

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION – MAKHANDA)**

CASE NO.: 1163/2022

Matter heard on: 27 September 2022

Judgement delivered on: 11 October 2022

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

In the matter between: -

M[....]1 G[....] H[....]

Applicant/Plaintiff

and

M[....]2 N[....]

Respondent/Defendant

JUDGMENT

SMITH J:

[1] The applicant seeks relief in terms of Uniform Court Rule 43, compelling the respondent, *pendente lite*, to continue making payments relating to: the repayment of a mortgage loan; rates and taxes; electricity accounts; payment of staff salaries employed by a trust; medical aid; motor vehicle instalments and insurance; fuel; cell phone account; payment of her monthly salary in the sum of R16 500; and R15 000 payment into her credit card account. She also seeks a contribution towards her legal costs in the sum of R70 000.

[2] The parties have been in a relationship since 2002 and entered into a universal partnership in 2013, in terms of which that partnership was recorded to have been in existence since 2002. They subsequently got married by civil union, in community of property, on 5 July 2019.

[3] The respondent is a prosthetist and businesswoman. The applicant claims that during the partnership and the marriage she and the respondent managed to successfully grow the latter's business. They were able to expand the business internationally to Mauritius and, more recently, to Zambia. Her role in the business related to the provision of consulting services, project management and overseeing care and recovery of the respondent's patients.

[4] The matrimonial home was purchased in the name of a trust, namely the Bozo Trust, which is a discretionary *inter vivos* trust of which she and the respondent are beneficiaries.

[5] It is apparent from the applicant's founding affidavit that all the relief sought by her, except for the R15 000 payment into her credit card account, relate to expenses incurred by the Trust. It was thus not surprising that the respondent has taken the point in her opposing affidavit that those claims have no place in rule 43 proceedings. In the event, the Trust is not a party to these proceedings.

[6] In argument before me Ms *Sephton*, who appeared for the applicant, has accepted that most of the relief sought in the notice of motion are directed at the Trust. She, however, urged me to have regard to the respondent's written undertaking to pay the claimed expenses. She submitted that the applicant is in any event entitled to an order compelling the respondent to continue paying the R15 000 per month into her credit account, fuel costs in the sum of R5000, as well as a contribution to her legal costs.

[7] Ms *Watt*, who appeared for the respondent, submitted that there was no need for the application since the respondent has been paying the R15 000 into the applicant's credit card account on a monthly basis, without fail. She submitted,

furthermore, that it is evident from the respondent's opposing affidavit that all the expenses which the applicant claims have been paid to her all along, including those that relate to the Trust.

[8] I agree with Ms *Watt* that the claims in respect of the Trust's obligations vis-a-vis the plaintiff cannot form part of rule 43 proceedings, regardless of undertakings given by the respondent. However, this judgment should not be interpreted to mean that the applicant is not entitled to those payments, but rather that her claims lie against the Trust.

[8] I am, however, of the view that the applicant is entitled to an order compelling the respondent to continue the monthly payments into her credit card account. That amount should be sufficient to take care of her monthly expenses, including her personal fuel costs. Divorce proceedings are more often than not passionately contested affairs, and the applicant was consequently entitled to the comfort and security of a court order compelling the respondent to continue that payment. There was also no suggestion that that amount is exorbitant.

[9] Insofar as the contribution to legal costs is concerned, I am of the view that the R70 000 claimed by the applicant is exorbitant. It seems likely that the divorce will be settled through mediation. In fact, both parties have already agreed in principle to that process. I am therefore of the view that a contribution in the sum of R15 000 will be fair and reasonable.

[10] There is no reason why the usual costs order should not follow, namely that costs should be in the main proceedings.

[11] In the result the following order issues:

- (1) The respondent must, *pendente lite*, continue to pay the sum of R15 000 per month into the applicant's credit card account.

(2) The respondent is ordered to contribute the sum of R15 000 towards the applicant's legal costs by way of payment directly into her attorney's trust account.

(3) Costs shall be in the main proceedings.

JE SMITH

JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicant/Plaintiff	:	Adv. Sephton
	:	Netteltons Attorneys
		118A High Street
		MAKHANDA
		(Ref: Ms. Pienaar)
Counsel for Respondent/Defendant	:	Adv. Watt
	:	Neville Borman & Botha
		22 Hill Street
		MAKHANDA
		(Ref: Mr. Powers)