

REPUBLIC OF SOUTH AFRICA
NORTH GAUTENG HIGH COURT
PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 54759/2011

DATE: 22 JULY 2014

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the matter between:

L[...] P[...]

APPLICANT

AND

M[...] W[...] P[...]

RESPONDENT

JUDGMENT

BAQWA J

[1] I have read the documents filed of the record and considered the allegations by both parties. I do not propose to repeat the evidence tendered by both the applicant and the respondent in their affidavits.

[2] It is quite apparent though that the relationship between them has become fairly turbulent to a point of breaking down. This has occurred over a period of time with allegations and counter allegations against each other. That scenario forms the backdrop to this application. It is however trite that such matters, namely the matrimonial disputes between the parties, are more for the consideration at the divorce trial and not in the present Rule 43 application.

[3] The right to maintenance arises out of the fact of marriage and terminates at the time of granting of a divorce order. An applicant has to establish a need for maintenance and the ability for the respondent to pay.

[4] In casu, respondent professes an inability to pay maintenance for the applicant and further submits that applicant has not made out a case for an order for maintenance.

[5] That the parties are no longer living together as husband and wife is common cause. It is also evident from the papers before me that applicant who is 55 years old is unemployed having been a house wife during the greater period of the marriage. That factor cannot simply be ignored by this court in weighing the pros and cons of this application. At the same time the court has to weigh respondent's submissions and evidence that he is not as well off as the applicant submits he is.

What bedevils the respondent's case however are mainly two factors. Firstly, he has supported his case with reference to statements relating to his finances as at the year 2012, some two years ago. This court therefore remains in the dark as to how far his business has progressed in the interim or otherwise.

Secondly, there are serious discrepancies between what he says under oath and the annexures he has annexed to his affidavit. He says for example that he makes no drawings and ploughs profits back into his business, yet the annexures tell another story. He appears to have made substantial cash withdrawals from the business for his own personal use.

[6] Whilst applicant has not been an employee of the respondent, she has submitted some evidence regarding respondent's vat payments for the period of 17 May 2011 to 10 May 2012. Whilst that evidence is not conclusive on its own, it is indicative of a business that is solid and performing reasonably well.

I say this despite respondent's reference to having been affected and lost income after a robbery in 2009 and inadequate returns due to the age of the machinery he uses for his business operations and the negative territory in which the South African economy finds itself. The fact of the matter is that respondent is a businessman. He also admits that he makes profit which he ploughs back into the business.

[7] Contribution towards costs in a matrimonial suit is a claim **sui generis** the basis of which is the duty of support which the spouses owe to each other. In assessing the quantum of the contribution to enable the party seeking the contribution to present her case before the court, the court must have regard to the circumstances of the case and the financial position of the parties and the pending litigation.

[8] Maintenance **pendite lite** is intended to be interim and temporary and cannot be determined with that degree of precision and closer exactitude which is afforded by detailed evidence.

See Taute v Taute 1974(2) SA 675 (ECD) at 676B

[9] As was stated by Ludorf J in the case of **Levin v Levin and Another 1962(3) SA 330 (W) at 331D**

"To decide the issue I am compelled to draw inferences and look to the probabilities as they emerge from the papers. Obviously my findings are in no way binding on the trial court and indeed after hearing the evidence it may emerge that some or all of the inferences I have drawn are wrong. On this basis I now turn to the issues as they emerge from the papers. "

[10] Taking these legal considerations and the evidence before me into account and the approach enunciated in the **Levin** decision I have come to the following conclusion:

I find that the applicant has made out a case for an order in terms of Rule 43.

[11] In the result, the following order is made;

11.1. Respondent is ordered to pay maintenance **pendente lite** in the sum of R30 000.00 (thirty thousand rands) per month.

11.2. The draft order which was handed to court and which I have amended is marked "X" and made an order of court.

S.A.M. BAQWA

(JUDGE OF THE HIGH COURT)

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG PROVINCIAL DIVISION, PRETORIA

CASE NUMBER: 67360/2012

In the matter between:

L[...] **P[...]**

Applicant

And

Draft Order

HAVING read the documents filed of record, heard counsel and considered the matter: **THE COURT ORDERS THAT:**

1. *Pendente life* the Respondent is ordered to pay maintenance to the Applicant in the amount of R 30.000 per month.
3. The payment referred to above will commence on or before the, 31 July 2014 and shall thereafter be made on or before the first day of each succeeding month.
4. The costs of this application are to be costs in the cause.

BY THE COURT

REGISTRAR