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REPUBLIC OF SOUTH AFRICA



**IN THE GAUTENG HIGH COURT OF SOUTH AFRICA
JOHANNESBURG LOCAL DIVISION**

CASE NO: 2013/27961

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

E, C L

Applicant

and

E, V G

Respondent

JUDGMENT

MUDAU AJ:

[1] This is an opposed application in terms of Rule 43 of the Uniform Rules of Court. Pending a divorce action, the applicant seeks an order granting to her:

- 1.1 maintenance for herself in the amount of R20 000,00;
- 1.2 that the respondent continue to pay maintenance expenses relating to two children studying at a university; and
- 1.3 a contribution of R10 000, 00 towards her legal costs.

[2] The parties were married in community of property on 25 January 1991. There are two daughters born of this marriage. They are O, born on January 1991, currently 22 years old and M, born on 11 August 1993, currently 19 years old. Both are students at the University of Pretoria.

[3] The parties and their daughters lived in the United Kingdom from 1999 to 2006 when the applicant and their daughters returned to South Africa in March 2006. The respondent joined his family in February 2010 on a work visa. The intention, however, was to make South Africa their permanent home. It is common cause that the respondent bought a house for his family and paid R1 100 000, 00 in cash.

[4] Both parties are employed. The applicant is employed by Christian Art (Cum Books) as a graphic designer. She earns a nett monthly income of

R16 697.52. The applicant alleges that the respondent is employed by a private company, Solifio Tanker Equipment (Pty) Ltd in the position of General Manager. The respondent, however, denies this and states in his opposing papers that he is a businessman trading as a Total Quantifying Consultant earning approximately R15 350.00 before tax deductions per month.

[5] The points of dispute between the parties that falls to be decided by this court remain:

- 5.1 maintenance *pendente lite*; and
- 5.2 contribution towards the applicant's costs.

It has been contended and agreed to by the parties that the respondent is willing and continues to bear the expenses of their daughters' university studies.

[6] In support of her claim for maintenance pending divorce, the applicant proceeded to itemise her monthly financial requirements totalling R24 601.89.

[7] The respondent is essentially opposing the application on two grounds. Firstly, he alleges that the applicant's monthly financial requirements are excessive and should reasonably be R19 404.08 which can be covered by her earnings. Secondly, he claims that he cannot afford to pay the amount claimed as he too has expenses totalling R17 858.00 per month.

[8] From the papers, the respondent can hardly be described as a man of straw. Significantly, the respondent has not placed evidence reflecting his true financial means. It is not in dispute that he has a standard lifetime allowance pension plan which as at 17/10/2011 was worth £1 800 000.00 from which he withdrew £2 839.53. It is common cause that he had bought the family house for R1 100 000.00 in cash and also gave his wife R600 000.00 to furnish it .As recent as February 2013, he issued a cheque of R100 000.00 which he claims is in settlement of a debt. In November of 2012, a similar amount had been drawn in favour of the same entity. In an email addressed to his financial broker motivating cancellation of a new policy with Sanlam as well as “future payments into the existing Sanlam funds” the respondent writes that he will no longer be investing any money in South Africa as SARS is going through his financial affairs.

[9] The respondent, it seems to me, has not fully, frankly and clearly disclosed his financial affairs. In dealing with the aspect of disclosing financial information in divorce matters, Lopes J in the matter of *M G B v D E B*¹, relied in an English Court decision of *J v J*² wherein Sachs J said:

“In cases of this kind; where the duty of disclosure comes to lie on a husband; where a husband has – and his wife has not – detailed knowledge of his complex affairs; where a husband is fully capable of explaining and has had the opportunity to explain, those affairs, and where he seeks to minimise the wife's

¹ *M G B v D E B* [2013] 4 All SA 99 (KZD).

² *J v J* [1955] P 215 at 227.

claim, that the husband can hardly complain if, when he leaves gaps in the court's knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap in such a state that two alternative inferences may be drawn, the court will normally draw the less favourable inference – especially where it seems likely that his able legal advisers would have hastened to put forward affirmatively any facts, had they existed, establishing the more favourable alternative...Any shortcomings of the husband from the requisite standard can and normally should be visited at least by the court drawing inferences against the husband on matters the subject of the shortcomings – in so far as such inferences can properly be drawn.”

[10] In this case the respondent's total monthly expenses far exceed his monthly salary which can render the estate technically insolvent if his version is accepted as correct. I have no difficulty in finding that the respondent is not candid with this court with regard to his financial affairs. It can easily be inferred from the above facts that the respondent is financially stable.

[11] Depending on the living standard of the parties³, the applicant may be entitled to maintenance provided she shows that she has insufficient means in addition she must show that her husband is able to make the required contribution.⁴In this matter it is admitted that the applicant and the children live a comfortable lifestyle.

[12] In *Dodo v Dodo*⁵, it was stated that:

³ See *Grauman v Grauman* 1984 (3) SA 447 (W) at page 379E.

⁴ *Greyling v Greyling* 1959 (3) SA 967 (W).

⁵ 1990 (2) SA 77 (W) at page 98 D – E.

“the fact that the respondent may be wealthy does not entitle the wife to unlimited spending, there being a difference between what she wants and what she needs.”

- [13] The following expenses by the applicant are in my view, non-essentials:
- i) R1100.00 as payment for the domestic worker's salary as the applicant has left the common house.
 - ii) the store card expenses can be reduced by an amount of R1000.00.
 - iii) stationary and printing for their daughters R400.00 (It was conceded that the respondent is responsible for their educational expenses).
 - iv) home maintenance equipments etc. for R300.00.
 - v) the respondent's insurance contribution of R450.00.
 - v) petrol expenses for their daughters can be reduced by R500-00.

It is a total of R3750.00.

- [14] However, I am satisfied that the applicant has made out a case which entitles her to maintenance *pendente lite*. An appropriate order in accordance with this finding will be made below.

- [15] It remains to deal with the application for contribution towards costs. It is trite law that the husband's duty of support includes supporting his wife with costs for her litigation against him. Before trial, the applicant is ordinarily entitled to be awarded a contribution only up to and including the

first day of trial.⁶ The rationale being that the case may be settled. It was argued on behalf of the applicant that R10 000.00 contributions towards costs is justified for purposes for investigating the respondent's financial affairs. In my view however, R10 000.00 as contribution is excessive.

[16] In the result I make the following order:

1. That the respondent pays maintenance *pendete lite* an amount of R15 000.00 per month in favour of the applicant.
2. That the respondent pays R3000.00 towards the applicant's costs.
3. The costs of this application are costs in the divorce action.

MUDAU AJ
Acting Judge of the Gauteng High Court of South Africa
Johannesburg Local Division

Date of Hearing: 14 October 2013

Date of Judgment: 24 October 2013

For Applicant:

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⁶ See *Dodo supra* at page 98 para F.

For Respondent:
Judgment noted by:

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