

REPUBLIC OF SOUTH AFRICA

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

CASE NO: 11443/20016

In the matter between

T S (BORN: J) APPLICANT

(Identity No.: 74....)

And

**DR S G S (Identity No.: 71.)
RESPONDENT**

JUDGMENT

MADIMA. AJ

1. The Applicant is a house wife. The Respondent is a Specialist Physician in Benoni. They

married each other on 25 November 1995 out of community of property with the

exclusion of the accrual system. The marriage still subsists.

They are parents to two minor children, a girl, A and a boy, C, born on 27 July 2010 and 2 October 2015 respectively.

The Respondent instituted divorce proceedings against the plaintiff on 20 November 2015 and seeks inter alia the following relief:

(a) . A decree of divorce;

(b) . That both retain full parental responsibilities and rights in terms of Section 18(2)(a),

Section 19 and Section 20 of the Children's Act 38 of 2005;

(c) . That the primary residence of the minor children be vested in the applicant subject to reasonable rights of contact in terms of which he seeks defined contact orders pertaining to the minor children dependent on their ages;

(d) . An order that the Respondent pay maintenance for the minor children in the sum of

R3, 000.00 per month on/or before the first day of each and every month;

- (e) . That the Respondent maintain the minor children on his Medical Aid and that he bear the reasonable costs of expenditure not covered by the said Medical Aid;
- (f) . The Respondent to effect payment of the minor children's educational costs, including school fees, the cost of two extra curricula and sporting activities, school outings, school camps, school books, school uniforms, equipment and attire relating to the minor children's education, sporting and/or extramural activities engaged in by the minor children;
- (g) . That the Respondent pay rehabilitative maintenance to me in the sum of R10, 000.00 per month commencing on 1 December 2015 for a period of twelve months;
- (h) . That the Respondent retain me on his Medical Aid for a period of twelve months calculated from 1 December 2015;
- (i) . That the Applicant pays the costs of the divorce action.

The Applicant and Respondent, despite the breakdown of the marriage still reside together with the minor children in the matrimonial home.

The Applicant in this Rule 43 application seeks maintenance *pendente lite*, and a contribution to legal costs.

The Respondent is a very successful specialist physician. The Applicant should know as she used to work for the respondent as his bookkeeper and performed other administrative duties.

The Applicant holds a B.Com Honors degree in Industrial Psychology and a Post- Graduate Certificate in Education. She used to teach at [...] in tandem with her bookkeeping duties at the respondent's practice. She quit her teaching job after the birth of A and stayed home to look after A fulltime. The Applicant however continued to perform the bookkeeping function from home. The Respondent paid the plaintiff a salary of R14 500.00 per month for her

services in his practice.

7. The Applicant used part of her salary to buy household items such as groceries and other requirements of the minor children. She was able to save approximately R2 000.00 per month from her salary.
8. The Applicant also has an investment of R93 808.61 with First National Bank and another totaling R269 984.92 with ABSA Bank. The tension between the applicant and Respondent forced the applicant to resign from her bookkeeping job with the Respondent in May 2015 and she has been a house wife with a consent and acquiescence of the respondent. She has not had any source of income since then and has used her savings and investment for the running of the household.
9. The Applicant claims further that she has not had access to the petty cash account of the Respondent's practice since May 2015. Before their marital problems, the Applicant had free access to the account, and used such funds to purchase items for the home and her own expenses.
10. The expenses pertaining to the children are paid for from her credit card for which she is refunded by the respondent upon production of a receipt. The Applicant is

also on occasions entitled to approach the Respondent's mother for cash to purchase prior agreed to items.

11. It is important to note that the plaintiff's requests for funds are never denied by the Respondent or the Respondent's mother save to state that she is required on every given occasion to account to the Respondent and his mother. The Applicant complains that the accounting to the Respondent and his mother is a new development which started after the institution of the divorce proceedings.
12. The Applicant states the Respondent earns vast amounts of monies, however only pays for the Applicant's petrol expenses. She requires cash payments of maintenance in respect of her own lifestyle as well as that of the children. The parties' overall lifestyle is extremely high because of the excessive amounts of income of the Respondent. The family eats out or has takeaways five times per week and go on expensive holidays. They live in a R7 million rand property. The Respondent earned approximately five million rand from his practice in the past financial year.
13. The Respondent's expenses were approximately R808 667.00 in the past year which left a profit before tax of R4.6 million thus earning a net income of R226, 167.00 per month.
14. The Respondent has another immovable property situate at [I.....] [G.....] [E...] in [R.....], [B.....], valued at approximately R1 300 000.00 which has a negligible bond. This property is rented out to tenants who pay R15 000.00 per month.
15. The Applicant is unable to work because she has to look after the children especially C who suffers from a bad reflux and has to be monitored continuously. The Applicant concludes by stating that her reasonable monthly expenses are in the order of R36 684. She provides a breakdown of same in her affidavit.
16. The Respondent in his answer to the maintenance *pendent life* claim states that the Applicant is abusing the court process and is not bona fide. She has inflated her

expenses.

17. The Respondent takes proper care and fully maintains the Applicant and their children.

There is no reason to bring this application. Apart from the Respondent's ability and willingness to support the Applicant and their children the Applicant has her own investments totaling R93 808.61 and R269 984.92. The Respondent claims that the applicant, with her funds is hardly anyone in need of personal maintenance.

18. The Respondent further states that the Applicant cannot expect to be fully maintained by him. She is 41 years old. She holds a B.Com Honours Industrial Psychology degree and a Post Graduate Certificate in Education. Over and above that the applicant has a B.Compt qualification which qualifies her to work as an accountant.

19. The Respondent states further that the applicant suffers from a bipolar condition. He should know. He is a medical doctor. One of the symptoms is or consequence of the condition is that the patients are inclined to spend excessively and unnecessarily. The Applicant has been spending vast sums of monies without a proper explanation. That is the reason the Respondent curtailed the spending by withdrawing her access to his bank accounts. He is of the view that the Applicant's rule 43 application should not succeed.

20. There is little doubt that the Applicant is able bodied and has the academic qualifications to secure a job for herself in no time. A B.Compt degree is a rare and useful qualification. Graduates do not struggle to secure employment.

21. It is also not disputed that the Respondent indeed does maintain his wife and minor children. It might not be to the extent envisaged or desired by the Applicant. The Applicant has admitted that the Respondent and/or his mother give her cash. Her beef with the provision of this cash is that she has to account for her purchases. In the past she did not have to account to anyone.

22. It does not seem fair that the Applicant should have carte blanche on the bank accounts

of the Respondent and spend monies without accounting. The Respondent has been more than fair to the Applicant. Whilst I am alive to the fact that things are no longer what they used to be between the Applicant and Respondent, I am of the view that the Respondent has an obligation to maintain his wife in a more controlled manner. The applicant has spent close to half her entire life as the wife of the Respondent. Surely that should in itself count for something.

23. The Applicant must in due course go out and look for a job to support herself. However in the meantime, the Respondent ought to look after her more especially that she still must nurse baby C and his sister.

24. Having considered all of the facts at my disposal I make the following Order *pendent lite*:

24.1. The Applicant and the minor children be entitled to occupy the common home situate at 3.. C.... of L... B...., D.... L.... E...., B.... E... 15, Kempton Park, Gauteng ("the common home").

24.2. The Respondent is ordered and directed to make monthly payment or continue to make monthly payment of the following expenses pertaining to the common home:

- (a) The Medical Aid in respect of the Respondent, the minor children and the Applicant with Medihelp Dimension Prime 3;
- (b) All expenses in respect of the mortgage bond payment on the common home;
- (c) Rates and taxes, electricity and water in respect of the common home;
- (d) Payment of the domestic worker's salary currently in the sum of R3 600.00;
- (e) Payment of the gardener's salary currently in the sum of R1 624.00;
- (f) Expenses relating to the maintenance and upkeep of the common home, including groceries;
- (g) Levies in respect of the common home;
- (h) Payment of the charges levied swimming pool service provider for the maintenance of the swimming pool forming part of the common home; and
- (i) DSTV premium.

25. The Respondent is ordered and directed to make payment of the following expenses pertaining to the minor children and the Applicant directly to the relevant service providers:
- (a) All expenses in respect of the mortgage bond payment on the common home;
 - (b) All expenses for the maintenance of the Applicant's motor vehicle;
 - (c) The insurance for the Applicant's motor vehicle;
 - (d) The Applicant's cell phone account which is part of the Respondent's cell phone contract up to a maximum of **R800.00** per month.
 - (e) . School fees at the [C M School in B.... P... for A];
 - (f) . all reasonable school clothes, stationery and school related expenses for A;
 - (g) . All reasonable extra-murals for A in respect of horse-riding, ballet, drumming, soccer and tumbling;
26. The respondent is ordered and directed to make a cash payment to the Applicant in the sum of **R5 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.
27. The respondent is ordered and directed to make a cash payment to the Applicant in the sum of **R1 600.00** per month (**R1 000.00** for A and **R600.00** for C) in respect of the maintenance of the minor children to be paid by no later than the first day of each month commencing on or before 1 June 2016.
28. The respondent is ordered and directed to effect payment of the sum of **R15 000.00** to the applicant as a contribution to her legal costs;
29. 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: Adv LC Leysath

Instructed by: Weavind and Weavind

Attorneys

Pretoria

On behalf of the Respondent: Adv

Instructed by: Shapiro & Haasbroek INC Brooklyn

Dates of Hearing: 9 May 2016

Date of Judgment: 25 May 2016