

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 33977/2021

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

Date: 14 January 2022 E van der Schyff

In the matter between:

H[....] S[....] M[....]

APPLICANT

And

P[....] J[....] M[....]

RESPONDENT

JUDGMENT

Van der Schyff J

[1] In this Rule 43 application, the applicant seeks an order for maintenance pending the finalisation of the divorce for R 15 000,00 per month, a declaration that she is

entitled to reside in the immovable property known as [...], Centurion, inclusion in the respondent's medical aid scheme and a contribution towards her legal costs.

- [2] The parties were married out of community of property with the exclusion of the accrual system on 15 December 2008. While the applicant was initially not employed, and maintained solely by the respondent, the position changed about five years ago when the respondent's contract with [...] was not renewed. This necessitated the applicant to seek employment. She is currently employed as a nursery school teacher. Her net salary is R 8 882.35 per month. The respondent is a pensioner. His primary source of income is derived from leasing out one of his two immovable properties. From this, he earns R16 100.00 per month. He also earns an amount of R428.00 from a policy. He acknowledges that he sometimes does home repairs but that the income from this source is negligible.

- [3] The respondent left the matrimonial home in May 2021. He avers that the applicant used her salary to maintain herself for the past five years since he became unemployed. He points out that the applicant is currently residing in his immovable property and that she refuses to move to the flatlet for him to rent out the house to increase his income to their mutual benefit.

- [4] During argument, the applicant's legal representative submitted that there is a possibility that the respondent does contract work for which he is remunerated in cash. This averment has not been made in the founding affidavit, and I cannot take cognisance thereof in deciding the application.

- [5] The respondent is currently contributing to the applicant's maintenance in that he is providing accommodation for her. Although it is evident from the papers that a dispute existed regarding her interim residence in the immovable property because the respondent wants to rent out the property, the respondent stated that the applicant's interim residence in the property is not contested. However, the consequence is that the house cannot be rented out, and no alternative income can be secured.

- [6] As for the applicant's claim to be included on the respondent's medical aid, the respondent claims that the applicant has not been a member of his medical aid scheme for the past five years. It was a joint decision to remove her due to their financial situation.
- [7] The respondent's counsel submitted that the applicant did not make out a case for a contribution to legal costs. There is no reason to assume that the divorce action will result in protracted litigation.
- [8] In considering the application, I am of the view that the applicant's expenses were inflated. I accept that the respondent provided in the applicant's maintenance needs when the marriage was concluded. However, the parties' financial position changed significantly when the respondent's contract with [...] was not renewed. I agree with the respondent's counsel that in these circumstances, an order for maintenance *pendente lite* will put the applicant in a better position than she was in before the respondent left the matrimonial home. The monetary value ascribed to her residence in the matrimonial home should not be overlooked or disregarded. The applicant's refusal to move to the flatlet for the main house to be rented out can likewise not be disregarded.
- [9] As for costs, it is justified that the costs of this application be costs in the cause. Although the respondent agreed to the applicant's continued residence in the matrimonial home pending the finalisation of the divorce, this was a point of contention between the parties before the application was issued.

ORDER

In the result, the following order is granted:

1. The applicant is entitled to reside in the immovable property known as[...] Centurion, Pretoria, Gauteng Province, pending the finalisation of the divorce.
2. The costs of this application are costs in the cause.

E van der Schyff

Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date for hand-down is deemed to be 14 January 2022.

For the applicant:	Mr. H. Hansen
Instructed by:	Hansen Inc. Attorneys
For the respondent:	Adv. M Fabricius
Instructed by:	Le Roux & Du Plessis Attorneys
Date of the hearing:	11 January 2022
Date of judgment:	14 January 2022