



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

**CASE NUMBER: 01649/2023**

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

DATE: 22 December 2023

In the matter between: -

**JTT**

Applicant

and

**ZZT**

Respondent

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**J U D G M E N T**

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**DELIVERED:** This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 10h00 on 22 December 2023.

F. BEZUIDENHOUT AJ:

## **INTRODUCTION**

- [1] This rule 43 application concerns a claim for children's maintenance and an initial contribution towards the applicant's legal costs.
- [2] The applicant claims maintenance in the amount of R31 182.56 per month and a contribution towards her legal costs in the sum of R166 164.43.
- [3] The respondent makes no tender towards the applicant's contribution to costs claim. The respondent tenders to make payment of the second and third children's school fees and transport-related costs, to retain the minor children on his medical aid scheme and to make payment of 50 % of the nanny's monthly salary. He also tenders to pay certain *ad hoc* expenses such as 50% of the cost of the children's clothing.

## **FACTUAL MATRIX**

- [4] The applicant and the respondent were married to each other on 12 October 2006 in community of property.
- [5] Three minor children were born of the marriage aged 15, 13 and 6 years.
- [6] There is no dispute regarding the sharing of full parental responsibilities and rights, primary residence and contact.
- [7] The applicant (as plaintiff) claims the following maintenance contributions from the respondent in the pending divorce action: -

- [7.1] That he shall retain the minor children on his current medical aid scheme or on a medical aid with similar benefits and should there be any costs not covered by the medical aid scheme, the parties shall agree to discuss the matter between themselves as to how the additional costs would be covered by them, failing agreement, the costs would be borne on a 50/50 basis payable thirty (30) days from receipt of the medical invoice;
- [7.2] That the respondent shall pay 100 % of all the minor children's school fees, including private and/or government school fees, school books, school uniforms, stationery, extra lessons, school trips and outings, extramural activities, sporting tuition and/or equipment and uniforms related thereto;
- [7.3] The respondent shall pay 100 % towards the minor children's school transport;
- [7.4] The respondent shall pay 50 % of all the minor children's clothing needs;
- [7.5] In addition to the aforesaid maintenance payments, the respondent shall pay 50 % of the minor children's nanny's salary.
- [8] The applicant pleaded at paragraph 8.6 of the particulars of claim that she agrees that all other maintenance needs for the children shall be paid by her, which includes but are not limited to daily nutrition, monthly groceries, electricity, water and lunches.

- [9] The applicant also claims spousal maintenance for one (1) year by being retained as a beneficiary on the respondent's medical aid scheme.
- [10] According to the respondent's plea and counterclaim, he consents to the maintenance order claimed by the applicant, save for claiming that the applicant should accept 100 % liability for the nanny's salary. Insofar as the applicant's claim for spousal maintenance is concerned, he denies this claim and asserts that she is able to afford her own medical aid.

## **MAINTENANCE**

- [11] The applicant is 44 years of age and a senior investigator in the employ of the Independent Police Investigative Directorate. The applicant earns a gross monthly salary in the amount of R46 447.84. Her net monthly salary amounts to R20 920.23.
- [12] The applicant contends that the monthly maintenance needs of the children amount to R42 465.87 per month. Her own personal expenses amount to R23 140.96.
- [13] The respondent states that he derives a net monthly income from his employment with the City of Johannesburg in the amount of R33 656.75.
- [14] He also disclosed a fluctuating income he derives from room rental at Kaalfontein. What exactly the extend of that income is, is not clear even after financial disclosure. The respondent states that the rental amount received is utilised to assist his mother, his siblings and his niece. He asserts that these family members are entitled to receive a monthly payment as

they are co-owners of the rented property. The respondent tells the court that he has another child born from a relationship prior to his marriage with the applicant and that his monthly maintenance obligations towards this child amounts to between R1 500.00 and R2 000.00 per month. The respondent confirms that he is a 50 % shareholder of a company, but that it is not trading with no property. It was also alleged that the respondent own taxis from which contributes further to his disposable income, but very little and often unsubstantiating information has been provided in this regard.

[15] The respondent relies on a verbal agreement concluded between him and the applicant when he left the matrimonial home. According to him, they agreed that the applicant would be responsible for the groceries of the household while he pays the school and related fees. The respondent also states that he has been purchasing clothing for his children and contributes 50 % towards the salary of the nanny. He asserts further that the agreement with the applicant was that she would pay for the DSTV and that he would pay for the Wi-Fi in an amount of R1 700.00 each month.

[16] The respondent admits that the school fees have fallen in arrears, but attached proof of acknowledgements of debt that he signed with the school in order to settle the arrears amounts.

[17] There does not seem to be much of a dispute regarding the maintenance needs of the children. The respondent did criticise some of the amounts recorded by the applicant in relation to school and transport fees, but this, in my view, does not carry much weight in light of the admissions on the

divorce pleadings and in the affidavits before me.

[18] I cannot ignore the nature and extent of the maintenance claim instituted by the applicant in the divorce proceedings. It is apposite that she does not seek payment of a monthly cash maintenance amount. This appears to be in line with the verbal agreement that the respondent seeks to rely on.

[19] What is undeniable is that the respondent is the higher income earner and has a greater earning capacity than the applicant due to his other business ventures. On both parties' version, the respondent's *pro rata* contribution must be proportionately more than the applicant's. This is a trite principle. I have therefore taken this into consideration in the maintenance order that I intend to make.

### **CONTRIBUTION TO LEGAL COSTS**

[20] The applicant provided an estimate of a contribution towards her legal costs. At first glance the estimate goes beyond the permissible claim for the first day of trial. It provides for two trial days which leads one to believe that the estimate relates to costs occasioned up and until the last day of trial. This is not what the rule and authorities envisage. It is furthermore inconceivable that the nature of the disputes will occasion a trial of two days. The parties are married in community of property. If they are unable to agree on the division of the joint estate, the default position is that a receiver and liquidator will be appointed.

[21] In addition the parties are not far apart on the issue of maintenance for the children and this issue can similarly be resolved quite speedily.

[22] I invited the parties to stand the rule 43 application down in order to attempt settlement negotiations. They accepted the invitation. Unfortunately they were unable to settle. This is regrettable in light of the fact that there are very limited issues in this matter. Having said that, I also have to take into consideration the inequality of arms<sup>1</sup> between the parties and each party's access to financial resources. Evidently, the applicant is at a disadvantage<sup>2</sup> and is entitled to a contribution towards her legal costs, albeit not to the extent of her claim.

## **ORDER**

I accordingly grant an order in the following terms *pendente lite*: -

1. The respondent shall retain the three minor children and the applicant on his current medical aid scheme or on a medical aid with similar benefits and shall pay the monthly premiums in respect thereof.
2. All medical excesses incurred on behalf of the three minor children and which are not covered by the medical aid scheme shall be paid by the parties on a 50/50 basis, which amount shall be payable within 10 days from receipt of proof of payment of the medical invoice. The applicant shall pay her own excess medical expenses not covered by the respondent's medical aid scheme.
3. The respondent shall pay 100 % of all three minor children's school fees, including school books, school uniforms, stationery, extra lessons, school trips

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<sup>1</sup> *Cary v Cary* 1999 (3) SA 615 (C).

<sup>2</sup> *Van Rippen v Van Rippen* 1949 (4) SA 634 (C).

and outings, extramurals and activities, sporting tuition and/or equipment and uniforms relating thereto. This includes all of the arrears school fees the respondent has already accepted liability for in terms of the signed acknowledgements of debt.

4. The respondent shall pay 100 % towards the three minor children's school transport.
5. The respondent shall pay 50 % of the three minor children's nanny's salary.
6. The respondent shall pay 50 % of all of the three minor children's clothing needs, whether formal, informal or school-related. He shall reimburse the applicant within 7 days from date of presentation of proof of payment an invoice.
7. The respondent shall pay for the WIFI at the home of the applicant and the three minor children limited to an amount of R 1,700.00 per month.
8. The respondent shall make an initial contribution towards the legal costs of the applicant in the amount of R40,000.00, payable in four equal monthly instalments, the first payment of R 10,000.00 to be made on or before the 1<sup>st</sup> of February 2024 and thereafter on or before the first day of every succeeding month until the amount has been paid in full. The contribution shall be paid into the designated trust account of the applicant's attorneys of record and it shall be the responsibility of the respondent to procure the banking details timeously.
9. The costs of the application shall be costs in the divorce action.





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**F BEZUIDENHOUT**

**ACTING JUDGE OF  
THE HIGH COURT**

**DATE OF HEARING: 6 November 2023**

**DATE OF JUDGMENT: 22 December 2023**

**APPEARANCES:**

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