

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

CASE NO: 5169/21

REPORTABLE: YES / NO

OF INTEREST TO OTHER JUDGES: YES / NO

REVISED.

3 August 2022

IN THE MATTER BETWEEN:

L[....] M[....]² T[....]
M[....]

APPLICANT

AND

T[....]² M[....]³
M[....]

RESPONDENT

JUDGMENT

Strijdom AJ

INTRODUCTION

1.

1.1. This is an opposed Rule 43 application for a contribution by Respondent to the joint household expenses of the Parties, being a form of maintenance.

BACKGROUND FACTS

2.

2.1. Applicant and Respondent are married to one another, in community of property since 28 June 1991. Both parties are medical specialists and high earning individuals¹.

2.2. Two children were born from the marriage. Both children are majors, although the youngest child is partly dependant on the parties, which maintenance need is solely covered by the Applicant².

2.3. The action between the parties is essentially a divorce action but includes more complicated relief regarding loans against a Family Trust of whom both parties are Trustees and in the alternative that the trust be declared a sham trust.

2.4. Despite the divorce action being instituted the parties remains to cohabit in the erstwhile matrimonial home.

THE ISSUES IN DISPUTE

3.

¹ Sworn Statement paragraph 1.1, 017-3; paragraph 2.2, 017-4.

² Sworn Statement, paragraph 5.3, 017-6.

3.1. A contribution by Respondent to the joint household expenses of the parties being a form of maintenance.

3.2. A contribution by Respondent of 50% of the medical aid fund contribution towards the major but dependent child, Tsholofelo Motsei Mohaji M[....].

4.

4.1. The main contention of the Respondent is that there are no facts pleaded in the application that the Applicant is in need of maintenance pendente lite, as per the provisions of Rule 43 of the Uniform Rules of Court.

4.2. It was submitted by the Respondent that this application is an abuse of the provisions of Rule 43 and that the court should dismissed the application.

4.3. Respondent also denied that the younger child is in any way dependent on the parties and refuses to contribute half of her medical aid fund premium.

4.4. Applicant demanded a contribution to the joint household expenses from Respondent, which he refused.

THE FACTS

5.

5.1. Applicants' version of the joint household expenses appears from the Financial Disclosure Form filed by her³.

5.2. Form Applicants' bank statements⁴, the following is evident;

5.2.1. Applicant pays the bond over the matrimonial property owned by the Trust. The bond repayment is R58 000.00 per month and Applicant pays R100 000.00 per month into the bond;

³ Vide: Paragraph 3.1, 020-22.

⁴ Vide: Annexure to the FDF, 020-39.

5.2.2. The groceries purchase by Applicant per month is in excess of R10 000.00, whilst Respondent avers to contribute R2000.00 per month to groceries;

5.2.3. Applicant pays the levies of the residential estate occupied by the parties in an amount of about R2100.00 per month;

5.2.4. Applicant pays the home-owners insurance regarding the matrimonial property.⁵

5.2.5. Applicant pays the salary of the housekeeper every month, this amounts to R6000.00;

5.2.6. Applicant pays for the maintenance of the matrimonial home. These expenses are not the same every month⁶;

5.2.7. Applicant pays for the aircon servicing, garden service and fuel for the generator used by the household;

5.2.8. Applicant purchases electricity for the matrimonial home⁷.

5.2.9. The net monthly trust income from rental received amounts to R39 905.08. the monthly trust expenses for the repayment of the mortgage bond over the matrimonial property amounts to R58 306.10, and the expenses needed to cover the maintenance over this property amounts to R24 523.36. The trust has a monthly shortfall of R42 924.38 which the Applicant pay for.

5.2.10. The Respondent's version of his expenses and income appears from the Financial Disclosure Form filed by him⁸.

5.2.11. The Respondent stated that he only earns an amount of R40 00 per month as drawings from his medical practice.

⁵ Vide: 020-69; 020-70; 020-73.

⁶ Vide: 020-73 to 75 and 020-89.

⁷ Vide: 010-40.

⁸ Vide: 021-1.

EVALUATION OF THE EVIDENCE

6.

6.1. The Applicant made full disclosure of her expenses and income in the Financial Disclosure Form filed by her. Her version is also corroborated by her bank statements.

6.2. It is evident that the Respondent did not disclose his full income and the different sources of his income.

6.3. A comparison of his expenses stated in his FDF and his answering affidavit clearly indicated the discrepancies⁹.

6.4. The Respondents' bank statements indicate a combined monthly drawing of R153 897.70 compared to what was stated by the Respondent as R40 000.00.

6.5. In my view the Respondent was dishonest with the Court about his earnings. He has failed to display good faith which is required of an Applicant/Respondent in proceedings such as the present.

6.6. In **Du Preez V Du Preez**¹⁰; the Honourable Court referred thereto that there was a tendency for parties in Rule 43 applications to misstate the true nature of their financial affairs by exaggerating their expenses and understating their income and that this was unacceptable.

LEGAL CONSIDERATIONS

7.

⁹ Vide: Y -10-23.

¹⁰ Vide: 2009 (6) SA 28 (TPD).

7.1. An Applicant is entitled to reasonable maintenance, pendente lite, dependent upon the marital standard of living of the parties, the Applicants' actual and reasonable requirements and the capacity of the Respondent to meet such requirements.¹¹

7.2. It is trite that spouses have a common law duty to maintain one another.¹² They both have a duty to contribute to the joint household in accordance to their income.

7.3. Section 10 of the Constitution states that "Everyone has inherent dignity and the right to have their dignity respected and protected."

7.4. Both parties are high earning individuals, and it is a clear sign of disrespect from Respondent to refuse to contribute his share to the joint household, and to expect the Applicant to maintain him whilst he can maintain himself. This strikes to the root of Applicants' right to dignity.

7.5. It was stated in **Bannatyne V Bannatyne and Another**¹³ that

"The enforcement of maintenance payments therefore not only secures the rights of children, but it also upholds the dignity of women and promotes the foundational values of achieving equality and non-sexism."

7.6. I must disagree with the submission made by the Respondent that what the Applicant is claiming is merely expenses and not maintenance. As already stated, the Respondent has a duty to contribute to the joint household in accordance with his income.

A CONTRIBUTION TO THE MEDIAL AID FOR THE DEPENDENT MAJOR CHILD

8.

¹¹ Vide: Taute V Taute 1974 (2) SA 675 [E].

¹² Vide: Woodhead V woodhead 1955 (3) SA 138 (SR) at 139 H to 140 A.

¹³ Vide: 2003 (2) SA 363 (CC).

8.1. It was recently decided in *Z V Z*¹⁴ that a parent has locus standi in judicio to claim maintenance from the other parent for and on behalf of an adult dependent child.

8.2. The Applicant stated that Tsholofelo the minor child, is still resident in the matrimonial home and that she still pays some of her expenses, specifically her medical aid fund contribution¹⁵.

8.3. She further stated that Respondent does not contribute to the household expenses attributed to Tsholofelo, and she is singlehandedly responsible for supporting her financially¹⁶.

CONCLUSION

9.

9.1. Having considered the existing and prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage and the standard of living of the parties, I am persuaded to exercise my discretion in favour of the Applicant in respect of maintenance for herself and a contribution by the Respondent towards the medical aid of the major dependent child Tsholofelo.

9.2. In the result the draft order marked “X” is made an order of court.

STRIJDOM JJ
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA
GAUTENG DIVISION

¹⁴ (556/2021) [2022] ZASCA 113 (21 July 2022).

¹⁵ Vide: 017-6 para 5.3.

¹⁶ Vide: 017-14 para 5.14.

PRETORIA

Appearances:

Counsel for Applicant:	Adv B Bergenthuin
Instructed by:	Gerhard Botha E Partners Inc.
Attorneys for Respondent:	KP Seabi E Associates

Heard on: 11 July 2022

Judgement on: 3 AUGUST 2022