



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

CASE NO: 2024/075727

In the matter between:

1. Reportable – No
2. Of interest to other Judges – No
3. Revised – No

Date of the Order: 19.03.2025

R: M.C. D.C.

Applicant

and

R: A. P. W.

Respondent

JUDGMENT

PRETORIUS AJ

INTRODUCTION

- [1] This is the reserved judgment in respect of an application brought in terms of the provisions of Rule 43(1)(a) and 43(1)(b) of the Uniform Rules of Court, and wherein the Applicant, who is the wife, is seeking an order for spousal maintenance *pendente lite*, with retrospective effect from **01 December 2024**, for a contribution towards her costs in respect of the pending divorce action, in the sum of R1,900,000.00, and for an order that the Respondent pay the costs of the Rule 43 application on the scale as between attorney and client, on Scale C, as provided for in Uniform Rule of Court 69.¹
- [2] Whilst it is common cause that the Respondent has tendered to continue making payment of most of the direct expenses historically paid for by him, the quantum and extent of the interim maintenance to be paid is in dispute, as is the Applicant's claim for a contribution to costs, with the Respondent denying that the Applicant is entitled to any contribution towards costs at all.² Equally, the aspect of who is to be liable for the costs of this Rule 43 application, is in dispute.
- [3] The Respondent served and filed his Sworn Reply³ out of time, on **21 December 2024**.⁴ The Respondent has sought condonation in his Sworn Reply for the late filing thereof.⁵ No issue was raised in regard to the condonation at the hearing of the matter and the respective Counsel proceeded to argue the matter before me. To the extent, however, that same may be required, the late filing of the Respondent's Sworn Reply is condoned.

¹ Notice in terms of Uniform Rule 43: prayers 1 (inclusive of the subparagraphs thereto) and 4, CaseLines 007-2 to 007-6

² Sworn Reply: par 241, CaseLines 007-146

³ This is described as "Respondent's Answering Affidavit". I will, however, refer thereto as the Sworn Reply in accordance with the terminology referred to in Uniform Rule of Court 43

⁴ Filing Sheet: CaseLines 007-88 to 007-91, read with Sworn Reply: paras 5 to 15, CaseLines 007-94 to 007-96

⁵ Sworn Reply: paras 5 to 15, CaseLines 007-94 to 007-96

- [4] Given that this judgment contains references to the parties' personal and financial information I have, in the interests of protecting such information, redacted the parties' full names in the heading of this judgment.

SYNOPSIS OF RELEVANT FACTUAL MATRIX PERTINENT TO THE APPLICATION

- [5] The parties were married to one another on *26 February 1999*, out of community of property, with the application of the accrual system.⁶
- [6] There are two children ("*the children*") born of the marriage between the parties, a son and a daughter, both of whom have attained the age of majority, and who are presently aged 22 and 20 respectively.⁷ *The children* do not reside with the either of the parties and are students, with the son studying locally and the daughter studying in New Zealand.⁸ *The children* are not self-supporting and are supported fully by the Respondent⁹ *The children* left the former matrimonial home in and during *2023*.¹⁰ The Applicant pertinently states that *the children* do not form the subject matter of her application,¹¹ and the Applicant does not deal with *the children's* maintenance requirements in her application.
- [7] The Applicant avers that she has been a stay-at-home mother and wife for the majority of the marriage and that she had fulfilled this role for 20 years, from *2002* to *2023*.¹² The Applicant re-entered the job market, as it were, since approximately *November 2023*, as a freelance tour guide, operating as a sole trader.¹³

⁶ Sworn Statement: par 7, CaseLines 007-10; Sworn Reply: par 19, CaseLines 007-104 and par 50, CaseLines 007-111

⁷ Sworn Statement: par 9, CaseLines 007-11; Sworn Reply: paras 20, 20.1 and 20.1, CaseLines 007-104 and par 55, CaseLines 007-111

⁸ Sworn Statement: par 9, CaseLines 007-11; Sworn Reply: paras 31 and 32, CaseLines 007-106

⁹ Sworn Reply: par 32, CaseLines 007-106 and par 56, CaseLines 007-111; Respondent's FDF: par 3, Schedule of maintenance requirements, CaseLines 007-348 to 007-352, par 4.1.2, CaseLines 007-353, par 4.3, CaseLines 007-353 to 007-354

¹⁰ Sworn Reply: par 39, CaseLines 007-108

¹¹ Sworn Statement: par 9, CaseLines 007-11

¹² Sworn Statement: par 32, CaseLines 007-23; Sworn Reply: paras 190 and 191, CaseLines 007-137

¹³ Sworn Statement: par 35, CaseLines 007-24, Applicant's FDF: par 2.15, CaseLines 007-187 and par 2.9, CaseLines 007-181

- [8] The Respondent is an aircraft pilot and Captain.¹⁴ The Respondent left South Africa in **2006** to pursue his career with various airlines.¹⁵ Since **11 September 2007**, the Respondent has been in the employ of Qatar Airlines, taking up residence in Qatar, the Middle East, in **2007**, and where he has been residing since.¹⁶
- [9] The parties are estranged from one another.¹⁷ The Respondent avers that the parties have effectively been separated for more than 20 years and that their relationship came to an end during **2004**, when they elected to start sleeping in separate bedrooms.¹⁸ The Respondent states that in his mind, he and the Applicant were separated since such time and only went on holidays with *the children* “to save face and try and appease them”, albeit that *the children* actually knew that the relationship between the parties was over.¹⁹
- [10] The Applicant avers that, notwithstanding the Respondent’s taking up of residence in Qatar since **2007**, the parties continued with the marriage and conducted themselves as husband and wife until at least **2023**,²⁰ being when, as stated above, *the children* left the matrimonial home. The Applicant has continued to reside in the matrimonial home, which is situated in Lonehill, Sandton.²¹ The Applicant lives alone in the matrimonial home, with the family pets, presently 6 dogs. *The children* visit her from time to time.²²
- [11] The Respondent, as Plaintiff, instituted divorce proceedings against the Applicant, as Defendant, in and during **July 2024**.²³ Needless to say, the divorce

¹⁴ Sworn Statement: par 3, CaseLines 007-9; Sworn Reply: par 47, CaseLines 007-110

¹⁵ Sworn Reply: paras 22 and 23, CaseLines 007-104 to 007-105, par 52, CaseLines 007-111

¹⁶ Sworn Reply: par 22, CaseLines 007-104, read with par 51, CaseLines 007-111

¹⁷ Sworn Statement: par 3.2, CaseLines 007-9; Sworn Reply: par 47, CaseLines 007-110

¹⁸ Sworn Reply: paras 21 and 33, CaseLines 007-104 and 007-106

¹⁹ Sworn Reply: par 53, CaseLines 007-111

²⁰ Sworn Statement: par 8, CaseLines 007-11

²¹ Sworn Statement: par 2.3, CaseLines 007-9; Sworn Reply: paras 44 and 45, CaseLines 007-109 to 007-110

²² Sworn Reply: par 45, CaseLines 007-110; Sworn Statement: Annexure “MR2” thereto, CaseLines 007-42

²³ Pleadings: CaseLines 001-1 to 001-3; Sworn Statement: par11, CaseLines 007-11; Sworn Reply: par 60, CaseLines 007-112

proceedings are contested and the pleadings therein have closed.²⁴ The issues in dispute in the divorce proceedings include the accrual, the Applicant's claim for spousal maintenance until her death or re-marriage, whichever is the sooner, and the costs of the divorce action.²⁵

CLAIM FOR INTERIM MAINTENANCE IN TERMS OF RULE 43(1)(a)

Catalyst for this application

- [12] The Applicant says that the Respondent has, throughout the marriage, been the primary, if not sole, breadwinner and that the Respondent has maintained her "*virtually in toto*."²⁶ The Applicant details the extent of the Respondent's support in her Sworn Statement and describes same as "*the marital maintenance agreement*".²⁷
- [13] Whilst the Respondent, on the one hand, denies the existence of the alleged marital maintenance agreement,²⁸ on the other hand, the Respondent states that: "*even though we were separated since 2006, I wholeheartedly continued to support the Applicant and her demands*."²⁹
- [14] It was submitted on behalf of the Applicant that the facts in this application follow a pattern often seen in Rule 43 applications where the Applicant did not work for most of the marriage and was maintained by the Respondent who was the primary, if not sole breadwinner. After instituting the divorce action, the Respondent starts to reduce the financial support historically provided to the Applicant, resulting in the Applicant having to institute a Rule 43 application.³⁰

²⁴ The Respondent, as Plaintiff, filed his Plea to the Applicant, as Defendant's, Counterclaim, on 08 October 2024. CaseLines: 001-40; Sworn Statement: par 19, CaseLines 007-14; Sworn Reply: par 71, CaseLines 007-114

²⁵ Pleadings: CaseLines 001-1 to 001-44

²⁶ Sworn Statement: par 21, CaseLines 007-14

²⁷ Sworn Statement: par 22, inclusive of subparagraphs, CaseLines 007-14 to 007-16

²⁸ Sworn Reply: par 178, CaseLines 007-130

²⁹ Sworn Reply: par 36, CaseLines 007-107

³⁰ Applicants Heads of Argument: par 7, CaseLines 007D-4

- [15] As stated above, the divorce action was instituted in *July 2024*. The Respondent defended the action, filing her Notice to Defend on *06 August 2024* and delivered her Plea and Counterclaim, on *16 September 2024*.³¹
- [16] According to the Applicant, since the beginning of *September 2024*, the Respondent refused to settle the amount outstanding in respect of the Applicant's credit card and which he historically used to pay for by the 10th of every month,³² said amount, as at the date of the Applicant deposing to her Sworn Statement, being the sum of R49,707.87.³³ In addition, on or about *01 November 2024*, the Respondent implemented a "*new regime*" in line with his tender and in terms whereof he paid to the domestic worker her salary directly and paid to the Applicant the sum of R15, 000.00.³⁴
- [17] The Applicant states that the Respondent has therefore drastically reduced, by at least half, the level of maintenance that he provided to the Applicant prior to her filing a Notice of Intention to Defend the divorce proceedings and her Plea and Counterclaim thereto, as the expenses which the Respondent used to pay in regard to the Applicant's credit card would historically amount to approximately R30, 000.00 per month.³⁵
- [18] The Applicant further avers that, by virtue of the Respondent neglecting to tender payment of a significant number of other expenses, whether directly to the relevant creditors or otherwise, and which the Respondent historically paid for, this leaves the Applicant to make payment of such expenses herself from the amount of R15,000.00, as tendered by the Respondent.³⁶ The Applicant avers that this is not only financially unsustainable for her but that it is also telling of the attitude of the Respondent.³⁷

³¹ Pleadings: CaseLines 002-4 to 002-6 and 001-23 to 001-39

³² Sworn Statement: par 22.2, CaseLines 007-15

³³ Sworn Statement: par 25, CaseLines 007-21

³⁴ Sworn Statement: par 28, CaseLines 007-22

³⁵ Sworn Statement: paras 27.1 and 29, CaseLines 007-22 to 007-23

³⁶ Sworn Statement: par 27.2, CaseLines 007-22

³⁷ Sworn Statement: par 29, CaseLines 007-22 to 007-23

- [19] It was submitted by the Applicant's Counsel³⁸ that the Respondent has not alleged any change in his circumstances to show that his income has reduced,³⁹ in justification of his unilateral reduction in the level of maintenance he provided to the Applicant prior to her defending the divorce proceedings.⁴⁰ From the facts before me, as contained in the Sworn Statement, the Sworn Reply as well as in the *FDFs* filed on behalf the parties, I am in agreement with the submission. The Applicant alleges that this conduct on the part of the Respondent is malicious and unreasonable,⁴¹ and in the absence of any change in the Respondent's circumstances, this does suggest an element of malice on the part of the Respondent.⁴² I am inclined to agree. The Respondent denies that there is any malice on his part.⁴³

The Respondent's Tender

- [20] It is common cause that, in respect of certain of the Applicant's claims for maintenance *pendente lite*, the Respondent has tendered to continue making payment in regard to certain of such expenses, pending the finalisation of the divorce proceedings.⁴⁴
- [21] The Respondent's tender appears to have evolved, with slight nuances thereto, from the initial tender contained in his Sworn Reply,⁴⁵ to the Respondent's proposed Draft Order, filed on *20 February 2025*,⁴⁶ and to the Respondent's Comparative Table, filed on *25 February 2025*, being the day preceding the allocated date for the hearing of this matter.⁴⁷ Certain of the tenders made by

³⁸ Applicant's Heads of Argument: par 11.1, 007D-5 and as amplified during oral submissions at the hearing of the matter

³⁹ Applicant's Heads of Argument: par 11.1, CaseLines 007D-5

⁴⁰ Applicant's Heads of Argument: par 11.2, 007D-5 to 007D-6, and as amplified during oral submissions at the hearing of the matter

⁴¹ Sworn Statement: heading [G], read with par 24, CaseLines 007-20

⁴² Applicant's Heads of Argument: par 11.2, 007D-5 to 007D-6

⁴³ Sworn Reply: par 177, CaseLines 007-130

⁴⁴ Sworn Reply: paras 17 and 18, CaseLines 007-97 to 007-103; Respondent's Draft Order: CaseLines 007C-15 to 007C-21; Respondent's Practice Note: Comparative Table, CaseLines 007B-16 to 007B-21; Applicant's Practice Note: annexure "A" thereto, being Applicant's Comparative Table, CaseLines 007B-6 to 007B-11, Applicant's Heads of Argument: par 13 and the Table therein contained, CaseLines 007D-6 to 007D-13

⁴⁵ Sworn Reply: paras 17 and 18, CaseLines 007-97 to 007-103

⁴⁶ Respondent's Draft Order: CaseLines 007C-15 to 007C-21

⁴⁷ Respondent's Comparative Table: CaseLines 007B-16 to 007B-21

the Respondent are not accepted by the Applicant and these issues thus remain in dispute between the parties.⁴⁸

[22] To the extent, therefore, where there is no disparity between the relief sought by the Applicant, on the one hand, and the tender made by the Respondent in regard thereto, on the other hand, these items are accepted as not being in dispute between the parties and will be reflected accordingly as such in the order to be made herein.

[23] The items which are thus not in dispute between the parties are reflected in the following table:

NO.	EXPENSE
23.1.	the Applicant is to continue to reside and enjoy full and undisturbed use of the matrimonial home situated in Lonehill, Sandton. ⁴⁹
23.2.	the Respondent is to continue paying the costs of water and electricity consumption, rates, taxes, refuse, and sewage in respect of the matrimonial home. ⁵⁰ <i>(The only area of dispute in this regard is that the Applicant wants the Respondent to pay her directly in regard to these expenses whereas the Respondent wishes to pay the service providers directly. I can see no reason why the Respondent should not pay the service providers directly and this will be reflected in the order made herein).</i>
23.3.	the Respondent is to continue paying the armed response subscriptions. ⁵¹

⁴⁸ Sworn Reply: paras 17 and 18, CaseLines 007-97 to 007-103; Respondent's Practice Note: Comparative Table, CaseLines 007B-16 to 007B-21; Applicant's Practice Note: annexure "A" thereto, Applicant's Comparative Table, CaseLines 007B-6 to 007B-11, Applicant's Heads of Argument: par 13 and the Table therein contained, CaseLines 007D-6 to 007D-13

⁴⁹ Respondent's Practice Note: Comparative Table, CaseLines 007B-20 to 007B-21; Respondent's draft Order: prayer 2, CaseLines 007C-17

⁵⁰ Notice in terms of Rule 43: prayer 1.1, CaseLines 007-2 to 007-3; Sworn Reply: par 17, including table therein, CaseLines 007-92; to 007-98 Respondent's draft Order: prayer 3 (inclusive of prayers 3.1 to 3.4), CaseLines 007C-17; Respondent's Practice Note: Comparative Table, CaseLines 007B-16

⁵¹ Notice in terms of Rule 43: prayer 1.2.1.2, CaseLines 007-3; Sworn Reply: CaseLines 007-98; Respondent's draft Order: prayer 3.7, CaseLines 007C-17; Respondent's Practice Note, Comparative Table, CaseLines 007B-17

NO.	EXPENSE
23.4.	the Respondent is to continue paying the household and/or Homeowners' insurance premiums. ⁵²
23.5.	the Respondent is to continue paying the internet subscriptions (<i>for purposes of this Judgment it is assumed that the Internet subscription is the same as the fibre as no issue in this regard was made by either of the parties at the hearing of the matter</i>). ⁵³
23.6.	the Respondent is to continue paying the salary of the domestic worker employed at the matrimonial home, being Ms Elisa Madiba, in the sum of R5,000.00 per month. ⁵⁴
23.7.	the Respondent is to continue maintaining the Applicant's membership as a dependent of the medical aid scheme of which the Respondent is the main member, and to pay the monthly premiums in respect thereof. ⁵⁵
23.8.	the Respondent is to pay for any excess and/or non-recoverable medical expenses incurred by the Applicant which are not covered, refunded and/or discharged by the Respondent's medical aid scheme, the incurring of such expenses to be agreed beforehand, save in the event of an emergency, and excluding any cosmetic or aesthetic surgeries ⁵⁶ (<i>albeit that the Applicant seeks for the Respondent to pay <u>any excesses</u> not covered by the Respondent's medical aid, the Respondent has limited these excesses to exclude co-payments relating to any cosmetic or aesthetic surgeries. There is nothing before me to suggest that the Applicant has in the past had, or that she requires, any of the foregoing procedures and hence I am satisfied that the limitations in regard to excesses in the Respondent's tender</i>

⁵² Notice in terms of Rule 43: prayer 1.2.1.3, CaseLines 007-3; Sworn Reply: CaseLines 007-98; Respondent's draft Order: prayer 3.6, CaseLines 007C-17; Respondent's Practice Note: Comparative Table, CaseLines 007B-17

⁵³ Notice in terms of Rule 43: prayer 1.2.1.4, CaseLines 007-3; Sworn Reply: CaseLines 007-98; Respondent's draft Order: prayer 3.8, CaseLines 007C-17; Respondent's Practice Note: Comparative Table, CaseLines 007B-17

⁵⁴ Notice in terms of Rule 43: prayer 1.2.1.5, CaseLines 007-3; Sworn Reply: par 17, including table therein, CaseLines 007-98; Respondent's draft Order: prayer 3.5, CaseLines 007C-17; Respondent's Practice Note: Comparative Table, CaseLines 007B-17

⁵⁵ Notice in terms of Rule 43: prayer 1.2.4, CaseLines 007-4; Sworn Reply: par 17, including table therein, CaseLines 007-100; Respondent's draft Order: prayer 4.5, CaseLines 007C-18; Respondent's Practice Note: Comparative Table, CaseLines 007B-18;

⁵⁶ Notice in terms of Rule 43: prayer 1.3.3, CaseLines 007-5; Sworn Reply: par 17, including table therein, CaseLines 007-101; Respondent's draft Order: prayer 4.6, CaseLines 007C-18; Respondent's Practice Note: Comparative Table, CaseLines 007B-19

NO.	EXPENSE
	<i>in regard to excess expenditure not covered by his medical aid is reasonable in the circumstances and will be reflected accordingly in the order to be made herein).</i>
23.9.	the Respondent is to continue paying the annual fees in regard to TV licences. ⁵⁷
23.10.	Applicant's gym membership ⁵⁸ (<i>Initially the Respondent made no tender in respect of the Applicant's gym membership, stating that she should pay for same herself. The Respondent further stated that in light thereof that the Applicant's gym membership is deducted by way of a debit order from his account on a monthly basis, that he would deduct the amount of the debit order being R1,180.00 from the cash portion of R15,000.00 he has tendered to pay the Applicant.</i> ⁵⁹ <i>In the Respondent's draft Order and Comparative Table filed alongside the Respondent's Practice Note, the Respondent, however, has tendered to pay the Applicant's gym membership in the sum of R1,370.00 per month.</i> ⁶⁰ <i>It appears that the cost of the Applicant's gym membership has increased from the amount initially claimed by the Applicant in the sum of R1,180.00 to R1,370.00. This will be reflected in the Order to be made herein.</i>
23.11.	The Respondent to continue paying for all costs which are associated with the major dependent children. ⁶¹ (<i>Albeit that the Applicant is not making any claim in regard to expenses for the children, it is common cause that the Respondent pays all expenses for the children and that the Respondent has undertaken to continue paying for all costs which are associated with the major dependent children.</i> ⁶² <i>I include this aspect in the table in regard to matters which are not in dispute between the parties given that in law, both parents have a duty to support their children in accordance with the children's needs and in accordance with the respective means of the parties. A Court dealing with an application in</i>

⁵⁷ Notice in terms of Rule 43: prayer 1.3.1.3, CaseLines 007-4; Sworn Reply: par 17, including table therein, CaseLines 007-101; Respondent's draft Order: prayer 4.4, CaseLines 007C-18; Respondent's Practice Note: Comparative Table, CaseLines 007B-19

⁵⁸ Notice in terms of Rule 43: prayer 1.2.3, CaseLines 007-4; Respondent's draft Order: prayer 4.1, CaseLines 007C-18; Respondent's Practice Note: Comparative Table, CaseLines 007B-18

⁵⁹ Sworn Reply: par 17, including table therein, CaseLines 007-100 and CaseLines 007-102

⁶⁰ Respondent's draft Order: prayer 4.1, CaseLines 007C-18; Respondent's Practice Note: Comparative Table, CaseLines 007B-18

⁶¹ Respondent's draft Order: par 5.2, CaseLines 007C-19

⁶² Respondent's draft Order: prayer 5.2 (inclusive of all sub-sub-paragraphs thereto), CaseLines 007C-19; Respondent's Practice Note: Comparative Table, CaseLines 007B-21

NO.	EXPENSE
	<i>terms of Rule 43(1)(a) should be satisfied that major children who are still financially dependent are properly provided for.⁶³ In light of the foregoing, and further given the Respondent's tender to continue maintaining the children, it is my respectful view that such undertaking by the Respondent is to be incorporated in any Order I make in this matter and as proposed in the draft Order of the Respondent.</i>

The issues remaining in dispute in respect of claim for interim maintenance

[24] The issues which therefore remain in dispute between the parties insofar as the Applicant's claim for maintenance, *pendente lite*, is concerned, are summarised in the below table, and I will deal with, and make a determination in regard thereto, further below in this Judgment:-

NO.	EXPENSE
24.1.	The account for the landline at the matrimonial home. ⁶⁴
24.2.	DSTV subscriptions. ⁶⁵
24.3.	any excesses relating to any claims in respect of the household and/or homeowners' insurances. ⁶⁶
24.4.	Bonuses, overtime, medical expenses and/or other charges associated with the domestic worker, ⁶⁷ and which the Applicant quantifies as being in the amount of R1,000.00 per month. ⁶⁸
24.5.	The remuneration, bonuses and overtime in respect of the gardener/handyman/driver and general helper employed at the

⁶³ AF v MF: 2019 (6) SA 422 (WCC), at 438 G

⁶⁴ Notice in terms of Rule 43: prayer 1.1, CaseLines 007-2 to 007-3; Sworn Reply: par 17, including table therein, CaseLines 007-98

⁶⁵ Notice in terms of Rule 43: prayer 1.2.1, CaseLines 007-3; Sworn Reply: par 17, including table therein, CaseLines 007-98

⁶⁶ Notice in terms of Rule 43: prayer 1.2.1.3, CaseLines 007-3; Sworn Reply: par 17, including table therein, CaseLines 007-98C; Respondent's draft Order: prayer 3.6, CaseLines 007C-17; Respondent's Practice Note: Comparative Table, CaseLines 007B-17

⁶⁷ Notice in terms of Rule 43: prayer 1.2.1.5, CaseLines 007-3; Sworn Reply: par 17, including table therein, CaseLines 007-98 to 007-99;

⁶⁸ Sworn Statement: Annexure "MR2" thereto, CaseLines 007-39

NO.	EXPENSE
	matrimonial home, ⁶⁹ and which the Applicant quantifies as being in the amount of R1,000.00 per month. ⁷⁰
24.6.	The Applicant's claim in respect of the use of the BWM X5 and Mercedes Benz ML 350 motor vehicles driven by her, the insurance, including any excesses in regard thereto, as well as the Netstar and/or Tracker subscriptions. ⁷¹
24.7.	In relation to the BMW X5 and Mercedes Benz motor vehicles, the cost of licences, repairs, maintenance, tyre replacement and services. ⁷²
24.8.	In relation to the matrimonial home, the costs of the replacement of any household furniture, appliances and/or other equipment, with an item of a similar and/or comparative standard, model and features selected by the Applicant together with the costs of any repairs and maintenance required to the matrimonial home. ⁷³
24.9.	Two return international, and two return local, business class airline tickets to destinations of the Applicant's choice, at times selected by the Applicant. ⁷⁴
24.10.	an annual holiday allowance to cater for the cost of, <i>inter alia</i> , accommodation, transport, entertainment and general subsistence whilst on holiday, in the amount of R250,000.00, the first payment commencing within five days of the date of an Order, and which amount shall escalate on the anniversary of the date of the Order. ⁷⁵

⁶⁹ Notice in terms of Rule 43: prayer 1.2.1.6, CaseLines 007-3; Sworn Reply: par 17, including table therein, CaseLines 007-99

⁷⁰ Sworn Statement: Annexure "MR2" thereto, CaseLines 007-39

⁷¹ Notice in terms of Rule 43: prayer 1.2.2 (inclusive of sub-sub-paragraphs thereto), CaseLines 007-4; Sworn Reply: par 17, including table therein, CaseLines 007-99 to 007-100

⁷² Notice in terms of Rule 43: prayer 1.3.2 (inclusive of the sub-sub-paragraphs thereto), CaseLines 007-4 to 007-5; Sworn Reply: par 17, including table therein, CaseLines 007-101

⁷³ Notice in terms of Rule 43: prayer 1.3.1 (inclusive of the sub-sub-paragraphs thereto), CaseLines 007-4; Sworn Reply: par 17, including table therein, CaseLines 007-100

⁷⁴ Notice in terms of Rule 43: prayer 1.3.4, CaseLines 007-5; Sworn Reply: par 17, including table therein, CaseLines 007-101 to 007-102

⁷⁵ Notice in terms of Rule 43: prayer 1.4.2, CaseLines 007-5; Sworn Reply: par 17, including table therein, CaseLines 007-102

NO.	EXPENSE
24.11.	Payment of the sum of R30,500.00 per month, payable in advance, on or before the first day of each and every month, retrospectively with effect from <i>01 December 2024</i> , subject to an annual escalation. ⁷⁶
24.12.	Payment of the sum of R49,707.87, within five days of the date of the Order, alternatively by way of three equal instalments, payable at intervals of one month, the first instalment being due and payable within five days of the date of the Order ⁷⁷

Determination of issues in dispute in respect of Applicant's claim for interim maintenance

[25] It is trite that an Applicant is entitled to reasonable maintenance, *pendente lite*, dependent upon:-

25.1. the marital standard of living of the parties;

25.2. the Applicant's actual and reasonable requirements; and

25.3. the capacity of the Respondent to meet such requirements.⁷⁸

[26] It is further trite that the determination of each case is dependent upon the facts and circumstances peculiar to that matter.⁷⁹

[27] Maintenance under Rule 43(1)(a) is intended to be interim and temporary in nature and cannot be determined with the same degree of precision as would

⁷⁶ Notice in terms of Rule 43, prayer 1.4.1, CaseLines 007-5; Sworn Reply: CaseLines 007-102

⁷⁷ Notice in terms of Rule 43, prayer 1.4.3, CaseLines 007-6; Sworn Reply: par 17, including table therein, CaseLines 007-102

⁷⁸ Taute v Taute: 1974 (2) SA 675 (E), at 676 E; Botha v Botha: 2009 (3) SA 89 (W), at 105 C to 106 J; J.K. v E.S.K [2024] 1 All SA 775 (WCC), at par [49]

⁷⁹ Taute v Taute: 1974 (2) SA 675 (E)

be possible in a trial where detailed evidence is to be adduced.⁸⁰ An order in terms of Rule 43 is not meant to provide an interim meal ticket.⁸¹

- [28] It is against the backdrop of the foregoing principles that I shall deal with the items in dispute in regard to the Applicant's claim for interim maintenance.
- [29] Before I proceed to do deal with the remaining issues in dispute in regard to the Applicant's claim for interim maintenance, it was submitted on behalf of the Applicant that the very fact that the Respondent has made the tender, as detailed above, in itself establishes and confirms that the Applicant has a need for maintenance, it being only the quantum of such maintenance which is in dispute and which requires to be determined. I am in agreement with this submission as logic dictates that if the Applicant did not need maintenance, the Respondent would not have tendered to continue maintaining her in the respects in which he has, and as dealt with and detailed above.
- [30] In dealing with the items in dispute and making a determination in regard thereto, I have, in addition to the Sworn Statement and Sworn Reply, had regard to the Financial Disclosure Forms ("*FDFs*"), as filed by the parties.
- [31] The Applicant's *FDF* ("*the Applicant's FDF*") is dated *28 January 2025*, i.e. effectively two months after she deposed to her Sworn Statement in this application. *The Applicant's FDF*, and the annexures thereto, was filed electronically on the Court Online platform on *20 February 2025*.⁸²
- [32] The Respondent's *FDF* ("*the Respondent's FDF*") is dated *25 February 2025*, i.e. just over two months after the Respondent deposed to his Sworn Reply in this application and was filed electronically on the Court Online platform at around noon on the same date,⁸³ with certain annexures to *the Respondent's FDF* only

⁸⁰ Levin v Levin: 1962 (3) SA 330 (W), at 331 D; Taute v Taute: 1974 (2) SA 675 (E), at 676 C-D; Grauman v Grauman: 1984 (3) SA 477 (W), at 479 F

⁸¹ Nilsson v Nilsson: 1984 (2) SA 294 (C), at 295 F

⁸² Applicant's *FDF*: CaseLines 007-168 to 007-170, read with 007-201, 007-202, 007-204, 007-220, 007-247, 007-275, 007-304, 007-309, 007-311, 007-315, and 007-323

⁸³ Respondent's *FDF*: CaseLines 007-334, read with 007-356 and 007-148

being uploaded close to 23h00 on the evening preceding the allocated date of hearing.⁸⁴

- [33] It is common cause that this application was enrolled on the Opposed Family Court Roll for the week *24 February 2025 to 28 February 2025*,⁸⁵ and was allocated for hearing by and before me on *26 February 2025*. *The Respondent's FDF* was uploaded to the Court Online platform the day before the hearing of this matter, i.e. contrary to the provisions of the prevailing Practice Directive in this Division. It is also noted in regard to *the Respondent's FDF* that the Respondent has failed to annex all the supporting documentation as required in terms of *the FDF* and, as such, has failed to make the full disclosure of his financial affairs as required by the *FDF*. I will revert to this aspect later in this Judgment.
- [34] The Respondent's Counsel submitted during argument that *the Applicant's FDF* was also filed late, having regard to the provisions of the prevailing Practice Directive applicable thereto. During argument, the Respondent's Counsel also submitted that certain of the Applicant's credit card statements, as annexed to her *FDF*, were illegible, and questioned whether this was not purposefully so, and on the basis that "*statements don't lie*". By extension of the same argument in respect of the Respondent's failure to provide proper disclosure by providing bank statements in respect of, for example, his HSBC bank account, I am at liberty to conclude that the Respondent's non-disclosure of such information appears to be deliberate and aligns with submissions made by the Applicant's Counsel to the effect that the Respondent has adopted an approach of "*catch me if you can*."⁸⁶

⁸⁴ CaseLines: 007-401 to 007-409

⁸⁵ Notice of Final Set Down: CaseLines 007A-10 to 007A-11

⁸⁶ Applicant's Heads of Argument: par 23, CaseLines 007D-18; Applicant's FDF: par 4.2, CaseLines 007-198

Standard Of Living

- [35] The Applicant avers that the parties had an “*exceptionally high*”/ a “*very high*” standard of living.⁸⁷ According to the Respondent the parties experienced a standard of living which was “*comfortable but always aware of spending and try to control/curb spending where possible* ”.⁸⁸
- [36] As dealt with hereinabove, the Respondent left South Africa in **2006** and has been living abroad since.
- [37] In addition, the Respondent avers that once *the children* had left the matrimonial home which, from the facts before me, appears to be in **2023**, the Respondent began explaining to the Applicant that he could not afford her demands and that she did not have to reside in: “*a massive 4-bedroomed home, by herself, as well as have three vehicles in her possession for one person.*”⁸⁹
- [38] On the facts before me, and despite the Respondent’s alleged protestations, the Respondent, however, continued to fund the Applicant in the aforesaid lifestyle and, to a large extent, based on what has been stated above, has tendered to continue doing so, as this was clearly the standard of living of the parties and this, the Respondent continued to do despite *the children* moving out of the matrimonial home in and during **2023**, and further despite the Applicant re-entering the job market in **November 2023**.
- [39] On the papers before me, and having heard argument, it is fair to say that the standard of living enjoyed by the parties was more than the “*comfortable*” standard of living which the Respondent wishes to portray and appears to have been more in line with the Applicant’s averments in regard to the parties’ standard of living of being “*exceptionally high*” to “*very high*”.

⁸⁷ Sworn Statement: par 23, CaseLines 007-16

⁸⁸ Respondent’s FDF: par 4.2, CaseLines 007-353

⁸⁹ Sworn Reply: par 37, CaseLines 007-108

Parties' Respective Means

- [40] As dealt with above, the Applicant avers that she has been a stay-at-home mother and wife for the majority of the marriage and that after the parties' marriage in **1999**, and by agreement with the Respondent, she stopped all forms of work some 3 years later, during **2002**.⁹⁰
- [41] The Applicant states that with what the Applicant terms the onset of the breakdown of the marriage in **2023**, she decided to re-enter the travel industry and to obtain freelance work as a tour guide.⁹¹ Since **November 2023**, the Applicant states that she has obtained work as a tour guide and that she is an independent contractor and that, as such, is reliant upon a tour operator to award her certain contract work.⁹² The Applicant avers that she cannot predict her income with any degree of certainty and that she cannot rely on such income for purposes of discharging her reasonable maintenance requirements.⁹³
- [42] Her net monthly income for the twelve month period preceding her deposing to her Sworn Statement in support of this application, on **27 November 2024**, was the sum of R147,024.38,⁹⁴ which equates to the sum of R12,252,03 per month.
- [43] According to *the Applicant's FDF*, she receives a meal allowance in respect of her operating as a freelance tour guide, which meal allowance has equated to approximately R20,000.00 "*in the same last 12 month period*".⁹⁵ This equates to R1,666.67 per month.
- [44] In addition, the Applicant, in her *FDF*, declares that she earned approximately R8,500.00 over the preceding 12 month period, said amount representing

⁹⁰ Sworn Statement: par 32, CaseLines 007-23

⁹¹ Sworn Statement: par 34, CaseLines 007-24

⁹² Sworn Statement: paras 35 and 36, CaseLines 007-24

⁹³ Sworn Statement: par 36, CaseLines 007-24 to 007-35

⁹⁴ Sworn Statement: par 35, CaseLines 007-24, read with CaseLines 007-36

⁹⁵ Applicant's FDF: par 2.15, CaseLines 007-186

income from her investments.⁹⁶ The aforesaid income equates to R708.33 per month.

[45] This therefore means that, taking the foregoing income into account, as detailed above, the Applicant, on her version, earns a total amount of approximately R14, 627,03 per month. The Applicant states that her monthly expenses, over and above the expenses paid for the by Respondent, amount to R30,535.07.⁹⁷ It is the Applicant's contention that, given the Respondent's historic level of support of her and that she was never required to work and meaningfully contribute to her own maintenance, it would be unfair to reduce the extent of the Respondent's contribution towards her maintenance, having regard to her "*hope of future income*".⁹⁸

[46] From *the Applicant's FDF*, and more specifically, her maintenance requirements as detailed therein, and which differs slightly from those contained in annexure "MR2" to her Sworn Statement,⁹⁹ it appears that the Applicant has included therein the following expenses:-

- 46.1. an amount of R1,150.74, being in respect of the motor vehicle insurance for the Hyundai motor vehicle, which it is common cause is reserved for us by the partes' major daughter and which insurance is paid for by the Respondent; and
- 46.2. an amount of R151.00 in regard to the Netstar tracking device pertaining to the said Hyundai motor vehicle.¹⁰⁰

[47] These two figures equate to R1,310.74 and must, in my view, be deducted from the Applicant's total alleged expenditure of R30,535.07, making the total expenditure R29,224.33. From this figure must further be deducted the

⁹⁶ Applicant's FDF: par 2.16, CaseLines 007-187 to 007-188

⁹⁷ Sworn Statement: Annexure "MR 2" thereto, CaseLines 007-39 to 007-42; In the Applicant's FDF this figure is slightly less, being R35,415.07, CaseLines 007-197

⁹⁸ Sworn Statement: par 36, CaseLines 007-24 to 007-35

⁹⁹ Sworn Statement: Annexure "MR 2" thereto, CaseLines 007-39 to 007-42

¹⁰⁰ Applicant's FDF: par 3, more specifically 3.1 being the schedule of monthly expenditure, CaseLines 007-193 and 007-194

Applicant's monthly income in the sum of R14,627.03, which leaves a balance of R14,597.30, which latter figure represents the applicant's approximate monthly shortfall.

[48] According to the *Applicant's FDF*:

48.1. the total value of her personal assets is R162,370.61;¹⁰¹

48.2. the total value of her other assets is R5,676.53;¹⁰²

48.3. the total value of her liabilities is zero.¹⁰³ This is contrary to what is stated in the Applicant's Sworn Statement where she alleges that her only liability is the amount outstanding on her credit card which the Respondent failed to discharge;¹⁰⁴

48.4. the value of her assets, less her liabilities is the sum of R168,047.14.¹⁰⁵

[49] Insofar as the Respondent's means are concerned, the Respondent, as dealt with earlier in this judgment, is employed as a Captain with Qatar Airlines and has been so employed since 2007. According to the Respondent, his monthly salary is earned in the currency of Qatar, being the Qatari Riyal, the Rand value of which obviously fluxuates depending on the exchange rate, from time to time. The Respondent's salary in Qatari Riyal is QAR52,281.00 which, converted to R282,968.14 per month,¹⁰⁶ as at the date of signature by the Respondent of his Sworn Reply, being 21 December 2024,¹⁰⁷

[50] In addition, having regard to *the Respondent's FDF*, it appears that over and above his monthly salary, the Respondent, in the 24 month period preceding

¹⁰¹ Applicant's FDF: C1 to C6, CaseLines 007-180;

¹⁰² Applicant's FDF: F, CaseLines 007-182 to 183

¹⁰³ Applicant's FDF: G, CaseLines 007-184

¹⁰⁴ Sworn Statement: par 40, CaseLines 007-26

¹⁰⁵ Applicant's FDF: par 2.19, CaseLines 007-189

¹⁰⁶ Sworn Reply: par 208, CaseLines 007-141 read together with annexure "AA5" thereto, CaseLines 007-160

¹⁰⁷ Sworn Reply: CaseLines 007-148

his deposing to the *FDF*, received bonuses or other occasional payments from his employer which were not reflected in his gross and/or net income in the total sum of R316,407.03.¹⁰⁸ This equates to an amount of R13,183,62 per month.

[51] Furthermore, and arising out of the Respondent's employment, he receives certain perks or other remuneration such as travel payments, accommodation, and/or meal expenses which, according to the Respondent varies as per his flight schedule, but which equates to approximately R12,629.61 per month.¹⁰⁹

[52] According to my calculations, therefore, the Respondent's income from his employment alone equates to R308,781.38 on a monthly basis. By extension, when compared to the Applicant's income as dealt with hereinabove, this translates to 21 times the Applicant's income.

[53] According to *the Respondent's FDF* which, as stated above, was filed on the eve of the hearing of this Application, and in respect of which there are deficiencies insofar as the provision of supporting documentation is concerned, the Respondent declares his total monthly expenditure to be the sum of R235,915.00, made up as follows:-

53.1. in respect of himself, R55,650.00;

53.2. in regard to *the children*, R149,740.00;

53.3. in regard to the Applicant, R30,525.00 (*plus the expenses paid for by him*).¹¹⁰

[54] It further appears, however, from *the Respondent's FDF*, that there are additional expenses, over and above the R235,915.00, the quantum of which expenses have not been disclosed in his *FDF*, being loan repayments for medication in respect of his son, *ad hoc* expenses for *the children*, the Applicant and himself

¹⁰⁸ Respondent's FDF: CaseLines 007-344

¹⁰⁹ Respondent's FDF: par 2.3, CaseLines 007-344

¹¹⁰ Respondent's FDF: CaseLines 007-348 to 007-352

and the monthly premium for his son's medical aid.¹¹¹ In the absence of any further particularity in regard to these alleged additional expenses, it is of course difficult for this Court to assess what the true position is, and further against the backdrop of the Respondent's failure to provide the requisite supporting documentation as required by the provisions of the *FDF*. Accordingly, these alleged additional expenses will be not be taken into account.

[55] In the premise, and based on the figures as provided by the Respondent, on his own version, he has a monthly surplus of at least R72,866.38.

[56] According to the *Respondent's FDF*:

56.1. the total value of his interest in the matrimonial home is R6,000,000.00;¹¹²

56.2. the total value of his personal assets is R592,159.50;¹¹³

56.3. the total value of his pension interest is R419,627.24;¹¹⁴

56.4. the total value of his liabilities is R180,000.00.¹¹⁵ In this respect the Respondent states that the amount is made up of an incremental loan from Derma Africa, taken in **2024**, for the major son's medication, in the sum of R90,000.00 and a further similar loan, for the same amount, to be taken in **2025**;¹¹⁶

56.5. the total value of his assets less his liabilities is R6,831,426.74, "*less inheritance utilized above plus CPI thereon: (R5,408,385.09)*", being R1,423,041.65.¹¹⁷ This aspect is not explained *in the Respondent's FDF*. In his Sworn Reply, however, the Respondent states that he received an

¹¹¹ Respondent's FDF: CaseLines 007-352

¹¹² Respondent's FDF: par 2.1, CaseLines 007-337

¹¹³ Respondent's FDF: C1 to C6, CaseLines 007-340;

¹¹⁴ Respondent's FDF: F, CaseLines 007-342 to 007-343

¹¹⁵ Respondent's FDF: D, CaseLines 007-341

¹¹⁶ Ibid

¹¹⁷ Respondent's FDF: par 219, Caselines 007-347 to 007-348

inheritance of R3,000,000.00 and that the amount was used to buy the BMW motor vehicle currently in the Applicant's possession and to support the Applicant's expenses.¹¹⁸ No proof of the foregoing is provided.

[57] It is further clear from the Respondent's Sworn Reply, read together with *the Respondent's FDF* that:-

57.1. the Respondent is a Trustee/Beneficiary of a Trust, ostensibly an *inter vivos* Trust;¹¹⁹

57.2. the Trust purchased, and owns, a light piston engine propeller aircraft;¹²⁰

57.3. the Trust is the 100% shareholder of a private profit company which purchased, in and during 2022, a sizeable piece of land in Limpopo Province for an amount of R14,000,000.00.¹²¹ According to the Applicant the Respondent is constructing an exclusive and luxurious game lodge on the aforesaid property;¹²²

57.4. it is not clear from either the Respondent's sworn Reply, or his *FDF*, what precisely the Respondent's beneficial interest in regard to the Trust and/or the private profit company owned by the Trust, is, and this would be something that would need to be investigated further for the purposes of the pending divorce proceedings, and more specifically, in relation to the determination of the accrual. I will revert to this aspect further when I deal with the Applicant's claim for a contribution towards her legal costs.

[58] Given that which has already been stated hereinabove in this judgment insofar as the Respondent's means are concerned, I am satisfied that the Respondent

¹¹⁸ Sworn Reply: paras 238 and 239, CaseLines 007-145

¹¹⁹ Respondent's FDF: par 2.2, CaseLines 007-344

¹²⁰ Sworn Reply: paras 105 to 107, CaseLines 007-120

¹²¹ Sworn Reply: paras 213 and 214, CaseLines 007-41; Sworn Statement: par 49, CaseLines 007-28

¹²² Sworn Statement: par 49, CaseLines 007-28

has the capacity to continue to contribute to the Applicant's maintenance requirements, *pendente lite*, subject to what is stated herein below in this regard.

Applicant's actual and reasonable requirements in so far as claim for a cash contribution in relation to monthly expenses is concerned

[59] As stated above, the Applicant avers that her expenses, i.e. her expenses which are not paid for by the Respondent, either directly or indirectly, amount to R30, 535.07 per month.¹²³

[60] It is common cause that the Applicant is claiming in this application a cash contribution from the Respondent in the sum of R30, 500.00. She states that she requires this amount to fund the balance of her maintenance requirements and seeks that the Respondent pays the same to her on a monthly basis, subject to an annual escalation.¹²⁴

[61] As dealt with above, the Applicant therefore wants this Court to ignore the income she currently earns, together with any future income she may earn, for purposes of any order to be made herein. I am not inclined to do so.

[62] Given that I have determined that the Applicant's actual expenses are R29,224.33, and that her monthly shortfall is the sum of R14,597.30, I am therefore respectfully of the view that the tender by the Respondent to pay the sum of R15,000.00 per month as a cash contribution towards the Applicant is, in the circumstances, reasonable, and will cover the Applicant's shortfall.

[63] The Applicant has claimed that the cash component must be subject to an annual escalation in terms of the Consumer Price Index and I am satisfied that, pending the finalisation of the divorce proceedings between the parties, such

¹²³ Sworn Statement: par 31, CaseLines 007-23, read together with annexure "MR2", CaseLines 007-39 to 007-42

¹²⁴ Sworn Statement: par 31, CaseLines 007-23, read together with Notice in terms of Rule 43: prayer 1.4.1, CaseLines 007-5

escalation is reasonable and necessary and the Order I intend making herein will take this into account.

Applicant's actual and reasonable requirements in so far as claims for maintenance in regard to remaining issues in dispute is concerned

- [64] In regard to the Applicant's claim that the Respondent continue paying the account for the fixed landline at the matrimonial home, whilst the Respondent has tendered to make payment in respect of this expense, he has only tendered to do so up to and including *April 2025*.¹²⁵ No reason is provided by the Respondent for doing so and this cut-off date seems arbitrary and further smacks of penny-pinching in the bigger scheme of this matter. It is my respectful view that there is no basis for the Respondent to tender to only pay the fixed landline costs up to and including *April 2025* and that he should continue to pay for the same, *pendente lite*, directly to the service provider concerned. The order I make will be reflective hereof.
- [65] It is common cause that the Respondent has tendered to pay the DSTV subscriptions up to and including *April 2025*.¹²⁶ The reason advanced by the Respondent for this is that, according to him, there was a previous problem with the DSTV which he had to sort out and which "*locked him in for a further year*" which subscription ends in *April 2025*. Accordingly, it is the Respondent's view that the Applicant should continue with the DSTV thereafter at her own expense.¹²⁷ In my view, for similar reasons expressed in regard to the expense for the landline, the Respondent must continue to pay for this expense, *pendente lite*, directly to the service provider concerned.
- [66] In regard to the expense pertaining to any excesses relating to any claims in respect of the household and/or homeowners' insurances, as stated above, the

¹²⁵ Notice in terms of Rule 43: prayer 1.1, CaseLines 007-2 to 007-3; Respondent's draft Order: prayer 4.8, CaseLines 007C-18; Respondent's Practice Note: Comparative Table, CaseLines 007B-16 to 007B-17

¹²⁶ Notice in terms of Rule 43: prayer 1.2.1.1, CaseLines 007-2 to 007-3; Sworn Reply: CaseLines 007-92; Respondent's draft Order: prayer 4.7, CaseLines 007C-18; Respondent's Practice Note: Comparative Table, CaseLines 007B-17

¹²⁷ Sworn Reply: CaseLines 007-98

Respondent's tender evolved from what was initially stated in his Sworn Reply to what was encapsulated in the Respondent's draft Order and the Comparative Table associated with the Practice Note filed on behalf of the Respondent. In the Respondent's Sworn Reply the Respondent did not draw a distinction between the premiums, on the one hand, and the excesses on the other, and stated that he will continue to pay these expenses directly.¹²⁸ No reason is provided by the Respondent for excluding the excesses in his final tender. In my view, the Respondent should continue to be liable for this expense, *pendente lite*.

- [67] In regard to the claim for bonuses, overtime, medical expenses and/or other charges associated with the domestic worker,¹²⁹ in the sum of R1,000.00 per month, these expenses appear to be of an *ad hoc* and discretionary nature. The Respondent refuses to pay any additional expenses in regard to the domestic worker, other than her agreed monthly salary of R5, 000.00, which has been tendered by him. The basis for his refusal is that *the children* are majors and are studying elsewhere and do not frequent the matrimonial home often. Any overtime which was previously paid to the domestic worker was when *the children* were younger and when same would be paid in the event that the Applicant needed extra assistance. The Respondent's view is that there is no requirement for the domestic worker, in the circumstances, to even work full-time, let alone overtime, as only the Applicant resides in the matrimonial home. The Respondent view is that these further expenses should be for the Applicant's account.¹³⁰ I am persuaded by the foregoing.

- [68] The Applicant claims R1,000.00 per month for remuneration, bonuses and overtime in respect of the gardener/handyman/driver and general helper ("*the gardener*") employed at the matrimonial home.¹³¹ The Applicant provides no proof of this expense and does not provide a breakdown and allocation of the expense. Based on what is said below in relation to the vehicles, it seems that

¹²⁸ Sworn Reply: CaseLines 007-98

¹²⁹ Notice in terms of Rule 43: prayer 1.2.1.5, CaseLines 007-3; Sworn Reply: CaseLines 007-98 to 007-99;

¹³⁰ Sworn Reply: CaseLines 007-98 to 007-99

¹³¹ Notice in terms of Rule 43: prayer 1.2.1.6, CaseLines 007-3; Sworn Reply: CaseLines 007-99

the Applicant uses the gardener to take her to the airport when she travels and to run errands for her. The Respondent makes no tender in respect of this expense, averring that this expense is an “*absolute fabricated claim*” made by the Applicant in that the gardener and the parties had a longstanding arrangement to the effect that the gardener could reside at the matrimonial home, rent-free, on the basis that he could work within the area and, on the weekends, assist the parties with any extra garden work *in lieu* of paying rent.¹³² I agree that this expense should be borne by the Applicant.

- [69] In regard to the Applicant’s claim in respect of the BWM X5 and Mercedes Benz ML 350 motor vehicles driven by her, more specifically for the insurance, including any excesses, and the Netstar and/or Tracker subscriptions in respect of the vehicles,¹³³ the Respondent avers that the Applicant is in possession of three motor vehicles, a BMW, a Mercedes Benz and a Hyundai i10, the latter vehicle being the vehicle driven by the parties’ major daughter when she is in the country. The Respondent contends that it is unnecessary and excessive for the Applicant to be in possession of three vehicles. The Respondent initially tendered that the Applicant should return either the BMW or the Mercedes Benz so that he can sell one and, in turn, continue to pay the insurance and Netstar, on an interim basis, in regard to the vehicle which the Applicant elects to retain.¹³⁴ The Respondent’s aforesaid tender changed in the Respondent’s proposed draft Order to the effect that the Applicant could retain the use and enjoyment of the BMW motor vehicle, with the Respondent covering the costs of insurance, Tracker and the annual licence fees in respect of the BMW.¹³⁵

- [70] In *the Applicant’s FDF*, she admits that she has three vehicles in her possession, confirming the position in regard to the Hyundai¹³⁶ She states that the BMW X5 is the vehicle she uses for everyday use. She does, however, use the Mercedes regularly to transport pets (*currently 6 dogs*), take items to the

¹³² Sworn Reply: CaseLines 007-99

¹³³ Notice in terms of Rule 43: prayer 1.2.2 (inclusive of sub-sub-paragraphs thereto), CaseLines 007-4; Sworn Reply: CaseLines 007-99 to 007-100

¹³⁴ Sworn Reply: CaseLines 007-99 to 007-100

¹³⁵ Respondent’s draft Order: prayers 4.2 and 4.3, CaseLines 007C-18. This tender is echoed in the Respondent’s Practice Note Comparative Table: CaseLines 007B-18

¹³⁶ Applicant’s FDF: par 3, being table of maintenance requirements, CaseLines 007-192 to 007-193

rubbish dump, and for the gardener to transport the Applicant to the airport for travel and to run various other errands as she says that the Mercedes is far less reliable, being almost 20 years old, and suffers from leaks and overheating.¹³⁷

- [71] In *the Respondent's FDF* he states, in relation to the Applicant, without quantifying the same, that he pays for the insurance, and the Netstar and/or Tracker subscriptions in regard to the vehicles.¹³⁸
- [72] In relation to the Applicant's claim for the cost of licences, repairs, maintenance, tyre replacement and services BMW X5 and Mercedes Benz motor vehicles,¹³⁹ as stated above, the Respondent's tender evolved to the point where it is his contention that the Applicant should remain in possession of only the BMW motor vehicle and in respect of which vehicle the tender extends to the insurance, Tracker, and annual licence fees for the BMW X5. The tender does not extend to the remaining items claimed by the Applicant,¹⁴⁰ being repairs, maintenance, tyre replacements and services. In *the Applicant's FDF*, she states that: "*recently, the Respondent refused to pay for the BMW to be serviced unless I effectively halt the legal proceedings.*"¹⁴¹
- [73] It is common cause that the Mercedes and BMW are older model vehicles which have historically been used by the Applicant. In the Respondent's *FDF*, he states that he pays these vehicle-related expenses, presumably including the Hyundai, and attributes the sum of R4,000.00 per month to this expense.¹⁴²
- [74] In the circumstances, my view is that the *status quo* in regard to the BMW X5 and Mercedes Benz vehicles should remain, *pendente lite*, and the order I make will be reflective thereof.

¹³⁷ Ibid

¹³⁸ Respondent's FDF: par 3, CaseLines 007-349

¹³⁹ Notice in terms of Rule 43: prayer 1.3.2 (inclusive of the sub-sub-paragraphs thereto), CaseLines 007-4 to 007-5; Sworn Reply: CaseLines 007-101

¹⁴⁰ Respondent's draft Order: prayer 4.3, CaseLines 007C-18; Respondent's Practice Note: Comparative Table, CaseLines 007B-18

¹⁴¹ Applicant's FDF: par 4.4, CaseLines 007-199

¹⁴² Respondent's FDF: par 3.1, CaseLines 007-349

- [75] Regarding the claim for the costs of the replacement of any household furniture, appliances and/or other equipment, with an item of a similar and/or comparative standard, model and features selected by the Applicant together with the costs of any repairs and maintenance required to the matrimonial home,¹⁴³ same is disputed *in toto* by the Respondent. The Respondent states, in disputing this expense, that he has contributed to the renovations of the matrimonial home even though he has not resided there since **2006**. He further states that he has paid for a solar system and inverter and that the whole house has been repainted and the external wall replaced. In the Respondent's view, all furniture and household equipment is in good working order and he cannot see that anything would require to be replaced. In the event, however, of something requiring to be replaced, his view is that it should be at the expense of the Applicant.¹⁴⁴
- [76] It is common cause that in the pending divorce proceedings, part of the relief which is sought by the Applicant, in her Counterclaim, is that the Respondent must pay her the sum of R1,500,000.00, alternatively certain periodical payments, in order for the Applicant to acquire furniture, appliances and other household effects.¹⁴⁵
- [77] I am thus not inclined to grant the claim for the replacement of household items, *pendente lite*, as this aspect can be dealt with in the pending divorce proceedings in due course. Insofar as repairs and maintenance to the matrimonial home are concerned, I am of the view that any major issues in the interim would fall to be covered by the household/homeowner's insurance, the premiums and excesses in respect of which I have found the Respondent liable to pay, *pendente lite*, and as such, I am also not inclined to grant this claim.
- [78] The Applicant claims two return international, and two return local, business class airline tickets to destinations of the Applicant's choice, at times selected

¹⁴³ Notice in terms of Rule 43: prayer 1.3.1 (inclusive of the sub-sub-paragraphs thereto), CaseLines 007-4; Sworn Reply: CaseLines 007-100

¹⁴⁴ Sworn Reply: CaseLines 007-100

¹⁴⁵ Sworn Statement: par 17.2.4, CaseLines 007-13

by the Applicant.¹⁴⁶ In my view, this claim does not fall within the purview of the relief intended to be provided in the nature of interim maintenance in terms of Rule 43. The Respondent avers that, by virtue of his employment with Qatar Airways, each family member receives one free airline ticket per annum to Doha, Qatar. The Respondent tenders such ticket to the Applicant, on an interim basis, only for so long as the Respondent continues to be employed by Qatar Airways, and within the parameters of what that free ticket entails and when and how it comes about, on the *proviso* that the Applicant shall be solely responsible for any additional traveling expenses exceeding the annual free ticket as aforesaid.¹⁴⁷ The order I make will accordingly reflect the terms of the Respondent's tender.

[79] In regard to the Applicant's claim for an annual holiday allowance to cater for the cost of, *inter alia*, accommodation, transport, entertainment and general subsistence whilst on holiday, in the amount of R250, 000.00,¹⁴⁸ which amounts to R20,833.33 per month, this claim is rejected outright by the Respondent as being excessive, unreasonable and unaffordable.¹⁴⁹ The difficulty with this claim is that it is couched in broad terms, without any detail as to how the amount is computed. There is no breakdown to assist the Court to consider and evaluate this claim. In the scheme of the facts of this matter, and in light of the relief intended to be provided by way of interim maintenance in terms of Rule 43, I am not inclined to grant this relief.

[80] Regarding the Applicant's claim for payment of the sum of R49, 707.87, same pertains to the dispute in regard to payment of the Applicant's credit card by the Respondent and which the Applicant avers the Respondent stopped paying with effect from *September 2024*. The amount represents the outstanding balance on the Applicant's credit card as at the date of her deposing to her Sworn Statement in regard to this Rule 43 Application, being *27 November*

¹⁴⁶ Notice in terms of Rule 43: prayer 1.3.4, CaseLines 007-5; Sworn Reply: CaseLines 007-101 to 007-102

¹⁴⁷ Sworn Reply: CaseLines 007-101 to 007-102

¹⁴⁸ Notice in terms of Rule 43: prayer 1.4.2, CaseLines 007-5

¹⁴⁹ Sworn Reply: CaseLines 007-102

2024.¹⁵⁰ The Respondent rejects this claim outright and states that same should be for the Applicant's own account, further stating that the Applicant has failed to provide any statements for this credit card yet expects him to pay for same.¹⁵¹

- [81] In her Sworn Statement, the Applicant states that her only liability is the amount outstanding in respect of her credit card, as aforesaid.¹⁵² However, in *the Applicant's FDF*, deposed to two months later, she declares that she has no liabilities i.e. that she does not owe any money on credit cards.¹⁵³ In the Applicant's list of monthly expenditure, in both her Sworn Statement and her *FDF*, she also does not budget for a monthly credit card repayment.¹⁵⁴ I am not inclined to grant the Applicant this relief as, in line with the decision of *Greenspan v Greenspan*, the lumpsum claimed is in regard to interim maintenance, with Rule 43(1)(a) envisaging periodic payments in this regard, the Court having no jurisdiction to award lumpsum payments in this respect.¹⁵⁵

Retrospectivity of Applicant's claim for interim maintenance

- [82] The Applicant seeks an order that the Respondent be ordered to pay her claim for interim maintenance with retrospective effect from *01 December 2024*.¹⁵⁶
- [83] In light of my findings above, and further in light of the Respondent's tender to continue making payment of certain expenses directly, it being common cause that the Respondent has been effecting payment of the sum of R15,000.00 per month to the Applicant as a cash component with effect from *November 2024*, in my mind there is no basis, *in casu*, on the facts and circumstances before me, to justify the retrospective order, as sought by the Applicant.

¹⁵⁰ Sworn Statement: par 25, CaseLines 007-21

¹⁵¹ Sworn Reply: CaseLines 007-102

¹⁵² Sworn Statement: par 40, CaseLines 007-26

¹⁵³ Applicant's FDF: par 2.13, CaseLines 007-184

¹⁵⁴ Sworn Statement: Annexure "MR2" thereto, CaseLines 007-39 to 007-42, Applicant's FDF: par 3, CaseLines 007-190 to 007-197

¹⁵⁵ *Greenspan v Greenspan*: 2000 (2) SA 283 (C)

¹⁵⁶ Notice in terms of Rule 43: prayer 1, CaseLines 007-2

APPLICANT'S CLAIM FOR A CONTRIBUTION TO COSTS IN TERMS OF RULE 43(1)(b)

[84] The Applicant further alleges that she is unable to progress the divorce action, *(in respect of which it is common cause, as stated above, that the pleadings have closed)*, due to a lack of funds and hence she has launched the Rule 43 Application, with the Applicant verily believing that her defence to the Respondent's claims in the divorce action and her Counterclaim thereto, have reasonable prospects of success.¹⁵⁷

[85] It is common cause that the Applicant is seeking a contribution towards her legal costs in the sum of R1,900,000.00, and that the Respondent has disputed such claim, stating that the Applicant should not be entitled to any contribution whatsoever. The parties are therefore at polar opposites in regard to this claim.

[86] In regard to her claim, the Applicant states that:-

86.1. "*thus far*", presumably being up to the date she deposed to her Sworn Statement in support of this application, being **27 November 2024**, she has managed to make payment of the legal costs that she has incurred from her "*relatively minimal earnings and/or savings*";¹⁵⁸

86.2. this is "*clearly not sustainable*";¹⁵⁹

86.3. she requires a contribution towards her future legal costs;¹⁶⁰

86.4. the issues in dispute in the pending divorce action are "*numerous and complex*" and relate, *inter alia*, to the Applicant's claim that the Respondent maintain her post the divorce, including relief ancillary to such claim, being the provision of accommodation, furniture, appliances,

¹⁵⁷ Sworn Statement: paras 19 and 20, CaseLines 007-14

¹⁵⁸ Sworn Statement: par 57, CaseLines 007-31

¹⁵⁹ Ibid

¹⁶⁰ Ibid

and/or other household equipment and a motor vehicle, the determination of the accrual of the parties' respective estates, and who should be liable for the costs of the divorce action;¹⁶¹

86.5. having regard to the issues in dispute and "*the respondent's unfortunate attitude towards*" the Applicant, "*as gleaned from*" the contents of the Sworn Reply, she will unfortunately be required to engage in extensive litigation at great cost, including consulting with counsel, attorneys and experts, which experts include an industrial psychologist, an actuary, an accountant/auditor, and an appraiser;¹⁶²

[87] In support of her claim for a contribution to her future legal costs, the Applicant has annexed to her Sworn Statement a Bill of Costs, which is headed: "*Memorandum of Estimated Future Legal Fees and Disbursements to be incurred by the Applicant/Defendant, in the above-mentioned matter up to and including the first day of trial, and due and payable to Steve Merchak Attorneys for purposes of an assessment of a Contribution towards Costs,*"¹⁶³ ("***the Bill of Costs***").

[88] ***The Bill of Costs*** was prepared by an attorney, Mr Ray Gertzen, who further deposed to a Confirmatory Affidavit in regard to ***the Bill of Costs*** as prepared by him relation to the Applicant's future legal costs.¹⁶⁴ The grand total reflected on ***the Bill of Costs***, inclusive of fees, disbursements and VAT, is the sum of R1,914,912.63.¹⁶⁵

¹⁶¹ Sworn Statement: par 58, including the subparagraphs thereto, CaseLines 007-31 to 007-32

¹⁶² Sworn Statement: par 59, including all subparagraphs thereto, CaseLines 007-32 to 007-34

¹⁶³ Sworn Statement: paras 60 and 61, CaseLines 007-34, read with Annexure "MR 7.1" thereto, CaseLines 007-72 to 007-83

¹⁶⁴ Sworn Statement: Annexure "MR7.2" thereto, CaseLines 007-166 to 007-167

¹⁶⁵ Sworn Statement: par 61, CaseLines 007-34, read with Annexure "MR 7.1" thereto, at 007-83

[89] The Applicant further annexed to her Sworn Statement, Quotations/*Proforma* Invoices, from an Industrial Psychologist,¹⁶⁶a firm of Actuaries,¹⁶⁷a Chartered Accountant,¹⁶⁸and a Valuer/Sworn Appraiser.¹⁶⁹

[90] I will revert to *the Bill of Costs*, and supporting annexures further hereinbelow.

[91] In his opposition to the Applicant's claim for a contribution to her future legal costs, the Respondent states that:-

91.1. the Applicant should not be entitled to a contribution towards costs as it is the Applicant who is insistent on proceeding with litigation in circumstances where, in the Respondent's view, "*this matter could easily be resolved*"¹⁷⁰ and where it is unnecessary to "*incur such high legal fees*";¹⁷¹

91.2. despite requests made to the Applicant's attorneys by his attorney to mediate the matter, this was rejected by the Applicant's attorneys with a "*flimsy excuse*";¹⁷²

91.3. he cannot afford the Applicant's legal costs "*of an expensive attorney who is intent on litigation*";¹⁷³

91.4. prior to the Respondent issuing Summons, and in an effort to avoid litigation, he had entered into verbal settlement discussions with the Applicant, which were in his view, fair and reasonable. He was forced to

¹⁶⁶ Sworn Statement: Annexure "MR 6.1" thereto, being from Jacobson Talmud Consulting, dated 05 November 2024, CaseLines 007-66

¹⁶⁷ Sworn Statement: Annexure "MR 6.2" thereto, being from Gilbey Forensic & Financial Services (Pty) Limited, dated 05 November 2024, CaseLines 007-67 to 007-68

¹⁶⁸ Sworn Statement: Annexure "MR 6.3" thereto, being from Gary Lewis, Chartered Accountant (SA), dated 07 November 2024, CaseLines 007-69 to 007-70

¹⁶⁹ Sworn Statement: Annexure "MR 6.4" thereto, being from George Taylor, dated 06 November 2024, CaseLines 007-71

¹⁷⁰ Sworn Reply: paras 241 and 242, CaseLines 007-146

¹⁷¹ Sworn Reply: par 244, CaseLines 007-146

¹⁷² Sworn Reply: par 243, CaseLines 007-146

¹⁷³ Sworn Reply: par 245, CaseLines 007-146

issue Summons as the Applicant was: "*disgusted with the idea that she would be expected to work for the rest of her life*";¹⁷⁴and

91.5. legal argument would be addressed at the hearing of the matter on the "*excessive nature*" of the required fees which the Respondent submitted were "*excessive, unnecessary and unaffordable*".¹⁷⁵

[92] Whilst the Respondent's Counsel did address legal argument to the Court at the hearing of the matter in regard to the Applicant's claim for a contribution to costs, neither the Respondent, in his Sworn Reply, nor his Counsel during argument, interrogated *the Bill of Costs* or raised an objection to any item in respect of the fees and disbursements as reflected therein. The Respondent's failure to interrogate *the Bill of Costs* is of no assistance to the Court. This point was also made by the Applicant's Counsel, during argument, when she submitted that one would have expected the Respondent, if he opposed *the Bill of Costs*, to state to which items therein he objected, and as one would have done in a scenario when a Bill of Costs is to be taxed.

[93] The legal principles applicable to a claim for a contribution to costs, have been crystalised in various decisions by our Courts over the years, and the essence of which is the following:-

93.1. a claim for a contribution to costs is a claim *sui generis* and has its basis in the reciprocal duty of support between spouses;¹⁷⁶

93.2. although the rules of the duty of support between spouses are gender neutral, in light of the traditional childcare roles and the wealth disparity between men and women, the norm has been that it is generally women who seek relief from the Courts in terms of Rule 43(1)(b);¹⁷⁷

¹⁷⁴ Sworn Reply: par 246, CaseLines 007-146

¹⁷⁵ Sworn Reply: par 247, CaseLines 007-147

¹⁷⁶ Cary v Cary: 1999 (3) SA 615 (C); AF v MF: 2019 (6) SA 422 (WCC), at 428 E - F

¹⁷⁷ AF v MF: 2019 (6) SA 422 (WCC), at par [30]

- 93.3. the purpose of the remedy is therefore to enable the party in the pending divorce action, who is comparatively speaking, financially disadvantaged in relation to the other party, to adequately put their case before Court.¹⁷⁸
- 93.4. as to what is “adequate” will depend upon the nature of the litigation, the scale on which the husband is litigating and the scale on which the wife intends to litigate, with due regard being had to the husband’s financial position;¹⁷⁹
- 93.5. Rule 43(1)(b), and the remedy provided thereby, must be interpreted through the prism of the Constitution, specifically in regard to the right to equality before the law and equal protection of the law.¹⁸⁰ The contribution towards costs should ensure that there is equality of arms for the wife in the divorce action against her husband.¹⁸¹ The Court is also bound to ensure access to Court as provided for in Section 34 of the Constitution¹⁸² A spouse’s right to dignity, as envisaged in Section 10 of the Constitution, when that spouse is deprived of the necessary means to litigate and when she has to go cap in hand to family or friends to borrow funds for legal costs or is forced to be beholden to an attorney, who is willing to wait for payment of fees and as such to effectively act as her banker;¹⁸³
- 93.6. the quantum of the contribution to costs which a Court may order a spouse to pay, lies within the discretion of the presiding Judge. In this regard, the Court should have regard to the circumstances of the case, the financial position of the parties, and the particular issues involved in

¹⁷⁸ Van Rippen v Van Rippen: 1949 (4) SA 634 (C), at 638 and 639; SH v MH: 2023 (6) SA 279 (GJ) at par [74]

¹⁷⁹ Dodo v Dodo: 1990 (2) SA 77 (W), at par 98 C

¹⁸⁰ AF v MF: 2019 (6) SA 422 (WCC)

¹⁸¹ Cary v Cary: 1999 (3) SA 615 (C) at 621

¹⁸² SH v MH: 2023 (6) SA 279 (GJ) at paras [89] to [90]

¹⁸³ AF v MF: 2019 (6) SA 422 (WCC), par [42]; SH v MH: 2023 (6) SA 279 (GJ), par [105]; J.K v E.S.K [2024] 1 All SA 775 (WCC), par [53]

the pending litigation in order for the wife to be enabled to adequately present her case before the Court.¹⁸⁴

- [94] I will therefore proceed to evaluate, and in the exercise of my discretion, make a determination in regard to, the Applicant's claim for a contribution to her future costs, against the backdrop of the aforementioned legal principles.
- [95] Items 1 to 33, and 166 to 171 of *the Bill of Costs* pertain to this Rule 43 application,¹⁸⁵ and the fees and disbursements, including Counsel's fees, associated therewith, together with VAT thereon and which amounts to R363,590.12. Given that the Applicant is also seeking an Order to the effect that the Respondent pay the costs of this application, at the conclusion of the Applicant's Counsel's submission in chief, I requested her to address me in this regard as, in my view, it is clear that the Applicant could not be entitled to both. The Applicant's Counsel conceded that if I were to award the costs of this Rule 43 application to the Applicant, then I should disallow the contribution, as claimed in *the Bill of Costs*, and *vice versa*.
- [96] There is of course a further option, which is that I neither grant the claim for a contribution, as contained in *the Bill of Costs*, in regard to the Rule 43 application, nor order the Respondent to pay the costs of this application, but rather that I make an order, which is not uncommon in Rule 43 applications, for the costs thereof to be costs in the cause of the divorce action.
- [97] In light of the view that I have taken, and as dealt with further hereinbelow, in regard to the costs of this application, the contribution to costs in respect of the Rule 43 application, as contained in *the Bill of Costs*, is disallowed.
- [98] Insofar as the balance of the claim for a contribution to future costs, as contained in *the Bill of Costs* is concerned, I have considered *the Bill of Costs*, bearing in mind that this is a claim for an initial contribution to future costs, albeit

¹⁸⁴ AF v MF: 2019 (6) SA 422 (WCC, par [28], including the quotation from Van Rippen v Van Rippen therein

¹⁸⁵ Sworn Statement: Annexure "MR 7.1" thereto, CaseLines 007-72 to 007-74 and 007-166 to 007-171

that *the Bill of Costs* reflects the estimated costs up to and including the first day of trial, that the Applicant is the Defendant in the divorce action and that the Applicant can bring a further application or applications for additional contributions to costs if the need arises, even during the trial. In this context, I therefore have the following specific comments in regard to the Bill of Costs:-

NO.	ITEM NO.	COMMENT
98.1.	126 ¹⁸⁶	If regard is had to the Quotation of the industrial psychologist, the fee for the Report is reasonable considering the Applicant's claim for spousal maintenance. The remaining items are reflected as " <i>if needed</i> " and as such are disallowed at this stage.
98.2.	134 ¹⁸⁷	If regard is had to the cost estimate from the actuary, arising from the Applicant's claim for spousal maintenance, the fee for the Report, which includes consulting, is reasonable with the remaining items being disallowed at this stage.
98.3.	140 ¹⁸⁸	If regard is had to the estimated fee indication of the chartered accountant, who is required <i>inter alia</i> , for determining the accrual, including forensic accounting, no detail is provided of the hourly rate for the junior staff referred to therein. It is common cause that there has not been full disclosure by the Respondent, that discovery has not taken place, and that further Subpoenae are yet to be served. The estimate of 90 hours at R2,500 per hour, excluding VAT, is in my view, at this juncture, premature and excessive in the circumstances. Half of the foregoing is reasonable, in the circumstances of this matter, at this stage. In regard to the further costs in paragraph

¹⁸⁶ Bill of Costs: 007-79, read with Annexure "MR 6.1" to the Sworn Statement, CaseLines 007-66

¹⁸⁷ Bill of Costs: 007-80, read with Annexure "MR 6.2" to the Sworn Statement, CaseLines 007-67 to 007-68

¹⁸⁸ Bill of Costs: 007-80, read with Annexure "MR 6.3" to the Sworn Statement, CaseLines 007-69 to 007-70

NO.	ITEM NO.	COMMENT
		6 of the fee estimate, same are premature at this stage and the reference to valuations of fixed property and land may overlap with the fees of the registered valuer and appraiser and could lead to a duplication of fees/costs, and are accordingly disallowed at this stage.
98.4.	146 ¹⁸⁹	If regard is had to the Proforma Invoice of the valuer/appraiser, the fee for the valuation of the matrimonial home is reasonable considering that the accrual is required to be determined. The remaining items are disallowed at this stage
98.5.	172 to 184 ¹⁹⁰	These items pertain to Counsel's fees and amount to R362, 000.00, excluding VAT. Half of this amount, as an initial contribution, in the facts and circumstances of this matter, is reasonable .

[99] In regard to the remaining items on *the Bill of Costs*, they pertain to fees and disbursements (*excluding the disbursements referred to above*) of the Applicant's attorneys which, excluding fees and disbursements in regard to the Rule 43 application, which have been disallowed for the reasons dealt with above, amount to approximately R587,000.00 (including VAT). In my view, an amount of R250,000.00, plus VAT thereon, as an initial contribution to future costs in respect of the Applicant's attorneys, is reasonable in the facts and circumstances of this matter.

[100] Insofar as the principle of equality of arms is concerned, it was submitted by Respondent's Counsel during argument that there is no equality of arms as the Applicant has a Senior Counsel and senior attorney representing her, whereas the Respondent does not. That said, it was submitted that perhaps the Applicant should be the one contributing to the Respondent's costs. I am not

¹⁸⁹ Bill of Costs: 007-80, read with Annexure "MR 6.4" to the Sworn Statement, CaseLines 007-71

¹⁹⁰ Bill of Costs: 007-82

persuaded by this submission. Albeit that often in matters which have come before our Courts in regard to a wife seeking a contribution for costs, the husband was the one who had briefed Senior Counsel, and sometimes two Counsel, in my view, and based on the facts and circumstances *in casu*, and specifically by virtue of the Respondent not playing open cards in regard to his financial affairs and by not making full disclosure in his *FDF*, that it is this conduct on the part of the Respondent which is, with respect, dictating the scale on which the Applicant is required to litigate.

[101] In my view, and for the above reasons, the sum of R700,000.00, inclusive of VAT, represents an adequate initial contribution to the Applicant's future costs in the pending divorce action.

COSTS OF THIS APPLICATION

[102] It is trite that this Court also has a discretion when it comes to the issue of ordering costs, which discretion must be exercised judicially.

[103] As dealt with hereinabove, the Applicant is seeking the costs of this application on a punitive scale, being the scale as between attorney and client, and on Scale C, as provided for in Uniform Rule of Court, 69. The Respondent, in turn, seeks an Order that the Applicant pay the costs of this Application, on Scale A.

[104] On the facts before me, I am of the view that the Applicant was entitled to launch this application, as was the Respondent entitled to oppose the same. Insofar as the allegations pertaining to the Respondent's lack of full and frank disclosure, of which this Court has also taken cognisance in relation to *the Respondent's FDF*, as dealt with above, this aspect has already been taken into account in dealing with the Applicant's claim for a contribution towards her costs, which claim included a contribution in regard to an auditor/accountant to investigate the Respondent's financial affairs.

[105] Both parties have pointed fingers at one another for not actively attempting to mediate the disputes between them. I accept that the Applicant would not be

in a position to consider mediating meaningfully, as she says, “*at this stage only*”,¹⁹¹ until she has received full and frank disclosure.

- [106] Both parties have been partially successful, as it were, in this application, and I am therefore not inclined, in the circumstances of this matter, to award costs in favour of either of the parties. I am accordingly of the view that the usual order relating to costs of an application under Rule 43 should apply, being that the costs of this application should be costs in the cause of the divorce action.

ORDER

In the circumstances, I make the following order, *pendente lite*:-

- [1] the Applicant is to continue to reside in, and to enjoy full and undisturbed possession of, the matrimonial home, situated in Lonehill, Sandton (*“the property”*)
- [2] the Respondent is to continue paying the Applicant an amount of R15, 000.00 per month, payable in advance on or before the first day of each and every month, with the next payment being due on or before *01 April 2025*. The amount of R15, 000.00 shall escalate on the anniversary of the date of the granting of this this Order, in accordance with the percentage rate increase in the Headline Consumer Price Index for the preceding 12-month period, based on the statistics as published by Statistics SA, or its successor;
- [3] the Respondent is ordered to continue paying the following monthly expenses directly to the service providers concerned, either via existing debit order, or electronic funds transfer, or where applicable, within 5 (*five*) days of the Respondent being placed in receipt, by the Applicant, of the relevant invoice and/or statement of account in regard to such expense:

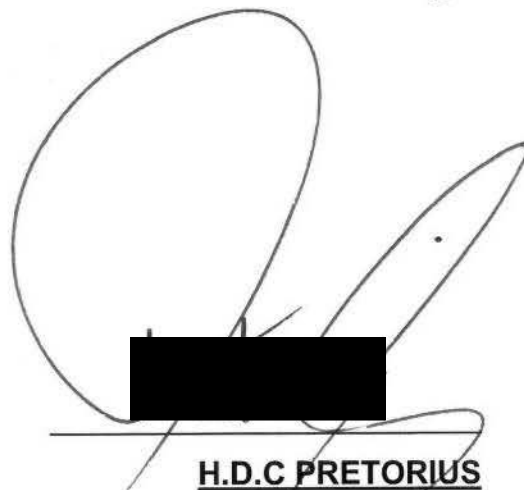
¹⁹¹ Sworn Statement: par 64, CaseLines 007-36

- 3.1 the costs of water and electricity consumption, rates, taxes, refuse and sewage in respect of *the property*;
- 3.2 armed response subscriptions in relation to *the property*;
- 3.3 household and/or homeowners' insurance, including any excesses;
- 3.4 the subscription in respect of the fixed landline at *the property*;
- 3.5 internet/fibre subscriptions;
- 3.6 the salary of the domestic worker in the sum of R5,000.00 per month;
- 3.7 DSTV subscriptions;
- 3.8 annual subscription in respect of TV licenses;
- 3.9 in relation to the BMW X5 and Mercedes Benz ML350 motor vehicles in the possession of the Applicant ("*the vehicles*"), the Applicant being entitled to the full use and enjoyment of *the vehicles*:
 - 3.9.1 insurance, including any excesses;
 - 3.9.2 Netstar and/or Tracker subscriptions;
 - 3.9.3 annual vehicle license renewal fees;
 - 3.9.4 repairs, maintenance, tyre replacement and services;
- 3.10 the Applicant's gym membership, currently in the sum of R1,370.00, and any annual escalation in regard thereto, as levied by the relevant service provider;
- 3.11 the monthly premiums in regard to the Applicant's membership as a dependent of the medical aid scheme of which the Respondent is the main member;
- 3.12 any excess and/or non-recoverable medical expenses incurred by the Applicant which are not covered, refunded and/or discharged by the aforementioned medical aid scheme, the incurring of such expenses to be agreed with the Respondent beforehand, save in the event of an emergency, and excluding any cosmetic or aesthetic surgeries;

- [4] in the event that the Applicant makes payment of any costs referred to above for which the Respondent is liable in terms of the Order, the Respondent shall reimburse the Applicant within 5 (*five*) days of being provided with proof of payment by the Applicant of such expense;
- [5] any and all payments due to be made by the Respondent to the Applicant, as provided for above, must be cleared, available and accessible on or before the due date of such payment;
- [6] the Respondent shall allow the Applicant the use of the Respondent's current available travel perquisite, arising from his employment with Qatar Airlines, being one free international airline ticket per annum, from Johannesburg to Doha, Qatar, within the parameters of what such free ticket entails, as dictated by the Respondent's employer from time to time in regard thereto, commencing with effect from 2025, and for as long as the Respondent continues to remain in the employ of Qatar Airlines. The Applicant shall be liable for all and any additional travelling expenses as may exceed the parameters the free ticket, as aforesaid;
- [7] the Respondent is ordered to continue paying the following expenses in respect of the major dependent children born of the marriage between the parties, *in toto* including, but not limited to:-
 - 7.1 tertiary fees;
 - 7.2 rental;
 - 7.3 food, groceries, cleaning materials and toiletries;
 - 7.4 motor vehicle insurance, Tracker, and annual license fees in respect of the major daughter's Hyundai motor vehicle;
 - 7.5 clothing and shoes;
 - 7.6 personal care;
 - 7.7 books and stationary;
 - 7.8 outings;

- 7.9 *ad hoc* educational expenses;
- 7.10 the monthly premiums in regard to the major daughter of the parties' membership as a dependent of the medical aid scheme of which the Respondent is the main member;
- 7.11 any excess medical expenses in respect of the major daughter not covered by the Respondent's medical aid scheme;
- 7.12 retaining the major son of the parties on a separate medical aid scheme, paying the monthly premiums in regard to such membership and any excess medical expenses not covered by said medical aid scheme;
- 7.13 pocket money; and
- 7.14 any further *ad hoc* expenses;

- [8] the Respondent is ordered to pay the sum of R700,000.00 (*seven hundred thousand rand*), which amount is inclusive of VAT, to the Applicant and into a bank account as nominated by her, as a contribution towards the Applicant's legal costs, payable in 2 (*two*) equal monthly instalments in the amount of R350, 000.00 each, the first instalment being due and payable on *01 April 2025* and the second instalment being due and payable on *01 May 2025*;
- [9] the costs of this application are costs in the cause of the divorce action.



H.D.C. PRETORIUS

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Electronically submitted

*Delivered: This Order was prepared and authored by the Acting Judge whose name is reflected herein and is handed down electronically by circulation to the Parties / their legal representatives by e-mail and by uploading it to the electronic file of this matter on Court Online/CaseLines. The date of the Judgment is deemed to be **19 March 2025**.*

Dates Of Hearing: *26 February 2025*

Date Of Judgment: *19 March 2025*

APPEARANCES:

For Applicant:

Advocate A De Wet S.C

Instructed by: Steve Merchak Attorneys

For Respondent:

Advocate K. Howard

Instructed by: Jennifer Scholtz Attorney