

SOUTH AFRICA / JUDGMENT

M.M v T.M (2023/012335) [2024] ZAGPJHC 835 (20 August 2024) [2024] ZAGPJHC 835

COURT

South Gauteng High Court, Johannesburg

BEFORE

Liebenberg

CASE / FILE NUMBER

2023/012335

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

Number: 2023-012335

1.

REPORTABLE: YES

/ NO

2.

OF INTEREST TO OTHER JUDGES: YES/NO

3.

REVISED: YES/NO

20

August 2024

In

the matter between:

M[...]:

T[...] M[...]

Applicant

And

M[...]:

M[...] G[...] T[...]

Respondent

ORDER

1.

Pendente lite the

respondent is ordered to contribute towards the maintenance needs of the applicant and the minor child born of the marriage,

as follows:

1.1

Subject to the

applicant continuing to receive the rental income from the Cedar Acres and Oppi Koppi properties, the respondent shall pay to the

applicant of the amount of R67 000.00 per month, the first payment to be made on or before the 28 August 2024 and monthly thereafter on or before the 28th day of each month.

1.2

The respondent shall

pay all the educational expenses of the minor child, including but not limited his school fees, levies and debentures at his current or

another agreed school, prescribed school uniforms, prescribed books and stationery, agreed extra lessons, agreed school outings, the costs of occupation and speech/language therapy, and the costs of agreed extra-mural activities, including the required kit and equipment.

1.3

The respondent shall

pay the following expenses in respect of the home which the applicant and the child occupy at The Rest, directly to the relevant service

provider:

1.3.1 The

estate levy, including security, the rates, taxes, costs of water and electricity consumption, and other municipal imposts and levies as invoiced.

1.3.2

The costs of maintenance and repairs, including swimming pool maintenance and chemicals.

1.3.3

The television license and current DSTV subscription.

1.3.4

The Telkom, ADSL and internet accounts.

1.3.5

The insurance premiums in respect of the household contents and homeowners' insurance.

1.3.6

The wages and annual bonuses of the domestic assistant and gardener.

1.4

The respondent shall pay, in respect of the Cedar Acres and Oppi Koppi properties, the levies, the rates, taxes, refuse and other municipal imposts and levies as invoiced, directly to the relevant service provider.

2.

The respondent is ordered to pay, as an initial contribution towards the applicant's legal costs, the amount of R250 000.00,

payable by way of five equal instalments:

2.1

The first payment to be made on 15 September 2024 and thereafter on the 15th day of the following four months.

2.2

Directly into the trust account of the applicant's attorneys.

3.

Costs of the application shall be costs in the cause of the divorce action.

JUDGMENT

LIEBENBERG AJ

Introduction

- [1] The parties, who are the parents of a boy now 12 years old, were married to each other in community of property on 11 May 2012. They separated towards the end of July 2022. The applicant wife now seeks maintenance pendente lite from the respondent for herself and the child.
- [2] The applicant is 31 years of age and did not progress beyond grade 10. She describes herself as a housewife. The respondent, who is 34 years old, has been employed as Chief Financial Officer for the past three odd years, initially at a municipality in the west of Gauteng, and since 1 November 2023 at a large metropolitan municipality. Until he took up employment with his current employer, the respondent states that he performed ad hoc consulting services to an entity, N... Investments (Pty) Ltd, of which he is neither a shareholder nor director. It is the respondent's version that his only current source of income is his salary.
- [3] It beggars belief that a young couple such as the parties to this application, was able to amass the wealth described in the affidavits, the majority of which is held in two trusts, the family trust, which was registered in 2016, and a business trust registered in
2021. Keeping his card very close to his chest, the respondent gave no indication of how the acquisition of this wealth was financed.
- [4] By all accounts, the parties enjoyed and continue to enjoy a lifestyle far beyond that of "ordinary" people. During their cohabitation, and thereafter, the parties travelled abroad relatively often, travelling first class. They drove and continue to drive a veritable fleet of supercars and other expensive vehicles, including a Porsche Targa, a 2023 model Porsche 911 Turbo (worth about R6 million) which the applicant says the respondent uses as "leisure" vehicle, which he denies, a 2023 BMW X6 M50D, which the respondent currently uses as "work" vehicle, no less than two Range Rovers of which one bore a personalised number plate referencing the applicant's name and date of birth, two BMW 125i, an older model BMW X6, a Mercedes Benz CLA 45, a Toyota Hilux Single Cab and a brand new Volkswagen Golf 8R. In December 2023, the applicant acquired a Maserati Levante vehicle at a discounted purchase price of R2.2 million, the majority of which she financed.
- [5] The respondent denies that he owns or owned all of these vehicles, explaining that he only has the use thereof on special occasions. The older BMW X6, which the applicant had use of until about December 2023, was registered in the name of the respondent's mother. The respondent owns four of the vehicles, but the supercars, he explains, are registered in the name of a third party.

- [6] In the face of photographic evidence, the respondent denies that he gifted the applicant, as a “sorry gift” for fathering another child a Range Rover Lumma, bearing a personalised number plate of the applicant’s name, in August 2020. She explains that the vehicle was registered in the name of a third party for the longest time. This is the same third party who the respondent explains allows him the use of the other supercars.
- [7] In the normal course of business, very few if any vehicle dealers or owners will allow the use of an expensive vehicle for months on end at no charge. In the absence of explanation for the peculiar agreement between the respondent and the third party, I do not accept the respondent’s version on this score. Yet, the exact relationship between the respondent and the third party remains a mystery.
- [8] There is no debate that the parties and two other persons are the trustees of the family trust. The parties are two of three beneficiaries of the family. This family trust is the owner of no less than 10 immovable properties with a combined value of in excess of R36 million, none of which is encumbered. The properties include:
- [8.1] What constituted the former matrimonial home in Mbombela, where the applicant and the child continue to reside. The former matrimonial home is unencumbered and according to the applicant is worth about R9.5 million.
- [8.2] The respondent’s residence in Bryanston which was acquired by way of a building package of R15 million and further improved. The acquisition and renovations were funded in cash. The property was intended to be the new common home, but the breakdown of the marriage put an end to that idea. As such, the respondent has been in occupation of the property since September 2022. According to the respondent he pays a monthly rental of R20 000.00 to the family trust.
- [8.3] An apartment in Cedar Acres, which is rented out at R14 00.00 per month, which the applicant receives.
- [8.4] A property described as Oppi Koppi, which is also rented with the applicant receiving the rental of R18 500.00 per month.
- [8.5] In an annexure to her Financial Disclosure Form (“FDF”), the applicant records that respondent pockets the monthly rental of R16 000.00 in respect of a property known as Cedar Lofts owned by the family trust.
- [9] The parties together with two other persons, including the respondent’s brother are the trustees of the business trust, and the parties and their son are beneficiaries. According to the respondent, the business trust “acts more in a commercial capacity as it governs the commercial interests of the” family trust. The nature and extent of the trust property of the business trust do not appear from the affidavits or the parties’ respective FDFs, the respondent having filed two FDFs.

- [10] Neither party deemed it necessary to disclose copies of the trust deeds, recent financial statements, or statements of either trust's bank accounts. But for a glib reference in his second FDF deposed to in June 2024, that the respondent owes the business trust R1.7 million (which liability did not appear in the respondent's first FDF which he deposed to in September 2023), none of the parties have given any detailed indication how the family trust amassed its wealth, or what the extent of the trust fund of the business trust may be.
- [11] In addition to the two trusts, four companies are mentioned in the papers.
- [12] The applicant is the sole shareholder and director of L... Investments (Pty) Ltd. She explains that this company was registered to enable the respondent to channel his consultancy fees to her. Until October 2023, an amount of R67 000.00 per month was transferred to the bank account of L... Investments with the narration "Cedar Acres rental".
- [13] Ostensibly, the majority of the respondent's income arose from his relationship with N... Investments (Pty) Ltd. The respondent is not reflected as a director or shareholder of N... Investments, but one MJ, who the applicant's says is

the respondent's front, which, unsurprisingly the respondent denies. The respondent disavows any interest in N...

Investments other than having rendered ad hoc consulting services to the company. Notably, the respondent contradicts himself on the date when he ceased rendering consulting services to N... Investments – 1 August 2023 or 1 November 2023, when he took up his employment position.

- [14] The respondent is the sole director of Fortune ... (Pty) Ltd, but he says he earns no income from this company. The identity of the shareholder(s) does appear from the papers.
- [15] The respondent, who appears to be the controlling mind of each of the trusts, contends that the affairs of the trusts are irrelevant to this application, and did not favour this court with annual financial statements nor bank statements of the either of the two trusts. The respondent's stance on the relevancy of the trusts is not only patently incorrect, but smacks of a spouse who

seeks to keep subscribes to the "catch me if you can" litigation strategy.

The legal principles

- [16] Whilst every application for maintenance pendente lite must be decided on its own facts, certain basic principles have been distilled in the authorities.
- [17] There is a duty on an applicant who seeks equitable redress to act with the utmost good faith, and to disclose fully all material financial information. Any false disclosure or material non-disclosure may justify refusal of the relief sought.[1]

- [18] An applicant is entitled to reasonable maintenance dependent on the marital standard of living of the parties, albeit that a balanced and realistic assessment is required, based on the evidence concerning the prevailing factual situation.[2]
- [19] The applicant's actual and reasonable requirements, and the capacity of the respondent to meet such requirements which are
- general met from income, although, sometimes, inroads on capital may be justified.[3]
- [20] A claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands,
- and similarly more weight will be attached to the affidavit of a respondent showing willingness to implement his lawful obligations.[4]
- [21] An interim maintenance order is not intended as an interim meal ticket for a spouse who, quite clearly, will not establish a right to maintenance at trial.[5]
- [22] A court must be circumspect in awarding an applicant with an interim maintenance order which she is unlikely to achieve at trial, for human nature predicts that she will then seek to delay finalisation of the action.[6]
- [23] Without full and frank disclosure of all material facts, a court is hamstrung in making a determination of what is fair and reasonable in the circumstances of the case before it. Regrettably, both the applicant and the respondent herein have been less than honest. Had it not been for the young child born of the marriage, I would have been mindful to dismiss the application. Yet, I cannot allow that a young child, who has been raised in the lap of luxury, who is used to flying internationally on first class, to wearing the most expensive brands of clothing and shoes, and to being spoilt by both his parents, suffer as a result of his

lack of honesty.

The applicant's case

- [24] The applicant's claims are out of the ordinary to those routinely encountered in this Court. She seeks a monthly cash contribution of R224 519.00 and an order that the respondent pays certain expenses, including the child's educational and the like expenses, directly to the relevant creditor. Additionally, she seek a contribution towards her legal costs in the amount of R600 000.00.
- [25] On the common cause facts, until at least October 2023, the applicant received an amount of R67 000.00 per month by way of maintenance from the respondent. The amount was paid into the account of L... Investments. Additionally, the applicant received the rental payable in respect of two immovable properties, owned by the family trust, amounting to R32 500.00 per month.

[26] According to the applicant, until about October 2023, the respondent would also deposit on average an amount of R10 000.00 per week into her credit card account. The respondent denies having made such payment with such regularity. The applicant's

credit card statements evidence credits of about R10 000.00 rather than R40 000.00 per month.

[27] Thus, on the applicant's version, until about November 2023 she received an average of R107 000.00 as maintenance from the respondent in addition to the rental income paid into her account – an aggregate of R139 500.00. She had the use of a Range Rover vehicle, and the respondent paid most, if not all of the direct expenses she claims herein.

[28] Since about December 2023, the applicant no longer had the use of the Range Rover, and she did not receive the monthly payment of R67 000.00 nor the payments into her credit card account. With effect from January 2024, the respondent unilaterally decreed that he would contribute a cash amount of R15 000.00 per month towards the child's maintenance only, and the applicant

continues to receive the monthly rental income of R32 500.00. Thus, the applicant contends she currently has monthly income from all sources of R47 500.00.

[29] In detailing the extent of the respondent's income, the applicant explains how, over the period January 2019 to January 2024, an aggregate of R10 260 000.00 was paid by N... Investments to the family trust referenced as "Rental", and an aggregate of R5 041 129.00 referenced "Loan".

[30] I regard the respondent's reaction to these allegations as peculiar: "I do not know where Applicant obtained this information, and Applicant has not provided any concrete proof in order for me to consider same." Given the respondent's role as co-trustee of the family trust, and his patent involvement with N... Investments, I reject his denial of these allegations as being too bald and vague.

[31] The causa for these payments, which spans the period of the respondent's previous position as chief financial officer of a municipality, and thus a civil servant, is not disclosed by either party. All of this being highly relevant to the issues for determination in this application.

[32] Additionally, the applicant disclosed that over the period June 2020 to December 2021, the respondent transferred an aggregate of R5 630 899.99 into her sister's banking account. Of this amount, some R1 665 505.002 was utilised to renovate the kitchen of the former matrimonial home. The applicant's sister transferred the balance of these payments to the applicant from time to time to fund her lifestyle. According to the applicant, these funds are now depleted. The sister's

confirmation under oath forms part of the founding affidavit.

[33] Whether these transactions relate to the respondent's ad hoc consulting services, neither party discloses.

- [34] In the face of the respondent bald denial that he made these payments to the applicant's sister, and in the absence of documentary evidence, this Court cannot determine the causa for or the source(s) of the payments.
- [35] That said, it is manifest that the parties had access to substantial additional funds available to them.
- [36] The applicant's list of expenses attached to her founding affidavit total R257 014.00 per month. Notably, these expenses include:
- [36.1] Personal care in relation to nails, lashes, facials, skin care, make-up and perfume totalling R52 620.00 per month.
- [36.2] The monthly instalments and insurance of the Maserati vehicle she purchased and financed during December 2023, in an aggregate of nearly R45 000.00 per month.
- [36.3] The medical aid premium for her and the children in the amount of R12 711.00 per month.
- [36.4] Lunches and entertainment of R16 000.00 per month.
- [36.5] The costs of holidays amounting to R180 000.00 per annum or R15 000.00 per month.
- [37] The applicant's list of expenditure does not correlate with her bank statements and is indubitably inflated.
- [38] Absent from the founding affidavit, is the applicant's explanation on how she was able to enter into a credit agreement of nearly R2 million in respect of this vehicle when she describes herself as a "housewife" with a monthly income of only R32 500.00.
- [39] She does not mention her trip and the extravagant purchases she made whilst on this trip abroad during January 2024, nor does how it was funded.
- [40] There is no attempt to rationalise the steep increase in her maintenance needs since November 2023, even discounting her acquiring the Maserati.
- [41] During argument, respondent's counsel pointed out the relatively large amounts being credited to the applicant's bank accounts, with annotations such as "Lindsay" and "Loan", none of which the applicant thought necessary to explain.
- [42] The respondent's critique of the applicant's list of expenses is far too conservative and not in keeping with the standard of living during the parties' cohabitation. By his estimation, the reasonable month maintenance needs of the applicant and the child amount to R34 525.00 and he contends that his R15 000.00 contribution towards the child's maintenance is sufficient for the child's portion of groceries, toiletries, lunches and toys. The respondent also suggests that the applicant's vehicle repayments ought to be no more than R2 500.00, this when he spends some R21 000.00 per month repaying two of his vehicles. In the circumstances, it is fair that the applicant is allowed a similar amount to spend on a vehicle suitable for her and the child.

[43] I am satisfied that the parties have enjoyed a standard of life far in higher than most citizen of this country. Having considered the applicant's list and the respondent's critique, I am of the view that reasonable monthly expenditure of the applicant and the child ought to be as follows:

1 Food groceries R 12 000,00 2 Toiletries R 4 000,00 3 Lunches R 3 000,00 4 Cell phone R 3 000,00 5 Plants R 0,00 6 Flowers R 1 500,00 7 Clothing & shoes R 3 500,00 8 Personal care, including nails, lashes, skin products and facials, makeup and perfume R 6 000.00 9 Car instalment R 21 000,00 10 Fuel R 5 000,00 11 Licenses R 125,00 12 Car insurance R 5 000,00 13 Medical aid R 12 711,00 14 Psoriasis medication * 15 Medical excesses R 1 500,00 16 Life insurance R 3 500,00 17 Pocket money / gifts R 2 500,00 18 Holidays R 5 000,00 19 Entertainment R 5 000,00 20 Toys R 750,00 21 Gym R 1 000,00 22 Mother's maintenance R 4 000.00 TOTAL R 97 586.00 Less rental income received -R 32 500,00 SHORTFALL R 67 586.00

[44] The respondent does not deny that the applicant suffers from psoriasis, and that he previously paid for the medication she required, which is not covered by the medical aid scheme. The respondent states that he has not paid for such medication since institution of the divorce action, contending that, if the applicant uses proper skin care treatment, there is no need for such medication.

[45] In her supplementary affidavit, the applicant presented a letter from her treating doctor confirming that the condition has flared up and that she requires medication.

[46] The respondent, who previously made payment of the costs of this medication, should continue doing so pendente lite, as and when such medication is reasonable required. I intend making a separate order on this score.

[47] In respect of her claim for a contribution towards costs, the applicant relies on a pro forma bill of costs prepared by her attorney. The bill includes amounts directly related to this application, totalling R 189 110.00. No historic costs and disbursements in the action are included in the pro forma bill, nor the costs of a chartered accountant, valuers, an industrial psychologist, or an actuary.

[48] Mindful of the issues to be determined at trial, the bill of R 601 575.00 do not appear to be out of kilter with what would be reasonably required to prepare for trial involving attacks on "corporate veils" of two trusts and two companies.

[49] From her bank statements, it appears that the applicant already expended some R 324 000.00 towards legal costs. To which items on the bill of costs, of any, these payments relate, is not evident from the affidavits.

[50] Ultimately, the parties being married in community of property, payments they personally make towards their respective attorneys will come out of the joint estate, unless otherwise ordered.

The respondent's case

- [51] As already stated, the respondent is also not frank and honest in disclosing his financial affairs. His stance regarding the relevancy of the affairs of the two trusts is plainly erroneous, and smack of an estranged spouse who is not willing to afford his wife what she is legally entitled to, both pendente lite and upon divorce.
- [52] The respondent fails to give any indication of the source of the monies which allowed the family trust to acquire 10 immovable properties, all unencumbered, since its registration in 2016.
- [53] But for reference to a resolution of the trustees to do so, dated 12 January 2024, the respondent does not explain how the business trust funded the acquisition of an immovable property in Nelspruit at a price of R5 750 000.00.
- [54] He does not explain the basis for his ready access to the banking accounts of N... Investments when he is not a shareholder or director of the company, nor why (a portion of) his consultancy fees were paid to the applicant's company.
- [55] The explanations he proffers for his use of various supercars and very expensive sedans are feeble and has no ring of truth to it.
- [56] Coyly, the respondent states that he has three Tag Hauer watches, the most recent of which he bought in December 2023 for R 34 000.00, and that he enjoys wearing "brand name" clothing, albeit that he last bought clothing for himself some 5 years ago.
- [57] According to the respondent, the only source of income now is his net salary of R123 924.14, and the extent of his monthly expenses total R169 358.00. which includes the maintenance contribution towards the child, and the certain of the direct expenses the applicant claims herein.
- [58] Notably, the list includes vehicle repayments totalling R21 000.00, a medical aid premium of R5 600.00, and a credit card liability of R15 000.00 (when this credit card account had debit balance of R5 703.76 on 30 March 2024, and on 10 April 2024 a debit balance of R24 122.00).
- [59] I am satisfied that, to a large extent, the respondent's listed credit card liability constitutes a duplication of other line items such as food, groceries, subscriptions and the like.
- [60] To his credit, the respondent tenders to continue paying the property and consumption charges relating to the former common home, the child's educational and extramural activities and costs of occupational and language therapy. He also tenders to continue paying the amount of R15 000.00 cash to the applicant by way of a contribution towards the child's maintenance needs.

[61] As to his own legal fees, it is evident that the respondent deposited an amount of nearly R180 000.00 into his attorneys' trust account, of which a balance of just more than R53 000.00 was available on 5 April 2024. He does not state where he sourced this trust deposit. Of course, the respondent was not the litigant who had to incur the costs of the joinder of the trustees of the two trusts and the two corporate entities.

Conclusion

- [62] On a conspectus of the (lack of) evidence before this Court, I am satisfied that neither the applicant nor the respondent has been forthcoming and honest, and failed to display the utmost good faith required of litigants in applications such as these.
- [63] The applicant's claims are inflated, and the respondent is less than frank about his financial affairs, choosing not to make disclosure of the financial affairs of two trusts registered during the subsistence of the marriage, and which house substantial wealth accumulated during the subsistence of the marriage.
- [64] I do not accept that the respondent's source of income from N... Investments simply disappeared. As recently as December 2023 and January 2024, N... Investments made substantial payments in excess of R1.5 million to the family trust, which is begs an explanation from the respondent.
- [65] I have no doubt that the better part of the wealth accumulated in the two trusts emanated from the respondent's enterprises. Simple accounting practice dictates that he therefore must have a loan account in each of the trusts. What the extent of those loan accounts are, he chose not to disclose.
- [66] The respondent previously ensure the applicant received R67 000.00 per month to pay for her and the child's expenses. He must continue doing so.
- [67] If needs be, the respondent will be able to draw down on his loan accounts to make an initial contribution towards the applicant's legal costs. The applicant is at liberty to approach the Court again should the initial contribution prove insufficient.
- [68] I repeat - had it not been for the young boy caught in the middle of his warring parents, I would have been inclined to dismiss the application. However, having waded through the common cause facts, the contradictions in each party's case, and distilling from bank statements and other documents before me, I am satisfied that the following order is fair and reasonable in

the circumstances:

Order

1.2 The respondent shall pay all the educational expenses of the minor child, including but not limited his school fees, levies and debentures at his current or another agreed school, prescribed school uniforms, prescribed books and stationery, agreed extra lessons, agreed school outings, the costs of occupation and speech/language therapy, and the costs of agreed extra-mural activities, including the required kit and equipment.

1.3 The respondent shall pay the following expenses in respect of the home which the applicant and the child occupy at The Rest, directly to the relevant service provider:

1.3.1 The estate levy, including security, the rates, taxes, costs of water and electricity consumption, and other municipal imposts and levies as invoiced.

1.3.2 The costs of maintenance and repairs, including swimming pool maintenance and chemicals.

1.3.3 The television license and current DSTV subscription.

1.3.4 The Telkom, ADSL and internet accounts.

1.3.5 The insurance premiums in respect of the household contents and homeowners' insurance.

1.3.6 The wages and annual bonuses of the domestic assistant and gardener.

1.4 The respondent shall pay, in respect of the Cedar Acres and Oppi Koppi properties, the levies, the rates, taxes, refuse and other municipal imposts and levies as invoiced, directly to the relevant service provider.

S LIEBENBERG

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Appearances:

For the applicant: Adv PV Ternent Instructed by: Kim Meikle Attorneys For the respondent: Adv R Andrews Instructed by: Vermeulen Attorneys Heard on 1 August 2024

Judgment

on 20 August 2024

[1] Du Preez v Du Preez 2009

(6) SA 28 (T).

[2] CMSC v NC [2021] ZAWCHC 227.

[3] Taute v Taute 1974

(2) SA 675 (E) (Taute).

- [4] Taute above.
- [5] Nilsson v Nilsson 1984
- (2) SA 294 (C) at 295E-G.
- [6] MCE v JE [2011] ZAGPPHC 193 per Makgoka J at para 4.
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