IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: 18177 / 2014

RM	Plaintiff
and	
AM	Defendant

Coram: Wille, J
Heard: 28th of April 2022
Delivered: 3rd of May 2022

JUDGMENT

WILLE, J:

INTRODUCTION

[1] This is a vigorously opposed and voluminous application chartered for in terms of rule 43(6) of the Uniform Rules of Court.[1] The parties shall for the purposes of clarity and ease of reference, be referred to as the plaintiff and the defendant (as they have been cited in the action proceedings). The plaintiff has elected to launch this application at a very late stage in the proceedings.[2] I say this because, by agreement between the parties, the trial action is due to commence on the 3rd of May 2022.

[2] The relief that the plaintiff seeks, in the main, relates to a number of contributions towards her legal costs, in order, so she says, to effectively advance

[1] The 'rules'.
[2] This application was only launched on the 16th of February 2022 (The trial date was agreed on the 11th of November 2021).

her action against her husband. She also seeks a substantial increase in her and her minor children's maintenance. This on the eve of the trial. I have been seized with this matter for an unwarranted period of time. The initial skirmish between the parties related to certain care and contact issues in connection with their minor children. These issues were separated out by way of an order and have hopefully now been finally resolved. The amended pleadings that have now been filed seem to indicate that these care and contact issues have now been resolved.

THE RELIEF SOUGHT

[3] The plaintiff seeks the following relief by way of a contribution towards her litigation costs, namely; (a) that she be awarded the sum of R615 000,00 (plus value added tax thereon***)*** in respect of her costs for preparation for the impending divorce action; (b) that she be awarded a contribution towards the costs of her expert attending at court in the amount of R40 000,00 (plus value added tax thereon) and, (c) that the defendant pays a further contribution of R280 000,00 (plus value added tax thereon) in respect of the plaintiff's attorney and counsel attending court on trial. This at the rate of R56 000,00 (plus value added tax thereon) per day and with effect from the day before the first day of trial and, daily thereafter.

[4] In addition, the plaintiff also seeks an increase in her cash maintenance per month from the sum of R71 000,00 per month to R125 000,00 per month. This over and above various other (not insignificant) expenses paid by the defendant to various third parties for the benefit of the minor children and the plaintiff.

[5] The defendant tenders; (a) that the plaintiff be awarded the sum of R200 000,00 (inclusive of value added tax thereon***)*** in respect of her costs on trial for the divorce action and, (b) that the defendant pays a further contribution in respect of the plaintiff's attorney and counsel attending court on trial at the rate of R50 000,00 (plus value added tax thereon), per day. This with effect from the day before the first day of trial and, daily thereafter.

SOME INTERIM 'OBSERVATIONS'

[6] The issues between the parties boil down to the following, namely; (a) should I order the defendant to increase his monthly payments of R71 000,00 to R125 000,00 (in addition to his other third party payments on behalf of the minor children and the plaintiff) and, (b) should I also make a cost allowance in the total amount of R935 000,00 (plus value added tax thereon) to cover the plaintiff's legal costs for preparation and on trial for the imminent pending action?

[7] While the actual sums at issue in this application are by no means modest, even when set against the estimated value of the assets (assuming the plaintiff is entitled to any assets) in this case, (or even compared with the cases that typically appear in our law reports), this application raises a number of problems which are endemic to interim financial applications, namely; (a) the delay that occurred before the launching of this application; (b) the parties' affidavits for this application were too long; (c) while the indexed papers consisted of some (206) pages, once counsel's position statements and copies of the authorities were added, the bundle exceeded (250) pages; (d) the parties' expectations in terms of judicial pre-reading was unreasonable and, (e) the length of oral submissions bore no relation to the normal time estimate usually allocated for such matters to be heard and determined.

[8] Making every allowance for the vagaries of litigation, the parties' agreed position that this hearing, could be heard within the space of a few hours[3] was wildly optimistic, to the point of an absurdity. For too long, interim applications like these (applications for interim maintenance and a cost allowance, both pending action), have been 'crow-barred' into inadequate time estimates, allowing the court insufficient time to consider the papers before the hearing, or sufficient time to properly review its judgment. This in the context of what are often hotly disputed interim financial remedy applications.

[9] Without wishing to belabour an obvious point, the court's task in an interim maintenance and cost allowance hearing, is fundamentally different from making summary directions or the giving of an order. Just as practitioners should not receive unreasonable demands from the judiciary, so judges should not be put in the sort of position that this court is faced with in the present case. After all 'well-being' is a two-

[3] By the medium of a 'virtual' hearing.

way street. I say this in the hope that it may do something to start to turn the tide in this regard.

[10] In my view, this application should have been launched many months ago. I appreciate that these applications need to be heard at the earliest opportunity. However, that does not excuse the unexplained delay that led to the belated filing of this application. As it happens, I have been able to arrange time to read this application and thereafter produce this judgment (within a matter of days) in order to deal with this application timeously.

[11] This notwithstanding, the parties should not be placing the court in this sort of position, or, if they do, they should be aware of the possibility of sanctions in the form of an adverse cost order. While the court was placed in an invidious position in this case (to prepare a reserved judgment within the space of a few days), I would nevertheless like to record my thanks to both counsel, for their analytical written and oral submissions, without which this hearing might have taken even longer.

THE 'PLEADINGS' AND THE 'LIS'

[12] It is alleged that the parties were married on the 30th of October 2009 (out of community of property) and with the exclusion of the accrual regime. There are (3) minor children born of the marriage who, since separation, have lived with both parents. Following the parties' separation, the plaintiff issued out an action for divorce on the 21st of November 2014.

[13] The plaintiff in essence initially sought the following in the form of a settlement, namely; (a) the sum of R60 000,00 per month, in the form of cash maintenance for and on behalf of the children; (b) an annual (10) % escalation thereon (alternatively, the usual annual increase)[4], whichever is higher; (c) all the schooling and tertiary educational costs of the minor children (plus all the extras); (d) the medical and dental costs of the minor children (plus all the extras not covered by medical aid); (e) spousal maintenance in the sum of R40 000,00 per month to increase by (10) % annually; (f) the medical and dental costs of the plaintiff (plus all

[4] According to the average Consumer Price Index.

extras not covered by medical aid) and, finally (g) the reasonable costs of an overseas trip annually for the minor children and the plaintiff.

[14] As far as the commercial proprietary consequences of the marriage were concerned, the following was sought, namely; (a) the plaintiff sought an order that the defendant transfer into her name (free of all encumbrances) an immovable property; (b) the plaintiff sought all the movables that were housed in this immovable property; (c) the plaintiff sought the ownership (free of all encumbrances) of a 'Ferrari Alonso 599' motor vehicle; (d) the plaintiff sought (in the alternative), equal ownership in and to the said motor vehicle and, (e) further alternatively, half of the market value of the said motor vehicle.

[15] In the defendant's initial amended plea and counter-claim the following position is taken, namely; (a) that he accepts responsibility for the cost of his minor children's' educational and medical expenses; (b) that he tenders further to pay cash maintenance for his minor children at the rate of R7500,00 per child, per month (with no annual escalation thereon). No tender is made in connection with the plaintiff personally and the defendant disputes any form of 'agreement of settlement' having being reached between himself and the plaintiff.

[16] The plaintiff in her particulars of claim also references a document[5] which she avers settled the 'financial dispute' between the parties. This document provides for the transfer of ownership of the subject immovable property to her, the payment of all educational costs for the minor children and the payment of all medical costs of the plaintiff (including the minor children). Further, the sum of R60 000,00 was allegedly agreed (by way of monthly cash maintenance) together with a half-share in the subject motor vehicle.

[17] In the defendant's initial amended plea, he avers that he signed the settlement agreement, but pleads that this 'settlement agreement' was too vague to be enforced and was, in any event, against public policy and therefore unenforceable. Further, this document was prepared for the purposes of a *trial*

[5] Which the plaintiff contends is an agreement and is binding between the parties ('NM2') – the 'settlement agreement'.

separation and, at that time, the plaintiff had not disclosed to him her clandestine extra marital affair with another man.

THE CASE FOR THE 'PLAINTIFF' IN THE RULE 43 (6) APPLICATION

[18] The plaintiff now contends that her monthly expenses for her and her children amount to the sum of R103 775,00. Notably, this sum includes legal fees, support of her mother and beauty care in the sum of R5000,00 per month. This amount is claimed for each of these items, per month. Notably, she also claims a bond repayment of R13 000,00 per month, building expenses of R4000,00 per month and, miscellaneous expenses of R9300,00 per month.

[19] In addition to this the plaintiff is claiming R7500,00 per month in order to repay loans that she had incurred with family, friends and from some unnamed and unspecified financial institutions. The evidential material in support of these loans is glaringly absent from these papers and is inadequate. Most significantly, she claims large amounts of money from the defendant in order to support her mother. This, the plaintiff says is because of an historical undertaking made to her by the defendant. Further, it is advanced that the defendant has in any event agreed to this in some prior maintenance order. It is trite that this is not the test to be applied as no information has been made available in regard to the financial position of her siblings or any alternative means of support for the plaintiff's mother.

[20] The defendant takes the position that he does not deny his ability to pay such reasonable maintenance (as he may be liable for) and, as may be ordered by the court. This notwithstanding, the plaintiff seeks to place the defendants entire financial position under the proverbial forensic microscope. Seemingly, the plaintiff's argument in this connection is fortified by and with a mere reference to the provisions of section 7(2) the Act.[6]

[21] In summary therefore, the plaintiff's personal claim (in the alternative) may very well turn out to be essentially a *maintenance claim* based on, *inter alia*, the existing means of the parties, coupled with the plaintiff's financial needs (and

[6] The Divorce Act, 70 of 1979.

obligations) and the parties standard of living prior to the divorce. This may very well be a completely alternative discrete claim from the core claims chartered for by the plaintiff in her particulars of claim. Despite numerous pre-trial conferences, an amendment of the plaintiff's claims was since only advanced on the 19th of April 2022 (scarcely a week before the agreed trial date)

[22] A large portion of the contribution towards the plaintiff's legal costs are connected with the costs of a report of an *independent industrial psychologist* as well as for preparation, on trial. Further, she seeks a contribution towards her legal costs, on trial. All these contributions are sought against the backdrop of a prior (not insubstantial) contribution award towards legal costs granted by Justice Rogers. To an extent, the court is somewhat held at *ransom by the plaintiff* to grant at least a large portion of these costs so that the trial action will not unnecessarily be delayed.

THE CASE FOR THE 'DEFENDANT' IN THE RULE 43(6) APPLICATION

[23] At the outset the defendant makes the point that despite the strictures of rule 43 in the precluding of the filing of voluminous affidavits, the plaintiff's founding affidavit runs into some (27) pages. This, without the annexures that amount to some (25) pages. This in turn, places the defendant in an invidious position as he was somewhat obliged to answer the application as formulated and presented by the plaintiff. The plaintiff also filed a further supplementary affidavit.

[24] The defendant takes the position that as an *interim* measure, he agreed to pay generous amounts of maintenance (and also cost contributions), because he anticipated (and was so advised) that his divorce trial would be settled, at least, within a reasonable time after February 2015. Further, at that stage the minor children also resided primarily with the plaintiff.

[25] During 2018, the minor children were placed in his primary care and the plaintiff had limited supervised access to and with the minor children. This regime persisted until June 2020. Thereafter, a shared access regime resumed. The point is made that for at least (2) years the plaintiff's expenses were greatly reduced and she had ample time to explore and pursue her own career opportunities. An industrial

psychologis*t* appointed by the *defendant* in 2018 assessed the plaintiff and opined that she had an earning potential of at least between R25000,00 and R35000,00 per month.

[26] Significantly, it is pointed out that the plaintiff did not apply for any increase in maintenance despite a lapse of about a (7) year time period. The defendant further takes the position that (even in general terms) a disclosure has not been made by the plaintiff in connection with how she had utilized the R71000,00 per month, paid to her over the last (7) years. This over and above the other payments made by the plaintiff to third parties on behalf of the plaintiff and their minor children

[27] In this connection, the defendant currently makes payments to the plaintiff, the children and to third parties (for the benefit of the children and/or the plaintiff) to the sum of R204 098, 82 per month. The defendant contends that as the minor children are now aged (16), (12) and (8) years respectively, they do not require the same degree of undivided personal attention and care from the plaintiff. They are all at school and they participate in extramural activities, all of which are paid for by the defendant.

[28] As far as the legal costs of the plaintiff are concerned, the defendant takes the position that no case has been made out by the plaintiff as to why *any further preparation* costs should be awarded, other than those awarded by Justice Rogers on the 10th of July 2019.[7] Put in another way, it is advanced that there is no discernible reason why this court should not follow the same judicial reasoning adopted in connection with the previous order granted by Justice Rogers. This notwithstanding, the defendant tenders the sum of R200 000,00 (inclusive of value added tax thereon), for preparation *on trial* and a further contribution in respect of the plaintiff's attorney and counsel attending court *on trial* at the rate of R50 000,00 (plus value added tax at thereon), per day.

[29] In addition, in the application that presented before Justice Rogers, no claim was made in connection with historical costs and the same reasoning should now be applied. The defendant has to date paid the sum of R1 756 092,00 in respect of his

[7] Justice Rogers ordered the sum of R269 000, 00 for *preparation* and for *on* trial.

contributions towards the plaintiff's legal costs. Further, it is averred that the plaintiff has not utilized her cost allowances in accordance with the specific purposes for which they were awarded by Justice Rogers. Put in another way, the point is made that the plaintiff did not use her costs allowances for the specific purposes for which such monies were allocated by Justice Rogers.

CONSIDERATION

[30] The main computational issue before me relates to the issue of a contribution towards the plaintiff's legal costs. The defendant advances that the plaintiff has behaved in such an unconscionable way by, *inter alia*, the manner in which this application has been piloted that I should draw a robust assumption about her *actual and real* need for increased interim maintenance and her application for a further costs allowance. This, on the eve of the trial.

[31] It is undisputed that the plaintiff has known about the trial commencement of the 3rd of May 2022, since at least the pre-trial conference on the 11th of November 2021. Further, that it took her at least (3) months to launch this application. No explanation at all for this delay has been offered by the plaintiff. The estimated costs involved for the plaintiff's expert was also received as early as the 10th of January 2022. The delays in this connection by the plaintiff are simply left unexplained on the papers presented to this court.

[32] The plaintiff simply asserts that the sums she seeks for the interim support for herself, her minor children and for her cost allowance, are reasonable and easily affordable by the defendant, who has a track record of living a very lavish lifestyle. She points to the high standard of living enjoyed by the parties during the marriage and also the defendant's ongoing expenditure.

[33] The defendant's material in answer to this is that the amounts that he is currently paying are in excess of the plaintiff's needs. On her own version, the plaintiff alleges that her monthly expenses amount to R103 775,00 and yet, she seeks the sum of R125 000,00 per month. No explanation is tendered for the difference in the amount claimed. The defendant takes the position that the plaintiff

has also failed to demonstrate that the amounts she alleges he is obliged to pay, are reasonable and justified especially on the eve of the trial.

[34] Most significantly, the defendant calculates that only if the expenses claimed from him in connection with the plaintiff's mother are deducted, then this would reduce her expenses to the sum of R85 075,00 per month. I must say that I am not convinced about the authenticity of the loans that the plaintiff alleges she has to repay (as currently formulated). Further, even if they are genuine, I am not persuaded that any payments towards these loans (or indeed the loans themselves) are recoverable by means of this type of application.

[35] I say this particularly because no allegation is made that these loans were incurred specifically to fund legal expenses. By contrast, it seems from the context of the allegations referenced in this connection that the loans were incurred (if indeed they were) largely to fund the living expenses incurred at the instance of the plaintiff's mother.

[36] In my view, the current legal position was correctly stated by the penchant remarks made by Binns-Ward J in *ALG*[8] in the following terms;

'…Whilst rule 43 predates the abolition of the marital power, it falls to be construed and applied in the context of the modern legal environment. I cannot conceive in the circumstances, why there should be any obstacle to the making of an order for a contribution towards costs that includes costs already incurred. On the contrary, allowing for the interim payment of accrued, as well as anticipated, costs in the principal proceedings would better promote achieving the relevant objects of the rule 43 procedure…'

[37] The point is crisply made that an order for a contribution towards costs may include costs already incurred. This would mean, as a matter of logical extension, to include the recovery of 'loans' entered into in respect of those specific legal costs (already incurred). This does not however mean that historical loans made in general fall to be recovered by way of an application in terms of rule 43 or rule 43 (6).

[8] *AG v LG* (9207/2020) [2020] ZAWCHC (25 August 2020) - (My emphasis).

[38] I say this also because if this was not the case, it could potentially mean that a party could incur extravagant and unnecessary loans not connected in any way with legal expenses in the relative financial comfort that they will be repaid by way of an order in an application chartered for in terms of rule 43 or rule 43 (6). In my view, this latter type of relief is not what is contemplated by a proper legal application of this mechanism for a *contribution* towards interim maintenance and cost allowances.

INTERIM MAINTENANCE

[39] Firstly, I agree with the defendant's approach that it is appropriate on the facts of this case to make robust assumptions about his ability to provide financial support. I have not heard any *viva voce* evidence from the parties and accordingly I am not in a position to make any findings of fact particularly where any disputes may exist (if indeed they do exist). I am however satisfied, that a pattern emerges from the defendant's actions and historical payments that he is in a position to pay such amounts as may be directed by the court, for the plaintiff and his children. This, without any undue hardship to him financially.[9]

[40] Secondly, I am satisfied that the defendant is playing open cards with this court and has not sought to give any misleading impression of the parties' standard of living during the marriage. Thirdly, I accept the defendant's arguments that he has historically, purely in an attempt to achieve an early settlement of this entire matter, continued to spend freely both on the plaintiff and his minor children. I am left with the clear impression that the defendant's financial position is not any different from how he has presented it to the court.

[41] Fourthly, I agree with the defendant's submissions that the plaintiff must demonstrate her real and actual need for the increase sought for her interim maintenance. In my view, she has not met the threshold required in this application. I also agree with the defendant that the plaintiff is required to take the court into her confidence and explain in detail how her sources of income (including those received from the defendant) have been previously applied (even if this is done in general

[9] *Gering v Gering and Another* 1974 (3) SA (WLD) page 358 at 361 C-D

terms). This, in order to demonstrate that she does not have sufficient means of her own, to at least maintain herself.

[42] Having considered the plaintiff's position carefully, I reject her argument that it demonstrates that any increase in interim maintenance for her and the minor children is justified. The court's task has been made even more difficult by the following; (a) I do not have any 'evidence' of the plaintiff's budget apart from her table of her alleged expenses (while I accept that an interim budget is not necessary in every claim), it would in my view have been helpful to have some understanding of the *evidential basis* for the sums that she now seeks; (b) her 'evidence' in terms of the actual expenses incurred by her is at best for her, confusing; (c) she fails to put up any proof (at all) of the alleged loan amounts that she is repaying; (d) the plaintiff seeks to support her brother and her mother from a portion of these now claimed increased maintenance payments; (e) no explanation whatsoever is advanced by the plaintiff why she waited for almost (7) years to apply for this increase and why this has been done on the eve of the trial.

A 'CONTRIBUTION' TOWARDS COSTS

[43] In terms of the total sums contributed towards the costs for the litigation thus far, I understand that the defendant has paid to the plaintiff the sum of R1 756 092,00. If one were to add to that the sum of R5000,00 per month (this being the aliquot share of the plaintiff's maintenance received towards her legal costs), the defendant's contribution towards legal costs would have amounted to date to the sum of R2 171 092,00.

[44] The plaintiff now seeks and additional R935 000,00 towards her legal costs. Justice Rogers ordered a contribution towards costs of R269 000, 00 for the entire trial. This order was made before I separated out the issues on the 5th of August 2019. Justice Rogers also ordered that the cost allowance (that he awarded), was only to be used in the specific manner as prescribed by him.

[45] Thus, it is argued that the plaintiff was not at liberty to utilize these funds in respect of her historical interlocutory applications and thereafter seek to claim further contributions from the defendant. On this, I agree.

[46] In connection with the cost allowance application, the defendant makes a number of powerful points; (a) the plaintiff fails to provide any supporting documentation to substantiate the figures representing her costs incurred for the period between July 2019 and June 2020; (b) the plaintiff (in her 'table'), does not explain at all, how and what portion of the amounts (of the globular amounts awarded), were actually utilized by her leal team; (c) the plaintiff has also failed to provide any real and proper detail as to her alleged past costs or the additional costs that she now seeks; (d) it is impossible for the court to determine whether the mere allegations made on behalf of the plaintiff justify any further contribution towards costs; (e) the first time the plaintiff filed an expert notice was on the 31st of January 2022; (f) the first time that these costs were indicated was when the application was launched; (g) there is already an industrial psychologist expert report before the court and, (h) the defendant tenders to the *plaintiff* limited updated fees in connection with this latter expert report filed by the *defendant* (by way of a contribution).

[47] The main argument by the defendant is that no in depth forensic financial disclosure is needed from him in the light of the limited issues at stake in the upcoming trial. The financial aspects in issue are only the plaintiff's right to and her need for maintenance and her earning capacity. The defendant's case is that he can and will pay whatever reasonable amount the court orders in terms of personal maintenance for the plaintiff and his children and that no extensive financial disclosure is warranted in these circumstances. In this connection, I am persuaded by the reasoning in *Gering.* In this case the defendant's position is that the threshold of the amounts claimed by way of maintenance for the plaintiff and the minor children (that may be ordered by the court, as being reasonable) will not cause him any financial hardship.

[48] I emphasize that I make no definitive findings in this connection as I have not had the benefit of the hearing of any *viva voce* evidence. However, I am of the view that taking into account these particular and peculiar circumstances, this stance by

the defendant must weigh in as a factor in my determination of the *quantum* of the interim costs allowance. In addition, I am advised that despite numerous requests the plaintiff has to date failed to file and serve her maintenance discovery bundle.

[49] Finally, it was eloquently pointed out by the defendant's counsel that the amount of preparation 'time' claimed by the plaintiff's legal team seems to be rather excessive. The plaintiffs' legal team request the sum of R615 000,00 (plus value added tax thereon) to prepare for trial. Of this amount the plaintiff seeks a globular amount of R25000,00 (plus value added tax thereon) for the issuing out of subpoenas and R60 000, 00 (plus value added tax thereon) for their expert. This in circumstances where; (a) their expert can only attend court on the first day of trial due to her alleged availability issues; (b) she has already been paid a not insubstantial deposit; (c) a tender has been made to update the *defendant's* expert report. Further, I must point out that the experts have not yet met in an attempt to file a joint minute to limit the possible issues in dispute.

CONCLUSION

[50] My conclusions are as follows. Firstly, it is settled law that an applicant for an order for increased maintenance and a contribution towards costs should clearly demonstrate the real and actual need for these contributions. Secondly, in my view, the plaintiff has failed to comply with the basic and generally understood requirements of proper and satisfactory material in support of her claims. These requirements have been achieved on many occasions without having to burden the court with voluminous applications. This court simply cannot in the circumstances, form a proper and adequate view as to whether the plaintiff actually does require all these additional contributions that she so freely claims.

[51] My previous order in connection with daily contributions on trial (ordered in arrears after each day of trial) will be re-instated (in so far as this may be necessary *on trial*) and, I will make a further order with reference to the *tender by the defendant* in connection with the fees for an updated expert report and for preparation *on trial*. Again, I make the daily contribution orders in arrears in order to attempt to exercise some control over the effective and productive use of valuable court time and to

ensure that valuable court time is not lost on issues that may not be relevant to the final outcome of the action proceedings.

ORDER

[52] The following order is granted, namely:

1. That the *defendant* shall make *further contributions* to the plaintiff's costs in the following amounts;

1.1 Trial preparation costs (on trial) in respect of the expert, Dr Swart in the sum of at least R33 075,00 (plus value added tax thereon) as tendered by the defendant.

1.2 Trial preparation costs (on trial) in the sum of R200 000,00 (inclusive of value added tax thereon) as tendered by the defendant shall be paid into the trust account of the plaintiff's attorneys, on or before 12h00 on Friday the 6th of May 2022.

1.3 The amount of R25 000,00 (plus value added tax thereon), per day, in respect of the plaintiff's counsel (on trial).

1.4 The amount of R25 000,00 (plus value added tax thereon), per day, in respect of the plaintiff's attorney (on trial).

2. That the payment of the amounts (or any such lesser amount as may be determined), as set out in paragraph 1.1 shall be paid directly to Dr Swart by the defendant, on demand.

3. That the payment of the amounts (or any such lesser amounts as may be determined), as set out in paragraphs 1.3 and 1.4 above, *shall be paid in arrears*, into the trust account of the plaintiff's attorneys, as determined from time to time, *after each day of trial.*

4. That if any balance of any of the amounts paid to the plaintiff (in terms of this order) remain in the plaintiff's attorneys' trust account after the divorce action is finally determined, such balance shall, subject to any contrary term in a settlement agreement or order of court, be repaid to the defendant's attorneys.

5. That the plaintiff's application for an increase of her maintenance as set out in paragraph 1.1 of her notice of motion, is dismissed.

6. That each party shall be liable for the costs of and incidental to this application and all remaining issues in connection with costs (if any), shall stand over for later determination at the trial.

E. D. WILLE
Judge of the High Court
Cape Town