IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2021-16497

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES:NO
(3)	REVISED: NO
DATE 16/09/2024	SIGNATURE

In the matter of :

F[…] : I[…] Applicant

and

C[…] : B[…] T[…] R[…] Respondent

JUDGMENT

VON LUDWIG AJ

INTRODUCTION

1. A wife has come to court for interim spousal maintenance in line, she says, with how the parties have lived throughout their marriage, and thus reasonable, which is a status quo needing to be protected until trial. She says her husband can

afford to pay, either by loans from a trust or from income which he can and does earn.

2. The husband denies her claim entirely, averring that the marriage endured only a few months, she works and had worked for many years and is able to support herself from her income, which has likely increased. Anyway, he cannot meet any liability which may exist and any need she might show, since his work has dried up, he can access no more loans from the Trust, and he is extremely ill and cannot work.

3. The application, and the opposition to it, are set out poorly. As can be deduced from the length of time it has taken for me to deliver this Judgment, these sworn statements and the Supplementary Affidavits, the Financial Disclosure Forms and the pleadings in the main action have had to be intimately scrutinised and properly summarised in painstaking detail for me to be able to arrive at what I consider to be the correct, legally substantiated, finding.

4. The temptation to dismiss the claim for want of a simple, clear case appearing in the Founding Affidavit has been strong. It should not be the Court's job to dig the fact and figures out of poor papers. But as the essay which has become this Judgment will show, there are claims which exist and which appear in the papers, which, for justice to be served, must be paid, and there are defences to some claims which likewise are made out in the papers and likewise must succeed.

5. In my view once a Court is seized of an application which complies with the basic requirements, no matter how tedious and frustrating it may be to adjudicate it, the Court has a duty to do so thoroughly.

6. In my view a Judgment, especially in matters financial, ought to be concise and crisp and not require a narrative, but the facts of this particular application, which have necessitated a Judgment as extraordinarily lengthy as this one, do require these introductory comments.

7. Lengthy as this Judgment is, it is not footnoted (to avoid further prolixity) and it does not contain each and every issue of law and on the allegations of each party, to

which I have applied my mind. At some point analysis of the papers has to stop, and once an outcome has been determined and the reasons for such outcome have been set out in sufficient detail for the litigants to understand it, that is enough. It is not, in this matter, all that can be said, but it is all that needs to be said, most especially since this outcome is not appealable, the judgement is not reportable, contains no new legal principles, and is simply for the parties to have an understanding of why I have reached the conclusions I have reached as set out in my Order.

CHRONOLOGY AND SUMMARY

8. This is a second marriage for both.

9. Each has 2 children. All are majors. Applicant’s R[...] was 18 on 14 November 2023 but is in school and J[...] is 23, a medical student living in Pretoria.

10. Applicant is an economist. Respondent is a financial and strategy adviser, CEO and company director.

11. They began living together in July 2013 at Balmoral. Applicant owned half and Respondent bought her former husband’s equal share.

12. R[...] and J[...] lived with them.

13. On 21 November 2018 they bought Waterfall (land R1 950 000, home to be erected for R4 500 000)

14. They married on 22 November 2018, in community of property.

15. On 30 January 2019 they concluded a mortgage agreement with Standard Bank in respect of Waterfall for R5 805 000.

16. On 09 March 2019 Respondent signed forms for the instalment R60 313.86 (now R66 373) to be debited from his account.

17. In July 2019 Respondent moved out to Capital Hotel.

18. After 2 weeks he asked to return, Applicant refused, he moved to an apartment with his daughter.

19. Respondent had 6 weeks of radiation, for cancer (which cancer Applicant denies).

20. Applicant remained at Balmoral.

21. In November 2019 he paid her debt of R400 000; she contends it was an "anniversary present". He says it was a loan from Malmax (Pty) Ltd

22. Respondent paid Balmoral bond, Eskom account, water, rates and taxes, security, her Mercedes and R15 000.

23. January 2020 Douglas' maintenance contribution for J[...] ended.

24. Waterfall building began in July 2020 (after Covid delays).

25. On 08 August 2020, while visiting Respondent Applicant found a message from "Roxanne" which was "the final straw".

26. August 2020 Respondent stopped paying Balmoral water, rates and taxes.

27. September 2020 Respondent stopped paying Balmoral security.

28. January 2021 Respondent stopped paying Balmoral Eskom and R15 000

29. On 01 April 2021 Divorce Summons was issued. Served 07 April 2021. Pleadings closed July 2021.

30. Defendant's Financial Disclosure Form was deposed on 03 August 2021 and served on 06 August 2021

31. Plaintiff's Financial Disclosure Form was served on 27 August 2021 (date of signature cannot be seen).

32. Balmoral was sold in August 2021 for R5 500 000. In November 2021 each received R1 185 894.

33. November 2021 Respondent refused to pay insurance for Waterfall

34. Applicant moved into Waterfall in December 2021 (building incomplete)

35. On 17 January 2022 Defendant served Notice to Amend his Plea and Counterclaim to include a claim for termination of Waterfall Joint Ownership and that if Applicant moves into Waterfall she pays 50% of the Waterfall Bond and expenses.

36. The first bond instalment was debited from Respondent's account in February 2022.

37. April 2022 Respondent stopped paying his 50% of water, rates and taxes at Waterfall

38. April 2022 Respondent stopped paying Applicant's medical aid

39. 18 November 2022 Applicant served consequentially amended Plea contending Respondent undertook liability for bond and must pay it.

40. March 2023 Mercedes lease ended on Applicant's car, Respondent insisted she return it and refused to pay towards any car.

41. August 2023 Respondent stopped paying Waterfall bond. Applicant found out on 24 October 2023.

42. 17 November 2023 Applicant launched this Application.

43. 05 December 2023 Respondent's Opposing R43 Statement delivered.

44. Applicant applied for a date 07 May 2024

45. Application set down for 19 June when postponed and interim order made by agreement.

46. Applicant applied for new date 24 June 2024

47. Respondent deposed to Supplementary Affidavit 10 August contending :

 47.1 01 April 2024 admitted to ICU 16 days then general hospital
 47.2 26 July 2024 discharged
 47.3 December 2023 Agis not operational
 47.4 April 2024 Bridgespan replaced him

48. 15 August Applicant replies and denies.

49. 16 August this application is heard.

LEGAL OBLIGATION TO MAINTAIN

50. Much in the Respondent's own version and in the chronology contradict the impression he attempts to create of a marriage so short (9 months) that the Applicant "does not qualify to claim spousal maintenance"

.

51. He accuses Applicant of "exploiting" him throughout the marriage and making "no contribution", but the fact is that he accepted liability for certain expenses and paid them.

52. We must remember also that he is clearly financially astute as he earned a very good living as an adviser, that he and the Applicant lived together for over 5

years in a jointly owned home before they married, and doubtless knew each other well, and that they chose to marry In Community of Property.

53. It is also relevant that he asked to return to Balmoral only a few weeks after moving out, that they bought Waterfall after he had moved out, that he paid R400 000 of her debt in October three months after he had moved out, and that building began on Waterfall a full year after he had moved out. He also continued to pay all the expenses until August 2020 when he began to stop paying them piece by piece.

54. Applicant's vitriolic description of the Respondent (included for nothing more than "atmosphere") is somewhat incredible considering they cohabited for over 5 years before they married and had her children living with them, she persuaded him to co-own Balmoral with her, and went on with the building and occupation of Waterfall (knowing that he had control over payment of the bond) long after she contended the marriage had broken down. All of this notwithstanding her contentions that he had a serious alcohol problem and was a liar.

55. The fact is there was a period, even on his own version, of just under 2 years (November 2018 to August 2020) during which he accepted liability for and paid expenses and thus a duty to maintain. Even from August 2020 he did not immediately stop all payments, but began to taper off, stopping completely only in August 2023 when he stopped paying the Waterfall bond.

56. The Respondent's contention that there is no basis for a maintenance claim due to the brevity of the marriage is not supported.

57. The Applicant however is also not on solid ground, having been employed throughout the marriage and for years before that. She earns a good income with bonuses and receives a contribution to her son's maintenance.

58. Applicant contends that this court must preserve the status quo until the matter reaches the trial court. Given that a Rule 43 Order, rightly or wrongly, is often a basis for, or a guide to, an eventual settlement or a final order, an interim court

would need to be very careful in finding that a spouse has no right to maintenance. Yet the Respondent reminds that a R43 order is not a meal-ticket for a spouse who is not entitled to maintenance to enjoy a free-ride up to trial.

59. The Respondent accepted his duty to maintain as analysed above, and it is material that only after the Applicant called "final straw" on 08 August he started to stop payments. Even then it is relevant that he did not terminate the R15 000 cash component until January 2021 and stopped her medical aid only in April 2022. The car he carried on paying until the lease ended in March 2023.

60. The Applicant has been tardy in prosecuting this Application, illustrating she has been able to sustain herself. Each of the payment-stops could have precipitated this application. She does not say why they did not. Even when the Respondent ceased the R15 000 cash component she did nothing.

61. She found money from which to pay over R11 000 of her student daughter's expenses and does not explain to the Court why she needs to do so and why her former husband cannot or is not obliged to cover these costs.

62. She did not, as *dominus litis*, adhere to the Directive about exchange of FDFs after the Plea, and even when Respondent filed his FDF she did not simultaneously produce hers.

63. Even in March 2023 when he stopped paying towards her car she did nothing and it was only when she found out in October 2023 that he stopped paying the Waterfall bond in August that she launched this application on 17 November 2023.

64. Even then she did not apply for a date for hearing until 07 May 2024.

65. The "atmosphere" to which the Applicant devotes so much of her Affidavit does nothing to compensate for the lack of a crisp, concise explanation of her Income, Expenses, Assets, Liabilities and Lifestyle, contrasted with those of the Respondent, to make out a simple case of Need and Ability to meet that need.

Having a dependant child to whom she contributes (and maybe two) she ought to have explained that situation in full as well.

66. In her Particulars of Claim dated 30 March 2021 she seeks cash maintenance of R50 000, medical aid and medical expenses.

67. In her Sworn Statement herein, of 17 November 2023, she seeks something very different:

67.1 A cash component of R23 042.00 payable within 3 days of the Order and thereafter monthly on the first day of the month;

67.2 Payment of the monthly mortgage bond instalment (which she refers to as the "premium") over the property described as "Waterfall" which is an asset in their joint estate;

67.3 Payment of a once-off sum of R16 710.16 to the City of Johannesburg for water pipes at Waterfall;

67.4 R100 000 contribution to her legal costs payable within 3 days of the Order and a contribution to the costs of a forensic accountant up to a maximum of R100 000 payable on presentation of invoice;

67.5 The costs of this application.

68. In her amended Notice of Motion attached to the Affidavit in which she answers the Supplementary Affidavit filed by the Respondent just before this application was heard, she asks instead of instalment payments, for the mortgage bond arrears of R620 000.00 to be paid.

69. Her Affidavit does not make it easy for the Court to track the steps of this matter and it is only with the chronology assembled above that the Court has been able to gain a conspectus of the entire situation.

70. From her FDF served on 27 August 2021 (almost three years before this application was argued) the following pieces of information appear which must also be woven into the puzzle. It is disconcerting that the Applicant herself did not take the trouble to do this and perhaps preferred the Court not to have regard to what now appear to be inconsistencies in her version :

70.1 Her income at that stage for the last financial year was R612 813 being R51 067.75 per month

70.2 Her bonuses over the past 24 months were R76 141(averaged out at R3 172,54 per month)

70.3 Her estimated income for the next 12 months she cited as R636 408 which would be R53 034

70.4 She disclosed child maintenance as R96 840 which is R8 070 per month. The payments for J[...] she said had already stopped in January 2020.

70.5 Her total estimated income at that point she stated as R785 794 which is R65 482.82 per month.

71. These are materially inconsistent with the Rule 43 Sworn Statement :

71.1 In support of her monthly salary hereto she annexes an undated payslip which she contends is for October 2023 which gives a take home salary of R51 641.26 (excluding bonuses)

71.2 She does not explain why, two years and two months later than the FDF her salary is less, a point one would expect her to highlight if she is showing a financial “need”.

71.3 Likewise in her R43 she tells of bonuses in April 2023 of R23 327 and November 2023 of R7 820 (bringing her bonus total for 2023 to only R31 147) but remains silent on her bonuses from August 2021 at which point her bonuses over the last 24 months as per the FDF were R76 141 (being an annual average of R38 070.50).

71.4 A history of bonuses received between the FDF date and the R43 date, would be a correct way of showing a downturn in bonuses (if that were the case) and the absence of such history is telling.

71.5 An applicant trying to show financial need would surely make much of a downward trend in salary and bonuses.

71.6 Even on her own version though she has R51 641.26 each month and something to add from bi-annual bonuses which is unlikely to be less than R31 147 / 12 = R2 595.58 per month.

71.7 She states that she pays "amounts" in respect of R[...] and "certain amounts" in respect of J[...], but that "Douglas makes payment to me of R9 593 in respect of maintenance for our children (from which I cover these expenses)"

71.8 It is clear that if she was receiving R8 070 at 27 August 2021 and she is receiving R9 593 at 17 November 2023, there is an annual increase in child maintenance and when this application was heard it would either have increased or be due soon to increase again.

71.9 Knowing that J[...]'s maintenance stopped in January 2020, the amount that is paid is not, as she deposes, "for our children" but is for R[...].

71.10 The sums expended on the children are far more than she receives from Douglas. His payment does not "cover" them as she alleges.

71.11 Inconsistencies in figures like this are material. Incorrect wording is material. Inconsistency between the FDF and a R43 Affidavit has an adverse effect on the credibility of the deponent.

71.12 Applicant does not appear to have been as candid about her income as she ought to have been, and her failure to set out details of her monthly income, annual increases or decreases, bi-annual bonuses, and child maintenance in a simple list leaves the court with uncertain figures. An undated, solo, payslip does nothing to assist her case.

71.13 We are therefore left to infer that her income is in all probability somewhat higher than she contends.

72. Applicant's case falls short as regards her expenses too.

72.1 Given that a R43 for interim maintenance is based largely on the Applicant's expenses it is expected that these are set out clearly in every respect – easy to find, easy to read and easy to understand. Applicant fails on each.

72.2 Annexure **ILF4** is tucked away as an annexure, it is in tiny print, difficult to read and is incorrectly set out in one list of globular sums.

72.3 Respondent's allegations that there are inflated costs are, in some instances, correct, but the Applicant's claim is not so over-inflated as to warrant its dismissal.

72.4 The Court is entitled to take, and has taken, judicial cognisance of the general costs of living and has made some adjustments to the total costs which appear below.

Item		Claimed	Adjusted
a.	Food, groceries, cleaning materials for 3	R17 600	
	R15 000		

b.	Toiletries mother and son	R1 200	
	R1 000		
c.	Plants	R200	R0
d.	Fuel self	R4 000	
	R3 500		
e.	Doctor excess	R1 000	
	R500		
f.	Hospital excess	R680	
	R500		
g.	Other policies (not explained)	R3 370	
	R1 000		
h.	Appliances	R600	
	R300		
i.	House maintenance (new house)	R1 000	
	R0		
j.	Other items (not explained)	R500	
	R0		
k.	Donations	R380	
	R150		
l.	Pocket money	R4 800	
	R3 000		
m.	Uber and parking	R350	
	R300		
n.	Extra lessons R[...] (only until year end)	R1 500	
	R0		
o.	Takeaways (covered with food)	R600	R0

73. Having arrived at more reasonable expenses these must be apportioned correctly.

74. Given that Douglas ceased to contribute to J[...]'s maintenance in 2020 we enquire as to the necessity and reasonableness of the Applicant paying the things for J[...] which she lists. She does not explain the maintenance situation with this major-dependent child. She contends that she does not have enough to support herself because she contributes to J[...], but this cannot be to the prejudice of the Respondent. She makes out no case for her legal duty to contribute to J[...]'s support and thus for purposes of this application what she pays for J[...] is disregarded. This reduces her expenses by R11 162.33

75. R[...], still at school, is entitled to a maintenance contribution from his mother. She does not explain the maintenance situation which exists with his father and what the sum she receives from him is supposed to cover, and we are expected to accept that what she contributes is her correct legal obligation.

76. If Applicant contends that what she spends on R[...] is a legally obligatory and reasonable draw on her income (leaving her with less from which to support herself) it is incumbent on her to explain the situation to the Court. She does not do so. The Court is left to assume, from limited allegations in the papers, that R[...] resides with her and, although he had attained majority in November 2023, is a dependant. As such she ought to have apportioned a share of the common costs of her household to R[...], as is correctly done when calculating maintenance costs of one person living in a home with other occupants.

77. What she has also not done is explain in what proportion the costs which she claims are for "self, R[...] and J[...]" (groceries and cleaning materials) or "self and R[...]" (for example toiletries) should be shared. To make out a proper claim she ought to have conducted this exercise. For her to have set out, in a very inadequate annexure, a list of her monthly expenses, subtract her income from it, and claim the reminder from the Respondent is not sufficient or correct.

78. In such circumstances the Court must follow the norms and apportion common costs, and shared costs equally between all who share them.

Item	Total (adjusted)	Applicant	R[...]	J[...]

Levy	R1 444		R722		R722	
Food etc	R15 000	R5 000			R5 000	
R5 000						
Toiletries	R1 000		R500		R500	
Rates taxes	R3 460		R1 730			R1 730
Water	R1 877		R938.50		R938.50	
Elec gas	R3 500		R1 750			R1 750
Fibre	R1 113		R556.50		R556.50	
Cell	R470	R470				
Domestic	R7 542		R3 771			R3 771
Gardener	R1 950		R975		R975	
Security	R540	R270		R270		
House content ins.	R738	R369		R369		
Clothing	R1 000		R1 000			
Hair	R800	R800				
Cosmetics	R500	R500				
Car maint	R500	R250		R250		
Fuel	R3 500		R1 750			R1 750
Fuel	R1 800					
R1 800						
Licence	R45	R22.50		R22.50		
Insurance	R850	R425		R425		
Insurance	R670					R670
Doc excess	R500	R500				
Meds excess	R100	R100				
Hosp excess	R500	R500				
Vitality Gap	R535	R535				
Life	R2 020		R673.33		R673.33	
R673.33						
RA	R9 253		R9 253			
Other	R2 000		R2 000			
Appliances	R300	R150		R150		
Mnet etc	R1 313		R656.50		R656.50	
Entertainment	R1 000		R1 000			

Personal loans	R1 519			R1 519
Pet food	R1 100	R550	R550	
Vet	R1 280	R640	R640	
Pocket money	R3 000		R1 500	R1 500
Uber	R300	R300		
Gym	R1 200	R1 200		
Gym	R400		R400	
Books	R200	R200		
Bank	R613	R613		
TOTAL	R75 432	R40 670	R23 174.33	R11 162.33

79. Respondent is not legally required to contribute to the costs of Applicant's children. But if the Applicant has to contribute to their maintenance this is a legitimate claim on some of her income, leaving her with less income from which to support herself.

80. Respondent addresses none of this simply contending that he has no duty to maintain her and that her costs are excessive.

81. Having regard to the above we can see :

81.1 R11 162.33 is spent on J[...] which is not a substantiated legal liability.

81.2 R23 174.33 is allocated to R[...] from which she receives R9 593 from Douglas (which has either escalated or is due to escalate shortly) leaving her needing R13 581.33 (or less) for R[...].

81.3 Her own need is R40 670.

81.4 The total is thus R54 251.33 (or less)

81.5 On her own version she has (if we apportion her bonus over the year) R51 641.26 = R2 595.58 = R54 236.84 per month.

81.6 Even on her own version she can cover all her own costs plus the portion of R[...]' costs not covered by Douglas' contribution, and from the details disclosed in her FDF it appears that R54 236.84 may well be understated.

82. Therefore, properly calculated, the Applicant has made out no claim for a cash component of maintenance and it is not necessary, for this part of her claim, to move to the next step of whether the Respondent has the ability to afford it.

MORTGAGE BOND INSTALMENT

83. The submission was made that such a claim does not fall under "maintenance" but I know of no authority for that proposition especially where the bond is over the home in which the Applicant resides, it is a jointly owned property and an asset in the Joint Estate.

84. The objection to an order being made for arrear maintenance is a red herring. Arrear maintenance would be a maintenance figure adjudicated now but to be paid from a date in the past. A claim non-existent until now. The mortgage bond arrear lump sum is an already existing debt arising from already existing monthly instalments for which Respondent was and is liable and which the Respondent simply stopped paying. With this debt being in respect of the house which the Applicant occupies, it may also be said that this is a debt incurred in order to maintain Applicant and thus falls within the exception followed in various cases to the *in praeteritum non vivitur* principle.

85. In the Respondent's own Notice to Amend his Counterclaim, filed in January 2022 and perfected, he accepts liability for 50% of the bond instalments, albeit with a proviso that the Applicant must pay the other 50%. This was at a time when he had already been allegedly ill with cancer and could and should have anticipated possible future inability to earn income for periods. That he stopped paying the entire bond

inclines one towards the Applicant's submissions that he is adhering to a strategy with regard to Waterfall.

86. Respondent filed a Supplementary Affidavit some days before the application was heard to which he attaches a letter from the Bank advising that the Bank has cancelled the agreement and calling for payment of the full sum outstanding. He seems to contend that this somehow puts paid to the Applicant's ability to seek payment of either instalments or an arrear balance (or both).

87. Applicant's submission is that Respondent was and is able to pay the instalments, but stopped doing so to engineer a calling-in of the debt by the bank and a forced sale.

88. Either way, the debt exists and until the trial court adjudicates on the division of the jointly owned property as the pleadings ask it to do, and that outcome is put into place and the mortgage loan is settled, this debt must be attended to. Non-payment of the debt may jeopardise the Applicant's continued occupation of the Waterfall property and leave her without a roof over her head.

89. For all of these reasons I am satisfied this is an issue that I can and must adjudicate.

90. From the figures dealt with above we can see that the Applicant is unable to pay any portion of the bond or instalment.

91. The Respondent wants the Court to believe he is also unable to pay, that he has no source of income, is unable to work and has no access to funds.

92. The Respondent has deemed it necessary to bring material change of circumstances forward in a Supplementary Affidavit. It would be expected that he would then ensure that such new circumstances were set out in full and compelling detail with annexures to support what he says. Instead there are significant gaps and inconsistencies which leave an unconvincing version.

93. He contends that his past financial situation has nothing to do with this application and that the current situation is one in which he has no ability to pay anything at all.

94. He tells us he has been grievously ill and in hospital for almost 4 months. His annexures however fail to support his case as fully as he intends them to.

95. I pause here to say that in this application the Affidavits of both parties leave a great deal to be desired. Both scatter the basic facts which are the backbone of a money Rule 43 amongst much irrelevant narrative. It seems both want to disclose the minimum of necessary information, leave much unsaid, and hope for their atmospheric stories to convince the court to find for them. Their sworn statements are all poor examples of the structure and content of a money-claim Rule 43 application

96. Right until his admission to hospital the Respondent's annexure shows us that he was still spending on luxuries. He must have had an income from which to fund them, even if by loans. One does not take loans if one does not anticipate having a means to settle them, unless they are not in fact repayable.

97. It is highly unlikely that if he had been a successful consultant for the time periods that he was, earning what he was earning when he was, his clients would have replaced him just due to him being in hospital, even if these were all arms-length relationships.

98. He wishes the court to believe Agis is dormant, due to the impact of Covid. It went from being the main source of his income in August 2021 (which ZAR Income amounted to R3 642 204) to being not operational in December 2023. And yet we read that the Respondent was in fact "rendering services as a consultant in December 2023". For whom he was doing this, if not Agis, we do not know.

99. There are inconsistencies between paragraph 40.1 of his Answer in which he refers to "the businesses I was previously involved with" suffering "significant down turns" since Covid resulting in "a substantial decrease in my monthly income",

against him saying in his Supplementary at 37.2 "even at the time of deposing to the answering affidavit in December 2023 I was not earning an income from Agis as it was dormant at the time…".

100. His level of control of the entire situation cannot be ignored. He is the sole director of Malmax (Pty) Ltd which is wholly owned by Malmax Trust of which he is one of two trustees, and Malmax (Pty) Ltd owns 48% of Agis of which he is the founder and CEO (although "historically engaged as an employee of Agis and later as a subcontracting consultant").

101. Malmax (Pty) Ltd derives its income from Agis dividends and consultancy fees. Respondent can't consult so Malmax (Pty) Ltd has no income and thus cannot lend funds to Respondent. Why then does Respondent pay "Malmax Office costs" of R8 372.31 on 18 June 2024 from his account which is BC2?

102. While he may not have received his "sitting fee" from Steward Bank while hospitalised, there is no reason why the retainer for being on the board is not still paid. He received R36 052.40 from Steward Bank on 24 June 2024. This contradicts submissions that he had no income.

103. Respondent had, on his own version, been diagnosed with cancer (albeit that this is disputed by the Applicant) in 2019 and had radiation. Yet he continued to work and, more relevantly, he continued to spend on a grand scale. Since that health scare he inter alia :

> 103.1 Moved into an apartment for which he was paying R36 000 per month;
>
> 103.2 Bought Waterfall and signed the debit order forms for the full monthly instalment;
>
> 103.3 Continued to pay all of the expenses he did, reducing them bit by bit from August 2022;

103.4 Submitted an FDF showing an income of R357 063.33 per month and expenses of R158 721.

104. It beggars belief that someone who has monthly commitments which include a mortgage bond payment of over R60 000, and who has enjoyed a very comfortable standard of living, who makes that living by giving financial and corporate advice, who has a business studies degree and an MBA and who has written a book on investment, has made no provision for ill-health, incapacity, retirement or other reasons he may not have an income, after he has had a cancer scare. The court simply does not believe that it is the case, and the overall zeal with which Respondent attempts to paint a picture of someone with no income after accepting such large liabilities and living so well for so long indicates a strong intention to avoid paying as opposed to an actual inability to pay.

105. It is also highly unlikely that, after he borrowed sums for all these years up to R8 million from the Trust, and now having actually repaid R3 000 000.00, he cannot secure an additional loan. The fact that after all these years history of borrowing he is no longer permitted any loans at the very time when the financial aspects of an acrimonious divorce are peaking is instructive.

106. Applicant invites me to draw an adverse inference from the absence of any documents from Drs Klipin and Sussman as to his inability to work, and I did indeed draw such inference not only from these absences but from the absence of any documents to support the most material averments in his Supplementary Affidavit about being replaced, companies being dormant, and loans being capped. The presence of documents which apparently indicate previously unknown bank accounts supports a further inference which is self-evident.

107. Read with the pleadings which accept (conditional) liability for half of the bond instalment we find also paragraph 79.8 “I have sequestrated my 50% share for the Waterfall mortgage bond to be paid if she agrees to pay her 50%”. If we take him to mean that he has “sequestered” this money then it is clear that funds are available and it is not that he cannot afford to pay, but that he chooses not to pay, to bring about a foreclosure, as the Applicant has alleged.

108. The initial relief sought in respect of the bond was that Respondent must pay the instalments. The amended relief sought is for him to pay the arrears. One does not know what effect either or both will have on the Bank and what the Bank will agree to accept, but given that the intention of this Order in terms of this Rule is to preserve the housing and joint ownership situation until trial, the Order must be one which is most likely to secure a hold by the Bank on legal proceedings and this will be the reason for the order I make below.

PIPES

109. Nothing appears to turn on the issue of paying the pipe debt and if the parties want to invite litigation by ignoring the City's account they may do so. I am not told that there is any problem with the pipes which hinders the Applicant's occupation of her residence and that is why this debt must be paid as part of maintenance. As such, while I can just as easily grant as refuse an order, I make no order in respect of this debt.

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CONTRIBUTION TO COSTS

110. On his own version Respondent paid R150 000 "for this R43" and he paid his attorneys another R57 000 as per annexure BC2 even when apparently grievously ill and with no income or access to loans, on 18 June 2024.

111. The Applicant's claim is far from unreasonable having regard to the nature of this litigation.

112. Respondent would have me believe that the relief the trial court can grant is a simple Order of Divorce and that the Joint Estate is to be divided. It is not for the trial court to adjudicate upon the nature and value of the Joint Estate. He forgets that the pleadings also include a claim for dissolution of the Waterfall Joint Ownership on which the parties have vastly differing versions.

113. Also, the Applicant has a maintenance case and she is entitled to understand the nature and value of the Trust and the various companies, and the various ways in which the Respondent earned and may still earn an income, and to obtain clarity in regard to all of his bank accounts given that new ones appear to have popped up in his Supplementary Affidavit. I am satisfied that to be able to litigate with a parity of arms she is entitled to the relief she seeks in this regard.

COSTS OF THIS APPLICATION

114. To reserve the costs hereof for the Trial Court seems to be unfair to that court, and to the parties, since it will not have the depth of insight into the papers herein that I have had. To allow costs to follow the result is also not helpful since the result is a win and a loss for both parties.

115. As I have said above, the Affidavits of both parties were significantly less than impressive and left the bulk of the work to the Court, with both parties being elusive, economical with the truth and reaching far to squeeze facts into conclusions which suit their respective cases without giving the court proper documentary support.

116. Their reciprocal acrimony leaks out of their affidavits like a nasty smell and permeates the entire application. Nothing is achieved by this subjective “scene setting” other than to waste everyone’s time and stretch the Court’s patience.

117. In such circumstances each party is to pay their own costs of this most application.

118. I therefore make the following Order

ORDER

A. Applicant’s claim 1.1 for payment of R23 042 per month is dismissed;

B. The Respondent is ordered to pay the monthly mortgage bond instalment due to Standard Bank under account number 533124077 (home loan agreement) monthly in whatever sum he is able to negotiate with the Standard Bank as acceptable to them in the circumstances, and after fulfilment of the Order contained in C below, but which shall not be less than R60 000 per month.

C. The Respondent is ordered to pay the arrears owing in respect of the mortgage bond registered over the Waterfall property in favour of Standard Bank under account number 533124077 (home loan agreement) in the minimum sum of R620 724, provided that if the arrears sum has increased since the Application was heard he is ordered to pay the sum which is described by the Standard Bank as "the arrears" within 7 days from date of this Order or such later date as the Bank may accept and on such terms as the Bank may accept;

D. The Respondent, through his attorneys, is ordered to provide to the Applicant, through her attorneys, copies of all correspondence and documents (including but not limited to Proofs of Payments) arising from and in relation to and for the compliance with and fulfilment of the Orders contained in C and D hereof, by way of copying the respective attorneys in on all emails and emailing to them under separate cover any documents and correspondence which for any reason whatsoever may not have had them on "copy in" when originally sent.

E. No Order is made in respect of Applicant's claim 2

F. The Respondent is ordered to pay an initial contribution to the Applicant's legal costs in the sum of R100 000.00 (one hundred thousand rand) within 7 days from date of this Order, and the costs of a forensic accountant appointed by her up to a maximum of R100 000.00 (one hundred thousand rand) to be paid on presentation of invoice, or invoices by the forensic accountant (which invoices shall not be required to contain detail of the work done by the forensic accountant save and except for the hours spent by them and the charges levied therefor and any disbursements).

G. Each party shall pay their own costs of this application.

VON LUDWIG AJ

JUDGE OF THE HIGH COURT

JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 16 September 2024.

Heard:	
Delivered:	**16 September 2024**

APPEARANCES:

Applicant's counsel:	Adv Lisa Segal SC
Applicant's Attorneys:	Deanne Kahn Attorneys
Respondent's Counsel:	Adv Amandalee De Wet Adv Lauryn Grobler
Respondent Attorneys:	Richen Attorneys