

SOUTH AFRICA / JUDGMENT

C.W.L v N.D.L (24232/2020) [2025] ZAGPPHC 67 (17 January 2025)

[2025] ZAGPPHC 67

COURT

North Gauteng High Court, Pretoria

BEFORE

Joyini

CASE / FILE NUMBER

24232/2020

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 24232/2020

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES/NO

DATE: 17/01/25

SIGNATURE:

In the matter between:

C[...] W[...] L[...]

Applicant

and

N[...] D[...] L[...]

Respondent

REASONS

FOR AWARDING A CONTRIBUTION OF R660 000 TOWARDS APPLICANT'S LEGAL COSTS

Joyini J

[1] By way of introduction, when considering an application under Rule 43 for a contribution towards legal costs, I take into account several factors. These include the financial means of both parties, the complexity of the divorce case, and the estimated cost of adequate legal representation. In these Rule 43 applications, I am always guided by the principle of 'Equality of Arms' as it is a cornerstone in the administration of justice, particularly in matrimonial disputes. This legal doctrine ensures that both parties in a divorce have equal opportunities and resources to present their cases, thereby

maintaining fairness and balance in the judicial process.

[2] Firstly, as a starting point with regard to my reasons for awarding a contribution of R660 000 towards Applicant's legal costs, it is common cause that the Respondent's [1] net estate is worth R11 000 000 inclusive of all the moneys in bank accounts, investments, immovable and movable property. I had to assess both the Applicant's and the Respondent's ("parties") ability to pay the contribution. This assessment includes examining the parties' income, assets, and overall financial stability with a view to ensuring that the contribution ordered is within the parties' financial capacity. During my assessment, I have established that the Applicant is really in need a contribution towards her legal costs and the Respondent can afford. Therefore, the ability of the Respondent to contribute towards the Applicant's legal costs is the key factor in my decision. The Respondent is a man of means and therefore, his wealth vis a vis the Applicant's need for help from her husband who happens to be the Respondent guided me.

[3] Secondly, I am of the view that an important factor in determining the quantum of contribution is the scale on which both parties are litigating. My decision is trying to balance the scale so that both parties can litigate on an equal footing. It is common cause that the Respondent

in this case has raised the bar by engaging in high-cost litigation against the Applicant by hiring Senior Counsel to represent him.[2] It then became necessary for the Court to intervene by awarding a contribution to the applicant to maintain the balance and fairness

with a view to making it possible for the Applicant to hire a Senior Counsel as well. The principle of 'Equality of Arms' is fundamental

in ensuring that divorce proceedings are conducted fairly and justly. Through mechanisms like Rule 43, South African courts strive to uphold this principle, ensuring that financial disparities do not translate into legal disadvantages. This approach not only reinforces the integrity of the judicial process but also reflects a commitment to the equitable treatment of individuals, regardless of their financial standing. When it comes to legal costs, Rule 43 serves to level the

playing field. It acknowledges that legal representation is not merely a luxury but a necessity for fair participation in divorce proceedings. The rule allows for the Court to order one party to contribute to the legal costs of the other, thereby preventing a situation where financial muscle could skew the justice process. I am aware that claims for contributions towards legal costs are unique and stem from the mutual duty of support between parties. In *A.F v M.F*,^[3] the Court underscored the importance of "equality of arms" in divorce litigation. The case highlighted the risk of financial

imbalances leading to unfair settlements, especially impacting the financially weaker spouse, often the wife. This imbalance was seen as unfair and contrary to constitutional rights, including equal protection, access to courts, and dignity.

[4] With regard to Applicant's debts, she is quoted in paragraph [15] of my judgment saying: "I am currently indebted to my attorneys of R152 018,62 (one hundred and fifty-two thousand eighteen rand and sixty two cents). I have also since deposing to my previous affidavits loaned funds from Mr Jacques Hans Botha ("Botha") in the sum of R56 752,50 (fifty-six thousand seven hundred and fifty-two rand and fifty cents) in order to place my attorney in funds, more specifically for counsel." In this regard, the case of *A.F v M.F*,^[4] offers profound insights into the complexities surrounding claims for contributions towards legal costs in divorce proceedings. This case is particularly instructive in understanding how South African Courts navigate the intricate balance between fairness, financial capacity, and the necessity of adequate legal representation. A pivotal aspect of this case was whether a Court can order a contribution to costs already incurred. The Court aligned with the approach that past legal costs, especially debts incurred to fund legal costs, should be considered in assessing a contribution under Rule 43. This stance is supported by constitutional imperatives, particularly the right to equality and equal

protection before the law. In my judgment, I have recognised the importance of 'Equality of Arms'. I have also considered the financial disparity between parties trying to level the playing field. This approach is not only about ensuring fair representation but also about upholding the dignity of the financially weaker party, who happens to be the Applicant in this case. The Applicant's dignity is impaired when she must seek financial support from others for legal costs. It is my considered view that the primary duty of support should enable the Applicant who does not have means to secure reasonable litigation costs from the Respondent who has sufficient means. In this case, you have, on the one hand, the Applicant who is, in debts, borrowing money from other people for legal costs when the Respondent (her husband) is, on the other hand, engaging in high-cost litigation against her by hiring Senior Counsel to represent him and his (Respondent's) "net estate is worth R11 000 000 inclusive of all the moneys in bank accounts, investments, immovable and movable property." The Court also had to intervene here to balance the scale as this imbalance is unfair and contrary to constitutional rights, including equal protection, access to courts, and the Applicant's dignity.

T E JOYINI

JUDGE OF THE HIGH COURT,

PRETORIA

APPEARANCES:

For the applicants: Adv M Abro Instructed by: Schuler Heerschop Pienaar Attorneys Email: ice@shplaw.co.za For the respondents: Adv T Strydom SC Instructed by: Fuchs Roux Inc. Attorneys Email: berna@frlaw.co.za or audrey@frlaw.co.za Date of Request for Reasons: 10 January 2025 Date of Delivery of Reasons: 17 January 2025

These reasons have been delivered by uploading it to the Court online digital data base of the Gauteng Division, Pretoria and by e-mail to the Attorneys of record of the parties. The deemed date for the delivery is 17 January 2025.

[1] Caselines Q406 to Q432.

[2] Para [14] of my

judgment

reads: The applicant, in her founding affidavit,² also revealed the followinghg: "The Respondent is utilising the services of a very senior counsel and I trust he will inform this Honourable Court as to what he has spent on his legal fees as well as the hourly and daily rate of his senior counsel and attorney."

[3] (6664/19)

[2019] ZAWCHC 111; 2019 (6) SA 422 (WCC); [2020] 1 All SA 79 (WCC) (28 August 2019

[4] (6664/19)

[2019] ZAWCHC 111; 2019 (6) SA 422 (WCC); [2020] 1 All SA 79 (WCC) (28 August 2019

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