

IN THE HIGH COURT OF SOUTH AFRICA

(THE TRANSVAAL PROVINCIAL)

DATE: 8/8/2005

CASE NO: 2734/2004

UNREPORTABLE

In the matter between

JOHANNES HENDRIK V AN NIEKERK

PLAINTIFF

AND

ANNEMARIE V AN NIEKERK

DEFENDANT

JUDGMENT

MABUSE AJ: {I} This is an action in which the plaintiff claims rescission of a maintenance order made against him in favour of the defendant. Going pari passu with the said order, which he also seeks to rescind, is another order in terms whereof the plaintiff was to retain the defendant on his medical scheme.

[2] The parties herein were married to each other and their marriage was terminated by an order of this court on the 6th December 1996 under case number 2358/1996 when it granted a decree of divorce. At the same time the court ordered that the plaintiff should pay a sum of R2547.42 per month towards the maintenance of the defendant and that the plaintiff should retain the defendant on his medical scheme.

[3] On the 7th August 2001 by a written agreement, the parties hereto amended the the court order insofar as it related to the amount of maintenance and the extent

of his contribution to the defendant's medical costs. The relevant amendment reads as follows:" Hennie sal voortaan onderhoud in die bedrag van R1915.00 aan ANNEMARIE betaal plus haar mediese onkoste soos in die hofbevel gadataer 6 Desember 1996 uiteengesit tot tyd en wyl 'n bevoegde Hof tot die teendeel beveel".

[4] In the present matter, the plaintiff has approached the court for an order of rescission of the agreement he made with the defendant on the 7th August 2001 on a number of reasons he has fully set out in the summons. Save to state that the reasons that the plaintiff has enumerated in his summons are singly and in combination sound reasons to rescind a maintenance order, and for stating further that in her plea the defendant has denied them, the court will not mention them. [5] In support of the grounds on which he seeks to upset his obligations to contribute towards the maintenance of the plaintiff and to pay for her medical costs, the plaintiff called his son, Jacques van Niekerk, as a witness. His evidence came be summarized in a few sentences. He testified that he knew that his father would subpoena him as witness because he had told him he needed him to testify. He knew a certain man called John Pitou. He only knew him by the name John and only started knowing his surname on the day he testified in the matter. John was introduced to him by the defendant while they were on holidays in Amanzimtoti.

He was introduced to him as his mother's friend. He saw them together at two different places and on two different dates. On those occasions he saw them together they shared one bed. One of such occasions was in St Lucia. On other occasions when he had gone away with his mother on holidays, she would communicate regularly with John by cell phone. As at the date he testified he had last seen this John more or less three years before. While he and the defendant were on holidays together, she paid with her own money. According to him John and the defendant were mere friends. They are not married to each other. John was an angler. During cross examination, he testified further that John did not work apart from being an angler. The defendant still stays in Queensborough, in Pinetown. She has not bought any new motor vehicle. This concluded his evidence.

[6] After the plaintiffs son had testified, the plaintiff closed his case and Advocate Deport immediately applied for absolution from the instance on the grounds that the plaintiff has failed to show that any good cause exists for the rescission of the maintenance order. This application was resisted by advocate Erasmus.

[7] In terms of Section 8 of the Divorce Act NO: 70 of 1979, a maintenance order made by a court in favour of one of the parties to a divorce action may be

rescinded, varied or suspended for sufficient reason by the court that made it or by another court if the jurisdictional requirements of Section 8(2) are satisfied". The duty to proof that sufficient reasons exist for the rescission, variation or rescission of the maintenance order lies on the party who makes the relevant application. This Court has already ruled in the case of **Roos v Roos 1945 TPD 84 at 85** per Schreiner J that: " a variation in a maintenance order will be decreed when there has been such a change in the conditions that existed when the order was made, that it would now be unfair that the order should stand in its original form". This decision was followed by OgilvieThompson J, in the case of *Hancock v Hancock* 1957 2 SA 500(c) at p 501 and by Claassen J in the matter of *Pieterse v Pieterse* 1965 4 SA 344 at 345-6. I therefore see no genuine reason why I should depart from those two authorities.

[8] There is no definition of "sufficient reason". The legislator has left it to the discretion of the courts to decide what "sufficient reason" for the purposes of the section may be. "Sufficient reason" is tantamount to "good cause". Therefore the plaintiff must show that there exists no valid reason for the continued existence of the maintenance order. " There rests an onus on an applicant in this case and he must show sufficient cause for a variation of the maintenance order" *Pieterse v Pieterse* at p 345g-h. Any factor or number or a combination of factors may be

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"sufficient reason". The duty placed on the plaintiff is not only to allege these grounds but also to prove them. As this court has already remarked, the grounds advanced by the plaintiff in his summons, singly or a combination of any would, only if proven, constitute "sufficient reason" to upset the maintenance order. The plaintiff has not, unfortunately though the court must remark, been able to prove anyone of those allegations. The plaintiff has in the circumstances, failed to prove that "sufficient reasons" exists for the rescission of the maintenance order. There is no evidence upon which the defendant can be called to her defence.

The application for absolution from the instance, with costs, is accordingly granted.

A handwritten signature in black ink, appearing to read 'MABUSE AJ', is written over a horizontal line.

MABUSE AJ