IN THE HIGH COURT OF SOUTH AFRICA

(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No : 847/2002

In the matter between:

MARKUS RUBEN BUYS Applicant

and

JACOMINA DOROTHEA COOPER First Respondent
(previously BUYS) (previously MULLER)

SANLAM Second Respondent

OLD MUTUAL Third Respondent

HEARD ON: 13 JUNE 2002

HEARD BY: RAMPAI J

DELIVERED ON:` 25 JULY 2002

JUDGMENT BY: RAMPAI J

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1. The matter first came before me by way of an urgent application in terms of rule 6(12)(a) on Wednesday 13 March 2002. I then granted an interim relief sought. The order I made restrained the second respondent from making further payments to the first respondent out of specific disability

and pension funds earmarked for the applicant; restrained the third respondent from alienating the first respondent's interest in a specific policy contract and retirement annuity contract in respect of the applicant; rescinded specific clauses of a deed of settlement which was made an order of court in Bloemfontein on 9 February 1999 under case nr 1557/1996 of the Free State High Court and also granted ancillary relief. In short the applicant applies on a notice of motion for an interim order relieving him from liability to pay the first respondent an amount of maintenance in terms of the consent paper incorporated in the divorce court order which amount is currently R1 200 per month.

2. I made the interim order *pendente lite* the main action which the applicant contemplated instituting against the first respondent. In the main action contemplated by the applicant the competing rights of the applicant *vis-a-vis* those of the first respondent shall be finally determined. The real parties to these proceedings are the first respondent and the applicant. They were formally husband and wife. They were divorced by an order of the Free State High Court in an action where the first respondent (the wife) was the plaintiff and the applicant (the husband) was the defendant. In terms of the deed of settlement incorporated in the court order on 9 February 1999 the applicant undertook to contribute an amount of R770 per month from 1 April 1999 towards the maintenance of the first respondent and also gave her 40% of his pension interest.

3. Three years after the divorce, the applicant commenced further proceedings against his former wife in the same court. The pivotal averments in support of his claim are:

3.1 that the first respondent had induced him to sign the settlement agreement, and to obtain a decree of divorce on the grounds thereof, by fraudulently representing that she was indigent and in need of support from the applicant, her husband;

3.2 that the representation she made was in fact incorrect;

3.3 that she made the incorrect representation with deliberate and fraudulent intent to mislead the court;

3.4 that the fraudulent representation was so divergent from the true facts that the court would not have given the judgment it was induced to give had the true facts been honestly divulged.

3.5 that the applicant had taken it upon himself to cancel the settlement agreement by stopping further payment of maintenance to the first respondent upon discovery of the true state of affairs.

4. The particulars of the true state of affairs as alleged by the applicant were set out in the applicant's founding affidavit and summarised by his counsel in the applicant's head of argument. The applicant states that during the negotiations which were aimed at settling the dispute and before the court pronounced the dissolution of the marriage on 9 February 1999 the first respondent did not disclose to him, his legal team, her legal team or the presiding judge:

4.1 that she had already married a certain Mr Gert Johannes Muller at

Paul Roux on 30 May 1998;

4.2 that the marriage between her and the said Mr Muller was in community of property;

4.3 that Mr Muller was a wealthy man who owned several properties, business ventures and farms at Lindley;

4.4 that she was employed by Mr Muller as a manageress of a furniture shop called G and M Meubels at Lindley;

4.5 that she owned a bird farming venture at Lindley;

4.6 that the marriage between her and Mr Muller was still subsisting and that she was happily married.

5. The applicant avers that during the negotiations which led to the signing of the settlement agreement and prior to the grant of the judgment on 9 February 1999 the first respondent concealed the aforesaid true facts and induced him, his legal team, her legal team and the trial judge to believe:

5.1 that she was ill, jobless, incapable to work and entirely dependent on her sister for her daily needs of subsistence;

5.2 that she was an indigent person without any income, without any property, without any shelter and without the necessary care;

5.3 that she was still living alone and had not remarried since cohabitation between her and the applicant ceased about six years back;

5.4 that she was lawfully married to the applicant who had adequate resources to provide support to her after her divorce from him.

6. Mr Claasen, counsel for the applicant, contended that by virtue of the first respondent's fraud, the applicant was entitled to the rescission of the decree of divorce in the form in which it was pronounced and issued on 9 February 1999. Mr Cronje, counsel for the respondent, did not launch any challenge, in my view rightly so, to the proposition that the law was as contended for the applicant; that he is entitled to the relief sought if he can show that the original judgment was obtained through fraud on the part of the first respondent. In his classic work, Pandectas 42.1.28 Voet says that the vanquished party has a right to have a judgment set aside if such judgment was obtained by false evidence and provided such false evidence first came to the knowledge of the vanquished party or the judge afterwards. In the case of **PEEL v NATIONAL BANK OF SOUTH AFRICA LTD** 1908 EDC 488 on p 493 Kotzé AJP says that where judgment is founded on fraud, the defrauded party has the remedy to have the case reopened and the judgment set aside if the alleged fraud is proven.

In the case of **ROBINSON v KINGSWELL** 1915 AD 277 on 285 Innes CJ says that the plaintiff was entitled to restitution in *integrum* if he can show that the original judgment was obtained through the defendant's fraud.

In the case of **DE WET v BOUWER** 1919 CPD 43 on 46 Juta JP said that if the true facts were not suppressed on the previous occasion and the full case was laid before the court then as was done afterwards, the judge in the first or original instance would never have granted the order if he knew what emerged afterwards in the subsequent instance or hearing. Juta JP was in effect saying no binding judicial order can rest on a fraudulent foundation.

The effect of fraud on a judicial judgment was again considered by the Appellate Division in the case of **SCHIERHOUT v UNION GOVERNMENT** 1927 AD 94 where De Villiers JA on p 98 reaffirmed the legal position by saying:

> "Now a final judgment of a court of law being *res judicata* is not to be lightly set aside. On the other hand it stands to reason that a judgment procured by the fraud of one of the parties whether by forgery, perjury or in any other way such as fraudulently withholding material documents, cannot be allowed to stand. That was the roman Law C.7.58), and that is our law (Voet 42.1.28)."

In the case of **PAUL AND PAUL v CULLUM** 1933 NPD 601 on 606 Landsdown J said it was clear that the court had jurisdiction to set aside a judgment obtained from it by fraud if the fraud was proven.

7. The vanquished party such as the applicant who seeks to have a judgment set aside on the ground that such judgment was obtained by fraud has to show the requisite of fraud which are:

7.1 that the evidence which was previously laid before the court was incorrect;

7.2 that it was fraudulently made with the specific intent to mislead;

7.3 that it diverged from the true facts to such an extent that the court would have given a different judgment from the one it was induced by the incorrect evidence if the true facts had been placed before it (*vide* **SWART v WESSELS** 1924 OPD 187 on 189-190 per De Villiers JP as he then was). Delivering judgment in the case of **VILJOEN v FEDERATED TRUST LIMITED** 1971(1) SA 750 (OPD) at 758A-B Steyn AJ elaborated on the requisites for fraud as follows:

> "In order to succeed on a claim that a particular judgment be set aside on the ground of fraud it is necessary for the claimant to allege and to prove: (*a*) that the successful litigant was a party to the fraud. (See **MAKINGS v MAKINGS** 1958(1) SA 338 (AD) at pp 344-345); (*b*) that the evidence was in fact incorrect; (*c*) that it was made fraudulently and with intent to mislead; and (*d*) that it diverged to such an extent from the true facts that the Court would, if the true facts had been placed before it, have given a judgment other than what it was induced by the incorrect evidence to give. See **SWART v WESSELS** 1924 OPD 187 at pp 189-190; **SMIT v VAN TONDER** 1957(1) SA 421 (T) at p 426H; **HERBSTEIN AND VAN WINSEN**, *supra* at p 424."

8. The question is whether a consideration of the evidence before me establishes those propositions. An answer demands an examination of the

facts. The first respondent was born on 6 May 1947. Virtually nothing is told about her childhood and family ties except that she has a sister Me SW Cusons.

8.1 She met a certain Mr Louis John Lachenicht who was born on 6 August 1942. She deposes that she married this gentleman and that two children were born of that marriage namely:

Craig Louis Lachenicht a boy born on 2 January 1967; and Timonthy John Lachenicht, a boy born on 19 February 1968.

She alleges that she divorced mr Lachenicht before she met the applicant. Not much is told about Mr Lachenicht. Neither a marriage certificate nor a divorce certificate is available to prove that marriage. The first respondent has failed to provide the applicant with copies of those documents despite numerous requests. Mr Lachenicht apparently died on 1 November 1981 according to a copy of the death certificate annexed to the first respondent's opposing affidavit - *vide* p 103 of the record.

8.2 The applicant states that according to first respondent immediately before her marriage to him her previous husband was a certain Mr Denis Hall of Electro Systems at Nelspruit. Again very little is told or known about Mr Hall, allegedly the second husband to the first respondent. Again neither a marriage certificate nor a divorce certificate relating to the alleged second marriage of the first respondent is available. Once more she has been called upon to produce proof of both marriages.

8.3 The first respondent married the applicant at Nelspruit in

Mpumalanga on 28 March 1980. At that time she was 32 years old and he was 37 years old. He was born on 18 May 1942. She brought her two sons Craig and Timothy into the third marriage. The applicant brought the two boys up. Their surname was changed from Lachenicht to Buys on 15 February 1982. The applicant states that he was not a party to the adoption application and that the first respondent found a way of doing it all alone without his co-operation or knowledge. In 1983 the couple officially adopted two children, namely Juanita and Lourens. At that time the parties were living at Barberton in Mpumalanga. Ten years later cohabitation came to an end. The applicant left the common home, 22 De Villiers Street, Barberton and settled at George at the Western Province. He took with him Juanita and Lourens. He took a minibus and left the rest of the assets with the first respondent, among them were the following: The aforesaid residential house, 5 rented flats, 5 undeveloped residential properties and the household furniture. In 1993 she sued him for divorce in Pretoria under case no 9422/1993 in the Transvaal Provincial Division. In 1994 she sued him for maintenance. He was then ordered to pay her R500 per month from March 1994. In 1996 she again filed for divorce. On this occasion she sued him in Bloemfontein under case no 1557/1996 of the Orange Free State Provincial Division. This while another similar case was still pending in the Transvaal Provincial Division. The Bloemfontein case dragged on for a considerable time. The fate of the Pretoria case remained unclear to the applicant.

8.4 In May 1996 the first respondent met a certain Mr Jacobus Johannes

Van Zyl, a provincial traffic inspector of Marquard. Shortly afterwards she sold her house and moved into Mr Van Zyl's house where she lived with him as husband and wife until about May 1997 when the relationship broke down.

"2.3 Hoewel ek en die Applikant nooit enige huwelikseremonie deurloop het nie, het ons tog verloof geraak. Ons het vir bykans 'n jaar as man en vrou saamgewoon en was die bedoeling dan ook inderdaad dat ons op 'n stadium in die huwelik sou tree."

"4.3 Die Applikant het nooit aan my openbaar dat sy 'n getroude vrou is nie. Indien ek bewus was van die feit dat sy 'n getroude was, sou ek nooit toegelaat het dat sy by my huis ingetrek het nie. Ek sou nooit aan haar verloof geraak het nie en daar sou nooit enige sprake van 'n huwelik gewees het nie."

Says Mr JJ van Zyl in his sworn statement signed at Marquard on 6 June 2001. She now sues him under case number 293/1998 of Marquard magistrate court for an amount of R44 000 in respect of money she alleges she lent and advanced to him while she was living in adultery with him - her marriage to the applicant was still subsisting.

8.5 In 1998 shall I say on 30 May 1998 to be precise, the first respondent married Mr Gert Johannes Muller at Paul Roux in the Free State *vide* the marriage certificate on p 40 of the record. Mr Muller was born on 17 February 1922. The marriage was in

community of property. He is a wealthy farmer and a businessman of Lindley. When she entered into this marriage with Mr Muller she was still legally married to Mr Buys of George. She did not tell Mr Muller she was still someone's wife.

8.6 In 1999, shall I say on 9 February 1999 to be precise, the first respondent and the applicant signed a separation agreement in terms of clause 3 of the separation agreement the applicant is obliged to contribute an amount of R700 per month from 1 March 1999 towards the maintenance of the first respondent and that obligations shall endure until the first respondent remarries, or if a third party assumes such duty, or until she dies or until the pension fund pays out the proceeds of a specific policy. In terms of clause 4 of the separation agreement the first respondent acquired 40% of three specific policies issued by Sanlam and Old Mutual. The separation agreement was incorporated in the court order which was given by Pretorius AJ on 9 February 1999. The applicant complied with this court order until 3 October 2000. Soon afterwards he discovered that the first respondent was living with a third party, and that she had in fact married the wealthy Mr Muller on 30 May 1998 while she was still his wife in law. He then took a unilateral decision to withhold any further payments to first respondent in terms of the court judgment.

8.7 In 2001 her purported marriage to Mr Muller began to crack. The formal heading of Mr JJ van Zyl's affidavit shows that the first respondent has instituted legal proceedings in 2001 against Mr

Muller under case number 1762/2001 of the Free State High Court. Still in the same year on 31 December 2001 thirteen months since the applicant had stopped paying her maintenance, she apparently appeared in the Johannesburg Family Court where she obtained an increased maintenance order of R1 200 per month with effect from 31 December 2001 against the applicant but in his absence. The order was then served on Sanlam, the applicant's pension was attached and Sanlam directed to deposit the amount of R1 200 per month into the bank account of first respondent 245308199 at Standard Bank (SA) Limited Senekal in the Free State. It seems to me that Sanlam complied with that court order three times before these proceedings were initiated. When the applicant became aware of this, he took the necessary legal steps at once. That then concludes the romantic saga of the first respondent and all the known men she has loved before but ended up suing them all.

9. On 13 March 2002 the applicant launched this urgent application *ex parte*. I considered that the applicant had established a *prima facie* right to the interim relief sought. It is that right which I am now asked to protect further by a final order confirming the rule *nisi*. But the respondent opposes the application and contends that the rule *nisi* has to be discharged. It is averred in the founding affidavit that the first respondent made certain representations with fraudulent intent in order to mislead and that such fraudulent representations induced the applicant to enter into the separation agreement and to consent to a divorce order in terms of such an agreement. It is also averred and contended on behalf of the applicant that, but for the fraud, on 9 February 1999 the court would not have made

an order of divorce in its present form. Annexed to the founding affidavit is the separation agreement signed by the parties which recorded the applicant's obligations to provide regular maintenance towards the respondent. It is further averred by the applicant that during the settlement negotiations the first respondent represented to the applicant that she was an indigent woman in a poor state of health, without any income or any assets or anyone to rely on for her daily necessities of subsistence other than her sister and the applicant. The respondent knew, it is further alleged, that all the representations were not true; moreover she knew the applicant was unaware of the true state of affairs; she knew the applicant was unlikely to agree to carry on supporting her after the divorce if he knew the true facts; she knew he would not have signed the separation agreement in the present form. In short she knew very well that the true facts were detrimental to her interest. With that knowledge in the forefront of her mind she deliberately suppressed the true facts, invented false stories, sugarcoated them in order to conceal their true colors and their bitter taste, thereby cunningly induced her adversary to sign the separation agreement so that she could present it to the judge with the request that it be made a binding order of the court. In my view those settlement negotiations lacked mutual *bona fides*. The separation agreement was underpinned by suppression of the truth. Its presentation to the presiding judicial officer was a deceitful act. All these deliberate acts of deception boil down to nothing more and nothing less than fraud perpetrated on the court itself.

10. The first respondent concealed the true facts that she was living with another man, as husband and wife, a wealthy man for that matter, that she

was gainfully employed as a manageress of a furniture shop belonging to the same rich man; that she owned properties and that she was the seller of exotic birds. The applicant lost his job in 1982 on the grounds of medical unfitness. Ever since then he has been on permanent but expensive medication. For two decades now he has not been gainfully employed. Therefore he has no steady source of income other than his pension which he has been sharing with the respondent until 3 October 2000. He spends the bulk (± R2 000) of his money on medications which is indispensable for his survival. Although he is a member of a medical aid society, his limit on chronic medication is R8 000 per annum. This amount gets exhausted in four months every year. For the remaining eight months of the year he depends on his modest pension of approximately R3 700. In those circumstances frank disclosure was clearly called for. *Vide* **GOLLACH AND GOMPERTS (PTY) LTD v UNIVERSAL MILLS & PRODUCE CO (PTY) LTD AND OTHERS** 1978(1) SA 914 (AD) at 924A-B per Miller JA. The respondent owed the applicant a duty to disclose the true facts relevant to her need to be supported and the applicant's ability to provide such support. In the case of **MESKIN, NO v ANGLO-AMERICAN CORPORATION OF SA LTD AND ANOTHER** 1968(4) SA 793 (WLD) at 802H Jansen J said the following about concealing the truth:

> "Cicero's own view is:
> `The fact is that merely holding one's peace about a thing does not constitute concealment, but concealment consists in trying for your own profit to keep others from finding out something you know, when it is for their interest to know it.' "

Jansen J at p 802A of the same case said the following about the conduct of the contracting parties:

> "It is now accepted that all contracts are *bonae fidei* (some are even said to be *uberrimae fidei*). This involves good faith (*bona fides*) as a criterion in interpreting a contract (**Wessels**, *op cit*, para 1976) and in evaluating the conduct of the parties both in respect of its performance (**Wessels**, para 1997) and its antecedent negotiation. Where a contract is concluded the law expressly invokes the dictates of good faith, and conduct inconsistent with those dictates may in appropriate circumstances be considered to be fraud."

I associate myself with these views expressed in the two passages.

11. Mr Cronje, counsel for the first respondent, argued that the applicant was still obliged to support the respondent in terms of the challenged provisions of the separation agreement seeing that the marriage between the respondent and Mr Muller was null and void. In developing that argument he made the submission that the criminal prosecution of the respondent and her subsequent conviction for bigamy in the Lindley magistrate court did not in any way adversely affect her right to be supported by the applicant in terms of the separation agreement which was confirmed by the court order thereby granting her the strongest right to enforce the provisions thereof. I have no hesitation in saying there is no foundation whatsoever in this submission. It is not the applicant's case that there was a legal duty created by a valid bond of marriage on the part of Mr Muller to support the first respondent as his lawful spouse. His case is that as a matter of fact she was staying with a third party, that they were living together as husband and wife; that the third party was a man of great substance; that she was gainfully employed; that she had a business

venture in her own right and that in the circumstances she had resources which exceeded his humble resources by far.

12. Now, there are cardinal requisites for the right to claim support. **Boberg: LAW OF PERSONS AND THE FAMILY** 2nd edition on p 233-234 writes:

> "The law imposes a duty upon one person to support another when three requirements are satisfied:
>
> (a) the person claiming support must be unable to support himself or herself;
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> (b) the person from whom support is claimed must be able to support the claimant; and
>
> (c) the relationship between the parties must be such as to create a legal duty of support between them."

It is my *prima facie* view that *in casu* none of the requisites has been established. As regards the first two requisites the respondent concealed the true facts. Her motive for concealing them is obvious now. The truthful disclosure would have revealed that she was not an indigent poor, jobless, husbandless woman who needed to be supported by a jobless, sickly pensioner. As regards the third requisite it has become increasingly doubtful whether a valid marriage really subsists between the applicant and the first respondent. Firstly on 9 February 1999 she deceived Mr Buys - she did not tell him she was already married. Secondly, on 30 May 1998 she deceived Mr Muller - she did not tell him she was still married. Instead

she tied a marital knot with him. Thirdly, in May 1996 she deceived Mr Van Zyl - she did not tell him she was still another man's wife. Instead she promised to marry him. She became engaged to him.

13. What can convince any reasonable person in these circumstances to believe that she did not deceive Mr Buys at Nelspruit on 28 March 1980 when she told him there were no legal hassles or impediments and that she was free to marry? Despite the applicant's specific requests over the years, she has failed to produce her divorce certificate relating to Mr Lachenicht who died on 1 November 1981, hardly two years after her marriage to the applicant. She provided proof of mr Lachenicht's death. But for no apparent reason she cannot produce proof that she was divorced from him. Mr Lachenicht's death certificate shows that he was still a married man at the time of his death at Pinetown on 1 November 1981. The applicant's suspicion that the first respondent might have still been married to Mr Lachenicht or Mr Hall at the time she married him on 28 March 1980, is not without substance. It is understandable should the applicant's private investigation confirm his suspicions, it would meant that his marriage to the first respondent was null and void. The effect thereof would be that there was never a valid relationship between the parties which imposed a legal duty on the applicant to support the first respondent. Should such fact be established, it would constitute another dimension of fraud perpetrated on the applicant and the marriage officer at Nelspruit. The further implication may be that the marriage the first respondent entered into subsequent to the death of Mr Lachenicht was valid because her marriage to Mr Lachenicht would have been dissolved by his death.

14. The nature of the process before me is in essence not final in substance it is an interim interdict. An interim interdict was defined as a court process which temporarily preserves or restores the *status quo* between the litigants to what it was before an act complained of pending the determination of their rights. The granting of an interim process does not entail a final determination of the competing rights and does not affect their final determination. *Vide* **Joubert : THE LAW OF SOUTH AFRICA**, first re-issue vol 11 paragraph 314; **APLENI v MINISTER OF LAW AND ORDER AND OTHERS** 1989(1) SA 193 AD at 201A-B. The grant of an interim interdict does not amount to any finding on the facts. The making of such findings is a prerogative reserved for the trial court hearing the main action.

15. There are four requisites which the applicant has to prove in order to establish a right to claim relief in the nature of an interim interdict namely:

15.1 that the applicant has a *prima facie* right;

15.2 that the applicant has a well-grounded apprehension of irreparable harm to that right;

15.3 that the balance of convenience favours the granting of an interim interdict;

15.4 that the applicant has no other satisfactory remedy besides the interim relief sought.

Vide **SETLOGELO v SETLOGELO** 1914 AD 221 on 227 and **ERIKSON MOTORS (WELKOM) LTD v PROTEA MOTORS WARRENTON** 1973(3) SA 685 (AD).

16. The applicant was *prima facie* defrauded by the respondent. As we have seen in terms of our substantive law he has the right to have the case reopened and the judgment set aside if he can show that but for the fraud the court would have given a judgment different from the one it was induced to give had the true facts been placed before it. Before he signed the separation agreement, the applicant had the right to know the truth. But the first respondent fraudulently suppressed the truth concerning her resources. The frank disclosure of the correct information was in the interest of the applicant. The applicant signed the separation agreement in the mistaken but *bona fide* belief that the first respondent acted in good faith during the negotiation. However, subsequent developments revealed that there were no *bona fides* on the part of the first respondent. She suppressed the truth on purpose. She exploited the applicant's ignorance of the truth, violated his right to know and presented perjured evidence to the court. In my view the applicant has proved the facts that he has a *prima facie* right in terms of substantive law for the relief he seeks.

17. Objectively speaking, any reasonable man, confronted by the facts confronting the applicant, would be apprehensive that if the first respondent continues taking away his modest pension money in terms of a judgment obtained by fraud, it will cause him irreparable harm. The first respondent obtained an increased maintenance order of R1 200 per month from 31 December 2001 issued by the Johannesburg Family Court. She

obtained the order in somewhat dubious circumstances against the applicant in his absence. The applicant stated that he was unaware of those proceedings. The first respondent alleges that she is penniless at present. Now, it is clear that if she is truthful on this point, she will not be able to make good the applicant's loss if the interim relief is refused but the ultimate relief is eventually granted in the main action. It is significant to bear in mind that the applicant was medically declared unfit to work in 1982. Since then he has been on permanent medication. It is an expensive kind of medicine. But it is indispensable to him for his survival. He fears he will die if he stops taking the prescribed medication. In my opinion his fear for his life is well-grounded. His hardship if the interim relief is not granted, will be far worse than the hardship of the first respondent if it is granted.

18. I have examined the facts of this case. It is my considered opinion that the applicant has strong prospects of success in the main action. Moreover, the first respondent was able to do without any support from the applicant from November 2000 until November 2001. The applicant is a pensioner, since he receives this pension money from the employer's disability pension scheme he does not qualify for the state welfare grant. If the first respondent is medically incapable of doing any work now, she will qualify for a state welfare grant, which can alleviate her problem pending the outcome of the main action. By hook or by crook she pocketed a lion's share of the joint estate, cashed cheques in excess of R27 300 which were drawn in favour of the applicant and also collected rental from the tenants for her own exclusive benefit. Her ridiculous claim that a certain magistrate authorised her to exchange those cheques only shows that she has a

propensity for fraudulent acts. While she was living in the fool's paradise with Mr Muller she did not care about the support from the applicant. Now that that relationship also has gone sour, she has turned to the applicant. She now wants the court to believe that she is this poor, needy, sickly and penniless woman. It seems to me the applicant will suffer greater prejudice if the interim relief is not granted than the first respondent will if it is granted. I therefore hold that the balance of convenience favours the applicant.

19. Counsel for the respondent argued that the applicant's proper remedy was limited to taking the order of the Johannesburg Family Court on review or appeal. He submitted that it was not open to him to seek relief from this Court. This submission holds no water. The appellant was within his right to approach this Court. The remedies provided for in the Maintenance Act No 99 of 1998 have not taken away the applicant's right to seek relief in this Court. After all it is this Court which was deceived. I can see no other alternative remedy of preserving the *status quo* other than the remedy he now seeks *vide* **PIETERMARITZBURG CITY COUNCIL v ROAD TRANSPORTATION BOARD** 1959(2) SA 758 (NPD) at 773A-B per Fannin J.

20. The applicant has in my view established all the requirements of an interim interdict. Accordingly the rule *nisi* is confirmed pending the final decision of the main action already commenced by the applicant against the first respondent. As regards costs I see no reason to depart form what is usual in cases of this nature. Therefor I order that the question of costs in this application be reserved for the decision of the trial court.

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MH RAMPAI, J

On behalf of the Applicant	**:**	**Adv JY Claasen** **Instructed by** **Hechter Attorneys**
On behalf of the First Respondent	**:**	**Adv PR Cronjé** **Instructed by** **UV Legal aid**

/Jacobs