

SOUTH AFRICA / JUDGMENT

L.M.G v J.M.G (Reasons) (124145/2023)

[2024] ZAGPPHC 1144 (22 May 2024)

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COURT

North Gauteng High Court, Pretoria

BEFORE

Retief

CASE / FILE NUMBER

124145/2023

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HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 124145/2023

- (1) REPORTABLE: NO.
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED.

DATE: 22 MAY 2024

SIGNATURE:

In the matter between:

L[...] M[...] G[]

Applicant

and

J[...] M[...] G[]

Respondent

In Re:

J[...] M[...] G[]

Plaintiff

L[...] M[...] G[...]

Defendant

SHORT REASONS AND ORDER

RETIEF J

1. This Court has considered the matters as a whole taking into account the documents presented in evidence as well as the Respondent's formal tender in terms of Uniform Rule
34. This Court has considered both the needs of the Applicant and the minor children [minors], the parties respective abilities to maintain themselves and the minors.
2. This Court too, considered the content of the Applicant's supplementary affidavit relating to her changed circumstances, with the exclusion of allegations pertaining to H[...] P[...] S[...]s therein as agreed between the parties.
3. The Court notes that the Respondent indicates his income by way of his financial disclosure form originating from M[...] R[...] South Africa as a net annual figure of R 841 128.00 (translates to approximately R 70 094.99) is indicated. In his answering affidavit

he confirms earning a monthly income of a net figure of R 66 85 428.63. However, from the attached bank statement taken over a period of two months, deposits from M[...] R[...] South Africa, indicate an average of R 83 421.98. The discrepancies illustrated

between the payments from M[...] R[...] South Africa are not explained under oath. The Respondent too, appears to receive an amount of R 6400 being the total of rent and electricity received from a tenant who resides in the parties previous common home.

4. The Court has taken into consideration the fact that the Respondent has failed to specifically deal with his interests and potential income from his position as a Director of H[...] P[...] S[...] (K[...]), H[...] P[...] S[...] Africa (K[...]), his directorship and ownership in I[...] S[...] S[...] (Pty) Ltd (K[...]) and from an entity called High performance [other entities] in his answering affidavit. The allegations made by the Applicant regarding these other entities were simply brushed off by the Respondent. He failed unapologetically to answer it and simply referred this Court to his financial disclosure recording that he issue by virtue of the his financial disclosure and calculations is moot. A totally misguided response. Nonetheless the Court considered the financial disclosure searching for particularity. Nothing was forthcoming, Part 8 and 10 of the financial disclosure not completed, albeit Part 8 as marked "not applicable". The Applicant's allegation left wanting. As a direct result, this Court makes a negative inference from the Respondent's failure to be frank about his interests, if any, in the other entities and the necessity to do so. The parties are married in community of property and it is clear that not only the Applicant but, this Court is left in the dark pertaining to the factual position of the other entities. The Respondent by his own hand has

diluted the veracity of his allegations pertaining to his financial means to support and possible shortfall.

5. It is common cause that the Respondent has always maintained the Applicant and the minors
6. This Court has considered the pleadings in the main action to ascertain what the triable issue are to be determined at trial including the claim for the division of the joint estate when considering the Applicant's claim for a contribution towards her legal costs. The Respondent's opposition noted as well as the absence thereof in his formal tender.
7. Applying section 28 of the Constitution of South Africa, and the best interest right of the minors, including the necessity to ensure the effect of an order in the parties interest as a result of the divorce proceedings, the following:

THE FOLLOWING INTERIM ORDER IS MADE:

1. Leave is granted for the Applicant to tender her supplementary affidavit into evidence, however, within the purview of the agreed limited issues.
2. That the Applicant and Respondent both retain full parental responsibilities and rights in terms of section 18(2)(a), 19 and 20 of the Children's Act, Act 38 of 2005, in respect of the two minor children.
3. That primary care and residency of the minor children, born of the marriage between the Applicant and the Respondent vests with the Applicant.
4. That reasonable contact to the minor children be awarded to the Respondent as follows:
 - 4.1 The right to remove the minor children every alternative weekend from Friday at 14:00 until Sunday at 17:00. Should the alternate weekend form part of a long weekend the right to remove the minor children from the first day upon which the long weekend commences at 14:00 until 17:00 on the last day of the long weekend, subject thereto that Easter weekend shall rotate yearly between the parties;
 - 4.2 The right to remove the minor children one afternoon in the week, to be agreed upon between the parties, taking into account the routine, activities and responsibilities of the minor children, from 16:00 to 18:00;
 - 4.3 The right to remove the minor children for half of the available time on each of the minor children's birthdays, to be agreed upon between the parties;
 - 4.4 The right to remove the minor children on Applicant's birthday by the Applicant and on Respondent's birthday by the Respondent if it falls on a school day from 16:00 to 18:00 and if it falls on the other party's weekend from 09:00 to 17:00;
 - 4.5 The right to remove the minor children on Father's day by Respondent and on Mother's day by Applicant if the minor children are with the other party for that weekend from 09:00 to 17:00;

4.6 The right to remove the minor children ever alternate public holiday which does not form part of a long weekend and/or school holiday;

4.7 The right to remove the minor children half of every long school holiday and ever alternate short school holiday subject thereto that the short school holiday shall rotate yearly between the parties. In respect of the December holidays, the party with whom the minor children will spend Christmas and New Year will rotate yearly;

4.8 The right to make telephonic or other electronic media contact with the minor children at all reasonable times taking into account the routine, school activities, school responsibilities and extramural activities of the minor children.

5. That the Respondent be ordered to pay R 6 000.00 per month per child as maintenance for the two minor children, directly to the Applicant. The first payment to be paid immediate and thereafter on or before the 1st of each month.
6. That the Respondent be ordered to pay R 300.00 per month as maintenance to the Applicant. The first payment to be paid immediately and thereafter on or before the 1st of each month.
7. That the Respondent be ordered to retain the minor children and the Applicant on the comprehensive medical aid scheme and pay the medical aid premium and all reasonable medical expenses and excesses for the Applicant and the minor children, not covered by the medical aid.
8. That the Respondent shall continue to pay the minor children's school fees, registration fees, extramural activities, aftercare fees, sport fees, school excursions, stationary and all reasonable school related expenses and school uniforms, extramural equipment and clothing, sport equipment and clothing.
9. That the Respondent shall continue to pay for the insurance on the Mini Cooper utilised by the Applicant and pay the license fees in respect thereof.
10. The Respondent is ordered to pay for the repairs, continual maintenance, (including tyre/s) and the continual costs associated with the reasonable services in respect of the Mini Cooper and in doing so, is to provide the Applicant with an alternate and reliable vehicle, at his cost when the Mini Cooper is not available as a result of it undergoing repairs and or maintenance and or services.
11. The Respondent is ordered to arrange and to accept a quotation for new tyres and to fully service of the Mini Copper in terms of prayer 10 hereof within 3 (three) days hereof, and to pay the service provider for such tyres and service thereafter accordingly.
12. The Respondent to pay an amount of R 3000 per month to the Applicant in respect of the solar system installed on the Applicant's revolving credit.

13. The Applicant and the minor children to reside in the previous common home, which is to be made available to them as soon as practically possible, the Respondent be ordered to continue payment of the following expenses:
- 13.1 the bond instalments in respect of the common home;
- 13.2 the water and lights, rates and taxes in respect of the common home;
- 13.3 the householders' and house owner's insurance in respect of the common home;
- 13.4 50% of the costs of the domestic worker in the employ at the common home;
- 13.5 the Wi-Fi at the common home and provide Applicant with unfettered access thereto;
- 13.6 that the Respondent will not interfere with and grant Applicant unfettered access in respect of the geyser at the common home.
14. That the Respondent is ordered to contribute an amount of R 40 000.00 towards the Applicant's legal fees which amount is payable in equal instalments of R 10 000.00 per month. The first payment being due and payable on or before the first day of the month following date of this order into an account so nominated by the Applicant.
15. The cost of the application is cost in the divorce action.

L RETIEF

Judge of the High Court

Gauteng Division, Pretoria

Date of Hearing: 13 May 2024

Reasons delivered: 21 May 2024

APPEARANCES

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