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

**CASE NO: 048896/2024**

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

(4) Date: 17 January 2024

Signature:

In the matter between:

**A[...] B[...] (born D[...] V[...], formerly G[...])**

Applicant

(Identity Number: 8[...])

And

**A[...] B[...]**

Respondent

(Identity Number: 6[...])

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**JUDGMENT**

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**NYATHI J**

**Introduction**

[1] The applicant, by way of Rule 43 of the Uniform Rules of Court, seeks an order, *pendente lite*, for her spousal maintenance needs, payment of her medical expenses as well as contribution towards her legal costs.

[2] The exact relief sought by the applicant as per the notice of motion is as follows:

- 2.1 Respondent to pay spousal maintenance (*pendente lite*) in an amount of R 84 000.00 per month.
- 2.2 Respondent to continue to pay the monthly premiums associate with the applicant's medical aid scheme on a monthly basis; the medical aid scheme being Discovery Health Medical Aid Scheme membership no: 3[...].
- 2.3 Respondent to pay 100% of any medical expenses not covered by the aforementioned medical aid.
- 2.4 The maintenance amount mentioned in prayer 2.1 above, to escalate annually on the anniversary date of the order at 10% per annum.
- 2.5 Respondent to contribute towards applicant's litigation costs in the amount of R350 000.00.
- 2.6 Costs of this application.

[3] The applicant and respondent ("the parties") married each other on 30 March 2012 out of community of property, with the exclusion of the Accrual System. The marriage still subsists.

[4] The parties had a normal marriage relationship and enjoyed a comfortable lifestyle.

[5] At the time of their marriage, the applicant was employed at R[...] E[...] Agents as a Senior Agent. In 2014, the respondent insisted that the applicant resign from R[...] E[...] Agents and join him in his family business, A[...] T[...] 8[...] (Pty) Ltd trading as Mesh for Birds registered in the A[...] B[...] Family Trust to which the applicant is a trustee too.

[6] The applicant took on the role of Sales Executive of the business and increased the turnover of the business astronomically, but never formerly received a salary.

[7] On 22 January 2024, the respondent shot and killed his elderly parents, domestic worker and the applicant's biological daughter. The respondent attempted to kill the applicant by shooting her in the face.

[8] In her attempt to flee the scene, the applicant sustained severe injuries. She broke her shoulder, severely damaged her upper jaw and lip, palate and tongue. Furthermore, the projectile got stuck in her skull.

[9] The applicant has had to undergo several reconstructive surgeries to repair her face. Whilst in hospital in trauma Intensive Care Unit, the applicant's life support system was tampered with and unplugged on two occasions.

[10] The applicant has had to receive trauma counselling to deal with this ordeal. The respondent is a major businessman- and currently incarcerated at Modderbee Prison under the Department of Correctional Services.

[11] Whilst incarcerated the respondent has on various occasions attempted to locate the applicant's whereabouts, which has resulted in the applicant obtaining a new place of residence.

[12] The applicant is currently unemployed. The prospects of her gaining employment in the foreseeable future are very unlikely due to security concerns, psychological trauma and reconstructive surgeries still to be undergone. The applicant does not own any assets and has nothing of value in her estate.

[13] The applicant's reasonable and necessary monthly expenses amount to R84 000.00 per month, the applicant has so far been assisted by the respondent's biological

children who provide her with R31 440.00 per month. The applicant has to cover the shortfalls of her monthly expenses with her Credit Card.

### **The respondent's version**

[14] The respondent confirms that although the applicant has discontinued to work at the company whereof he is the sole director, A[...] T[...] (Pty) Ltd (*Altius*), it is the version of the applicant herein that the company continues to pay the monthly amount of her erstwhile salary to wit: R 31 440.00, the monthly repayments on her motor vehicle to wit: R 11000.00, the monthly insurance premiums on her motor vehicle R 3000.00 (both of which he is uncertain of), her monthly medical aid contributions to wit R 4200.00, her monthly life insurance policy contribution to wit: R 3500.00, the total monthly amount whereof being R 53 140.00 (fifty three thousand, one hundred and forty Rand).<sup>1</sup>

[15] The respondent further acknowledges that the above-mentioned payments are to the best of his knowledge, being made by his daughter upon his authority in terms of a power of attorney that he gave her.<sup>2</sup>

[16] Mr Van der Westhuizen submitted on behalf of the respondent that:

16.1. due to the respondent's incarceration and the conditions attendant thereto, he has no access to information save for some oddments of information he got last week. This rendered it inadequate for him to compile his Financial Disclosure Document as required in a rule 43 application.

16.2. the court should make a dispassionate assessment on what the applicant's needs are, and whether the respondent can afford same.

16.3. the applicant has been receiving over R53 000.00 per month from A[...] T[...]. The company is not party to this application. Whilst she has been receiving this amount since January 2024, this cannot be

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<sup>1</sup> Respondent's answering affidavit para 23.

<sup>2</sup> Answering affidavit para 24.

formally tendered by the respondent since it is being paid by the company.

16.4. the respondent has tendered two items of property. This was, however, not accepted on behalf of the applicant.

[17] The matter of *Taute v Taute* 1974 (2) SA 675 (E) is authority for the proposition that a claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands. Furthermore, greater weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligations than to that of one who is seeking to evade them.

[18] Whilst the respondent is vehemently asserting that the applicant is in a position to pursue her previous occupation as an Estate Agent, I am not persuaded that this is the case having regard to the sequelae arising from her injuries sustained in the unfortunate attack that befell her.

[19] The respondent has not shown a manifest desire to evade his lawful obligations towards the applicant. The sentiments expressed in *Taute v Taute*<sup>3</sup> are accordingly apposite in this matter. This is also not a case where the applicant's demands may be labelled as extortionate or unreasonable.

[20] The applicant annexed a pro forma bill of costs in support of her claim for assistance to fund her litigation by way of contribution by the respondent. In the circumstances that are peculiar to this matter, the financial need of the applicant cannot be gainsaid. The legal basis<sup>4</sup> for this aspect of the application is trite by now.

[21] While it is commendable that the respondent has permitted A[...] T[...] to continue to pay the applicant, the applicant seeks a more certain outcome by way of this

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<sup>3</sup> *Taute v Taute* (*supra*).

<sup>4</sup> See *Carey v Carey* 1999 (3) SA 615 (C); *Van Rippen v Van Rippen* 1949 (4) SA634 (C).

application. The respondent is free to plan to this end in compliance with the outcome hereof.

[22] For the above reasons, I make the following order: -

1. Pending finalization of the main action for divorce, the respondent is ordered to pay –

- a. maintenance to the applicant in respect of spousal maintenance in an amount of R 84000.00 (Eighty Four Thousand Rand) from date of this order and thereafter on or before the seventh day of each succeeding month, which amount is to be paid into the applicant's nominated account;
- b. the respondent to continue to pay the monthly premiums associated with the applicant's medical aid scheme on a monthly basis; the medical aid scheme being Discovery Health Medical Aid Scheme and membership number being 3[...].
- c. respondent to pay 100% of any medical expenses not covered by the aforementioned medical aid;
- d. the maintenance amount mentioned in paragraph 22.1 (a) *supra* escalate annually on the anniversary date of the order at 10% per annum;
- e. all maintenance payments made to the applicant in respect of spousal maintenance and monthly medical aid contributions shall be paid into the applicant's bank account with the following details:

Account holder: A[...] B[...]

Bank: ABSA BANK

Branch code: 6[...]

Account number: 4[...]

Reference: Spousal maintenance.

- f. the respondent is ordered to contribute towards the applicant's litigation costs on an attorney-client scale in the amount of R350 000.00 (Three Hundred and Fifty Thousand Rand) payable within seven days of this order, into the Trust Account of WM DIXON ATTORNEYS, ABSA Bank, Account Number 4[...], Branch Code: 6[...], Reference: A[...] B[...] Legal Costs;
- g. the respondent is ordered to pay the applicant's costs of this application.

J.S. NYATHI  
Judge of the High Court  
Gauteng Division, Pretoria

Date of hearing: 28/10/2024

Date of Judgment: 17 January 2025

On behalf of the Applicant: Ms. L Isparta  
Duly instructed by: WM DIXON Attorneys  
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On behalf of the Respondent: Mr H. Van der Westhuizen (Attorney with right of appearance) – Appearing pro bono.  
Duly instructed by: WENTZEL & PARTNERS Attorneys.  
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**Delivery:** This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 17 January 2025.