPPHC 1780**COURT**

North Gauteng High Court, Pretoria

BEFORE

MNGQIBISA-THUSI

CASE / FILE NUMBER

38773/21

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Policy**IN THE HIGH COURT OF****SOUTH AFRICA****GAUTENG DIVISION,****PRETORIA)****Case No.: 38773/21****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES:NO****(3)****REVISED.****DATE 04/10/2023****SIGNATURE****In the matter between:**

B[...]

D[...] S[...]

Applicant

and

G[...]

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

Respondent

JUDGMENT

MNGQIBISA-THUSI, J

[1] The parties were married to each other on 20 May 1990. Out of the marriage two children were born. Both children are now majors and self-supporting.

[2] On 4 August 2021, the plaintiff issued summons seeking a divorce decree and other relief.

[3] The defendant has defended the divorce action.

[4] The parties are in agreement that their marriage has irretrievably broken down and that no reasonable prospect exists for the restoration of a normal marriage relationship.

[5] Although the parties are in the process of divorce proceedings, they currently both live in the matrimonial home although they sleep in separate bedrooms.

[6] On 17 December 2021 the plaintiff launched this application in terms of Uniform Rule 43 in which she seeks, pendente lite, an order on the following terms:

6.1 that the respondent be ordered to contribute towards the applicant's maintenance as follows:

6.1.1 by making payment to the applicant of a sum of R120 000.00 per month, alternatively such amount as the above Honourable Court deems appropriate, due regard being had, inter alia, to the applicant's maintenance requirements, each such payment to be made to the applicant without deduction or set off on or before the first day of each month, by debit order into such account as the applicant may from time to time determine in writing.

6.1.2 by making payment and by bearing all the medical expenses incurred in private healthcare in excess of the cover provided by any medical aid scheme, (Discovery Health, Classic Comprehensive Plan) of which the applicant is a member, such costs to include all medical, dental, pharmaceutical (including levies), surgical, hospital, orthodontic and ophthalmic (including spectacles and/or contact lenses), physiotherapeutic, psychotherapeutic, occupational therapeutic, homoeopathic, chiropractic and similar medical expenses which are not covered by the medical aid scheme. The respondent shall reimburse the applicant and for all expenses are so incurred in respect of which she has made payment, or shall make payment directly to the service providers, as the case maybe, within 5 (five) days of the applicant providing the respondent with proof of payment and/or the relevant invoice.

6.2 That the applicant shall be entitled to the continued use of the Toyota land cruiser with registration letters and numbers: F[...] and that the respondent shall see to the punctual payment of any instalments payable in respect of that vehicle as well as the premiums in order to keep the vehicle comprehensively insured and the reasonable maintenance costs thereof.

6.3 That the respondent make available for removal and use by the applicant of the household items in annexure "FA3" hereto.

6.4 That the respondent be ordered to make payment of a deposit for rental accommodation to be obtained by the applicant to a maximum of R30, 000.00, directly to the estate agent and/or landlord who owns the said property when the property is leased and that the respondent in addition thereto, pay the reasonable transport costs of the applicant's movable assets directly to the service provider to a maximum of R8, 000.00, and in addition that the respondent pay the costs of connection of electricity supply to those premises.

6.5 That the respondent be ordered to make an initial contribution towards the applicant's legal costs in the sum of R10, 000.00 within seven days from date of order herein.

6.6 That costs hereof be costs in the divorce action.

6.7 Further/alternative relief be afforded to the applicant.

[7] As a preliminary point, the respondent is seeking condonation of the late filing of his opposing affidavit and admission of a supplementary affidavit.

[8] The applicant served the application electronically on the respondent's attorneys on 17 December

2021. As this was during the dies non period, the respondent alleges that his attorneys only became aware of the application when the law firm reopened on 17 January 2022, at a time when the time for filing the opposing affidavit had lapsed. Further, the respondent contends that since the application was served during the holiday period, he was not in a position to obtain the necessary documentation in relation to his financial disclosure before 17 January 2022 when the opposing affidavit was served on the applicant's attorneys, hence the need to file a supplementary affidavit.

[9] The applicant has opposed the granting of condonation of the late filing of the opposing affidavit and the admission of the supplementary affidavit. However, the applicant has responded to the allegations made in the two affidavits.

[10] Taking into consideration the period during which the application was served on the respondent's attorneys, I am of the view that it is not unreasonable to expect that the respondent and his attorneys would not have been aware of the application. As the applicant has had the opportunity to respond, I am of the view that she has not suffered any prejudice due to the lateness of the filing of the two affidavits and I am satisfied that condonation should be granted and that the supplementary affidavit for the sake of completeness should be admitted.

[11] With regard to prayer 6.3 (above), the respondent does not have a problem with the applicant removing the items listed in annexure "FA3".

- [12] The applicant is 54 years old and unemployed. Before the birth of their first child the applicant was employed as a beauty therapist at a salon. According to the applicant she has been fully reliant on the respondent to provide for her maintenance and other personal needs since the birth of their first child. The applicant further alleges that she owns a sectional title unit from which she receives rental income in the amount of R5, 300.00.
- [13] The respondent is a businessman. As appears from the respondent's supplementary affidavit, he is a shareholder and director of S[...] T[...] (Pty) Ltd. Although the respondent also has another company, D[...] M[...] G[...] T [...], in which he holds sole shareholding, he alleges that this company has become dormant and is no longer trading.
- [14] It is not in dispute that during the marriage the applicant had access to a joint account which enabled her to draw amounts of R30, 000.00 to R40, 000.00 per month to buy household groceries and to pay for personal expenses. However, after the divorce action was instituted, the respondent has replaced the debit card previously accessible to and used by the applicant. The most that the respondent has given to the applicant is the sum of R1, 000.00 per month.
- [15] The applicant disputes the respondent's allegation that he only receives an amount of R80, 000.00 from his company as remuneration. The applicant alleges that the respondent has failed to disclose other benefits he receives from the company. According to the applicant, all of the respondent's expenses used to be paid by the company.
- [16] The applicant further alleges that since the divorce proceedings were instituted, the respondent has stopped paying for the following items:
- 16.1 her maintenance;
 - 16.2 groceries for the common household;
 - 16.3 medical expenses not covered by the medical aid; and
 - 16.4 electricity and rates and taxes.
- [17] The applicant further alleges that the respondent has also stopped her from using the petrol card and the eTag and is no longer providing her with diesel for the Toyota Land Cruiser she is using. Furthermore, the applicant has denied taking any money from the family home as alleged by the respondent.
- [18] However, the applicant admits to receiving an amount of R48, 000.00 from a S[...] U[...] Trust Fund and that since December 2021 she has signed a new lease over the sectional title unit and is receiving the sum of R7, 000.00 as rental income. At the time the financial disclosure form was completed, the applicant had a balance of R204, 781, 85 in her Standard Bank account.

- [19] On the other hand, the respondent alleges that he is not in a position to pay any maintenance to the applicant because since October 2018 he has suffered financial hardship as his business was affected by the Covid pandemic and the a claim by SARS of an amount of R8 million in relation to the D[...] company. It was further submitted on behalf of the respondent that the applicant has sufficient income to maintain herself as she had cashed in on her share of a joint Australian investment from which she received approximately R750,000.00.
- [20] The respondent further alleges that he is still paying for the insurance for the vehicle the applicant is using and for the house and still maintains the applicant in his medical aid. For the rest of the items claimed, it is the respondent's contention that the applicant can afford to pay for herself.
- [21] In her financial disclosure form the applicant has set out in detail what her reasonable monthly expenses are. The amounts needed for some of the expenses appear to be exorbitant. According to the applicant, she is entitled to the amounts she is claiming as she has become accustomed to the high standard lifestyle which she enjoined before the marriage started to disintegrate.
- [22] The respondent filed a financial disclosure form setting out his income and expenses. The form indicates that he receives approximately R80, 000.00 as remuneration from his company. From this amount , his financial disclosure form indicate that he receives a cash payment from the company in the amount of R43,000.00 per month after all his and the applicant's expenses have been paid.
- [23] Having considered the facts before me, I am however of the view that the applicant is entitled to maintenance pendente lite even if it is of a reduced amount than that sought. In Taute vs Taute 1974
- (2) SA 675E the court said the following:

"There are certain basic principles which in my view govern an application of this type. As already indicated such maintenance is intended to be interim and temporary and cannot be determined with the degree of precision and closer exactitude which is afforded by detailed evidence.

The Applicant's spouse (who is normally the wife) is entitled to reasonable maintenance pendente lite dependent upon the marital standard of living of the parties, her actual and reasonable requirements and the capacity of her husband to meet such requirements which are normally met from income, although in some circumstances in roads on capital may be justified. The question of maintenance payable must in the final result depend upon reasonable interpretation of the summarised facts contained in the founding and answering affidavits as indeed is contemplated and intended by Rule 43."

- [24] Some of the items listed appear to be a duplication. Furthermore, the applicant is receiving income from her rented unit.

- [25] It is common cause that the applicant is unemployed and would find it difficult to find employment due to her age. It is not in dispute that the respondent is a director of at least one company. There is proof that each month he receives a sum of money, although the amount received is disputed, into his personal account. Even though the applicant has an expectation of having the same standard of living she previously had, the changed financial position of the respondent calls for a balancing of the needs of both parties so that a fair distribution of the income available can be made.
- [26] I am therefore satisfied that the respondent would be in a position to pay the applicant maintenance in the total amount of R45, 000.00 per month.
- [27] As far as a contribution to legal costs the applicant seeks an amount of R10, 000.00 as a contribution which I regard as being fair under the circumstances.
- [28] In the result the following order is granted:
1. That the late filing of the respondent's opposing and supplementary affidavits is condoned.
 2. That the respondent make available for removal and use by the applicant of the household items in annexure "FA3" hereto.
 3. That the respondent make payment to the applicant of the sum of R45, 000.00 per month, on or before the first day of each month, by debit order into such account as the applicant may from time to time determine in writing.
 4. That the respondent shall make payment and bear all the medical expenses incurred in private healthcare in excess of the cover provided by any medical aid scheme, (Discovery Health, Classic Comprehensive Plan) of which the applicant is a member, such costs to include all medical, dental, pharmaceutical (including levies), surgical, hospital, orthodontic and ophthalmic (including spectacles and/or contact lenses), physiotherapeutic, psychotherapeutic, occupational therapeutic, homoeopathic, chiropractic and similar medical expenses which are not covered by the medical aid scheme. The respondent shall reimburse the applicant and for all expenses are so incurred in respect of which she has made payment, or shall make payment directly to the service providers, as the case maybe, within 5 (five) days of the applicant providing the respondent with proof of payment and/or the relevant invoice.
 5. That the applicant shall be entitled to the continued use of the Toyota land cruiser with registration letters and numbers: F[...] and that the respondent shall see to the punctual payment of any instalments payable in respect of that vehicle as well as the premiums in order to keep the vehicle comprehensively insured and the reasonable maintenance costs thereof.
 6. That the respondent will make payment to the applicant of the sum of R10, 000.00 as an initial contribution towards the applicant's legal costs.

7. That costs hereof be costs in the divorce action.

N P MNGQIBISA-THUSI

Judge of the High Court

Date of hearing : 19 April 2022

Date of Judgment :04 October 2023

Appearances

For Applicant: Adv Jana Schoeman (instructed by Shapiro & Haasbroek Inc) For Respondent: Adv T Eichner Visser (instructed by Chris de Jager Inc)

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