

SOUTH AFRICA / JUDGMENT

Z.K.M v V.A.M (13924 / 2022; 16505 / 2018) [2023] ZAWCHC 2 (17 January 2023)

[2023] ZAWCHC 2

COURT

Western Cape High Court, Cape Town

BEFORE

Wille, J

CASE / FILE NUMBER

13924 / 2022; 16505 / 2018

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FLYNOTES:

VARIATION OF MAINTENANCE

Family

– Maintenance – Variation – During acrimonious divorce proceedings – Husband having reduced income, used up capital reserves and dependent on family and friends to supplement income – Wife has savings, disposable assets and income from a trust – Maintenance varied with order catering for whether or not wife and child vacate former matrimonial home.

IN

THE HIGH COURT OF SOUTH AFRICA

WESTERN

CAPE DIVISION, CAPE TOWN

Case

Number: 13924 / 2022

and

Case

Number: 16505 / 2018

In

the matter between:

Z.K.M

Applicant

V.A.M

Respondent

Coram:

Wille, J

Argument:

30 November 2022

Judgment:17 January 2023

JUDGMENT

WILLE, J:

Introduction

- [1] This is an application for the variation of an extant court order in connection with a lamentable and acrimonious divorce trial. The plaintiff is the wife, and she has elected to pursue her claims against her husband without the benefit of any legal assistance. The defendant is represented by senior counsel. The defendant is the applicant in the variation application, and the plaintiff is the respondent. There is one (1) minor child born of the marriage between the parties who is now nine (9) years old. It is common cause that the parties were married to each other by an ante-nuptial contract, including the provisions of an accrual regime.[1]
- [2] Since the parties agree that their marriage has irretrievably broken down, some of the remaining issues that need to be adjudicated at the trial are the following: (a) their parental responsibilities towards the minor child;
- (b) the primary residence of the minor child; (c) their reasonable rights of access; (d) the appointment of a parenting coordinator;
- (e) the responsibility for the maintenance of the minor child; (f) the personal maintenance of the plaintiff; (g) the transfer of specific immovable property to the plaintiff and; (h) the implementation of the terms of the antenuptial contract.
- [3] The applicant tenders that the immovable property sought by the respondent may be registered in her name on divorce. The applicant also tenders maintenance for his minor child and all reasonable medical and educational expenses. In addition, he tenders rehabilitative maintenance to the respondent for one (1) year together with the implementation of the terms of the antenuptial contract. The applicant avers that certain other immovable properties were purchased by him for the respondent (during their marriage) and that these properties are already registered in the respondent's name.

Overview

- [4] Because the trial was due to commence during the last week of the court term, I invoked specific judicial case management provisions. I called upon the parties to attend a pre-trial conference in open court on 16 November 2022. This was to ensure that the matter was trial ready and to narrow the issues for determination at the trial.
- [5] Following this pre-trial conference, the parties agreed that they were both ready for trial and could and would proceed on 28 November

2022. This did not happen. On the first day of the trial, the respondent requested that the trial be postponed. This request was opposed by the applicant. The respondent remained unrepresented and appeared in person. I directed that the matter stand down so that the respondent would be given some time to formally prepare and file a substantive application for the trial postponement. The applicant was also given time to file an answering affidavit to the postponement application.

Pleadings

[6] It is crucial to refer briefly to the allegations made in the pleadings to consider this application in its proper context. The respondent requests in her amended particulars of claim, among other things, the following: (a) an order that she and her minor child be allowed to continue to reside in the prior matrimonial home; (b) that the applicant pays to the respondent R50 000,00 per month towards the maintenance of their minor child and; (c) that the applicant pays to the respondent maintenance for the rest of her life in the sum of R100 000,00 per month. This maintenance is in addition to the minor child's educational and medical expenses. The respondent also pilots a claim for her medical expenses. This is also in addition to the transfer of the immovable property and the implementation of the terms of the antenuptial contract entered into between the parties.

Postponement

[7] This trial was set down for the week commencing on 28 November 2022 to 1 December 2022. This was in the final week of the court term and at the court's indulgence due to the respondent's various complaints that the matter was delayed and giving her assurances that all her trial preparations had been completed. Before the trial was finally scheduled for hearing, the parties attended two (2) judicially managed pre-trial meetings before me, the last being on 16 November 2022. The parties assured me they were both ready for the trial to commence on 28 November 2022.

[8] The respondent contended that she sought a late postponement of the trial because the courts have failed to protect her despite the passage of over four (4) years since the commencement of the action. Further, she alleges that she needed to postpone the trial because she wanted to seek legal advice in light of all the information that had surfaced in the last week before the trial date.

[9] By elaboration, she advanced that she issued certain further subpoenas only on 25 October 2022. She avers that specific new evidence came to her knowledge on 17 November 2022. This was coincidentally the day after the pre-trial conference before me, at which she indicated that she was ready for trial. Why the respondent did not advise me of this development on 17 November 2022 is left unexplained on the papers. The respondent also refers to further documentation she was aware of before 16 November 2022. These reasons and references are not understood as this all occurred prior to the last pre-trial conference on 16 November 2022.

- [10] The main complaint by the respondent is that the applicant has fallen in arrears with his bond payments in connection with the former matrimonial home in which the respondent resides with their minor child. This is an issue which requires clarification. The former matrimonial home is not owned by the applicant, and it is not owned by the respondent. This home is owned by a discrete private company of which the applicant is the sole shareholder and director. This property-owning entity is not a party to any of these proceedings.
- [11] The respondent links this complaint to the fact that, before the last pre-trial hearing, she discovered that the applicant had allegedly spent some money on shopping and travelling instead of paying the bond instalments in connection with the prior matrimonial property. It is challenging to understand how these averments (assuming they are true) amounted to grounds for the postponement of the trial action bearing in mind the chronology of these alleged discoveries.
- [12] I say this because the discrete private entity that owns the former matrimonial home is not before the court as a party to any of these proceedings. More importantly, a court ordered the respondent to vacate the former matrimonial property more than two years ago. The respondent has refused to comply with the terms of this court order. Accordingly, the only submission made by the respondent that held any merit in connection with her application for a postponement was the allegation that she wanted to seek legal advice to determine her rights and what steps to take.
- [13] In opposition to the application for postponement, the applicant confirmed that despite severe financial challenges, he has continued to pay all his minor child's reasonable expenses. These were financed through borrowings to supplement his income set out in his application for a variation of the extant interim financial relief order, which he filed about four (4) months ago. The applicant emphasised that the respondent is a beneficiary of a family trust from which, according to her financial documentation, she had received substantial sums to supplement her income.
- [14] The applicant confirmed under oath that he accepted his responsibility to provide for all the reasonable maintenance needs of his minor child and confirmed his willingness to provide for the reasonable needs of the respondent, both pre-and post-divorce, subject to what she is entitled to in law. The applicant denied that he did not make a full disclosure of his financial position.
- [15] According to the applicant, he recently lost his employment with a significant state-owned entity and mainly relies on borrowings from family and friends to move his divorce matter forward to reach finality. To this end, the parties jointly appointed a well-respected financial expert to find common ground in connection with some of the financial aspects of the pending divorce. The costs of this expert are being paid by the applicant.

- [16] In addition, another respected expert in the field of industrial psychology has been appointed to assess the employability of the respondent going forward. This expert has a good record and is regularly appointed as an expert in this field. There is no merit in suggesting that this expert would not give independent testimony in these pending court proceedings. Finally, a well-respected expert in the field of property valuations has been appointed by the applicant. Also, there is no basis to suggest that he will not provide the court with an independent opinion in these proceedings. The respondent has thus far appointed two (2) experts she intends to call to testify at the trial. One of these is an actuary, on whom she relies for the calculation of her maintenance needs, and the other on whom she relies for the valuation of certain properties registered in her name.
- [17] The applicant's case is that he has complied with the provisions of the ante-nuptial contract. He has tendered a transfer of the immovable property in Gauteng to the respondent. This property is bond free, and following the tender, the applicant signed an offer to purchase another property for himself in Gauteng. At this time, the applicant was gainfully employed by a large state-owned entity and earned a substantial salary with benefits.
- [18] Before finalising the applicant's purchase of this Gauteng property, he was suspended, and his employment contract was terminated on 30 November 2021. Having lost his employment, he could not proceed with the purchase of the property as he needed to make the required bond payments and repay the loans made to him by a third party to enable the purchase of the property.
- [19] The applicant is still involved in extensive litigation with his former employer despite receiving a favourable arbitration award about a year ago. The property sellers in Gauteng have elected to keep the sale alive as the property market has taken a turn for the worst, which means that the sellers would not be able to achieve this price for the property in the current market. The applicant has yet to encourage the cancellation of the sale agreement as he may face a damages claim. No doubt, the realtors have already taken their commission on the sale. According to the applicant, this pending transaction does not influence his financial situation, save that it may negatively impact his current position. He does not own the property and faces a possible damages claim from the property sellers. According to him, if the sale does materialise in the future, the liability attached to the purchase of the property will be equivalent to its asset value.
- [20] The applicant also indicated financial difficulties with the former matrimonial home. This is because the secured creditor and bondholder of the private company (that owns the former matrimonial home) has instituted foreclosure proceedings. The company recently filed a business rescue application to prevent the loss of the property by way of a forced sale in execution. Similarly, according to the applicant, when he agreed to repay the bondholder's arrears in respect of this indebtedness, he was gainfully employed. This has all now changed.

- [21] Solely because the respondent took the position that she was unrepresented and needed further legal advice in connection with her legal position, I was persuaded to grant her a request for the trial postponement. I postponed the matter and placed it on my pre-trial judicial case management roll for 31 January 2023. I did this to save valuable court time. All the costs of and incidental to the postponement were held over for later determination. Given the postponement of the trial, the applicant elected to proceed with his variation application of the extant interim financial relief order.

Variation

- [22] This divorce action was initially certified trial ready on 23 August 2021 and was scheduled for a hearing a month before on 28 November 2022. The respondent has, for at least the last two (2) years, been representing herself and about
- (4) months ago, the respondent delivered a notice of her intention to amend her claims and, a month after that, delivered a notice of her intention to amend her claims, once again.
- [23] In terms of the initial financial relief order, the applicant was ordered to make the following payments to the respondent pendente lite: (a) payment of R50 000,00 on or before the first day of each month into the bank account as was nominated by the respondent from time to time; (b) payment of all the minor child's reasonable educational expenses including but not limited to school fees, the costs of extra-curricular school and sports activities, as well as the costs of a facilitator, books, stationery, equipment and attire relating to his education and the sporting and/or extra-mural activities engaged in by him which are swimming, Kumon, Mandarin and Piano, save that if any such costs which did not form part of the school fees exceeded R1000,00 per month, the applicant's prior written consent needed to be obtained (which consent could not be unreasonably withheld); (c) by payment of all the minor child's reasonable and necessary medical, dental, surgical, hospital, orthodontic and ophthalmological treatment required by him, including any sums payable to a speech therapist, physiotherapist, Bio Kineticist, occupational therapist, psychiatrist/ psychologist, chiropractor, the cost of Inspire Health Supplement programme including supplements, prescribed medication and the provision where necessary of spectacles and/or contact lenses which are not covered by the respondent's medical aid, save that if any such costs exceeded R1000,00 per month, the applicant's prior written consent needed to be obtained (which consent would not be unreasonably withheld); (d) respondent was obliged to continue to pay the medical aid contribution to retain the minor child as a dependent member of her medical aid fund; (e) the respondent would have the use of a Mini Cooper 'Countryman' motor vehicle and the applicant would remain responsible for the licensing fees and insurance costs in respect of this vehicle as well as the reasonable costs of services provided that the applicant's prior written consent thereto was obtained (which consent would not be unreasonably withheld).

[24] The respondent was ordered to vacate the former matrimonial home by the end of March 2019. From that date, the applicant was ordered to make the following payments to enable the respondent to rent alternative accommodation for her and their minor son, pendente lite: (a) by payment directly to the landlord of premises rented by the respondent, in the sum of R35000,00 per month (together with

any rental deposit required limited to two month's rental), which would be repayable to the applicant once the respondent vacated the property; (b) an amount of R1000,00 per month towards respondent's electricity expenses which would be added to the amount mentioned above; (c) by payment of the reasonable costs of respondent's removal costs and the costs of the reconnection fees of cable television, electricity and internet charges; (d) by payment of an initial amount of R50 000,00 towards respondent's costs, payable directly to respondent's former attorneys of record and; (e) the reasonable costs of the accountant's expert if he was a jointly appointed expert by the parties. Further, the respondent would be entitled to remove certain furniture items, within reason, to enable her to furnish her rented accommodation. This was in order to facilitate the respondent's vacation of the former matrimonial home in terms of the court order granted at that time.

Consideration

[25] The former matrimonial home is registered in the name of a discrete company. The applicant is the sole director and shareholder of the company. According to the applicant, the amount of maintenance sought from him was predicated on the fact that the respondent would vacate the former matrimonial home in terms of the extant interim order. In the applicant's case, he wanted to rent the former matrimonial home to supplement his disposable monthly income to comply with the interim maintenance order granted in the respondent's favour.

[26] It is common cause that the respondent refuses to vacate the matrimonial home despite the adequate arrangements for reasonable alternative accommodation provided for in the extant order. The applicant contends that the amounts he must pay in terms of the extant order, including the costs of the former matrimonial home, amount to between R165 000,00 and R170 000,00 per month. This excludes the applicant's monthly expenses and the expenses related to the immovable property in Johannesburg, which is registered in his name and is to be transferred to the respondent in terms of the antenuptial contract.

[27] The basis for his variation application is the following: (a) that the respondent refuses to vacate the former matrimonial home despite the adequate arrangements for reasonable alternative accommodation provided to her; (b) that he is unable to rent the former matrimonial home to generate income; (c) that the applicant's net income was reduced from about R243 000,00 per month to about R95 000,00 per month and; (d) that the applicant avers that all his capital reserves have now been depleted. It is common cause that several unsuccessful attempts have been made to settle the divorce action, which included mediation and settlement negotiations with the respondent. The applicant believes that the

respondent's demands and expectations are not achievable and beyond the scope of his financial reach.

[28] As indicated above, the respondent refuses to vacate the matrimonial home despite the extant court order. The applicant avers that as a direct consequence of the respondent's refusal to vacate the matrimonial home, the exorbitant amount of maintenance and other expenses he was required to pay resulted in him experiencing cash flow issues and he was unable to service the mortgage bond over the former matrimonial home.

[29] It was the view of the applicant that it made no sense to sell the previous matrimonial home. The applicant, instead from a commercial point of view, opted to dispose of an unencumbered holiday home.[2] This property was owned by a trust of which the respondent was a trustee and beneficiary. The respondent agreed to the sale of the holiday home. The proceeds of this sale were used to settle the bond over the property in Gauteng. The applicant says this was done because this was the property claimed by the respondent in the action proceedings and fell to be transferred to the respondent,

unencumbered upon granting a divorce decree.

[30] The applicant is now in a position where he cannot service the mortgage bond payments over the former matrimonial home, and the bondholder has commenced foreclosure proceedings. The applicant's case is that, given his current state of unemployment, he cannot meet his monthly financial commitments from his disposable income.

[31] The applicant initiated contempt of court proceedings against the respondent for her failure to vacate the former matrimonial home and obtained an order in his favour in this connection. After that, leave to appeal was refused. The respondent applied to the Supreme Court of Appeal for leave to appeal against the findings of contempt of court against her relating to her refusal to vacate the former matrimonial home. This was granted, and an appeal was due to be heard by a full court of this division.

[32] At the hearing before the full court of this division, the applicant was advised to abandon the contempt of court judgment against the respondent. He was advised to do so as the interests of his minor child were only partially canvassed when the order was initially granted. He heeded this advice, and the court appointed a discrete legal representative to safeguard the minor child's best interests. A legal-aid attorney currently represents the interests of the minor child.

[33] The applicant advances that his financial position has also deteriorated significantly due to the numerous unnecessary

interlocutory applications piloted against him by the respondent. The respondent has represented herself for most of this unfortunate

litigation. Although some cost awards were granted against the respondent, in the interim, the applicant has been obliged to foot

the entire bill for all his legal expenses, which he avers are not insubstantial.

- [34] About a month after the divorce was instituted, the respondent proceeded with another application for interim relief to obtain a contribution to her legal costs in the sum of half a million rands. Only a small portion thereof was granted. Dissatisfied with the result, the respondent applied for leave to appeal against this interim court order. However, after some legal sparring, the respondent eventually withdrew her application for leave to appeal and elected not to continue with any appeal against the interim order made against her.
- [35] Despite this, the respondent refused to comply with the extant order by failing to vacate the former matrimonial home. After that, the respondent instituted an application for contempt of court against the applicant and an application for variation. The respondent subsequently withdrew her application for contempt of court, and her application for a variation of the extant interim order was dismissed.
- [36] During the first quarter of last year, the applicant landed a lucrative employment contract with a state-owned enterprise. However, he was dismissed during the final quarter of last year and is still embroiled in litigation with his erstwhile employer. According to the applicant, he has not received any emoluments since he was dismissed and was compelled to utilise all his available capital and reserves. As a result, the applicant has been forced to make several loans from his family and acquaintances. The applicant's bank statements confirm that he has received loans of more than half a million rands. In confirmation of these loans, the applicant also attached a letter from his auditors.
- [37] The applicant currently relies on income through his consultancy services as he cannot obtain permanent employment considering that he is seeking reinstatement from his former position with his former employer. By elaboration, the applicant avers that his income from his consultancy work now amounts to an average of approximately R30 000,00 per month before taxation. In addition, the applicant receives a stipend in the form of board fees which amount to an average of R65 250,00 per month before taxation. Again, the applicant annexes proof by a letter from his auditors.
- [38] In summary, the applicant alleges that his expenses are more than twice his current earnings. Despite this, he has done everything within his power to fulfil his obligations towards the respondent and his minor child by using his capital and reserves. His income is supplemented through loans which he advances is not sustainable.
- [39] Further, to take the court into his confidence, the applicant sets out in some measure of detail his assets and liabilities. In the applicant's case, he advances that he does not have readily realisable assets to be utilised to meet the respondent's and his minor child's monthly expenses. As far as the respondent is concerned, the applicant advances that the respondent owns at least two (2) immovable unencumbered properties, and she also owns jewellery and clothing of considerable value.

- [40] The respondent also has substantial savings at her disposal. These savings also showed some increase in growth during the last year. The respondent also receives not insubstantial amounts from a family trust, the extent of which still needs to be made entirely clear by the respondent.
- [41] The applicant complains that for the past forty-three (43) months, the respondent has yet to secure employment to support herself. It is argued that the respondent has been able to manage her litigation full-time for the past two years. Thus, it is the applicant's case that the respondent can take on employment but refuses to do so. It is submitted that the respondent can support herself from her savings and other income from unknown sources until the ultimate adjudication of the divorce.
- [42] Rule 43(6) provides for an application for variation if there is a change in circumstances. This rule must be strictly interpreted. There must be a material change in circumstances. Accordingly, it is not permissible to seek a re-hearing or a review of an existing order under the guise of this rule or to appeal an extant order. The court may, in terms of this rule:
- ‘...on the same procedure, vary its decision in the event of a material change occurring in the circumstances of either party or a child, or the contribution towards costs proving inadequate...’[3]
- [43] There often are disputes of fact in these types of variation applications. It is significant to record that a lengthy period has elapsed since divorce proceedings were instituted. Given the disputes and the complexity of the matter, there is no reason why this matter cannot proceed to trial so that any factual disputes may be dealt with appropriately.
- [44] The postponement is because the respondent now requires legal assistance after having dealt with the matter herself for several years. In the respondent's opposing papers, she focuses on many general complaints about the applicant and also regrettably criticises some of my previous colleagues who have dealt with some of the parties' prior skirmishes.
- [45] The legal aid attorney who represents the minor child is also criticised. The applicant tenders maintenance for the minor child in the sum of R7500,00 per month, and the minor child's attorney takes no issue with this tender. The respondent's core complaint was initially that the applicant's variation application was a delaying tactic to prevent the divorce trial from taking place. This is now not helpful, as the respondent requested and was granted a postponement of the divorce trial.
- [46] The averments in the applicant's papers, when compared to the averments and financial position of the respondent, in my view, justify a finding of a material change in circumstances that merit a revised order. Since the first interim financial application was argued, the applicant has lost his employment. He explains that, given the impending litigation, most of his financial obligations are financed through loans from friends and family members. His current financial situation has resulted in a substantial decrease in his actual income. Central to the applicant's case is that his consultancy is also not showing

significant income compared to the salaried emoluments received from his previous employer.

- [47] The evidence presented by the applicant in his variation application is convincing. He makes a case for a variation based on a material change in circumstances. I say this because: (a) he is no longer in full-time employment; (b) he cannot, in his circumstances, seek full-time employment; (c) he has used up his capital and his reserves and; (d) he is dependent to a large extent on friends and family to supplement his income.
- [48] By contrast, the respondent: (a) has savings; (b) has disposable assets and; (c) derives income from a trust. Under these circumstances, the appropriate order is to grant a reduction in the interim financial relief and that the costs stand over for determination at the trial action.
- [49] This case is manifestly distinguishable from the facts in the oft-quoted case of *L v L*[4], which formulated the enquiry when dealing with allegations of changed circumstances. In this case, it is abundantly clear that the applicant is no longer in full-time employment, he cannot, in his circumstances, seek full-time employment, and he has used up his capital and his reserves.
- [50] I record that a court may allow any party to file further affidavits in an interim relief application. This is so because, in terms of rule 43(5), a court:
- ‘...may hear such evidence as it considers necessary and may dismiss the application or make such order as it deems fit to ensure a just and expeditious decision...’[5]
- [51] I mention this because I have considered, albeit to a limited extent, some of the material placed before me in the substantive opposed application for the postponement of the trial at the instance of the respondent. Some of the information in the postponement application was new information relevant to a just and expeditious decision. The respondent’s papers in this connection are replete with complaints and allegations about the applicant’s alleged conduct. This does not assist. The respondent also unnecessarily criticises the legal aid attorney representing the interests of the minor child. This is also not helpful. Regrettably, the respondent seems to focus on levelling complaints against the applicant and accuses him of fraud, non-disclosures, concealment of assets and making a false statement under oath. Again, these allegations are not helpful.

Order

- [52] Given the respondent’s refusal to vacate the former matrimonial home, I am obligated to formulate an order that caters for two different factual scenarios regarding the interim financial relief as the parties advance their divorce action.

[53] In one case, interim financial relief will be granted on the basis that the respondent and the minor child remain in the prior matrimonial home. In the other case, interim financial relief will be granted if and when the respondent and the minor vacate the former matrimonial home.

[54] In all the circumstances, the following orders are granted, namely:

1. If the respondent and the minor child remain in the prior matrimonial home, the applicant shall maintain the respondent and the minor son, pendente lite, as follows:

1.1 By paying R25 000,00 in cash maintenance for the respondent and the minor son. The first payment is to be made on or before the 1st of February 2023 and, after that, on or before the first day of each month into the bank account as nominated by the respondent from time to time.

1.2 By paying all the minor child's reasonable educational expenses, including but not limited to school fees, the costs of extracurricular school and sports activities, as well as the costs of a facilitator, books, stationery, equipment and attire relating to his education and the sporting and/or extra-mural activities engaged in by him which are swimming, Kumon, Mandarin and Piano, save that if any such costs which do not form part of the school fees exceed R1000,00 per month, the applicant's prior written consent shall be obtained (which consent shall not be unreasonably withheld).

1.3 By paying all the minor child's reasonable and necessary medical, dental, surgical, hospital, orthodontic and ophthalmological treatment required by him, including any sums payable to a speech therapist, physiotherapist, Bio Kineticist, occupational therapist, psychiatrist/psychologist, chiropractor, the cost of Inspire Health supplement programme including supplements, prescribed medication and the provision where necessary of spectacles and/or contact lenses which are not covered by respondent's medical aid, save that if any such costs exceed R1 000.00 per month, the applicant's prior written consent shall be obtained (which consent shall not be unreasonably withheld). The respondent is obliged to continue to pay the medical aid contribution to retain the minor child as a dependent member of her medical aid fund.

1.4 The respondent shall have the use of the Mini Cooper Countryman vehicle, and the applicant shall be responsible for the licensing fees and insurance costs in respect of the vehicle as well as the reasonable costs of services provided that the applicant's prior written consent to it has been obtained (which consent shall not be unreasonably withheld).

Alternatively

2. If the respondent and the minor child vacate the former matrimonial home, the applicant shall maintain the respondent and the minor child, pendente lite, as follows:

2.1 By paying directly to the landlord of the premises rented by the respondent the sum of R35 000,00 per month (together with any rental deposit required limited to two (2) months' rental), which deposit shall be repayable to the applicant once the respondent vacates the rented accommodation.

2.2 By paying R1000,00 per month towards the respondent's electricity expenses shall be added to the rental amount mentioned above.

2.3 By paying the reasonable costs of the respondent's removal costs and the reconnection fees of DSTV, electricity and internet charges.

2.4 By paying R35 000,00 in cash maintenance for the respondent and the minor son. The first payment is to be made on or before the first day of the month following the month in which the respondent vacates the former matrimonial home and, after that, on or before the first day of each month into the bank account as nominated by the respondent from time to time.

2.5 By paying all the minor child's reasonable educational expenses, including but not limited to school fees, the costs of extracurricular school and sports activities, as well as the costs of a facilitator, books, stationery, equipment and attire relating to his education and the sporting and/or extra-mural activities engaged in by him which are swimming, Kumon, Mandarin and Piano, save that if any such costs which do not form part of the school fees exceed R1000,00 per month, the applicant's prior written consent shall be obtained (which consent shall not be unreasonably withheld).

2.6 By paying all the minor child's reasonable and necessary medical, dental, surgical, hospital, orthodontic and ophthalmological treatment required by him, including any sums payable to a speech therapist, physiotherapist, Bio Kineticist, occupational therapist, psychiatrist/psychologist, chiropractor, the cost of Inspire Health supplement programme including supplements, prescribed medication and the provision where necessary of spectacles and/or contact lenses which are not covered by respondent's medical aid, save that if any such costs exceed R1000,00 per month, the applicant's prior written consent shall be obtained (which consent shall not be unreasonably withheld). The respondent is obliged to continue to pay the medical aid contribution to retain their minor child as a dependent member of her medical aid fund.

2.7 The respondent shall have the use of the Mini Cooper Countryman vehicle, and the applicant shall be responsible for the licensing fees and insurance costs in respect of the vehicle as well as the reasonable costs of services provided that the applicant's prior written consent to it has been obtained (which consent shall not be unreasonably withheld).

2.8 The respondent shall be allowed to take with her to the rented accommodation a reasonable amount of furniture and effects from the former matrimonial home to enable her to furnish her rented accommodation by agreement between the parties. Failing any agreement in this connection, this 'furniture and effects' dispute will be referred to a mediator by the parties. If the parties cannot agree on the identity of the mediator, the mediator will be appointed by FAMSA.

3. The costs of and incidental to this application shall stand over for determination at the trial.

E.D. WILLE

Judge of the High Court

Cape Town

[1] They were married on the 4th of July 2012 and at Soweto in Gauteng.

[2] This property was situated in Gansbaai.

[3] Rule 43(6) of the Uniform Rules of Court.

[4] L v L (2017/31153) [2022] ZAGP JHC 396 (8 JUNE 2002).

[5] Rule 43(5) of the Uniform Rules of Court.

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