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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 72325/2015
25/5/2016

[1] Reportable: Yes/~~No~~
[2] Not of interest to other judges: Yes/~~No~~
[3] Revised.

25/5/16
Date

In the matter between

R N N (BORN: ...)

APPLICANT

(Identity No.: ...)

and

P M N

RESPONDENT

(Identity No.: ...)

JUDGMENT

1. The applicant/plaintiff and the respondent/defendant ("the parties") were married to each other in community of property on 22 May 1986. They have three adult children. The marriage still subsists. The applicant has instituted divorce

proceedings and she seeks interim maintenance *pendente lite* in the total amount of **R86 000.00** per month.

2. The applicant is 54 years of age. She has never worked since she married the respondent. This was at respondent's insistence. The applicant lives in the matrimonial home with the three adult children.
3. The respondent is a businessman. He left the matrimonial home in February 2015 to co-habit with a third party. However he continued to contribute financially to the needs of the household. The respondent also allowed the plaintiff use of his Absa debit and petrol card.
4. The financial support ceased when the respondent received the divorce summons.
5. The applicant has set out what she considers to be her reasonable monthly expenses which the respondent ought to pay for. I do not deal with each and every one of these expenses in this regard. I however do not accept the proposition that the respondent must continue supporting his adult children maintenance via the applicant. Put another way the applicant's monthly expenses in a rule 43 application ought not include the support of the applicant's adult and able bodied children. The respondent's children can, separately seek the respondent's financial assistance separate from the rule 43 process.

6. The respondent's financial position is not seriously in dispute. He is in the transport business. The respondent also is owner, through Magogo Passenger Services and MPS Tours CC of three fixed properties and other valuable assets, namely three other properties in Mpumalanga Province.
7. The businesses also own 35 luxury busses and a VW Amarok, Ford Ranger and Isuzu motor vehicles.
8. The fixed properties are worth approximately between R7 and R10 million. The busses are worth approximately R17 000.00. the business itself had an annual turnover of approximately R6.8 million in the financial year ending February 2014.
9. The respondent also has a cheque account with a credit balance of R108 070.24, another cheque account a Absa Bank with a credit balance of R4 069 157.38, a further cheque account at Absa Bank with a balance of R429 299.03, another cheque account with a credit balance of R2 149 829.50
10. The applicant also seeks a contribution to her own legal costs in the divorce proceedings.
11. The respondent raised several *points in limine* in his affidavit. The first being that the applicant is not bona fide in her *pendente lite* application for interim maintenance. He accuses the applicant of an abuse of the rule 43 process. The second being that the applicant's allegations are vague and open ended as are used as a tactic.

12. The third point relates to the children's support via a rule 43 process. The fourth relates to mediation by the parties prior to litigation. The fifth relates to contribution towards legal costs with the sixth being that the applicant has chosen to ignore the Rules of Court.
13. The only valid point in limine raised by the respondent relates to the applicant claiming support for her adult and able bodied children via the rule 43 process. The rest of the points in limine are without merit.
14. I find it extraordinarily astonishing that the respondent denies that he has an obligation to support the applicant of almost 30 years. The parties are married in community of property. The applicant has not been permitted to work by the respondent. She has only a grade 10 qualification. Is it fair of the respondent to say that he is not obliged to maintain the applicant? I think not. Yes the respondent is obliged to maintain his wife *pendente lite*.
15. The respondent's financial position ex facie is solid. The applicant, as his wife has some sense of how much the respondent makes per month / per annum. The fact that the respondent has the ability to maintain the applicant does not in itself mean that he should pay out of proportion maintenance.
16. In the circumstances I make the following Order:

17. The applicant be entitled to occupy the common home situate at [...] Colling Street, Standerton, Mpumalanga ("the matrimonial home").
18. The respondent is ordered and directed to make monthly payments or continue to make monthly payments of the following expenses pertaining to the matrimonial home:
- (a). All expenses in respect of water and electricity in the amount of **R2 000.00;**
 - (b). Municipal taxes in the amount of **R800.00**
 - (c). Salary of domestic worker in the amount of **R2 600.00**
 - (d). Salary of gardener in the amount of **R2 200.00**
 - (e). Groceries in the amount of **R6 000.00**
 - (f). Fuel for applicant's motor vehicle in the amount of **R2 400.00**
 - (g). Cellphone in the amount of **R800.00**
 - (h). Clothes in the amount of **R2 000.00**
 - (i). Gym fees in the amount of **R700.00**
 - (j). Cosmetics in the amount of **R2 000.00**
 - (k). Motor vehicle maintenance in the amount of **R2 500.00**
 - (l). Motor vehicle insurance in the amount of **R1 200.00**
 - (m). Entertainment in the amount of **R2 000.00**
 - (n). Maintenance of residence in the amount of **R3 000.00**
 - (o). Unforeseen expenses in the amount of **R2 000.00**
 - (p). Payment of all of the applicant's medical expenses within 5 days upon presentation of invoices by the applicant.

(q). Payment of all of the applicant's medical expenses on or upon hospitalization in a private medical facility and other expenses arising therefrom.

(r) . All expenses in respect of the mortgage bond payment (if any) on the matrimonial home;

19. The respondent is ordered and directed to make a cash payment to the Applicant in the sum of **R10 000.00** per month in respect of the applicant's maintenance by no later than the first day of each month commencing on or before 1 June 2016.

20. The Respondent is ordered and directed to effect payment of the sum of **R25 000.00** to the Applicant as a contribution to her legal costs;

21. The costs of this application be the costs in the cause and the limitations of rule 43(7) & (8) be lifted.

TS MADIMA: AJ

ACTING JUDGE OF THE HIGH COURT

On behalf of the Applicant:

Instructed by:

Adv K T JORDT

Theuns Hurter Attorneys

Hatfield

Pretoria

On behalf of the Respondent:

Adv A E Willcock

Instructed by:

Jurgens Bekker Attorneys

Bedfordview

Dates of Hearing:

9 May 2016

Date of Judgment:

24 May 2016