

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

CASE NO: 48853/2021

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 24 February 2023

E van der Schyff

In the matter between:

M[...] P[...]

APPLICANT

and

K[...] P[...] P[...]

RESPONDENT

JUDGMENT

Van der Schyff J

[1] The parties are involved in an acrimonious divorce. An order was granted in terms of Rule 43 of the Uniform Rules of Court on 6 January 2022. The applicant now approaches the court in terms of Rule 43(6) for a variation of the order.

[2] Rule 43(6) provides that a court may vary its decision in the event of a material change occurring in the circumstances of either party or a child, or if the contribution towards costs is proving to be inadequate.

[3] The parties opposed divorce is set down for trial on 8 May 2023. The two primary questions that need to be answered are (i) was there a material change in circumstances since the order was granted in January 2022 (the January-order) that necessitates a variation of the existing order; (ii) is it in the children's best interests to change the *status quo* less than two months before the matter will finally be determined in opposed divorce proceedings.

[4] The contentious provision in the January-order is the respondent's contact with the children which entails that he has the right to remove the children every alternative weekend from a Thursday afternoon after school until Monday morning when he returns the children to school.

[5] The applicant contends that since the January-order was granted the Office of the Family Advocate concluded an investigation regarding the residency and contact arrangement that is in the best interests of the children, and made recommendations regarding the primary care of the children which indicate that the current contact arrangements are not in the children's best interest. It has also since been established that the parties' eldest son has learning problems for which he needs extra classes and that he needs therapy for emotional problems. The applicant thus claims an increase in the maintenance contribution made by the respondent. In the event that the respondent's contact is curtailed, she claims a further increase.

[6] The Family Advocate opines that the children, and in particular the eldest child, need structure, stability, and routine in their lives. The Family Advocate's report is directed at the final residency regime that should be incorporated.

[7] After considering the affidavits filed, I am not of the view that there is any material change in the circumstances that necessitates an immediate intervention. The court seized with the divorce will have regard to the factors highlighted in the Family Advocate's report as supported by other expert opinions, and determine the residency and contact regime that is in the children's best interest. I am not of the view that it is in the children's best interests in the factual context of

their situation to vary the existing arrangement which has been in place since January 2022, when the trial is set for 8 May 2023.

[8] As for the maintenance contribution, the court dealing with the Rule 43 application considered the parties' respective financial positions and the children's financial needs. The applicant submits that she asked for a contribution of R12 000 per child per month but that the court ordered that the respondent contribute R5 500.00 per month. She states 'The fact that the court did not make the award did not make the expenses disappear. To cover these expenses and to make sure the children's needs are catered for, I have been forced deeper into debt. At this stage I am overburdened with debt'.

[9] Although I empathise with both parties, I am of the view that no material change in circumstances has occurred since the granting of the January-order that necessitates this court to step in to amend the interim arrangement. The current order provides for the additional costs that are necessitated by the eldest' child's learning and emotional problems. Although the applicant also seeks that the current order be amended to provide that the respondent pay the contributions he is responsible for within 7 days of being provided with the invoices, no case was made that the respondent is tardy in this regard or fails to pay such contributions timeously. It will be practical if such a provision is included in the final order, but this aspect does not justify a Rule 43(6) application.

[10] This application stands to be dismissed. Due to the nature of the proceedings costs are to be costs in the cause.

[11] The parties are encouraged to engage in constructive discussions prior to the divorce proceedings.

ORDER

In the result, the following order is granted:

- 1. The application is dismissed.**

2. Costs are costs in the cause.

E van der Schyff Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicant:	Adv. C Barreiro
Instructed by:	JP Venter Attorneys
For the respondent:	Adv. E Haarhoff
Instructed by:	CR Law Inc.
Date of the hearing:	21 February 2023
Date of judgment:	24 February 2024