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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 3291/2021

In the matter between

S D R

And

B R R

CORAM: MZANAAJ

HEARD ON: 19 AUGUST 2021

DELIVERED ON: 02 SEPTEMBER 2021

INTRODUCTION

[1] This is an opposed application for the specific relief's pendete lite in terms of Rule 43 on the Uniform Rules of the court, which the Respondent is opposing. The applicant seeks or moves for orders pending the finalization of the main action

(divorce) which include monthly spousal and children's maintenance, contribution towards her legal costs.

BACKGROUND

[2] The parties were married to each other out of the community of property including accrual' system on the 28 January 2017 and the marriage still subsists. Two children who are still minors were born from the marriage. It appears that, the applicant was a businessperson before meeting the Respondent, and had more than one successful business. Had been a sole member of S[...] as well as a member of SEO3

construction and Projects CC and both established a "trust" However, in 2015, she was charge for Fraud and subsequently convicted and sentenced to one year in prison. As she could not attend to the day-to-day needs of the businesses, she transferred her member's interest verbally to the respondent until such time she could be able to take over again. Whilst they were married, they equally enjoyed the fruits of both businesses and the trust. They lived a lavish lifestyle with the driving of expensive cars inter alias, Porsche and Mercedes Benz cars.

[3] It is her evidence that, the respondent did not abide with their verbal agreement, literally took over, and utilized both businesses and the trust as if there was no difference between him and the entities. He misused, mismanaged and recklessly withdrew the funds for his private use without permission and her consent.

[4] Subsequent to her release from prison, the applicant received a monthly salary of R72.000.00 from the profits and income of the businesses (S[...]). As their marriage started deteriorating. in January 2020 so did the income until the respondent finally stopped making any payments. Due to such she and children have nothing, have no cash reserves with which to maintain herself and children and no source of income. As a result, she has incurred a huge debt she is unable to pay, and she is not qualified to acquire any loan nor debt. During their marriage, they have acquired properties that some rented out.

[5] Respondent in his opposing affidavit moves for a counter order. His income and liabilities is condensed in a financial statement prepared by his auditors with a bank statement attached. He indicated in his opposing affidavit that his opposition is not premise on an unwillingness to pay and or to contribute to the applicant and his minor children's financial obligations. On the contrary, since their separation, he has been making payments to the applicant to meet the children's needs and willing to continue doing so. However, the two entities are no longer as profitable as they were before Covid-19 and the lockdown. Because of the

aforementioned reason, he started giving the applicant less money as the business was not doing well. Due to company's dire financial position he could not afford to pay most of the important things including the medical aid as a result it lapsed. He confirmed that they lived a lavish lifestyle indeed driving the aforementioned expensive cars, however denied that their marriage started deteriorating in January 2020 but around May 2019. The respondent has tendered on to pay:

1. R1500.00 per month per child
2. R2000.00 per month towards the applicant for water and electricity
3. Pay 50% for clothing, food and sports etc. as needed for the children
4. To pay school fees
5. To contribute R5000.00 towards the legal costs of the applicant, this be paid off monthly over 10 months.

Although respondent reacts to the listed expenses of the applicant by indicating that they are exorbitant, counsel for the respondent, at the onset of the proceedings conceded, that the applicant is entitled to maintenance pendente lite. I do not intend dealing with every expense listed by applicant as it was canvassed fully during hearing of arguments.

APPLICABLE LAW:

[6] The financial aspects of a Rule 43 are generally, directed at providing child maintenance, spousal maintenance and contribution to legal costs. It stands to reason, that the purpose of this rule will be defeated if there is no proper financial disclosure from both parties. Maintenance pendente lite is intended to be an interim and temporary and cannot be determined with the same degree of precision as would be possible in a trial where detailed evidence is adduced. The applicant is entitled to a reasonable maintenance pendente lite dependent upon the marital standard of living of the parties. The applicant's actual and reasonable requirements, and the capacity of the respondent to meet such requirements, which are normally met from the income although in some circumstances in roads on capital, may be justified. See in this regard **Botha V Botha 2009 (3) SA 89 (W)**.

[6] An applicant for a contribution towards costs must show that, if she is the plaintiff in the main action, that she has a prima facie case. If she is the defendant that she is defending in good faith, **see Griesel v Griesel 1981(4) SA 270 (0)**. The applicant must further show that, she has insufficient means of her own. It is trite that, the applicant is not entitled to all her anticipated costs, even though the respondent can well afford to pay them, but only a substantial contribution towards them. Prior to the trial the applicant is ordinarily entitled to be awarded a contribution only up to and including the first day of trial.

[8] In the matter in casu, it is not in dispute that the companies are not doing well due to Covid-19 and the lockdown. The marriage between the parties is irretrievably broken and the respondent is controlling the string of the purse.

[9] The interim order prayed for, is a temporary relief that the divorce trial court might have a huge impact on. Nobody can predict what is going to happen in the future in respect of the performance of the companies however, it is not for this court to concern itself and such left for the trial court. The task of this court is to determine and give an interim relief.

[10] It is trite law, that, in an application for an interim spousal maintenance pendente lite the court exercises a judicial discretion to award same, taking into account the factors alluded in the papers before court in the reasonableness of the claim, the standard of living of the parties and the abilities of the person expected to pay. Furthermore each case under this sub rule should depend upon its own particular facts see **Taute v Taute 1974 (2) SA 675 (E)**. Maintenance pendente lite is not meticulously calculated.

[11] I am also satisfied that, the respondent's counter offer is an unreasonable and therefore, not accepted. I believe he can do better than that. I have my serious doubts whether respondent disclosed his full income to me and I suffice to say that I am satisfied that he would be able to comply with the orders I intend to make.

CONCLUSION

[12] Having read the documents filed for record, heard counsel and considered the matter, I am of the view that the applicant has made out a proper case. That she is in a position to meet her reasonable needs, legal costs and the needs of her minor children. Not much can be gleaned from the prepared financial statements indicating that the respondent cannot afford to meet some of the prayers in this application, for example the medical aid as he indicated that it lapsed due to non-payment.

[13] I therefore, grant the following order pendente lite:

1. That the respondent pays maintenance to the applicant as follows:

1.1 to pay R30, 000.00 spousal maintenance per month, the first payment be made on or before 15 September 2021, and thereafter on the first day of each successive month.

1.2 To pay maintenance to the applicant in respect of the minor children, R5000. 00 per month per child, the first payment to be made on or before 15 September 2021, and thereafter on or before the first day of each successive month.

2. Prayers 1,2,3,4,5,6 granted as prayed
3. To contribute towards the applicant's legal costs as prayed.
4. The costs of this application be costs in the divorce action

Mzana AJ

On behalf of the Applicant

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Instructed by

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On behalf of the Respondent

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