

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 47459/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 29 August 2025

In the matter between:

V[...] N[: G[...] S[[]

APPLICANT

and

V[...] N[: C[...] C[[]

RESPONDENT

JUDGEMENT

ALLY AJ

INTRODUCTION

[1] This is an opposed application in terms of Rule 43(6) of the Uniform Rules of Court as well as an application to strike out and counterclaim.

[2] The applicant was represented by Adv. K. Howard and the Respondent by Adv. A. Koekemoer.

[3] Before dealing with the merits of the application the Applicant launched an application to strike out¹ certain paragraphs of the Respondent's answering affidavit deposed to on 10 April 2025 together with the annexures.

[4] I deemed it necessary to hear argument on the merits of the Rule 43(6) as well as the application to strike out because of time constraints.

[5] The basis for the application to strike out is that the Respondent has made disparaging remarks against the Applicant without providing proof thereof and therefore stand to be struck out.

[6] A recent judgment² by my sister Neukircher J, as well as other judgments³ in this Division have provided some insight into Rule 43 applications and how our Courts should approach these matters. At the outset, I must state that I agree with the sentiments set out therein and the judgments discussed therein.

[7] It has always been that a Rule 43 application was an expeditious application that was *sui generis* in nature and different from an application launched in terms of Rule 6 of the Uniform Rules of Court. Legal Practitioners are enjoined to set out the facts succinctly so that the Court is able to deal with the matter as quick as possible.

[8] The trend, however, in this Division, is that parties go to extreme lengths to make out a case for relief *pendente lite*. A judge is expected to read hundreds of pages in supporting documents and heads of argument.

[9] The application before this Court has to deal with changed circumstances, but the parties have filed the following in respect of pages:

- Notice and Founding Affidavit with annexures – 46 pages;

¹ CaseLines: Section 57-244 - 255

² M N v A L N 2024 GPPHC

³ Du Preez v Du Preez 2008 GPJHC

- Answering Affidavit and Counter-application with annexures – 53 pages;
- Answering Affidavit to the Counter-application with annexures – 82 pages;
- Application to strike out – 9 pages.

[10] A quick arithmetic calculation puts the pages that had to be read by this Court at 190 pages.

[11] It cannot be stressed more that litigating in the manner that the parties before this Court have, does not benefit either party. The energy expended in launching this application, application to strike out and counter-application can best be used in finalising the divorce which is being case-managed by my sister Crutchfield J.

[12] The application to strike out as outlined above, is in my view, one that can be described, at best, as being ill-advised. The Respondent, however, is not innocent in this description because some of the disparaging remarks relating to the character of the Applicant and his continued misconduct and criminal behaviour without providing facts is to say the least unacceptable. However, because of the acrimoniousness nature of the litigation between the parties, one can understand the temptation to go beyond what is necessary to defend one's case. In my view, and in fairness to both parties, the application to strike out falls to be dismissed for the reasons set above and also for the reason that the Rule 43 procedure does not cater for such an application in the circumstances of this case. Furthermore, I am also of the view that each party should pay their own costs in relation to this application to strike out.

[13] Coming to the merits of the Rule 43(6) application, both parties have sought to impliedly request this Court to pronounce on the Order of my brother Malindi J which is, in my view, unsustainable. A Rule 43(6) application, as explained above is there only to adjudicate a 'material change in circumstances' and not a rehearing of a previous Rule 43⁴. As stated, both parties malign the Order of my brother Malindi J.

⁴ N J A v K L 2021 GPPHC at para 18 and 20

Firstly, the fact that reference is made to a Domestic Violence matter does not, in my view, take away the paragraphs dealing with the agreement between the parties relating to what will occur pending finalisation of the divorce.

[14] The issue of the company being a separate entity is a matter that this Court cannot pronounce upon in a Rule 43 application and the less said of that issue the better.

[15] The counter-application is also misplaced in that the Order of my brother Malindi J states clearly that the contact of the minor children is postponed *sine die* and it is clear that a regime is in place regarding such contact.

[16] In my view, the parties should endeavour to proceed to settle this divorce which is taking an inordinate amount of time to finalise and should make use of the Mediation Protocol⁵ of this Division in this regard.

[17] Accordingly, on a consideration of all the papers and the submissions of Counsel an Order, it is just and fair that the following Order be issued:

- a). The application in terms of Rule 43(6) by the Applicant is hereby dismissed with each party paying their own costs;
- b). The application to strike out by the applicant is dismissed with each party paying their own costs;
- c). The counter-application by the Respondent is dismissed with each party paying their own costs.

G ALLY
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Electronically submitted therefore unsigned

⁵ April 2025

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **29 August 2025**.

Date of hearing: 18 June 2025

Date of judgment: 29 August 2025

Appearances:

Attorneys for the Applicant: **SPELLAS LENGERT KEUBLER BRAUN INC**
fri@sklkb.co.za

Counsel for the Applicant: **Adv. Adv. K. Howard**

Attorneys for the Respondent: **WATSON LAW INCORPORATED**
rwatson@watsonlaw.co.za

Counsel for the Respondent: **Adv. A. Koekemoer**