

SOUTH AFRICA / JUDGMENT

C H v J H (4203/2020) [2020] ZAFSHC 235 (10 December 2020) [2020] ZAFSHC 235

COURT

Free State High Court, Bloemfontein

BEFORE

T.V Raikane

CASE / FILE NUMBER

4203/2020

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IN THE HIGH COURT

OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

number: 4203/2020

In

the matter between:

C

H Applicant

IDENTITY

NUMBER:[...]

and

J

H Respondent

IDENTITY NUMBER:[...]

JUDGMENT

BY: RAIKANE, AJ

HEARD ON: 3 DECEMBER 2020

DELIVERED ON: 10 DECEMBER 2020

INTRODUCTION:

- [1] This is an application in terms of Rule 43 which is resisted by the Respondent. The Applicant seeks contribution towards her legal costs and maintenance pendete lite. The divorce proceeding is pending in this division.

THE

FACTS:

- [2] The parties were married to each on 21 July 1990 in community of property which was converted to out of community without accrual. The parties have three major children who are out of the house. The Applicant has been unemployed since two years after the birth of their first child to date and devoted all her attention and efforts towards the communal home, doing all the household chores and helping the Respondent's farming activities without any remuneration save a stipend of R300.00 which has been increased to R500.00 but it has since been stopped.
- [3] She possess a learner's licence and could not continue to obtain the driver's license as the Respondent did not want to pay for that. she was completely reliant on the Respondent for transportation all her daily needs. She would accompany him once a month to Bloemfontein to buy groceries, meat, medications, and clothing on the accounts the Respondent had with the various shops /dealers subject to his approval. The clothing account has since been closed. They lived comfortably and had never had any financial shortages.
- [4] She is currently taking chronic medication and suffers from spastic colon, stomach ulcer, anxiety and depression due to the abuse she endured during the marriage even at times included physical abuse. She wants to relocate to Stellenbosch where her daughter and her sister are residing as they are her support structure. She inherited a house which she is renting out at a nominal price and that income is swallowed up by the arrears on the municipality services.

- [5] The envisaged amount prayed for under this application as fully set out in the founding affidavit with further averments that the Respondent can afford same as he owns three unencumbered farms of which one he is renting out. He is a livestock farmer who sells cattle, lamb, plant and sell feed and also sheep, and at time the wool from the sheep. He owns two motor vehicles and intimated that he is planning to buy others. He also has various farming implements and household goods to the value of approximate R 500 000.00.
- [6] In the Answering Affidavit, the Respondent avers that the Applicant left her employment out of her will and she never helped in the farm. They had a monthly budget of R 900.00 for their groceries of which R 200.00 went to her cigarettes. He closed the accounts as she was abusing them. The two farms are encumbered for loans taken out from FNB and the Landbank.

The other farm is rented out at R 157 320.00 p/a. He further avers that he is not making much out of the livestock and has annexed a receipt of a sale from an auction dated 10 November 2020. He has employed one person who works twice a week and casual workers on an ad hoc basis for shearing the sheep. I could not pick up an entry for salaries on the financial statement annexed.

- [7] His income and liabilities have been condensed in a financial statement ending 29 February 2020 prepared by his auditors with no banking statement attached and nor are his drawings reflected. What is absent and glaring is the loan from FNB to which one of the farms is averred to be encumbered. Also, only one copy of a loan contract against Landbank is annexed which reflects two separate reference numbers on payment made to Landbank. The Respondent has tendered only R 3000.00 towards maintenance. He objects to the relocation expenses on the basis that there are drastic and extravagant and further that he can no longer help their daughter out with her car repayment which is included in the list of the Applicant.

THE LAW:

- [8] The financial aspects of a Rule 43 are generally directed at providing child maintenance, spousal maintenance and contribution to legal costs. It stands to reason that the purpose of this rule will be defeated if there is no proper financial disclosure other than a product of a typewriter as stated in the (unreported matter of TS, R and TS, T Gauteng Local Division, Johannesburg, case number: 28917/2016)
- [9] In the matter in casu it is not disputed that the Applicant has been unemployed for a considerable time during the marriage and she remains unemployed and that the Respondent is controlling the string of the purse. It is not disputed that the marital regime was altered at the behest of the parties. Further that her energy was spent on bringing up the kids and the household chores instead of amassing her wealth and even the little attempt to bake and sell biscuits for an income which was stopped on its track by the respondent.

- [10] The interim order prayed for by its nature it's a temporary relief which the divorce trial court might have a huge impact on it. It was submitted that any prospect of her being employed are nil considering her age, qualification level and she possess no skill or experience and that the interim relief will come handy.
- [11] I am mindful of the ruling in Nilson v Nilson 1984 (2) 294 (C) that Rule 43 was not created to give an interim meal-ticket to an applicant who quite clearly at the trial would not be able to establish a right to maintenance and the pending trial.
- [12] In the same breath in an application for an interim spousal maintenance the court exercises a judicial discretion to award same taking into consideration the factors alluded in the very few papers required to be filed in the reasonableness of the claim, the standard of living of the parties and the abilities of the person expected to pay.
- [13] The prayer for relocation also hinges on the factors whether such is reasonable and excessive. The health issues confronting the Applicant as averred remains uncontroverted and nothing is suggested by the Respondent as a reasonable amount that he could offer. On the legal cost it is suggested that she must pay her own legal cost on the basis that the parties are married out of property.
- [14] taking into consideration the oral and written submission made in this application, I am of the view that the Applicant is in no position to meet her reasonable needs, legal costs or finance her own relocation and not much can gleaned from the prepared financial statements indicating that the respondent cannot afford to meet some of the prayers in this application.
- [15] Accordingly, the order I make pendente lite is as follows:
1. That the Respondent be ordered pendent lite to pay maintenance to the Applicant in the amount of R 25 000.00 per month. The first payment to be made on or before 31st of December 2020, and thereafter on or before the first day of each successive month;
 2. That the Respondent be ordered to make a contribution towards the Applicant's legal costs in the amount of R 20 000.00;
 3. That the Respondent be ordered to provide the items listed in Annexure "D" to the Applicant pendent lite.
 4. That the Respondent be ordered to attend to the payment of the amount of R 56 199.35 in respect of the Applicant's relocation.
 5. That the Respondent be ordered to pay the Applicant's medical costs not covered by medical aid pendent lite, such costs to include the costs of the Applicant's hospitalization at Bloemcare.
 6. Prayer 6 is dismissed.

7. The cost of this application be costs in the divorce action.
8. Further and/or alternative relief.

T.V RAIKANE, AJ

On behalf of the Applicant:

Adv. R van der Merwe

Instructed by:

Rossouws Attorneys

BLOEMFONTEIN

On behalf of the Respondent:

Adv. H.J van der Merwe

Instructed by:

Callis Attorneys

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