

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

Case Number: 17573/2014

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

In the matter between:

M[...] **L[...]**

Applicant

And

S[...] **J[...]** **P[...]** **L[...]**

Respondent

JUDGMENT

Mahomed J

[1] The Applicant in this matter seeks an order in terms of R43(6), she alleged changed circumstances from the last occasion when this matter was heard in 2018. She applies for an order for maintenance in the amount of R32 613.90 and an increase in a contribution to legal costs of R90 000, when previously she was

awarded only R80 000 as a contribution to her legal costs. The judgment of 2018 was only made available to this court on the morning of the hearing of this matter.

[2] It is also necessary to mention that there are no papers on file for the R43 application, when Splig J granted an order for contribution towards costs, the learned judge made no order in regard to interim maintenance in that the court noted that the Respondent wanted to move the matter to the magistrate's court to limit legal costs and Splig J stated that since the matter was set down for trial the following month, that the trial court would be in a better position to hear evidence on the aspect of maintenance and make the appropriate order. The parties dispute the interpretation of the judgment, the applicant contends that the issue of interim maintenance was reserved whilst the respondent argued that maintenance was not awarded.

INTERIM MAINTENANCE

[3] Counsel for the Respondent Adv. Scholtz in opposition submitted that the claim for interim maintenance cannot succeed, the Applicant has not claimed for maintenance in her particulars of claim, he submitted that a party must stand and fall on her pleadings, and the court is bound by the pleadings. Counsel argued that the Applicant will not establish her right to maintenance at the trial and this application is futile.

[4] Adv. Bergentuin for the Applicant, conceded that her client did not claim maintenance in her pleadings and explained that the Applicant was of the view that she would receive her share of the joint estate on divorce and would not require any financial assistance. Counsel contended that despite there being no "baseline from which to commence" this court can make an order for maintenance. Mr Scholtz, disagreed and submitted that his client was called upon to answer to a R43(6) application, and referred the court to the founding papers in paragraphs 9 and 13 where the allegations made confirm the procedure followed and it is understood that the applicant is to put forward her changed circumstances, for the court's determination for an increase.

[5] The respondent argued that the Applicant has been legally represented throughout the proceedings, the applicant asks the court to vary a judgment, which she failed to place before the court, and the Applicant has only disclosed her finances a few days before this hearing, which itself is questionable, the documents she annexes in support tell a different story. The financial disclosure is outstanding for several years, as the matter commenced in 2014. Counsel further argued that there is no claim for maintenance even in her counterclaim, which is deals only with a dispute about her marital regime. Counsel argued that there is no even a prima facie case presented for the maintenance claim, the matter commenced 11 years ago, and she remained silent on spousal maintenance. It was contended that if the Applicant's interpretation is to be accepted, then Spilg J is seized with the matter, and this court cannot make any determination regarding interim maintenance.

CONTRIBUTION TO COSTS

[6] Adv. Bergenthuin reminded the court that Spilg J awarded her client R80 000, however, the amount has been used up and referred me to the pro forma account on file. Mr Scholtz for the respondent argued that the items as appear, were previously considered and cannot be reconsidered, it was argued that the costs items now are for experts to assist the applicant to prove her claim for maintenance, which was not a claim on the papers. Furthermore, it was argued that since monies were paid over in 2018, nothing has happened in this matter, there is no accounting for what was done with monies. Adv. Scholtz submitted that most of the items claimed for are cost to prove a "non-existent claim," he submitted the application stands to be dismissed, with costs on a party-party costs.

[7] In reply, Adv. Bergenthuin referred to para14 of the judgment by Spilg and argued that the court reserved its judgment on the interim maintenance. Counsel conceded that some line items on the pro forma account may be a repeat and may be removed, however the costs are for the "*future litigation of the matter, which is for proving her maintenance requirements.*" Counsel for the applicant implored the court to consider the ethos of the Rule and grant the order sought.

JUDGMENT

[8] A court has a discretion in matters of this nature and must exercise that discretion judiciously. It is trite that in our law there is a reciprocal duty of support until the divorce. I noted Adv. Bergenthuin submissions that the Applicant will be severely prejudiced if the application is dismissed, her rights must be preserved and that an amendment to her pleadings would afford her a fair opportunity. In the alternative counsel asked this court to postpone the matter and reserve the costs.

[9] In *S v S*, the Constitutional Court confirmed that the purpose of R43 is to provide a speedy and inexpensive remedy, for the *benefit of women and children*. It provides for interim relief in matrimonial disputes until the divorce court can properly make an informed finding after hearing oral evidence. The court has held that almost invariably women are at the lowest rung of the economic ladder and are generally in a less favourable financial position than their husbands.

[10] I noted that the Applicant is of poor health and cannot rely on her children either for support, I am not inclined to close the door on her right to a fair hearing. Having considered the conspectus of the evidence before, me she suffers greater prejudice, if she is not afforded her opportunity to equal protection before the law and a right to be heard. In my view it is in the interest of justice, that the matter be postponed. The matter is of importance to the applicant and the Respondent will not suffer any prejudice in this instance.

[11] Regarding costs, Counsel for the Respondent submitted that he was aware that this is a family law matter and therefore, submitted that costs on a party and party scale are appropriate. I think it fair to grant the Respondent the costs of the application, as the postponement is an indulgence afforded to the Applicant in this instance. I also noted Mr Scholtz submissions on the way the applicant litigated, in this matter particularly regarding disclosure of material facts on her financial position.

[12] Accordingly, I make the following order:

1. The application is postponed *sine die*.
2. The Applicant shall pay the Respondent's party-party costs on scale C.

**MAHOMED J
JUDGE OF THE HIGH COURT
JOHANNESBURG**

For the Applicant: Adv. Bergenthuin

Instructed by: Swanepoel & Partners Inc.

For the Respondent: Adv. Scholtz

Instructed by: Jean Keyser Attorneys Inc.

Date of hearing 12 March 2025

Date of delivery 13 March 2025