

SOUTH AFRICA / JUDGMENT

N.M.M v J.G.M (5052/2019) [2024] ZAGPJHC 1174 (30 October 2024)

[2024] ZAGPJHC 1174

COURT

South Gauteng High Court, Johannesburg

BEFORE

Nieuwoudt

CASE / FILE NUMBER

5052/2019

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

Number: 5052/2019

(1)

REPORTABLE: YES

/ NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

In

the matter between: M[...],
 N[...] M[...]
 Applicant
 and
 M[...],
 J[...] G[...]
 Respondent

JUDGMENT

Nieuwoudt, AJ

[1] This is a Rule 43 in which the Applicant is asking for –

1.1 Maintenance of R30 000.00 per month for her and the minor children

1.2 A contribution towards legal costs in the amount of R18 000.

[2] Mr Kwinika who was appearing on behalf of the Applicant conceded that as the minor children are residing with the Respondent, despite the recommendation of the Family Advocate to the contrary, the Applicant cannot ask for maintenance for them so this application will only deal with maintenance for herself.

[3] After working through the Applicant's expenses as per the Financial Disclosure form the amount put forward by Mr Kwinika on behalf of the Applicant was R5300.00.

[4] These are her expenses while she is living with her mother and does not include rent and other auxiliary expenses.

[5] Mr Sihawu appearing for the Respondent conceded that this was a more realistic amount but still deny that the Applicant is entitled to any maintenance pendente lite.

[6] The Family Advocate's recommendation was made in July 2024 which was that the two minor children should reside with the Applicant. In principle, it would seem that this recommendation is accepted by the Respondent. How this recommendation will be implemented is still not clear.

[7] The Applicant did not amend the Rule 43 application to include a prayer for the recommendation of the Family Advocate to be made a court order. Mr Kwinika indicated that he holds instructions to proceed with the application and that he did not want to postpone the matter to effect any amendments.

[8] This divorce has been pending since 2019 and after 5 years of litigation the following is in dispute:

8.1 Division of the joint estate;

8.2 Rehabilitative maintenance for the Applicant; and

8.3 Residency of the minor children.

- [9] It is unclear why these parties have been unable to finalise this divorce in 5 years. The Plaintiff in her summons already prays for the appointment of a liquidator, which is the simplest and quickest solution for the division of the joint estate.
- [10] It is unclear why the Applicant needs R18 000 towards the contribution to legal costs. There is also no proper explanation in her application why this contribution is needed. In my opinion, giving money for further litigation will be like pouring petrol onto fire – just encouraging further litigation.
- [11] The parties should as a matter of urgency settle this matter and if needed appoint a mediator to resolve the outstanding disputes between the parties.
- [12] Coming back to the maintenance requested by the Applicant. I am inclined to grant the pendente lite maintenance for two reasons –

12.1 The Respondent was the breadwinner during the subsistence of the marriage and took care of the Applicant. It is only since the second separation that the Applicant needs to maintain herself, something she is not running away from but is asking for assistance from the Respondent.

12.2 All indications are that the two minor children will be moving to the Applicant residence in Polokwane at the beginning of 2025. There will be expenses settling in the minor children in Polokwane.

[13] Therefore, the following order is made –

1. The Respondent is to pay maintenance for the Applicant pendente lite in the amount of R5 300.00 per month the first payment to be made on or before the 7th of November 2024 and thereafter on or before the 7th of each month.
2. The cost of the application will be cost in the cause.

NIEUWOUDT, E

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: Date of Judgment: 29 October 2024 30 October 2024 Appearances: For the Applicant: Instructed by: Mr. N. Kwinika Kwinika Attorneys For the Respondent: Instructed by: Mr. V. Sihawu MVC Inc.

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