

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 11653/2019

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

DATE

SIGNATURE

In the matter between:

G T

Applicant

And

G J

Respondent

JUDGMENT

TSOKA J

[1] On 26 April 2019, the applicant, T G (T) launched an application in terms of Rule 43 wherein she claims that the respondent, J G (J) *pendent lite* be ordered to pay;

1.1 the full monthly mortgage repayments on the matrimonial property and all the arrears thereon;

1.2 the full monthly water and electricity costs and rates and taxes on the matrimonial property and all the arrears thereon;

1.3 R5000 cash payment in respect of maintenance for each of the parties' four minor children;

1.4 all educational expenses reasonably incurred inclusive of school fees at private school, transport costs, school uniforms, school books, stationery, extra lessons and compulsory tours and outings;

1.5 one extra activity per child per term inclusive of clothing and equipment.

1.6 and to retain herself and the minor children on respondent's medical aid scheme and pay all additional costs not covered by the medical aid;

[2] In addition, T seeks an order that J be ordered to pay the amount of R10 000 per month as maintenance for herself. Furthermore, that J be ordered to

pay R50 000 in respect of contribution to her costs payable in monthly instalments in the amount of R5000 plus the costs of the application.

[3] The application is opposed by J who raises two preliminary points that the application constitutes an abuse of the court process as T solemnly undertook not to litigate but to have the disputes between the parties mediated. A further preliminary point raised is that T compromised her claims in that all her claims against J were settled at a mediation agreed to between the parties. Thus, the launching of the application by T, in these circumstances, is abuse of the court process and that the application must accordingly be dismissed with costs.

[4] The facts in this matter are, in the main, uncomplicated and common cause. The parties were married to each other on 3 December 2000 out of community of property but subject to the accrual system. The marriage is about to be dissolved as T has instituted an action of divorce against J. The pleadings in the pending divorce action are closed.

[5] There are four children born of the marriage between the parties. All the four children are minors. T is the primary caregiver of the minor children and by agreement between the parties, the children were to spend two weeks per month with each party.

[6] T has no formal qualifications. Presently she is employed by a company as an administrative assistant earning R10 065 net per month. J is presently running a company that sells Kosher food products amongst the Jewish community. His earnings are, however, unknown to T. Notwithstanding that the latter does not know the former's earnings, she contends that J is capable of making cash payments to her and the four children in the total amount of R30 000 per month as she is financially unable to manage to support herself and the four minor children on her net salary of R10 065.

[7] J in his answering affidavit apart from challenging the application on the two preliminary points mentioned above, states that T's monthly expenses are grossly inflated to bolster her claims. In addition, he states that some of the expenses T alleges are her expenses are in fact the expenses paid by him. His conclusion is that the application is an abuse of the court process which this court should not countenance.

[8] Sight should not be lost that T's application is in terms of Rule 43. The orders sought are interim and temporary in nature pending the dissolution of the marriage in due course. To achieve this temporary and interim remedy, Rule 43(2) provides that an application such as the present, must be in a form of a declaration. J's affidavit in terms of Rule 43(3) must be in the nature of a plea.

That the parties' papers must not be prolix and contain irrelevant material, is obvious.

[9] In the present matter, T's sworn statement is not in a form of a declaration. So is J's answer which is not in a form of a plea. That the parties regard the provisions of Rule 43 as irrelevant that can be ignored at whim is obvious. Although T's sworn affidavit commences from page 3 to 13, it contains irrelevant annexures that run from pages 14 to 52. J is also not blameless. One can, however, understand that he was expected to respond to the case presented to him by his wife.

[10] In 2009, in the matter of *Van Beest Van Andel*¹, a matter also relating to Rule 43, I had the opportunity to observe that –

‘The purpose of Rule 43, is to afford the parties inexpensive and speedy relief pending the finalization of a divorce action. This purpose is frustrated by the filing of lengthy and irrelevant annexures. These lengthy and irrelevant annexures merely increase the cost of what is meant to be an inexpensive procedure.’

[11] The observation made in 2009 that applications in terms of Rule 43 must not be prolix, carries on. Litigants and their respective legal representatives launch

¹ Van Beest Van Andel Isabella Susanna v Van Beest Van Andel Edwin Paul (Unreported Case no: 27869/2007 GJ)

applications in this court in terms of Rule 43 regardless of the rule's clear and unambiguous wording and the line of decided cases that gave guidelines as to the approach to be adopted in launching such applications. The conclusion reached is that as far as the litigants and their legal representatives are concerned, the provisions of Rule 43 do not exist. The previous decided cases are inapplicable to them. That this conduct is not only abuse of the court process but brings the administration of justice into disrepute, admits no doubt. The practice must stop. Applications in terms of Rule 43 must be brief and in accordance with the provisions of the Rule.

12] That the present application in abuse of the court process appears not only from the prolix and the irrelevant annexures attached, but appears also from T's allegations in support of the application.

[13] Although the residential property has been taken over by the mortgagee under its Easy Sell to enable the property to be sold at profit for the benefit of the parties, T claims payment in excess of R10 000 pm in respect of mortgage repayments. She seeks an order that she knows that J in any event does make. Notwithstanding that by agreement, the four children only are with her two weeks in a month, she seeks an order for maintenance for the whole month. In spite of her being provided with transport by J, she seeks an order that in addition J must pay for her transport. That indeed T did not need to approach this Court, is also

obvious. Particularly that the various amounts of money claimed are now greater than the ones claimed in the mediation. December 2017 a similar application to the present one was launched by T claiming maintenance for herself and the children in the sum of R9000. The said application was inexplicably withdrawn. Surely this is not the conduct of someone who requires interim financial relief pending the divorce.

[14] On the conclusion reached, it is unnecessary to determine whether the preliminary points raised have merit or not. The observation made, however, is that the applicant cannot give an undertaking not to litigate as this appears to be against public policy and therefore unconstitutional. Neither has she compromised her claims, as the alleged agreement between the parties has not been signed by the mediator.

[15] To conclude, the present application amounts to abuse of the court process. The abuse cannot be countenanced by this Court. The application deserves to be dismissed.

[16] Having regard to the aforesaid, the application is dismissed with costs.

M TSOKA

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOAHHESBURG

Date of hearing: 12 June 2019

Date of judgment: 13 June 2019

Appearances:

For the applicant: Adv Courtenay

Instructed by: Sterling Attorneys

For the respondent: Adv Segal

Instructed by: Thompson Wilks