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

CASE NUMBER: 2024/141833

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates **NO**

In the matter between:-

N[...] J[...] R[...] (B[...])
(Identity Number 8[...])

Applicant

and

L[...] R[...]
(Passport Number: B[...])

Respondent

This order is made an order of Court if duly initialled by the Judge whose name is reflected herein and duly stamped by the Registrar of the Court. This judgment is handed down electronically to the parties' legal representatives 1st email addresses as reflected in the respective practice notes. This order is uploaded to the electronic file of this matter on Caselines by the Judge or the Judge's Secretary.

*The date of the order is deemed to be **15 September 2025***

JUDGMENT

Reid J

Introduction

[1] This is an application in terms of Rule 43 of the Uniform Rules of Court, in relation to parental responsibilities and rights of contact and care (specifically visitation and access) to the minor children of the parties. The parties agree that the Rule 43 application, dealing with issues in addition to the aforementioned, should be postponed *sine die*.

[2] The parties have 2 daughters who were born on 26 October 2020 and 13 September 2022 respectively. At the time of hearing the matter they were 4 years and 2 years old. The principal dispute between the parties relate to the contact provisions providing for sleepover contact to the respondent during a fortnightly cycle. The respondent seeks sleepover contact and the applicant seeks that the parties should continue, *pendente lite*, on a contact regime that they agreed after 24 December 2024 which excludes sleepover contact.

[3] On **17 December 2024** an interim order was made in this Court under the hand of Makamu J. In the Rule 43 application, the respondent did not deliver an answering affidavit, and the Rule 43 order was made by agreement between the parties. The Rule 43 order provides interim maintenance for both the applicant and the children for a fixed period of six months, with provision for the appointment of a forensic social worker to prepare a care and contact report. The investigation of the forensic social worker is not complete and consequently the report was not at hand during the hearing of the matter.

[4] The applicant in this applicant is the same applicant referred to in the Rule 43 and equally the respondent remains the same party. The order reads as follows:

1. *“That the Rule 43 application is postponed sine die.*
2. *The Respondent shall pay maintenance in respect of the Applicant for a period of **6 (six) months** from the date of the granting of this order and for*

the minor children, pending the determination of the Rule 43 application, as follows:

2.1. Payment of spousal maintenance to the Applicant in respect of the following expenses:

2.1.1. R2,260.00 per month in respect of the mortgage instalments;

2.1.2. R990.00 per month in respect of City of the Johannesburg utility account;

2.1.3. R2,335.00 in respect of the Applicant's medical aid monthly premium and gap cover;

2.1.4. R2,732.00 per month in respect of the Applicant's household insurance and motor vehicle insurance.

2.2. The Respondent shall pay the Applicant's aforementioned expenses as listed in paragraphs 2.1.1 to 2.1.4 supra directly to the relevant service providers and institutions.

2.3. The Respondent shall make payment in the sum of R1,500.00 (One Thousand Five Hundred Rand) to the Applicant into the Applicant's designated bank account on or before the first day of each month for a period of 6 (six) months from the date of granting of this order in respect of the Applicant's monthly motor vehicle instalment.

2.4. The Respondent shall make payment into the Applicant's designated bank account in the sum of R5,500 (Five Thousand Five Hundred Rand) per month for a period of six months from the date of the granting of this order, in respect of the Respondent's monthly motor vehicle instalment (which motor vehicle is registered in the Applicant's name).

*2.5. Pending the determination of the Rule 43 Application in the ordinary course, full parental rights and responsibilities in respect of the minor children **L[...]** **R[...]** and **L[...]** **L[...]** **R[...]** ("the minor children") as set out in terms of section 18(2) of the **Children's Act** 38 of 2005 shall be retained by both parties' including joint decision making in respect of the minor children.*

2.6. Payment of maintenance in respect of the following expenses of the minor children shall be paid by the Respondent directly to the relevant service providers and institutions, pending the determination of the Rule 43 application:

2.6.1. 100% of the minor children's school fees.

2.6.2. 100% of one extra mural activity per child.

2.6.3. 100% of the children's medical aid premiums and gap cover.

2.6.4. Payment in respect of groceries (to be ordered by the Respondent via the Checkers 60 Sixty App or by purchase by the Respondent from any grocery store or online App he deems appropriate). The groceries purchased by the Respondent for the minor children shall:

2.6.4.1. be purchased in the sum of R3,500.00 per month in respect of both minor children;

2.6.4.2. Include specific groceries that the Applicant requires for the minor children, which specific groceries the Applicant shall notify the Respondent of by sending the Respondent a list of groceries on a monthly basis which groceries requested by the Applicant shall not exceed the sum of R3,500.00.

2.6.4.3. The aforementioned groceries shall be delivered to the Applicant's residence.

3. A private social worker, namely Adell-Mari Wolmarans, be appointed to conduct an investigation into the best interests of the minor children, the parental rights and responsibilities of the respondent as provided for in section 18 (2)(a) — (d) of the **Children's Act** 38 of 2005 and to file a report with recommendations in relation to the respondent's contact with the children and the best interest of the minor children. Such investigation to be completed within a period of 30 - 60 days from date of her appointment, which appointment shall be made within 5 days from date of this order.

4. The Applicant and the Respondent shall avail themselves, participate and co-operate with the social worker in order to enable her to properly investigate the matter and compile her report to this Court.

5. The Applicant shall pay 40% of all the associated costs in respect of the appointment of the social worker and the Respondent shall pay 60% of all associated costs in respect of the appointment of the social worker.

6. Pending the outcome of the social worker's report, the primary residence of the minor children shall continue to vest with the Applicant subject to the Respondent's reasonable rights of contact with the minor children.

7. Commencing on the date of the granting of this order, the Respondent

shall continue to exercise contact with the minor children as per the status quo, as follows:

7.1. WEEK 1

7.1.1. The applicant shall exercise contact with the minor children from Saturday at 18h00, when the respondent shall drop the minor children off at the applicant's residence until Tuesday morning, when the applicant will drop the minor children off at school.

7.1.2. The respondent shall exercise contact with the minor children from Tuesday morning until Wednesday evening at 18h00, when the respondent will fetch L[...] from school on Tuesday morning with the nanny and take L[...] and the nanny to his residence thereafter. The respondent will then fetch L[...] from after school on Tuesday in the afternoon to commence his contact with her. The respondent will then fetch L[...] from after school on Tuesday in the afternoon to commence his contact with her. The respondent will then fetch L[...] from after school on Wednesday and drop both children at the Applicant's residence at 18h00.

7.1.3. The Applicant shall exercise contact with the minor children from Wednesday at 18h00, when the Respondent shall drop the minor children that the Applicant's residence until Sunday morning at 08h00, when the Respondent will fetch the children from the Applicant's residence.

7.2. WEEK 2:

7.2.1. The respondent shall exercise contract with the minor children from Sunday at 08h00, when the respondent will fetch the children from the applicant's residence, until Monday at 18h00. The respondent will drop L[...] at school on the Monday morning and fetch her after school on a Monday and drop both children off at the applicant's residence on Monday at 18h00.

7.2.2. The Applicant shall exercise contact with the children from Monday at 18h00 until Friday morning, when the applicant will drop both children off at school.

7.2.3. The Respondent will exercise contact with the minor children

from L[...] from the school on Friday morning with the nanny and take L[...] and the nanny to his residence thereafter. The respondent will then fetch L[...] from after school on Friday in the afternoon to commence his contact with L[...] and drop both children at the applicant's residence on Saturday evening at 18h00. Friday morning until Saturday evening at 18h00.

8. The Respondent's contact with the minor children shall include the following: contact with the minor children every Father's Day and on the Respondent's birthday irrespective of which parties contact day Father's Day or the Respondent's birthday falls under.

9. Similarly, the Applicant shall have contact with the minor children on Mother's Day or on the Applicant's birthday irrespective of which parties contact day Mother's Day or the Applicant's birthday falls under.

10. The Applicant and Respondent shall arrange weekends in such a fashion that the entire weekend of Mother's Day the minor children shall be with the Applicant and the entire weekend of Father's Day, the minor children shall be with the Respondent.

11. The Applicant and the Respondent shall share the minor children's birthdays equally with each party to exercise reasonable and equal contact with the minor child on the day of the birthday.

12. The minor children shall spend Christmas 2024 with both the Applicant and the Respondent. The Applicant will have the minor children from 08h00 on Christmas morning until 13h00, whereafter the minor children will spend the remainder of Christmas day with the Respondent.

13. The minor children shall spend New Year's Day 2025 with the both the Applicant and the Respondent. The Respondent will have the minor children from 08h00 on New Year's Day morning until 13h00, whereafter the minor children will spend the remainder of New Year' Day with the Applicant.

14. *The parent who is not exercising contact with the children at any given time shall be entitled to exercise daily telephonic and video contact, which contact shall include inter alia, video conferencing contact such as skype, Zoom, MS Teams, Facetime and WhatsApp video call.*

15. *The Applicant will be reasonably accommodating to the Respondent when the Respondent exercises his daily telephonic and video contact with the minor children whilst the minor children are in the Applicant's care.*

16. *The Respondent will be reasonably accommodating to the Applicant when the Applicant exercises her daily telephonic and video contact with the minor children whilst the minor children are in the Respondent's care.*

17. *In exercising the telephonic and video call contact with the minor children the party in whose care the minor children are in shall take all the reasonable steps to ensure that the minor children are available and shall facilitate the call to enable the other party to exercise the telephonic and/or video call contact.*

18. *The aforesaid daily telephonic and video call contact shall be exercised by the Respondent when the minor children are in the Applicant's care between 18h30 – 19h00.*

19. *The aforesaid daily telephonic and video call contact shall be exercised by the Applicant when the children are in the Respondent's care between 18h00 – 18h30.*

20. *Neither party shall hinder the telephonic and video call contact as referenced above and the Applicant and Respondent shall both ensure that that their respective communication devices are fully charged, with the audio and video in proper working order and with sufficient data connection.*

21. *Upon receipt of the social worker's report containing the social worker's recommendations, if the parties are unable to settle the Rule 43 application*

within 15 days of receipt of the social worker's report as aforesaid, then the, Applicant shall be entitled to file an affidavit supplementing her Rule 43 papers solely in relation to the social workers report and findings within 15 days thereof. The Respondent in turn will have 15 days thereafter to file a statement of reply in respect of the Rule 43 application dealing with the Applicant's notice and statement in terms of Rule 43 and the social workers findings and recommendations. Either party may thereafter enrol the Rule 43 application for hearing, on due notice given.

22. *Each party shall pay their own costs in respect of this application.”*

[5] The matter was set down by the applicant on the basis that the maintenance provisions in paragraph 2 of the court order dated 17 December 2024 were limited to a period of six months. The applicant requires this Court to extend the maintenance obligations pending the determination of the application.

[6] By agreement, the parties departed from the contact provisions in the court order and implemented a different contact regime, in terms whereof the respondent exercised daytime contact with the minor children on three days a week, collecting them from the applicant and taking them to and fetching from school on Tuesdays and Thursdays and having them on one day of the weekend alternating between Saturday and Sunday from one weekend to the next.

[7] The applicant wishes to maintain the current contact regime until the care and contact report of the social worker is at hand, and a more considered decision may be made.

[8] In the respondent's practice note, as well as in argument, it is reflected that:

“The respondent seeks an order that:

- 1) *The Rule 43 application be postponed sine dies.*
- 2) *The interim order dated 17 December 2024 be extended, in toto, pending the determination of the Rule 43 application. ...”*

[9] The respondent further requests sleepover contact in terms of the interim order pending the determination of the Rule 43 application, as part of the extension of the interim order.

Legal principles

[10] In any application that relates to minor children, the best interest of the minor child is of paramount importance. This is set out expressly in the **Children's Act 38** of 2005.

[11] It is argued before this Court that the Rule 43 application in relation to the care and contact of the minor children was amended, by agreement between the parties, after the order was granted by Makamu J on 17 December 2024. It is common cause that the agreement did not include sleep-overs of the children at the respondent's residence.

[12] In **VN v MD and Another** 2017 (2) SA 328 (ECG) the oral variation of a custody and a parenting plan which was made an order of court in relation to section 33(5) of the **Children's Act 38** of 2005, was discussed on appeal by the full bench. It was held that:

*"[18] Mr Stamper argues that the magistrate was not empowered to order a variation of an agreed parenting plan in the absence of agreement between the parties reduced to writing and signed by them. At face value s 34(5) requires the application to be made by 'the parties'. This appears to suggest that an application by one party in the face of opposition by another is impermissible. Such an interpretation, however, was rejected by Goosen J in **PD v MD** 2013 (1) SA 366 (ECP). For the purposes of the present appeal I accept, without making any finding in this regard, that the first respondent was entitled to bring the application and the magistrate was empowered to grant an order on the application of one parent in the face of opposition. That, however, is not the end of the matter.*

[19] It is true that s 33(5) does not pertinently prescribe that the variation to the parenting plan must be prepared with the assistance of the family advocate, social worker or psychologist. When regard is had, I however, to the structure of part 3 of ch 3 of the Act, it is clear that, in pursuing any agreement in respect of the exercise of parental rights and responsibilities, the parties are required to consult the family advocate, social worker or a psychologist, who is qualified to provide guidance as to the best interests of the minor child, before approaching a court. By parity of reasoning, where the parenting plan is to be varied by virtue of the parties experiencing difficulty in exercising their rights and responsibilities, the parties are again required to engage the services of such a qualified person before seeking the intervention of a court. This is particularly so where a significant period has elapsed since the previous parenting plan had been endorsed and where the parties have failed to reach agreement. In the circumstances I consider that the magistrate erred in concluding that the Act did not require further consultation for an amendment to the parenting plan in accordance with s 34(5). For this reason too I think that the appeal must succeed.”

[13] In the absence of any due variation of the order, this Court is *functus officio* and cannot change the order of Makamu J dated 17 December 2024. This much is illustrated in **VN v MD and Another** above.

Analysis

[14] This Court is called to decide whether the order by Makamu J that deals with maintenance, should be extended *in toto* or only in part. In addition, the issue of sleep-over in addition to the order of Makamu J is to be decided.

[15] The applicant requests that the following draft order should be made an order of court:

“1 *The Rule 43 application is postponed sine die.*

2 *Pending the determination of the Rule 43 application, the respondent shall pay maintenance to the applicant as set out in paragraphs 2.1 - 2.6 of the order of court dated 17 December 2024.*

3 *The costs of 9 June 2025 are to be costs in the cause.*”

[16] The respondent requests that the following draft order should be made an order of court:

- “1. *The Rule 43 application is postponed sine die.*
2. *The interim Order dated 17 December 2024 is extended, in toto, pending the determination of the Rule 43 Application.*
3. *The Applicant is ordered to pay the costs of 9 June 2025, on the scale as between attorney and client.*

[17] On my reading of the order dated 17 December 2024, the maintenance obligations are set out in paragraphs 2.1 to 2.6. Essentially, both parties want the maintenance part of the order dated 17 December 2024 extended, on a perusal of the draft orders presented to court at the argument of the matter.

[18] It follows that the court order of Makamu J should be extended.

[19] The issue of sleepovers of the minors remains in question.

Conclusion

[20] Having regard to the age of the minor children, being 2 years and 4 years old, I hold the view that it would not be in their best interests if sleepover arrangements were implemented in the absence of a social worker report.

[21] I therefore deem it in the interest of the children that the arrangements as made by the parties, alternatively the arrangements as set out in the court order dated 17 December 2024, be followed by the applicant and respondent.

[22] After receipt of the social worker report, the issue of sleepovers of the children at the respondent can be reconsidered.

Costs

[23] The general principle is that the party that has been successful is entitled to its costs. However, the application before this Court is an interim application and forms part of the final Rule 43 application.

[24] As such, I deem it in the interest of justice that an order be granted that costs of this application be costs in the Rule 43 application.

Order

I consequently make the following order:

- i) The Rule 43 application is postponed sine die.
- ii) The Interim Order dated 17 December 2024 is extended, *in toto*, pending the determination of the Rule 43 application.
- iii) The costs of 9 June 2025 are to be costs in the cause.

FMM REID
JUDGE OF THE HIGH COURT
GAUGENG DIVISION JOHANNESBURG

DATE OF APPLICATION: 9 JUNE 2025

DATE OF JUDGMENT: 15 SEPTEMBER 2025

APPEARANCES:

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