

SOUTH AFRICA / JUDGMENT

V.N v S.N (9932/2016) [2016] ZAGPPHC 1216 (2 December 2016) [2016] ZAGPPHC 1216

COURT

North Gauteng High Court, Pretoria

BEFORE

S P Mothle

CASE / FILE NUMBER

9932/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

2/12/2016

CASE

NUMBER: 9932/2016

In

the matter between:

V

N Applicant

and

S

N Respondent

JUDGMENT**MOTHLE J**

1. This is a Rule 43 application for maintenance pendent lite, in which the Applicant is claiming maintenance and other consequential relief.
2. The Respondent opposes this application, contending that in addition to an allowance of R10,000.00 which he provides to the Applicant on a monthly basis, he pays for all the expenses which related to their joint estate as well as in particular the common home where the Applicant still resides.
3. It is common cause that the parties were married to each other on 17 June 1992 at Witbank, Mpumalanga. The marriage, which is in community of property, still subsists.
4. The couple has one child, S M N born on [...] January 1995 who is presently studying and being maintained by the Respondent.
5. The Applicant instituted divorce proceedings against the Respondent on 9 February 2016 in this Court. The action is still pending. It is further common cause between the parties that;
 - 5.1 During their marriage and after the Respondent left the common home, the Applicant was and still is unemployed;
 - 5.2 The Respondent provided the only income in the marriage;
 - 5.3 The Applicant has been provided with a credit card which the Respondent took from her at the time he left the common home;
 - 5.4 The Respondent continues to pay all expenses relating to the common home and provides a monthly allowance of R10,000.00 to the Applicant, for groceries, personal needs and her cell phone expense.
6. The Respondent contends that the Applicant is sufficiently catered for and that there is no need for any maintenance to be paid. The Respondent even refuses to make a contribution to the legal costs of the Applicant, notwithstanding the fact that he has lodged a counter action in the divorce proceedings in which he claims forfeiture of the assets from the marriage against the Applicant. I will return to this aspect further in this judgment.
7. The Respondent admits that he is a director of several companies and earns an amount of at least R84,000.00 per month after deductions. He claims that his total monthly expenses amount to R98,716.44 which includes expenses for the Applicant in the amount of R51,913.72; the Respondent's niece L. R8,363.00; their son S. R13,362.43; residence of Applicant's extended family R1,123.99; expenses of accommodation for himself S. and L. R6,902.41; expenses for himself R25,413.89.

8. The Applicant on the other hand contends that: The Respondent should pay a monthly amount of R24,767.00 per month, be ordered to retain the Applicant on his medical aid fund and make a contribution to payment of medication that is not covered by the fund; be ordered to continue paying the monthly instalments, insurance and maintenance of the motor vehicle; be ordered to pay the Applicant's cell phone account as well as contribution to the legal costs in the amount of R20,000.00.

9. It seems to me that the dispute between the parties can be narrowed to three aspects, namely:

9.1 The allowance payable to the Applicant on a monthly basis. The Applicant needs approximately R24,000.00 per month while the Respondent claims that R10,000.00 per month is sufficient;

9.2 The request by the Applicant of a Court order compelling the Respondent to continue paying for the expenses relating to The common home which, it seems, the Applicant is concerned that the Respondent may discontinue paying; and

9.3 The contribution towards legal costs wherein the Applicant requests the payment of R20,000.00 while the respondent through counsel in Court offers R3,000.00.

9.4 I now turn to deal with each of these three aspects.

MONTHLY ALLOWANCE:

10. There is no evidence to point out that the monthly maintenance of the Applicant which Respondent claims is R9,000.00 plus R1,000.00 for cell phone, was agreed to by the parties. It seems to me that the Respondent on his own decided on what he deemed sufficient for the Applicant and paid out that amount.
11. The Applicant has presented a budget estimate which appears to have some of the amounts being repeated. After taking counsel through the various items in what the Applicant claims are shortfalls in her personal upkeep, it became clearer that the amount claimed by the Applicant being R24,000.00 per month is clearly excessive.
12. Similarly, it is clear on consideration of the Applicant's needs that the R10, 000.00 which the Respondent pays per month to the Applicant is insufficient. The Respondent in fact contends that this amount should be reduced to R7, 800.00 per month. In dealing with the Applicant's budget estimate, the Respondent in Annexure "1" to his affidavit dismisses most of the items as being excessive. It cannot depend on the Respondent, for example, as to what hairstyle the Applicant must make by unilaterally determining the amount he regards as being appropriate! It should be considered that prior to the Respondent leaving the common home, the Appellant had access to a credit card and was able to decide how to regulate her spending.

13. It will be beyond the scope of this judgment to deal with each and every item of a rather long list of items stated in each budget. Suffice to state that after considering the budget estimates by both parties, the Court is of the view that for the Applicant to remain in the lifestyle she is used to, a fair and reasonable amount which the Respondent has to pay to the Applicant for her upkeep, pending the divorce proceedings should be R16, 000.00 per month plus R1, 000.00 per month for cell phone. All payments for medication not covered by the medical aid, hair maintenance, manicure, cosmetics, church contributions and food for the helper/gardener should be reasonably covered by this amount.
14. The Respondent should also keep the Applicant in his medical aid and pay for fuel and repairs of the motor vehicle allocated to her for her use.

PAYMENT OF THE MONTHLY EXPENSES RELATING TO THE COMMON HOME

15. The Applicant admits that the Respondent does pay for most of the items relating to the common home. However, she complains that she has to ask him every week to purchase electricity and he has reduced the DSTV premium to a limited view option.
16. The Respondent, being the sole breadwinner, is in control of the finances of the joint estate and it seems he unilaterally decides what is sufficient or good for everyone, including the Applicant. The Applicant requires certainty that the payments will be effected and not be put in a position where she must always plead after the Respondent to effect payments. In the circumstances it is necessary for this Court to make an order that the Respondent should pay all the expenses relating to the common home in exactly the same way as it was before he left the common home. That will include restoring the DSTV to the same channels that operated before he left the common home, and to purchase the electricity regularly to avoid a situation where the Applicant has to ask him to do that.

CONTRIBUTION TOWARDS LEGAL COSTS

17. The parties are married in community of property. Applicant is unemployed. The Respondent admits the allegation by the Applicant that in defending the divorce action, he instituted a counter claim wherein he demands forfeiture of three immovable properties, a BMW motor vehicle and any interest in his pension benefits. The rest of the estate he claims should be divided equally.
18. It is trite that the Applicant needs to be placed in sufficient funds to acquire legal representation to protect her interests arising out of the common estate. The amount of R3, 000.00 offered by the Respondent for the Applicant's legal fees, viewed in the context of the size of the marital property, is woefully inadequate. According to the Respondent's own version as stated in Annexure "4" to his replying affidavit, he estimates the total assets at R13, 400,000.00 as against liabilities of R10, 432,000.00. The statement

however does not indicate any interest or shares held by the Respondent in the various companies as well as other forms of income

and investments.

19. I am of the view that the amount of R20, 000.00 claimed by the Appellant as a contribution to legal fees is not unreasonable. In fact, for the Applicant to obtain competent counsel to assist her in the divorce proceedings, the legal fees may be in excess of this amount. However that will be for the trial court to decide.
20. Counsel for the Respondent referred this Court to authorities such as *Du Preez v Du Preez* v 2009 (6) SA 28 (T) and *Taute v Taute* 1974 (2) SA 675 (E), in support of the contention that the application should be dismissed. The principles established in these two cases, namely the proximity of the application and the Respondent's preparedness to meet reasonable claims were not in issue in this case. This case is clearly about one party being in control of the income and unilaterally deciding what is or is not good for the other, which

negatively impacts on the lifestyle of the other party which he/she may be accustomed to. This case is thus distinguishable from the authorities referred to by Respondent's counsel.

CONCLUSION

21. It appears from the evidence that prior to the institution of the divorce proceedings, the Applicant and Respondent enjoyed and are accustomed to an affluent lifestyle, having regard to the size of the joint estate as viewed within the context of the broader society in South Africa. The income declared by the Respondent excluding all other expenses, indicate that the Respondent can afford to maintain the Applicant such that she continues with that lifestyle, pending the conclusion of the divorce proceedings.
22. In the premises I make the following order:
 1. Pending the prosecution to finality of the divorce proceedings between the Applicant and the Respondent, the Respondent is ordered to:
 - 1.1 pay an amount of R17,000.00 per month into the bank account of the Applicant for her maintenance, cell phone and upkeep;
 - 1.2 keep the Applicant as a dependant in his medical aid and pay for fuel and repairs of the motor vehicle allocated to her for her use;
 - 1.3 continue to pay all the expenses relating to the common home where the Applicant is resident as they have been paid prior to him leaving the common home, including restoring the DSTV to the full complement of the channels; and
 - 1.4 pay to the Applicant an amount of R20,000.00 as a contribution towards the Applicant's legal costs within 15 days from the date of this order.
 2. The Respondent is further ordered to pay the costs of this application subject thereto that Rule 43(7) and (8) shall not be applicable.

S P MOTHLE

Judge of the High Court

Gauteng Division, Pretoria

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