

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION)

In the matter between:

6125/07

SUSAN JANE HATTINGH

AND

MICHAEL GORDON HATTINGH

Case No:

APPLICANT

RESPONDENT

REASONS FOR JUDGMENT

CHETTY, J

1. This is a second application for maintenance *pendente lite*.
The first application during October 2007 was, in the nomenclature of the applicant “. . . *mero motu* . . . ruled . . . premature”. At the conclusion of argument before me, I dismissed the application with costs. Reasons have now been requested and these follow:
2. It is not in issue that the respondent earns a nett salary of R15 800, 00 out of which he pays the applicant a cash amount of R8000, 00 and an additional amount of R3 652, 47 in respect of the DSTV, school fees, the hospital plan and the insurance premium, in total R11 652, 47. In her notice of motion the applicant claims a cash amount of R4 000, 00 per month and R3 700, 00 per month in respect of each the three minor children as maintenance *pendente lite*, in total R15 100, 00

per month. Cognisant, no doubt, that the respondent cannot conceivably pay that amount from his salary she nonetheless contends that the *Umbuthanu* Trust has a cash amount of R1 899 378, 56 standing to its credit which could be utilised to supplement her maintenance requirements.

3. Although the applicant seems to suggest that she is only “nominally a trustee of the trust” the fact remains that she and the respondent are the trustees. She has all the rights available to a trustee. She has however done nothing being content to allege, unfairly on the papers before me, that the respondent treats the trust assets as his personal fiefdom. In argument before me Mr Cole submitted that as the applicant had given the respondent the requisite authority to utilise the trust money for the purpose which she seeks, there is no impediment preventing the respondent from so agreeing. Reliance on the resolution (page 16 of the papers) is clearly misplaced. The resolution is limited in extent and cannot be construed in the manner contended for. In the opposing affidavit the respondent has pertinently stated that provided he has the co-operation of the applicant he would have no difficulty in agreeing that the trust money be utilised. On the applicant’s papers no such authorisation is evident and it scarcely behoves her to now complain. The assets of the trust rest in the trustees and they must act jointly in all matters

affecting the trust.

D. CHETTY
JUDGE OF THE HIGH COURT

OBO THE APPLICANT: ADV COLE

OBO THE RESPONDENT: ADV BROOKS

DATE HEARD: 14/02/2008