



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

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

SIGNATURE

DATE: **20 SEPTEMBER 2021**

Case No: 31812/2021

In the matter between:

LP

Applicant

and

MP

Respondent

JUDGMENT

WILSON AJ:

- 1 The applicant (“Mrs. P”) approaches the court in terms of Rule 43 seeking interim maintenance and a contribution to her legal costs, pending the finalisation of her action for divorce from the respondent (“Mr. P”).

Maintenance *pendente lite*

- 2 Mr. P is a businessman with interests in at least six companies and a family trust. In his answering affidavit, he states that all but one of these entities is effectively dormant, and that his sole income is R66 500 per month, consisting of payments from one of the companies, rental income, and a return on an endowment investment.
- 3 However, during argument, Ms. Georgiou, who appeared for Mrs. P, provided an analysis of Mr. P's bank statements, produced as part of the financial disclosure process now hardwired into Rule 43 proceedings (see *E v E* 2019 (5) SA 566 (GJ), paragraph 64). On that analysis, Mr. P was shown to have made payments in reduction of credit card debt in the amount of an average of just over R91 000 per month over a four-month period. A similar analysis of his current account statements yielded the conclusion that Mr. P's accounts have been credited with an average of around R100 000 per month.
- 4 Ms. Manning, who appeared for Mr. P, was constrained to accept that Mr. P's true income is at least R82 000 per month. Ms. Manning took issue with Ms. Georgiou's analysis of Mr. P's statements, however, and there was some debate between counsel about how the various statements had to be interpreted.
- 5 On any analysis, Mr. P's declared income is somewhere between R82 000 and R100 000 per month. His true means, though, are inextricably linked to the value of his various businesses. Given the discrepancies I have pointed out between the income Mr. P says he derives from the companies, and the

income and expenditure disclosed in his bank statements, I cannot accept Mr. P's assertion that he derives an income from only one of those businesses.

6 There is, however, no dispute about Mrs. P's income. That income is presently a little under R4 000 per month from a retirement annuity and interest earned from capital. Mrs. P also has fairly substantial interests in two, perhaps three, of Mr. P's businesses (Mr. P says she resigned from one of them in 2018). Mrs. P currently derives no benefit from any of these business interests, because Mr. P manages them "to [her] exclusion" (paragraph 24 of Mrs. P's sworn statement). This allegation is not denied in Mr. P's answering statement.

7 As is trite, Mrs. P's entitlement to maintenance must be assessed having regard Mr. P's means and to the standard of living enjoyed by the parties when they lived together. In the course of that assessment, Mrs. P's reasonable and moderate claims carry more weight than any extravagant or unmotivated demands. Mr. P's version is entitled to the requisite degree of credit if it evinces a willingness to implement rather than evade his lawful obligations (see *Taute v Taute* 1974 (2) SA 675 (E), 676D-H).

8 Mrs. P's total maintenance request is R37 000 per month, for rent, subsistence and various other fairly mundane expenses. She also asks that Mr. P pay for the renewal of the licence for a car in her possession and deliver the licence to her. None of this is unreasonable. It is, at any rate, far from "extravagant".

9 On the other hand, Mr. P's attitude on the papers is marked by selective and unreliable financial disclosures, and a dogmatic refusal to engage with what his maintenance obligations might be. During argument, Ms. Manning all but

conceded that Mr. P's failure to tender any maintenance at all was not consistent with a Rule 43 respondent's duty to identify and implement their lawful obligations. I afforded Mr. P an opportunity to make a reasonable tender in post-hearing submissions. Perhaps as a result of Ms. Manning's wise counsel, he tendered R15 000 per month and the payment of Mrs. P's medical aid contributions.

10 While I am encouraged by Mr. P's change of heart, it seems to me that there is in the circumstances no fair alternative to the award of Mrs. P's maintenance request as motivated in argument before me. The amount requested had itself been reduced from the amount sought in Mrs. P's Rule 43 notice, and it is an amount I am satisfied that Mr. P can reasonably afford.

The contribution to Mrs. P's legal costs

11 Mrs. P also seeks a contribution to costs in the sum of R100 000, payable in five monthly instalments of R20 000. The amount is both modest and genuinely needed if Mrs. P is to be able, in the main action, to carve out a claim to what seems to me to be a complex chain of business interests. I am satisfied that the contribution Mrs. P seeks is appropriate.

Order

12 For all these reasons, I make the following order.

12.1 The respondent is directed to:

12.1.1 pay maintenance *pendente lite* to the applicant at the rate of R37 000 per month commencing on 24 September 2021

and thereafter on or before the 7th day of each succeeding month;

12.1.2 pay for the renewal of the licence in respect of the Toyota Fortuner motor vehicle bearing registration letters and numbers XJD 309 GP in the applicant's possession when such payment becomes due and to deliver the renewed licence disc to the applicant; and

12.1.3 pay a contribution towards the applicant's costs of the pending divorce action in the sum of R100 000, payable in instalments of R20 000 per month, commencing on 7 October 2021, and then on or before the seventh day of each succeeding month.

12.2 The costs of this application will be costs in the divorce action.



S D J WILSON
Acting Judge of the High Court

This judgment was prepared and authored by Acting Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 20 September 2021.

HEARD ON: 5 August 2021

DECIDED ON: 20 September 2021

For the Applicant:

S Georgiou

Instructed by Houghton Harper Inc

For the Respondent:

B Manning

Instructed by Fullard Mayer Morrison Inc