

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

CASE NO: 70189/2013

13 -05-2015

In the matter between:-

[S..... V..... D..... L.....]

Applicant

And

A..... J..... V..... D..... L.....] Respondent

J U D G M E N T

Ismail J:

[1] This is an application in terms of Rule 43 (6) of the Uniform Rules of Court. The rule stipulates

“ The court may on the same procedure, vary its decision in the event of material change taking place in the circumstances of either party ora child, or the contribution towards costs proving inadequate”.

[2] This application previously was heard before her Ladyship, Justice Jansen on the 20 December 2013 when the learned judge made the following order:

1. THAT the respondent to pay the medical aid of all 3 children as well as the applicant;
2. THAT the respondent to give the applicant the Mercedes - Benz vehicle and to insure and service it when necessary;

3. THAT the respondent to pay R5 000-00 maintenance towards the minor child, [K.....];
4. THAT the respondent to pay the applicant maintenance in the amount of R8 130-00 per month;
5. THAT the issue of custody and access to the minor child, [K.....], be referred to the Family Advocate.

[3] In this application the applicant seeks an order as follows:

- (1) That the Respondent be ordered to electronically pay maintenance in the amount of R10 000.00 per month on or

before the 1st day of every month into the bank account of the Applicant towards the minor child.

The first payment to be effected on or before the 1st day of the 1st month after granting of the court order;

- (2) That the Respondent be ordered to electronically pay maintenance in the amount of R20 000.00 per month on or before the 1st day of every month into the bank account of the Applicant towards the Applicant. The first payment to be effected on or before the 1st day of the 1st month after granting of the court order;

- (3) That the Respondent be ordered to electronically pay the Applicant's medical aid premium in the amount of R4 574.00 per month on or before the 1st day of every month into the bank account of the Applicant. The first payment to be effected on or before the 1st day of the 1st month after granting the court order;

- (4) That the Respondent be ordered to retain all 3 children on his medical aid and to pay all medical expenses not covered by the medical aid;

- (5) That the Respondent be ordered to insure the Mercedes Benz motor vehicle and to pay all monthly premiums in connection therewith;

- (6) That the Respondent be ordered to pay the services and maintenance of the Mercedes Benz motor vehicle including tyres;

- (7) That the Respondent be ordered to electronically pay the amount of R7 994.00 into the bank account of the Applicant as partial payment on the service in respect of the Mercedes Benz motor vehicle. The payment to be effected within 5 (Five) days of date of granting of this order;

- (8) That the Respondent be ordered to electronically pay medical expenses incurred by the Applicant in the amount of R12 205.75 into the Applicants bank account within 5 (Five) days of date of granting of this order;
- (9) That the Respondent be ordered to electronically pay arrear maintenance into the bank account of the Applicant in the amount of R25 060-21 within the 5 (Five) days of the date of granting of this order;
- (10) That the Respondent be ordered to electronically pay legal fees of the Applicant into the trust bank account of to the Applicants attorneys with trust bank details in the mount of R36 565.29, to be paid in equal monthly instalments of R5 000.00 per month. The first payment to be effected on or before the 1st day of the month after granting of the court order;
- (11) That the costs of this application shall be costs in the cause and that the restrictions of Rule 43(7) and (8) are not applicable; and
- (12) Further and/or alternative relief.

[4] This application is opposed and the respondent filed answering Affidavits. As a consequence the applicant filed a third set of affidavits in these proceedings, which is an exceptional in applications of this nature. The papers in this matter.

[5] It would be completely untoward of me if I were not to say something regarding the volume of this application, in view of the judgments expressed by various dealing with Rule 43 applications. Some of the judgments which I would allude to, below, in this judgment

[6] The founding affidavit in this matter comprises 17 folios and attached to it are annexures comprising a further 42 folios. The respondents answering affidavit consist of 34 folios and attached to it annexures

comprising an additional 74 folios. The applicant's supplementary affidavit consists of 13 pages and annexures thereto of a further 7 folios.

[7] In total the application embraces 205 pages.

[8] To compound and aggravate matters the applicant filed supplementary affidavit wherein the applicant stated:

“ I have been advised by my legal representative that the uniform Rule 43 does not make provision for three sets of affidavits as is the position in normal applications I have read the

respondent's opposing affidavit of not less than 35 pages, and as a result of the absurd, untrue and defamatory allegations although irrelevant, I have no other choice than to supplement my founding affidavit in order to address these allegations.

[9] One would be imagine that if the allegations are so absurd, untrue and defamatory it would best to treat them with the contempt they deserve and leave it to a judge who hopefully would not be so myopic as not to see them for what they are. Please excuse the pun. Instead the very allegations which are described as absurd and untrue are now replied to, thereby adding to the absurdity and thereby obfuscating the issues.

[10] It is trite that where there are limitations to the number of affidavits that can be filed additional affidavits will only be countenanced with the leave of the court. *Victor v Victor* 1938 WLD 16 and *Transvaal Government v Standerton Farmers' Association* 1906 TS 21. The supplementary affidavit notwithstanding the applicant stating that in such applications a third affidavit is not permitted in terms of the Rule the affidavit was filed. Additional or supplementary affidavits will only be permitted where special circumstances exist, such as where there was something unexpected in the replying affidavits.

[11] Lest it be stated that the court seems to be venting itself only against the applicant conduct, permit me to set the record straight, that both parties are recalcitrant in this regard. The approach to Rule 43 applications from previous judgments:

[12] Our courts in various judgments over time set out the law that these applications should be succinct and brief. In this regard see *Smit v Smit* 1978 (2) SA 720 (W) at 722 G; *Patmore v Patmore* 1997 (4) SA (W)

785 and more recently *Du Preez v Du Preez* 2009 (6) SA 28 (T). Judgments of this division.

[13] The approach referred to is no different in other divisions. In this regard it is apt to refer to what was stated in *Coleman v Coleman* 1967(1) SA 291 (C) at 292H, where Theron J said: " the whole spirit of Rule 43 seems to me to demand that there should be only a very brief statement by the applicant of the reason why he or she is asking for the relief claimed and an equally succinct reply by the respondent and the Court is then to do its best to arrive expeditiously at a decision as to what order should be made pendent lite

[14] In *Du Preez's* matter, *supra*, Murphy J at par [14] stated:

"Consistent with the policy that prolixity should be discouraged, he made no order to costs and further ordered that neither party be charged any fees by their attorneys. This approach, as I have said commends itself to me as an effective means of disciplining practitioners and I accordingly

propose to follow it.”

See also: The remarks of Murphy J in par [18] of the judgment and Maree v Maree 1972(1) SA 261(0) at 263 G-H where the following was stated:-

“Die hele doel van die prosedure wat deur Reel 43 geskerp is, is dat die partye die beweringe wat vir die behoorlike beregting van so ‘n aansoek nodig is kort en bonding moet stel... Lang - asem uiteensetting wat lywegeverklarings tot bevolg het, is teenstrydig met, en sal die doel van hierdie Reel verydel.”

Erasmus, Superior Court Practice B1 -312.

[15] The procedure to be followed in Rule 43 applications are prominently known and one would expect that practitioners would follow the procedure set out in the Rule and adhere to the principles spelt out in the judgments, however one finds all too often that these applications contain voluminous affidavits, as in this matter.

[16] Having read through the application I am of the view that both parties are culpable of prolixity, and in so doing rather than assist the court they have obfuscated the issues.

[17] In the circumstances I make the following order:

1. The application is struck off the roll;
2. There is no order as to costs and it is specifically ordered that neither party would be charged any fees by their attorneys in respect of the application and the opposition thereto.

Ismail J

APPEARANCES.

For the Applicant: Adv. E de Lange instructed by Riette Oosthuizen
Attorneys, Pretoria.

For the Respondent: Adv. M Barnard instructed by Van Heerden
Schoeman Attorneys, Pretoria,

Date of hearing: 13 May 2015