

SOUTH AFRICA / JUDGMENT

C.L.D.S. v F.S.D.S.S. (2024/092744) [2025] ZAGPJHC 726 (23 July 2025) [2025] ZAGPJHC 726

COURT

South Gauteng High Court, Johannesburg

BEFORE

C Von Ludwig

CASE / FILE NUMBER

2024/092744

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

Number: 2024-092744

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

In

the matter between: C[...]
L[...] D[...] S[...]
S[...]
Applicant
and
F[...]
S[...] D[...] S[...]
S[...]
Respondent

JUDGMENT

VON LUDWIG AJ

Introduction

- [1] This is an application in term of Rule 43.
- [2] The parties were married in September 2009, out of community of property with exclusion of the accrual system.
- [3] They have 2 boys, 9 months apart in age, both now aged 10 and a daughter born prior to their marriage, aged 19, who lives at home and began her tertiary education in 2025.
- [4] Respondent is the owner of company and paid all expenses for the family (some via the company) except for school fees which Applicant's parents pay.
- [5] Applicant says she is unemployed, is the director of a company which yields no income, and has received one dividend from her father's company. Respondent contends there are un-investigated income sources here. Respondent contends Applicant has always paid for her own toiletries, cosmetics and the like.
- [6] Respondent asked for a divorce in December 2023.
- [7] The home is jointly owned and they currently both reside there.
- [8] Applicant contends that Respondent is abusive, he consumes alcohol to excess, she is afraid of him, and he left the marriage due to having a relationship with a significantly younger colleague.
- [9] Respondent denies these allegations. He contends Applicant is dependent in prescription medication, consumes alcohol to excess, and spends excessive time in bed or at home doing nothing.

- [10] Both aver that they are the primary caregivers of the boys. Applicant seeks primary residence and offers contact to Respondent. She wishes to remain in the common home. Respondent seeks shared residence and submits that Applicant should move to her parents who will assist her. She supplements to advise they live in Somerset West so this is not viable.
- [11] Respondent contends for a downturn in business and that he was never as well-to-do financially as Applicant suggests. He agrees to continue paying at this stage, but subject to what he contends he can afford. He is of the view that Applicant can and must in due course work and support herself.
- [12] Respondent appeared in person and advised that the divorce has “made Applicant clean up her act and he’s glad” and that he too is “clean” and has nothing further to say in this regard.
- [13] Respondent believes the Applicant’s parents are paying her significant amounts of money each month (some R60 to R70 000) and wants to know what she uses this money for if he pays for everything in the house and 25% of groceries,. He is of the view that, because her father “doesn’t give money away for free” she is receiving dividends and there will be more to come.
- [14] Both parties want the other party to vacate the common home. and both have submissions as to where the other can go and how the other can afford it. When advised that this is not relief this Court can or will grant pursuant to Rule 43 the Respondent advised that the acrimony has reduced, they can both remain there and occupy separate rooms and can co-exist until the divorce is finalised.
- [15] Respondent advised “not much has changed from what it was. We get along. The kids are happy. If you can rule everything proceeds as is I will pay what I can pay”
- [16] He advised that the Applicant pays for the children’s day care and buys her own beauty and grooming products.
- [17] Respondent advised that their eldest is employed by her maternal grandfather in IT and project processing and goes to the office. Over tea break Applicant’s counsel took an instruction on this and reported to the Court that the eldest child earns R12 000 per month until next year.
- [18] When asked about Applicant’s claim for a contribution to costs Respondent contended he could not even afford the request for a R50 000 deposit payable to his own former attorney
- [19] Applicant’s counsel referred me to an analysis of reimbursement of expenses for Respondent and an instance where he spent R104 000, contending that if could spend that he must have access to further funds, and pointed out that Respondent’s FDF is inconsistent with his Affidavit herein, showing expenses of R54 221 and that he pays the bond for his mother’s house.

Analysis

- [20] Aside from the need to come to the best possible result on the figures available, this is not a complex matter and there is much that is common cause.
- [21] I could not in any event have made a ruling for either to leave the former common home under R43. With the Respondent accepting that both will remain there and they can get along and the children are happy, it is also not necessary to adjudicate on any claims for residence and contact and to allow that aspect of the matter to take its own course via a Voice of the Child and/or Family Advocate and/o private psycho-legal assessment. It is hoped that the parties will use common sense, remember that the interests of the children are paramount, and will share their parenting responsibilities and rights in a manner which involves them both actively and responsibly.
- [22] Also, on the positive premise that expenses are lower when a family lives together than when there need to be two homes, and in the hopes that the parties will start to plan their future budgets now, I have worked through the Applicant's list of expenses versus the Respondent's lists of what he pays, to arrive at the pendente lite Order I make below.
- [23] With regard to the claim for a contribution for costs, even though there is a redistribution and a spousal maintenance claim, I am of the view that the bill is high. The tendency to claim excessive costs based on a generalised pro forma bill must be discouraged. That this is a generalised pro form is apparent from a number of entries which do not accord with the facts of this matter. There are a number of references to the accrual, but the parties are married without accrual. S7 of the Matrimonial Property Act is likewise inapplicable, and reference to an expert to calculate accrual is likewise incorrect. There is no basis to claim costs for a pre-trial before the DJP in this matter. on the flip side, the experts possibly necessary to address the Plaintiff's claim for maintenance have not been dealt included. The necessity for counsel for every attendance may also be queried. The claim for a contribution to costs has been poorly formulated as will be reflected in my Order.
- [24] Respondent being unrepresented does not mean that the applicant's right to litigate with a parity of arms gets her no contribution if regard is had to the overall "need versus affordability" position, and the fact that Respondent has a formal income whilst Applicant has none. Respondent contends his business is not doing well, he has a significant maintenance liability in terms hereof (albeit most of it in line with what he conceded and offered) and that Applicant's parents have funds. It is not for them to finance her litigation, but it may well be possible for them to lend her funds pending finalisation of her claims.
- [25] All in all Applicant's claim for a contribution to her legal costs is not an easy one, but I am satisfied that the award I make below is a fair and correct award for both parties having regard to their respective financial means and what is claimed.

- [26] With regard to the costs of this application they must reflect various shortcomings in the manner in which this application has been presented. For an Applicant to not set out the basis of a claim in her R43 Sworn Statement and just to refer to the FDF for details of expenses is unsatisfactory. Strictly it renders the R43 application materially defective. From a practical perspective also, why should the Court and the opposing party be required to find, and wade through pages of, an FDF when the R43 Sworn Statement is required to set out this detail as a material allegation.. It is lax advocacy and cannot be encouraged.
- [27] Whilst annexures in a R43 are no longer discouraged, they are meant to be concise (as is the application as a whole) and pertinent. The Applicant's annexures are not.
- [28] The Applicant wasted a great deal of her affidavit on a claim for primary residence within the factual matrix of the parties living together in the common home. Rule 43 is very explicit in the relief which it offers and it is clear that it does not include claims of this nature. It is not for the Applicant to know this and the blame can only be placed at the door of the drafter of the application.
- [29] My displeasure with all of these aspects is reflected in the costs order I make.
- [30] I accordingly make the following order :

Order

- [1] Both parties hold full parental responsibilities and rights in respect of their minor children in terms of the law.
- [2] The minor children, and the major dependent child insofar as she chooses to do so, shall remain resident in the common home in which both parties currently reside and may both continue to reside pendente lite, being 3[...] C[...] Street, F[...] Benoni.
- [3] If either parent chooses to leave the common home before there is an agreement between them and/or the divorce is resolved and/or there is an order in this regard by a competent court, the children shall remain in the common home with the remaining parent unless and until there is an Order dealing expressly with their care and contact in such amended circumstances..
- [4] The Respondent shall continue to pay the following costs direct to the service providers, in full and on due date, in respect of the common home being 3[...] C[...] Street, F[...], Benoni :
- [4.1] Monthly mortgage bond instalment;
- [4.2] Municipal rates
- [4.3] Water and refuse
- [4.4] Electricity, gas, and fuel for the generator such that it is always filled
- [4.5] Householders and homeowners insurance premiums for buildings and content

[4.6] Telephone landline and ADSL

[4.7] Medical aid premiums for Applicant, the major dependent daughter and 2 minor sons

[4.8] MNet and DSTV subscriptions

[4.9] Security

[4.10] TV licence

[4.11] Domestic helper for no less than 3 days per week whilst Applicant is unemployed, but for 5 days per week if Applicant commences employment for more than 2 days per week.

[4.12] Gardener (for as many days or hours as Respondent deems necessary)

[4.13] Haircuts for the boys, for which he shall take them when required

[4.14] Swimming pool chemicals and cleaning equipment

[5] In addition to the above the Respondent shall pay to the Applicant, on or before the first day of each month, in advance, without deduction, the following cash components, which shall escalate by CPI on the anniversary of this Order if this Order is still then in place:

[5.1] For each of the minor children R5 500.00

[5.2] For the Applicant

R6 000.00

[5.3] For the major dependent daughter R0

[5.4] Towards his own share of groceries and cleaning materials with the proviso that he shall have meals cooked, food available, and cleaning and laundry done on the same basis as the other members of the family, but may cease this contribution if he does not require these R4 000.00

[6] If the divorce has not been resolved, or this Order replaced by an Order of a competent court, by the time the major daughter commences tertiary education in 2026, and if she is unable to retain her current employment at that time or secure alternative part time employment, the cash component referred to in [4.3] above shall increase to R6 000.00 with effect from the first day of the month in which she commences her tertiary studies.

[7] The Respondent shall contribute the sum of R100 000.00 (one hundred thousand rand) towards the legal costs of the Applicant, in 5 equal monthly instalments of R20 000.00 each, the first instalment to commence on the first day of September 2025 and the following instalments to be paid on the first day of each subsequent month.

- [8] Each party shall be liable for their own costs of this application, subject to the proviso that all costs of and attaching to those paragraphs of the Applicant's Affidavit which deal with the claim for primary residence of the children and the claim for Respondent to vacate the common home, the costs of her Supplementary Affidavit, and the costs of all the Annexures to her Affidavits, including the pro forma Bill of Costs, are disallowed, meaning that Applicant's attorneys may not charge her a fee or a disbursement for any of these items.

C VON LUDWIG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Date of Judgement 23 July 2025

Date of Hearing 27 March 2025

For Applicant: Adv J C Kotze

Instructed by Du Plessis De Heus Van Wyk & Chiba

For Respondent: In Person

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Prepared on 10 October 2026 · Esheria