



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 19 October 2021

Case No: 33546 / 2020

In the matter between:

HAT

Applicant

and

DBT

Respondent

JUDGMENT

WILSON AJ:

- 1 The applicant ("Mrs. T") seeks a contribution to her costs in a divorce action against the respondent ("Mr. T"). She also seeks a contribution towards the maintenance of the parties' three minor children, who live with her, pending the determination of that action. Relief regulating the residence of, and Mr. T's contact with, the children was abandoned before I heard the application, and is apparently being pursued in the Greek courts.

- 2 Mrs. T currently lives in Greece with the children. She apparently moved there, at least initially, as part of a plan to strengthen the parties' relationship and rejuvenate a flagging marriage. But that was not to be. Shortly after Mrs. T relocated to Greece with the children, the parties separated permanently, and Mrs. T instituted the action for divorce.
- 3 Both parties are people of considerable means. Mrs. T says that the parties' joint gross income is just under R900 000 per month. Mrs. T's net monthly income from employment and her investments is just over R200 000 per month. Mr. T's income is substantially more, and he declares a personal net worth of something in the region of R18 million. There are a wide range of valuable financial interests and assets in the marital estate.
- 4 Accordingly, the reality is that neither party is genuinely in need of financial support from the other pending divorce.

The contribution to costs sought

- 5 This undisputed fact means that there is no basis in law on which Mrs. T could reasonably be entitled to a contribution to her legal costs in the divorce action.
- 6 Mrs. T originally sought contributions to the costs of a range of pending matters between her and Mr. T, including a Labour Court application and the costs associated with a criminal matter. Ms. Kollips, who appeared for Mrs. T, very sensibly conceded that my power to order a contribution to costs is limited to the costs of a pending matrimonial action. She motivated only for a contribution to Mrs. T's costs in the divorce action. However, it has long been held that an applicant for a contribution to the costs of a pending divorce action

must show that they have insufficient means of their own to prosecute that action (See *Von Broembsen v Von Broembsen* 1948 (1) SA 1194 (O)). Mrs. T has not shown this, and in all likelihood cannot show this. The application for a contribution to costs must accordingly be refused.

The maintenance of the parties' minor children

- 7 The application for a contribution to the maintenance of the parties' three minor children is, though, on a very different footing. Mrs. T is entitled to a contribution to the costs of maintaining the children whether or not she is capable of providing for all their needs herself. Mr. T owes a separate and independent duty of support to the children. He ought, in my view, to be required to do all that is reasonably within his means to discharge that duty.
- 8 The financial contribution required from Mr. T must be calculated having regard to his means, relative to those of Mrs. T, and to the standard of living the parties and their children enjoyed before the parties' separation. Given the nature of the children's needs, Mrs. T's means and Mr. T's own resources, there is no reason why, in principle, Mr. T should not end up meeting a larger proportion of the children's financial needs than Mrs. T herself.
- 9 But the problem in this case is that Mrs. T has not laid a substantial basis for the maintenance contribution she seeks. Mrs. T seeks payments amounting to over 10 000 euros per month. There is precious little on the papers to justify this amount. The principal difficulty is that the children now live in Greece. The information before me about the standard of living to which they have become accustomed is based on the cost of living in South Africa. I have no idea what

the reasonable cost of meeting the children's needs in Greece is. Nor has any information on that issue been placed before me.

10 Ms. Killops was constrained to accept this. She sought instead, by pressing a series of careful and well-argued inferences from the papers, to place before me ascertainable amounts Mr. T could be ordered to pay in relation to the children's accommodation and schooling costs. Much of this information was contained in a supplementary affidavit, which I admitted at the commencement of the hearing. But Ms. Killops did not, and could not, contend that these amounts represented either the children's true needs, or the full extent of Mr. T's obligations to meet them.

11 Ms. Segal, who appeared for Mr. T, emphasised the the paucity of information on the papers before me. Relying on the fact that Mrs. T recently instituted, but then withdrew, an application for interim maintenance against Mr. T in the Greek courts, Ms. Segal objected to the jurisdiction of the court. The objection was essentially one of *forum non conveniens*. Ms. Segal accepted that this court has jurisdiction in principle, but that it should decline to entertain the application, because the more convenient forum to determine the maintenance due to Mrs. T in respect of the children is a Greek family court. Ms. Segal argued that, the main question being essentially one of how much things cost in Greece, a South African court ought not to entertain the Rule 43 application at all. Mrs. T should be required to persist with her application in Greece.

12 I am not persuaded that I should dismiss the application altogether on the basis that a South African court is an inconvenient forum. The divorce action

is pending in this court. The parties' married life was spent in South Africa. The respondent still resides in South Africa. The only difficulty is the factual problem of working out a maintenance contribution due to Mrs. T from Mr. T sufficient to meet the children's needs in Greece. As Mrs. T's attorney explained in an affidavit filed with my leave after the application was heard, this requires no more than the production of the appropriate evidence, possibly of an expert nature.

13 There is no dispute that this evidence is not currently before me. Ordinarily, the absence of such evidence would lead to the dismissal of the application, or to a diminished maintenance award. However, as this application concerns the best interests of minor children, I am enjoined instead to ensure that the information needed to give effect to those interests is placed before the court. It appears from Mrs. T's attorney's post-hearing affidavit that it will take at least a month to gather the necessary information. I will accordingly postpone the application with appropriate directions for the production of the required information.

14 The delay is not ideal. However, given Mrs. T's substantial means, I see no prejudice to the children from a postponement, and a good deal of advantage to them in placing the court in a position to make an order that will fully account for their reasonable needs, and fairly apportion responsibility for meeting those needs between the parties. An appropriate order backdating Mr. T's obligations and directing him to pay at least some the maintenance due to Mrs. T in arrears may also be a possibility. Mrs. T seeks relief of this nature in

her papers, which the court hearing the merits of Mrs. T's application will in any event have to consider.

15 Accordingly, I make the following order –

15.1 Both parties' applications to introduce supplementary affidavits are granted.

15.2 The application for a contribution to the applicant's legal costs is dismissed.

15.3 The respondent's objection to this court's jurisdiction is dismissed.

15.4 The application is postponed *sine die*.

15.5 The applicant is granted leave to file a further affidavit, by not later than Friday 26 November 2021, which deals fully with the reasonable financial needs of the parties' minor children residing in Greece.

15.6 The respondent may reply to the applicant's further affidavit within two weeks of receiving it.

15.7 Neither party shall canvass in their affidavits any matter other than the financial needs of the minor children.

15.8 The costs of this application are reserved.



S D J WILSON
Acting Judge of the High Court

HEARD ON: 15 September 2021

FURTHER AFFIDAVITS AND SUBMISSIONS ON: 8 October 2021

DECIDED ON: 19 October 2021

For the Applicant: T Killops
Instructed by Christophers & Oosthuizen

For the Respondent: L Segal SC
Instructed by Deane Kahn Attorneys