

SOUTH AFRICA / JUDGMENT

Van Wijk v Van Wijk [2011] ZAWCHC 295; ; 14434/2009 (17 June 2011)

[2011] ZAWCHC 295**COURT**

Western Cape High Court, Cape Town

BEFORE

A G Binns-Ward

CASE / FILE NUMBER

14434/2009

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Source record**Republic****of South Africa****IN THE****HIGH COURT OF SOUTH AFRICA****(WESTERN****CAPE HIGH COURT, CAPE TOWN)****CASE NO:**

14434/2009

Before:The Hon. Mr Justice Binns-Ward
In the**matter between:**

ARIE

WILLEM VAN

WIJK.....Applicant

and

ILSE

ADELE VAN WIJK (gebore DU TOIT)

.....Respondent

JUDGMENT

DELIVERED THIS DAY OF 17 JUNE 2011

BINNS-WARD, J:

- [1] In this matter the applicant, who is the defendant in pending proceedings in an action by the respondent for a divorce and ancillary relief, applies for an amendment of the order made by agreement between the parties in 2009, which determined the applicant's maintenance obligations pendente lite to the respondent and the parties' minor child.
- [2] The applicant alleges that his income has been materially diminished. He states that this has been mainly as a consequence of the termination of his services by an entity known as 4i and the significant reduction of the income previously enjoyed by him from the Zilla Trust
- [3] In my view it was incumbent on the applicant to set out in some depth how and why his alleged drop in income has occurred. He has averred that his services were terminated by 4i because his contribution to the business of the entity has been adversely affected as a result of a drop in his productivity caused by the psychological stress that he is suffering as a consequence of the unresolved matrimonial litigation in which he has been involved for the past two years. He put in support of this allegation a letter under the 4i letterhead signed by two unidentified persons (possibly Christo Malan and Michal Calitz) which baldly, and somewhat enigmatically states that the applicant will not be part of the investment team of 4i Asset Management and a confirmatory affidavit by Michal Calitz which merely endorses the content of the applicant's supporting affidavit. The reason for the alleged drop in the level of income previously received by him from the Zilla Trust is obscure.
- [4] The evidence put up by the applicant does not detail what his contribution to the 4i entity was in 2009, or how it has changed over the intervening period. There is also no evidential material introduced to corroborate his allegation of an enduring and continuing deterioration of his input into the business. There is nothing in the way of real evidence to reflect any reaction by his business partners and clients to the alleged situation during the period in question. I would have expected there to be relevant

correspondence during the period and perhaps also minutes of board or management committee meetings evidencing continuing and growing

dissatisfaction by clients and/or management with his performance.

- [5] The evidence at the time of the 2009 rule 43 proceedings indicated that the residential property, which constituted the parties' former common home and which is currently still occupied by the applicant, was mortgaged for a sum exceeding R1 million. The information put in by the applicant in respect of his current situation suggests that notwithstanding the drop in interest rates in the intervening period his liability in respect of monthly payments on the mortgage loan has remained constant down to the exact rand. This is unconvincing. I refer to it merely as a further instance which makes leaves me sceptical about the cogency of the evidence produced by the applicant in support of his application. I also wonder why, if his circumstances have become as straitened as he alleges, it is necessary for him to continuing living in the property and why it should not be rented out to so as to enable him to subsidise the bond with the margin between the rental obtainable and the lesser rental payable by him on smaller premises suitable for a single person

[6] All in all the evidence put up by the applicant is bald and unconvincing. I have not been persuaded, on the robust approach necessitated in rule 43 proceedings, that an adequate case has been made to amend the terms of the order made by Thring J in 2009.

[7] The application is dismissed with costs.

A. G. BINNS-WARD

Judge of the High Court

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