IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 134285/2017

(1) REPORTABLE: ***NO***

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

(3) REVISED: **NO**

(4) Date: 24 July 2025

Signature:

In the matter between:

M[...] M[...] R[...] Applicant

And

N[...] B[...] R[...] Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This is an application (opposed by the respondent) in which the applicant seeks an order *pendente lite* in terms of Rule 43 ordering the respondent to make a financial contribution in the amount of R14 980.00 towards the maintenance of the minor children born from the marriage of the parties as well as related orders pertaining to parental rights and responsibilities, primary care, residency and access to the said children.

[2] The applicant prays more fully for the orders as stipulated in her application and amplified in her founding affidavit.

[3] The parties were married to each other in community of property on 31 March 2015 at Centurion, Pretoria and the marriage still subsists.

[4] Of the marriage two minor boy children were born, to wit, WRR and RWR aged 7 and 5 years respectively.

B. BACKGROUND AND APPLICANT'S CONTENTIONS

[5] The marriage has broken down materially and the applicant has instituted an action for divorce on 21 December 2023, which action is pending with pleadings having since closed.

[6] The applicant is a lecturer at a university in the city since 2021 and earns a disclosed amount of R41 663.20 per month.

[7] The parties had a property in Tzaneen, Limpopo Province, which property has since been sold and the parties each received an amount of R264 776.02 as proceeds from the sale.

[8] The applicant does not receive any additional income whatsoever and foresees that her gross annual income for the next 12 months will be the same.

[9] She and her minor children's actual, reasonable and essential monthly living expenses amounts to approximately R41 538.80 and she is currently stretched to her absolute financial limit. Should any unexpected financial need arise, she will unavoidably suffer a devastating shortfall.

[10] The respondent has the financial means to meet the applicant and the children's essential maintenance needs as he has done prior to the breakdown of the marital relationship but chooses not to.

[11] According to the applicant, the respondent has always been curiously secretive with his financial affairs. The respondent is a highly qualified individual with vast business interests.

[12] The applicant brings it to the court's notice that prior to obtaining employment in January 2021 at the University of South Africa and more specifically throughout the entire course of 2020, she was unemployed since she was permanently studying towards her master's degree. In August 2020 the family moved into a property situated at P[...] Avenue, Bloemfontein. For the period from August 2020 to December 2020, applicant was solely reliant upon the respondent, who had inter alia paid for the following expenses: -

12.1 Rental of the property where they resided at the time, situated at P[...] Avenue, Bloemfontein, including the water and electricity;

12.2 Food, groceries & all cleaning materials;

12.3 The minor children's school fees and all related educational expenses;

12.4 The minor children's clothing and shoes;

12.5 Toiletries;

12.6 Miscellaneous expenses such as personal care.

[13] It is applicant's contention that prior to the breakdown of their marriage, she and the respondent and their children enjoyed a lifestyle that can be described as very comfortable. They frequently went on a family holiday, and it was mostly funded by the respondent. They loved to eat out at restaurants, shopped at notable department stores, and more often than not, the respondent would pay for these expenses.

[14] In January 2021, the applicant moved with their minor children to their residence in Venda, Limpopo Province, where applicant was maintaining the property. The respondent did not move with them but stayed behind in Bloemfontein, as he was managing his business. However, despite the fact that he did not move with them to Venda, he continued to pay the aforementioned expenses until August 2021. Applicant is not certain what the exact costs of these expenses amounted to, since the respondent was mainly in control of the finances during the said period.

[15] For the period from September 2021 to December 2021, the respondent made no contributions towards the minor children and applicant. He has subsequently resiled from his obligation to contribute to the expenses of their minor children. It should further be noted that the respondent stopped visiting the minor children during this period at the residence in Venda, Limpopo Province.

[16] In January 2022, applicant relocated with the minor children to the property situated at P[...] Avenue, Bloemfontein. During 2022, the respondent made some contributions towards the reasonable and essential monthly living expenses of the minor children. Applicant expresses gratitude that the respondent has at least made some contributions during the course of 2022, but sadly, these contributions happened very inconsistently and were subsequently insufficient to sustain her and their minor children and can almost be regarded as being negligible.

[17] In November 2022, the parties purchased and moved into a property situated at [...] M[...] Street, O[…] Estate, [...] O[...] Range. The agreement between applicant and the respondent was that he would be solely responsible for the payments towards the bond on the property, including the rates, taxes, water and electricity. The said amounts would be debited from applicant’s bank

account, whereafter respondent would reimburse her. He reimbursed her faithfully for approximately 6 (SIX) months, whereafter he stopped to make any further payments towards the bond on the property from approximately June 2023, with no communication.

[18] As of June 2023, the respondent has made limited contributions towards the maintenance of the minor children and the applicant, which are not sufficient to properly maintain them. Despite applicant's earnest pleas to the respondent to make a proper contribution towards their minor children's maintenance, he has failed to do so. Regrettably, the respondent's obstructive behaviour has now escalated to such a level that applicant feels she has no other option but to approach this Court for interim relief, since the respondent has ignored each and every one of these requests, which are more than reasonable in circumstances where the respondent has in the past adequately footed the bill for their minor children's maintenance, and assisted with the upkeep of the minor children. Applicant submits that she is simply not in a financial position to take responsibility, let alone be the sole provider, for the children's monthly expenses.

[19] Applicant has in recent times had to fund her significant shortfall by dependence on hand-outs from friends and family. The respondent merely shirks his responsibilities, caring only for himself and his personal needs.

C. RESPONDENT'S CONTENTIONS

[20] The respondent opposes this application on technical grounds. For example, at the onset he raises a point in limine that the applicant has failed to comply with Rule 41A of the Uniform Rules of Court. Further grounds are that he cannot afford to meet the applicant's requirements. The applicant is not duty bound to pursue mediation in place of Rule 43 in the current circumstances.

[21] The applicant has disclosed her financial position by way of a financial disclosure form as well as her bank statements. The respondent has filed only a bank statement, but not an FDF and necessary annexures. The applicant has challenged the respondent to do so, but to no avail.

D. APPLICABLE LEGAL REQUIREMENTS

[22] Applicant is entitled to reasonable maintenance *pendente lite* dependent upon the marital standard of living of the parties, the applicant's actual and reasonable requirements[1] and the capacity of the respondent to meet such requirements which are normally met from income although in some circumstances inroads on capital may be justified.[2]

[23] In *Taute v Taute (Supra),* it was held that a claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands. Similarly, **more weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligations than to that of one who is seeking to evade them.[3]** [emphasis added]

[24] In this matter the applicant is only seeking maintenance due to the difficult position she finds herself in. Her testimony in her founding papers reveal a reasonable professional woman who is not driven by any ill-feelings against the respondent, but only concern for the well-being of their minor children. On the contrary, the respondent displays an uncaring and selfish attitude to the respondent and his minor children.

E. CONCLUSION

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[1] *J.K v E.S.K* (15912/2023) [2023] ZAWCHC 317; [2024] 1 All SA 775 (WCC) at paragraph [49].
[2] *Taute v Taute* 1974 (2) SA 675 (E) at paragraph 676E.
[3] *Taute v Taute* 1974 (2) SA 675 (E) at 676H; *Y.B v L.B* (unreported, GP case no 5413/2020 dated 28 March 2023) at paragraph [31].

[25] In the absence of functional co-operation on the respondent’s part as required by Rule 43, the court can only deal with evidence before it.

[26] Accordingly, the application succeeds with costs.

[27] The draft order filed on behalf of the applicant at Caselines file - 21 is made an order of court.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 20/01/2025
Date of Judgment: 24 July 2025

On behalf of the Applicant: Adv CC De Klerk
Instructed by: Pritchard Attorneys, Pretoria

On behalf of the Respondents: Adv. M Musetha
Instructed by: Nefuri 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 24 July 2025.