

Divorce: Interim Relief



Divorce: Claiming Interim Maintenance and a Contribution to Legal Costs

Even if your marriage is collapsing around you, you might be afraid to sue for divorce because you have no money to survive on, plus you know that a hotly contested divorce might take years to finalise while your breadwinner spouse fights you tooth and nail every step of the way.

How will you support yourself and your children until the case is finalised? How will you pay your lawyer to run the case for you? **Must you wait for the end of the case before you see a cent?**

The answer luckily is “no” in that you have a relatively quick and simple remedy in the form of asking the court for “interim relief” in respect of –

- An order that your spouse pay you –
 - * Maintenance (for children and/or for yourself) pending finalisation of the divorce,
 - * A contribution towards your costs in the divorce proceedings,
- Interim care of, and contact with, your children (if there is any dispute over this aspect).

You may well hear this form of relief referred to in High Court divorces as a “Rule 43 application” (or, if your divorce is in the Regional Court, as a “Rule 58 application”), whilst the technical term for the maintenance is “maintenance pendente lite” (“maintenance pending the litigation”).

At this stage the Court isn’t interested in recriminations, or blame-finding, or the itemised details of your and your spouses’ financial positions. Those enquiries come later, during the actual divorce litigation. At this stage all it wants to know is how much you need, and how much your spouse can afford to pay.

A recent High Court judgment illustrates...

A “coy about his wealth” spouse ordered to pay up - now

- The warring spouses here are a senior banking executive and his wife, who qualified as a teacher but gave up that career to become a homemaker and mother to the couple’s two children.

- She asked the High Court for interim maintenance for herself and the children, and for a contribution to her legal costs.

- In assessing these requests the Court laid out some of the general principles involved –

* Unless the care and residence of children is involved the issues are straightforward, relating to “the applicant’s **reasonable needs**, and the respondent’s **ability to meet those needs**. The applicant’s entitlement to maintenance must be assessed having regard to the standard of living enjoyed by the parties during the marriage.” This should be “**a simple and straightforward calculation of needs and means**”. (Emphasis supplied).

* The aim is “to avoid substantial prejudice to either party pending divorce. It is not to provide a precise account of what is due to or from either party, according to the parties’ or the court’s sense of morality, propriety, the blameworthiness of the parties’ conduct during the marriage, or their habits of living after the separation.” The case should be cast in practical rather than moralistic terms, and the “emotional heat of a separation” should be kept out of it.

How much money could you be awarded?

Of course every case will be different, but where the parties have, as in this case, enjoyed a high standard of living, the figures can be substantial.

Here for example the Court’s awards were sizeable, commenting that the husband “is coy about his wealth, but there is little doubt that he has a substantial income” - just under R7m in the previous year - with “considerable resources” and an estimated net worth of just over R40 million. Moreover the couple had enjoyed “a very comfortable lifestyle” together.

The end result is that the husband must pay substantially what his wife asked for in the form of R1.6m immediately and thereafter R108k p.m. -

- R88,701-69 p.m. for the wife and children’s interim maintenance, plus school fees, extra mural activity costs, medical aid and medical costs

- Rental of up to R20,000-00 p.m., plus cost of utilities

- R34 656.39 for house moving costs

- R1,572,945-80 as a contribution towards the wife’s interim legal costs.

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