

**IN THE CENTRAL DIVORCE COURT  
HELD AT JOHANNESBURG**

CASE NO A7479/99 IN THE MATTER BETWEEN:

28 January 2000

T. H.

APPLICANT

AND

F. H.

RESPONDENT

BEFORE: Z. MOLETSANE, PRESIDENT, ON THE 28<sup>TH</sup> DAY OF JANUARY 2000.

AFTER HAVING READ THE PAPERS FILED OF RECORD AND HAVING HEARD COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT;

**JUDGMENT**

1. **FACTS**

THE MATTER BEFORE COURT CAME BY WAY OF NOTICE OF MOTION IN TERMS OF *RULE 32* OF THE DIVORCE COURT RULES.

THE FACTS ARE SIMPLY AS FOLLOWS:

APPLICANT AND RESPONDENT WERE MARRIED ON 14 APRIL 1984 IN COMMUNITY OF PROPERTY AND THE MARRIAGE STILL SUBSISTS. THERE IS A PENDING DIVORCE ACTION INSTITUTED BY THE RESPONDENT IN THIS COURT AND THE APPLICANT SEEKS MAINTENANCE *PENDENTE LITE* IN RESPECT OF HERSELF AND THE TWO MINOR CHILDREN BORN OF THE MARRIAGE. THE MINOR CHILDREN ARE D.F.H., A BOY BORN ON THE 9<sup>TH</sup> OF OCTOBER 1994 AS WELL AS D.B.H., A BOY BORN ON THE 24<sup>TH</sup> OF NOVEMBER 1986. THE TWO MINOR CHILDREN ARE STAYING WITH THE APPLICANT AT THE MATRIMONIAL HOME IN KWA ZULU NATAL AND RESPONDENT CONCEDES CUSTODY OF THE MINOR CHILDREN TO THE APPLICANT *PENDENTE LITE*.

IT IS COMMON CAUSE THAT APPLICANT AND RESPONDENT DO NOT LIVE TOGETHER IN THE MATRIMONIAL HOME SINCE RESPONDENT RELOCATED TO JOHANNESBURG AND HAS ESTABLISHED A BUSINESS CONCERN IN GAUTENG. RESPONDENT HOWEVER CONCEDES THAT HE IS STILL AND WILL CONTINUE PAYING MONTHLY EXPENSES PERTAINING TO THE MATRIMONIAL HOME, APPLICANT'S MOTOR VEHICLE AND **OTHER** RELEVANT HOUSEHOLD EXPENDITURE. MOST CRUCIAL IS THAT HE UNDERTAKES TO PAY AN AMOUNT OF R1000 AS MAINTENANCE IN RESPECT OF THE APPLICANT AND THE TWO MINOR CHILDREN IN ACCORDANCE WITH HIS COMMON LAW DUTY TO SUPPORT.

THE RESPONDENT IS AN ENTREPRENEUR AND HAS A BUSINESS CONCERN AND IS IN POSSESSION OF SOME FINANCIAL RESOURCES TO ENABLE HIM TO MEET THE MAINTENANCE NEEDS OF THE APPLICANT AND THE MINOR CHILDREN. HE IS AN ENTREPRENEUR WHO GENERATES A REASONABLY SOUND INCOME PER MONTH.

THE APPLICANT ON THE OTHER HAND IS UNEMPLOYED AND HAS NOT BEEN WORKING FOR A

CONSIDERABLE NUMBER OF YEARS AND HER OCCUPATION IS THAT OF A HOUSEWIFE AND MOTHER. HER DAILY TASKS INCLUDE TRANSPORTING CHILDREN TO AND FROM SCHOOL AND SPORTING ACTIVITIES AS WELL AS PERFORMING GENERAL HOUSEHOLD CHORES. SHE IS IN NO FINANCIAL POSITION TO CONTRIBUTE ANYTHING TOWARDS THE DAILY AND MONTHLY HOUSEHOLD EXPENSES AS WELL AS THE MINOR CHILDREN'S EDUCATIONAL, HEALTH CARE, CULTURAL (SPORTING) ACTIVITIES AND OTHER RELEVANT NEEDS.

APPLICANT REQUIRES RESPONDENT TO PAY MAINTENANCE *PENDENTE LITE* IN RESPECT OF HERSELF AND THE TWO MINOR CHILDREN.

## **2. DISPUTE**

THE DISPUTE IS A FACTUAL ONE. THE POINT IN ISSUE IS TO DETERMINE A REASONABLE AMOUNT OF MAINTENANCE WHICH THE RESPONDENT WILL BE ABLE TO PAY IN RESPECT OF THE APPLICANT AND THE TWO MINOR CHILDREN *PENDENTE LITE*.

ACCORDING TO THE PAPERS FILED OF RECORD AND ESPECIALLY APPLICANT'S AFFIDAVIT, SHE REQUIRES AN AMOUNT OF R18,220.71 FOR THE MINOR CHILDREN AND HERSELF. THIS AMOUNT EXCLUDES EXPENSES RELATING TO THE EDUCATIONAL, CULTURAL (SPORTING) ACTIVITIES AND HEALTH CARE NEEDS OF THE MINOR CHILDREN. SHE HAS DULY GIVEN A MOTIVATION FOR THE RELIEF SOUGHT.

RESPONDENT ON THE CONTRARY CONTENDS THAT HE PRESENTLY GENERATES AN INCOME OF APPROXIMATELY R40,000 PER MONTH AND INCURS MONTHLY EXPENDITURE AMOUNTING TO R42,338.72 WHICH LEAVES HIM WITH A SHORT FALL OF R2,338.72. HE ALSO GIVES A MOTIVATION AND RATIONALE FOR THE AVERMENT HE MAKES. INCLUDED IN HIS MONTHLY EXPENDITURE IS THE BOND REPAYMENTS IN RESPECT OF THE MATRIMONIAL HOME, INSTALMENTS AND INSURANCE FOR THE APPLICANT'S MOTOR VEHICLE, LIFE INSURANCE AND ENDOWMENT POLICIES, SECURITY SERVICES COSTS. IN RESPECT OF THE MATRIMONIAL HOME *INTER ALIA*.

## **3. RATIO DECIDENDI**

WHEN THE COURT IS FACED WITH THE TASK OF HAVING TO CONSIDER AND DETERMINE THE QUANTUM OF MAINTENANCE CLAIMED BY ONE PARTY AGAINST THE OTHER, IT IS CRUCIAL THAT THE FOLLOWING FACTORS BE BORNE IN MIND:

- WHAT IS IN THE BEST INTERESTS OF THE MINOR CHILDREN
- FINANCIAL POSITION OF BOTH PARTIES
- EXISTING AND PROSPECTIVE MEANS OF EACH PARTY (SPOUSE IN THIS CASE)
- THE STANDARD OF LIVING OF THE FAMILY (SPOUSES AND MINOR CHILDREN) PRIOR TO THE MARITAL BREAKDOWN
- FINANCIAL OBLIGATIONS AND NEEDS OF BOTH SPOUSES
- QUANTIFYING THE EDUCATIONAL, HEALTH CARE, CULTURAL (SPORTING) ACTIVITIES NEEDS AS WELL AS FOOD, CLOTHING, ACCOMMODATION AND ALL OTHER RELEVANT NEEDS OF THE MINOR CHILDREN.
- THE MEANS OF THE PARTY AGAINST WHOM MAINTENANCE IS SOUGHT, THAT IS, AFFORDABILITY BY THE RESPONDENT *IN CASU*.
- THE PARTIES SHOULD EXPLORE THE POSSIBILITY OF CUTTING DOWN LUXURY OR UNNECESSARY ITEMS FROM THE LIST OF NEEDS. THAT IS ONLY THE **NEEDS** OF THE PARTIES AND THE MINOR CHILDREN SHOULD BE CONSIDERED AND NOT THE **WANTS**.

A NEED TO MY MIND IS WHAT IS REQUIRED TO PROMOTE THE REASONABLE SURVIVAL OF A HUMAN BEING. A WANT ON THE CONTRARY IS WHAT IS ACTUALLY NOT NECESSARY FOR THE REASONABLE SURVIVAL OF A HUMAN BEING BUT IS HOWEVER DESIRED BY THE PARTICULAR INDIVIDUAL FOR A MYRIAD OF REASONS. IN ASSESSING WHAT A NEED IS AND WHAT A WANT IS, THE FINANCIAL POSITION OF THE PARTIES MUST ALWAYS BE CONSIDERED AS WELL AS THE STANDARD OF LIVING OF THE PARTIES.

IN TERMS OF THE EVIDENCE BEFORE COURT, APPLICANT AVERS THAT THE RESPONDENT

IS IN A SOUND FINANCIAL POSITION TO MEET THE MAINTENANCE NEEDS OF HERSELF AND THE TWO MINOR CHILDREN AND RESPONDENT REFUTES THAT.

THE COURT RELIES MAINLY ON WHAT IS STATED BY THE PARTIES IN THE PAPERS BEFORE COURT AND OF COURSE ARGUMENT BY THE ADVOCATES FOR BOTH. THERE IS NO TANGIBLE PROOF SUCH AS DOCUMENTARY EVIDENCE AS TO THE INCOME THE RESPONDENT GENERATES BUT FOR HIS PAYSLIP DATED 25 JANUARY 1999 - EXHIBIT 'A' - WHICH STATES THAT HIS NET SALARY AT THE TIME WAS R8,428.12. HE WAS AT THE TIME EMPLOYED BY A COMPANY KNOWN AS "MOOI RIVER TEXTILES" BASED IN KWA ZULU NATAL.

THE COURT IS PLACED IN A PRECARIOUS POSITION IN THAT THE QUANTUM OF MAINTENANCE CLAIMED SHOULD ONLY BE DETERMINED FROM AFFIDAVITS FILED OF RECORD.

THE COURT WILL ORDER THAT THE RESPONDENT CONTINUES PAYING THE EXPENSES RELATING TO THE COMMON HOME, THE MOTOR VEHICLE OF THE APPLICANT AND OTHER EXPENSES WHICH HE HAS COMMITTED HIMSELF TO PAY PENDING THE MAIN ACTION.

ON THE QUESTION OF THE AMOUNT OF MAINTENANCE TO BE PAID BY THE RESPONDENT TOWARDS THE APPLICANT AND THE MINOR CHILDREN THE COURT NOTES THAT ALL THE PAPERS FILED OF RECORD DO NOT EXPRESSLY STIPULATE THE BREAKDOWN OF THE EXPENSES RELATING TO THE MINOR CHILDREN'S EDUCATIONAL, MEDICAL CARE AND SPORTING ACTIVITIES NEEDS. IT IS INDEED IN THE BEST INTERESTS OF THE CHILD THAT IN ANY MAINTENANCE ISSUE, SUCH EXPENSES MUST BE MADE A PRIORITY. IT IS A CONSTITUTIONAL IMPERATIVE THAT THE CHILD'S RIGHT TO EDUCATION BE PROMOTED AND PROTECTED.

**SECTION 28 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT NO 108 OF 1996** PROVIDES THAT:

- “(a)...
- (b) Every child has the right to family care and parental care...
- (c) basic nutrition, shelter, basic health care services and social service...”

IN INTERPRETING THIS SECTION I AM OF THE VIEW THAT THE AMOUNT OF R1000 OFFERED BY THE RESPONDENT AS MAINTENANCE TOWARDS THE CHILDREN AND THE APPLICANT FALLS SHORT OF CONSIDERING THE EDUCATIONAL AND HEALTH NEEDS OF THE CHILDREN.

IT IS NECESSARY THEREFORE TO INCREASE THE AMOUNT OFFERED SO THAT THE CONSTITUTIONAL VALUES SHOULD BE TRANSLATED INTO REALITY. THE PARTIES HAVE TO REMOVE THEIR WANTS FROM THEIR MONTHLY EXPENDITURE LISTS AND FOCUS ONLY ON THE NEEDS, ESPECIALLY OF THE MINOR CHILDREN.

WITHOUT BEING PRESCRIPTIVE, THE COURT WOULD SUGGEST THAT BOTH PARTIES CONDUCT AN AUDIT OF WHAT IS REALLY ESSENTIAL FOR THEIR OWN SURVIVAL AND THAT OF THEIR CHILDREN, AND DEEM THAT AS THEIR MONTHLY EXPENSES.

#### **4. ORDER**

IT IS THEREFORE ORDERED THAT:

- 4.1 THE RESPONDENT PAYS MAINTENANCE OF R3,000 PER MONTH IN RESPECT OF BOTH MINOR CHILDREN WHICH AMOUNT WILL CATER FOR THE CHILDREN'S BASIC NEEDS SUCH AS SPORTING ACTIVITIES, FOOD, MEDICAL CARE COSTS AND OTHER EDUCATIONAL REQUIREMENTS.

4.2 THE RESPONDENT PAYS MAINTENANCE OF R1,000 PER MONTH IN RESPECT OF THE APPLICANT FOR HER PERSONAL NEEDS SUCH AS FOOD, PETROL TO TRANSPORT HERSELF AND THE MINOR CHILDREN AS WELL AS RELEVANT HOUSEHOLD NECESSARIES.

4.3 THE RESPONDENT CONTINUES PAYING THE AMOUNTS IN RESPECT OF THE HOUSE, THE APPLICANT'S CAR AND OTHER RELEVANT EXPENSES ENCAPSULATED HEREUNDER.

WATCHDOG SECURITY	-	R148.35 PER MONTH
HOSKINS INSURANCE	-	R206.57 PER MONTH
BONUS CARD	-	R153.52 PER MONTH
BANKFIN (APPLICANT'S VEHICLE)	-	R1063.04 PER MONTH
APPLICANT'S VEHICLE INSURANCE	-	R270.03 PER MONTH
SAGE LIFE	-	R525.94 PER MONTH
SAGE LIFE	-	R96.48 PER MONTH
HOUSE BOND INSTALMENTS	-	R4100.00 PER MONTH
M CHOICE	-	R146.72 PER MONTH.
MUNICIPALITY RATES (WATER AND LIGHTS AS WELL) PER MONTH.		

4.4 THE RESPONDENT SETTLES ALL OUTSTANDING SCHOOL FEES AND PAYS CURRENT COSTS RELATING TO THE CHILDREN'S EDUCATION.

4.5 THIS ORDER IS TO OPERATE *PENDENTE L'ITE*.

REPORTABLE : YES.

COUNSEL FOR APPLICANT: ADV L SILBERG  
COUNSEL FOR RESPONDENT: ADV M OLIVIER

**BY ORDER OF COURT**

**REGISTRAR**