

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 3635/2019

REPORTABLE: **NO**
OF INTEREST TO OTHER JUDGES: **NO**

REVISED: no

Date of hearing: 08 March 2022

In the matter between:

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

Applicant

And

C[....] V[....]

Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This is an application for relief in terms of Rule 43 of the Uniform Rules of court. The Applicant claims for maintenance, relocation costs and a contribution towards legal

costs pending a divorce which she has initiated against the Respondent. This application is opposed by the Respondent.

[2] The Applicant more particularly seeks the following relief:

1. The Respondent shall pay the Applicant the sum of R30 950.00, which includes a monthly rental amount, per month on or about the 1st day of every month by way of debit order into such banking account as the Applicant may nominate in writing from time to time.
2. The Respondent retains the Applicant as dependant on his medical-aid scheme at his costs and the Respondent undertakes to pay the reasonable and necessary shortfalls not covered by the said medical-aid scheme which shortfalls shall include but not limited to the medical, dental, surgical, hospital, orthodontic and ophthalmological treatment needed by the Applicant and not covered by the medical-aid scheme, including any sums payable to a physiotherapist, occupational therapist, psychiatrist, psychologist and chiropractor, the cost of medication and the provision, where necessary, of spectacles and/or contact lenses inclusive of any excess payment required and not covered by the medical-aid fund, alternatively R2000.00 be paid to the Applicant to pay the excess herself;
3. The amount payable in terms of prayer 1 supra, shall be increased annually on the anniversary date of this Order, by the percentage change in the Headline Consumer Price Index ("CPIX") for the Republic of South Africa in respect of the middle-income group, or in line with the headline inflation rate, which is applicable, or any replacement inflationary index should the CPIX be discontinued, as notified from time-to-time by the director of statistics, or his equivalent, for the preceding 12 months.

4. That the Respondent shall make a once-off contribution towards the Applicant's relocation costs in the amount of R15 000.00 on or before the 1st day of the month succeeding the court order;
5. That the Respondent make a once-off contribution towards the payment of a deposit for the Applicant's new abode in the amount of R10 000.00 together with payment of the contract/registration fee, water and electricity connection fee and all other related relocation costs;
6. That the Respondent shall continue to pay any and all expenses that he currently pays on behalf of the Applicant including, but not limited, to the payment of the Applicant's comprehensive short-term insurance and household contents, as well as the payment of her monthly annuity contribution.
7. That the Respondent be ordered to make an initial contribution to the Applicant's legal costs in the amount of R 180 000.00, which amount shall be payable in monthly instalments of R20000.00 per month and which includes all outstanding amounts to *Couzyn Hertzog & Horak Attorneys*.
8. That the Respondent be ordered to pay the costs of this application, only in the event of opposition.

ISSUES IN DISPUTE

[3] The issues in dispute between the parties are the following:

- 3.1 The quantum in respect of the applicant's claim for maintenance;
- 3.2. The basis of the applicant's claim for the payment of future rental, once-off relocation costs and deposit of one month's rental;

3.3. The proper basis of the applicant's claim for a contribution towards her legal costs

Applicant's version

[4] Applicant is a 62-year-old unemployed woman.

[5] The Applicant is completely dependent on her husband for financial and other resources. The Applicant has never been employed during the marriage and was a housewife throughout their marriage. This is common cause.

[6] Through this application, the Applicant submits that she is asking for fair and reasonable maintenance and contribution towards her legal costs.

[7] The Respondent has been in business for at least 29 years and has a portfolio of properties and investments and earnings whilst the Applicant was a housewife who never worked during the marriage.

[8] The Respondent also earns a rental income from 8 properties, 5 of which he is the sole owner and 3 in which he has at least a 50% share. The combined value of these properties is R6 505 000.00. Of note is that two of these properties are owned by a CC known as "Nico Electronic Developments" of which the Applicant owns 50% of the member's interest, yet the Respondent takes all the rental in respect thereof.

[9] The Respondent's income on his version is at least R43 772.00 per month.

[10] Over and above the properties the Respondent owns, he has additional assets worth R 2885225.34 of which R932 352.00 are in Kruger Rands. This together with the above-mentioned properties amounts to assets to the value of R9 390 225.34.

[11] The monthly expenses of the Respondent (which includes the R7500.00) contribution amounts to R40 094.37. He therefore has a monthly expenditure on him and his assets of R32 594.34.

[12] On the 2nd of February 2022 the Respondent received payments of his retirement annuities both of which he reinvested. He did not deem it necessary to utilise these payments. This is indicative of the money he has to his disposal. The two respective amounts which should have been paid out and which was reinvested are R190 586 and R694 419 respectively.

Respondent's version

[13] The Respondent contends that he is paying the Applicant a cash contribution of R 7 500.00 per month, as per his tender contained in his Answering Affidavit. The Applicant fails acknowledge the fact that he pays for her Medical Aid, Retirement Annuity, Vehicle Insurance, DSTV and Showmax, as well as her municipal expenses. The Applicant also fails to acknowledge the fact that Respondent bought her a brand new vehicle during the divorce proceedings. The details of his continued monthly contributions towards the Applicant are fully set out in his Answering Affidavit.

[14] Respondent denies that he has received pay-outs from a PPS Retirement Annuity and Insurance Company SANLAM. He attaches correspondence from the above-mentioned institutions to his answering affidavit. Where he maturity date was reached the proceeds were reinvested, seeing that he is already 65 years old and may not be able to work in his business much longer.

[15] Respondent has detailed his monthly income and expenses in his answering affidavit, read with his Financial Disclosure Form. He states further that his income and expenses have largely remained the same, apart from minor escalations in premiums payable to insurers, the Applicant's Medical Aid and living cost increases. He has had to adapt his lifestyle in order to accommodate and absorb these increases.

Analysis of legal provisions and conclusion

[16] In *Du Preez v Du Preez 2009 (6) SA 28 (T)* the court was scathing of the parties filing unnecessarily long papers in a rule 43 application. The court held that this defeated the purpose or object of the rule.¹ The purpose of rule 43 is to provide *interim* relief pending the finalization of the main action wherein all the contentious issues between the parties are resolved. The applicants in this matter canvassed a broad spectrum of issues with a wide area of demands and resistance to same.

[17] Applicant has however, made a clear case supporting her needs and the fact that she is dependent on the Respondent. What needs determination is the extent thereof, especially her needs for a contribution to her legal fees.

[18] As regards the rest of the orders prayed for by the Applicant in her notice of motion, there seems to be consensus in principle between the parties. The only point of divergence seems to be the monetary value thereof. I have to place on record however, that the Respondent has outright not bothered himself in applying his mind on the issue of a contribution for legal costs in the divorce.

[19] In *Cary v Cary 1999 (3) SA 615 (C)* Donen AJ referred to the constitutional imperatives of equality before the law. He observed at the outset that he was required to exercise his discretion under Rule 43 in the light of the fundamental right to equality and equal protection before the law. He held that there should be “equality of arms” in order for a divorce trial to be fair, and came to the conclusion that:

“... applicant is entitled to a contribution towards the costs which would ensure equality of arms in the divorce action against her husband. The applicant would not be able to present her case fairly unless she is empowered to investigate respondent's financial affairs through the forensic accountant appointed by her. That is applicant will not enjoy equal protection unless she is equally

¹ Para 5 at 30G/H.

empowered with 'the sinews of war'. The question of protecting applicant's right to and respect for and protection of her dignity also arises in the present situation, where a wife has to approach her husband for the means to divorce him. I therefore regard myself as being constitutionally bound to err on the side of the 'paramount consideration that she should be enabled adequately to place her case before the Court'. The papers before me indicate that respondent can afford to pay the amount claimed and that he will not be prejudiced in the conduct of his own case should he be ordered to do so".

[20] It is in full consideration of the above that I make the following order:

1. That the Respondent is ordered to pay the Applicant the sum of R10 000.00, per month as maintenance, *pendente lite*, on or before the 1st day of every month into such bank account as the Applicant may nominate in writing from time-to-time.

2. The Respondent is ordered to make an initial contribution to the Applicant's interim legal costs in the amount of R100 000 which amount shall be payable in monthly instalments of R20 000 per month.

3. The Respondent is ordered continue to pay the following expenses of the Respondent, *pendente lite*, as per the current status quo:

3.1. Monthly medical aid premium (Discovery).

3.2. Retirement Annuity (Sanlam).

3.3. Motor vehicle Insurance (Mutual & Federal).

3.4. M Choice (DSTV 8 Showmax).

3.5. Water, rates and taxes for Applicant's residence

The costs hereof to be costs in the main divorce action

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of Judgment: 25 May 2022

On behalf of the Applicants: Adv. S.M. Stadler

Instructed by:

ADAMS & ADAMS

Lynnwood Bridge

4 Daventry Street

Lynnwood Manor, Pretoria

PRETORIA

Tel: (012) 432 6155

Email: Shani.VanNiekerk@adams.africa

Courtney.Elson@adams.africa

Ref: SVN/COSE/jdw/F992

On behalf of the Defendant: Adv. G. Kyriazis

Instructed by:

HAHN & HAHN ATTORNEYS

218 Richard Street

PRETORIA

Ref: Everts/am/CDV177