

SOUTH AFRICA / JUDGMENT

Mkhehlane v Mkhehlane (6108/2017)

[2018] ZAFSHC 24 (22 February 2018)

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COURT

Free State High Court, Bloemfontein

BEFORE

P.E Molitsoane

CASE / FILE NUMBER

6108/2017

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable:

NO

Of

Interest to other Judges:

NO

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NO

Case number:

6108/2017

In

the matter between:

MARY

MOASHENE MKHEHLANE

APPLICANT

and

BENNET

MOLAPO MKHEHLANE

RESPONDENT

JUDGMENT

BY: MOLITSOANE AJ

HEARD ON: 15 FEBRUARY 2018

DELIVERED ON: 22 FEBRUARY 2018

- [1] This is an application in terms of Uniform rule 43 in which the applicant seeks maintenance against the respondent pending their divorce action.
- [2] The applicant seeks, inter alia, the following relief, pendete lite:
1. That the respondent pay maintenance for herself in the amount of R3000 on a monthly basis in addition to the child maintenance pendent lite;
 2. That the respondent be ordered to pay a contribution towards applicant's legal costs in the amount of R10 000;
 3. That the respondent be ordered to provide a suitable and reliable vehicle to the applicant.
- [3] At the onset it needs to be mentioned that in the peculiar nature of this application, the court does not deal in its judgment with every allegation or submission by the parties.
- [4] The parties were married in community of property on the 6th January 2009 and the marriage still subsists. One child, currently 12 years old was born between the parties and it appears that the said child stays with the mother within the jurisdiction of this court.
- [5] The Applicant has set out in detail her monthly expenses which in total amount to R17 669.00. According to her, she thus has a deficit of R3 669 which she seeks the respondent to make good. It needs to be mentioned that in her original calculation she had indicated her expenses to amount to R17 219.00 which clearly was an error in calculation. The applicant is employed as a secretary and she earns an amount of R14 000 per month. With regard to the provision for a motor vehicle she avers that she currently uses a motor vehicle with a rough market value of R35 000 and which frequently breaks down.
- [6] On the other hand the respondent submits that it was feasible for the applicant to reduce her expenses and if that were to eventuate, she would have a surplus in the amount of R979.37.
- [7] The respondent is a businessman. According to him his average income per month amounts to R50 642.79. He also compiled a list of expenses which amount to R98 095.62. In the calculation of his personal expenses he included his business expenses as he avers that he had no other income other than the income generated from his business. The business does not pay him any salary. It appears that he makes drawings anytime he wants.

- [8] During argument, Counsel for the respondent referred me to the case of *Rabie v Rabie* 1992 (2) SA (W) 306 where it was held that the court had no jurisdiction to make an order for maintenance for children in an application under rule 43 where an order for maintenance of the children made by the maintenance court was already in existence. It is not in dispute that there is already a maintenance order for R2000 in favour of the minor child. Applicant does not request the said maintenance order of the child to be varied. What she seeks is that over and above that child maintenance order, respondent must pay a further R3000 to her. That order in respect of the child made by the maintenance court remains valid until it set aside. I can find no reason why I should make that same order in addition to any order I may make in favour of the Applicant.
- [9] The respondent does not dispute that most of the expenses are reasonable. He, however, avers that he simply cannot afford to pay any interim maintenance to the Applicant.
- [10] It is true that in an enquiry of this sort, one does not look at the needs of the Applicant only but one also has to enquire whether the Respondent will be in the position to afford it.
- [11] The main gripe of the respondent is that an amount of R1000 for clothing is way too excessive for the Applicant and respondent avers that an amount of R200 would be reasonable in the circumstances. I fail to understand this reasoning in view of the fact that on his own list of expenses he avers that he spends R1500 on a twelve year child's clothing on a monthly basis. I am of the view that the amount incurred for clothing for both the mother and the child on a monthly basis is, however, excessive.
- [12] The child is 12 years old and he stays alone in the afternoon when the mother is at school. There is no nanny to look after him after school. Payment of the dstv will be a necessity to keep the child in doors and in my view it is a necessary expense.
- [13] The next question for consideration is whether the respondent cannot afford to pay interim maintenance. Annexure MK1 of the respondent sets out in detail his monthly expenses. Applicant avers that she spends R2500 on groceries for herself and the child. Respondent, however, spends R4000 on groceries and what he terms food supplements. This is R1500 more than what applicant and the child spends on food combined. No explanation was furnished as to why respondent spends R1000 on food supplements. He also spends R500 on gym fees. The respondent further avers that he spends R7 000 on maintenance of two vehicles per month. This translates to R84 000 per annum on vehicle maintenance alone. This cannot be true. He avers he buys the child PlayStation games amounting to R1000 and spends another R1000 on the entertainment of the child. In view of the fact that the respondent says he cannot afford to pay interim maintenance he could greatly cut down on these unnecessary expenses. In that way he will be in apposition to pay the maintenance to the Applicant.

[14] I am of the considered view that the respondent is in a position to pay maintenance. Fact that he is in arrears in respect of his credit instalments does not necessarily imply that he cannot pay interim maintenance. He only needs to learn to priorities his obligations.

[15] With regard to a motor vehicle his assertion that one of the motor vehicles has broken down remains undisputed. A motor vehicle is a necessity in his kind of work and I am of the view that I cannot order that he furnish one to the Applicant pendent lite as this would leave him without transport.

[16] The applicant further claims a contribution towards her legal costs in the amount of R10 000. Having regard to the facts and circumstances of this case I am unable to award a higher amount than the usual amount of R5000.

[17] I accordingly make the following order pendent lite:

ORDER

1. That the respondent pay maintenance to the Applicant in monthly instalments of R3000 with the first instalment be due on or before the 7th day of March 2018 and the subsequent amounts be due and payable on or before the 7th day of each successive month;
2. That the respondent shall make a contribution towards applicant's costs in the amount of R5000 and which costs shall be due and payable on or before the 31st March 2018;
3. That costs shall be costs in the course.

P.E MOLITSOANE, AJ

On behalf of the Applicant: Adv Naidoo

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On behalf of the Respondent: Adv Berry

Instructed by:

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