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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

Case no: 2025-047845

In the matter between:

L[....] C[....]

APPLICANT

and

C[....] B[....] C[....]

RESPONDENT

Coram: Jonker AJ

Heard: 25 July 2025

Delivered: 28 July 2025

JUDGMENT

JONKER AJ

1. This is an urgent application brought in terms of Rule 43 of the Uniform Rules of Court in the *fast lane*, in which the applicant, the wife of the respondent, seeks a contribution towards her legal costs pendente lite. The matter is limited solely to this aspect.
2. The respondent filed his answering affidavit 4 days after it was due. The reasons set out for the delay is adequately set out therein. I find the respondent has shown good cause for the delay and as a result I grant condonation for the non-compliance.
3. The respondent has raised an abuse of process argument, contending that the applicant was aware of the trial date for over a year and elected to bring this application only on the eve of the hearing in the urgent court. While it is so that the applicant could, and arguably should, have approached the court earlier for this relief, the court finds itself in a difficult position. On the one hand, the delay is not insignificant and on the other hand the right to a contribution towards legal costs pendente lite is well-established in our law, and is designed to ensure fairness and equality between spouses in matrimonial litigation.¹ This is confirmed in *AF v MF 2019 (6) SA 422 (WCC)*² by Davis AJ. It can be said that the law is settled. The respondent's counsel also accepts that applicant is entitled to the contribution.
4. To deny the applicant relief on the grounds of delay alone—when the substantive requirements for a contribution are met—would result in an inequality of arms, particularly given the complexity of the matter and the imminent hearing date. The court cannot ignore the applicant's legal entitlement to be placed in a position to participate meaningfully in the litigation. While her dilatory conduct is not condoned, it cannot operate to deprive her of a right recognised in both common law and Rule 43.

¹ *Cary v Cary* 1999 (3) SA 615 (C) at 621D.

² *AF v MF* 2019 (6) SA 422 (WCC) at par 30.

5. The appropriate balance, in the Court's view, is to grant the relief with a contribution reflective of the stage of proceedings and to reserve the question of costs in the application, thereby allowing the trial court to consider the full context, including the timing of this application.
6. The applicant seeks in her notice of motion a contribution of R1.3 million, a portion of which relates to legal expenses already incurred and a portion to anticipated future legal costs, primarily in relation to the adjudication of a special plea set down for hearing on 11 August 2025.
7. It was conceded by the applicant's counsel that the amounts already expended are not urgent, as no demand for repayment by the applicant's father—who funded those costs—has been made. This Court, accordingly, does not consider past expenses in this determination.
8. The application is urgent, and rightly so. The trial of the special plea is imminent, and the applicant requires funds to ensure that her legal team is adequately resourced to prepare and present her case. Delays in securing funding at this stage would likely prejudice the applicant and may affect her ability to present her case on equal footing with the respondent.
9. It is accepted by the parties that the respondent has the financial means to contribute. The only issue for determination, as conceded by both parties, is the *quantum* of the contribution that would be reasonable in the circumstances to ensure fairness and an "equality of arms" between the parties in the upcoming litigation.
10. The applicant is represented by a legal team consisting of senior and junior counsel—while the senior counsel is not formally conferred silk status, they are of comparable standing—as well as both a senior and junior attorney. The respondent's legal team comprises senior counsel (silk) of considerably experience and stature, a junior counsel, and a senior attorney. The composition of both teams appears to be closely matched in terms of size and

seniority. Such parity naturally entails high hourly rates, which is to be expected and which is not unreasonable.

11. It is noted that the respondent's team has taken the view that the matter may not proceed and has sought directions from the Judge managing the trial. The applicant, however, remains intent on proceeding with the matter as set down. I was told that there are other applications, between the same parties, that have also been set down for the same date. A practice note is due to be filed soon which shall inform the presiding Judge in charge of the case management of the matter where the matter is in fact ripe for hearing. Be that as it may, whether the matter continues on 11 August 2025 or not, the matter will proceed at some other time which will necessitate legal cover required by the applicant.
12. The court is mindful that the purpose of a contribution towards legal costs is not to equalise the financial positions of the parties in absolute terms, nor to finance the applicant's litigation on a scale of her choosing, but to enable her to adequately and meaningfully participate in the litigation process.
13. In light of the proximity of the trial date, the complexity of the matter, the composition of the legal teams, and the principle that both parties should be afforded a fair opportunity to present their case, I am satisfied that a contribution is warranted.
14. However, I do not find that the full amount claimed—R1.3 million—is justifiable at this stage, particularly as it includes past expenses. The applicant is not precluded from seeking a further contribution towards those expenses should circumstances justify it, at a later stage.
15. Applicant's attorney has, in relation to the future preparation of the specific hearing of 11 August 2025, furnished the Court with a proforma account setting out the legal work done to date and what is still anticipated to be incurred. The charges of the two attorneys, and counsel, are duly set out. I have carefully considered the listed charges.

16. In my view, a contribution of R600,000.00 would be reasonable in the current circumstances to enable the applicant to instruct her legal representatives and prepare for the trial of the special plea having regard to the items as reflected in the pro forma invoice.
17. Accordingly, I make the following order:

ORDER

- (a) The respondent is directed to pay a contribution towards the applicant's legal costs, in respect of the future preparation of the specific hearing of 11 August 2025, in the amount of R600,000.00 (Six Hundred and Thousand Rand) within 5 (five) days of this order;
- (b) The applicant is not precluded from seeking a further contribution should circumstances materially change or the litigation expand beyond what is presently contemplated by the applicant;
- (c) The costs of this application are to be costs in the main divorce action.

E JONKER

Acting Judge of the High Court

Appearances

For applicant: Adv P Gabriel
Instructed by: Abrahams & Gross Inc.

For respondent: Adv BK Pincus SC with Adv SL Sundelson
Instructed by: Barkers Inc.