



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: 17 August 2025

Case number: 2024-143960

In the matter between:

E [....] V [....]

APPLICANT

and

G [....] V [....]

RESPONDENT

JUDGMENT

MARX DU PLESSIS, AJ

Introduction

- [1] This is an application in terms of Rule 43 of the Uniform Rules of Court in which the applicant seeks interim relief pending the finalisation of the divorce action between the parties.
- [2] The applicant claims, *inter alia*, a contribution towards her maintenance in the sum of R20,000.00 and a contribution towards her legal fees in the sum of R200,000.00.
- [3] Both the applicant and the respondent sought leave to deliver supplementary affidavits in terms of Rule 43(5). The reasons advanced for these supplementary affidavits, as well as the court's approach thereto, will be dealt with later in this judgment.
- [4] It is, however, necessary at the outset to emphasise the nature and purpose of Rule 43 proceedings. Rule 43 was designed to provide parties with a swift, inexpensive and effective remedy for interim relief in matrimonial matters. The Rule requires parties to deliver sworn statements in the nature of a declaration and plea, setting out concisely the relief claimed and the grounds therefor. The object being to ensure that such matters are resolved expeditiously and inexpensively.

Background

- [5] The parties were married to one another out of community of property, subject to the accrual system, on 11 January 1997. One child was born of the marriage, a son, EV. Although EV has attained the age of majority, he is not yet self-supporting. The respondent presently bears sole responsibility for EV's maintenance.
- [6] The parties have not cohabited since August 2023, when the applicant vacated the erstwhile matrimonial home. EV remained in the care of the respondent.
- [7] Apart from making payment of the applicant's monthly medical aid premiums, the respondent has made no cash contribution towards the maintenance of the applicant since she vacated their erstwhile matrimonial home.
- [8] Shortly after the applicant vacated the erstwhile matrimonial home, the parties engaged in mediation which culminated in the conclusion of a settlement agreement during October 2023.
- [9] In terms of the settlement agreement, the respondent undertook and performed the following obligations:

- [9.1] He purchased an immovable property to the value of R1,350,000.00 which was subsequently registered in the name of the applicant. This immovable property serves as the applicant's residence.
- [9.2] He paid the conveyancing cost, water and electricity connection fees, and related expenses in the sum of R81,500.00.
- [9.3] He paid an amount of R50,000.00 as contribution towards the applicant's relocation cost.
- [9.4] He transferred the sum of R3,080,000.00 into an investment account nominated by the applicant and made payment of the associated administration fees and taxes. (These funds are not to be accessed or utilised by the applicant pending the finalisation of the divorce action.)
- [10] The applicant, while disclosing the conclusion of the settlement agreement, contends that she was manipulated into signing it. She nevertheless confirms that the respondent purchased the immovable property and caused it to be registered in her name, and that he continues to pay her monthly medical aid contributions.

[11] Furthermore, the applicant confirms that the transfer of the investment funds was effected, and that the parties are agreed she may not access these funds pending the finalisation of the divorce.

[12] The applicant has, however, failed to disclose in her founding affidavit the balance of the sums paid by the respondent, and she has not disclosed that she is possessed of an investment to the value of R4,000,000.00, derived from an inheritance, or what returns this investment yields.

[13] It is common cause that this latter investment is excluded from the applicant's estate for the purposes of calculating the accrual.

[14] The applicant's R4,000,000.00 investment, derived from an inheritance, was disclosed not by the applicant herself, but by the respondent in his sworn statement. The applicant then elected to address the content of the respondent's sworn statement in what she styled as a replying affidavit, to which the respondent in turn delivered a supplementary affidavit.

Legal principles

[15] Each Rule 43 application falls to be determined on its own facts. Despite this, certain foundational principles governing such applications have become well-established in our courts. These principles are, *inter alia*:

- [15.1] The purpose of Rule 43 applications is to provide swift, effective and inexpensive relief in matrimonial matters, pending the finalisation of the main action.¹
- [15.2] Rule 43 contemplates brevity. Affidavits should approximate the form of a declaration or plea and should contain only such information as is strictly necessary for the court to make an equitable interim determination. Prolivity and unnecessary detail are to be avoided.²
- [15.3] Prolivity in a Rule 43 proceeding constitutes an abuse of process because it defeats the very purpose and object of the Rule.³
- [15.4] There is tendency in Rule 43 applications for parties, whether acting expediently or strategically, to misrepresent the true nature of their financial affairs. This often takes the form of an exaggeration of expenses or an understatement of income, only to be corrected later when confronted with contrary evidence. Such conduct undermines the integrity of Rule 43 proceedings. Consequently, applicants who seek equitable relief under Rule 43

¹ Taute v Taute 1974(2) 675 (EC)

² Colman v Colman 1967(1) SA 291 (c) at 292A

³ Smit v Smit 1978(2) SA720 (W)

are under a duty to act with the utmost good faith (*uberrima fides*). They must make a full and frank disclosure of all material facts relating to their financial affairs. A failure to do so, whether by misstatement or omission, means that the applicant approaches the court with unclean hands, and on that basis alone a court is justified in refusing relief.⁴

[15.5] A fundamental principle underpinning any award of maintenance is the consideration not only of the ability of the spouse from whom maintenance is sought to pay, but equally the demonstrated need of the party claiming maintenance.⁵

[15.6] Maintenance claims must be reasonable and moderate. Extravagant, inflated, or unjustified claims may undermine the entire application.⁶

[15.7] There should be a level playing field in relation to party representation.⁷ The scale upon which the parties litigate, and the

⁴ Du Preez v Du Preez (16043/2008) [2008] ZAGPHC 334

⁵ Buttner v Buttner 2006 (3) SA 23 (SCA)

⁶ Carstens v Carstens 1985 2 SA 351 (SE)

⁷ Nicholson v Nicholson 1998 (1) SA 48 (W) at 50C-G

manner in which the trial proceeds, must take proper account of the respective means of the parties.⁸

[15.8] Rule 43 applications deviate from ordinary motion proceedings in that they do not permit the filing of a third set of affidavits. This underscores the duty on an applicant to place all pertinent information before the court in the founding affidavit.⁹

[15.9] As stated, an applicant in Rule 43 proceedings bears an obligation to act with the utmost good faith and to make full and frank disclosure of his or her financial position. The penalty for such non-disclosure may be as severe as the outright refusal of the application.¹⁰

[16] It is against the backdrop of the foregoing principles, the voluminous papers placed before this Court, and the arguments advanced on behalf of the parties that this matter falls to be determined.

⁸ *Glazer v Glazer* 1959(3)(SA) 928 (W)

⁹ *E v E and related matters* 2019 3 All SA 519

¹⁰ *Du Preez v Du Preez* 2009 (6) SA 28 (T)

Prolivity

- [17] In terms of Rule 43, an applicant is required to deliver a sworn statement in the nature of a declaration, setting out the relief claimed and the grounds therefor, while the respondent's sworn statement is to take the form of a plea. Such statements are intended to be concise. The parties are accordingly obliged to place before the court only such evidence and information as is necessary and relevant for the determination of the application, and to refrain from prolix, verbose, or irrelevant matter.
- [18] Both parties' sworn statements, which include the supplementary affidavits filed, fall foul of the principles outlined above.
- [19] The applicant's sworn statement extends over nineteen pages, of which approximately eleven are devoted to irrelevant allegations concerning her employment history, alcoholism, and the respondent's alleged role therein. In all of these pages of unnecessary matter, no information whatsoever is furnished regarding the applicant's investment and the return it yields. This omission is striking as it cannot be denied that such information is essential, as it bears directly on the applicant's need for maintenance and her ability to maintain herself.

- [20] In response, the respondent delivered a sworn statement spanning fifty pages, much of which is characterised by verbosity and unnecessary elaboration, extending well beyond what is required for the purpose of a Rule 43 application.
- [21] The respondent's sworn statement, which disclosed the applicant's investment and the balance of the payments made to her, prompted the applicant to file a replying affidavit. This replying affidavit spans a further nineteen pages. In turn, the respondent delivered yet another sworn statement, styled a supplementary affidavit.
- [22] The circumstances of this application, as reflected in the numerous and lengthy affidavits before me, are not exceptional so as to justify the unacceptable length and content of the papers. A failure to frame Rule 43 statements in accordance with the spirit, purpose, and requirements of the Rule constitutes an abuse of process.
- [23] Had the applicant made a full and frank disclosure of her financial position, as required, there would have been no need for either party to deliver further affidavits. I am not persuaded that there exists any justification for the inordinate prolixity evident in the papers before me.

Failure to make a full disclosure

- [24] As appears from the preceding paragraphs, a further matter of concern is the applicant's misstatement of the true nature of her financial affairs. Not only did the applicant fail to disclose a significant investment, and the returns yielded by such investment, but she also omitted to disclose the further substantial contributions made to her by the respondent in terms of the disputed settlement agreement.
- [25] It is a common feature of Rule 43 applications that parties inflate their expenses or understate their income, only later, when confronted with contrary evidence, seeking to amend and supplement their papers through the filing of further affidavits. Such a practice is neither acceptable nor permissible.
- [26] The fact that the applicant conceded, only in a replying affidavit, which is ordinarily not permitted, and only after the disclosure was made by the respondent, that she holds an investment of R4,000,000.00 and has received further sums and contributions from the respondent, demonstrates that the applicant failed to make a full and frank disclosure of her finances in her founding affidavit. The applicant accordingly approaches this Court with unclean hands.

[27] Such conduct undermines the integrity of Rule 43 proceedings and of court orders granted pursuant thereto. It follows that where an applicant fails to act with the requisite candour, the relief sought may properly be refused outright.

[28] Rule 43 empowers the court to “*dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision.*” The discretion is essentially an equitable one and must be exercised judicially, with due regard to all relevant considerations.

Conclusion

[29] On the limited information disclosed by the applicant, it is impossible for this Court to determine whether the applicant has a need for maintenance and, if so, in what amount, and consequently whether the respondent is in a position to meet such a need.

[30] A claim for a contribution towards legal costs flows from the duty of support owed between spouses and must take proper account of the respective means of the parties. Given this Court’s inability to determine the applicant’s means, her claim for a contribution towards legal costs cannot be determined.

[31] Having considered the evidence and the authorities cited above, I am unable to find that the applicant has established the requisite need for maintenance or for a contribution towards her legal costs.

Order

In the result, I make the following order:

1. The application is struck off the roll.
2. No order as to costs is made.



Z MARX DU PLESSIS

Acting Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 12 August 2025

Date of order: 17 August 2025

APPEARANCES

On behalf of the applicant: Adv M Coetzee

On behalf of the respondent: Adv S Barreiro