



**IN THE HIGH COURT OF SOUTH AFRICA
(EAST LONDON CIRCUIT LOCAL DIVISION)**

CASE NO: EL1154/2022

In the matter between:

Q[....] P[....] Z[....] (born T[....])

Applicant

and

M[....] D[....] Z[....]

Respondent

JUDGMENT

LAING J

[1] This is an application brought in terms of rule 43.

[2] The parties are married in community of property and are the parents of two minor children (a boy and a girl), aged 16 and 13 respectively. The applicant has instituted divorce proceedings.

[3] Both parties are employed. The applicant is employed as an Acting Manager at the Amathole District Municipality, the respondent is employed as a Senior Manager

at the East London Industrial Development Zone. It is common cause that the parties are or were joint owners of three immovable properties, one having been sold recently.

[4] Each of the parties filed comprehensive affidavits. By the time that the matter was heard, counsel had succeeded in narrowing the issues considerably.

[5] In relation to the remaining issues, the respondent denies that he uses alcohol excessively. There is no indication, however, that he contests the details of purchases made from various liquor retailers and taverns, as apparent from the bank statement that was attached to the applicant's affidavit. It is necessary for the court, in the circumstances, to attach some qualification to the respondent's right of access, as appears in the order that follows.

[6] Moreover, the court understands counsel for the applicant to have accepted, during argument, reduced amounts payable as maintenance *pendente lite* with regard to each of the children and the applicant herself. The adjusted amounts are reflected in the order.

[7] The respondent has already tendered payment of the costs of extra lessons to the institution concerned and avers that it is not necessary to pay same directly to the applicant. The applicant has indicated that the latter approach would be preferable to ensure that the costs are settled timeously, without issue. The court agrees.

[8] The applicant is satisfied that she will retain the children as dependants in terms of her medical aid membership, the costs of which being subsidized by her employer. Nevertheless, she has claimed payment from the respondent of all medical expenses not covered, including hers. It would be fair to limit the respondent's liability to expenses incurred only for the children.

[9] The respondent undertakes to continue making payment of the instalments and insurance owing with regard to the Toyota Fortuner (registered as [...]), currently used by the applicant, but only until the date of the divorce. It would be fair for him to cover the reasonable and necessary costs of licensing, repairs, servicing and the replacement of tyres, especially when he is the registered owner of the motor vehicle.

[10] The applicant has claimed a contribution towards legal costs. The respondent has flatly refused same, arguing that the applicant's existing employment and her receipt of the proceeds of the sale of the immovable property situated at 5 Southend Avenue would be sufficient to cover such expenses. It would be fair simply to divide the difference equally.

[11] Despite the applicant's having initially claimed the costs of the application itself, she argued that costs be made in the cause. The court sees no reason why this should be otherwise.

[12] Consequently, the court makes the following order:

- (a) The applicant is appointed as primary carer of the minor children, subject to the respondent's reasonable exercise of his right to contact with them; provided, however, that he is not under the influence of any intoxicating substance at the time;
- (b) The respondent is ordered to effect payment of maintenance *pendente lite* to the applicant in the amount of R4,250 per month, per child;
- (c) The respondent is ordered to effect payment of maintenance *pendente lite* to the applicant in the amount of R5,000 per month, to be deposited directly into the applicant's bank account on or before the last day of each and every month;
- (d) The respondent is ordered to effect payment of the children's school fees on a monthly basis, payable directly to the school;
- (e) The respondent is ordered to effect payment of the outstanding school fees, payable for the children with regard to the 2022 school year, from his share of the proceeds of the sale of the immovable property situated at 5 Southend Avenue, Gonubie, East London;
- (f) The respondent is ordered to effect payment of the children's school-related expenses, including but not limited to their school uniforms,

stationery, textbooks, registration fees, and all costs associated with their participation in extramural activities, including but not limited to fees, tours, clothing, and equipment;

- (g) The respondent is ordered to effect payment of the children's extra lessons in the amount of R2,095 per month, to be deposited directly into the applicant's bank account on or before the last day of each and every month;
- (h) The respondent is ordered to effect payment of such of the children's medical expenses as are not covered by the applicant's medical aid;
- (i) The respondent is ordered to continue to effect payment of the following household expenses on a monthly basis:
 - (a) the bond repayments in respect of the immovable properties situated at [...] Hudson Avenue, Vincent, East London, and [...] Main Road, Gonubie, East London, respectively;
 - (b) homeowner's insurance;
 - (c) household contents insurance;
 - (d) municipal rates and services in respect of the above immovable properties;
 - (e) monthly instalments payable in respect of the applicant's Toyota Fortuner motor vehicle (registered as [...]);
 - (f) insurance for the above motor vehicle;
 - (g) all reasonable and necessary costs associated with licensing, repairs, servicing, and the replacement of tyres, for the above motor vehicle;

- (j) The respondent is ordered to effect payment of a contribution towards the applicant's legal costs in the amount of R10,000; and
- (k) The costs of the application are ordered to be costs in the cause.

JGA LAING

JUDGE OF THE HIGH COURT

APPEARANCE

Counsel for the applicant: Adv Wood, instructed by Difford Underwood Inc., East London.

Counsel for the respondent: Adv Molony, instructed by Coutts Fraser & Associates, East London.

Date of hearing: 23 August 2022

Date of delivery of judgment: 30 August 2022