

SOUTH AFRICA / JUDGMENT

M.S v R.G.S (21620 / 2019) [2023] ZAGPJHC 1231 (26 October 2023)

[2023] ZAGPJHC 1231

COURT

South Gauteng High Court, Johannesburg

BEFORE

D Van Niekerk

CASE / FILE NUMBER

21620 / 2019

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Policy

IN THE HIGH COURT

OF SOUTH AFRICA

(GAUTENG DIVISION,

JOHANNESBURG)

CASE NO: 21620 / 2019

In

the matter between:

S,
M
Applicant
And
S,
R G
Respondent

Delivered:

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and uploaded on caselines electronic platform. The date for hand-down is deemed to be 26 October 2023

JUDGMENT

CORAM: VAN NIEKERK AJ

1. This is an application terms of which the applicant seeks an order:

1.1 directing the respondent to make a financial disclosure in terms of the Judge President of the High Court's practice directive dated 10 January 2020 ("the practice directive") within 10 days of service of an order, to this effect, upon the respondent's attorneys of record; and

1.2 directing the respondent pay the costs of this application.

2. The parties are embroiled in divorce proceedings which were instituted in and during 2019 ("the divorce action").

3. An analysis of the pleadings delivered in the divorce action reveal that the issue of maintenance is in dispute.

4. Paragraph 3.5.1 of the practice directive provides that a Financial Disclosure Form ("FDF") annexed to the section as form "FDF 1" must be completed under oath, together with the supporting documentation referred to in FDF 1 by each party in an opposed divorce action in which maintenance or proprietary relief is in dispute and/or in every rule 43 application

in which maintenance is in dispute. Each party must index and paginate his/her duly completed FDF with supporting documents, prior

to the exchange and delivery thereof.

5. Paragraph 3.5.2 of the practice directive provides that in any opposed divorce action in which maintenance or proprietary relief is in dispute both parties must exchange (inter partes), their respective FDF's no later than 10 court days after the defendant delivers his/her plea.

6. The practice directive is couched in peremptory terms and enjoins parties in an opposed divorce action in which, inter alia, maintenance relief is in dispute, to complete Financial Disclosure Form, under oath, together with supporting documentation.

7. The essence of the respondent's opposition to the relief sought by the applicant is that:

7.1 he is able to afford the amount of maintenance claimed by the applicant, and that, therefore, the issue of maintenance is not in dispute, and this would then relieve him of the obligation to provide a Financial Disclosure Form;

7.2 the applicant has not proved a need for maintenance; and

7.3 he has a constitutional right to keep his financial affairs private.

8. The applicant has complied with the practice directive and provided her Financial Disclosure Form.
9. I do not find the respondents reasons for refusing to comply with the practice directive to be compelling. As already indicated, the wording of the practice directive is peremptory, and the respondent is not excused from compliance therewith. Moreover, an analysis of the pleadings reveals that the issue of maintenance is in dispute between the parties. At the very least, the issue of rehabilitative maintenance is in dispute. This dispute engages the provisions of the practice directive.
10. The respondent analyses the Financial Disclosure Form in order to attempt to demonstrate that the applicant does not have a need for maintenance. However, this is an attempt to usurp the functions and powers of the divorce court, which will, in time, embark upon this analysis using, inter alia, the Financial Disclosure Forms delivered on behalf of both of the parties.
11. In the circumstances, I make an order in the following terms:
 - a.) the respondent is directed to make a financial disclosure in terms of the Judge President of the High Court's practice directive dated 10 January 2020 within 10 days of service of an order, to this effect, upon the respondent's attorneys of record; and
 - b.) the respondent is directed to pay the costs of this application.

D Van Niekerk AJ

Representatives:

For the Applicant:

Adv. Bernette Bergenthuin

Attorneys for the applicant:

Arthur Channon Attorneys Inc,

For the Respondent:

Adv. JC Kotze

Attorneys for respondent:

DMO ATTORNEYS

Hearing date: 12 October 2023

Delivered: 26 October 2023

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Prepared on 9 October 2026 · Esheria