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IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case no: **3045/2022**

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

L[....] F[....] J[....] S[....]1
[ID: 6[....]]

Applicant

And

D[....] P[....] S[....]2
[ID: 5[....]]

Respondent

CORAM: RAMDEYAL AJ

HEARD ON: 20 April 2023

DELIVERED ON: 28 April 2023

[1] This is an application for payment of maintenance *pendent lite* and contribution towards costs in terms of Rule 43 of the Uniform Rules of Court.

[2] The respondent instituted divorce proceedings against the applicant which action is still pending before this court. The applicant and respondent were both married on 17 April 1993, out of community of property with the exclusion of the accrual system. They have two children that have reached the age of majority.

[3] The parties are separated and the applicant currently lives in Jeffrey's Bay in a property apparently owned by the respondent.

[4] The applicant avers that she has suffered physical abuse during the course of the marriage at the hands of the respondent. She raised their children, maintained the common household and supported and assisted the respondent in his business and farming endeavors. The parties enjoyed a lifestyle of luxury. Whilst the respondent still maintains the applicant at the Jeffrey's Bay property the applicant is still in need of further maintenance.

[5] The respondent pays the applicant an amount of R17 000 over and above the payment of the expenses for the Jeffrey's Bay property. This is not in dispute. He is willing to retain the applicant on his medical aid, make available the Mercedes Benz vehicle to her and to pay R2500 towards legal costs.

[6] He believes that the applicant is now in a relationship and living with a certain Mr. Lotter, according to his private investigation and therefore the applicant seeks cash maintenance in the exorbitant amount.

[7] The applicant on the other hand is not satisfied with the amount of R17 000 which the respondent is currently paying as her expenses exceed that amount. The applicant according to her list of expenses submitted Annexure "FA2" page 27 the papers requires an amount of R33 180.00 per month for her expenses which is almost twice the amount the respondent is currently paying.

ANNEXURE "FA2"PERSOONLIKE MAANDELIKSE UITGAWE

1.	<u>KRUIDENIERS ENS</u>	
1.1	Kruideniers	3600.00
1.2	Melk en brood	200.00
1.3	Vleis	1300.00
1.4	Vrugte en groente	1200.00
1.5	Skoonmaakmiddels	600.00
2.	<u>PERSOONLIKE SORG</u>	
2.1	Nag - en dagrome. grimering	3000.00
2.2	Haarsny	1000.00
2.3	Naelversorging	350.00
2.4	Shampoo, conditioner ens	250.00
2.5	Tandepaste, seep ens.	100.00
2.6	Vitamiene ens	600.00
3.	Internet (Wifi)	450.00
3.1	Addisionele data	100.00
4.1	Klerasie en skoene	2000.00
4.2	Sportdrag	500.00
5.	Brandstof	40000.00
6.	Lewensversekering	800.00
7.	Leesstof en musiek	350.00
8.	Bankkoste	380.00
9.	Gimnasium	250.00
10.	Ontspanning	2000.00
11.	Sakgeld	2500.00
12.	Geskenke	1000.00
13.	Onvoorseeine uitgawes	2000.00

14.	Reiskoste om kinders te besoek	1700.00
15.	Kroniese medikasie	1700.00
16.	Veearts ten opsigte van honed	250.00
17.	Huishulp	1000.00
	TOTAAL	R33 180.00

[8] The purpose of interim maintenance is to supplement expenses which the applicant cannot meet but in terms of Rule 43 such maintenance must be reasonable in the circumstances, depending on the marital standard of living of the parties, the applicant's actual and reasonable requirements and the capacity of the respondent to meet the requirements. *Botha v Botha*¹

[9] It is so that the applicant lived a life of comfort and luxury with the respondent. It is further so that the applicant seems to want to continue that lifestyle and believes she is entitled to as the respondent is a man of considerable means whereas the applicant has no income or assets.

“... A claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands-similarly more weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligations than to one who is obviously, albeit on paper, seeking to evade them...” *Taute v Taute*²

[10] The list of expenses that the applicant claims does include some excessive expenses. The respondent maintains the property the applicant currently resides at and pays all the electricity, rates, security, cellular phone and medical expenses including numerous other expenses as per annexure A (page 54 of the court bundle).

¹ 2009 (3) SA 89 (WLD) at 106 C

² 1974 (2) SA at 675

[11] The respondent does not evade his lawful duties and evinces a willingness to do so. The possibility of the applicant living with another man should in no way increase costs for the respondent.

[12] In my view the maintenance together with all the other expenses the respondent currently pays is reasonable.

[13] In respect of legal costs, the applicant seeks a contribution in the amount of R30 672.00. It is obvious that the applicant does not have sufficient means to cover her legal costs. The amount ordered to be paid by the respondent lies within the discretion of the presiding judge.

[14] In *Van Rippen v Rippen*³ the exercise of that discretion was discussed...

“... the Court should, I think, have the dominant object in view that, having regard to the circumstances of the case, the financial position of the parties and the particular issues involved in the pending litigation, the wife must be enabled to present her case adequately before the Court...”

[15] The applicant was totally dependent on the respondent during the marriage and still dependent on him now for support. He has instituted divorce proceedings against her. She has a right to defend the action and her right to dignity must be protected and would be infringed should she have to approach the respondent for legal fees of the pending divorce action. *Cary v Cary*⁴

[16] The papers before me do indicate that the respondent being a man of means can afford to contribute to the applicant's legal fees and will not be prejudiced in the conduct of his own case should he be ordered to do so.

[17] In the circumstances of this matter and having considered all the expenses and papers before me as well as being tasked according to counsel for both parties to

³ 1949 (4) SA 634 (C) at 37

⁴ 1999 (3) SA 621 D –G

make an order only in respect of cash amounts (applicant's accommodation and expenses of the property thereof being in place) I make the following order:

1. That the respondent pay maintenance to the applicant in the amount of R17 000 per month; the first payment is to be made on/or before the first day of the month following this order and thereafter on/or before the first day of each successive month.
2. That the respondent retains the applicant as a beneficiary on his medical aid pendent lite and pay all other additional reasonable medical costs incurred that is not covered by the medical aid;
3. That the respondent makes available the Mercedes Benz vehicle with registration number F [...] to the applicant *pendent lite* and pay the monthly instalment if any; and that the respondent be liable for all maintenance costs of the vehicle, *pendent lite*;
4. That the respondent makes a contribution to the applicant's legal costs in the amount of R20 000. 00.

RAMDEYAL AJ

On behalf of the Applicant:

Instructed by:

Adv. Van Aswegen

Hill, Mchardy & Herbst Ing

Bloemfontein

On behalf of the Respondent:

Instructed by:

Adv. S Reinders

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