

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 10192/2020

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: NO
09 JULY 2021

In the matter between:

D[....] N[....]

Applicant

And

N[....] N[....]

Respondent

JUDGMENT

Delivered: *By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered. The date for hand-down is deemed to be 09 July 2021*

SENYATSI J:

[1] On 20 April 2021, I issued an interim order dealing with the rights over the parties' minor children, an interim maintenance order and contribution for legal costs by the respondent to the applicant in three equal instalments. The respondent has

requested reasons for the order and the reasons are as set out below. The order was issued in terms of Rule 43 of the Uniform Rules of Court pending the final determination of the divorce proceedings between the parties.

[2] There are two minor children born of the marriage. The minor children have been in the primary care of the applicant since November 2019. The applicant resided with her sister and her family in Fourways, Johannesburg, and did not receive maintenance from the respondent. The minor children exercised contact with the respondent regularly since the separation. The respondent transported them to and from extra mural activities from time to time and every alternative weekend and as well as every alternative Wednesday which is Wednesday prior to the weekend when they would be with the applicant.

[3] When the national lockdown was announced, the minor children were in the care of the respondent for the latter's short holiday contact. This was before divorce summons was issued and consequently no formal court order was available regulating the minor children's contact rights between the parties.

[4] During the hearing of this application, the Counsel for the parties indicated that the parties were in agreement on most of the issues on the Rule 43 with the exception of what each considered pertinent to their case. The court asked their Counsel for short submissions, and to provide it with their proposed draft orders to which they obliged.

[5] Rule 43 on matrimonial matters provides as follows:

"(1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

- (a) Maintenance pendente lite;*
- (b) a contribution towards costs of a pending matrimonial action;*
- (c) interim custody of any child*
- (d) interim access to any child."*

[6] The duty of parents to support their children is derived from section 15 of the Maintenance Act 99 of 1998 ("the Act). Section 15 of the Act provides that without derogating from the law relating to the liability of persons to support children who are unable to support themselves, a maintenance order for the maintenance of a child is directed at the enforcement of the common law duty of the child's parents to support that child, as the duty in question exists at the time of the issue of the maintenance order and is expected to continue.

[7] The duty extends to such support as a child reasonably requires for his or her proper living and upbringing and includes the provision of food, clothing, accommodation, medical care and education.¹

[8] The purpose of Rule 43 application procedure is to bring an interim relief to any party pending the finalisation of the ongoing matrimonial dispute between the parties.

[9] The order made under this rule is not final in nature but provisional in nature.

[10] I have considered the evidence adduced by both parties on their papers. I have also considered the financial disclosure forms which supported by the bank statements attached to the financial disclosure from each of the parties. What struck me was indeed confirmation, when it comes to the respondent's financial disclosure form, his income earning capacity as well as to his spending. I considered critical information relating to his expenses on the Capitec bank account. I was more interested in his spend on gambling through World Sports and noted that for instance between 29 to 31 January 2020, he spent about R 6 990 on gambling. This is quite a significant amount for three days of gambling. I am therefore persuaded that he can be able to contribute to reasonable maintenance of the minor children as well as contribution toward costs pending the finalisation of the acrimonious divorce.

[11] With regards to the joint parenting of the minor children, I am of the view that pending the final outcome of the divorce, the joint parenting and access to the children should be executed in accordance with the order of this court.

¹ See Section 15(2) of the Act

[12] **ORDER**

The following order is made:

- (a) The Respondent shall pay the costs of the urgent application pertaining to Part A of this application, which was heard on 20 April 2020;
- (b) The Respondent shall pay maintenance in the amount of R 4500.00 (Thousand Five Hundred Rand) per child per month into a bank account elected by the Applicant, the first payment to be made on the first day of the first month following this order and thereafter on or before every first day of every month until finalisation of the divorce action between the Parties;
- (c) The Applicant shall retain the minor children as beneficiaries on her medical aid fund and shall honour the monthly payments to the fund. The Respondent shall pay all reasonable expenses in respect of medical, dental, surgical, hospital, orthodontic and ophthalmological treatment needed by the minor children and not covered by the Medical Aid Fund;
- (d) The Respondent shall pay the school fees of the minor children directly to the minor children's school;
- (e) The Applicant shall have use of the Run X vehicle registered in the Respondent's name, and the Respondent shall be responsible for the insurance premiums relevant to this vehicle;
- (f) The Respondent shall pay an amount of R 20 000.00 (Twenty Thousand Rand) to the Applicant in 3 (Three) equal instalments as an initial contribution towards her legal fees, the first payment to be made on or before the first day of the first month following this order, and the remaining two payments on or before the first days of the following two months;
- (g) The cost of this Part B of the application shall be cost in the divorce action

SENYATSI ML

***Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg***

REPRESENTATION

Date of hearing: 20 April 2021

Date of Judgment: 09 July 2021

Plaintiff's Counsel: Adv B Bergenthuin

Instructed by: Danelle Els Attorneys

Defendant's Counsel: Adv A Scott

Instructed by: Gascoigne Randon & Associates