

**Republic of South Africa**  
**IN THE HIGH COURT OF SOUTH AFRICA**  
**(WESTERN CAPE HIGH COURT, CAPE TOWN)**

**Case Number: 8897/2011**

In the matter of:

**C S (nee S)**

Applicant

versus

**M G M S**

Respondent

**Judgment: 27 March 2012**

**MOSES, AJ:**

**Introduction.**

[1] This is an opposed Rule 43 application, in which the applicant, Ms C S (nee S), asks for an order against the respondent, Mr M G M S, in the following terms:

1. That the respondent be ordered to pay maintenance to the applicant in the amount of **R52, 930.00** per month *pendente lite*.
2. That the respondent be ordered to maintain applicant as a beneficiary on his medical aid *pendente lite*.
3. That the respondent be ordered to pay a contribution to applicant's legal costs in the amount of **R100, 000.00**.
4. Costs of the application only if opposed.

[2] The papers are voluminous covering in excess of 120 pages, consisting of a founding affidavit with annexures, by the applicant (62 pages), respondent's

sworn reply (42 pages), an affidavit by the respondent's attorney, Mr Peter Seymour, stating basically that the respondent suffered a severe stroke on 25 June 2011, the effect of which has been debilitating, with medical reports confirming same (12 pages) and subsequently, the respondent's supplementary sworn reply (12 pages). This latter affidavit by the respondent, which is dated 19 March 2012, was only handed up by the respondent's counsel at the hearing of this matter on 20 March 2012. There being no objection from the applicant, it was received as evidence. This matter was adjourned after counsel on behalf of both the applicant and respondent have addressed me, and judgment reserved to enable the court to consider those submissions, and study the contents of the latter supplementary sworn reply of and by the respondent, which was done.

[3] The import of the said supplementary sworn reply in essence is that, given the severe stroke suffered by the respondent, he has become unable to practice his profession as a professional pilot. As a result hereof his employment with Comair has been terminated as he was advised by a letter dated 30 November 2011. This in turn has had a serious impact on his financial situation, causing it to be radically different from what he had set out in his first affidavit - the sworn reply referred to above.

[4] The net result of this was that whereas he has formerly received a net income of R63 676, 29 after deduction of his medical aid pension contributions, he presently receives a net salary of R51 478, 20, and, in addition, must pay his medical aid contribution himself from his net income. The respondent also received disability payouts pursuant to the aforesaid stroke he suffered and his subsequent medical condition, totaling R1,45 million. This was not disputed by and on behalf of the respondent.

[5] This court has listened carefully to the submissions made by counsel on behalf of the parties, and has given it very careful consideration. This court has

also carefully and thoroughly considered all the information placed at its disposal by and on behalf of the parties, as set out in their respective affidavits and annexures, referred to above. In the circumstances, this court does not deem it necessary to give a full judgment, dealing with all the above stated information and submissions, save to state that reasons will follow, if and when it is deemed necessary. In the circumstances, this court considers the following order to be appropriate.

1. The respondent shall support the applicant *pendente lite* by paying:
  - 1.1. the monthly premium due to Standard Bank in respect of the mortgage bond registered against the former common home as well as the home owner's insurance premium;
  - 1.2. the household content insurance premiums;
  - 1.3. the monthly DSTV subscription;
  - 1.4. the security fees;
  - 1.5. the municipal accounts in respect of the former common home (which include rates, taxes, water, electricity and other charges) as well as the rates and water bill in respect of the business premises;
  - 1.6. the home Telkom landline (limited to R300 per month);
  - 1.7. the applicant's cell phone (limited to R300 per month);
  - 1.8. the reasonable maintenance expenses of the property, provided that the respondent shall contract directly with the supplier;
  - 1.9. the applicant's vehicle's short term insurance premiums (by paying the applicant the amount of R500 per month) and the cost of reasonable and necessary services and repairs of the vehicle, provided that she uses the family mechanic and the respondent has

provided his prior written consent, which shall not be withheld unreasonably.

2. The respondent shall maintain the applicant as a dependent on his current medical aid and shall pay her reasonable and necessary medical expenses (provided that she has first obtained his prior written consent, save in real emergencies, which consent shall not be withheld unreasonably, for a total expense that exceeds R500 per month).

[6] The respondent is ordered to pay a contribution towards the applicant's legal cost in the amount of R50 000.00 which amount is to be deducted from the applicant's share of the accrued estate as determined by a court pursuant to the divorce proceedings pending between the parties.

[7] Costs to stand over for later determination.

**MOSES, AJ**