



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Case No. 284/2013

In the matter between

GLEND A STEPHENS

Applicant

and

JOHN WOOLCOTT STEPHENS

Respondent

Neutral citation: *Glenda Stephens v John Woolcott Stephens*
(284/2013) [2013] SZHC 156 (19 July 2013)

Coram: **Mamba J**

Heard: **12 July, 2013**

Delivered: **19 July, 2013**

- [1] Civil law – Matrimonial action – application for MPL and contribution towards the costs of the action in terms of rule 43 of the Rules of Court. Court has discretion to decide on the amount based on the living standards of the couple and the ability of the respondent to pay for the needs of the applicant.
- [2] Civil law – Matrimonial action – application for contribution towards costs of suit. Applicant not entitled to the full amount of the costs of the pending action but to a reasonable contribution.

[1] This is an application for MPL and Contribution towards the costs of the applicant in the action wherein she is the defendant. This application is made in terms of rule 43 of the rules of this court. This rule provides that it 'shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

(a) maintenance pendente lite;

(b) a contribution towards the costs of a pending matrimonial action;

(c) interim custody of any child;

(d) interim access to any child.'

The present application concerns the matters stated in (a) and (b) above.

[2] By its nature, such an application is interlocutory and has to be dealt with expeditiously and inexpensively and the court... 'may dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision.' (per subrule 6 thereof)

[3] It is common ground that the applicant is entitled to a reasonable

amount in respect of maintenance and also a reasonable amount as contribution towards the costs in the divorce action. The court has been called upon to determine what is reasonable in the circumstances of this case, in respect of each of the two claims ie, maintenance and contribution towards legal costs. I now examine each of these in turn hereunder.

- [4] The applicant seeks a sum of E30, 000.00 per month as maintenance, with effect from 01 March 2013; presumably because this application was file on 26 February. She also states that the respondent gave her a sum of E7,000.00 as maintenance in February 2013 and a sum of E10, 000.00 in December, 2012, and these were arbitrary payments by him.
- [5] The applicant is 59 years and is unemployed. She is currently staying in Mocambique, with friends, having left Swaziland in June 2012. She states that the house she stayed in in Mocambique was completely burnt down together with all her personal belongings and she now relies on the generosity of her friends for accommodation and cloths. There is no indication on the papers when this fire occurred.

[6] I do not think it will serve any useful purpose to list her stated needs in this judgment. Suffice to say that her claim for staff wages, gas, furnished accommodation, medical expenses, telephone and contingencies have not been motivated or articulated or justified. For instance, she has not said that she has an employee or that she needs to employ someone to do or perform certain specified tasks, or what she means by “contingencies”. Again, it is common cause that she is on the respondent’s medical aid scheme. It is common cause further that, the applicant is living with friends and has not secured any rented accommodation for herself or that suitable accommodation is available in the market that would cost her the stated amount per month.

[7] I accept that, where she stays, she may reasonably be expected to make a contribution towards the payment of household utilities such as electricity and water. I accept further that, having lost all her cloths in the fire referred to above, she is entitled to a reasonable amount to enable her to purchase cloths for herself. I think her claim for E2500.00 under this heading is fair, reasonable and justified.

[8] I accept further that the applicant will need to travel within Mocambique and also come to Swaziland from time to time for amongst other things, consulting her lawyers. She will need her motor vehicle to carry out these chores or errands. Some of these tasks, however, will be honoured by the use of a telephone.

[9] I have carefully considered the affidavit by the respondent in opposition to this application and taking into account the informal arrangements between the parties herein, after the applicant relocated to Mocambique, I award the applicant a sum of Ten Thousand Emalalangi (E10,000) per month and this is made up as follows:

(a) Clothing	E2500.00
(b) Food	E4000.00
(c) Transport (Motor Vehicle)	E2400.00
(d) Utilities (Electricity and Water)	E 400.00
(e) Telephone	E 700.00

This I believe is in accordance with the living standard of the parties and the capacity of the respondent to meet the applicant's needs. See *TAUTE v TAUTE*, 1974 (2) SA 675.

[10] In March and April 2013, the respondent paid a sum of E25, 000.00 to the applicant. The aggregate monthly payment in this instance is a sum of E12 500.00. As payment has already been made for these two months, I do not think it would be fair or even logical to back date the maintenance payment to March as sought, by the applicant. I order that the payments be back-dated to 01 May this year instead and shall continue to be paid on or before the 7th day of each succeeding month until the action is finalized.

[11] The applicant has sought payment of a sum of E40,000.00 as contribution towards her costs of the action. The respondent avers that this is rather too extravagant. He also makes the point that he has already paid a sum of E5000.00 to the applicant's attorneys in this regard.

[12] The applicant has indicated that she is going to defend the divorce action. She has further stated that she intends filing a counter-claim that there existed a universal partnership between her and the respondent. 'The sum to be contributed is determined by the court's view of the amount necessary for the applicant adequately to put her

case before the court. The applicant is not entitled to all her anticipated costs, even though the respondent can well afford to pay them, but only a substantial contribution towards them. Before trial, the applicant is ordinarily entitled to be awarded a contribution only up to and including the first day of trial; the rationale for this restriction is said to be that the case may be settled, as such cases often are on the first day of trial; (Erasmus, *Superior Court Practice at B1-315*). See also *Michelle Rosemary Van Den Berg (born Kingwill) v Roelfba Johannes Van Den Berg* (Eastern Cape High Court judgment delivered on 15 March 2013). The assumption stated in the above excerpt obviously does not apply in this case as the applicant has indicated that she will be contesting the divorce action. The matter will therefore in all probability not be settled or concluded on the first day.

- [13] Assuming that the action will be defended and that a counter-claim shall be raised by the applicant, I estimate that such a trial will not take more than three (3) days. That being the case, I consider that a sum of E15,000.00 will be a reasonable contribution for costs by the respondent herein. This amount includes the sum of E5,000.00 that

has already been paid by him to the applicant's attorneys. The respondent is therefore ordered to make a further payment of ten thousand Emalangi (E10,000.00) to the said attorneys. This amount is to be made in full, not later than ten days after the close of pleadings in the matrimonial action.

[14] For the foregoing reasons I make the following order:

(a) the respondent is ordered to pay to the applicant MPL at the rate of E10,000.00 per month with effect from 01 May 2013,

(b) pay a sum of ten thousand Emalangi (E10,000.00) as contribution towards the applicant's costs in the divorce action and that such amount must be paid to the applicant's attorneys not later than ten (10) days after the close of pleadings in that action.

(c) The costs of this application shall be costs in the cause (action).

MAMBA J

For Applicant : **Mr L. Mamba**

For Respondent: **Adv. P. Flynn**