

SOUTH AFRICA / JUDGMENT

N L v J L (3323/2020) [2020] ZAFSHC 241 (14 October 2020) [2020] ZAFSHC 241

COURT

Free State High Court, Bloemfontein

BEFORE

C Nekosie

CASE / FILE NUMBER

3323/2020

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

**personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII**

Policy

IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Case

no: 3323/2020

In

the matter between:

N
L Applicant
and
J
L Respondent

CORAM:

C NEKOSIE AJ

JUDGMENT

BY: C NEKOSIE AJ

HEARD ON: 8 October 2020

DELIVERED ON: 14 October 2020

[1] This is an opposed application in terms of Rule 43 of the Uniform Rules and Superior Courts Act of 2013.

[2] The parties were married out of community of property with the accrual in Cape Town on 2 May 2008 and the marriage still subsist.

Two minor children, ages 11 and 7 were born from the marriage.

[3] The applicant is in the employ of Voster Attorneys. The respondent is a chartered accountant with interest in a number of businesses and trusts. He is a successful business man.

[4] The applicant claims that primary care and residence of the minor children be awarded to her. Maintenance of R12 000 per month per child. The respondent is to be liable for medical, dental, optometric and pharmaceutical costs of the children and herself and school fees, after school care school books and school related expenses. She further claims maintenance in respect of herself in the amount of R24 000 and the use of the Toyota Fortuner in her possession with the respondent continuing to make payment on the instalment sale agreement of the said vehicle. The respondent is to pay the insurance and maintenance of the vehicle. In addition, the respondent should be ordered to make R25 000 contribution to her legal cost.

[5] The respondent acknowledges that he is obliged, at least pendente lite the finalisation of the divorce, to contribute towards the reasonable expenses of the applicant and the minor children. He made certain tenders in respect of the applicants claim which is duly noted. In opposing the application, he indicates that he cannot

afford to finance the extravagance of the applicant. He further contents that his income has declined over the last couple of years.

[6] The crux of the applicant's argument is that the respondent possesses the means to provide the maintenance pendente lite but he structured his businesses in such a manner that he legally disguises his true earnings, thus creating the facade of a struggling

businessmen.

[7] There is a reluctant acknowledgement that the amounts claimed is high by the plaintiff. She ascribes her high demands to the fact that they used to live in that manner and the respondent is simply spiteful in not wanting to exceed to her demands.[1]

- [8] The applicants founding affidavit points the court to the many entities that the respondent has an interest in but cannot shed light on the actual earnings of the respondent. This is understandable because not only is it within the respondent's knowledge what he earns per month but being a chartered accountant, he has the expertise to show only what he thinks we need to know.
- [9] Respondent on the other hand seems determined to persuade the court that he is not reluctant to maintain the applicant and the children. He promptly, in the beginning of his answering affidavit makes a tender in respect of the maintenance totalling R28 250. This tender does not tally well with his reported nett income of R38 385-02.[2] It would essentially leave him with R10 135-02 to get through the a month. This leaves one with the persuasion that he has

additional income which he failed to disclose.

- [10] The respondent elects to bombard the court with outdated financial statements of entities in which he has an interest. He states that he does not receive any income from them. What then is the purpose of producing them, other than to confuse and the distract for establishing his true earnings. One need not painstakingly traverse the statements to detect that the finances of the various entities are deliberately intertwined to reflect minimal profit and disposable cash.

- [11] In Nagel v Nagel[3] it was affirmed that:

"Our law provides that applicants in terms of Rule 43 are entitled to reasonable maintenance, pending the outcome and finalisation of the divorce matter. For this purpose, the court has to take the following into consideration:

- 5.1. The standard of living of the parties during the subsistence of the marriage;
- 5.2. The Applicant's actual and reasonable requirements and
- 5.3. The income of the Respondent."

- [12] In the case of Taute v Taute,[4] the court stated the following:

"The quantum of maintenance payable must in the final result depend upon a reasonable interpretation of the summarized facts contained in the founding and answering affidavits as indeed is contemplated and intended by Rule 43. It is also in my view helpful to take cognizance of the approach made in the affidavits by the applicant and the respondent respectively, bearing in mind that normally it is not the practice in these matters (although permissible) to test the evidence viva voce. A claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands

- similarly more weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligations than to one who is obviously, albeit on paper, seeking to evade them."

- [13] In my view, despite the tender, the respondent's affidavit fell in the category of one seeking to evade his obligations. Thus it carries less weight in the present circumstances.
- [14] The claim of the applicant is undoubtedly extravagant. Her claims for rent, groceries, expenses not part of grocery account, Enofoods and movies in particular, are in my view extortionate demands that cannot be sustained under the present circumstances.
- [15] Both parties did not come to court with the best of intentions and having considered all the evidence presented I make the following order:
1. Pendente lite respondent shall pay maintenance to applicant in the amount of R 15 000 per month.
 2. Pendente lite applicant is awarded care and primary residence of the minor children born out of the marriage.
 3. Pendente lite respondent shall be entitled to reasonable access to the minor children, which access shall include:
 - (i) Every alternate weekend
 - (ii) Reasonable telephonic contact and
 - (iii) Such reasonable contact as arranged between the parties
 4. Pendente lite respondent shall pay maintenance to applicant in respect of the aforesaid minor children in the amount of R 4000 per month per child.
 5. Pendente lite respondent shall pay school fees, after school care school books and school related expenses for the two minor children
 6. Pendente lite respondent shall secure and make monthly payments for medical insurance for the applicant and the two minor children.
 7. Pendente lite applicant shall be entitled to use the Toyota Fortuner in her possession and the respondent shall pay the monthly instalment on the instalment sale agreement alternatively the lease of the vehicle.
 8. Respondent shall make a contribution to applicant's legal costs in the amount of R10000, payable in monthly instalments of R1000.
 9. All payments referred to above shall commence on or before the 1st day of November 2020 and shall thereafter be made on or before the 3rd day of each succeeding month.
 10. The costs of this application shall be costs in the cause.

CNEKOSIE, AJ

For the applicant: Adv Heyman

Instructed by EG Cooper Majiedt Inc

BLOEMFONTEIN

For the Respondent: Adv De Larey

Instructed by: Honey Attorneys

- [1] See paragraph 14 of the applicant`s founding affidavit
- [2] See paragraph 67.1 of the respondent`s answering affidavit for the net salary
- [3] Nagel v Nagel 2020 JDR 0168 (GP) at paragraph 5
- [4] 1974
- (2) SA 675 (E) at 676F

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAFSHC/2020/241.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/n-l-v-j-unknown-topic-afshc-2020>

Prepared on 9 October 2026 · Esheria