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

Case no: 2025-094930

In the matter between:

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

Applicant

And

A[...] L[...]

Respondent

Coram: PANGARKER, J
Hearing date: 18 September 2025
Judgment delivered: 29 September 2025

JUDGMENT

PANGARKER J

The background to the Rule 43 application

[1] This matter came before the Court as an opposed Rule 43 application on the Third Division Motion Court roll. After hearing the parties' submissions and receiving a suggested draft order from the applicant's counsel, I indicated that I would consider the matter and deliver a judgment by 22 September 2025. Having considered the affidavits again after the hearing, it became apparent that the respondent refers to and relies upon an alleged agreement between the parties that the applicant would receive reduced financial support.

[2] The agreement is referred to as annexure "AL3" attached to the respondent's sworn reply. However, there is no such annexure attached nor a copy in the Court file. Subsequently, my registrar transmitted a query to the legal representatives, with the result that I received "AL3" on 25 September 2025. In addition, I also requested the Chief Registrar to provide me with the date of issuing of the divorce Summons which the applicant instituted against the respondent as the action and this application, as is the case in this Division, are issued under different case numbers.

[3] The applicant seeks maintenance *pendente lite* of R12 000 per month, that she is retained on the respondent's medical aid scheme; alternatively, that she is placed on a comprehensive medical aid scheme. That the respondent pays all the applicant's additional medical expenses not covered by his medical aid scheme; a costs contribution of R60 000; that the applicant be allowed to remove certain items as per annexure "A", from the respondent's property, and costs of the Rule 43 application

[4] The parties are pensioners and were married to each other on 16 September 2019 in accordance with Muslim rites and in terms of Shariah (Muslim) law. It is common cause that they were married to each other previously and that this was their second marriage.

[5] It is evident from the affidavits filed in this opposed Rule 43 application that the parties previously lived together as husband and wife and that no children were born of their marriage. On **6 April 2025**, the respondent issued the applicant with a written *Talaq*, which is a written declaration of divorce in terms of Shariah law. At some stage in February 2025 the applicant left the shared common home in Vasco, Goodwood, and took up residence with one of her adult sons from a previous marriage. It seems undisputed that the applicant left the common home prior to the issuing of the *Talaq*.

[6] During the course of their marriage and co-habitation, the respondent provided for the applicant's maintenance needs, while the applicant was responsible for the couple's household, which included cooking meals, ensuring that the two- bedroomed flat was clean and tidy, and other daily and regular household chores and tasks.

[7] The respondent, aged 63 years at the time the application was launched, was employed as a validation officer at Kenview & Johnson & Johnson and retired in February 2025. According to the applicant, she was unaware of his salary and the number of bank accounts he held. From the evidence, it is apparent that the respondent holds three First National Bank (FNB) accounts, namely, a savings account, smart (current) account and money maximiser account (investment).

[8] Aside from the above, it is common cause between the parties that the respondent previously paid the applicant R11 000 per month but that as from February 2025, he reduced the payments to amounts between R1 500 to R4 000 per month. The respondent also maintained the applicant as a dependant on his Discovery Health Medical aid plan, albeit that the plan was changed from Discovery Classic to Discovery Delta. At the time of institution of this application, the applicant was required to pay for her medication.

[9] As at the date of the Rule 43(1) notice, the respondent had not yet filed a Plea in the divorce action.

The issues in dispute

[10] The dispute in this matter revolves around the following issues:

- (a) whether the respondent has a duty to maintain the applicant pending finalisation of the divorce action (interim maintenance);
- (b) if so, whether the applicant established a need for interim maintenance;
- (c) the respondent's ability to afford interim maintenance;
- (d) the request for a costs contribution, and,
- (e) costs of the Rule 43 application.

The parties' *Talaq* and the Rule 43 application

[11] On **27 March 2025**¹, the applicant caused a divorce Summons to be issued out of the High Court against the respondent (as defendant) under case number **2025-042065**. The applicant's Rule 43(1) application was issued on **23 June 2025**. According to the respondent, the Summons was served on him personally by the Sheriff of the High Court in

¹ Caselines information, case number 2025-042065

July 2025. While he does not indicate the service date, the respondent states in his sworn reply in the Rule 43 application that he received the Summons “*two (2) weeks ago*”².

[12] In view of the date of *Talaq* being **6 April 2025**, the respondent contends that the parties’ marriage was already dissolved by the time the divorce Summons was served upon him. In light of these reasons, his view is that the divorce action/Summons is therefore moot and that the responsibility to maintain the applicant, rests with her two adult sons, in terms of Islamic principles.

[13] The respondent furthermore underscores this view by stating that his responsibility to maintain the applicant lapsed on the issuing of the *Talaq* and the conclusion or termination of the applicant’s *iddah* period³. Accordingly, the respondent submits that he owes no responsibility to the applicant for interim maintenance. Notwithstanding this stance, he has nonetheless addressed the merits of the Rule 43 application.

[14] The applicant and her legal representatives hold a different view. The argument was that there is indeed a divorce action pending between the parties, hence the applicant was entitled to approach the Court to seek relief in terms of Rule 43. It was apparent from the submissions made regarding the above question that notwithstanding the absence of a Plea at this stage, all indications are that the respondent takes issue with whether a marriage existed at the time the divorce action was instituted. This aspect remains a dispute between the parties.

[15] I am quite mindful that the matter for determination is the Rule 43 application, and should the above dispute be raised on the pleadings in the divorce action, whether as a

²Answering affidavit, par 27.2

³ *Iddah* is a compulsory waiting period in Islam for a woman after her husband’s death or after divorce, before she may remarry. The period differs, depending on certain factors, for example, whether the woman is childbearing or not, whether she is a widow or divorced woman, and whether she is pregnant at the time of her husband’s death or at the time of divorce. In respect of divorce, such as in this case, the *iddah* period constitutes or is calculated as three menstrual cycles (see *fatwa.mjc.org.za*, “calculation of the *iddah*,” Muslim Judicial Council, Mufti Tahaa Karaan)

special Plea or a Plea on the merits, it would be up to the trial Court to determine the issue finally. However, to the extent that the respondent has raised mootness of the divorce action and that he is absolved of responsibility to maintain the applicant *on an interim basis*⁴ by virtue of the parties' *Talaq*, the issue remains a live dispute before me and is thus considered below.

[16] The starting point is to recognise that it is undisputed that a divorce action was issued in March 2025 and subsequently, the divorce Summons was served on the respondent who is cited as the defendant in the action. Having regard to the chronology of events and steps taken by the parties in relation to the marriage and litigation, it is evident that the divorce Summons was issued approximately a week prior to the written *Talaq* issued by the respondent. To reiterate, the respondent's view is that:

*"The Applicant is no longer my wife. Therefore, an action to dissolve our marriage is moot".*⁵

[17] As recently as May 2024, certain amendments were promulgated and took effect in respect of the Divorce Act 70 of 1979 (Divorce Act), in what the legislature referred to as the Divorce Amendment Act 1 of 2024⁶ (Amendment Act). The Amendment Act amended certain parts of the 1979 Divorce Act, more specifically in the following important ways:

- (a) the legislature includes the definition of a Muslim marriage under the framework of marriages in terms of the common law;
- (b) it provides for asset redistribution in terms of 7(3A) of the Divorce Act;
- (c) it allows for forfeiture of patrimonial benefits in Muslim marriages in terms of section 9 of the Divorce Act;

⁴ My emphasis

⁵ Par 5, respondent's sworn reply

⁶ GG NO 50651 of 14 May 2024

- (d) the protection afforded to minor and dependent children in section 6 of the Divorce Act was extended by virtue of the amendments, to include minor and dependent children born of Muslim marriages; and
- (e) in respect of a redistribution of assets claim in terms of section 7(3A) by a spouse in a Muslim marriage, the Court is now empowered to take into account any contract concluded between spouses in a Muslim marriage where the husband is a spouse in more than one Muslim marriage⁷.

[18] The most significant amendment which was introduced in 2024 to the Divorce Act, 1979 is that it allows for the dissolution of a Muslim marriage concluded in terms of Islamic principles to be dissolved by a High Court or Regional Court's decree of divorce. Furthermore, the amended Act, 2024 applies to all subsisting Muslim marriages, including a Muslim marriage which was terminated or dissolved in terms of the tenets of Islam⁸ and where legal proceedings for the dissolution of the marriage in terms of the Divorce Act have been instituted but not yet finalised and which existed as of 15 December 2014⁹. The amendment has retrospective effect in respect of Muslim marriages.

[19] With these legislative provisions regarding Muslim marriages in mind, I turn to the respondent's submission that the divorce action is moot because he had already issued a written *Talaq* in April 2025 which terminated the parties' marriage and hence owes no interim maintenance responsibility to the applicant. Uniform Rule 43 allows a party to a pending divorce action, or where a divorce action is about to be instituted, to apply to the High Court for interim maintenance, a contribution towards the costs of pending litigation, and interim care and contact of any child. The relief, if granted, is interim in nature and does not bind the trial Court in the divorce action.

⁷ Section 7(5) (Aa)

⁸Such as a *Talaq* or *Fasakh*, which is a judicial decree which terminates a Muslim couple's marriage, applied for by the wife (unlike a *Talaq*, as explained above)

⁹ Section 6, Divorce Amendment Act, 2024. See *Women's Legal Centre Trust v President of the Republic of South Africa and Others* 2022 (5) SA 323 (CC) par 1.7 of the Order

[20] It is evident from the facts as alleged in the affidavits and the issuing date of the divorce Summons, that the divorce action was issued prior to the respondent's written declaration of *Talaq* in April 2025. From these facts, it follows that a divorce action was indeed already pending at the time when the *Talaq* occurred and when the Rule 43 application was issued in June 2025. In this regard, the applicant was thus entitled to utilise the provisions of Rule 43 and approach the Court for relief on an interim basis pending finalisation of the divorce action.

[21] Furthermore, the respondent's view that the *Talaq* rendered the subsequent divorce action or Summons moot, is with respect, misguided. The parties were spouses in terms of a Muslim marriage, and which in terms of the 2024 amendment to the Divorce Act, 1979 allowed either spouse to approach the High Court to institute a divorce action against the other. This is indeed the step taken by the applicant and the fact that a *Talaq* was issued after the institution of the divorce action, does not render such action either inappropriate or moot.

[22] In view of these findings, the applicant was well within her rights as a spouse to a Muslim marriage and where a divorce action was pending since March 2025, to institute an application in terms of Rule 43 for interim relief in June 2025.

Merits of the application

[23] The applicant lists her total monthly interim maintenance need as R11 200 per month. Insofar as the amounts for food, clothing and toiletries are concerned, her case is that these amounts are reasonable. Included in the total is R2 000 for rental per month which she alleges she pays to her son in with whom she resides.

[24] In support of her application, the applicant attaches, *inter alia*, copies of her son's Capitec bank statement and her Standard bank statements. Insofar as the rental amount is concerned, the applicant does not state when she vacated the parties' common home, but it is accepted that this occurred in February 2025.

[25] The respondent's view is that the application is not *bona fide*, and to this extent, two aspects are raised in respect of rental. Firstly, the respondent questions why the applicant claims rental when, in terms of the tenets of Islam, sons would not charge their mother rental as it was their duty to maintain a mother. Secondly, the respondent questions the applicant's rental payments to her son prior to leaving the parties' common home. He alleges that it was indicative of the financial abuse he suffered at her hands during the marriage as she squandered the money he paid her, on her son, K[...] H[...].

[26] In respect of these averments and submissions, and not imposing upon a son's Islamic obligation to his mother, there is simply insufficient information and evidence in this matter to summarily conclude that the applicant, when leaving the common home, did not pay rent to her son or that there was an agreement between them that she could live rent-free in her son's flat. When I consider Mr H[...] Capitec bank statement together with the applicant's Standard bank statement, it is evident that the only payment which she made to his account was on 4 February 2025 for R2 100 reflected as "*other income*".

[27] Whether this transaction constituted rent or not, is unclear from the affidavits, and if indeed it was rent paid to Mr H[...], whether it was paid before or after the applicant's departure from the common home, is also uncertain. These details are not provided by the applicant, nor does the respondent provide any illumination on the question. Be that as it may, the only conclusion I am able to reach in respect of the aforementioned payment made by the applicant is that it was made in the same month in which the applicant left the common home to live with her son.

[28] The applicant's Standard bank account raises a question in respect of two payments or transactions from her account to Mr H[...] account, as follows:

3 December 2024	MK H[...]	rent	R2 150
3 January 2025	MK H[...]	rent	R2 200

Thereafter payments of R2 100 (4 February 2025), R2 000 (5 March 2025), R2 000 (2 April 2025), and R2 000 (6 May 2025) respectively are reflected on the applicant's bank statement.

[29] In respect of the December 2024 and January 2025 payments reflected as rent to her son, the submissions of the respondent's counsel have merit. This is because there is no rational reason why the applicant would need to pay rent to her son in December 2024 and January 2025 when she was still living with the respondent. Furthermore, an advance payment of rent is questionable particularly when the applicant only left the common home in February 2025 and one must wonder why the son would require payment in advance from his mother. These questions are not answered and as this is a Rule 43 application which does not allow a replying affidavit, inferences are drawn from the affidavits.

[30] In my view, it is unlikely that the December and January payments referred to above were for rent for the applicant's accommodation with her son. It would simply make no sense in the circumstances of the parties. The more likely scenario is in line with the respondent's version that the applicant paid over money which she received from him to her son. Inevitably, the conclusion on the limited facts is that the two payments constituted a financial contribution or financial assistance to Mr H[...] for his own rent.

[31] Insofar as the other transactions which are reflected on the applicant's annexures, it is evident that she is a pensioner. The Government pension of R2 190 per month is reflected

on her bank account statement. In addition, the bank statement indicates no other source of income and the respondent's averment that the applicant is financed by her two sons is not borne out by the evidence.

[32] Following on from the above, the applicant's pension is entirely depleted by the equivalent R2 000 monthly rental paid to her son, leaving her with a few Rands in her account after the payment is made. It must be emphasised that this is not a case where the respondent alleges that the applicant is the holder of another, undisclosed bank account or that she receives large cash payments from her sons. Aside from alleging that her oldest son is wealthy, the respondent does not provide proof that the applicant has access to another source of funds or has deliberately failed to disclose her true financial position.

[33] As to why the applicant would provide her son with her entire pension in December 2024 and January 2025 as referred to above, is anyone's guess. I certainly view the payments with circumspect as she was not living with him at the time, but it does not taint the entire application nor is it a ground for dismissal thereof.

[34] Rule 43 applications generally require of a Court to adopt a robust and expeditious approach. There is no replying affidavit, and the Court must be mindful that the relief sought is of a temporary nature¹⁰. In **Taute v Taute**¹¹, the High Court held that the applicant is entitled to reasonable maintenance *pendente lite* dependent upon the standard of living during the parties' marriage, the applicant's actual and reasonable requirements and the respondent's ability to meet such requirements, normally from the latter's income although "*inroads on capital may be justified*"¹². Furthermore, it is not required of the Court in a Rule 43 application to consider the parties finances and expenses with mathematical precision¹³.

[35] In view of these guidelines, the evidence regarding the parties' financial circumstances is approached robustly, bearing in mind that luxurious and extraordinary

¹⁰ The Law of Divorce and Dissolution of Life Partnerships in South Africa, J Heaton (Editor), p541

¹¹ 1974 (2) SA 675 (E) 676

¹² At 676

¹³ Taute, 676

expenses are not allowed¹⁴. Thus, the applicant's summary of expenses is considered below having regard to the parties' averments and submissions and a determination of reasonableness and necessity¹⁵:

Food and takeout, R2 500: The respondent alleges that this amount would ordinarily be paid by the applicant's son, yet there is no foundation nor basis laid for such averment, except the respondent's reliance on the son's religious obligation toward his mother. In my view, the argument has little merit in that the respondent relies largely on an assumption without any concrete basis that Mr H[...] pays for all the applicant's food. At the time of institution of the application, the applicant was already living with her son and while his Capitec bank statement reflects some transactions related to food and take-aways, I cannot simply infer and thus conclude that these amounts include the applicant. The amount of R2 500 per month for food is a reasonable amount and is thus allowed.

Transportation, R1 000: The applicant does not expand on this expense. Fuel and transport may be accepted as a necessary expense generally, but the respondent alleges that the applicant gifted her old vehicle to her son. This raises the question as to the mode of transport, and how regularly the applicant travels or requires transport. Considering the applicant's circumstances in that she lives with her son, it is not unreasonable to expect that her son(s) would assist her in her travelling needs and requirements, and as to whether they would require her to contribute financially to fuel, is unknown. Having considered the above, and while I allow the transportation expense as a necessary monthly expense, the amount is reduced by R500, leaving a total transport expense of R500 per month.

Electricity, R1 000: The applicant lives with her son in a flat, and there is no evidence which indicates the monthly electricity bill or whether she is required to contribute to it. In the

¹⁴ Glazer v Glazer 1959 (3) SA 928 (W) 331D

¹⁵ Summary of expenses, p14 – not all amounts and expenses are listed in the judgment

circumstances, the electricity expense is reduced to R500 per month as a more reasonable monthly amount.

Toiletries and pharmaceuticals, R3000: The applicant was diagnosed with hyperthyroidism¹⁶ and receives radioactive iodine therapy. Due to the respondent changing his medical aid plan, the applicant made certain payments in respect of medication. Except to indicate that the applicant's pharmaceutical expenses amounted to less than R1 000 when the annual medical benefit was depleted, the respondent's response is unconvincing, especially as annexures "SW8" and "SW9" indicate that radiation treatment/therapy may be required every three months. It is also apparent from the annexures that the applicant paid more than R1 800 for medication in June 2025, and in view of the changes to the medical aid plan, would have to make future payments for medication. In all the circumstances, I am satisfied that R3 000 per month for toiletries and pharmaceuticals is a reasonable amount.

Cell phone, clothing and rental: These expenses are reasonable and necessary, and the amounts reflected on the applicant's expenses list are accepted, hence no adjustments are made.

Household products, R1 000: My view is that considering the applicant's shared accommodation with her son, who is the tenant, it is reasonable to conclude that he would provide the household products necessary for the flat. In the circumstances, R1 000 for household products is regarded as excessive and the expense is thus excluded from the calculation of reasonable expenses and needs.

[36] The applicant lists her total expenses and interim maintenance needs as being R11 200 per month. In view of the above adjustments and exclusion, there is a total

¹⁶ SW8

reduction of the monthly expenses of R2 000, brings the reasonable monthly maintenance needs and expenses of the applicant to R9 200.

[37] In view of the fact that the applicant's only income is derived from a government pension, there would be a considerable monthly shortfall. Aside from excluding household products, none of the applicant's listed expenses and needs are extravagant or excessive; they are basic monthly expenses for a pensioner. In light of the above discussion, I find that the applicant has established a need for interim maintenance pending finalisation of the divorce, the next issue is to determine the respondent's ability to meet the interim maintenance requirements.

[38] The applicant obtained the respondent's bank statements for the period July/August 2024 to March 2025 under subpoena *duces tecum* for the purpose of indicating payments into his account and his ability to pay her reasonable interim maintenance needs. The respondent attaches "AL1", a balance statement of his three FNB accounts as at the end of July 2025 which indicates that the balances in these accounts stood as follows: the cheque account was slightly more than R47 000, the savings account was R1 371, and the investment account held R681 112¹⁷. The respondent does not attach copies of his bank statements to his application.

[39] The respondent also refers to "AL3" and relies upon it in support of his case that the applicant agreed to receive R4 000 from him. As indicated, "AL3" was not attached to the respondent's affidavit and was requested from his counsel. The annexure consists of one page of a WhatsApp conversation between the parties on 18 February 2025, which refers to three messages¹⁸. The first message from the respondent states that he gave R4 000 as agreed, "*took care of the rest*" and paid for medical aid and hospitalisation. The applicant's

¹⁷ Amounts rounded off

¹⁸ It is unclear whether the conversation continued as only one page was provided as the annexure

response was to indicate, *“Well that’s just great I already know all that”*. The respondent’s second message indicated that the medical aid expense comes off his salary and that the applicant would need to inform him of *“anything additional”*.

[40] The difficulties with annexure “AL3” are firstly, that the annexure is incomplete as it clearly seems to cut off the conversation after the respondent’s second message. Secondly, the applicant’s response merely confirms that she already knows/was aware that the respondent paid R4 000 monthly and saw to the medical and hospital expenses. Seen against the background of the other facts in this matter, and that the respondent reduced the monthly payments from R11 200, the applicant’s response is neither strange nor unexpected. In my view, the incomplete WhatsApp conversation in “AL3” may be relied upon only to the extent indicated but to extend its meaning and import to that an agreement that the applicant only needed R4 000 per month and no more, would be to imbue the conversation with a meaning beyond that which is evident from “AL3”. The reliance on “AL3” is thus limited.

[41] The respondent’s version is that he is unemployed and that the R1 096 867,64 payment was his Provident Fund payment after tax, pursuant to retiring from Kenvue & Johnson & Johnson. He settled the bond on the immovable property and invested the remainder of the Provident Fund payment, leaving a balance of R681 112 in July 2025. The respondent’s case – aside from the issues addressed earlier in the judgment - is that he only receives the monthly interest on the investment of R4 342, does not receive a government pension and that the investment would have to last him for the rest of his life. He thus does not have available funds to support the applicant.

[42] I accept that the respondent is unemployed due to retirement, and that he received a Provident Fund pay out. Insofar as questions were posed by the applicant’s counsel as to why the respondent, subsequent to retirement, still received payment of R40 259 into his

account in February 2025, the submission in clarification that the respondent would still receive the following month's salary, cannot be countered. I thus take no issue with this aspect.

[43] Notwithstanding the above, however, questions indeed arise as to the respondent's total expenses and how it is settled monthly since February 2025 as the listed expenses total R15 200 (per month). The respondent explains that he "*tapped*" into his savings and investment and this too, is his rationale for changing the medical aid plan to a less costly option. Turning to some expenses, the applicant's submission is that the groceries expense of R3 500 per month for a single person is inflated/excessive and I agree. I would thus allocate a similar amount as for the applicant and allow R2 500 per month for groceries and food.

[44] The only other expense which requires comment is the medical aid expense of R5 085, which on my understanding, is the amount paid for both parties. The respondent alleges that he cannot afford it and would have to cancel it. I assume that the R5 085 reflects the monthly payment in respect of the changed plan (Discovery Delta), yet there is no indication on the respondent's bank statements of such a debit to Discovery after his retirement in February 2025.

[45] In my view, the complete termination of medical aid would be unreasonable in the applicant's circumstances given her regular medical treatment for hypothyroidism. To add, the respondent's explanation of downscaling since retirement is reasonable, and changing the medical aid plan, which already occurred prior to the Rule 43 application was served, was perhaps unavoidable, but there are other considerations as discussed below.

[46] In the applicant's current medical circumstances and until the trial Court makes a different determination, the respondent's responsibility toward the applicant, who cannot

afford medical aid, remains. In fairness, I am inclined to grant an order that any medical and related expenses of the applicant which are not covered by the respondent's medical aid, should be split on a 50/50 basis.

[47] It is apparent from the undisputed facts that the respondent held the purse strings in the marriage and while the parties co-habited in the shared common home. Whilst queries arise as to the rental payments to the applicant's son prior to her vacating the common home, my finding above is that the applicant's reasonable maintenance needs amount to R9 200 per month. I have reduced the respondent's monthly food and groceries to R2 500 per month, thus reducing his monthly expenses by R1 000 which would bring his reasonable monthly expenses to R14 283.

[48] On the face of it, the respondent's reasonable monthly expenses exceed his investment income of R4 342 per month leaving him with a shortfall of more than R9 000 per month. While I appreciate that the respondent wishes to maintain a nest egg at the age of 63 years, it is concerning that he would spend close to R400 000 of his Provident Fund pay out to settle the bond on his property at or around the time when his wife had already left the common home. The Provident Fund payment occurred in February 2025, the same month in which the applicant left the common home.

[49] It follows that the bond settlement must therefore have occurred shortly after receipt of the Provident Fund payment and whether before or after the *Talaq* is unclear. The point is that surely, considering the applicant's departure from the common home (February 2025), the institution of the divorce action (March 2025) and the subsequent *Talaq* (April 2025), it could/should not have come as a surprise to the respondent that the applicant would seek spousal and/or interim maintenance from him. As indicated above, the fact of the *Talaq occurring* in April 2025 was not a bar to the applicant approaching the Court in terms of Rule 43 for interim maintenance pending finalisation of the divorce.

[50] Having regard to these factors cumulatively, therefore, the respondent's large payment of close to (or more than) R400 000 in respect of his bond in the looming climate of termination of the parties' marriage, may be considered as unreasonable, alternatively, cannot be used as a legitimate reason for decreasing the maintenance and changing the medical aid plan. A portion of the approximate R400 000 could have been retained and thus provide the respondent with more available funds for the payment of medical aid contributions and financial support to the applicant.

[51] In the result, the respondent's decision to spend such a substantial sum of money in the face of a looming spousal maintenance and redistribution of assets dispute and having regard to the recognition of Muslim marriages in terms of the recent amendments to the Divorce Act, 1979, was neither wise nor prudent. In the result, and borrowing from **Taute**, the respondent would have to dip into his investment to maintain the applicant *pendente lite*. The fact that it is his nest egg is not lost on the Court but in these circumstances, he would have to utilise it to meet his financial responsibility to the applicant pending a final determination by the trial Court in the divorce action. In the result, the applicant will be awarded an amount for maintenance *pendente lite*.

[52] The applicant is entitled in terms of section 9 of the Constitution, to litigate on the same level as the defendant. While both parties are legally represented, as illustrated above it is the respondent who has an investment or savings available to him to fund his litigation, unlike the applicant. As for the complexity of the issues in the divorce action, it is understood that spousal maintenance and a section 7(3A) redistribution claim would be the main issues, in addition to the respondent's averment that the divorce action is moot due to the *Talaq*.

[53] One of the main issues in the section 7(3A) claim would be the extent of the applicant's direct or indirect contribution and maintenance to the increase of the respondent's estate, which would include a consideration of the factors mentioned in

section 7(5) read with section 7(3A) and (4) of the Divorce Act, 1979 as amended. This would by necessity entail evidence regarding the parties' financial circumstances and obligations in order for the trial Court to reach a just and equitable decision regarding redistribution of assets.

[54] The landscape of the action is that the matter is in its early stages. No Plea was filed at the time of the Rule 43 application and thus pleadings were far from being closed. In view of the issues between the parties, it is guaranteed that there would be discovery by both parties, followed by pretrial procedure. On the issue of mediation, I certainly agree with the respondent's submission that mediation could be explored but if the issues remain as they are, including the alleged mootness of the divorce action due to the *Talaq*, it is doubtful whether the parties would mediate the issue successfully¹⁹. Furthermore, should the respondent persist with this issue, it could result in either or both parties calling expert witnesses on Shariah law relating to *Talaq* and the maintenance of a spouse.

[55] The parties are litigating on a similar scale in this application. While the applicant is represented by an attorney and counsel, the respondent is represented by a Trust account counsel. Each parties' financial circumstances would be scrutinised in the discovery process and questions which arose in this application may well be answered during the discovery process. Since the respondent has the greater resources, it causes me to conclude that he would be better placed to deploy resources to support his defence.

[56] In the spirit of section 9 of the Constitution, the applicant should be put in a position to adequately prepare for trial and place her claim before the trial Court. In view of the applicant's limited funds and where the action, if not settled, could involve an expert in Muslim matrimonial law should the matter proceed to trial, the applicant's request for a costs contribution is granted in the amount R30 000.

¹⁹ SJ v SE [2018] ZAGP JHC 724, par [46], [47]

[57] The applicant has been largely successful, through amounts have been reduced or adjusted for the reasons advanced earlier, and similarly, the amount of the costs contribution awarded is less than that requested in the Rule 43 notice. In the exercise of the Court's discretion regrading costs, each party shall be ordered to pay their own costs of the Rule 43 application.

[58] Lastly, as for the applicant's request in paragraph 2 of the Notice of Motion for the return and/or collection of the items as per the attached Annexure "A", I am not inclined to grant such relief in an application in terms of Rule 43(1) as it does not constitute interim or *pendente lite* relief. It is respectfully suggested that the parties try to reach an amicable agreement regarding the return or collection of the items, alternatively, it should be left to the trial Court to determine the issue.

Order

[59] In the result, an order in the following terms is granted, *pendente lite*:

- (a) The respondent is ordered to pay maintenance to the applicant in the amount of R9 200 per month, commencing on or before 31 October 2025, and thereafter on or before the last day of each succeeding month, until finalisation of the parties' divorce action under case number 2025-042065 or until this order is varied or amended. All payments shall be made into the applicant's nominated bank account.
- (b) The respondent shall retain the applicant as a dependent on his medical aid scheme. In the event that the applicant's reasonable medical, dental, ophthalmological, surgical, hospital, orthodontic, pharmaceutical and related medical expenses exceed the medical aid cover, the respondent shall be

responsible for payment of 50% of such expense/cost, which must be paid to the applicant or service provider within 30 days after receipt of an invoice/statement from the relevant service provider, or within 30 days of presentation of proof of payment of the full amount by the applicant.

- (c) The respondent is ordered to pay a contribution to the applicant's legal costs in the sum of R30 000 directly into the Trust Account of the applicant's legal representative, within 30 days of date of the granting of this order.
- (d) Each party shall pay their own costs.

M PANGARKER

JUDGE OF THE HIGH COURT

Appearances

For applicant: Adv Y Abbas
Instructed by: Rahim Joseph Attorneys
Salt River

For respondent: Adv M Abduroaf (Trust account)
Cape Town