

SOUTH AFRICA / JUDGMENT

W.A.S.B v J.M.K (046725/23) [2025] ZAGPPHC 44 (17 January 2025)

[2025] ZAGPPHC 44

COURT

North Gauteng High Court, Pretoria

BEFORE

Nyathi

CASE / FILE NUMBER

046725/23

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IN

THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

CASE

NO: 046725/23

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

(4)

Date: 17 January 2025

Signature:

In

the matter between:

W[...]
A[...] S[...] B[...]
Applicant
(Identity
Number: 7[...])
And
J[...]
M[...] K[...]
Respondent
(Identity
Number: 8[...])

JUDGMENT

NYATHI J

A.

Introduction

- [1] This is an application in terms of Rule 43 of the Uniform Rules of Court, for the granting of an order, pendente lite, towards the applicant's reasonable, spousal maintenance needs, as well as for an initial contribution towards his legal costs.
- [2] The applicant and respondent ("the parties") were married to each other on 7 September 2019 out of community of property, with the inclusion of the Accrual System.[1]
- [3] No children were born from the marriage.
- [4] The applicant claims monthly maintenance of R65 000.00 per month and R100 000.00 payable in monthly instalments of R10 000.00.

B.

BACKGROUND

- [5] The applicant submitted that during the parties' romantic relationship, and subsequent marriage, he made contributions in cash and in kind towards the establishment, growth and development of various business enterprises conducted by the respondent, such as C[...] P[...] P[...] D[...] and Dr [...] D[...] H[...].
- [6] Before the parties separated, their joint household and living expenses were funded at the instance and request of the respondent, by the entity known as C[...] P[...] P[...] D[...], until approximately April 2022, whereafter the entity known as Dr [...] D[...] H[...], catered for all their joint maintenance needs, by mutual decision between the parties.

- [7] The respondent had employed the applicant in her business and remunerated him as an employee.[2] Applicant then alleges that the respondent decided that she no longer wished to remain married to him, she unfairly, and without due reason or proper process, terminated his employment, thereby effectively "ousting" him from the business that they had built together. This resulted in the applicant being completely cut off financially.
- [8] As a result of the termination of his employment, the applicant is without any income. The respondent fails to make any meaningful contribution towards the applicant's reasonable and actual needs. From the applicant's Financial Disclosure Form ("FDF") it is reflected that he has liabilities totalling R782 473.71.

There are, however, no bank statements attached.

- [9] The applicant has sketched out a monthly expenditure requirement of R65 300.00.[3]
- [10] The respondent has in the meantime sold the luxurious matrimonial home which she had purchased in Silverlakes Road, Pretoria for nearly R4 million. The respondent makes no contribution towards the applicant's accommodation costs.
- [11] The applicant has tried to find new employment but without any success.
- [12] The respondent has removed the applicant from her medical aid scheme.
- [13] In the face of the applicant's application, the respondent makes no tender at all but pleads poverty.

The respondent's version

- [14] The respondent contends that it was not the applicant who was employed by Cosmo Farm but a corporate entity. The Commission for Conciliation, Mediation and Arbitration ("CCMA") ruled that the applicant has successfully established the existence of an employment relationship between himself and the respondent.[4]
- [15] The respondent alleges that on or about 21 December 2022, the applicant transferred from her personal credit card account an amount of R65 000.00 into his own bank account, without her knowledge or authorization.[5]
- [16] The respondent details malicious, abusive, aggressive, threatening and unbecoming conduct on the part of the applicant, which eventuated in her obtaining a Protection Order at the Magistrates' Court.[6] The prohibitions in force from the order are far-reaching, I deem it not necessary to repeat them herein.
- [17] According to the respondent, the applicant continued to occupy the matrimonial house even after the official transfer was done, therefore she had to initiate legal proceedings to evict him.

[18] The respondent submits that she is hopelessly insolvent, with debts in the region of R1,4 million rand. The respondent lists her indebtedness in her Financial Disclosure Form (“FDF”) broken down as follows:

18.1 Nedbank Covid Loan – R50 334.58

18.2 Nedbank Credit Card – R52 962.95

18.3 Standard Bank Credit Card – R168 078.60

18.4 Standard Bank Revolving Credit Account – R277 616.90

18.5 Nedbank Current Account – R5 674.32

18.6 Cosmo Pharm – Loan Account – R852 213.00

[19] Respondent lists her total income from her consultancy business as R690 000.00 per annum. Her monthly expenses are R62 740.00 per month.

[20] The respondent acknowledges that the applicant did advance R300 000.00 to Cosmo Pharm at its inception. The loan was repaid in full by way of three payments: R150 000.00 on 1 April 2022, R100 000.00 on 4 April 2022 and R50 000.00 during January 2023.

[21] The applicant, on his version, has not earned an income since January 2023. He waited nearly 14 months before launching this application.

[22] The respondent has sought a forfeiture order in the divorce action.

Common cause facts

[23] The respondent instituted divorce action in May 2023. The applicant filed his plea and counterclaim, to which respondent has pleaded. Pleadings have closed. What remains is application for and allocation of a trial date.

C. DISCUSSION AND CONCLUSION

[24] The applicant has not taken the court into his confidence by providing his bank statements and other documents to support his predicament. He has not set out in his founding affidavit any efforts on his part to secure employment since his alleged dismissal. He has not explained, as the respondent did, how he has managed to get by for the 14 months before he initiated this application.

[25] The applicant’s non-disclosure of his bank financial statements and other supporting documents as well as the means of securing employment in the previous 14 months is substantial, as this information is material for Rule 43 Applications and such information would draw a clear picture of the applicant’s financial situation.

- [26] In *Du Preez v Du Preez*[7] Murphy J states that “A mistreatment of one aspects of relevant information invariably will colour other aspects with the possible (or likely) result that fairness will not be done. Consequently I would assume there is a duty on applicants in rule 43 applications seeking equitable redress to act with the utmost good faith (*uberrimae fidei*) and to disclose fully all material information regarding their financial affairs. Any false disclosure or material non-disclosure would mean that he or she is not before court with ‘clean hands’ and, on that ground alone, the court will be justified in refusing relief.”
- [27] The applicant, in support of his claim for contributions towards his legal costs, attached a bill of costs marked “annexure I” totalling some R145 725.40. Items 58 and 59 thereof simply read as follows: “Letters written (58pg)” and “Letters received (75pg)” and are billed at R11 926.54 and R7 809.75 respectively. These amounts are food for thought as to their reasonableness for what they purport to represent.
- [28] In *Nilsson v Nilsson* 1984 (2) SA 294 (C) at 295F, VAN DEN HEEVER J held that a rule 43 order is not meant to provide an interim meal ticket to a person who quite clearly at the trial would not be able to establish a right to maintenance. The court further determined that “The shorter the duration of the marriage, the more important the conduct of the parties within the relationship – their respective ‘guilt’ or ‘innocence’ – would ordinarily be in relation to the question whether maintenance should be paid at all.” This is so, mindful of the fact that the trial court will be best placed to make a final determination on the issue of maintenance.
- [29] It is trite that it was held that a claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands.[8] Similarly, more weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligations than to that of one who is seeking to evade them.
- [30] In *Taute v Taute*[9], reference was made to *Levin v Levin* 1962 (3) SA 330 (W) at p331D, where LUDORF J said the following:
- “To decide the issues I am compelled to draw inferences and to look to the probabilities as they emerge from the papers. Obviously my findings are in no way binding on the trial Court and indeed after hearing the evidence it may emerge that some or all of the inferences I have drawn are wrong. On this basis I now turn to the issues as they emerge from the papers.”*
- [31] This is one such instance where I am compelled to look to the probabilities as appears from the papers and draw inferences therefrom. I have referred to the parties’ marriage on 7 September 2019. The respondent commenced divorce proceedings in May 2023. The respondent has detailed the circumstances leading to the breakdown of the marriage and the applicant’s conduct resulting in the prayer for forfeiture in the particulars of claim.

- [32] All these allegations will be dealt with by the trial court in due course. The allegations cannot be disregarded in the rule 43 proceedings. The respondent's prospects of success in due course will have a bearing on whether the applicant prevails in the interim application for maintenance and contribution to legal costs.
- [33] On a holistic consideration of the papers, I am not persuaded that the applicant is wholly incapable of supporting himself. The respondent is not a big shot businesswoman as the applicant makes her out to be.
- [34] The normal rule regarding costs in litigation is that the costs follow the outcome, unless a case is made out for a different order as to costs.

In the result, the following order is made:

The application is dismissed with costs.

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 28/10/2024

Date of Judgment: 17 January 2025

On behalf of the Applicant: Ms. M. Fabricius Duly instructed by: Shapiro & Haasbroek Inc.; Pretoria e-mail: leon@shinc.co.za / geraldine@shinc.co.za On behalf of the Respondent: Ms. S. Liebenberg Duly instructed by: ALAN JOSe Inc. c/o Griesel van Zanten Attorneys, Pretoria. e-mail: alanj@alanjoseatt.co.za

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 17 January 2025.

- [1] Chapter 1 of the Matrimonial Property Act 88 of 1984.
- [2] Applicant submits that he was paid a salary of R50 000.00 per month.
- [3] FDF para 3.
- [4] Para 45 of the CCMA Jurisdictional Ruling dated 04 September 2023 filed with the Rule 43 application.
- [5] Respondent's answering affidavit para 11.
- [6] Ibid para 12 – 19.
- [7] 2009
- (6) SA 33 para 16.

[8] Taute v Taute 1974

(2) SA 675 (E).

[9] 1974

(2) SA 675 (E).

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