

IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)

In the matter between:

CORNELIA WILHELMINA SPIES

APPLICANT

and

ANTON JOHAN SPIES

RESPONDENT

JUDGMENT

MOGOENG JP.

- [1] This is a Rule 43 application in which the Applicant (wife) seeks an order for her maintenance *pendente lite* and a contribution towards her legal costs.
- [2] The parties have been married out of community of property for the past 29 years. They are presently living apart since the Applicant left the common home.

- [3] The Applicant, who is a qualified teacher, worked as a teacher but resigned about 16 years ago to work with and support the Respondent on a full time basis in the business enterprises that he is involved in. The Respondent is an undisputed highly successful crop, cattle and game farmer who has interest in other business concerns which are admittedly doing very well.
- [4] There are accusations and counter-accusations of infidelity by both parties. It appears that their marriage relationship has been sour for some time now. What falls for determination is the amount of maintenance to be paid by the Respondent to the Applicant and the contribution towards the Applicant's costs.
- [5] The strained relationship between the parties has led both parties to be somewhat economical with the truth when it comes to the disclosure with particular reference to the monthly income of each of them. The Applicant chose to project herself as a housewife who is merely toying with a business idea of running a lodge which has some conference facilities, whereas she has in fact been running such a business since sometime in 2004. The result is that although she is definitely generating some income, this Court does not know how much income is generated by her business enterprise. The Respondent has also been less than candid in his disclosure of how much exactly he earns. He claims to be earning a monthly income of R29 191.00 which is not borne out by the documentation which is attached to his papers for the purpose fortifying his case about the correctness of the reflected monthly income. The documentation suggests that he earns much more than R29 191.00. This obviously makes it very difficult for the parties to be treated in accordance with

their true financial position. The Court will, therefore, have to work on the basis of the limited information at its disposal.

- [6] Since the Applicant is the one claiming maintenance, I will deal with some of the items for which she claims certain amounts of money.

6.1 An amount of R2 500.00 is claimed for accommodation. There has been no motivation for this amount. It cannot, however, be disputed that she is entitled to accommodation of her own. She does not have to depend for accommodation on her lover, Mr Vosloo, who may terminate the relationship and order her out of his place anytime. She is not married to Mr Vosloo and she is, therefore, not his dependant. I award her R1 800.00.

6.2 An amount of R850.00 is claimed for water and electricity, an amount of R800.00 for gas and R2 950.00 for fuel. All this is said to be for the business operation as well. The Applicant acknowledges that these amounts are very high and complicates the situation by again referring to her business, which has in fact been running for some one and a half years, as a business idea which is at its formative stage. Well, the Court will only grant her an amount which is reasonable for each of these items bearing in mind that the truth has not been told about the income that she actually generates through her business concern. An amount of R600.00 is reasonable for water and electricity, R600.00 for gas and R2 000.00 for fuel.

6.3 A total amount of R2 300.00 is asked for, for what could generically

be referred to as groceries. Regular visits by children and grand children are cited as the reason for this high amount. It is the Applicant's interim maintenance that is the subject-matter of this order, not maintenance for her self-supporting children and their children. Besides, they only visit but do not live with her on a full time basis. A reasonable amount R1 600.00 is awarded for groceries in a generic sense.

6.4 As for nails, skin treatment and care, haircut and tint, an amount of R750.00, instead of the R1 500.00 claimed for, is deemed to be reasonable in the interim.

6.5 An amount of R750.00, instead of R1 050.00, for clothing and shoes is reasonable and will be awarded.

6.6 For pharmaceutical products and related matters, the Applicant will receive an amount of R250.00 considering that she is a beneficiary of the Respondent's medical aid.

6.7 For the cellular phone, an amount of R600.00, instead of R900.00 will be paid to the Applicant.

6.8 For sport and recreation, an amount R400.00 will be payable.

6.9 Reading material and pocket money may well be provided for in the amount of R350.00. She can augment her pocket money with the income she generates from her business.

6.10 Vehicle maintenance will be paid for in the amount of R700.00.

- [7] The Respondent has undertaken to pay the employee of the Applicant namely Isak, to pay the premiums for her policies and to retain her as a beneficiary on his medical aid. The Court has decided to leave that position undisturbed.
- [8] The Applicant has asked for a contribution towards costs in the amount of R50 000.00. The reason given for such a very high contribution is that services of a forensic investigator would have to be enlisted to ensure that the Respondent does not hide any of his numerous business interests and assets. I am not convinced that sufficient reason has been given to justify such an exorbitant amount as contribution towards costs. An amount of R10 000.00 would, in my view, be reasonable.
- [9] It appears that the Respondent wants to exchange vehicles with the Applicant for the benefit and comfort of the Applicant. The parties obviously know their vehicles better. If the Isuzu double-cab is indeed superior to and more luxurious than the Landcruiser pickup, then no Court order is necessary to force the Applicant into a more comfortable situation. It should be left to her to opt for what suits her best. No order will, therefore, be made about the exchange of vehicles.
- [10] In the result the Court makes the following order:
- a) The Respondent is ordered to pay the amount of R10 400.00 to the Applicant as maintenance *pendente lite* on or before 01 October 2006, and thereafter on or before the first of every subsequent month;

- b) A contribution towards costs in the amount of R10 000.00 is to be paid by the Respondent, to the Applicant on or before 15 November 2006;
- c) The Respondent will pay Isak's wages, all the Applicant's current policies and retain her as a beneficiary on his medical aid; and
- d) Costs of this application will be costs in the action.

M.T.R. MOGOENG

JUDGE PRESIDENT OF THE HIGH COURT

APPEARANCES

DATE OF HEARING : 07 SEPTEMBER 2006
DATE OF JUDGMENT : 21 SEPTEMBER 2006

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