

IN THE EASTERN CAPE HIGH COURT
(EAST LONDON CIRCUIT LOCAL DIVISION)

CASE NO. EL 276/2010

ECD 576/2010

DATE HEARD: 27 JULY 2010

DATE DELIVERED: 19 AUGUST 2010

NOT REPORTABLE

In the matter between:

T S (born C)

APPLICANT

and

R J S

RESPONDENT

JUDGMENT

NDENGEZI AJ:

This matter came before Court on the 27th of July 2010 and judgment was reserved.

1. This is an application in terms of Rule 43. The parties were married to each other after the commencement of the Matrimonial Property Act 88 of 1984 in terms of a duly registered antenuptial contract wherein community of property, profit and loss was excluded and the accrual system was included the marriage still subsists. However, the marriage has reached such a state of disintegration that there is no reasonable prospect of restoration of a normal marriage relationship.
2. Only one child was born out of the marriage and is aged 16 years.
3. According to the Applicant, the purpose of this application is to request the Court to order the Respondent to pay maintenance pendente lite for the minor child, to retain the Applicant and the minor child as beneficiaries of the Respondent's Medical Aid Scheme and pay the contributions in respect thereof as well as anything not covered by the Respondent's Medical Aid to pay pendente lite for the school fees of the minor child and for all other reasonable expense related to her schooling, including but not limited to, extramural equipment and extramural costs and clothes, to pay

pendente lite the costs of the minor child's casual clothing and to contribute towards Applicant's costs.

4. It is significant to mention that both parties are shareholders and directors of the company called Siyakhanda Medical Services (Pty) Ltd. Applicant receive a nett salary of R24 528-00 (Twenty Four Thousand Five Hundred and Twenty Eight Rand) from the company by virtue of holding the position of director.
5. The Respondent contends that it was not even necessary for the Applicant to bring this application as he is presently contributing towards the child in a fair and reasonable manner. The child is presently 16 years of age and will turn 17 years on 24 September 2010. She has expressed a desire to reside with both parents and she believes that it is in her best interests that the Applicant and him be joint caregivers of the minor child. Both parents are presently maintaining the minor child and she is already spending time with each of them on a more or less equal basis.
6. The Respondent is prepared to retain the Applicant and the minor child as beneficiaries of his Medical Aid Scheme on an interim basis.

7. I observe that the interests of the minor child are well taken care of by both parties and this is very good.
8. Respondent further contends that the expenses claimed by the Applicant are in some instances simply outrageous. Applicant and Respondent presently hold 35% shares in Siyakhanda Medical Services (Pty) Limited. This put the parties on almost equal footing if not equal.
9. After careful consideration, I have come to the decision that the Applicant has failed to prove on a balance of probability that she need assistance towards costs in this matter taking into account her income and what would be reasonable expenses.

In the result I make the following order:

1. The parties hereto shall be the joint caregivers of the minor child whose place of primary / physical residence shall vest jointly with the parties.
2. The Respondent must pay the school fees, cost of school books and cost of school uniforms.

3. The Respondent must retain the Applicant and the minor child as beneficiaries in his Medical Aid Scheme.
4. The Applicant must pay for the minor child's hair-do's, casual clothing and pocket money.
5. Each party to pay its own costs.

S D NDENGEZI

JUDGE OF THE HIGH COURT

ACTING JUDGE

19 AUGUST 2010