

SOUTH AFRICA / JUDGMENT

M.P.K v F.O.K (1477/12) [2013] ZANWHC 21 (14 February 2013) [2013] ZANWHC 21

COURT

North West High Court, Mafikeng

BEFORE

A A Landman

CASE / FILE NUMBER

1477/12

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IN

**THE NORTH WEST HIGH COURT
(MAFIKENG)**

CASE

NO.: 1477/12

In

the matter between:

M
P
K
APPLICANT
and
F
O
K
RESPONDENT

JUDGMENT

LANDMAN J:

Introduction

- [1] M P E K, the applicant, applies in terms of Rule 43 for maintenance pendent lite for the two children born of her marriage to F O K, the respondent. The children are C K, a university student who is a major and K[....] K[....]2 a scholar who is a minor.
- [2] She seeks leave to file a further affidavit. It deals with subsequent events. I would allow it.
- [3] The plaintiff earns a gross income/basic salary of R20 014 with incentive bonuses which varies each and every month. If she earns an incentive bonus of R 9 482.00 she will earn a nett income of approximately R 13 507.
- [4] The monthly expenses and needs of the applicant and the minor child K[....] are as follows:

Accommodation

R 10 000

Groceries (including toiletries & cleaning materials)

R 3 000

Fuel

R 1 500

Edgars

R 585

Game

R 835

Identity clothing

R 380

Total Sports

R 2 450

School and sport uniforms

R 700

School fees, books and stationary

R 1 000

Telephone (4 cell phone contracts)

R 2 000

Domestic worker

R 800

Garden Services

R 100

Bradlows credit agreement

R 1 396

Nedbank Credit Card

R 600

Allowance and entertainment C[....]

R 700

Applicant's Vehicle

R 2 708

[5] The applicant claimed her expenses as regards the maintenance of C (C has filed a confirmatory affidavit). These expenses include groceries (including toiletries and cleaning materials) R 1500, Accommodation in Potchefstroom, vehicle instalment and insurance, fuel, tuition fees, allowance and entertainment. Annexures “O” and “P” have not been attached to the affidavit.

[6] The applicant says she has a monthly shortfall.

[7] The applicant says she does not possess assets that can be liquidated to fund her litigation in the divorce action. She seeks an initial contribution towards her legal costs in the amount of R5 000.

Respondent

[8] The respondent takes the point, at least in his affidavit that C[....] must sue for her own maintenance. But he says he pays all her university fees. He was paying C's accommodation costs but has paid only half of these expenses since 16 Augustus 2012 and has ceased to pay for her motor vehicle. He says he did this because the applicant must take some responsibility for C's expenses.

- [9] The respondent earns a salary package of R 42 350 per month. His monthly expenses, which he details, amounts to R27 770. These expenses include R 1800 that he pays to L[....] S[....] with whom he lives. The applicant has filed a further affidavit to which she attaches photographs of what appears to be an expensive wedding when the respondent and L[....] “married” in December 2010 while still married to the applicant. He offers to pay R1 500 as regards the applicant and I assume K[....].
- [10] The applicant has abandoned her claim for maintenance pendent lite for herself. She requires R3500 in respects of K[....] who normally lives with her
- but seems to be interested in living with her father.
- [11] The applicant is clearly experiencing financial stress. She supports both children; K[....] more so than C[....] on account of the facts that K[....] lives with her.
- [12] The respondent says he is financially strapped but he has remarried before the pending divorce action is finalised and ceased payment of C[....]’s expenses in order to teach the applicant responsibility. I am of the view that pendent lite he must maintain his daughters even if this causes him to borrow funds.
- [13] In the premises I make the following order:
1. The joint parental rights and responsibilities over the minor child is awarded to both parties with regard to the care of the minor children as contemplated in section 18(2) of the Children's Act.
 2. The primary care and permanent residence of the minor child, K[....], is awarded to the applicant.
 3. The respondent is awarded specific parental responsibilities and rights with regard to contact to K[....].
 4. The respondent is to pay maintenance to the applicant in respect of K[....] in the amount of R3 500.
 5. The respondent is to pay the following as maintenance for C[....] her R2500 (accommodation in Potchefstroom), vehicle instalment and insurance, R400 fuel, tuition fees, an R650 (allowance, pocket money and entertainment).
 6. The respondent is ordered to make an initial contribution to the applicant's legal costs in the amount of R5 000.00, payable in monthly instalments of R500.00 per month.
 7. The costs of this application shall be cost in the cause.

A A LANDMAN

JUDGE OF THE HIGH COURT

APPEARANCES:

DATE OF HEARING

: 07 FEBRUARY 2013

DATE OF JUDGMENT

: 14 FEBRUARY 2013

COUNSEL FOR APPLICANT : ADV VAN WYK

COUNSEL FOR RESPONDENT : ADV D SMIT

ATTORNEYS FOR APPLICANT : NIENABER & WISSING

ATTORNEYS FOR RESPONDENT : SMIT & STANTON INC

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