

IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG  
REPUBLIC OF SOUTH AFRICA

Case No: 364/2009

In the matter between:

C L H

Applicant

and

P L H

Respondent

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JUDGEMENT

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**Govindasamy AJ:**

This is an application for a contribution towards costs. The trial has been set down for hearing on the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> November 2009.

In the divorce proceedings the Applicant claims *inter alia* payment of a sum representing the claim under section 7(3) of the Matrimonial Causes Act, 33 of 1985 (Zimbabwe) and damages for assault.

The Applicant applied in February 2009 for a contribution towards costs but was unsuccessful.

She claims a contribution of R65,000-00 (sixty five thousand Rand). Her estimates are set out in paragraph 12 of the statement as follows:-

- “12.1 Payment of PETER DUNCAN’S existing account in the sum of R31,828-80.
- 12.2 Payment for PETER DUNCAN for three hours consultations, and attendance at court – R30,000-00.
- 12.3 Consultations with Senior Counsel (5 hrs at R1,800-00) – R9,000-00.
- 12.4 Senior Counsel first day fee – R18,000-00.
- 12.5 Consultations with my attorney.

She alleges she is unemployed and sets out a list of her monthly living expenses as well as a statement of assets and liabilities

The Respondent tendered an amount of R30,000-00 which he described as “an advance payment of any order that the trial court may make ...”

The Applicant rejected that tender. He draws attention to certain credit balances in respect of the Clover Bay property which is jointly owned between himself and the Applicant. In addition he states that there is a credit facility of R12,5747-02 on that property which could be used by both of them to fund the litigation.

He denies that the Applicant is unemployed and states that she and her boyfriend work together in a photography business. She also has an interest in a “Thai massage business” and a distribution company.

The Respondent further attacked her statement of income and expenditure and assets and liabilities. In so far as the assets and liabilities are concerned he drew attention *inter alia* to certain insurance policies that were cashed.

It is clear to me:

- (a) That the Applicant is in need of a contribution towards costs; and
- (b) That the Respondent is in a position to make a contribution.

I am not satisfied, however, that the Applicant has no funds at all to litigate. In this regard there is every likelihood that she is earning some income and that there may be proceeds from some of her policies still available. In any event she is entitled to fifty percent (50%) of the credit standing in the bond account of the Clover Bay property.

The Respondent has conditionally tendered R30,000-00. I do not believe he is entitled to make a conditional tender. Accordingly any order I make shall be on the basis that no tender has been made. Having regard to the papers and submissions made by counsel I make the following order:

1. The Respondent is directed to pay the Applicant the sum of R50,000-00 (fifty thousand Rand) as a contribution towards the Applicant's costs.
2. The costs of this application are reserved for determination by the trial court.

M GOVINDASAMY AJ

Date of Hearing	:	17 <sup>th</sup> September 2009
Date of Judgment	:	21 <sup>st</sup> September 2009
Counsel for Applicant	:	Advocate A. Stokes SC
Instructed by	:	Shepstone & Wylie c/o Tomlinson Mnguni James
Counsel for Respondent	:	Advocate SI Humphrey
Instructed by	:	King Essack & Associates c/o Stowel & Co.