



**REPUBLIC OF NAMIBIA**

**CASE NO: I 267/2008**

**IN THE HIGH COURT OF NAMIBIA  
MAIN DIVISION, HELD AT WINDHOEK**

In the matter between:

**ERENSTINE TALENI KANYAMA (born ELAGO)**  
**Applicant**

and

**ALUGODHI PAULUS KANYAMA**  
**Respondent**

**CORAM: VAN NIEKERK, J**

Heard: 30 May 2012

Delivered: 20 June 2012

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**JUDGMENT : RULE 43 APPLICATION**

**VAN NIEKERK, J:** [1] This is a rule 43 application in which the

applicant claims maintenance for herself and three children *pendente lite*. She also claims a contribution to legal costs. The applicant is the defendant in an action for divorce instituted by the respondent. She also instituted a counterclaim against the respondent.

[2] The application, to which the respondent has filed a sworn reply, was previously set down for hearing. At the time there were certain annexures referred to in the application which the applicant failed to attach. The application was withdrawn and subsequently replaced by a fresh application, which is virtually the same word for word, except that the annexures are now attached and where the applicant previously mentioned that her family was assisting her to pay for certain expenses, she now states the names of the particular family members and attaches their confirmatory affidavits. Also attached is an affidavit previously made by the eldest daughter in support of an application for a protection order against the respondent in November 2010, which order was subsequently withdrawn.

[3] Mr *van Vuuren* for the respondent pointed to the fact that the applicant states in her sworn statement that she has never been employed, that she has always been a homemaker and that in fact she cannot work as a result of a mental illness for which she is being treated. Yet, he pointed out, in the above-mentioned affidavit made by the daughter on 17 November 2010, mention is made to the effect that the applicant did in fact work as from middle 2008 and that she was earning N\$8 000-00 per month at the time the affidavit was made. In

the first sworn reply (as well as the second sworn reply) the respondent takes issue with the allegations made by the applicant. He states that she can work and that she indeed was employed by Komesho Enterprises during 2006. Mr *van Vuuren* submitted that on the applicant's papers there were contradictions regarding the issue of whether she had ever been employed. Furthermore, although she had the benefit of the respondent's first reply, she elected not to clarify the disputed issues in the second application. As a result, counsel submitted, there is a question mark as to the applicant's truthfulness and her *bona fides*. I must say that this aspect is most disturbing and I have given serious consideration to dismissing the application without any further ado. However, I am concerned about the maintenance for the three children, who are innocent in this affair.

[4] It seems to me that on the respondent's own version he does not provide any money for clothes or pocket money for the children PK and NK. The applicant claims N\$600 and N\$500 for these items per child, which she says is being paid by her sister. These amounts seem reasonable and the respondent should pay them. In the case of PK who is already 23 and studying at the Polytechnic, he may pay the amount directly to her. In the case of NK who is only 16 and still a scholar, the money should be paid to the applicant for use in respect of NK. As far as the other amounts claimed are concerned, I am inclined to accept the respondent's version that he is already paying for groceries and other household expenses and provides transport.

[5] The position of the child AK is more difficult. He is 19 years of age and during 2011 he was enrolled for studies in South Africa at the respondent's expense, which are considerable. The applicant states that he had to interrupt his studies and return to Namibia because the respondent refused to assist him further with his studies. However, this does not convey the whole picture, as it is clear from the respondent's reply that the particular university refused the child re-admission for the next year because he was not serious about his studies and did not make satisfactory academic progress. The child is now enrolled for studies at UNAM for which the applicant's sister is paying. The applicant claims maintenance for him in respect of groceries, toiletries, transport, clothing and pocket money. The respondent states that AK works as a disk jockey at a night club. He already alleged this in the first sworn reply. The applicant has not dealt with this allegation at all in the second application. I assume that she cannot dispute this allegation otherwise she would have dealt with it in the second application. The respondent states that AK lives in the common home shared by the parties, that he never asks for monetary assistance and does not speak to the respondent. The respondent's attitude is that he is not liable to maintain AK because he has not shown a reasonable aptitude for furthering his studies at an acceptable level.

[6] I agree that the respondent need not pay for the child's studies, as he has not applied himself before. However, as the child is

not a major, it is trite that the parents are liable to maintain him until the age of 21 unless he is self-supporting. It appears from the papers that the relationship between the parties and between AK and the respondent is strained and that there is very little communication. However, they all live in the same house and I think that it is incumbent upon the respondent as the parent to make it his business to ensure that AK is properly maintained, even if his conduct and way of life do not meet the respondent's approval. I accept that the respondent provides a roof over the child's head and groceries and other household items. I shall assume it includes toiletries. I further accept that, while studying, AK has some employment. He can therefore pay for his own entertainment. I shall however order the respondent to pay N\$600 for clothing and N\$750 for transport on a monthly basis in respect of AK.

[7] The applicant claims maintenance for herself as well as a contribution to her legal costs. In the light of my earlier findings about her *bona fides* I am not prepared to consider her claims. In any event, she has not laid a proper basis for her claim for a contribution to costs (see *Dreyer v Dreyer* 2007 (2) NR 553 (HC); Erasmus Superior Court Practice B1 315-316).

[8] In my view the outcome of this application is such that it is fair to order that each party bears his/her own costs.

[9] In the result the following order is made:

1. The respondent shall pay the amount of N\$1 100 per month as maintenance *pendente lite* to PK, the second eldest child of the parties.
2. The respondent shall pay the amount of N\$ 1 100 per month in respect of the minor child NK and N\$1 350 in respect of the minor child AK to the applicant as maintenance *pendente lite*.
3. The first payment shall be made on or before 7 July 2012 and thereafter on or before the 7<sup>th</sup> day of each consecutive month.
4. Each party shall bear his/her own costs.

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**VAN NIEKERK, J**

Appearance for the parties

For  
Mr A Small

the

applicant:

Instr. by Kirsten & Co. Inc

For the respondent:  
Mr A S van Vuuren

Instr. by Du Pisani Legal Practitioners