



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

1. REPORTABLE: YES/NO
2. OF INTEREST TO OTHER JUDGES: YES/ NO
3. REVISED: YES/ NO
DATE: 14 August 2025

Case number: 050868/2025

In the matter between:

Y[....] S[....]

APPLICANT

and

W[....] S[....] S[....]

RESPONDENT

JUDGMENT

MARX DU PLESSIS, AJ

Introduction

1. This is an application brought in terms of Rule 43, which came before me in the Family Court on 12 August 2025.
2. The applicant claims, *inter alia*, spousal maintenance, maintenance in respect of the parties' two minor children, and a contribution towards costs. The application was launched simultaneously with the institution of the divorce action on or about 11 April 2025.
3. On 17 July 2025, the applicant applied for the allocation of a hearing date, approximately two weeks after the respondent delivered his sworn statement and some three months after the application had been launched.

Brief background

4. The parties were married to one another on 17 September 2011 out of community of property, subject to the accrual system. Two children were born of the marriage, aged 12 and 5.
5. The applicant vacated the parties' erstwhile matrimonial home during or about February 2025. The reasons for her doing so are in dispute but are irrelevant for the purposes of this application.
6. Upon vacating the matrimonial home, the applicant took the minor children with her, and they have been in her care since. The applicant moved into her

parents' home, where she still resides. The primary care and residence of the minor children are not in dispute in this Rule 43 application, nor are the respondent's rights of contact.

7. During April 2025, the applicant caused a summons for divorce to be issued and, at the same time, launched the present Rule 43 application. The applicant claims a cash contribution towards her and the children's maintenance in the total sum of R43,000.00 per month, as well as a contribution towards her legal costs in the sum of R80,000.00.
8. The sum of R43,000.00 comprises a contribution of R20,000.00 per month towards the applicant's maintenance, R8,000.00 per child per month, and R7,000.00 per month as full payment the applicant's and the children's rental.
9. In addition, the applicant seeks an order directing the respondent to pay all of the children's educational expenses, the applicant's and the children's medical aid premiums together with all medical expenses not covered by the medical aid, as well as an amount of R30,000.00 as a contribution towards her relocation costs.
10. On the applicant's own version, as set out in paragraphs 6.14 and 6.15 of her sworn statement, her and the children's monthly shortfall amounts to R5,075.33. This shortfall is calculated inclusive of the R7,000.00 rental payment, which the applicant also seeks payment of separately, thereby

duplicating this expense and, in effect, seeking an order in terms of which the respondent pays for it twice: firstly, as part of the cash component to supplement the applicant's alleged shortfall, and secondly, as a stand-alone expense payable directly to the service provider.

11. On the applicant's version, it is manifest that the contributions she claims by far exceed the extent of her alleged shortfall and are, in fact, exorbitant in the extreme.
12. The applicant launched the application not knowing what, if anything, would be in dispute in the divorce action and, more importantly, not knowing anything about the respondent's financial position. In paragraph 6.1 of her sworn statement, the applicant expressly confirms under oath that she possesses little knowledge of the respondent's financial position.
13. Notwithstanding the respondent's full disclosure of his financial position, his payment of monthly cash contributions to the applicant and the children (albeit in fluctuating amounts), his continued payment of the children's school and aftercare fees, and his reasonable tender for a contribution towards the children's maintenance as set out in his sworn statement, the applicant nonetheless persisted in setting the matter down for hearing and sought an order in accordance with her Rule 43 notice.

14. As previously stated, the applicant applied for a hearing date three months after launching the application, and only after the respondent had delivered his sworn statement, to which his Financial Disclosure Form was attached. This chronology undermines the applicant's assertion of urgency and dire financial circumstances.

Applicable legal principles

15. In adjudicating Rule 43 applications, the Court must consider the applicant's reasonable needs and the respondent's ability to meet them.¹ To this end, and to ensure that justice is done between parties, the exchange of Financial Disclosure Forms has been made compulsory in all divorce actions and Rule 43 applications where maintenance is in dispute, whether it be child or spousal maintenance.
16. The Financial Disclosure Form is a comprehensive document dealing with a party's financial affairs, completed under oath, accompanied by relevant supporting documentation.
17. The completion and exchange of Financial Disclosure Forms is one of many tools in divorce litigation, not only serving an administrative function. The purpose of exchanging Financial Disclosure Forms is not only to ensure a fair hearing, but also to secure the inexpensive and expeditious finalisation of

¹ Buttner v Buttner 2006 (3) SA 23 (SCA) at par 36.

litigation. Disclosure by Financial Disclosure Form can assist litigants to achieve correct results sooner and more cost effectively than they would without.

18. A full and frank financial disclosure of a party's finances is essential so as not only to ensure a just resolution of the financial disputes between the parties, but as stated, to facilitate the expeditious and cost-effective conclusion of the disputes between the parties.
19. It is trite 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 one who is obviously, albeit on paper, seeking to evade them.²
20. Had the applicant waited for delivery of the respondent's Financial Disclosure Form before launching this application, as one would reasonably expect from a party lacking particulars of the other's finances, she would have been able to assess the reasonableness of her claims and to seek a contribution towards her and the children's maintenance needs that was neither exorbitant, extortionate, nor extravagant, and thus is in line with purpose of Rule 43.

² Taute v Taute 1974(2) 675 (EC) at 676H

21. The applicant waited more than two months before applying for a hearing date and persisted in pursuing the application and the relief sought, despite being in possession of the respondent's Financial Disclosure Form, which clearly demonstrates that his income is not as she had assumed and was, in fact, substantially lower.
22. In my view, the applicant's conduct amounts to an abuse of the Rule 43 process.

Respondent's tender during argument

23. During argument, the respondent made a further tender for the contribution of maintenance towards the minor children. Based on the evidence before me, this tender, as with the tender contained in the sworn statement, is more than reasonable.
24. Notwithstanding my misgivings regarding the application, the Court remains mindful of its duty to protect and promote the best interests of the minor children.
25. As the respondent's tender sufficiently caters for the children's accommodation, nutritional, and educational needs, it is appropriate to make it an order of court.

Costs

26. Whilst the Court recognises the urgent and interlocutory nature of Rule 43 applications, such proceedings cannot be instituted, pursued, and adjudicated in a vacuum. Orders granted in terms of Rule 43 frequently bear upon the conduct, prosecution, and potential settlement of the divorce action, and the significance of ensuring that such orders are correct and appropriate cannot be overstated.
27. The application launched by the applicant was incomplete and speculative in material respects, thereby giving rise to an undesirable and avoidable application.
28. Instituting the application without any knowledge of the respondent's financial position, in circumstances where the applicant was aware that the respondent would be compelled to deliver a Financial Disclosure Form soon after service of his plea, and thereafter persisting with the application notwithstanding full disclosure of the respondent's finances, was ill-considered and contrary to both the intention and the purpose underlying Rule 43.
29. The applicant's conduct in launching and prosecuting the application in the circumstances outlined above warrants censure and, in the Court's view, justifies an adverse costs order.

Order

In the result, it is ordered that, *pendente lite*:

1. The respondent shall contribute towards the maintenance of the two minor children in the amount of R3,000.00 per month per child, the first instalment shall be paid on 1 September 2025, and thereafter on the first day of every succeeding month.
2. The respondent shall continue making payment of the minor children's school and aftercare fees, directly to the relevant service providers.
3. The applicant shall retain the minor children as dependants on her medical aid and shall continue making payment of the monthly contributions in respect thereof. The parties shall be equally liable for the payment of all medical expenses of the two minor children not covered by the medical aid.
4. Full parental responsibilities and rights in respect of the minor children, as contemplated in s 18(2) of the Children's Act 38 of 2005, are awarded to the applicant and the respondent, subject thereto that the applicant is awarded the right to provide primary care and the primary place of residence to the minor children.
5. Specific parental responsibilities and rights as contemplated in s 18(2)(b) of the Children's Act 38 of 2005, and in particular, the right to maintain contact with

the minor children, are awarded to the respondent. Such contact shall include, but shall not be limited to, the following:

5.1 Removal of the children every alternate weekend from Friday at 15h00 to Sunday at 15h00.

5.2 Removal of the children every alternate short school holiday, on the basis that the minor children shall spend alternate Easter weekends with the applicant. For purposes hereof, "*short school holidays*" refer to the school holidays occurring during March/April and September/October each year.

5.3 Removal of the children for half 50% of every long school holiday, subject thereto that Christmas and New Year shall rotate between the parties. For purposes hereof, "*long school holidays*" refer to the school holidays occurring during June/July and December/January each year.

5.4 Reasonable telephonic contact at all reasonable times.

5.5 Removal of the children on Father's Day weekend from 15h00 on the Friday until 15h00 on the Sunday, unless this coincides with a normal contact weekend, in which event the applicant shall be entitled to the same contact on Mother's Day weekend.

5.6 Removal on the respondent's birthday from 09h00 until 17h00, should the respondent's birthday fall over a weekend which does not coincide with a normal contact weekend, in which event the applicant shall be entitled to the same contact on her birthday.

5.7 Removal for 50% of the available time on the birthdays of the minor children, insofar as this is practically possible.

6. The applicant is to pay the costs of the application on scale A.



Z MARX DU PLESSIS

Acting Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 12 August 2025

Date of order: 14 August 2025

APPEARANCES

On behalf of the applicant: Adv S van Dyk

On behalf of the respondent: Adv R Morgan