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

CASE NO: 052216/2024

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

(4) Date: 16 May 2025

Signature:

In the matter between:

A[...] W[...] F[...]

Applicant

And

K[...] S[...] R[...]

Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This is an application in terms of Uniform Rule 43 in terms of which the applicant seeks interim relief pending the finalization of the divorce action that is pending between him and his wife, the respondent.

[2] The relief is three-fold and as follows:

2.1 That the care that he has given and that he intends to continue to give both minor children be entrenched in a court order that

provides him with enforceable and unambiguous rights of care towards and contact with the minor children.

- 2.2 That he has offered to maintain the children fully and is willing and able to do so. He seeks to entrench the financial needs of the children in a court order and is prepared to take the financial burden off the shoulders of the respondent in this regard, *pendente lite*. That a *curator ad litem* be appointed to exercise specific duties and powers to ensure that the rights of the children are protected and to act in their best interests pending the finalization of the divorce action.

B. BACKGROUND

- [3] The parties were married to each other on 28 October 2022, out of community of property with the exclusion of the accrual system and this marriage still subsists.
- [4] From this marriage one minor child was born, namely, a girl, CF on 4 February 2023. The parties are holders of full parental rights and responsibilities in respect of CF.
- [5] The respondent has a minor daughter, namely CR, born on 13 May 2020. CR is the biological daughter of the respondent and a certain PK who has never obtained any parental rights and responsibilities in respect of CR. The respondent confirmed that she has been vested with full parental rights and responsibilities in terms of CR and she is the sole guardian, caregiver and parent of CR.
- [6] What necessitates this application is that the applicant seeks to be awarded full parental rights in respect of both children including CR in terms of sections 23 and 24 of the Children's Act, so that the parties share the care of the minor children. And that the applicant be ordered to maintain both children.

- [7] The applicant seeks an order appointing an independent expert to evaluate and assess the best interests of the minor children and report upon the findings to the court. This application was necessitated by the respondent's unreasonable refusal to refer the question of the best interests of the minor children for independent determination and recommendation.
- [8] The respondent is currently opposed to the above applications. The respondent acts erratically and in an unpredictable manner rendering it impossible for the applicant to plan with his family and friends to engage with the minor children. The respondent's actions to date were such that he is led to believe that respondent does not want applicant or any of his family members to have a close and nurturing relationship with the children.
- [9] The applicant lays out a litany of examples of how the respondent systematically frustrates his endeavours at exercising contact with the children.¹
- [10] The respondent in turn tabulates a litany of her own, consisting of a history of controlling and overbearing conduct on the part of the applicant and evidence of racial tensions seemingly driven by the applicant's ex-wife which I find unfortunately, emanate from a level so low as to deserve no repetition herein, if proven to be true.²

C. DISCUSSION

- [11] The respondent counterclaims for spousal maintenance for herself.

¹ Paragraph 8 of applicant's founding affidavit in rule 43 application.

² Paragraphs 46, 47, 49 and 52 *inter alia* of respondent's answering affidavit.

[12] The normal default position is for young children to reside with the mother;³ the separation of children from one another should be discouraged where possible.⁴ The two minor children in this case have bonded well with the applicant and with one another. Separating them in any way makes no sense.

[13] An applicant for maintenance *pendente lite* is entitled to reasonable maintenance dependent upon the marital standard of living of the parties and the applicant's actual and reasonable requirements and the capacity of the respondent (in this instance the applicant) to meet such requirements.

[14] The obligation to pay maintenance arises from the parties' reciprocal duty of support which spouses owe one another. The rule 43 procedure merely provides a spouse in need of support with the mechanism to give effect to this duty.⁵

[15] The applicant's opposition to the respondent's claim is bald and unsubstantiated. He states: "*I can pay the necessary and needed maintenance, but the respondent's demands are exorbitant, unrealistic and unreasonable*".

[16] This brings to mind the matter of *Taute v Taute* where it was held that a court will be far more inclined to allow an application made on reasonable grounds than one that contains extravagant demands and a respondent (in this case, the applicant) who shows a willingness to maintain his spouse and/or children will be heeded with greater sympathy than one who is shown as avoiding his obligations.⁶

³ Erasmus – Superior Court Practice, Vol 2, D1-583 (Service Issue 20, 2022)

⁴ See *Madden v Madden* 1962 (4) SA 654 (T) at 658D.

⁵ *JK v ESK* (2024) 1 ALL SA 775 (WCC) at para 49.

⁶ *Taute v Taute* 1974 (2) SA 675 (E) at 676H.

[17] The evidence presented as well as the respondent's Financial Disclosure Form ("FDF") makes it clear that she is a vulnerable wife as captured in many court decisions.⁷ The applicant, is undeniably, well to do with an attitude to match the respondent's observation that he simply refuses to make his FDF available for the court and the respondent.

[18] In the final analysis the parties are entitled to exercise full parental rights over both minor children and the applicant to have reasonable access to them.

[19] The following order is made:

19.1 **The filing of the respondent's supplementary affidavit is condoned. *Pendente lite* the applicant is ordered to pay:**

1. In respect of the property being No. 9[...] B[...] Crescent, Waterfall Estate, Midrand, Gauteng Province ("the Waterfall property"):

- a. the rates, taxes, levies, electricity, water, loans and/or bond;
- b. household and homeowner's insurance;
- c. Wi-Fi/internet connection;
- d. DSTV/Netflix/any other streaming services reasonably required by the minor children;
- e. two domestic workers;
- f. garden manager/gardener
- g. costs for maintaining the swimming pool including maintenance and chemicals;
- h. general house and property maintenance;
- i. security and alarm system;
- j. maintenance of the back-up power system;
- k. In respect of the Land Rover with registration number K[...] (registered in the name of the applicant) currently utilised by the respondent, which the respondent will retain in her possession for

⁷ See for example the Constitutional Court case of *S v S* 2019 (6) SA 1 (CC) ([2019] ZACC 22) at para [3].

her sole and exclusive use, all finance payments, insurance and maintenance (including all services, licences, tyres and so forth).

- l.* The applicant is ordered to pay maintenance *pendente lite* payable as follows:

 - i.* spousal maintenance in the amount of R40,000 per month;
 - ii.* maintenance in respect of the minor children, CF ("C[...]") and CR ("C[...]"), in the amount of R10,000 per child per month;
 - iii.* all creche, and school fees, extra-murals, stationary, text-books, school uniforms, school outings and sport clothing as and where applicable;
 - iv.* any additional reasonable schooling expenses for the minor children upon receipt of an invoice for same; and
 - v.* any additional reasonable medical expenses not covered by the medical aid, including ophthalmic, orthodontic or specialist care for the minor children, upon receipt of an invoice for same.
- m.* The respondent is to remain in occupation of the Waterfall property, with undisturbed use and occupation thereof to the exclusion of the applicant.
- n.* In terms of the minor children, primary residence, interim care and contact shall be as follows:

 - i.* primary residence of the minor children is to be with the respondent;
 - ii.* subject to the schooling needs of the children, the applicant is to have contact with the minor children every Tuesday and Thursday from 8:00am until 4:00pm and again every alternate weekend from Friday at 5:00pm until Sunday at 5:00pm, such contact is not to take place at the Waterfall property, subject to the following conditions:

1. the applicant is to ensure that the minor children are not exposed to racial prejudice or discrimination during contact periods;
 2. the applicant is to inform the respondent immediately of any illness developed or injuries sustained by either of the minor children; and
 3. any changes to this arrangement must be agreed upon in writing by both parties.
 4. Should the applicant not be able to care for the minor children at any time when the minor children are scheduled to be in his care, he shall immediately inform the respondent, and the respondent shall have the first right of refusal to care for the minor children for the entire period when the applicant is unable to do so. This right shall apply *vice versa* to the applicant, should the respondent be unable to care for the minor children at any time when they are scheduled to be in her care.
- iii. Full parental rights and responsibilities in respect of both minor children are to vest in both parties.
 - iv. Advocate Johanni Barnardt is appointed as curator ad litem for the two minor children. The curator's costs are to be paid by the applicant.
 - v. The applicant is to make an initial contribution of R 500 000.00 towards the respondent's legal costs.
 - vi. The Applicant is ordered make financial disclosure within 10 days of the granting of this order.
 - vii. The costs of the rule 43 applications are reserved for determination in the main divorce trial.

J.S. NYATHI
Judge of the High Court

Date of hearing: 21/01/2025

Date of Judgment: 16 May 2025

On behalf of the Applicant: Adv. NC Maritz

Instructed by: Attorneys: Van der Merwe & Bester Inc. Pretoria.

On behalf of the Defendants: Adv. G. Hulley SC

With : Adv. N. Strathern (Ms).

Instructed by: Gittins Attorneys Inc. Johannesburg.

c/o Jason Martin Attorneys, Pretoria.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 16 May 2025.