



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

Case No: 2025-095755

In the matter between:

KJ

Applicant

and

IJ

First Respondent

THE MAINTENANCE OFFICER

MITCHELL'S PLAIN MAGISTRATES COURT

Second Respondent

REASONS FOR JUDGMENT – 4 SEPTEMBER 2025

LEKHULENI J:

Introduction

[1] The applicant brought an application on an urgent basis which was divided into two parts, Part A and Part B. In Part A, the applicant sought an order suspending the Mitchell's Plain Maintenance Court proceedings instituted by the first respondent

against the applicant pending the finalisation of the review proceedings contemplated in Part B of the Notice of Motion. In Part B, the applicant seeks relief in terms of the Promotion of Administrative Justice Act 3 of 2000, alternatively, the common law, that the decision of the Maintenance Officer to refer the first respondent's maintenance complaint for an inquiry as contemplated in section 10 of the Maintenance Act 99 of 1998 ('the Maintenance Act') be reviewed and set aside. Ancillary thereto, the applicant also seeks an order that the aforesaid decision by the maintenance officer be substituted with an order declining to refer the first respondent's complaint for an inquiry in terms of section 10 of the Maintenance Act. This court was tasked to consider Part A of the application.

[2] After listening to arguments in the urgent court, I dismissed the application and promised to furnish reasons for my decision. What follows are the reasons for that order.

The background facts

[3] The first respondent (a dependent daughter) is a biological daughter of the applicant. She was born out of a marriage between the applicant and Mr MSJ. The marriage relationship between the applicant and Mr MSJ has broken down irretrievably with no prospects of reconciliation. The parties have separated, and in 2024, the applicant instituted divorce proceedings against Mr MSJ under case number 11295/2024, seeking a divorce order, forfeiture of benefits, as well as lifelong maintenance in terms of section 7(2) of the Divorce Act. The first respondent has reached the age of majority and is a student at False Bay College doing training in tourism. The first respondent resides with her father, Mr MSJ.

[4] The second respondent is a Maintenance Officer, of Mitchell's Plain Magistrates Court appointed in such capacity in terms of Section 4(1)(a) of the Maintenance Act 99 of 1998 ('the Maintenance Act') with her principal place of business at the Mitchells Plain Magistrates Court, situated at First Avenue, Mitchell's Plain, Cape Town, Western Cape. The applicant sought an urgent order for the suspension of the Maintenance Court proceedings instituted by the first respondent

(her daughter) against her at Mitchells Plain Magistrates Court, pending the finalisation of the review proceedings contemplated in Part B of the Notice of Motion.

[5] During October 2024, the applicant instituted a Rule 43 application against her husband, Mr MSJ. The application in terms of Rule 43 was heard on 22 October 2024. Nuku J granted an order against Mr MSJ to contribute to the maintenance of the applicant as from 01 November 2024 until the determination of the divorce action by effecting payment to the applicant in the sum of R8824 per month as maintenance payable on or before the first day of each month, directly into such bank account as the applicant may nominate from time to time. In addition, the Court ordered Mr MSJ to retain the applicant on his medical aid scheme and to bear the monthly premium in respect thereof, including any increases. The Court also directed Mr MSJ to pay R50 000 towards the applicant's legal costs.

[6] Subsequent thereto, the dependent daughter applied for maintenance against the applicant, her biological mother, at the Mitchells Plain Magistrates Court for an amount of R9,595.52. The applicant was subpoenaed, and the Maintenance Officer investigated the complaint, conducted an informal enquiry in terms of section 6 of the Maintenance Act. The Maintenance officer determined that a need in respect of the dependent daughter was established. The Maintenance Officer determined that an inquiry be held in terms of section 10 to determine a reasonable amount of maintenance that the applicant should pay whilst the dependent daughter was still studying. The matter was enrolled for the section 10 enquiry for 16 May 2025 at the Maintenance Court.

[7] At the hearing of the matter, the applicant's counsel objected to the commencement of the proceedings of the section 10 inquiry before the Maintenance Court and asserted that the granting of an order at the inquiry would effectively vary the Rule 43 order granted by the High Court. The applicant's counsel asserted that the applicant intended to launch review proceedings against the Maintenance Officer's decision to refer the matter for enquiry in terms of section 10. In addition, the applicant's counsel requested that the enquiry before the Maintenance Court be stayed pending the outcome of a review application that the applicant intended to launch in the High Court.

[8] Counsel argued in the Maintenance Court that the review application would be based on three grounds. First, that the applicant has no means to make any financial contribution to the first respondent. Secondly, the dependent daughter has no need for maintenance as her father (Mr MSJ) looks after her, and thirdly, the applicant has no means to make any financial contribution. It was also argued that the maintenance order in the Maintenance Court could not be granted against the applicant due to the Rule 43 interim order.

[9] On 23 May 2025, the magistrate dismissed the applicant's request and found that the duty of support envisaged in the Act extends to both parents, and that parents are obliged to maintain their children in accordance with their respective means. Notwithstanding, the magistrate directed that the anticipated review application, if any, be launched by no later than 01 July 2025 and that the section 10 inquiry would proceed on 01 August 2025.

[10] Pursuant to the magistrate's judgment, the applicant brought this application on an urgent basis for a hearing on 29 July 2025 to suspend the proceedings at the Maintenance Court pending review proceedings. In her urgent application, the applicant contends that on a balance of probabilities, the inescapable conclusion is that the institution of the Maintenance Court proceedings by the first respondent was motivated by ulterior motives. The applicant asserted that the first respondent, clearly at the behest of her father, with whom she is residing, and who is clearly aggrieved by the Rule 43 order, is seeking to recoup what must be paid monthly to her to make ends meet.

[11] The dependent daughter filed a notice to oppose and did not file any answering affidavit. The dependent daughter applied for legal aid, and her application was unsuccessful. She approached other institutions, and her request was declined. She appeared in person at the hearing of this matter.

Principal submissions by the parties

[12] Mr Steyn, counsel for the applicant, argued that no maintenance order can possibly be made against the applicant in the Maintenance Court proceedings during a section 10 inquiry while the Rule 43 order remains in place. Mr Steyn submitted that the applicant bases her contention on three grounds: First, the applicant contended that the first respondent (the dependent child) has no need to be maintained by her. According to counsel, the first respondent is being maintained by her father. In the Rule 43 proceedings, her father indicated on record that he would continue to do so. Secondly, in terms of the Rule 43 order, this Court has already declared that the applicant is maintenance dependent. In other words, since Mr MSJ must maintain the applicant to make ends meet, the Maintenance Court cannot expect the applicant to maintain the dependent daughter. Thirdly, any order that the Maintenance Court may make during the Maintenance Court proceedings will conflict with the Rule 43 order.

[13] As discussed above, the first respondent (dependent daughter) appeared in person. At the hearing of this application, she informed the Court that the maintenance that she receives from her father was insufficient. The first respondent submitted that there was a shortfall in the maintenance she received from her father, and hence she approached the Maintenance Court for maintenance from her mother, the applicant. The first respondent stated that she is a student at False Bay College, pursuing a degree in tourism management. The Court specifically asked her what prompted her to approach the Maintenance Court for maintenance, and she stated that she went to the Maintenance Court because she needed money for school, food, toiletries, and other essentials. She stated that the money her father supports her with was insufficient and not enough to cover all her expenses, and hence she approached the Maintenance Court for her mother's assistance.

Applicable legal principles

[14] The first respondent is an adult dependent child who has reached the age of majority, but she is still dependent on her parents for a living. She is at an institution of high learning. She indicated she needs support from her mother as the support she receives from her father is insufficient. Her parents are in the process of divorce.

[15] It is apposite to underscore the fact that parents of a minor child or of an adult dependent child are both under a common law duty to support their minor and major dependent children in accordance with their respective means. (*Z v Z* 2022 (5) SA 451 (SCA) para 8). It is an inescapable fact of modern life that marriage often ends in divorce. (*S v S and Another* 2019 (8) BCLR 989 (CC) para 1). The parents' duty to support their children is not terminated by the dissolution of their marriage by divorce. In *Bursey v Bursey and Another* 1993 (3) SA 35 (SCA) at 36D, the Supreme Court of Appeal (*the SCA*) held that the incidence of the common law duty of support in respect of each parent depends upon their relative means and circumstances and the needs of the child from time to time. The court observed that the duty does not terminate when the child reaches a particular age but continues after majority. (see also *Kemp v Kemp* 1958 (3) SA 736 D) at 737; *Hoffmann v Herdan NO and Another* 1982 (2) SA 274 (T) at 275A).

[16] The Divorce Act itself recognises that there are instances where a child born to divorcing parties may, despite the fact that he or she has attained majority, nonetheless still be financially dependent on his or her parents for some time to come. (*J.A.L v J.L and Another* (19441/2020) [2022] ZAWCHC 118 (10 June 2022) para 18). Section 6(1)(a) provides that 'a decree of divorce shall not be granted until the court is satisfied that the provisions made or contemplated with regard to the welfare of any minor *or dependent child of the marriage* are satisfactory or are the best that can be effected in the circumstances' (emphasis supplied). Section 6(3) provides that a Court granting a decree of divorce may make any order which it deems fit in regard to the maintenance of *a dependent child* of the marriage.

[17] Section 6 of the Divorce Act safeguards the interests of dependent and minor children. It provides the power for a court to make orders directing parents who are in the process of seeking a divorce to make payments for minor children who are dependent. (*Jarvis v Jarvis* [2013] JOL 30618 (GSJ) at para 6). Significantly, sections 6(1)(a) and 6(3) do not differentiate between a minor child and a major dependent child of the marriage regarding the payment of maintenance. When the Divorce Act came into effect the age of majority was 21 years in terms of section 1 of the Age of Majority Act 57 of 1972. Since the advent of the Children's Act 38 of 2005 on 1 April 2010, the age of majority has been set at 18 years in terms of section 17 of the Act. It

is incontestable that at this age, many young people have not yet completed their secondary education, let alone started and finished their tertiary studies.

[18] It must be stressed that a child's vulnerability and their need for protection do not abruptly disappear when they turn 18. In *Centre for Child Law v Minister of Justice and Constitutional Development and Others (National Institute for Crime Prevention and the Re-Integration of Offenders, as Amicus Curiae)* 2009 (2) SACR 477 (CC) para 39, albeit in a different context, the Constitutional Court observed that 'there is no intrinsic magic in the age of 18, except that in many contexts it has been accepted as marking the transition from childhood to adulthood'.

Discussion

[19] It is common cause that the Maintenance Officer in this matter investigated the dependent child's maintenance complaint in terms of section 6 of the Maintenance Act and established that there is a need for maintenance. Pursuant thereto, the Maintenance Officer recommended that the matter proceed to a section 10 enquiry to determine the relative means of the applicant to contribute towards the financial needs of the dependent child, her daughter. Mr Steyn implored this Court to suspend the enquiry at the Maintenance Court, premising his argument on the three grounds discussed above. I address these grounds, *ad seriatim*, *infra*.

Should the dependent child be maintained by the applicant?

[20] For the sake of clarity, the relevant part of section 6 of the Maintenance Act 99 of 1998 provides that –

‘(1) Whenever a complaint to the effect -

- (a) that any person legally liable to maintain any other person fails to maintain the latter person;
- (b) that good cause exists for the substitution or discharge of a maintenance order; or
- (c) that good cause exists for the substitution or discharge of a verbal or written agreement in respect of maintenance obligations in which respect

there is no existing maintenance order, has been made and is lodged with a maintenance officer in the prescribed manner, *the maintenance officer shall investigate that complaint* in the prescribed manner and as provided in this Act.

(2) After investigating the complaint, the maintenance officer *may* institute an enquiry in the Maintenance Court within the area of jurisdiction in which the person to be maintained, or the person in whose care the person to be maintained is, resides, carries on business or is employed with a view to enquiring into the provision of maintenance for the person so to be maintained.’ (emphasis added)

[21] A careful consideration of these provisions demonstrates that it is certainly the function of the Maintenance Officer to investigate any complaint and then decide whether to institute an enquiry in the Maintenance Court. Section 7 of the Act sets out the manner in which the Maintenance Officer may investigate the matter. Amongst others, the Maintenance Officer may obtain statements under oath or affirmation from persons who may be able to give relevant information concerning the subject of such complaint; gather information concerning the identification or whereabouts of any person who is legally liable to maintain the person mentioned in such complaint or who is allegedly so liable; the financial position of any person affected by such liability; or consider any other matter which may be relevant concerning the subject of such complaint.

[22] In the written submissions made by the Maintenance Officer opposing the suspension of the inquiry at the Maintenance Court, the Maintenance Officer submitted that the maintenance needs of the dependent child (first respondent) have been established. The Maintenance Officer also noted that the means of the applicant must be established. Based on the investigation of the maintenance complaint made under Section 6, the Maintenance Officer asserted that the respondent has the means to contribute towards the applicant's needs. According to the Maintenance Officer, the applicant may not be able to afford the full amount requested by the dependent child; however, some contribution from the applicant can be made. Simply put, the Maintenance Officer found merit in the dependent child's complaint.

[23] The applicant asserts that the dependent daughter does not have any maintenance needs. According to her, her daughter is seeking to recoup the maintenance that her husband was directed to pay her under the Rule 43 court order. This, in my view, cannot be correct. The dependent child has indicated that the maintenance contribution made by his father is insufficient to care for her expenses and needs. The Maintenance Officer investigated her complaint and determined that she indeed needs maintenance. The suggestion that she does not need maintenance is speculative and cannot be endorsed.

[24] Accordingly, the Maintenance Officer's decision to refer the complaint for inquiry in terms of Section 10 was spot on and cannot be faulted. Moreover, both parents have a legal duty to maintain their dependent children. Perhaps it is apposite to remind ourselves that in terms of section 305(4) of the Children's Act 38 of 2005, a person who is legally liable to maintain a child is guilty of an offence if that person, while able to do so, fails to provide the child with adequate food, clothing, lodging and medical assistance. In addition, once legal liability to pay maintenance is established, as in this case, a person can be compelled to provide evidence of their means so that the amount of maintenance can be determined. (*Govender v Amurtham* 1979 (3) SA 358 (N) at 361H).

[25] The first respondent is currently not self-sufficient. She is busy with her studies and is being financially supported solely by her father. Notwithstanding that she has attained the age of majority, it cannot be said that the dependent child cannot seek relief in terms of the duty of support from the applicant based on the fact that she has reached the age of majority. The duty of support extends to dependent children even if they have reached the age of majority. Consequently, the applicant has a duty to maintain her daughter.

Can a Maintenance Court make an order against a dependent applicant?

[26] Mr Steyn submitted that, in terms of the Rule 43 order, this Court has already declared the applicant to be maintenance dependent. According to counsel, as Mr MSJ was ordered to maintain the applicant, the Maintenance Court cannot expect

the applicant to maintain the dependent child. This proposition with respect is erroneous and misplaced. I must point out that the maintenance of children is the primary obligation of parents. Maintenance of children, in my view, must prevail over all other expenses, including those of their parents. Children have a right to family care or proper parental care.

[27] It must be borne in mind that at the time the Rule 43 application was heard, the dependent child was not part of those proceedings. The High Court, considering Rule 43, may have considered the father's contribution towards the minor child, but the basic needs of the child were not at all considered by the High Court, as that was an issue the Court was not seized with.

[28] The ability of the applicant to pay maintenance to the dependent child can only be determined at the section 10 maintenance enquiry. To close the door of the Court on the dependent child in circumstances where the Maintenance Officer has established independently that the child needs maintenance will be an infringement of her right to dignity and the right to access the courts. Above all, such a decision would be inimical to the tenets set out in Section 28(2) of the Constitution, which underscores the best interest of child and that a child has the right to proper parental care, basic nutrition, shelter, basic healthcare services, and social services.

[29] The commitment made by Mr MSJ at the hearing of the Rule 43 proceedings to support the dependent child does not absolve the applicant from her common law duty to support her daughter. In addition, it cannot be expected of the father of the dependent child to take sole responsibility for caring for the dependent child when the applicant can equally contribute towards her maintenance. What must be determined by the Maintenance Court is the applicant's ability to pay and the amount of contribution she is required to make. The assessment of each parent's ability to meet the needs of the dependent daughter will require an investigation by the Maintenance Court into the assets, liabilities, income, and expenses of each parent, in accordance with Section 10 of the Maintenance Act. The Maintenance Court will be required to perform an intricate balancing act to determine to what extent the needs of the dependent child can be met by both parents and the amount which

each parent is required to contribute towards those needs. (see *Mgumane v Setemane* 1998 (2) SA 247 (Tk) at 250H.

Will a maintenance order made at Maintenance Court conflict with the Rule 43 order?

[30] The applicant asserts that, having assessed both her financial position and that of her husband, the High Court directed that the applicant requires monthly maintenance of R8824 to make ends meet *pendente lite*. To this end, her husband was directed to make payment of the aforesaid amount. The applicant contended that if the Maintenance Court grants an order pursuant to section 10 inquiry, such an order would reduce the interim order granted by the High Court in terms of Rule 43. As a matter of law, so the contention proceeded, this is untenable and unsustainable. The applicant asserted that the Maintenance Court cannot overrule an order granted by the High Court in terms of Rule 43.

[31] The argument raised by the applicant fundamentally misses the point and is therefore incorrect. The relevant question is the means on the part of the applicant to pay maintenance to her daughter. The mere fact that there is a current Rule 43 interim spousal maintenance order awarded in favour of the applicant in a pending divorce action cannot automatically negate the duty of support placed on the applicant. As correctly pointed out by the court below, if that were indeed the case, it would suggest that all parties currently involved in divorce proceedings, where an interim spousal maintenance order has been issued, are automatically exempt from their obligation to provide support for their children. Such a conclusion cannot be accurate. While I acknowledge that the applicant has been recognised as financially dependent, this status does not relieve her of the duty to provide maintenance for her dependent child. As foreshadowed above, when the Rule 43 order was granted, it was an order made between the applicant and the respondent. The High Court did not consider the financial needs of the dependent child.

[32] Furthermore, if the Maintenance Court finds that the applicant has the means to pay maintenance towards the dependent child, and such an order reduces the award of the applicant in terms of Rule 43, that would be a consequence of the rule

of law. In my view, the maintenance obligation that parents have over their children supersedes any maintenance obligations between spouses. Notwithstanding, the overriding consideration is the ability of the parent concerned to pay maintenance and the needs of the dependent child. Accordingly, sections 15 and 16 of the Maintenance Act settle it. Section 15(3)(a) provides:

‘Without derogating from the law relating to the support of children, the Maintenance Court shall, in determining the amount to be paid as maintenance in respect of a child, take into consideration -

(i) that the duty of supporting a child is an obligation which the parents have incurred jointly;

(ii) that the parents' respective shares of such obligation are apportioned between them according to their respective means; and

(iii) that the duty exists, irrespective of whether a child is born in or out of wedlock or is born of a first or subsequent marriage.

(b) Any amount so determined shall be such amount as the Maintenance Court may consider fair in all the circumstances of the case.’

[33] Whilst section 16(1)(b) provides:

‘(1) After consideration of the evidence adduced at the enquiry, the Maintenance Court may –

(b) in the case where a maintenance order is in force make a maintenance order contemplated in paragraph (a)

(i) in substitution of such maintenance order; or

(ii) discharge such maintenance order; or

(c) make no order.’

[34] The two sections make it abundantly clear that a Maintenance Court has a wide discretion when dealing with a maintenance matter. Any maintenance amount determined by the Court as a maintenance contribution must be fair in all circumstances of the case. Simply put, at the hearing of the section 10 enquiry, the court will consider the evidence presented and the fact that both parents have a duty to support the dependent child. The court will also consider the applicant's relative

means to pay maintenance to the dependent child and thereafter determine an amount that the court considers fair in all circumstances. I must, however, underscore the fact that the Maintenance Court is not compelled to make a maintenance order. As I see it, if the court determines that the applicant lacks the means to support the dependent child, it is expected that no order will be made as envisaged in section 16(1)(c) of the Act.

[35] Finally, Mr Steyn argued that the Maintenance Court cannot overrule an order granted by the Rule 43 court even if done so indirectly. This assertion is also reflected in paragraph 84 of the applicant's founding affidavit. This argument is mistaken and cannot be correct. A Maintenance Court can vary a Rule 43 order where the circumstances warrant such variation. Significantly, a maintenance order in terms of section 1 of the Maintenance Act means any order for the payment, including the periodical payment, of sums of money towards the maintenance of any person issued by any court in the Republic. An interim maintenance order in terms of Rule 43 is an order envisaged in section 1 of the Maintenance Act. It thus can be varied in terms of the provisions of the Maintenance Act.

[36] This view was shared by the Court in *De Witt v De Witt* 1995 (3) SA 700 (T), where the Court found that the maintenance court had jurisdiction to substitute or discharge the interim order made in terms of Rule 43 in the High Court. Similar sentiments were echoed by the full bench in *Thompson v Thompson* 1998 (4) SA 463 (T) at 465I-J and 466C, where the Court discussed the ordinary meaning of the words 'maintenance order' as they appeared in the Maintenance Act 23 of 1963 to decide whether the definition thereof included an order in terms of Rule 43. The Court held that an order in terms of Rule 43 fell four-square within the ordinary meaning of the words 'maintenance order' as they appeared in the Maintenance Act, and the Maintenance Court therefore had the necessary power to suspend the order made in terms of Rule 43. The Court, however, warned that the Maintenance Court had to display caution in such circumstances and not lightly change an order made in terms of Rule 43 in the absence of altered circumstances. I share the views expressed in these cases.

[37] The applicant is not without a remedy. If a maintenance order is granted in favour of the dependent child at the Maintenance Court and that order impacts on her maintenance in terms of Rule 43, the applicant may still approach this Court in terms of Rule 43(6) of the Uniform Rules of Court for the variation of the Rule 43 maintenance order. It is expected of the applicant to demonstrate that there has been a material change in her circumstances.

Conclusion

[38] Having considered the matter, I was satisfied that the duty of support envisaged in the Maintenance Act extends to both applicant and her husband. I was also satisfied that the applicant and her husband are obliged to maintain the dependent child in accordance with their relative means. I was further satisfied that a section 10 enquiry must proceed to determine the relative means of the applicant in accordance with the common law duty of support. To this end, I dismissed the applicant's application to suspend the proceedings of the Maintenance Court in terms of section 10 of the Maintenance Act.

LEKHULENI JD
JUDGE OF THE HIGH COURT

APPEARANCES:

For the Applicant: Adv RJ Steyn

Instructed by: Bellingan Muller Hanekom Attorneys

Respondent: In Person