

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

CASE NO: 2024-016242

(1) REPORTABLE:

(2) OF INTEREST TO OTHER JUDGES:

(3) REVISED:

12 September 2025

In the matter between:

B[...]: K[...] Y[...]

Applicant

And

B[...]: B[...] L[...]

Respondent

Heard: 24 March 2025

Delivered: This Judgement was handed down electronically by circulation to the parties' legal representatives by email and by uploading to Court-Online and release to SAFLII. The date and time for hand down is deemed to be 10:00 am on 12 September 2025.

ORDER

1. The Respondent shall continue to pay or resume paying, or continue to procure the payment on his behalf, of the following costs and items for and in respect

of the former common home ("Unit 5") on due date, in full and without deduction (and any arrears on any or all of the accounts which in any way prejudice the continued provision of the services in question) :

- 1.1 The monthly mortgage bond instalment;
- 1.2 Maintenance and repairs necessary to maintain the buildings and the property in the state in which it was when both parties resided there as their common matrimonial home, which he shall determine at his sole discretion;
- 1.3 Insurance premiums in respect of the property, buildings and contents as paid by him when both parties resided there as their common matrimonial home;
- 1.4 Security as paid by him when both parties resided there as their common matrimonial home;
- 1.5 Municipal rates;
- 1.6 The basic monthly service and connection charges as they appear on the relevant accounts for electricity and water, but not the costs of usage of electricity and water which are for the account of the Applicant since she has the use thereof.;
- 1.7 Levies insofar as any are charged in respect of the property.

2. The Respondent shall continue to pay or resume paying, or continue to procure the payment on his behalf of (and if necessary reinstate) medical aid for the Applicant of the same value and benefit as enjoyed by her during the subsistence of the marriage, and cellular telephone device rental and service usage for the Applicant of the same average monthly value and benefit as enjoyed by her during the subsistence of the marriage or up to a monthly maximum of R2 000.00 whichever is the lesser amount.

3. The Respondent shall either procure the return to the Applicant of the BMW X3 motor vehicle referred to in paragraph 203 of his Answering Affidavit insofar as he has the ability to do so, for her to have unrestricted use thereof, at no cost to her except as provided for herein; or shall procure for the Applicant the unrestricted use and enjoyment, at his sole cost, of a vehicle of no less value than a 2023 model BMWx3, and shall, at his cost, procure that any such vehicle is comprehensively insured for the Applicant to drive (with a replacement vehicle in terms of the policy if

for any reasons the vehicle is unfit to drive), and shall be liable for the costs of licensing of, and tyres, maintenance and repairs for, such vehicle.

The Applicant shall be liable for the costs of fuel and any traffic fines incurred by her in using such vehicle and any excess on the insurance in respect of any loss of or damage to the vehicle.

Such vehicle shall be delivered to the Applicant at the former common home within 5 days of the date of this Judgment.

4. The Respondent shall contribute the sum of R400 000.00 (four hundred thousand) towards the Applicant's legal costs, which contribution shall be paid in four equal instalments, direct to her attorney's Trust account the details of which are to be furnished by her attorneys to his attorneys within 5 days of this Order, the first instalment to be paid on or before 01 October 2025 and the subsequent instalments on or before the 01st days of the next three successive months.

5. Paragraph 4.2 and the first line and first word of line 2 of paragraph 4.3, at paragraph 59 of the Applicant's Founding Affidavit, and all of the Applicant's annexures except for KB21, KB22 and KB36 are struck out of the record.

This striking out has the following effect on costs:

5.1 Any costs incurred by the Respondent in perusing, copying or addressing these annexures in his Opposing Affidavit, and the Respondent's costs as Applicant in the Application to Strike Out are to be paid by the Applicant's attorneys on a party and party basis at Scale A.

5.2 The Applicant's attorneys may not charge the Applicant any fees or disbursements in respect of any of the struck out material and the process of recovery of any of the costs referred to in 5.1 above.

6. With regard to the remaining costs of this application the Respondent shall pay one third of the Applicant's costs of this Application, to include one third of the

costs of counsel, on Scale B, and each party shall thereafter be liable for their own costs.

JUDGMENT

C Von Ludwig AJ

Introduction

[1] This is a Rule 43 application in which a wife seeks spousal maintenance and a contribution to her legal costs. All relief is opposed by her husband.

[2] The Affidavits of each paint extremely different pictures, both peppered with acrimony and accusation, and the parties are about as far apart as it is possible for parties to be in a Rule 43 application.

[3] I reserved this Judgment to work through my comprehensive notes and again through the papers. I had no idea that I would be struck by illness which put me out of action for some two months, resulting in a delay in delivering this Judgement. I can only apologize to the litigants for something completely out of my control.

[4] Fortunately for those notes, capturing the detailed submissions by counsel, I remain fully apprised of all I need to give this Judgment as I now do.

Procedure

[5] On the procedural issues:

5.1 At the outset, I condoned late filing of the Opposing Affidavit.

5.2 Ms Franck later advised me that the Supplementary Affidavits were to be admitted by agreement.

5.3 I deal below with the Application to Strike Out some of the Applicant's Founding Affidavit and some annexures (contended to contain without prejudice material).

Background Summary

[6] The parties were married on 25 November 2018, out of community of property with accrual.

[7] Applicant issued Divorce Summons on 14 February 2024, in which she stated that Defendant/Respondent had left the common home on 03 November 2023.

[8] The parties were together for just less than 5 years.

[9] Applicant remained in the jointly owned common home ("Unit 5") and part of the relief she seeks herein is for payment of some of the costs of that home.

[10] The Respondent contends that she does not actually live there anymore, has taken up occupation with her new "life partner" and returns to Unit 5 only occasionally.

[11] The Applicant contends that she is unemployed. The Respondent's version is that she has many avenues of income generation, one being continued part-time employment at Stan Smith Electrical, where he himself contends to be "employed", but where Applicant avers he is a part-owner or shareholder.

[12] Yet again this R43 Court must work with what is before it to make a just interim order until the Trial Court can assess the full evidence.

[13] Even on her own version Applicant contends "unemployment" only since January 2022, although she does not say what her employment was before then. This would mean that she was income-earning for most of her marriage (just over 3

years) and unemployed for only about a year and a half before instituting the Rule 43 application.

[14] She paints a picture of a high-end standard of living and a husband who spoiled her with expensive gifts and holidays. He contends that she paid for or contributed to the payment for a number of these things herself, and that they as a couple were the beneficiaries of his father's generosity.

[15] Both versions are to be taken in the context of what has become an acrimonious divorce where it serves each party to emphasize certain aspects and to underplay others.

The Law and the Cases

[16] Rule 43 is a concise Rule and speaks for itself. There is a plethora of cases dealing with R43, but it is trite that every matter has its own individual facts and must be adjudicated on those facts within the parameters of the legislation and relevant case law. It serves no purpose in this Judgment to waste time summarizing the law.

Relief sought

[17] The Applicant seeks (1) a cash component of maintenance of R38 339.18 and then sets out (2) a paragraph of costs for the former common home and then lists (3) "monthly premiums" she requires him to continue to pay, some of which are for her and some in respect of the former common home (not all are in fact "premiums").

[18] She asks for the one bundle (2) to be paid "as these costs arise" and the other list (3) to be paid by way of "monthly premiums".

[19] In respect of (2) and (3), her claim is that he "continues to pay".

[20] She also asks that "*The Respondent shall...ensure that the Applicant's motor vehicle described as BMW X3 with vin number.....and licence number K[...] ('the BMW X3') is not removed unless through purposes of a court order.*"

[21] She seeks a contribution to her legal costs of R996 498.50

[22] Finally she asks that the costs of the R43 application are paid by Respondent on an attorney client scale.

Observations

[23] This is a most unpleasant application on which to adjudicate.

[24] Laypersons seldom understand the purpose and nature of a Rule 43 Application. It is up to the attorneys to guide them to a responsible and cost-effective use of process. Regrettably this has not been done.

[25] I have found all the papers before me distasteful in both adherence to process and in content. I will say no more, but hope that the costs orders herein serve the intended purpose.

Analysis

[26] An Applicant stands or falls by the relief they seek. Attempting to keep the claim as wide as possible by including words such as “*inter alia*” does not help them to get more.

[27] Inaccurate wording of claims may result in a court being unable to grant relief which an Applicant thinks they have sought. In this regard I refer specifically to the claim for the vehicle, which is worded as I set out above. It is not the Applicant’s vehicle and well she knows this. Whether she knew it at the time the application was launched is not clear, but at the time it was argued she had deposed to her Supplementary Affidavit in which she quoted G[...] B[...] as saying “*It is my vehicle*”. She further set out at (unnecessary) length the vehicle disputes, from which I conclude that there is a separate case pending dealing with the vehicle. That might make an order given in line with the wording of her application meaningless and/or incapable of fulfilment.

[28] Whether the manner in which the vehicle claim is worded permits me, in a Rule

43 application for a contribution to interim maintenance, to grant such relief is another point in issue. All of this will be evident when I deal with the vehicle, but my point now is to illustrate that an Applicant can secure, at best, only what her application asks for. If her relief is not accurately stated she is (or her attorneys are) the author/s of her own disappointing order.

[29] For ease of reasoning I have divided the claim into costs pertaining to the former

common home, expenses for the Applicant (the cash component, medical aid and cell phone), and finally legal costs.

[30] As regards the former common home Applicant requires Respondent to “continue to pay” the items she claims.

[31] In his “BB17” and paragraphs 76 and 77 of his Affidavit he says he pays these anyway.

[32] Yet it becomes evident from the Applicant’s Supplementary Affidavit that, despite Respondent having said this, there have been instances of non-payment and/or actions which infer that there will be non-payment.

[33] Respondent contends that Applicant no longer resides there and seems to contend that accordingly he is not required (insofar as she may have any claim) to pay these portions of her claim. Applicant avers that she does still reside there.

[34] The property is jointly-owned and Respondent has sought a forfeiture in the main action. Whether or not he proceeds, and/or succeeds, with the forfeiture claim, it is in his interest to continue to pay for the property and its related expenses whether or not the Applicant resides there. It was submitted that he is not obliged to single handedly maintain a joint asset (and that a R43 application cannot be used to secure protection of an asset, (with which submission courts before me have disagreed)), but on his own version he has always done so, and it will be for the Trial

Court to determine, if this is so, what the consequences thereof might be. Having conceded that he does pay these costs, there can be no dispute now as to affordability for him to continue to pay them.

[35] On the one hand there is no need for an order if he is going to protect his own interests and pay, and on the other hand there is no harm in an order for the very same reasons. It is only the costs of the application which may be affected by the making or refusing of such order, but my costs order is driven predominantly by other considerations.

[36] My finding in this regard is that the Respondent shall continue to pay the listed costs of the former common home in the manner that I set out in my order.

[37] Applicant's alleged needs are to be found in her cash component claim, her claim that Respondent continues to pay for her medical aid and her cell phone, and her claim for a vehicle.

[38] As regards her cash component, it is comprised almost entirely of her personal lifestyle expenses which, on any interpretation, are high end. She contends that she has no means from which to pay for any of these and the Respondent argues that she has various sources of income and ways to cover the costs of what she reasonably needs.

[39] On her own version she earns interest on her inheritance of some R144 000 per annum (R12 000 per month). Whilst she is not required to use her capital sum to support herself there is no reason why she cannot use her income derived therefrom.

[40] She concedes having earned some ad hoc income by way of some of her qualifications in the past, but says she does not earn that now. She has a duty to attempt to support herself and no reason is given as to why she does not and/or cannot derive ongoing ad hoc income from her various sources. She cannot expect,

in the totality of circumstances, to have a lifelong spousal maintenance claim, and she does not contend for any upskilling or the like. As such it must be concluded that she can, must, and on the probabilities does, use her qualifications to earn some income.

[41] There is a fine distinction between “earning capacity” in the future, versus current ability to earn which is not being used either at all or to full potential. The qualifications of the Applicant, her past ad hoc earnings, and her diary, paint a picture of an Applicant who has the current ability to generate an income and is on the probabilities doing so.

[42] It is accepted that it is unrealistic to expect her to receive any income from Stan Smith Electrical given the acrimony between herself and Respondent and his father.

[43] Almost all of the claims making up Applicant’s cash component are excessive. The Applicant has given no explanation as to what she includes under “household” or “sundries” and as such no claims can be substantiated. Her claims for entertainment and gifts are excessive in the extreme. Likewise the costs of clothing, hair and beauty. When adjusted, as I have done, to realistic amounts, I find that she has enough from her the interest earned on her inheritance (she is not obliged to delve into the capital sum thereof) and from ad hoc income she can make from her various qualifications and enterprises to support herself.

[44] It is not clear whether the Respondent has removed her from the medical aid on which she was a dependent during the subsistence of their marriage or whether he has terminated whatever contract or arrangement was in place with regard to a cell phone for her. Both actions would be counter-productive and unjustified *pendente lite* as my order reflects.

[45] A vehicle seems, on both versions, to have been something the Respondent always provided to the Applicant, however he may have financed it, and whether or not it was intended to be “hers”. Undoubtedly she always had the unobstructed use and enjoyment of luxury vehicles.

[46] Fortunately it is not necessary for this court to analyze the manner in which her

claim for a vehicle is worded (which may well have resulted in no order for a vehicle being made), or to delve into the history of the removal of vehicles from the Applicant, since the Respondent in his paragraph 103 makes a tender of a “*affordable safe alternate vehicle*” to the BMW x3 referred to in that paragraph.

[47] Respondent’s later tender of a Nissan NP200 does not accord with the wording

and paragraph-context of his offer (he speaks of “alternate” when referring to an X3), as my Order conveys.

[48] With regard to her claim for a contribution to her legal costs, it is clear from the

manner in which this application itself has been conducted, and from the processes involving the vehicles, that further litigation is inevitable. It is also clear that the Applicant (notwithstanding that she somehow managed all the vehicle litigation as she (unnecessarily) describes in these papers) will not be able to litigate on a par with Respondent. It is trite that she is entitled to a parity of arms. As such she must succeed in principle in her claim for a contribution.

[49] However her claim as set out in the Bill of Costs is inflated. She will need funds

to at least interrogate the Respondent’s employment and asset situations, and to defend his claim for forfeiture. The inequality in their balance sheets, earnings and financial support structures indicates that she will require some help with legal fees. The amount of work to be done on these aspects however is not in the quantum that the Bill of Costs sets out and if there is a suggestion that she is to be charged those fees I trust she will assess it carefully since the reduced sum as per my order should suffice.

[50] The draft Bill of Costs ought not to include the costs of this application, since

they will be dealt with herein and that too accounts for a significant deduction from the sum claimed.

[51] Finally, I am required to deal with the striking out of portions of the Applicant's papers and annexures. Before even addressing the allegation that the portions to be struck are "without prejudice" I feel constrained to address the manner in which both parties, but most especially the Applicant, have ignored the nature and the spirit of a R43 application.

[52] Both have given free rein to their submissions about each other's conduct far outside the bounds of what is needed to establish, or refute, a need for assistance and an ability to meet or contribute to that need. Given that neither is a legal professional of any nature, a significant portion of the blame must attach to their attorneys. I trust that my Order as to costs reflects the displeasure of the Court in this regard.

[53] With regard to the Application for Striking Out, I find that whilst the quoted portions do appear to contain without prejudice material, all of the Applicant's annexures except for KB21, KB22 and KB36 are in fact unnecessary and serve to make the Application unnecessarily prolix, and are inconsistent with the nature and spirit of a Rule 43 application. As such I order that the quoted portions of the Affidavit, and all the Annexures to the Founding Affidavit, shall be struck out.

[54] As pertains to the costs of this application, even though the Applicant has been

successful in securing payment of the costs of the former common home, medical aid and cell phone, provision of a motor vehicle and a part contribution to her legal costs, her papers pay scant regard to the constraints of the Rule. The papers of both are unnecessarily padded with distasteful and excessive, irrelevant detail and both are excessively long, especially those of the Applicant. The conduct of the Respondent and/or those acting for or through him has also been unfortunate to say the least. The cases of both parties have been presented in a manner less than ideal for both of them, and the court wants this to be understood. Both must feel the

consequences in their respective pockets, as must the attorneys involved. I trust that my costs order reflects this.

[55] I thus make the following order *pendente lite*:

Order

1. The Respondent shall continue to pay or resume paying, or continue to procure the payment on his behalf, of the following costs and items for and in respect of the former common home ("Unit 5") on due date, in full and without deduction (and any arrears on any or all of the accounts which in any way prejudice the continued provision of the services in question) :

- 1.1 The monthly mortgage bond instalment;
- 1.2 Maintenance and repairs necessary to maintain the buildings and the property in the state in which it was when both parties resided there as their common matrimonial home, which he shall determine at his sole discretion;
- 1.3 Insurance premiums in respect of the property, buildings and contents as paid by him when both parties resided there as their common matrimonial home;
- 1.4 Security as paid by him when both parties resided there as their common matrimonial home;
- 1.5 Municipal rates;
- 1.6 The basic monthly service and connection charges as they appear on the relevant accounts for electricity and water, but not the costs of usage of electricity and water which are for the account of the Applicant since she has the use thereof.;
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enjoyed by her during the subsistence of the marriage or up to a monthly maximum of R2 000.00 whichever is the lesser amount.

3. The Respondent shall either procure the return to the Applicant of the BMW X3 motor vehicle referred to in paragraph 203 of his Answering Affidavit insofar as he has the ability to do so, for her to have unrestricted use thereof, at no cost to her except as provided for herein; or shall procure for the Applicant the unrestricted use and enjoyment, at his sole cost, of a vehicle of no less value than a 2023 model BMWx3, and shall, at his cost, procure that any such vehicle is comprehensively insured for the Applicant to drive (with a replacement vehicle in terms of the policy if for any reasons the vehicle is unfit to drive), and shall be liable for the costs of licensing of, and tyres, maintenance and repairs for such vehicle.

The Applicant shall be liable for the costs of fuel and any traffic fines incurred by her in using such vehicle and any excess on the insurance in respect of any loss of or damage to the vehicle.

Such vehicle shall be delivered to the Applicant at the former common home within 5 days of the date of this Judgment.

4. The Respondent shall contribute the sum of R400 000.00 (four hundred thousand) towards the Applicant's legal costs, which contribution shall be paid in four equal instalments, direct to her attorney's Trust account the details of which are to be furnished by her attorneys to his attorneys within 5 days of this Order, the first instalment to be paid on or before 01 October 2025 and the subsequent instalments on or before the 01st days of the next three successive months.

5. Paragraph 4.2 and the first line and first word of line 2 of paragraph 4.3, at

paragraph 59 of the Applicant's Founding Affidavit, and all of the Applicant's annexures except for KB21, KB22 and KB36 are struck out of the record.

This striking out has the following effect on costs :

5.1 Any costs incurred by the Respondent in perusing, copying or addressing these annexures in his Opposing Affidavit, and the Respondent's costs as Applicant in the Application to Strike Out are to be paid by the Applicant's attorneys on a party and party basis at Scale A.

6. With regard to the remaining costs of this application the Respondent shall pay one third of the Applicant's costs of this Application, to include one third of the costs of counsel, on Scale B, and each party shall thereafter be liable for their own costs.

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Date of hearing: 24 March 2025

Date of judgment: 12 September 2025

