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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

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

Case No: 3646/2012

In the matter between:

S: L

APPLICANT

and

S: R

RESPONDENT

JUDGMENT

MTATI AJ

Introduction

[1] This application is brought before Court on an urgent basis. The applicant seeks an order to the effect that a Rule 43 order granted on 23 May 2012 by Coppin J, as later varied, was not extinguished by a subsequent order of Francis J handed down on 6 July 2017 in the divorce proceedings. Put differently, it is argued on behalf of the applicant that the Rule 43 order is still extant notwithstanding judgment in the divorce proceedings. This argument is raised as a result of a pending order as to costs by Francis J and as a result, it is the case of the applicant that the divorce proceedings have not been finalised. A second argument linked to the costs determination is that there is a pending appeal and, as such, the Rule 43 order should continue to operate. Ms De Wet, for the applicant, argues that the fact that there is still an undecided appeal, that should be construed to mean that the matrimonial *lis* has not been finally determined.

[2] On the other hand, there are two alternatives to the main order sought above. Firstly, that the order of Francis J dated 6 July 2017 is and be immediately executable in terms of section 18(1) of the Superior Courts Act 10 of 2013, secondly, and in the further alternative, that the same order of Francis J be varied in terms of section 8 of the Divorce Act 70 of 1979 in respect of the amount of maintenance payable. The alternative reliefs sought by the applicant is as a result of an application for leave to appeal that was granted by Francis J on 4 August 2017.

Background

[3] The parties were married to each other out of community of property subject to the accrual system. Three children were born out of the marriage between the parties. The marriage relationship between them broke down irretrievably necessitating the applicant to institute divorce proceedings claiming, *inter alia*, a

decree of divorce, division of the accrual, spousal maintenance and payment of maintenance for the three children.

[4] The applicant launched an application in terms of Rule 43(1) seeking relief for maintenance and a contribution towards costs. On 23 May 2012 an order was granted in the Rule 43 application. The salient terms of the Rule 43 order as far as they find relevance to this application, are that the respondent was to pay:

4.1. R25 000.00 per month to the applicant in respect of maintenance for the applicant and the three children; and

4.2. certain expenses directly to the service providers concerned.

[5] On 11 September 2013, the applicant launched a Rule 43(6) application seeking an increase of the quantum of the maintenance that was awarded to her in terms of the initial Rule 43 order and the initial order was duly varied.

[6] The divorce matter proceeded to trial and was heard over some nineteen days whereafter, on 6 July 2017, judgment was handed down by Francis J. The salient terms of the order finding relevance to this application are the following:

6.1. a decree of divorce was granted;

6.2. the respondent was ordered to pay maintenance to the applicant in respect of the three children for as long as they resided with the applicant and were not self-supporting in the sum of R8 000.00 per month per child;

6.3. the respondent was ordered to pay maintenance in respect of the applicant for a period of twenty four months in the sum of R16 000.00 per month;

6.4. the respondent was ordered to pay other costs for the children including educational, medical and mobile phone expenses; and

6.5. The costs of the divorce action were to be determined in a separate judgment.

[7] The applicant filed an application for leave to appeal. The application for leave to appeal related to the maintenance orders only. Leave to appeal was granted on 4 August 2017 to the Full Court of this Division.

[8] This application is premised on the basis that the respondent, rightfully or erroneously, proceeded to comply with the maintenance order as per the judgment of Francis J and has since alerted the applicant that he has fully complied with the court order in respect of spousal maintenance. In other words, the respondent informed the applicant that he will no longer pay spousal maintenance since he has done so in terms of the order of Francis J. It is on this basis that the applicant seeks an order from this Court declaring the Rule 43 order, as existed prior to the judgment in the divorce action, to be extant or that the Court considers the alternative prayers claimed.

Issues for determination

[9] In my view, the following issues require determination by the Court:

9.1. Application of a Rule 43 order pending a hearing of an appeal against maintenance orders;

9.2. Requirements and application of section 18 of the Superior Courts Act, 10 of 2013 in the matter before Court;

9.3. Variation in terms of section 8 of the Divorce Act; and

9.4. Urgency

Rule 43 of the Uniform Rules of Court

[10] Rule 43 provides as follows:

“Interim relief in matrimonial matters

(1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters:

(a) Maintenance pendent lite;

(b) A contribution towards the costs of a matrimonial action, pending or about to be instituted;...”

[11] This rule is interim in nature pending finalisation of a divorce action¹. Ms De Wet for the applicant argued at length in justifying application and relevance of Rule 43 in the matter before Court. In particular, an emphasis was based on the fact that the issue of costs has not yet been determined by Francis J. The question for determination is whether the divorce court has not pronounced on the substantial issues constituting the divorce action. If the substantive issues have been determined by the divorce court, it seems to me, that the Rule 43 order should lapse. There has, however, been a number of cases that proffered different views on this aspect.

[12] The Court was referred to a number of decisions dealing with the appropriate application of Rule 43. It is apposite to deal with some of these authorities before coming to my conclusion. In ***S v S and Another***² the Constitutional Court explained that Rule 43 was not designed to resolve issues between litigating spouses for an

¹ Gunston v Gunston 1976 (3) SA 179 (W); Van Oudenhove De St Gery v Gruber 1981 (3) SA 737 (E)

² (CCT147/18)[2019] ZACC 22

extended period, but rather as an interim measure until all the issues are properly ventilated by the trial court. Once the trial court has finally determined all the issues in the divorce action, Rule 43 no longer finds application.

[13] In the matter of **Bienenstein v Bienenstein**³, De Villiers AJ was called upon to adjudicate an objection *in limine* to an application in terms of Rule 43 for a contribution towards costs, under the following circumstances:

13.1. At the instance of Mr Bienenstein, a judge granted a final rule *nisi* in an action for restitution of conjugal rights and granted a decree of divorce. Mrs Bienenstein noted an appeal against the final order.

13.2. Thereafter Mrs Bienenstein made an application in terms of Rule 43 for a contribution towards her costs of the appeal to enable her to furnish security for the costs of the appeal. De Villiers AJ stated that Rule 43 deals “*only with regulating the position of the parties or the children and the costs before the final order has fallen.*”⁴

[14] However, in the matter of **Carstens v Carstens**⁵, there Roberson J held that, unlike in Bienenstein, despite the decree of divorce having been granted, there were still matrimonial disputes pending between the parties. In addition, it appears that the parties themselves had agreed in the minutes of a pre-trial conference that “*the interim arrangements*” will continue until the action was finalised. In the result, the court granted an order in terms of Rule 43 in favour of Mrs Carstens.

³ 1965 (4) SA 449 (T)

⁴ At 451 I

⁵ (2267/2012) [2012] ZACPEHC 100 (20 December 2012)

[15] In his judgment in the matter of **Beckley v Beckley**⁶, Tsoka J was also called upon to adjudicate an application for interim maintenance in terms of Rule 43. Pursuant to a separation application, the Beckley's were divorced and a division of the joint estate was ordered, with Mrs Beckley's claim for spousal maintenance and a damages claim, being postponed *sine die*. As part of the separation order, Mrs Beckley was granted the right to claim interim maintenance in terms of Rule 43. By the time the application for interim maintenance was launched, there was no longer a pending matrimonial action between the parties. Tsoka J considered it apparent that the provisions of Rule 43 were no longer applicable.

[16] In **KO v MO**⁷, Loots AJ agreed with the view held by Roberson J in *Carstens* by finding that, pending the finalisation of the divorce action, an extant order in terms of Rule 43 survives a decree of divorce to the extent that issues regulated thereby remain unresolved. In this matter an order was granted in terms of Rule 43 whereof the respondent was ordered to pay a monthly cash contribution in the amount of R28 000.00 towards the maintenance of the parties children, as well as to make payment of certain expenses relating to the children, pending the determination of the divorce action between the parties.

[17] Ms De Wet for the applicant, argued at length in persuading the Court that the case of **Joubert v Joubert**⁸ finds application in these proceedings. In this case the parties were embroiled in an acrimonious divorce. There was a Rule 43 order which primarily addressed various aspects of the respondent's maintenance obligations towards the applicant. A separation order in terms of Rule 33(4) was granted whereby the final decree of divorce was separated from the issues pertaining to the

⁶ Unreported. Case number 01098/2015, Gauteng Local Division, 6 May 2015

⁷ 2017 JDR 1839 (WCC)

⁸ Unreported. Case number 67591/2013, Gauteng Division, Pretoria

determination of the accrual and the defendant's spousal maintenance. The applicant then approached the court on an urgent basis seeking a declaratory directive that the Rule 43 order remains operative, in respect of the separated issues and that her rights to approach the court for further relief in terms of Rule 43 remain unaffected by the granting of the divorce order. It was argued on behalf of the respondent that Rule 43 has no application to any matrimonial dispute which has come to an end by the final order of divorce.

17.1. In finding for the applicant in the *Joubert* matter, Opperman J stated as follows in paragraph 21:

"The applicant's claim for spousal maintenance can be nothing else but a dispute arising from a matrimonial action and/or proceedings incidental to such action."

17.2. She continues at paragraph 26 and states further that:

"Where the issue of spousal maintenance is expressly kept alive (like the present case), the lis contemplated in Rule 43 has not come to an end. Such lis is clearly a matrimonial one in respect of the proceedings incidental to an action for divorce. However, I need not go that far in this matter as in this case the respondent expressly invited the court to separate out the issue of spousal maintenance and undertook to be governed by the rule 43 relief which had already, by the time the undertaking was made, been granted."

17.3. It should be noted that Mr Joubert had stated under oath that the granting of a separation order would not prejudice Mrs Joubert as the Rule 43 order was in place and would remain in place pending a decision in respect of the issues to be separated.

[18] The argument on behalf of the applicant is that there is still a matrimonial *lis* pending since there is a pending appeal relating to maintenance for the applicant and the children. Furthermore, Counsel for the applicant sought to persuade the Court that, since the determination of costs in the divorce action has not been finally determined, that makes the *lis* pending.

[19] What appears to be common facts on all the cases referred to above where the courts ordered continuation of the Rule 43 orders, is that there had been separation of issues ordered. The substantial disputes between the parties had not been resolved whereas the situation is different in the present case. In addition, if the facts of the case before me were as a result of a separation order, in my view, I would have had to find cogent reasons to deviate from the conclusions reached by Tsoka J in the *Beckley*⁹ matter in the light of the doctrine of *stare decisis*, since that is the latest decision that could be found in this Division dealing with similar circumstances.

In ***Patmar Explorations (Pty) Ltd and Others v Limpopo Development Tribunal and Others***¹⁰, Wallis JA stated as follows:

“The basic principle is stare decisis, that is, the Court stands by its previous decisions, subject to an exception where the earlier decision is held to be clearly wrong. A decision will be held to have been clearly wrong where it has been arrived at on some fundamental departure from principle, or a manifest oversight or misunderstanding, that is, there has been something in the nature of a palpable mistake. This Court will only depart from its previous decision if it is clear that the earlier court erred or that the reasoning upon which the decision rested was clearly erroneous.”

⁹ See note 6 *supra*

¹⁰ 2018 (4) SA 107 SCA

[20] A further distinguishing feature in the matter before me is that an application for leave to appeal was granted to the applicant. The appeal is not to dispute whether maintenance is payable but instead how much more should maintenance be paid and for how long. The Court could not find any authority supporting the argument on behalf of the applicant that noting of an appeal, as in this case, constitutes a matrimonial *lis*. I am not persuaded that granting of leave and the subsequent noting of the appeal constitutes a matrimonial *lis* justifying continuation of the Rule 43 order.

[21] The applicant sought and obtained leave to appeal against a limited number of the maintenance orders as per the judgment of Francis J. This is in respect of spousal maintenance where the contention relates to the duration thereof, and an increased amount payable in respect of the children. The remainder of the orders as per the judgment remain enforceable. For example, the children's educational costs, their medical expenses and the payment of R2 700 000.00 to the applicant are not affected by the leave to appeal. In my view, the very fact that the application for leave to appeal was granted, demonstrates the final effect of the order made by Francis J. An appeal lies only against an order having a final effect and is not susceptible to the court of the first instance; an order which is definitive of the rights of the parties; and has the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings. The issue of costs that is still to be determined is ancillary and obviously had no bearing to the granting of the application for leave to appeal by Francis J.

Section 18(1) of the Superior Courts Act 10 of 2013

[22] The next issue for determination is whether the order made by Francis J on 6 July 2017 is immediately executable in terms of section 18(1) of the Superior Courts Act 10 of 2013 (the Act). The relevant portion of the Act reads as follows:

“Suspension of decision pending appeal

(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders...”

[23] The applicant needs to prove to the Court, on a preponderance of probabilities that exceptional circumstances exist to warrant execution of an order that is otherwise suspended by section 18(1). This is not the end of the matter for the applicant. She needs to further establish, on a balance of probabilities that she will suffer irreparable harm if the Court does not grant the order and that the respondent will not suffer irreparable harm if the order sought is granted. In analysing the requirements of section 18, Fourie AJA, as he then was, in the matter of ***UFS v***

Afriforum & another¹¹, had the following to say:

“[8] This is the first appeal under s 18(4)(ii) of the Act that has reached this court. Section 18 of the Act has, however, been considered by divisions of the high court. In this regard reference can be made to Incubeta Holdings (Pty) Ltd & another v Ellis & another 2014 (3) SA 189 (GJ); Liviero Wilge Joint Venture & another v Eskom Holdings Soc Ltd [2014] ZAGPJHC 150 and The Minister of Social Development Western Cape & others v Justice Alliance of South Africa & another [2016] ZAWCHC 34. Although these judgments differ in certain respects as to the application of the requirements of s 18 of the Act, they are closely reasoned and of much assistance in the interpretation of this novel provision.

[9] In embarking upon an analysis of the requirements of s 18, it is firstly necessary to consider whether, and, if so, to what extent, the legislature has interfered with the common law principles articulated in South Cape Corporation, and the now-repealed Uniform rule 49(11). What is immediately discernible upon perusing ss 18(1) and (3), is that the legislature has proceeded from the well-established premise of the common law that the granting of relief of this nature constitutes an extraordinary deviation from the norm that, pending an appeal, a judgment and its attendant orders are suspended. Section 18(1) thus states that an order implementing a judgment pending appeal shall only be granted ‘under exceptional circumstances’. The exceptionality of an order to this effect is underscored by s 18(4), which provides that a court granting the order must immediately record its reasons; that the aggrieved party has an automatic right of appeal; that the appeal

¹¹ [2016] ZASCA 165 (17 November 2016)

must be dealt with as a matter of extreme urgency and that pending the outcome of the appeal the order is automatically suspended.

[10] *It is further apparent that the requirements introduced by ss 18(1) and (3) are more onerous than those of the common law. Apart from the requirement of 'exceptional circumstances' in s 18(1), s 18(3) requires the applicant 'in addition' to prove on a balance of probabilities that he or she 'will suffer irreparable harm if the order is not made, and that the other party 'will not' suffer irreparable harm if the order is made. The application of rule 49(11) required a weighing-up of the potentiality of irreparable harm or prejudice being sustained by the respective parties and where there was a potentiality of harm or prejudice to both of the parties, a weighing-up of the balance of hardship or convenience, as the case may be, was required. Section 18(3), however, has introduced a higher threshold, namely proof on a balance of probabilities that the applicant will suffer irreparable harm if the order is not granted and conversely that the respondent will not, if the order is granted.*

[11] *In Incubeta Holdings at para 24 Sutherland J aptly commented as follows on s 18(3):*

'A hierarchy of entitlement has been created, absent from the South Cape [Corporation] test. Two distinct findings of fact must now be made, rather than a weighing-up to discern a "preponderance of equities".'

D E Van Loggerenberg and E Bertelsmann Erasmus: Superior Court Practice 2 ed vol 1 Service issue 2, correctly concludes that s 18(3) 'is a novel provision and places a heavy onus on the applicant'. On a proper construction of s 18, it is clear that it does not merely purport to codify the common law

practice, but rather to introduce more onerous requirements. As submitted on behalf of the UFS, had the legislature intended the section to merely codify the common law, it would have followed the authoritative formulation by Corbett JA in South Cape Corporation.

[24] The common cause facts before me are that the respondent commenced paying spousal maintenance to the applicant as per the judgment of Francis J. He proceeded to do so for a period of twenty five months. These payments were occasioned by a legal advice that the respondent received. The nub of the advice was to the effect that noting of an application for leave to appeal does not automatically suspend the execution of the maintenance order. It is only after the respondent intimated to the applicant that he has fully complied with the court order in relation to spousal maintenance that led to this application. The main reason advanced by the applicant as constituting exceptional circumstances, is that she will be left destitute without spousal maintenance whilst the hearing of the appeal is awaited.

[25] I agree with Ms De Wet for the applicant that the court in the *UFS* case found that the prospects of success play a role in determining granting execution of the order sought. The court the held as follows:

“[14] A question that arises in the context of an application under s 18, is whether the prospects of success in the pending appeal should play a role in this analysis. In Incubeta Holdings Sutherland J was of the view that the prospects of success in the appeal played no role at all. In Liviero Wilge Joint Venture Satchwell J, Moshidi J concurring, was of the same view. However, in Justice Alliance Binns-Ward J (Fortuin and Boqwana JJ concurring), was of a

different view, namely that the prospects of success in the appeal remain a relevant factor and therefore ‘ . . . the less sanguine a court seized of an application in terms of s 18(3) is about the prospects of the judgment at first instance being upheld on appeal, the less inclined it will be to grant the exceptional remedy of execution of that judgment pending the appeal. The same quite obviously applies in respect of a court dealing with an appeal against an order granted in terms of s 18(3)’.

[15] I am in agreement with the approach of Binns-Ward J. In fact, Justice Alliance serves as a prime example why the prospects of success in the appeal are relevant in deciding whether or not to grant the exceptional relief. Binns-Ward J concluded that the prospects of success on appeal were so poor that they ought to have precluded a finding of a sufficient degree of exceptionality to justify an order in terms of s 18 of the Act. This conclusion was subsequently proven to be justified when this court upheld the main appeal in Justice Alliance. However, in the present appeal, the appeal record in the review application was not before us. The prospects of success shall therefore not feature in our consideration of whether or not the order of the Full Court should be upheld.”

[26] Ms De Wet argued that the court *a quo* found that there is a “*high likelihood that another Court may come to a different decision...*” I had an opportunity to read through the judgment of Justice Francis in the application for leave to appeal and I can unfortunately not agree with the assertions made by Counsel. In my reading of the judgment, it appears as though Justice Francis was distressing about the initial

order made. This does not mean, in my view, that his judgment was clearly erroneous. At least I could not find anything that warrants sanction for the views expressed by Counsel. Even if I am wrong at arriving at this conclusion, prospects of success in the appeal are just but one of many factors for consideration.

[27] The applicant has been receiving a benefit of “spousal maintenance” until after a period of twenty five months. There has been very little or no progress in prosecuting the appeal during this period. The response for this failure by the applicant is that she did not have funds to do so. On a question by the Court on why the Legal Aid South Africa or a similar institution was not approached for assistance, there was very little convincing explanation that was advanced to the Court.

[28] I accept that the applicant will suffer harm by the discontinuation of payment of her spousal maintenance. This is evident and can be discerned from the fact that she is still unemployed. However, section 18(3) further requires that the applicant proves on a balance of probabilities that there will be no harm to the respondent. It is common cause that the respondent has since been medically boarded from his employment. He is now living through insurance benefits which are lower than what he was earning. The respondent’s changed circumstances do not justify the appropriateness of the order sought. It cannot be argued that the respondent will not suffer irreparable harm in the light of his medical condition and the reduced income. On this basis alone, the application for the execution of the order of Francis J in respect of spousal maintenance falls to be dismissed.

Variation in terms of section 8 of the Divorce Act

[29] It was argued on behalf of the applicant that this Court has the power to vary the judgment of Francis J in respect of spousal maintenance. The Court is aware that the situation of the applicant will definitely not be the same if she does not continue to receive monetary support to acquire basic human necessities such as food, medical services, clothing etcetera. The question however, is whether the Court is empowered to vary an order which is a subject of an appeal? Section 8 of the Divorce Act 70 of 1979 provides that:

“A maintenance order or an order in regard to the custody or guardianship of, or access to, a child, made in terms of this Act, may at any time be rescinded or varied or, in the case of a maintenance order or an order with regard to access to a child, be suspended by a court if the court finds that there is sufficient reason therefor: Provided that if an enquiry is instituted by the Family Advocate in terms of section 4(1)(b) or (2)(b) of the Mediation in Certain Divorce Matters Act, 1987, such an order with regard to the custody or guardianship of, access to, a child shall not be rescinded or varied or, in the case of an order with regard to access to a child, not be suspended before the report and recommendations referred to in the said section 4(1) have been considered by the court.”

[30] In my view, the maintenance orders granted in favour of the applicant and the children have been overtaken by events, being the pending appeal. As a result, this Court is not permitted to vary the impugned orders. Furthermore, on a question by the Court to both Counsel if this Court, sitting as an urgent court, has all the necessary information to determine the necessity and the amount payable for maintenance, both Counsel conceded that I was not placed with sufficient information to come to such a determination. The Maintenance Court has wide

powers in the determination of maintenance matters and that is the appropriate forum to make a determination as sought by the applicant. As a result, I find that this Court cannot interfere with the order of Francis J in the light of the pending appeal.

Urgency

[31] At the commencement of the proceedings, the Court permitted both Counsel to advance their arguments on both merits and urgency. This practice is not unheard of but in particular, the Court was sensitive to the nature of the application brought before Court. This matter relates to vulnerable groups being children and a woman. It was and still is my view that the Courts need to show more vigilance and appreciation of the difficulties faced by the vulnerable groups of our society. Maintenance related applications generally affect women and children. Whilst this Court can consider and call for argument on the urgency of the matter first and make a determination thereon which may culminate in striking off an application, it seems to me, in matters relating to vulnerable groups, the Courts have to entertain the merits as well before coming to a conclusion. At least, such an exercise shall demonstrate vigilance on the part of the courts in considering the rights of vulnerable groups. At any rate, it is at the discretion of a Judge to consider both merits and urgency at once in urgent applications.

[32] Having said that, I do not propose to deviate from the well-established principles setting out the requirements of urgency but I merely put forward a proposition that an

added attention needs to be given to these matters and they need to be disposed of as speedily as possible.

[33] The applicant has been receiving spousal maintenance for a period of twenty five months until end of August 2019. In terms of the court order, the respondent was to pay this maintenance for a period of twenty four months. Notwithstanding the order, the respondent continued to pay for an additional one month. It is apparent from the papers filed before Court that the applicant was under the impression that the maintenance will continue until, at least, the final determination of the appeal. This application was launched on 23 August 2019, soon after the applicant became aware that the respondent is not proceeding with the payment of her maintenance.

[34] The respondent opposes the urgency of the application on the basis primarily that the applicant knew, as early as July 2017, that the respondent understood the judgment of Francis J to mean he should proceed to comply therewith and nothing was forthcoming to enforce implementation of the order.

[35] I am not swayed that the applicant delayed in bringing this application before Court. She re-acted immediately upon realizing that she will be left destitute. As indicated above, the nature of the application brought before me persuaded the Court to consider same on urgent basis. Accordingly, I am persuaded that a proper case has been made to justify hearing of this application in an urgent Court.

Costs

[36] The issue of costs lies in the discretion of the Court. Ordinarily the successful party is entitled to costs of the application. Sadly, this is a matrimonial matter which has clearly become acrimonious between the parties where there are also children involved. This application revolves around maintenance of one of the parties. Both

parties have also begun to experience health problems. On proper reflection, I do not think it will serve any purpose to make any order as to costs as this can only exacerbate the financial means of either of the parties.

[37] As a result, I make the following order:

Order

1. *The application that this matter be heard as one of urgency in terms of Rule 6(12) is hereby granted;*
2. *The application for the continuation of the Rule 43 order is dismissed;*
3. *The application in terms of section 18(1) of the Superior Courts Act for the implementation of the order granted on 6 July 2017 is dismissed;*
4. *The application to vary the order granted on 6 July 2017 in terms of section 8 of the Divorce Act is dismissed; and*
5. *Each party shall pay his/her own costs.*

T. MTATI

**Acting Judge of the High
Court, Gauteng Division,
Johannesburg**

APPEARANCES

ON BEHALF OF THE APPLICANT: ADV A.A. DE WET SC

INSTRUCTED BY: MERCHAK ATTORNEYS

ON BEHALF OF THE RESPONDENT: ADV S LIEBENBERG

INSTRUCTED BY: ALAN JOSe' INC

DATE OF HEARING: 5 SEPTEMBER 2019

DATE OF JUDGMENT: 15 OCTOBER 2019