

SOUTH AFRICA / JUDGMENT

T.A.S v I.S (2021/58750) [2025] ZAGPJHC 248 (11 March 2025) [2025] ZAGPJHC 248

COURT

South Gauteng High Court, Johannesburg

BEFORE

Mahomed

CASE / FILE NUMBER

2021/58750

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, JOHANNESBURG

Case

Number: 2021/58750

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

In

the matter between: S[...],
 T[...] A[...] (born
 P[...])
 Applicant
 And
 S[...],
 I[...]
 Respondent

JUDGMENT

MAHOMED J

- [1] This judgment is ex tempore, I address the various claims and provide main reasons for the order granted. This application is brought in terms of R43(6) of the Uniform Rules of court and Advocate Strydom for the applicant submitted that there is a material change in her client's financial circumstances, since the interim order was granted on August 2022.
- [2] The parties before me were married over 20 years ago and they have two children, there is no dispute regarding the children. The parties needed to clarify that the dispute in regard to the car, is open to contention and not res judicata. This point was not strongly contested and on a plain reading of the order granted on 31 July 2024, it is clear that both parts of the application was to be finalised together.

MOTOR VEHICLE

- [3] The applicant argued that the vehicle she was given is old and within two months of receipt of the vehicle, its gearbox had broken down, following this the brakes had failed and the general performance of the vehicle, which had clocked over 200 000km on its oddometer, was no longer a safe car to drive, with confidence. Advocate A van der Merwe contended that her client fixes the vehicle

as per the order and that it is roadworthy, he argued there is nothing wrong with its mechanics. I considered the applicant's

submissions, and the evidence before me indicates that the vehicle is no longer "reliable" as would have been contemplated in the order granted. I am of the view that a car in the current climate and according to the lifestyle that the parties enjoyed, is an essential item and that the approach adopted in the past is less than satisfactory. Accordingly, having regard to the respondent's

financial position I am of the view that the applicant should not be subject to any further indignity to have to hold out a begging bowl, each time the car breaks down. The respondent must pay over R180 000 to applicant to purchase a car, and will be responsible for its related license, maintenance and insurance, pendente lite.

SPOUSAL MAINTENANCE

[4] Ms Strydom contended that there is a material change in her client's financial circumstances, she is unable to make ends meet on the R11 000 awarded on the last occasion. I agree with counsel that the increased costs of daily expenses would constitute a material change in the circumstances as contemplated in rule and as per the various judgments of our courts. On the last occasion no provision was made for normal escalation linked to the consumer price index. The court cannot ignore the reality of high costs of living and regular power tariff hikes. I agree that an increase of R5 000 per month is relatively small and her client has provided her breakdown of expenses and I had regard to submissions on the respondent's ability to pay as per his financial disclosure

document. I considered the applicants age in relation to the requirements in the job market and her training for any employment.

Ms van der Merwe correctly argued that the court must not lose sight of the fact that her client too is no longer a young person with a high earning capacity. However I noted the significant difference in the total worth of the estates of each party and do not see this as an unreasonable demand and cost.

CONTRIBUTION TOWARD COSTS

[5] Ms Strydom submitted that her client was only awarded R40 000 as a contribution to her legal costs and the entire amount has been utilised. The applicant furnished the court with a schedule of future legal costs and prays for an award of R1 170 000, as a contribution. The respondent argued that the costs are exorbitant but conceded that the R40 000 previously awarded was distant from the reality in current practise in this jurisdiction. Ms Strydom contended that the practise in our courts is to order the costs contributions, payable in instalments and bearing in the mind the constitutional rights of the parties to litigate on an equal basis. She submitted that the respondent's actions, have forced unnecessary joinder applications, he simply pushed up the litigation bill and it will be necessary for her client to engage the services of a forensic investigator. It was common cause that the finalisation

of this divorce is a long way off, I implored the parties to take bold economic decisions when they both win, albeit to varying

degrees. Ms Strydom contended that her client will need a limited budget for printing and service, she was aware that the caselines

system is useful in limiting expenses. It is worth mentioning that the low award in contribution toward legal costs is unrealistic even two years ago and regrettably, has the effect of bringing the applicant back to court at additional costs for an increase. If the account is too high a court could manage this award on the basis that any balance at the first day of trial, must be returned to the contributing party with a specific time.

[6] Having considered the conspectus of the evidence, I make the following order pendente lite:

1. The respondent shall pay over the sum of R180 000 for the applicant to purchase a vehicle, within 2 weeks of the order and shall be entitled to the return of the BMW in the applicant's possession. The respondent shall be responsible for the related costs of maintenance, license, and insurance for this vehicle.
2. The respondent shall pay the applicant an additional R5 000 per month, from 30 March 2025, spousal maintenance shall be a total of R16 000 per month.
3. The respondent shall pay a contribution to legal costs in the sum of R800 000, payable into the trust account of the applicants attorneys. The amount is to be paid within 6 months of this order, of which R100 000 is to be paid over within 2 weeks of this order.
4. The costs of the litigation to date are reserved.

JUDGE OF THE HIGH COURT

JOHANNESBURG

For the Applicant: Adv. I Strydom instructed by Leslie Cohen & Associates

For the Respondent: Adv AM van der Merwe instructed by Shaban Clark Coetzee Attorneys

Date of hearing: 10 March 2025

Date of Judgment : 11 March 2025

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Prepared on 10 October 2026 · Esheria