

SOUTH AFRICA / JUDGMENT

M.M.W v H.J.W (32130/2014) [2014] ZAGPPHC 765 (8 October 2014)

[2014] ZAGPPHC 765**COURT**

North Gauteng High Court, Pretoria

BEFORE

E M Kubushi

CASE / FILE NUMBER

32130/2014

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****DIVISION, PRETORIA)****CASE****NO: 32130/2014****DATE:**

8 OCTOBER 2014

NOT

REPORTABLE

NOT

OF INTERES TO OTHER JUDGES

In the matter

between:

W[...], M[...]

M[...].APPLICA

NT

and

W[...], H[...]

J[...].RESPONDE

NT

JUDGMENT

HEARD ON THE: 06 OCTOBER 2014

DATE OF JUDGMENT: 08 OCTOBER 2014

KUBUSHI, J

[1] This is an opposed uniform rule 43 application. The parties are in the process of divorce. The applicant has approached this court for relief pending the outcome of the divorce proceedings. The respondent in his papers raises a point in limine in terms of which he contends that the respondent's 'sworn statement' does not comply with the mandatory and imperative

requirements of uniform rule 43. According to the respondent the applicant's papers are prolix and on that basis alone the

application should be dismissed with costs. In this regard the respondent's counsel relied on the judgments in *Du Preez v Du Preez* 2009 (6) SA 28 (T).

[2] The applicant's founding affidavit comprises of 67 pages - the affidavit consists of seven pages and the rest of the pages are annexures. The submission by the applicant's counsel is that the annexures were necessary to prove the allegations made out in the founding affidavit since the applicant is, in terms of the uniform rules, not allowed to file a replying affidavit. On reading the founding affidavit together with the annexures I found that the annexures should have been included in the applicant's papers. They are necessary to found the applicant's case and are therefore not prolix.

PROOF OF APPLICANT'S INCOME

[3] Another point raised by the respondent's counsel in argument is that the applicant did not disclose her true financial position and is on that basis not entitled to the relief she seeks. On the papers before me, I could not find any evidence which indicates that the applicant is earning any income. It is common cause that the catering business she was operating is no longer in operation. The bank account presented in court confirms as much. The bank account of the applicant also indicates that there is no money with which it can be said is business related, either coming into or going out of the account.

The amount of R26 900, which was a bone of contention between counsel, even if it was for the applicant, is a once off amount and not conclusive proof that the applicant's business is still in operation. I have to conclude therefore that the plaintiff is presently not earning an income and is as such, pending the outcome of the divorce proceedings, entitled to maintenance by the respondent.

[5] The applicant is claiming, pendente lite,

a maintenance for herself in the amount of R26115 per month;

- b. the use of the respondent's motor vehicle with registration number F[...] and the monthly insurance;
- c. that the respondent retain her on his current medical aid;
- d. the respondent pay re-location costs in the amount of R97100;
- e. respondent pay contribution towards her costs in the amount of R200 000; and
- f. that she be granted leave to apply to court for a daily contribution towards her costs for each and every day of trial subsequent to the first day thereof.

MAINTENANCE

- [5] It is common cause that the respondent is presently maintaining the applicant. He has allowed the applicant the usage of the motor vehicle she is claiming and maintaining it and paying its monthly insurance premium. He has also retained the applicant on his medical aid. The applicant wants to leave the common household and is not certain whether the respondent will continue to maintain her as he has been doing. However, the respondent has conceded that he will continue to maintain the applicant. I am therefore of the view that an order on this basis should be granted.

RELOCATION COSTS

- [6] I do not understand the respondent, from his evidence, to be saying that he does not want the applicant to leave the common household or that he is not prepared to fund her relocation costs. What he is in issue with is the amount which the applicant is claiming in order to relocate.
- [7] I am also of the view that the amount the applicant is claiming is exorbitant. Whilst mindful of the applicant's reliance on the lifestyle which, correctly so, they have been living with the respondent, she should at the same time not lose sight of the fact that the relief sought in this application is pendente lite. After the divorce she might have to maintain herself - apparently she did not claim for maintenance in the divorce proceedings. It should also be taken into account that the applicant is not as desolate as she makes out to be. She has been running a catering business which is a skill which she should use in order to continue with her life. She should not entirely rely on the respondent. The decision to move to Klerksdorp is entirely her decision and should not be imposed on the respondent. An adequate and reasonable amount for her relocation is in my view R50 000.

CONTRIBUTION TO COSTS

[8] The amount claimed by the applicant is exorbitant. A justified amount in the circumstances should be R12 000. The amount should be paid in monthly instalments so as not to burden the respondent. In order to prove any further costs, the applicant should be granted leave to apply to this court for a daily contribution towards her costs for each and every day of trial subsequent to the first day thereof.

[9] I make the following order:

1. The points raised in limine by the respondent are dismissed.

2. The respondent is ordered to maintain the applicant, pendente lite, by paying:

a the applicant's life insurance;

b. the applicant's cell phone insurance; and

c a monthly allowance of R12 000. The first amount is to be paid on the first day of the month following the month on which the applicant

shall have left the common household. Whilst the applicant is still residing in the common home the respondent shall continue to pay her the monthly allowance of R2 500 and pay for all other household necessities as he has been doing.

3. The respondent, pendente lite, to allow the plaintiff the usage of the motor vehicle with registration number F[...], maintain it and pay for its monthly insurance premium.

4. The respondent, pendente lite, to keep the applicant on his medical aid.

5. The respondent shall pay the applicant an amount of R50 000 for her relocation costs. The amount is to be paid within ten days after the applicant shall have requested the respondent to do so.

6. The respondent shall pay an amount of R10 000 as contribution towards the applicant's legal costs. The amount shall be paid in monthly instalments of R2 500 with effect from 1 November 2014.

7. The applicant is granted leave to apply to this court for a daily contribution towards her costs of the divorce for each and every day of trial subsequent to the first day thereof, such application to be brought on these papers duly supplemented if so advised.

8. Each party to pay own costs.

E M KUBUSHI

JUDOE OF THE HIGH COURT

APPEARANCES

APPLICANT'S COUNSEL : ADV VAN DER MERWE

APPLICANT'S ATTORNEY : SCHICKERING, BOWEN & HESSELINK INC

RESPONDENT*! COUNSEL : ADV FERREIRA

RESPONDENT'S ATTORNEY : MARTIN VERMAAK ATTORNEYS

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Prepared on 12 October 2026 · Esheria