



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

CASE NO: 2020/18792

In the matter between:

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

Date of the Order: 24.03.2025

M: J.

Applicant/Defendant

and

M: S.

Respondent/Plaintiff

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, on the one side of the scale, the Applicant, who is the wife, is seeking that the Respondent, her husband, be ordered to:

- 1.1. make payment of a lumpsum of R200,000.00 (*two hundred thousand rand*), by way of four equal intalments of R50,000.00 (*fifty thousand rand*) each, to cover the costs of alleged necessary repairs to an immovable property which the Applicant wishes to take occupation of ("*the 24 MC property*");¹
- 1.2. make the necessary arrangements with the Ekurhuleni Metropolitan Municipality to have the municipal services to *the property* restored and to pay the security deposit and other amounts that may be required by the Ekurhuleni Metropolitan Municipality to have such services restored to *the24 MC property*;²
- 1.3. pay spousal maintenance *pendente lite* to the Applicant in the sum of R94,010.32 (*ninety-four thousand, ten rand and thirty-two cents*) per month, commencing from the first day of the month following of the granting of such order;³ and
- 1.4. make a contribution towards the Applicant's legal costs in the sum of R100,000.00 (*one hundred thousand rand*).⁴

[2] On the other side of the scale is the Respondent, who disputes all of the relief sought by the Applicant, and who has made no tender in regard to any aspect

¹ Sworn Statement: par 97.1, CaseLines 027-33 to 027-34

² Sworn Statement: par 97.2, CaseLines 027-34

³ Sworn Statement: par 97.3, CaseLines 027-34, read with par 70, CaseLines 027-27

⁴ Sworn Statement: par 97.4, CaseLines 027-34

thereof.⁵ The Respondent accordingly seeks an order dismissing the application, with costs.⁶

[3] Certain preliminary issues were raised by the parties in the papers before me, being the following:-

- 3.1. the Respondent had delivered his Sworn Reply out of time and had brought the necessary application for the condonation of the late filing thereof, alternatively for the upliftment of the bar to his filing thereof;⁷
- 3.2. the Respondent raised a point *in limine* in his Sworn Reply in regard to the length of the Applicant's Sworn Statement, and the annexures thereto (*which complaint appears to relate to the annexures filed with the Applicant's FDF*);⁸
- 3.3. the Applicant sought leave from the Court, in terms of the provisions of Rule 43(5), to file a Supplementary Affidavit, as delivered by her on *12 November 2024*; ⁹
- 3.4. the Respondent had objected to the delivery of the Applicant's Supplementary Affidavit in terms of the provisions of Rule 30(2)(b) on the basis that same constituted an irregular step;¹⁰
- 3.5. notwithstanding the aforesaid objection, on the day before the allocated date for the hearing of the matter, the Respondent delivered a 161-page Supplementary Affidavit (*inclusive of the Annexures thereto*) in reply to the Applicant's Supplementary Affidavit;¹¹

⁵ Respondent's Practice Note: Comparative Table, CaseLines 076-7 to 076-48; Applicant's Practice Note: Comparative Table, CaseLines 038-2 to 038-3

⁶ Sworn Reply: concluding prayer, CaseLines 035-43

⁷ Respondent's Condonation Application: CaseLines 001-1 to 001-17

⁸ Sworn Reply: paras 4 to 7, CaseLines 035-5

⁹ Applicant's Practice Note: par 10, CaseLines 038-2, read with Applicant's Supplementary Affidavit: CaseLines 027-320 to 027-347

¹⁰ Respondent's Notice in terms of Rule 30(2)(b): 037-1 to 037-4

¹¹ Respondent's Reply to Supplementary Affidavit: CaseLines 077-3 to 077-163

3.6. this prompted the Applicant to deliver, on the morning of the date of the hearing of the matter, a Notice to the effect that the Applicant would be seeking an order that the Respondent pay the costs of the application on the attorney and client scale, with the costs of Counsel to be on Scale B.¹²

[4] It is common cause that when the matter was argued before me, the only residual issue which remained to be determined in regard to the foregoing preliminary issues, was is the aspect of the punitive costs order sought by the Applicant, and which I will deal with further hereinbelow when I deal with the costs of this application. In the circumstances, the late filing of the Respondent's Sworn Reply is condoned and leave is granted for the filing of the Applicant's Supplementary Affidavit and the filing of the Respondent's Supplementary Reply thereto. The order I make herein will be reflective of the foregoing.

[5] 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 as well as in regard to certain other aspects in the body of this judgment.

BACKGROUND

[6] The parties were married to one another on *25 June 2006*, out of community of property, without the application of the accrual system.¹³ It bears mention that prior to this, the parties were previously married but were divorced from one another in *2003*, remarrying in *2006*, as aforesaid.¹⁴

[7] There are two daughters born of the marriage between the parties, both of whom have attained the age of majority and both of whom are self-supporting.¹⁵

¹² Applicant's Notice i.r.o. costs in the Rule 43 Application: CaseLines 077-165 to 077-166

¹³ Sworn Statement: par 4, CaseLines 027-4; Sworn Reply: par 10, CaseLines 035-6

¹⁴ Sworn Reply: par 33, CaseLines 035-9

¹⁵ Sworn Statement: par 5, CaseLines 027-4; Sworn Reply: par 10, CaseLines 035-6

- [8] The parties have been separated from one another since *November 2017*.¹⁶ The Respondent alleges that he has, since *2018*, been in a relationship with one “*AN*”, and from which relationship a daughter was born on *25 May 2018*.¹⁷
- [9] The Respondent, as Plaintiff, instituted divorce proceedings against the Applicant in *July 2020*,¹⁸ and which proceedings are defended by the Applicant, who filed a Plea and Counterclaim, incorporating, *inter alia*, a claim for a redistribution of assets in terms of Section 7(3) of the Divorce Act, 70 of 1979.¹⁹ The Respondent has pleaded to the Counterclaim²⁰ and it is common cause that pleadings have closed in the divorce action.²¹
- [10] The Applicant describes herself as unemployed, which is denied by the Respondent, who alleges that the Applicant “*runs her own bakery business*”.²² The Respondent is a businessman.²³
- [11] From the facts before me it appears that during the parties’ marriage there were multiple business entities which operated, some of which traded and some of which were property holding entities. This aspect has been canvassed extensively in the various affidavits filed of record.
- [12] In respect of one of the business entities, being a close corporation, and to which I will refer as “*IO cc*”, the Applicant was the sole member, but alleges that the Respondent was factually managing the affairs of *IO cc*.²⁴ The Applicant further alleges that the Respondent abused the corporate identity of *IO cc* by diverting its income to another close corporation of which the Respondent was the sole member, and to which I will refer as “*IP cc*”.²⁵ This is denied by the

¹⁶ Sworn Statement: par 7, CaseLines 027-4; Sworn Reply: par 11, CaseLines 035-6

¹⁷ Sworn Reply: par 32, CaseLines 035-9, read with Respondent’s FDF, par 1.11, CaseLines 036-4

¹⁸ Sworn Statement: par 7, CaseLines 027-4; Sworn Reply: par 11, CaseLines 035-6

¹⁹ Defendant’s Plea and Counterclaim: CaseLines 008-1 to 008-14

²⁰ Sworn Statement: par 9, CaseLines 027-5; Sworn Reply: par 11, CaseLines 035-6.

²¹ The Respondent, as Plaintiff, delivered Notices calling on the Applicant, as Defendant to discover, Caselines 028-8 to 028-15. The Respondent, as Plaintiff, has delivered his Discovery Affidavit, CaseLines 028-1 to 028-7

²² Sworn Statement: par 1, CaseLines 027-3; Sworn Reply: par 8, CaseLines 035-5

²³ Sworn Statement: par 3, CaseLines 027-3; Sworn Reply: par 10, CaseLines 035-6

²⁴ Sworn Statement: par 10, CaseLines 027-5

²⁵ Ibid

Respondent who alleges that the Applicant ran her own business *via IO cc*, trading in diesel, and mismanaged the affairs of *IO cc*.²⁶

- [13] It is common cause that *IO cc* was liquidated in and during 2017, upon the application of one of its suppliers, Total South Africa.²⁷ The Respondent avers that the liquidation of *IO cc*, and the Applicant's providing of "*misinformation*" to the Liquidator, caused a domino effect in respect of his other businesses, and also in the freezing of various bank accounts, making it impossible for the Respondent to trade, crippling him financially in his various businesses.²⁸ It appears that after several years of litigation, a Settlement Agreement was entered into on 14 February 2024, between the Liquidator and the Respondent, in his personal capacity, on the one hand, and five entities, as represented by him, on the other hand.²⁹ In terms of the Settlement Agreement the bank accounts of the Respondent's businesses which had been frozen, were released for the benefit of the account holders, subject to certain conditions.³⁰
- [14] The Applicant alleges that during the course of the marriage, she was involved in the Respondent's various businesses for a period of in excess of 25 years.³¹ She states that after the liquidation of *IO cc*, she was employed by *IP cc* as an administration manager and that the Respondent summarily terminated her aforesaid employment on 14 April 2020.³² The Respondent denies this, stating that *IP cc* was adversely affected in the wake of the liquidation of *IO cc*, with *IP cc* being provisionally wound-up and its bank accounts being frozen.³³
- [15] The relevance of the foregoing to this application is that the Respondent alleges that he is unable to afford any maintenance for the Applicant as he is trying to recover from the alleged financial ruin caused by the Applicant.³⁴

²⁶ Sworn Reply: par 12, CaseLines 035-6

²⁷ Sworn Statement: par 10, CaseLines 027-5 to 027-6, read with paragraph 13, CaseLines 027-6; Sworn Reply: par 12, CaseLines 035-6

²⁸ Sworn Reply: paras 13 to 16, CaseLines 035-6 to 035-7

²⁹ Sworn Reply: par 18, CaseLines 035-7, read together with Annexure "SM1" thereto, CaseLines 035-45 to 035-74

³⁰ Sworn Reply: Annexure "SM1" thereto, clause 7.3, at CaseLines 035-52 to 035-53

³¹ Sworn Statement: paras 13 and 14, CaseLines 027-6 to 027-7

³² Sworn Statement: paras 13 and 14, CaseLines 027-6 to 027-7, read with Annexure "JM2" thereto, CaseLines 027-37

³³ Sworn Reply: paras 27 to 29, CaseLines 035-9

³⁴ Sworn Reply: par 17, CaseLines 035-7

- [16] The Applicant states that after her employment with *IP cc* was terminated in *April 2020*, she started “a small business” called *J’s M (Pty) Limited*, which baked biscuits which the company then sold, and of which company she was the sole director and shareholder.³⁵
- [17] The Applicant states that the parties lived “an opulent lifestyle.”³⁶ The Respondent does not deny that the parties previously lived “a more opulent lifestyle” but states that this is now “ancient history.”³⁷
- [18] In addition to the various entities, as referred to above, there is also a Family Trust (“*the Trust*”), which appears to have been established during *2001*,³⁸ of which the Applicant, Respondent, and their eldest daughter, are the Trustees.³⁹ The beneficiaries of the Trust appear to be the Applicant and the parties’ two daughters.⁴⁰
- [19] *The Trust* owns various properties, including a holiday apartment in Umhlanga, KZN (“*the Umhlanga property*”),⁴¹ the property in which the the Applicant currently resides (“*the 25 MC property*”),⁴² *the 24 MC property* in respect of which the Applicant seeks an order in terms of this application,⁴³ as dealt with in the introduction above, and a unit which I will refer to as “*the unit 37 AC property*.”⁴⁴ All of the aforesaid properties appear to be bonded with various banking institutions and with the Applicant and Respondent having signed personal suretyships in favour of the various banks for *the Trust’s* indebtedness to said banks.⁴⁵

³⁵ Sworn Statement: par 25, CaseLines 027-11

³⁶ Sworn Statement: par 19, CaseLines 027-8

³⁷ Sworn Reply: par 46, CaseLines 035-17

³⁸ Applicant’s FDF: par 2.12, CaseLines 027-99; Respondent’s FDF: par 2.12, CaseLines 036-14. The year of establishment of the Trust is gleaned from its registration number

³⁹ Sworn Statement: par 19, CaseLines 027-8; Sworn Reply: par 35.6, CaseLines 035-11

⁴⁰ Sworn Statement: par 19, CaseLines 027-8, read with Applicant’s FDF: par 2.12, CaseLines 027-99; Sworn Reply: par 35.6, CaseLines 035-11, read with the Respondent’s FDF: par 2.12, CaseLines 036-14 and wherein the Respondent only refers to his capacity as being that of Trustee in relation to the Trust

⁴¹ Sworn Statement: par 19, CaseLines 027-8; Sworn Reply: par 47, CaseLines 035-17

⁴² Sworn Statement: par 37, CaseLines 027-16; Sworn Reply: par 109.1, CaseLines 035-31

⁴³ Ibid

⁴⁴ Sworn Statement: par 47, CaseLines 027-19 to 027-20; Sworn Reply: par 85, CaseLines 035-27

⁴⁵ Sworn Statement: par 48, CaseLines 027-20; Sworn Reply: par 86, CaseLines 035-27

- [20] It further appears that foreclosure proceedings have commenced in respect of *the Umhlanga property*⁴⁶ and *the unit 37 AC property*.⁴⁷ It also seems that foreclosure proceedings are imminent in respect of *the 25 MC property*.⁴⁸ The Applicant avers that once the bank forecloses against *the 25 MC property*, the only alternative property she can move to is *the 24 MC property*,⁴⁹ which is vacant but in a state of disrepair by virtue of a previous tenant who had occupied same,⁵⁰ and hence her seeking the order she does in regard thereto. She states that the bond of *the 24 MC property* is also in arrears but can still be salvaged provided regular bond repayments are made on the bond account.⁵¹
- [21] In regard to *the Trust*, and the properties owned by it, the Respondent states that he previously funded *the Trust* from his businesses but, for the reasons dealt with above, he could not afford to continue doing so.⁵² The Respondent further avers that he currently earns a salary of R30,000.00 (*thirty thousand rand*) a month from his one business "*I-TFS (Pty) Limited*", that this is his only source of income and that his personal monthly expenses are R31,600.00 (*thirty one thousand six hundred rand*).⁵³
- [22] It is further apparent that the parties in their respective capacities as Trustees of *the Trust*, have been unable to reach agreement in regard to the affairs of *the Trust*, particularly in regard to the sale of various of the properties owned by *the Trust* to halt some of the foreclosure proceedings. The parties respectively blame one another for the impasse plaguing *the Trust*. The Respondent states that *the Trust* currently has no income, this will lead to *the Trust* losing all its assets through foreclosures and undoubtedly having to be wound-up.⁵⁴
- [23] Against the backdrop of the foregoing, I will now deal with the relief sought by the Applicant in this application.

⁴⁶ Sworn Statement: par 20, CaseLines 027-8; Sworn Reply: paras 47 and 50, CaseLines 035-17

⁴⁷ Sworn Statement: par 47, CaseLines 027-19 to 027-20; Sworn Reply: par 85, CaseLines 035-27

⁴⁸ Sworn Statement: par 37, CaseLines 027-16; Sworn Reply: par 39.9, CaseLines 035-14

⁴⁹ Sworn Statement: par 37, CaseLines 027-16

⁵⁰ Sworn Statement: par 38, CaseLines 027-16

⁵¹ Sworn Statement: par 38, CaseLines 027-16

⁵² Sworn Reply: par 84, CaseLines 035-27

⁵³ Sworn Reply: paras 169 and 170, CaseLines 035-41 to 035-42

⁵⁴ Sworn Reply: par 138, CaseLines 035-37, read with par 90, CaseLines 035-28

RELIEF SOUGHT AND APPLICABLE LEGAL PRINCIPLES

Claim for lumpsum payment in respect of repairs to the 24 MC property and for restoration of municipal services to the 24 MC property

- [24] As dealt with in the Introduction above, the Applicant seeks an order that the Respondent make payment of a lumpsum of R200,000.00 (*two hundred thousand rand*), by way of four equal instalments of R50,000.00 (*fifty thousand rand*) each, to cover the costs of alleged necessary repairs to *the 24 MC property* which the Applicant wishes to take occupation of.⁵⁵
- [25] In addition, the Applicant seeks an order that the Respondent make the necessary arrangements with the Ekurhuleni Metropolitan Municipality to have the municipal services to *the property* restored and to pay the security deposit and other amounts that may be required by the Ekurhuleni Metropolitan Municipality to have such services restored to *the 24 MC property*.⁵⁶
- [26] It is common cause that *the 24 MC property* is owned by *the Trust*.
- [27] It is further common cause that *the Trust* is neither joined as a party to the main divorce action nor as a party in this application.
- [28] The Respondent avers, given that *the 24 MC property* is owned by *the Trust*, that he has no personal obligation to bear the expenses in relation to *the 24 MC property* and further that if *the Trust* "*believes*" that he has a duty to make payments in respect of the properties owned by *the Trust*, it would be for *the Trust* to institute legal action to compel him to do so, and that the Applicant cannot do so in this Rule 43 application.⁵⁷
- [29] It was submitted on behalf of the Applicant during argument before me that this claim by the Applicant effectively falls under the Applicant's claim for

⁵⁵ Sworn Statement: par 97.1, CaseLines 027-33 to 027-34

⁵⁶ Sworn Statement: par 97.2, CaseLines 027-34

⁵⁷ Sworn Reply: paras 109.2 and 109.3, CaseLines 035-31 to 035-32

maintenance, that it is akin to a relocation cost and that the Court has a discretion to grant the claim.

[30] Based on the facts, *in casu*, I am not persuaded by the Applicant's submissions. If I were to order the Respondent to effect the payments sought, I would respectfully be stepping into the arena of *the Trust*, and its affairs, in circumstances where *the Trust* is not before me. As an aside, the Applicant is one of the Trustees, and a beneficiary of *the Trust*, and her claims in regard to *the 24 MC property* and to the improvement, use and enjoyment thereof, are claims in regard to an asset of *the Trust*, and should be dealt with in that arena, with due regard being had, *inter alia*, to the prevailing provisions of the Trust Deed in terms whereof *the Trust* was constituted.

[31] In the application before me, the parties are before me as spouses and not in their capacities as Trustees and/or beneficiaries of *the Trust*. I reiterate that *the Trust* is not before me and *ergo*, neither are its assets. The relief sought by the Applicant respectfully conflates these principles.

[32] In the premise, I am not inclined to grant the relief, as sought by the Applicant, in regard to *the 24 MC property*.

Claim for spousal maintenance in the sum of R94,010.32 per month, pendente lite

[33] Before considering what would be the Applicant's reasonable maintenance requirements and whether the Applicant has made out a case in that regard, it must first be considered whether the Applicant has established a need for maintenance.

[34] In dealing with her need for maintenance, the Applicant is required to make full and frank disclosure of all relevant facts to place the Court in a position to assess whether there is truly a need on the part of the Applicant for maintenance.

- [35] In the matter of *Nilsson v Nilsson*,⁵⁸ it was stated, *inter alia*, that an interim maintenance order is not intended as an interim meal ticket for a spouse who quite clearly would not establish a right to maintenance at trial.⁵⁹
- [36] Once the need for maintenance has been established, then the next level of the enquiry would be to establish what the marital standard of living of the parties was, what the Applicant's reasonable maintenance requirements are and what the capacity of the Respondent is to meet such requirements.
- [37] In the matter before me, it seems that the Applicant's need arises from her alleged unemployment. In this regard, the Applicant states that she last earned an income, and then only "*a meagre amount of R2,500.00*" from her bakery business, "*J's M (Pty) Limited*", in *November 2022*, when the business allegedly stopped trading.⁶⁰ The Applicant states that she has no other means of generating an income and that she is incapable of supporting herself without the Respondent's assistance.⁶¹
- [38] In this regard, I emphasise that the parties have been separated from one another since *November 2017*, with the divorce action having been instituted in *July 2020*. The Applicant does not inform the Court how she has managed to survive and support herself in the intervening period. This application was served on *21 August 2024*.⁶²
- [39] In the papers before me there are contradictory statements in regard to *J's M (Pty) Limited* as, despite averring that the business stopped trading in *November 2022*, the Applicant:-
- 39.1. states that the Respondent had procured an interim protection order against the Applicant on *01 February 2023*, prohibiting her from, *inter alia*, entering the Respondent's place of employment, being the industrial park owned by one of the Respondent's companies, "*A Trading 48 (Pty)*

⁵⁸ 1984 (2) SA 294 (C)

⁵⁹ Ibid at 295 F

⁶⁰ Sworn Statement: par 25, CaseLines 027-11, read with par 31, CaseLines 027-13

⁶¹ Sworn Statement: par 56, CaseLines 027-23

⁶² Proof of electronic service of the Rule 43 Application dated 21 August 2024, CaseLines 027-87

Limited", and from where the Applicant ran her bakery business. The return date was *14 April 2023*. The Applicant attempted to anticipate the return date as she required urgent access to her bakery because she had various orders to fill and had a substantial amount of baking cream, milk, almond powder, butter and eggs in the fridges at her bakery, which items had a limited shelf life and were required to be kept refrigerated. She was not successful in anticipating the return date. On the return date the Respondent withdrew his application but, by the time the Applicant could eventually return to her bakery, she had to discard the aforementioned ingredients as they had perished by then, causing her to suffer a loss of R8,500.00;⁶³

39.2. states that in and during *June 2023*, and *July 2023*, the Respondent's alleged conduct interrupted and interfered with the Applicant's ability to run the business, which included the Respondent instructing one of his employees to break through the wall from his unit to hers, fitting heavy chains and a padlock around the door of the unit where the business traded from, and demanding that the Applicant should vacate the premises where she was "*trying to earn a living*";⁶⁴

39.3. annexes to her *FDF*, which was served simultaneously with this Application, on *21 August 2024*, bank statements in respect of *J's M (Pty) Limited* current account held with First National Bank Limited for the period *31 October 2023* to *31 July 2024*.⁶⁵ A scrutiny of these bank statements reveals credit and debit transactions over the aforementioned period with a visible pattern of the value of the debits being more or less equal to the value of the credits in any of the given months,⁶⁶ and so that the closing balance in the account is negligible,

⁶³ Sworn Statement: paras 51 and 52, CaseLines 027-21 to 027-22

⁶⁴ Sworn Statement: paras 26 to 28, CaseLines 027-11 – 027-12

⁶⁵ Applicant's FDF: CaseLines 026-28 to 026-45, read with proof of electronic service in regard to the Rule 43 Application and Applicant's FDF, dated 21 August 2024, CaseLines 027-87

⁶⁶ Applicant's FDF: CaseLines 026-28 to 026-45

with the lowest closing balance during the period being R3,49⁶⁷ and the highest, R422,46;⁶⁸

39.4. fails to annex copies of the annual financial statements for the business for the preceding two financial years, and as required by the provisions of *the FDF* when making a declaration in regard to one's business interests;⁶⁹

39.5. in her *FDF*, which is dated *20 August 2024*, values her interest in the business at R200,000.00 (*two hundred thousand rand*), ostensibly representing the value of ovens, mixers, microwave, utensils, packaging material and other kitchen equipment, but fails to annex any supporting documentation in regard to how she has arrived at this valuation and as invited to do by the provisions of *the FDF*.⁷⁰

[40] It of course begs the question that if *J's M (Pty) Limited* indeed stopped trading in *November 2022*, as alleged by the Applicant, as to why it still has an active bank account.

[41] The Respondent consistently in his Sworn Reply denies that the Applicant is unemployed and avers that the Applicant is still conducting the business of *J's M (Pty) Limited*, both from the business park owned by one of his companies, *A Trading 48 (Pty) Limited*, as well as from another location, although he does not provide details of the latter. He alleges that the Applicant mostly runs the business of *J's M (Pty) Limited* with cash sales which are not disclosed. He further alleges that the Applicant supplies and distributes macarons and other baked products to a number of clients, including to Atlas Corpco, First National Bank, and a number of other corporates.⁷¹

⁶⁷ Applicant's FDF: CaseLines 026-32

⁶⁸ Applicant's FDF: CaseLines 026-30

⁶⁹ Applicant's FDF: par 2.9, CaseLines 026-10

⁷⁰ Applicant's FDF: par 2.9, CaseLines 026-10 to 026-11

⁷¹ Sworn Reply: par 74, CaseLines 035-22 to 035-23

- [42] The Applicant has also referred, at length in her Sworn Statement, to a dispute between her and the Respondent, being in regard to who owned the shares of a company, to which I will refer as “*86 RR (Pty) Limited*”, which in turn owned an immovable property, “*the 86 RR property*”.⁷² This dispute ended with the parties signing a Settlement Agreement which was made an order of this Court on *11 June 2024*.⁷³ In terms of the aforesaid settlement, it was agreed that the shareholding of *86 RR (Pty) Limited* had, at all material times and since the date of the company’s conversion from a close corporation, vested in the Applicant.⁷⁴ *The 86 RR property* was transferred to the purchaser thereof on *06 August 2024*.⁷⁵
- [43] Notwithstanding the foregoing, the Applicant states that she has not included *86 RR (Pty) Limited* in her *FDF*, “*as it is no more than an empty husk*.”⁷⁶ The Applicant, however, neither reveals the price for which *the 86 RR property* was sold, nor if any profit was realised and, if so, how much. Unfortunately this is of no assistance to the Court, particularly when viewed against the Respondent’s allegations to the effect that the Applicant has refused to disclose the profits from the sale of *the 86 RR property* to this Court and if there was no profit to the Applicant, she would not have “*litigated for the property to be declared her own*.”⁷⁷
- [44] All of the foregoing raises more questions than answers, and leaves this Court in the dark as to what the Applicant’s actual financial position and thus her need is.
- [45] The Court would have expected that the Applicant deal with all the aforementioned facts and material information as they have a direct bearing on the Applicant’s claim for maintenance and her related claim for a contribution to legal costs. The Applicant’s failure to place before this Court the aforesaid material facts, results in an inability to establish whether there indeed exists a

⁷² Sworn Statement: paras 32 to 36, CaseLines 027-13 to 027-15, and paras 40 to 44, CaseLines 027-17 to 027-18

⁷³ Sworn Statement: par 42, CaseLines 027-18, read with Annexure “JM10” thereto, CaseLines 027-56 to 027-59

⁷⁴ Sworn Statement: par 42, CaseLines 027-18

⁷⁵ *Ibid*

⁷⁶ Sworn Statement: par 43, CaseLines 027-18

⁷⁷ Sworn Reply: paras 76.9 and 76.11, CaseLines 035-24 and 035-25

true need on the part of the Applicant to be maintained and her related claim for a contribution to costs.

- [46] In the context of full disclosure and the duty of Applicants in Rule 43 Applications to act with the utmost good faith, it is apposite to refer to the matter of Du Preez v Du Preez⁷⁸, where the Court held, *inter alia*, the following:-

“[15] However, before concluding, there is another matter that gives me cause for concern, deserving of mention and brief consideration. In my experience, and I gather my colleagues on the bench have found the same, there is a tendency for parties in Rule 43 applications, acting expeditiously or strategically, to misstate the true nature of their financial affairs. It is not unusual for parties to exaggerate their expenses and to understate their income, only then later in subsequent affidavits or in argument, having been caught out in the face of unassailable contrary evidence, to seek to correct the relevant information. Counsel habitually, acting no doubt on instruction, unabashedly seek to rectify the false information as if the original misstatement was one of those things courts are expected to live with in Rule 43 applications. To my mind, the practice is distasteful, unacceptable, and should be censured. Such conduct, whatever the motivation behind it, is dishonourable and should find no place in judicial proceedings. Parties should at all times remain aware that the intentional making of a false statement under oath in the course of judicial proceedings constitutes the offence of perjury and, in certain circumstances, may be the crime of defeating the course of justice. Should such conduct occur in Rule 43 proceedings at the instance of the applicant, then relief should be denied.”

“[16]. Moreover, the power of the court in rule 43 proceedings in terms of Rule 43(5) is to ‘dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision.’ This discretion is essentially an equitable one and has accordingly to be exercised judicially with regard to all relevant considerations. A misstatement of one aspect or relevant information invariably will colour other aspects with the possible (or likely) result that fairness will not be done. Consequently, I would assume there is a duty on applicants in rule 43 applications seeking equitable redress

⁷⁸ 2009 (6) SA 28 (T), par 15

to act with the utmost good faith (ubberimae fidei) and to disclose fully all material information regarding their financial affairs. Any false disclosure or material non-disclosure would mean that he or she is not before the court with 'clean hands' and, on that ground alone, the court will be justified in refusing relief." [Emphasis added]

[47] In the matter of C.M.A. v L.A.,⁷⁹ Liebenberg AJ reaffirmed that there is an obligation on an Applicant in Rule 43 proceedings to act with the utmost of good faith and to make full and frank disclosure of his/her finances. The penalty of non-disclosure may be as high as the refusal of the Application.

[48] In C.A v H.A.,⁸⁰ the following was stated:

"In Rule 43 proceedings, it is prudent that the Court should be satisfied that an Applicant acts in good faith. Thus, an Applicant simply cannot afford to omit facts in the founding affidavit that are vital to the application. Surely, if the applicant was willing not to reveal certain facts in her founding affidavit, she must certainly be willing not to be frank about weighty facts that would reveal the true state of her finances."

[49] In the matter of M.N.Y v J.Y.,⁸¹ Van Aswegen AJ stated:

"Without a frank and full disclosure of all material facts a Court can simply not make a determination as to the applicant's need and cannot quantify such a need." [Emphasis added]⁸²

[50] No order can be made by this Court if the Applicant does not get out of the starting blocks, as it were, of establishing that she has a need. It is my view that the Applicant herein has elected to selectively disclose facts in an attempt to establish her need but, by virtue of her failure to make full disclosure, all the relevant facts have not been placed before me. It is therefore not possible for me to properly assess whether a need exists on behalf of the Applicant and

⁷⁹ [2023] ZAGPJHC 364 (24 April 2023) at par [25], specifically at par [25.1]

⁸⁰ (5578/2022) [2024] ZAWCHC 25 (06 February 2024)

⁸¹ (2024/013982) [2024] ZAGPJHC 1823 (24 July 2024)

⁸² Ibid at par 82

what the precise extent of that need is. In the circumstances, I am unable to entertain the Applicant's claim for maintenance *pendente lite*.

Claim for a contribution to costs

- [51] It is trite that a claim for a contribution to costs is a claim *sui generis* and has its basis in the reciprocal duty of support between spouses.⁸³
- [52] By extension of the same reasoning in declining to entertain the Applicant's claim for spousal maintenance, *pendente lite*, being the inability to establish a need for maintenance by virtue of the absence of full and frank disclosure on the part of the Applicant in regard to her financial affairs, I am similarly unable to entertain the Applicant's claim for a contribution towards her legal costs.

COSTS OF THIS APPLICATION

- [53] It is trite that this Court has a discretion when it comes to the issue of ordering costs, which discretion must be exercised judicially.
- [54] In the normal course, and having regard to the facts and circumstances of this matter, including the Applicant's failure to make full and proper disclosures, I would have been inclined to have the costs follow the result, ordering the Applicant to have paid the costs of this Application. However, for the reasons which follow, I am not so inclined.
- [55] As an aside, had the Applicant established a need with the enquiry having moved to the next level, the Respondent would have seriously fallen foul of the the full and frank disclosure requirements in regard to his financial affairs, given his failure to annex all of the required supporting documentation to his *FDF*. It also did also not go unnoticed that the Respondent's Sworn Reply and his Reply to the Applicant's Supplementary Affidavit are peppered with references to his romantic partner, *AN*, in relation to her direct/indirect involvement in certain of

⁸³ Cary v Cary: 1999 (3) SA 615 (C); AF v MF: 2019 (6) SA 422 (WCC), at 428 E - F

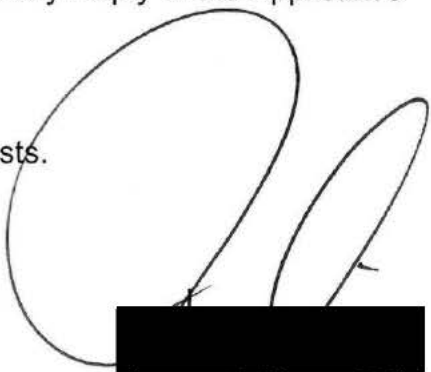
his business affairs, her payment of certain expenses and in relation to the home where they reside, yet no Confirmatory Affidavit from *AN* is provided to substantiate these allegations. Similarly, the Respondent makes various averments in relation to his attorney of record including, *inter alia*, that he owes his attorney money and that his attorney has accommodated him in this regard. No Confirmatory Affidavit from the Respondent's attorney is provided. Whilst it may therefore be that the Applicant, for the reasons referred to above, was not successful with her application, this time around, this is no cause for the Respondent to celebrate, should he feel that way inclined, as any perceived victory on his part, against the backdrop of the foregoing, rings hollow.

- [56] In the premise I am of the view that each party should bear their own costs in respect of this application.

ORDER

In the circumstances I make the following order:-

- [1] the late filing of the Respondent's Sworn Reply is condoned;
- [2] the leave sought by the Applicant to file the Supplementary Affidavit, which was delivered on *12 November 2024*, is granted;
- [3] leave for the filing of the Respondent's Supplementary Reply to the Applicant's Supplementary Affidavit, is granted;
- [4] the application is dismissed with no order as to costs.



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 **24 March 2025**.*

Dates Of Hearing: *27 November 2024*

Date Of Judgment: *24 March 2025*

APPEARANCES:

For Applicant:

Advocate A. Scott

Instructed by Marius Verster and Associates

For Respondent:

Mr R. Zimmerman (Attorney)

Instructed by Taitz & Skikne Attorneys