

SOUTH AFRICA / JUDGMENT

D.B v B.J.B (40/2024) [2024] ZAFSHC 112 (18 April 2024) [2024] ZAFSHC 112

COURT

Free State High Court, Bloemfontein

BEFORE

MGUDLWA, AJ

CASE / FILE NUMBER

40/2024

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case number: 40/2024

REPORTABLE

OF INTEREST TO OTHER JUDGES

REVISED

DATE:

In the matter between:

D[...] B[...]

APPLICANT

And

B[...] J[...] B[...]

RESPONDENT

CORAM: MGUDLWA, AJ

HEARD ON: 29 FEBRUARY 2024

DELIVERED ON: 18 APRIL 2024

Introduction

- [1] This is an application for relief pendente lite in terms of Rule 43 of the Uniform Rules. The applicant ("the wife") is the plaintiff and the respondent ("husband") is the defendant in a pending divorce action. Pleadings have not yet been closed in the main action.
- [2] Both parties were married out of community of property with exclusion of the accrual system on the 28th October 2007 and there are no children born out of wedlock.

Factual

background

- [3] The applicant seeks an order in terms of rule 43 of the Uniform Rule pending finalization of the main action which include monthly

maintenance, an amount in respect of relocation costs, a contribution towards her legal costs, an order against the respondent to continue with payment of FNB Bond over the communal property situated in Hoopstad and an order for reinstatement of her vehicle and iPad on respondent short-term insurance.

- [4] In pursuance to the application, the applicant listed her monthly pendente lite expenses with a total amount of R36 982.98. Additionally, she mentioned that she is getting R3000.00 twice annually from Sanlam annuity, R350.00 per month from Johannesburg stock exchange and annuity and R11 000.00 from her townhouse rental in Laborie. She mentions in her affidavits that she is a pensioner and has no other source of income. Thus, her shortfall is in the amount of R25 682.98 in respect of her reasonable monthly expenses.
- [5] The respondent in his opposing affidavit is controverting that he can afford to pay the amount claimed or any portion thereof. In his opposing affidavit the respondent denied that he gave the applicant an amount of R10 000.00 per month to spend as she saw fit instead gave it to her as salary since she worked in the surgery as a receptionist and administrator. According to him, he is 70 years old receives chemotherapy for colon cancer. This has weakened his legs to such an extent that he will fall from time to time. Due to his age and state of health he has been running a tight ship and hardly able to practice for a full day.
- [6] According to the respondent, his practice normally generate medical fees of approximately R90 000.00 per month. In his opposing affidavit he listed both his business and personal expenses. In addition, mentioned that he has a maintenance order in the amount of R10 000.00 per month in favour of his first wife and has to pay R5 173.00 for her medical aid.

APPLICATION OF RULE 43

- [7] Rule 43 of the Uniform Rules of the High Court. It reads as follows:

"(1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

- (a) Maintenance pendente lite;
- (b) a contribution towards the costs of a pending matrimonial action;
- (c) interim custody of any child; and
- (d) interim access to any child.”

[8] In TAUTE V TAUTE[1] it was held that the interim maintenance will be determined according to the “marital standard of living, her actual and reasonable

requirements and the capacity of her husband to meet such requirements”

[9] It settled law that maintenance includes amongst others the provision for accommodation, food, clothing, a car and medical expenses. The general approach is that the applicant is entitled to reasonable maintenance pending the finalisation of divorce. However, the person claiming maintenance must establish a need to be supported. The applicant’s entitlement to maintenance must be assessed having regard to the standard of living enjoyed by the parties during their marriage. This should be a simple and straightforward calculation of “needs and means”. It is also important to mention that the aim is to avoid substantial prejudice to either party pending divorce. It is not to provide a precise account of what is due to or from either party, according to the parties or the court’s sense of morality, propriety, the blameworthy of the parties’ conduct during the marriage or their habits of living after the separation. The case should be cast in practical rather than moralistic terms and the emotional heat of a separation should be kept out of it.

ANALYSIS

Maintenance

[10] I now turn to consider the extent to which the applicant is entitled to the relief sought. It is trite law that each case under this subrule should depend upon its own particular facts[2]. It is also axiomatic from the papers that both parties in this matter are relatively old. I also accept that the age and health condition of the respondent has an impact in his generation of income. This brings me to a question of affordability of the needs and respondent’s capacity to meet such needs.

[11] Regarding the applicant’s prayer for an order for maintenance pendente lite in the amount of R25 000.00. In all the circumstance, I consider an amount of R 8 000.00 to be the applicant’s reasonable monthly needs for maintenance.

Relocation costs

[12] In support of her prayer for relocation costs pendente lite, the applicant provided a list of her expenses to wit transporting her personal belongings, furniture and utensils. Furthermore, she listed the expenses incurred to furnish the rental residence.

[13] In my view the amount of R83 744.00 the applicant is claiming is exorbitant. She should also not lose sight of the fact that the relief sought in this application is pendente lite. I have also taken into account that the applicant is not as desolate as she makes out to be. She has monthly income of R11 300.00 and a Corporate Cash Manager at Investec Bank valued at R191 917. 95.

[14] Having considered the conspectus of evidence regarding means of the respondent and the case law[3] referred to by the applicant in pursuing her argument for relocation costs pendente lite. In my view the circumstance of the parties in casu are completely distinctive from both cases. Thus, I am not persuaded that the applicant has made out a case for a separate order for relocation costs. I am not oblivious of the fact that she incurred expenses.

Legal costs

[15] In her founding affidavit the applicant is requesting an amount of R35 000.00 alternatively R45 000.00 as contribution towards her legal costs.

[16] In NICHOLSON V NICHOLSON[4] the following was said” the applicant is entitled, if the respondent has the means and she does not have them, to be placed in the position adequately to present her case, relevant factors being the scale on which the respondent is litigating and the scale on which the applicant intends litigating, with due regard being had to the respondent’s financial position.

[17] In this regard, I have considered the financial position of the respondent and the fact that the applicant has a sum of R 191 197.

95, which can be used to cover her legal costs. In my view an order for contribution towards legal costs of the applicant would not be appropriate in the circumstances

[18] I consider it appropriate to grant the following order pendente lite:

1. The Respondent to pay maintenance to the applicant in the amount of R10 000. 00 per month on or before 30 April 2024 and thereafter

on the last day of each and every succeeding month.

2. The Respondent is ordered to continue with the payments in respect of FNB Bond over the communal property situated in Hoopstad.

3. The Respondent is ordered to reinstate the Applicant’s vehicle and iPad on his short-term insurance.

4. Costs of this application is costs in the main cause.

S. T. MGUDLWA, AJ

For the Applicant:

Adv. J Bornman

Instructed by:

Hendre Conradie Inc.

Bloemfontein

For the Respondent:

Adv. G. Steenkamp

Instructed by:

Peyper Botha Attorneys

[1] 1974(2) SA 675

[2] See. Taute v Taute 1974 (2) SA 675 (E).

[3] M.W.U v B.D.U , Case No: 4739/2016, Judgment by: C Reinders, J, delivered on: 28 November 2016 and Wood v Wood [2014] JOL 32402 (GP)

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[4] 1998(1) SA 48.

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