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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

Case No: 91/2019

In the matter between:

W[...] A[...] (born S[...])

Applicant / Plaintiff

And

G[...] E[...] A[...]

Respondent / Defendant

JUDGMENT

BESHE J:

[1] The applicant instituted divorce proceedings against the respondent earlier this year to end the parties' marriage of 46 years.

[2] The applicant has now approached the court in terms of *Rule 43 (1) (a) and (b) of the Uniform Rules* of this court seeking payment in the sum of R20 00.00 per month from the respondent for maintenance *pendente lite*, as well as a R25 000.00 contribution towards her legal costs of the matrimonial action.

[3] The applicant gives a breakdown of their monthly expenditure before their separation the total of which is a sum of R43 160.00.

[4] The applicant then proceeds to give a breakdown of what she deems to be her necessary and reasonable monthly expenses totalling R26 968.00. She states that she receives about R6 000.00 as a pensioner per month and states that the shortfall between the R12 000.00 tendered by respondent for maintenance and her reasonable monthly expenses is R9 000.00. She goes on to state that as a retired Magistrate, respondent receives a pension in the sum of R39 000.00 per month and attaches respondent's bank statement in this regard. She also tabulates respondent's assets.

[5] The applicant estimates the costs that she will incur in order to proceed with the matter to trial up to and including the first day of trial to be R50 000.00. No details are provided as to how this estimate was arrived at. A request is made that respondent be ordered to make a payment of R25 000.00 towards her litigation costs.

[6] The respondent on the other hand tenders a sum of R12 000.00 maintenance per month *pendente lite* and R5000.00 as initial contribution towards applicant's costs. This is on the basis that the amounts stated by applicant as her reasonable expenses are exaggerated and not reasonable in light also of his means. He refutes the accuracy of amounts that applicant alleges they expended before their separation. He also takes issue with applicant's current expenses. I do not intend dealing with each and every alleged expense and respondent's response thereto. I will deal with only a few of the items. As far as the amount of R1 666.00 per month applicant asserts she requires towards her annual holiday, respondent submits that this is irrelevant for purposes of maintenance *pendente lite* whilst in any event exorbitant. In respect of entertainment and eating out applicant requires R2 500.00

respondent spends or provides R1 500.00 for himself. R500.00 for clothing as opposed to R1 500.00 applicant alleges she requires. The applicant puts her groceries at R4000.00 per month, respondent puts his at R3000.00 but is of the view their groceries combined would have been R4000.00. On dog food for two dogs respondent states that he spends R1000.00. I am of the view that the sum of R2000.00 for groceries for applicant's use as suggested by the respondent is not reasonable in the circumstances. A sum of ± R3000.00 appears reasonable.

[7] Whether or not the amounts given by applicant are necessary and reasonable is not the only factor to determine whether she entitled to an order that respondent should foot the bill for her expenses. The capability or ability of the respondent to meet such requirements comes into play and requires consideration.

[8] It is common cause that respondent receives a monthly pension payment of R39 000.00. From his cheque account statement (annexure "F" to applicant's founding affidavit) he pays ± R5 000.00 towards medical aid. He states in his opposing affidavit that his medical aid subscription is R6 488.00 as well as R1 695.00 for medicine not covered by medical aid. Applicant is also covered by respondent's medical aid scheme / subscription. According to him, his monthly expenses total R38 972.00. Included therein is R12 000.00 maintenance to the applicant.

[9] The amount required by applicant as a contribution to her costs is assailed on the basis, *inter alia*, that respondent can only afford to make a R5 000.00 contribution and that she could have instituted the divorce action in the Regional Court to minimize the costs.

[10] As I indicated earlier, apart from stating that she was advised that the estimated costs which will be incurred in order to proceed with this matter to trial will be R50 000.00 up to and including first day of trial, no details are provided as to how this figure was arrived at.

[11] Having considered that the applicant is entitled to reasonable maintenance *pendente lite* the divorce (this does not appear to be in dispute) as well as the respondent's capability to meet such requirements, I am of the view that the amount of R12 000.00 tendered by the respondent is reasonable in the circumstances. That is in light of his means and the fact that I will order him to contribute towards applicant's cost. I am not persuaded that a contribution of R5 000.00 will be adequate in this regard. Accordingly, I will order that respondent makes a contribution of R10 000.0.

[12] I have been urged to order respondent to shoulder the costs of the application. It was submitted that this I should do to show my disquiet and displeasure at the language employed by the respondent. Some of the allegations made by the applicant are said to be "laughable", "ridiculous" and expressions such as "not in a million years" are used.

[13] Counsel for the respondent, *Ms Stretch* acknowledged that the language used in the opposing affidavit is not the ideal language. She however urged me not to attach any weight thereto. She submitted that this may be attributed to the attorney who drew the papers or to the fact that in matters such as this, emotions usually run high, with bitterness and anger abound. I am in agreement with *Ms Stretch's*

sentiments and propose to issue the standard order in this regard namely – that costs be costs in the divorce action.

[14] Accordingly, it is ordered:

(i) That respondent pays maintenance for the applicant in the sum of R12 000.00 per month *pendente lite*. This amount is to be paid into applicant's bank account with FNB on or before the first day of every month with effect from 1 November 2019

(ii) That the respondent be and is hereby ordered to effect a contribution of R10 000.00 towards applicant's legal costs on or before 1 November 2019.

(iii) Costs of this application to be costs in the divorce action.

NG BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant / Plaintiff : Adv: F Miller

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Date Heard : 22 October 2019

Date Reserved : 22 October 2019

Date Delivered : 24 October 2019