REPUBLIC OF SOUTH AFRICA

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

Case Number: 22/010214

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES

17/12/24. [redacted]
DATE SIGNATURE

In the counter-application between:

CLK Applicant in counter-application

and

KKK Respondent in counter-application

JUDGMENT

---

[1] KKR (the father) and CLK (the mother) are married to each other. There are two children born of their marriage, namely IVK and IZK. IVK was born on 12 February 2018 and he is almost 6 years of age. IZK was born on 29 September 2019 and she is 5 years of age. IVK and IZK are collectively referred to in this judgment as the children.

[2] The marriage between the father and mother has irretrievably broken down and they are at present in the throes of a divorce action. The father instituted proceedings under Uniform Rule of Court 43, which proceedings are primarily

concerned with the exercise by him and the mother of parental responsibilities in respect of the children and matters incidental thereto. This application has been suspended pending the completion of certain investigations decreed by the judge who initially dealt with it. I need say nothing further about it.

[3] The mother has instituted a counter-application against the father. They are described in that counter-application as the respondent and the applicant respectively.

[4] The relief sought by the mother in the counter-application was, in terms of her "NOTICE IN TERMS OF RULE 43" formulated thus:-

> *"1. The Applicant pay a contribution towards legal costs in the amount of* ***R 830 685.31 (eight hundred and thirty thousand six hundred and eighty-five rand and thirty-one cents)*** *to the Respondent within 7 (seven) days of the granting of this order, which payment is to be made into the Respondent's designated bank account.*
>
> *2. The Applicant to pay maintenance towards the Respondent and the minor children in the amount of* ***R42284.16 (forty-two thousand two hundred and eight-four rand and sixteen cents)*** *a month, the first payment to be made within 7 (seven) days of the granting of this order, whereafter payment shall be effected on the 25th day of every month, which payments are to be made into the Respondent's designated bank account.*
>
> *3. The Applicant shall continue to pay, directly to the service providers within 7 days (seven) on presentation of invoice, the following:*
>
> *3.1 All the educational and related expenses of the minor children, which shall include inter alia, the school fees, special levies, school lunches, extra lessons, extra murals, sport, school and sport clothing, books and stationery, sport equipment, school functions, tours and outing, transport, computer equipment and related expenses.*
>
> *3.2 The Applicant shall pay for the following extra mural activities for the minor children:*
>
> *3.2.1 Rugby*
>
> *3.2.2 Manners for Minors*
>
> *3.2.3 Krav Maga/Brazilian Ju Jitsu.*
>
> *3.2.4 Swimming lessons*

3.3 The Applicant shall pay all excess medical costs incurred by myself and the minor children, which costs are not covered by the medical aid.

*4. The Applicant shall pay the Respondent **R 6 470.72 (six thousand four hundred and seventy rand and seventy-two cents)** for the cell phone account in the Respondent's name, with cell phone number 071 421 9413, which payment is to be made into the Respondent's designated bank account.*

5. In the event that the Respondent make payment of expenses which are for the account of the Applicant, the Applicant shall reimburse the Respondent within 48 hours of receipt of the invoice / statement evidencing such expenditure and payment.

*6. The Applicant shall make payment in the amount of **R 465 130.60 (four hundred and sixty-five thousand one hundred and thirty rand and sixty cents)** directly to the Respondent for the arrear maintenance within 7 (seven) days of the granting of this order, which payment is to be made into the Respondent's designated bank account.*

7. Costs of the main application and counter application to be paid by the Applicant."

[5] The children are primarily resident with the mother and she bears the brunt of the expenses associated with their day to day care. She has no qualifications to speak of and ekes out a living by working on a contractual basis for an entity named SA Fleet. She earns approximately R9 000.00 a month from that activity. She supplements her income by baking and performing occasional work for friends, which work relates to the performance by her of administrative tasks, the rendering of rudimentary maintenance work on properties, the cleaning of swimming pools and the collection of people from the airport. She has moreover on an ongoing basis been required to borrow monies from friends in order to make ends meet. She is currently indebted to them in an amount of R137 136.15.

[6] The baking business has all but collapsed. The menial work which the mother performs for the benefit of her friends generates very little income and according to her, her monthly income from all sources now amounts on average to R10 000.00. She has no cognisable asset base of which to speak.

[7] The mother's monthly expenses according to her amount to some R52 157.00. She on her version consequently has in relation to the monthly combined expenses of the children and her a shortfall of some R42 284.16.

[8] The father is a businessman. He controls two companies. They are said to be loss-making entities, albeit that the father earns a monthly salary of R18 000.00 from one of them. He has created a number of trusts. According to him the Trusts thus created have no assets. He owns two properties in Bulgaria which, according to him, have a combined value of some R3 000 000.00. He has leased one of those properties and derives a monthly income of R2 800.00 from that source. His mother contributes the sum of R5 000.00 to his monthly expenses. The father moreover owns a life policy with a surrender value of R96 344.00. He owns the immovable property in which he and his mother reside and he has recently acquired a second residential property. He owns the property which houses the business of one of the companies he controls and he undoubtedly derives rental income from it. He "hustles" in the acquisition and sale of motorcycle spares. The income which he derives from that activity has not been disclosed.

[9] According to the father his monthly expenses amount to R28 880.00. He in addition contributes an amount of R9 710.00 towards the welfare of the children, comprised of the sum of R5 960.00 on account of school and crèche fees, the sum of R750.00 on account of medical expenses not covered by medical aid, the sum of R1 500.00 for clothing and shoes, the sum of R1 000.00 in respect of outings and the sum of R500.00 in respect of pet foods. The father's monthly expenses on his version thus amounts to R38 958.00.

[10] The father has launched an attack on the mother's claimed expenses. He says they are exaggerated and not in keeping with the lifestyle which the parties enjoyed *stante matrimonio.* I have carefully scrutinised the schedule of the mother's monthly expenses and I consider then reasonable. It is not without significance that the mother's monthly expenditure for her and the children (R52 157.00) bears some correlations with the father's household and related expenses (R38 958.00). It will in this regard be recalled that the father's household is comprised of him and his mother. The mother in her household needs to provide for three people. Moreover the father's list of expenditure is clearly lacking in essential items. By way of example, the father makes no provision for medical aid premiums. Moreover, some of the amounts reflected therein are clearly understated.

[11] The father also attacks the mother's earnings. He, in this regard, contends that they are understated. He asserts that the mother trades in Bitcoin and that she has not disclosed the earnings which she derives therefrom. There is in my view little real evidence to support the contention that the mother is or has ever been involved Bitcoin trades. The

father moreover claims that the mother has not made a full disclosure of the income which she earns from the menial services which she from time to time renders on behalf of friends. This holds merit and it is a matter which I will take into the reckoning when considering the mother's claims.

[12] The father's position in relation to his income and resources is regretfully unclear. His proclaimed expenses exceed his declared monthly income of approximately R18 000.00. The additional monthly sum which the father receives from his mother (R5 000.00) and the monthly rental (R2 800.00) derived by him from one of his properties in Bulgaria does not extinguish the excess.

[13] The position is compounded by the fact that it is clear to me that the father has other sources of income which he has omitted to declare. Thus, the father in paragraph 6.25 of his sworn response in the counter-application records the following:-

> "*The result thereof is that I am forced to utilise my credit card and cheque account to help T4S and each and every payment that I make on behalf of T4S or a payment that I receive back from T4S is taken into consideration by the auditors when they draw up the financial statements on his investment.*"

The father went on to say the following in paragraph 6.28:-

> *"G Robberts, my friend who help (sic) me start the business is also a very wealthy man and he on a continuous basis, when T4S need (sic) cash to be able (sic), if T4S has a bargain at an auction, will pay huge amounts directly into my credit card or directly to the auctioneer and TS4S normally pays him the amount plus approximately 20% back on his investment. From the bank accounts of TS4 it is quite apparent that I have to utilize my credit card on numerous occasions to assist the company in breaking even. For November 2022 until February 2024, I paid for example most of the salaries out of my personal bank account (creditor cheque account), due to a lack of funds."*

[14] Other than his somewhat oblique reference to G Robbert's, the source of the amounts in question have not been disclosed. The father has moreover not accounted for the rental which he derives from the second immovable property which he purchased. He

has also not disclosed the rental income which he derives form the occupation by engineering company of his property. Given his lifestyle I have little doubt that the father's financial position is vastly better than that suggested by him.

[15] I consequently intend approaching the mother's claims on the basis that:-

- she has not made a complete disclosure of her monthly income;
- her disclosed monthly income consequently falls to be increased by what she probably earns from the tasks she performs on behalf of friends, which earnings need to be robustly assessed;
- assessed robustly, that income should be of the order of R1 000.00 to R3 000.00 per month;
- the father has not made a full disclosure of his monthly income, which income has been substantially understated;
- he is in a position to meet the mother's claims.

[16] I now address the respondents claims in reconvention.

The Claim of R830 685,31 in respect of a contribution towards costs

[17] This claim is comprised of past costs in the sum of R177 299.00 (of which amount the mother has paid her attorney the sum of R60 350.42), the sum of R185 000.00 for work which expert witnesses will be required to undertake on behalf of the mother and the sum of R663 736.65 in respect of the other anticipated costs of the pending divorce action.

[18] The figures referred to in paragraph [17] exceed the amount claimed by R195 354.34.

[19] It is now recognised that past costs may under Uniform Rule of Court 43 be claimed as part of a contribution towards costs. I will consequently permit the mother's claim for past costs, other than those which she has already paid. The past costs thus fall to be reduced to R116 948.58. The remaining amounts claimed are said to be necessary to enable the mother to prosecute her action until the first day of trial.

[20] The matter is in my view not one of great complexity and it seems to me that a total contribution of R800 000.00 (including past costs) will satisfy the requirements of the case. This can be discharged by the father in monthly instalments of R100 000.00.

Maintenance in the sum of R42 284.16.

[21] The expenses which the mother bases her claim for maintenance for herself and the children are in my view not unreasonable. I must, however, make allowance for the additional income which I believe the mother earns, which income has not been disclosed by her. I would accordingly adjust her monthly claim for maintenance in the sum of R42 284.16 to R40 000.00, comprised of R15 000.00 for the mother and R12 500.00 for each of the children.

[22] This will then relieve the father from paying for the children's clothing and shoes, the cost of pet food and the costs of the children's outings, which costs the father asserts he pays directly.

Payment to service providers

[23] The mother requires the father to make payment to service providers of certain defined expenses. Her claims in this regard are in my view entirely reasonable. She is, in my judgment, entitled to relief on this leg of the case.

Cell phone expenditure

[24] This is a somewhat peculiar claim. The mother for reasons which are not apparent concluded an agreement with a cell phone provider. She did so at the request of the father's son (from a previous marriage). The son has had sole use of the phone. The mother by concluding the agreement in her name has incurred a monthly liability to the provider. The idea was that the son would make payment of that liability. He did not do so with the result that the mother presumably in order to preserve her credit standing paid that recurring liability. She has paid the total sum of R6 470.72 on account thereof.

[25] The liability is genuine in nature and constitutes an item which she may recover from the father as an incidence of maintenance. The mother must succeed on this claim.

Arrear maintenance in the sum of R465 130.60

[26] Generally arrear maintenance cannot be recovered under Uniform Rule of Court 43. There is one notable exception to this, namely if monies are borrowed by a person to enable him or her to maintain themselves, a claim for arrear maintenance will be permitted. It is unquestionable that the mother was compelled to borrow monies in order to meet the monthly requirements of both her and the children. These monies will need to be repaid. However, evidence relating to full extent of the mother's borrowings and

how they are said to relate to the claim in the sum of R465 130.60 is entirely unclear. This claim has not been established.

The costs of the application

[27] The mother seeks the costs of this application. I am not prepared to accede thereto. These costs form part of the mother's application for a contribution towards her costs, which matter I have already addressed and determined.

[28] The following orders will thus issue:-

1. The respondent in the counter-application will pay maintenance to:-

   1.1. the applicant in the counter-application in the sum of R15 000.00 per month;

   1.2. the two minor children born of the marriage in the sum of R12 500.00 each per month.

2. The payments referred to in paragraph 1 hereof will commence on 7 January 2025, with subsequent payments being made on the seventh day of each and every succeeding month.

3. The respondent in the counter-application will within seven days of the presentation to him of an invoice make payment to the service provider concerned of the costs associated with the following:-

   3.1. the education and related expenses of the minor children, which costs shall include, *inter alia*, school fees, special levies, after-care, school lunches, extra lessons, extra mural activities, school and sport clothing, books and stationery, sport equipment, school functions, tours and outings, transport, computer equipment and related expenses;

   3.2. The medical aid premiums for both the applicant in the counter-application and the minor children;

   3.3. the excess medical costs incurred by the applicant in the counter-application for both her and the minor children.

4. The respondent in the counter-application will within seven days of the presentation to him of an invoice make payment of the costs associated with the following:-

   4.1. the fees relating to the minors' participation in rugby;

   4.2. the costs relating to the minors' involvement in Manners for Minors;

   4.3. the costs relating to the minors' involvement in Krav Maga Brazilian Jujitsu;

   4.4. the costs of the minors' swimming lessons;

5. In the event that the applicant in the counter-application makes payment of the costs more fully referred to in paragraphs 3 and 4 hereof, the respondent in the counter-application shall reimburse her within 48 hours of presentation to him of the invoice and/or statement evidencing such expenditure and payment;

6. The respondent in the counter-application will pay the sum of R6 470.72 to the applicant in the counter-application;

7. The respondent in the counter-application will pay the sum of R800 000.00 to the applicant in the counter-application as and by way of a contribution towards her costs, such payment to be effected in eight equal monthly instalments of R100 000.00, the first instalment to be paid on 7 January 2025, and thereafter on the seventh day of each and every succeeding month.

8. There will be no order for costs.

[redacted]

G FARBER
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Applicant in reconvention: **MS R ANDREWS**

Instructed by: **WADE THERON INC**
68,2nd Avenue, Ravenswood
Boksburg
Johannesburg
Tel: 011 484 4950
EMAIL: swade@wtinc.co.za
REF: SW/DIV00006/KOSTOV

For the Respondent in reconvention : **MS L BEDEKER**

Instructed by: **B MALAN ATTORNEY**
24 Saint Cloud Estate,
78 Hyperion Drive,
Northriding,
Gauteng,
2169
c/o BRIAN WILKEN ATTORNEYS INC
Suite 4
Profin Building
21 The Broads Street
Cnr Blakeney Road
Mulbarton
JOHANNESBURG
Tel: 076 155 1201
EMAIL: barbara@bmalanattorneys.co.za