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

**CASE NO: 2022/20502  
NOT REPORTABLE  
OF INTEREST TO OTHER JUDGES  
REVISED  
24.04.23**

In the matter between:

|                |            |
|----------------|------------|
| <b>A: C. M</b> | Applicant  |
| and            |            |
| <b>A: L</b>    | Respondent |

**Neutral citation:** *CMA v LA (Case number: 2022/20502) [2023] ZAGPJHC 364 (24 April 2023)*

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**JUDGEMENT**

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**Coram: Sarita Liebenberg AJ**

[1] The parties were married to each other on 13 August 2016, having executed an antenuptial contract in terms whereof the accrual system was specifically

excluded. During the marriage, twin daughters were born, who, at the time of penning this judgment, are about 3½ years old. During January 2022, the respondent vacated, what was then, the matrimonial home in Craighall Park.

- [2] In June 2022, the respondent instituted divorce action. The applicant defended the action and served her plea and counterclaim on 17 August 2022. At that juncture, the applicant raised no dispute regarding the matrimonial property regime between the parties, and counterclaimed for *inter alia*, spousal maintenance in the amount of R 81 000.00 per month, and maintenance for the children in the amount of R 36 000.00. In early September 2022, the respondent's plea to the counterclaim was delivered, and pleadings closed.
- [3] It is evident from the electronic court file that, by notice dated 28 November 2022, the applicant proposed to amend her counterclaim by the introduction of a further claim, pleading that the antenuptial contract that the parties executed was tainted by fraud, and seeking the setting aside thereof. The respondent objected to the proposed amendment. When preparing for the hearing and at the time of this judgment, the electronic court file does not contain any application for leave to amend.
- [4] During argument, which I heard on Wednesday, 19 April 2023, I was advised that the parties are engage in other litigious skirmishes relating to the sale of the respondent's immovable properties.
- [5] Notwithstanding the pending litigation, the parties have been able to co-parent peacefully, and they have managed to agree to and implement a care and contact arrangement with entails the twins approximately equal time with each parent. This is to the credit of the parties.
- [6] On 25 January 2023, the applicant launched the present application, seeking orders compelling the respondent to contribute *pendente lite* towards her own maintenance in the amount of R 45 000.00 per month, and towards the maintenance needs of the children, by payment of the amount of R 8 700.00 per month per child, payment of their educational and schooling costs, and payment of the wages of the housekeeper, and of the nanny. No relief is sought regulating the care and contact of the children or for a contribution towards her

legal costs in the divorce action.

- [7] In response to the applicant's claim for maintenance for the children, the respondent records his current maintenance contributions towards the children are as follows:

[7.1] Payment to the applicant of cash maintenance in the amount of R 10 000.00 per month per child.

[7.2] Payment of the children's school fees, amounting to R 15 835.00 per month.

[7.3] Through benefits afford to him by his employer, payment of the monthly wages of the nanny and two housekeepers employed by the parties, in an aggregate of R 27 250.00; and

[7.4] The children being dependants on his medical aid scheme, at his costs, and by payment of all excess medical and the like expenses incurred in respect of the twins and not covered by the medical aid scheme.

- [8] It is not the applicant case that the respondent withdrew or threatened to withdraw his contributions towards the children's needs. There is no explanation on her papers why she seeks less than he currently contributes towards the children's needs.

- [9] The respondent's defence against the claim for interim spousal maintenance is premised on *inter alia* the applicant's failure to make full disclosure of additional income she earned as 'influencer' on social media; her failure to factor in the contributions her boyfriend, Mr L, with whom she cohabits, makes, or should make to their joint household; and what the respondent contends are inflated expenses that the applicant listed.

- [10] The applicant sought leave to file a replying affidavit, to which the respondent acceded but for paragraphs 28 to 36 and the annexes referred to in those paragraphs, which contain details of settlement proposals the respondent previously made and which the applicant rejected.

## APPLICATION TO STRIKE OUT

- [11] Generally, settlement negotiations between parties are privileged from disclosure. The rationale is one of public policy: to encourage people to ‘*buy their peace*’ without prejudice to them.<sup>1</sup> The exceptions to this rule are founded in public policy, such as in the context of an act of insolvency,<sup>2</sup> and an acknowledgment of liability in the sphere of insolvency.<sup>3</sup> These exceptions are not relevant to the issues at hand.
- [12] In family law and matrimonial litigation, especially involving minor children, litigants are encouraged to seek a consensus-based resolution of their differences. As such, most divorce actions ultimately settle, and the agreement of settlement is incorporated into the decree of divorce. Frequently, the settlement of matrimonial litigation covers more than just maintenance. The eventual compromise covers all sorts of ferocious disagreements, and is the result of give and take, which involves the making admissions or concessions in the hope of ensuring other benefits.<sup>4</sup>
- [13] The settlement privilege is that of the offeror and the offeree, and when the privilege is invoked, even third parties with knowledge are forbidden from testifying about the statements made during negotiations.<sup>5</sup>
- [14] Human nature being what it is, an offeror-spouse will generally regard the offer made as reasonable and fair, whereas the offeree-spouse will hold the opposite view. In this matter, the same occurred.
- [15] In arguing against the striking out of the offending material, Mr Daubermann, who appeared for the applicant,<sup>6</sup> submitted that the inclusion of the contents of these settlement proposals was necessary to gainsay the respondent’s allegations that he sought to settle this application, and based on an imputed waiver of the privilege which attaches to settlement negotiations. On my

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<sup>1</sup> *Naidoo v Marine & Trade Insurance Co Ltd* 1978 (3) SA 666 (A)

<sup>2</sup> *ABSA Bank Ltd v Hammerle Group* 2015 (5) SA 215 (SCA)

<sup>3</sup> *KLD Residential CC v Empire Earth Investments 17 (Pty) Ltd* 2017 (6) SA 55 (SCA)

<sup>4</sup> See *Eke v Parsons* 2016 (3) SA 37 (CC) at [21]

<sup>5</sup> *De Beers Consolidated Mines Ltd v Ettling* 1906 TS 418; *Magxoka v Skilingo* 1914 CPD 386; *Ingersoll Rand Co (SA) Ltd v Administrateur, Transvaal* 1991 (1) SA 321 (T)

<sup>6</sup> He is also the applicant’s father

reading of the affidavits, it is not the respondent's case that he sought to settle this application, which was launched months after the proposals had been made.

[16] It is in answer to the applicants' case that he had 'forced' her from the matrimonial home, that the respondent states in paragraph 33 of his answering affidavit: *"The heartless picture which the applicant seeks to paint in these paragraphs that I would simply abandon her and the children without a home is baseless. I have made two comprehensive and fair settlement proposals to the applicant. The proposals are simply rejected out of hand by Daubermann, and which proposals would have enabled the applicant and the children to be comfortably accommodated at all times."*

[17] It is in relation to paragraph 33 of the answering affidavit, and with reference to Schmidt's *Law on Evidence*, at page 20-8 of the electronic version, and the judgment in *Contango Trading SA and others v Central Energy Fund SOC Ltd and others*,<sup>7</sup> that Mr Daubermann argued that the respondent had waived the settlement privilege by referring to the proposals in his attempts to discredit the applicant's case. The argument proceeded that, based on fairness, the applicant is entitled to rely on the contents of the settlement proposals.

[18] In *Contango*, the Supreme Court of Appeal Court considered the dismissal of an application in terms of Rule 35 (12), where the appellant sought disclosure of documents referred to in affidavits, including legal opinions by senior counsel. In relation to these opinions, which by their very nature is privileged from disclosure, the appellant contended for an implied waiver of the legal professional privilege. In the second of two unanimous judgments, penned by Wallis JA, dealt specifically with the question of implied waiver of privilege. Having compared local authorities and those in comparable foreign jurisdictions, it was held that:

*"[48] The first is that there is no difference between implied waiver and a waiver imputed by law. They are different expressions referring to the same thing. The second is that such a waiver may be inferred from the objective*

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<sup>7</sup> 2020 (3) SA 58 (SCA)

conduct of the party claiming the privilege in disclosing part of the content or the gist of the material. The third is whether the disclosure impacts upon the fairness of the legal process and whether the issues between the parties can be fairly determined without reference to the material. Finally, the fourth is that there is no general overarching principle that privilege can be overridden on grounds of fairness alone. The rule is 'once privileged, always privileged' and it is a fundamental condition on which the administration of justice rests. Only waiver can disturb it.' (underlining added)

[19] It was further held that<sup>8</sup> an implied waiver arises where the conduct of the person concerned is objectively inconsistent with the intention to maintain confidentiality and, if permitted, will unfairly fetter the opponent's ability to respond to the case or defence advanced in reliance on the privileged material. This is a factual enquiry. Ultimately, the Court held that the "*nature, extent and purpose of the disclosure is fundamental. Considerations of fairness come into play when the disclosure introduces into the claim or defence contentions that can only be responded to if there is full disclosure. There is no automatic waiver as a result of partial disclosure, as the facts in both Peacock v SA Eagle and Harken demonstrate. Nor is fairness an independent ground for holding that there has been a waiver of privilege.*"<sup>9</sup> (underlining added)

[20] Mr Daubermann argued that the same considerations of apply to the imputed waiver of settlement privilege. The court was not referred to any authorities. I accept however that that the party making the settlement proposal may waive privilege.<sup>10</sup> If the offeree also waives the privilege, the proposal may be admitted into evidence.

[21] By seeking to introduce the terms of the settlement proposals, I accept that the applicant unequivocally waived the privilege. I am, however, not satisfied that the respondent had waived, impliedly or otherwise, the privilege attaching to his settlement proposals. The disclosure amounts to no more than the fact that

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<sup>8</sup> At [51]

<sup>9</sup> At [63]

<sup>10</sup> *SOS Kinderdorf International v Effie Lentini Architects* 1993 (2) SA 481 (Nm) at 490 H-I

the respondent had made two comprehensive settlement proposals which included provision for accommodation and vehicle requirements for the applicant and the children. The disclosure does not detail the contents or terms of the proposals.

[22] Secondly, I do not regard the respondent's disclosure to be unfair to the applicant's case. After all, she may not of right, file a replying affidavit in proceedings as the present. To my mind, whether the applicant was 'forced' out of the matrimonial home, or left of her own accord, does not materially affect her claims herein.

[23] In sum, on the facts before me, I am not satisfied that the respondent had waived the settlement privilege, and accordingly the offending paragraphs and annexures to stand to be struck out.

[24] Should my ruling on this score be mistaken, I am also satisfied that the terms of the respondent's settlement proposals, which the applicant rejected, renders very little assistance if any, to her case for maintenance *pendente lite*.

## THE LAW ON RULE 43 APPLICATIONS

[25] Whilst every application for maintenance *pendente lite* must be decided on its own facts, certain basic principles have been distilled in the authorities.

[25.1] There is a duty on an applicant who seeks equitable redress to act with the utmost good faith, and to disclose fully all material financial information. Any false disclosure or material non-disclosure may justify refusal of the relief sought.<sup>11</sup>

[25.2] An applicant is entitled to reasonable maintenance dependent on the marital standard of living of the parties, albeit that a balanced and realistic assessment is required, based on the evidence concerning the prevailing factual situation.<sup>12</sup>

[25.3] The applicant's actual and reasonable requirements, and the capacity

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<sup>11</sup> *Du Preez v Du Preez* 2009 (6) SA 28 (T)

<sup>12</sup> *CC v NC* (16742/21) [2021] ZAWCHC 227 (9 November 2021)

of the respondent to meet such requirements which are general met from income, although, sometime, inroads on capital may be justified.<sup>13</sup>

[25.4] A claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands, and similarly more weight will be attached to the affidavit of a respondent showing willingness to implement his lawful obligations.<sup>14</sup>

[25.5] An interim maintenance order is not intended as an interim meal ticket for a spouse who, quite clearly, will not establish a right to maintenance at trial.<sup>15</sup>

[25.6] A court must be circumspect in arming an applicant with an interim maintenance order which she is unlikely to achieve at trial, for human nature predicts that she will then seek to delay finalisation of the action.<sup>16</sup>

[26] On first principles, also in matters such as the present, an applicant stands or falls by the contents of the founding affidavit. An applicant, seeking interim maintenance, must disclose all material facts which may influence the determination of the relief sought. Similarly, a respondent must be honest and frank in the answering affidavit about matters of financial nature. Thus, there rests a serious duty on legal representatives to ensure that their clients do not misstate the true nature of their financial affairs, whether by exaggerating claims or understating income.

[27] It is necessary to comment on the aggressive tone and emotive language adopted in this matter, which is most regrettable. Mindful of the inevitable trauma associated with any divorce, not only to the children, but also to the spouses, it is of fundamental importance that legal representatives of warring spouses resist the temptation to use unreasonably hostile or inflammatory language, whether in correspondence, pleadings, or affidavits. Especially in matters concerning children, emotive language serves to inflame, rather than avoid or

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<sup>13</sup> *Taute v Taute* 1974 (2) SA 675 (E)

<sup>14</sup> *Taute* above

<sup>15</sup> *Nilsson v Nilsson* 1984 (2) SA 294 (C) at 295E-G

<sup>16</sup> *MCE v JE* (13495/2011) [2011] ZAGPPHC 193 (14 September 2011) per Makgoka J at [4]

minimise legal action.<sup>17</sup> More often than not, affidavits containing scurrilous attacks on the opposing party undermine rather than support case of the attacker.

## **THE PARTIES' AND THEIR FINANCIAL AFFAIRS**

[28] The applicant is a 35-year-old woman who has been permanently employed by the local branch of a well-known international company since 2014. Throughout the parties' relationship and marriage, which spanned 13 years, the applicant was employed, earned a handsome salary, and contributed towards the costs of the parties' joint household. According to her, during the last five years she contributed more than R 2 500 000.00 towards the parties' household.

[29] In her founding affidavit the applicant disclosed that, as public relations and communications manager, she earns a monthly net salary of R 78 416.48, and that she was entitled to a raise during February 2023. During the hearing, I accepted into evidence a copy of the applicant's February 2023 salary advice. This salary advice shows a gross salary of R 134 621.94, and deductions including tax, pension, and medical aid contributions, resulting in a net payment of R 81 647.37.

[30] Until at least October 2022, the applicant earned substantial additional income from 'influencing' the public on social platforms, so much so that, during the period April to December 2022, she was able to save on average R 90 000.00 per month. During this time, she lived in the former matrimonial home, and used a vehicle, belonging to the respondent's employer, all at no cost to her.

[31] The respondent, who is 36 years old, earns a monthly net salary of R 109 253.93, which includes a car allowance entitling him to the use of a BMW M 3. In addition, the respondent's employer pays about R 73 850.00 per month in respect of the rates and taxes of the former matrimonial home, which has now been sold, his rental, and the wages of the domestic assistants employed by the parties.

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<sup>17</sup> Section 7 (1)(n) of the Children's Act 38 of 2008

[32] By all accounts, the parties enjoyed a relatively high standard of living, including residing in upmarket accommodation, driving expensive vehicles, and holidaying abroad. For present purposes, I accept that the respondent's family is wealthy, and that his employer is a family concern via corporate structures involving offshore companies and foundations. I also accept that the respondent has access to 'soft loans' from his employer, meaning he has relatively easy access to funds, advanced to him very favourable terms.

### **THIS APPLICATION**

[33] Stripped of hyperbole, this application was triggered, in the main, by two events:

[33.1] In late January 2023, the applicant also vacated the former matrimonial home, and moved into a two bedroomed apartment in Melrose North, the lease in respect of which she concluded during December 2022; and

[33.2] In mid-January 2023, the applicant bought herself a Mini Clubman vehicle, intending to return the Volvo XC 90 vehicle she had been using, to the registered owner thereof, being the respondent's employer.

[34] According to the applicant, the respondent 'forced' her to vacate the former matrimonial home, when, during September 2022, he indicated to her that he intends selling the home, and that he was cancelling the guarding services at the home. Accordingly, the applicant identified and obtained alternate accommodation, entered into a lease agreement in early December 2022, and vacated the matrimonial home on or about 23 January 2023.

[35] The applicant presently resides in the Melrose North apartment with her boyfriend, Mr S. L, and the children, during those periods when the applicant is entitled to have them in her care.

[36] On the evidence before me, including the evidence of the respondent's settlement proposals, which the applicant seeks to introduce, I am unable to find that the applicant was 'forced' out of the matrimonial home. I do, however accept that the applicant incurs expenses in respect of her new

accommodation, which she did not previously incur. More about these expenses later.

[37] During or about December 2022, a disagreement arose between the parties in respect of the Volvo vehicle that the applicant used. It is her case that:

[37.1] She had to replace, at her own costs, one tyre, but that the two front tyres also required replacement.

[37.2] She also states that the windscreen is cracked, and that the respondent had indicated to her that he had lodged an insurance claim to have the windscreen replaced.

[37.3] The respondent had offered to extend the motor plan, which had expired, at his costs but that she should pay for the two tyres.

[37.4] It was when the respondent refused to accede to her demands that the Volvo be transferred to her name, that she bought a second-hand Mini Countryman vehicle for R 679 000.00 on 19 January 2023, and stated that she would return the Volvo to its registered owner. Evident from the financing agreement, which the applicant disclosed, she paid a deposit of R 200 000.00 towards the purchase price, and the balance is repaid by way of 60 monthly instalments, currently in the amount of R 10 700,00.

[38] The respondent does not seriously challenge the applicant's exposition of the disagreement regarding the Volvo vehicle, and he confirms that the applicant in fact returned it to the registered owner.

[39] It appears that the applicant may have acted in haste when she purchased the Mini Clubman, but this is a neutral factor. I accept that the applicant now incurs additional expenses in respect of the Mini Clubman vehicle, including the monthly instalment, insurance, license fees, and the like, all of which form part of her reasonable needs *pendente lite*.

[40] According to the applicant, her estimate monthly expenses in respect of herself

amount of R 121 235.12, leaving her with a shortfall of R 45 235.12.<sup>18</sup> The children's monthly expenses amount to R 17 400.00 per month, which expenses exclude the children's schooling, medical needs, and the costs of their nanny. These the respondent pays directly to the relevant service providers.

[41] Thus, the total of the applicant's estimated monthly expenses amounts to R 137 818.67, from which one is to deduct the respondent's contribution of R 20 000.00 and the applicant's own salary of R 81 647.37. This leaves her with a shortfall, on her version, of R 39 402.19 per month. Her claim, however, is R 45 000.00 per month for herself.

[42] The respondent having made much of the respondent's additional income as 'influencer', the applicant, in her replying affidavit, discloses that until October 2022 she also earned an income as 'influencer' on social media platforms.<sup>19</sup> In the same affidavit, she admits that, during the period April to December 2022, she was able to save approximately R 90 000.00 per month, stating that this was because she had the additional income, did not have to pay rent in respect of the matrimonial home, had the use of the Volvo XC 90 vehicle at no costs to her, and had the use of the respondent's credit card to pay for the children's day-to-day expenses.

[43] For purposes of this application, I accept that the applicant does not presently earn an income as 'influencer' and adjudicate her claims on the basis of her salary as being her sole income.

[44] The founding affidavit is silent on the extent of Mr L's contributions towards the costs of occupation of the Melrose North apartment, which includes the monthly rental of R 35 000.00,<sup>20</sup> the costs of utilities, and the costs of their joint household. In response to the respondent's criticism in this regard, the applicant, in her replying affidavit, records merely that *'Mr L pays for whatever*

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<sup>18</sup> Based on her salary before the increase in February 2023

<sup>19</sup> In her Financial Disclosure Form the applicant states that she stopped acting as influencer in August 2022

<sup>20</sup> During argument the applicant advised that she was able to negotiate a decrease in the rental, which according to the agreement of lease disclosed in her Financial Disclosure Form, was R 37 000.00 per month.

*he consumes in my household.* What he consumes and what he pays, she does not detail.

- [45] It was argued on the applicant's behalf that Mr L's occupation of the apartment, and the extent of his contributions towards the joint household were irrelevant to the issues at hand. This is, so the argument went, because Mr L owes the applicant no duty of support. These arguments do not bear scrutiny.
- [46] Accepting, as I must, that the mere fact that the applicant cohabits with another does not bar her from claiming maintenance,<sup>21</sup> the applicant must still establish a need to be supported. If she fails to do so, it is not 'just' that a maintenance order be made in her favour, whether *pendente lite* or ultimately.
- [47] There is no duty of support between the applicant and Mr L. If the applicant chooses to allow Mr L to occupy the Melrose North apartment *gratis*, she cannot complain that she needs maintenance from the respondent to pay her and Mr L's accommodation costs.
- [48] During the existence of the marriage relationship, the respondent's only duty of support is to his wife and the children, and he owes Mr L none.
- [49] The applicant's choice to not disclose the terms of her and Mr L's agreement regarding his occupation of the apartment, his means, and/or the extent of his contributions towards the costs of the joint household, undermines the equitable redress she is claiming from the respondent. I did not allow Mr Daubermann to present evidence from the bar about Mr L's alleged income. The applicant must stand or fall by the choice not to present admissible evidence. And absent admissible evidence, I cannot find it is just or reasonable that Mr L contributes nothing towards his accommodation costs.
- [50] According to the applicant's list of expenses, the costs of occupation of the apartment<sup>22</sup> amount to R 41 200.00. Given that the apartment is occupied by two adults and two young children, for half of a month, the costs must be

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<sup>21</sup> *EH v SH* 2012 (4) SA 164 (SCA) at [11]

<sup>22</sup> Being rental, the costs of water, electricity and gas consumption, internet, and Netflix subscriptions

apportioned to all four individuals. Adopting the approach in *Acutt*,<sup>23</sup> Ms Ternent, who appeared for the respondent, urged that a third of the costs of occupation ought to be apportioned to Mr L, being R 13 707.00 per month. The approach is robust, but a handy yardstick, more so in applications for interim maintenance. Accordingly, I accept Ms Ternent's submissions and calculations in this regard. I find that Mr L's monthly contributions towards the occupation of the apartment ought to be no less than R 13 707.00. This amount stands to be deducted from the applicant's list of expenses.

[51] In regard the remainder of her expenses, the applicant's representative made certain concessions, including the annual vehicle license, and her medical aid subscription which is a salary deduction. For present purposes, I accept that the applicant, as only member of her medical aid fund, do not expend much by way of medical and the like expenses which are not covered by her medical aid fund. There is no evidence on record to suggest that the applicant suffers from frail health.

[52] The respondent contended that various expenses which the applicant listed are inflated, or non-existent. I do not intend detailing each of these expenses. I am however satisfied that the applicant can make adjustments to the extent of her alleged monthly expenses, and that some of the amounts are inflated.

[53] This court is not called upon and is it not able to determine the applicant monthly maintenance needs with the same precision as a trial court will be. Having taken into account the respondent's critique, as well as the applicant's historic bank statements in so far as they are relevant, I conclude that the reasonable monthly expenses in respect of the applicant and the children are in the region of R 86 118.00.

[54] The respondent contributes R 20 000.00 per month cash towards the children's needs, leaving a balance of R 67 000.00. Whether Mr L contributes or not, is of little consequence, as the applicant earns more than enough to cover her and the children's reasonable monthly expenses.

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<sup>23</sup> 1990 (4) SA 873 (ZH). Also see *Forssman v Forssman* 2008 (2) SA 144 (W)

[55] In the final instance, the applicant has failed to establish a need for maintenance for herself, and her application must fail.

### **APPLICATION FOR RECUSAL**

[56] As I was about to put the finishing touches to this judgment, the applicant uploaded onto the electronic case file, on Sunday at about 10:30, a notice of motion, without a supporting affidavit, seeking my recusal. According to the notice on motion, the applicant herein would be filing a supporting affidavit as soon as the transcript of proceedings became available. Also on Sunday, at 10:49, Mr Daubermann addressed an email to my secretary to which the notice of motion was attached. I receive a copy of the email on Monday morning from my secretary.

[57] At the hearing on 19 April 2023, argument was presented by both representatives, and when argument concluded, I reserved judgment, with the indication that it would be handed down by no later than today. At no stage during the hearing of the Rule 43 application, did either of the parties seek my recusal.

[58] The notice of motion itself does not stipulate grounds of alleged misconduct on my part, and absent a supporting affidavit, the applicant does not prove a reason for my recusal on a reasonable cause.<sup>24</sup> Thus, the 'application' for my recusal does not comply with the provisions of Rule 6(1) and is improper.

### **CONCLUSION**

[59] On the affidavits filed of record, the applicant cannot succeed on either of her maintenance claims. However, in relation to the children, and in my role as their upper guardian, I intend incorporating the respondent's tender in my order.

[60] Sensitive to the nature of the proceedings, and not wishing to aggravate the existing tensions between the parties, I do not intend acceding to the request of Ms Ternent, for the respondent, that costs should follow the result.

[61] In the result, I grant the following order:

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<sup>24</sup> *Bernert v ABSA Bank Ltd* 2011 (3) SA 92 (CC) at [35] – [36]

[61.1] The applicant's replying affidavit is accepted into evidence.

[61.2] Paragraphs 28 to 36 of the replying affidavit as well as annexures "CMA2" and "CMA3" to the replying affidavit, are struck from the record, with costs.

[61.3] The application in term of Rule 43 is dismissed.

[61.4] In accordance with his tender, the respondent is ordered to contribute towards the maintenance needs of the children, P-R and I-M, *pendente lite*, as follows:

[61.4.1] By payment to the applicant of the amount of R 10 000.00 per month per child.

[61.4.2] By payment of the children's school fees at agreed schools.

[61.4.3] By payment of the monthly wages of the nanny and two housekeepers employed by the parties; and

[61.4.4] By retaining the children as dependants on his medical aid scheme, at his costs, and by paying all reasonable excess medical and the like expenses incurred in respect of the children and not covered by the medical aid scheme.

[61.5] The remainder of the costs shall be costs in the cause of the divorce action.

**SARITA LIEBENBERG  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, JOHANNESBURG**

For the applicant: Mr P Daubermann (attorney)

Instructed by: Peter Daubermann Attorneys

For the first, second and third respondents: Adv (Ms) T Ternent

Instructed by: Martin Speier Attorneys

Hearing Date: 17 April 2023

Judgement Date: 24 April 2023