



**IN THE NORTH WEST HIGH COURT
(MAFIKENG)**

CASE NO.: 1550/12

In the matter between:

GREDEL WLLEMSE

APPLICANT

and

PRETRUS JOHANNES WILLEMSE

RESPONDENT

JUDGMENT

LANDMAN J:

[1] Petrus Johannes Willemse, the respondent, issued a summons for divorce and Gredel Wllemse, the applicant, has filed a counterclaim. The pleadings in the divorce action have not yet closed. This is an application in terms of Rule 43 brought by the applicant.

[2] The parties do not live together. Although there are one or two items which are not entirely clear it. The applicant states that the respondent contributes the following to her maintenance monthly pendente lite, namely:

- (a) R 5000;
- (b) The monthly bond instalment on the erstwhile common home which is R9 300 per month;
- (c) The water, lights, rates, taxes and levy account;
- (d) Maintains her on his medical aid scheme (but alleges he does not reimburse her for medical expenses incurred but not covered by the medical aid scheme);
- (e) The payments in respect of the DSTV and her cellphone;
- (f) The short term insurance on her motor vehicle, insurance on home and contents and the financing agreement;
- (g) The instalments of the Honda Jazz motor vehicle, with is registered in his but currently in her possession and which she uses;
- (h) R400 in respect of a Sanlam Life Insurance.

[3] The applicant says:

“The Respondent has threatened to stop paying the monthly DSTV payment and despite requests will not consider increasing the monthly amount paid to me as maintenance, knowing full well that it is totally inadequate and I cannot come out thereon on a monthly basis.

By virtue of the foregoing, I have been left with no alternative but to launch this application.”

[4] The applicant sets out her estimated monthly expenses as follows:

Groceries and cleaning materials	R3,500.00
Meat	R1,500.00
Fruit and vegetables	R 300.00
Bread and Milk	R 400.00

Domestic servant	R1,300.00
Gardener	R 500.00
Cell phone account	R 750.00
Edgars account	R1,000.00
Clothing bought elsewhere	R1,000.00
Minimum payment on credit card	R 300.00
Petrol	R1,500.00
Nails	R 310.00
Skin care, make-up, cosmetics, shampoo, conditioners, etc.	R1,000.00
Hair grooming, cut and colouring every three months (R600.00)	R 200.00
Newspapers, books, magazines	R 250.00
Pool maintenance and chemicals	R 200.00
Household maintenance, repairing of appliances, purchase of bulbs, etc.	R 400.00
Pocket money, entertainment home and eating out, video hire	R3,000.00
Premium on annuity policy	R 600.00
Bank charges	R 400.00
Incidental, small and unforeseen expenses	R 500.00
Car wash, motor car maintenance, inclusive of services	R 500.00
Provision for weekend excursions and holidays	R2,000.00

Her expenses total R 21,410 per month.

[5] She seeks an order (I paraphrase) that:

- (a) The respondent be ordered to pay to her an amount of R21 410 per month as maintenance pendente lite.
- (b) The respondent, in addition to the amount set out above, an order that continue to pay all those expenses which he has been paying.
- (c) The respondent to make a contribution to her legal costs in the amount of R100 000.
- (d) The respondent be ordered to pay the costs of this application and, for these purposes, that the cost limitation provided for in Rule 43(7) and (8) not be applicable, alternatively that the costs of this application be costs in the divorce action.

[6] The respondent seeks an order dismissing the application. He says the applicant does not requires the services of a domestic servant as she, of her own choice, does not work and she, together with their two daughters, are quite capable of doing any housework. The parties did not have a gardener in respect of the former common home. A gardener is employed by the complex in which the former common home is situated. He is paid by way of the levy which the respondent pays monthly. He pays the applicant's cellphone account.

[7] The applicant is reckless with incurring expenses at Edgars. On two prior occasions he paid the account off entirely, and on one occasion the account was approximately R20 000. He paid off credit card both accounts in full in the sum of R7 700 and appealed to the applicant not to incur any further expenses on overdraft as he was paying for all the expenses and she had no need to incur additional expenses. He pays for the pool maintenance and chemicals. He pays for all the household maintenance and whatever requires repair and/or maintenance, he arrange for this to be done and pay for any expenses in this regard. He disputes the need R3 000 a month for entertainment. He disputes the alleged video hire. He pays for DSTV and the applicant has a full bouquet of

channels including the Box Office channels where the Applicant can download the new movies currently on circuit. Other challenges need not be specified

[8] He says he should not be ordered to pay the sum of R21 410 per month as maintenance pendente lite. He already pays in excess of R21 410 for the applicant's expenses. He denies that the applicant is entitled to a contribution for legal costs in the sum of R100 000 or any amount whatsoever and prays that the application be dismissed with costs.

Evaluation

[9] I disallow the applicant's supplementary or replying affidavit. I think I am entitled to assume that the respondent has been buying or paying for groceries, cleaning materials, meat, fruit and vegetables and bread and milk. I do not think that this was to come out of the R5000 paid per month which appears to be intended to provide the applicant with discretionary spending money.

[10] I make no finding as regards the earnings of the respondent. He is able to provide what is reasonable taking into account the parties' standard of living.

[11] The applicant's expenses must be reduced by the amounts paid by the respondent which I calculate to be R8 150. As the parties have not quantified all items which the respondent pays I have done the best I can and I have, and as I have indicated, I assume that he pays for groceries etc. The applicant cannot have been paying for them.

[12] Therefore the applicant's expenses run to R13 260. She receives R5 000 per month which leaves a shortfall of R7 260.

[13] The respondent should be ordered to pay the amount of R13 000 which is to include the R5 000 he has been paying. In addition he will be ordered to continue paying the expenses which he has been paying including those expenses which I have assumed he has been paying.

[14] Clearly the respondent must make a contribution towards the applicant's legal costs but not in the extravagant amount of R100 000 nor half that as submitted by Mr Smith SC, who appeared for the applicant. R20 000, which far exceeds the normal contribution, would be a amount suitable given the financial circumstances of the parties as evidenced by their life style.

[15] As far as costs are concerned, it is evident that the applicant has not been left to fend for herself. The respondent has been astute in providing for her pendente lite although the R5 000 allowance is inadequate. There is no suggestion that a demand for payment was made. The respondent's reaction to these papers may have been influenced by the absence of a proper request. I do not intend making any other order than that costs of the Rule 43 application be costs in the divorce action.

[16] In the result:

1. The respondent is ordered to pay to the applicant an amount of R13 000 per month as maintenance pendente lite.
2. The respondent shall to pay pendent lite all the expenses which he has been paying as listed in paragraph 6.3 of the founding affidavit which expenses shall include an amount of at least R5000 for groceries, cleaning materials, meat, fruit and vegetables and bread and milk.
3. The respondent is ordered to contribute to the applicant's legal costs in the amount of R20 000 payable in equal instalments over four months.

4. The cost of the applicant's second affidavit is disallowed.
5. The costs of this application, save the applicant's second affidavit, are to be costs in the divorce action.

A A LANDMAN
JUDGE OF THE HIGH COURT

APPEARANCES:

DATE OF HEARING : 07 FEBRUARY 2013

DATE OF JUDGMENT : 14 FEBRUARY 2013

COUNSEL FOR APPLICANT : ADV SMITH SC

COUNSEL FOR RESPONDENT : ADV KLOPPERS

ATTORNEYS FOR APPLICANT : VAN ROOYEN TLHAPI & WESSELS

ATTORNEYS FOR RESPONDENT : SMIT & STANTON