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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2024-084226

1. REPORTABLE: NO

2. OF INTEREST TO OTHER JUDGES: NO

3. REVISED:

DATE: 29 August 2025

SIGNATURE OF JUDGE

In the matter between:

V[...] H[...]: I[...]

APPLICANT

and

B[...]: J[...] G[...] R[...]

RESPONDENT

This Judgment 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 system and by release to SAFLII. The date for hand down is deemed to be 29 August 2025.

JUDGMENT

BADENHORST, AJ

INTRODUCTION:

[1] This is an opposed Rule 43 application and the following *pendente lite* relief is sought in terms of the Notice:

[1.1] Making payment to the applicant of a sum of R38,050.00 per month, alternatively of such monthly amount as this Honourable Court should determine reasonable having regard to the proprietary consequences of the marriage and the parties' respective income, means and needs, each such payment to be made to the applicant without deduction or set-off on or before the first day of each month, by debit order into such account as she may from time to time determine in writing.

[1.2] Making payment and by bearing all the medical expenses incurred in private healthcare in excess of the cover provided by any medical aid scheme or hospital plan of which the applicant is a member, such costs to include all medical, dental, pharmaceutical (including levies), surgical, hospital, orthodontic and ophthalmic (including spectacles and/or contact lenses), physiotherapeutic, psychotherapeutic, occupational therapeutic, homeopathic, chiropractic and similar medical expenses which are not covered by the medical aid scheme. The respondent shall reimburse the applicant for all expenses so incurred in respect of which she has made payment, or shall make payment directly to the service providers, as the case may be, within 5 (five) days of the applicant providing the respondent with proof of payment and/or the relevant invoice.

- [1.3] The amount payable in terms of prayer 1.1 above shall be increased annually on the anniversary date of the divorce order by the percentage change in the Headline Consumer Price Index ("CPIX") for the Republic of South Africa in respect of the middle income group or in line with the Headline Inflation Rate, which applicable (or a new replacement inflationary index should the CPIX be discontinued) as notified by from time to time by the Director of Statics ("DS") or his equivalent, for the preceding 12 months.
- [1.4] That the respondent be ordered to make an initial contribution towards the applicant's legal costs in a sum of R174 250.89 in equal monthly instalments of R15 000.00 per month on or before the first day of every month.
- [1.5] That the respondent be ordered to make a once off contribution towards the applicant's costs in respect of household furniture and necessities in the amount of R50 000.00.
- [1.6] That the respondent be ordered to pay the costs hereof.
- [1.7] That further / alternative relief be afforded the applicant.

FACTS:

- [2] The parties were married on **17 July 2021** out of community of property excluding the accrual system.
- [3] This was a second marriage for both parties and both parties were in their fifties when they got married.
- [4] The applicant vacated the erstwhile matrimonial home on **27 October 2022** and moved to Pretoria.

- [5] The applicant (plaintiff in the divorce action) issued summons during **July 2024** for a decree of divorce and claims only spousal maintenance.
- [6] The respondent claims in his Plea for a decree of divorce and for the dismissal or the remainder of the applicant's claim.
- [7] The Rule 43 application was instituted on or about **23 December 2024**, two years and two months after the applicant vacated the common home.
- [8] The Rule 43 application was enrolled on the family court roll of **28 July 2025**, being 2 years and 9 months after the applicant left the common home.
- [9] The applicant claims considerably more relief in her Rule 43 application than in the in the divorce action.
- [10] The parties were both unemployed when they got married and they were unemployed during the period they were married.
- [11] The parties were married for 1 year and 3 months during which time the applicant, on her own version, were away from home on several occasions. On one of these occasions the applicant was away from home for more than a month.
- [12] The applicant avers they lived a comfortable life whilst the respondent avers that their respective children contributed to their individual expenses.
- [13] The respondent avers that he has not contributed to the applicant's expenses whilst they were married nor since she moved out of the common home.
- [14] The applicant avers that when she was admitted to the Helderberg Psychiatric Clinic for 28 days during August 2022 the respondent did not pay for her medical expenses as she was not on his medical aid. The applicant confirms that her children paid for these medical expenses.

- [15] The respondent avers that the applicant has never claimed any form of financial assistance from him. The applicant avers that she has contacted the respondent's brother during January 2023 to ask for financial assistance.

APPLICANT'S SUBMISSIONS:

- [16] The applicant seeks condonation for filing of a supplementary affidavit in terms of the provisions of Rule 43(5). Rule 43 does not allow for automatic answer or reply to the answering affidavit of the respondent, but this Court has a discretion to allow the filing of a further affidavit in terms of Rule 43(5).
- [17] I afforded the applicant the opportunity to place further evidence before the court as it was in the interest of justice to afford the applicant the opportunity to deal with certain averments made by a respondent in his answering affidavit. There is furthermore no prejudice towards the respondent allowing same.
- [18] The applicant is an unemployed 57-year-old woman and she has been residing with her elderly mother in a two-bedroom accommodation in Bronberg Retirement Estate, Olympus. The applicant describes her place of residence as an old age home, but it is a retirement estate.
- [19] The applicant had a Bernina Sewing Machine Agency from August 2026 to August 2020 until Covid and she closed her business.
- [20] It is common cause the applicant and respondent only resided together for 15 months after their marriage.
- [21] The parties give different reasons for the breakdown of the marriage.
- [22] The applicant avers she has two Capitec savings accounts, being account numbers 1[...] and 1[...]2.

[23] The applicant further avers that she earns a sum of R1,146.27 per month from a living annuity from Sanlam (from her former spouse) and she is reliant upon her mother who, when necessary, gives her R2,000.00 in a month.

[24] The applicant claims R12,000.00 per month in the Rule 43 for accommodation and she avers her fair, reasonable and necessary monthly needs and expenses are as follows:

- [24.1] Rental R 12,000.00
- [24.2] Food, groceries and cleaning materials R 4,000.00
- [24.3] Toiletries R 500.00
- [24.4] Electricity R 1,500.00
- [24.5] Householders' insurance R 500.00
- [24.6] Wi-Fi R 500.00
- [24.7] Cellular telephone R 500.00
- [24.8] Domestic worker part-time R 1,500.00
- [24.9] Clothing and shoes R 700.00
- [24.10] Hair care R 500.00
- [24.11] Cosmetics and make-up R 500.00
- [24.12] Vehicle maintenance, services, tyres, brake pads, etc. (in R 800.00 respect of her mother's vehicle)
- [24.13] Fuel R 1,500.00
- [24.14] Licenses R 100.00
- [24.15] Parking, inclusive of parking attendants R 100.00
- [24.16] Other and unforeseen expenses R 200.00
- [24.17] Other educational expenditure R5 000.00 for fees relating to enrolment for a course at HyperionDev as she is studying software engineering
- [24.18] The respondent to pay for a Comprehensive Medical Aid with Discovery
- [24.19] Doctor / Dentist / etc. excess R 1,000.00
- [24.20] Medication excess R 200.00
- [24.21] Life insurance R 500.00
- [24.22] Provision for retirement annuity R 5,000.00

[24.23] House maintenance R 250.00

[24.24] M-Net / DSTV R 700.00

[25] The applicant claims spousal maintenance in the amount is R38,050.00 per month from the respondent.

[26] The applicant further claims a R50 000.00 once-off amount to purchase household furniture and content to furnish the property that she intends to rent and reside in. There is no rental agreement in place, the applicant merely avers she wishes to move.

[27] The applicant avers that the respondent earns enough to pay all her expenses listed.

[28] The applicant attaches two letters from psychiatrists confirming her previous treatments. The letters are dated 9 February 2023 and 15 October 2024 respectively.

[29] The applicant submits that she has made out a proper case for her claim towards spousal maintenance and that respondent can afford to pay same.

RESPONDENT'S SUBMISSIONS:

[30] The respondent avers that he is not financially in a position to contribute to any of the applicant's personal expenses as claimed, nor is he under any obligation to do so.

[31] The respondent avers that he can barely pay his own personal expenses with the commission he earns from his current employment.

[32] The respondent avers that both parties were unemployed during the time that they were married and the lifestyle the parties led was meagre and both parties struggled to pay just the most basic of expenses.

- [33] The respondent states that the parties agreed that they would only be responsible for payment of their own personal expenses for the duration of the marriage.
- [34] The respondent states that the parties lived together as husband and wife from 17 July 2021 until 27 October 2022 which is a period of approximately fifteen months.
- [35] The respondent states that the applicant is fifty-six years of age whilst he is sixty-two. The parties married when the applicant was fifty-two (52) years of age, and the respondent was fifty-eight (58) years of age.
- [36] The respondent confirms that the applicant has not claimed interim maintenance from him since 27 October 2022 (when she vacated their common home) until the institution of this application on 23 December 2024 and after more than two years the applicant decided to pursue a financial contribution.
- [37] The respondent states that he was not able to make any meaningful financial contribution towards the applicant during their marriage as he extensively struggled with finances.
- [38] The respondent avers that since their marriage the applicant has been financially dependent on her family and she entered into the marriage with the understanding that she would continue to be so dependent on her family for her income until she is able to secure employment. The respondent states that the applicant has made no effort to obtain employment.
- [39] The respondent avers that this application is an opportunistic attempt to force him to pay for the applicant's personal expenses which he has never done before and the lifestyle the applicant now seeks is a lifestyle neither the Applicant have ever enjoyed during their marriage.

- [40] The respondent states that he obtained employment as a salesman in Somerset Wes in the Western Cape on March 2023 more than four months after the applicant left the common home.
- [41] The respondent's net income was on average R 33 623.00 for the six-month period of payslips attached to the Respondent's FDF. However, this amount includes a significant once off commission payment received in June 2024. The net income for the last financial year was R365 623.58 which is an income of R30 468.58 per month. The respondent's estimated net income for the next twelve months is R372 000.00 which calculates to R31 000.00 per month.
- [42] The respondent's expenses are approximately R45 495.88 per month.
- [43] The respondent avers that the applicant is unemployment by choice and not due to circumstances.
- [44] The respondent referred to **Botha v Botha**¹ where it was held that the purpose of interim maintenance is to supplement expenses which the applicant cannot meet however, in terms of Rule 43, such maintenance must be reasonable in the circumstances, depending upon the marital standard of living of the parties, the applicant's actual and reasonable requirements and the capacity of the respondent to meet the requirements.
- [45] The respondent avers that the applicant fails to prove to the Court that any of her listed expenses are current. Instead, the Applicant only indicates what kind of lifestyle she wishes to lead in the future.
- [46] The respondent avers the applicant has not made out a case for maintenance for herself. **Kroon v Kroon**² held that, "*The position in our law is that no maintenance will be awarded to a woman who can support herself.*" It was further held that, "*What does the plaintiff want and what does she need?*"

¹ 2009 (3) SA 89 (WLD) at 106 C

² 1986 (4) SA 616 (E)

Wants and needs are two different things. People usually want more than they need."

[47] The respondent argues that the applicant does not make out a case for contribution towards her legal costs because both parties are on equal financial footing with regards to litigation, in fact the applicant is litigation on a higher scale as the respondent.

[48] The respondent referred to **Du Preez v Du Preez**³ where the Court held that a *"misstatement of one aspect of relevant information invariably will colour other aspects with the possible (or likely) result that fairness will not be done. Consequently, I would assume there is a duty on applicants in Rule 43 applications seeking equitable redress to act with the utmost good faith (uberrimae fides) and to disclose fully all material information regarding their financial affairs. Any false disclosure or material non-disclosure would mean that he or she is not before the Court with "clean hands" and on that ground alone it will be justified in refusing relief."*

EVALUATION:

[49] It is common cause that Rule 43 proceedings are interim in nature pending resolution of the main divorce action. Each case must be based upon its own particular facts.⁴

[50] The Court is referred to Erasmus, Superior Court Practice (2nd Edition) Vol. 2 at D1-580 during argument in that it states: *"... Maintenance pendente lite is intended to be interim and temporary and cannot be determined with the same degree of precision as would be possible in a trial where detailed evidence is adduced. The applicant is entitled to reasonable maintenance pendente lite dependent upon the marital standard of living of the parties, the applicant's actual and reasonable requirements and the capacity of the*

³ 2009 (6) SA 28 TPD

⁴ **Taute v Taute** 1974 (2) SA 675 (E)

respondent to meet such requirements which are normally met from income although in some circumstances inroads on capital may be justified.”

[51] Our Courts have always emphasised the need for utmost good faith by both parties in Rule 43 proceedings and the need to disclose fully and all material information regarding their financial affairs.⁵

[52] The applicant must show a need and then the court should also consider the financial capacity of the respondent.

[53] The Court affirmed the position that the lifestyle requirement must be a balanced and realistic assessment, based on the evidence concerning the prevailing factual situation.⁶

Ludorf, J held: *“To decide the issues I am compelled to draw inferences and to look to the probabilities as they emerge from the papers. Obviously, my findings are in no way binding on the trial Court and indeed after hearing the evidence it may emerge that some or all of the inferences I have drawn are wrong. On this basis I now turn to the issues as they emerge from the papers.”*⁷

[54] A rule 43 application is interim assistance to an applicant and not a meal ticket.

[55] The applicant vacated the common home in October 2022. 2023. She issued the Rule 43 application in December 2024 and the matter was only enrolled for 18 July 2025, almost three years after the applicant left the common home.

[56] There is no evidence before me to suggest that the respondent maintained the applicant during their 15 months marriage. On the applicant’s own version her family paid for her medical expenses during the time she was admitted to

⁵ **Du Preez v Du Preez** 2009 (6) SA 28 (T) at para 16

⁶ **M.M v T.M** (2023/012335) [2024] ZAGPJHC 835 (20 August 2024) para 18

⁷ **Levin v Levin** and Another 1962(3) SA 330 (W) at p331D

the Helderberg Clinic as she was not registered as a dependant on the respondent's medical aid.

- [57] On the respondent's own version she did not receive any financial assistance from the respondent since she left the common home and that the Parties were both unemployed during their marriage.
- [58] The respondent obtained employment in Somerset Wes, in the Western Cape, more than four months after the applicant left the common home in Hermanus.
- [59] On the applicant's own version, she only contacted the respondent's brother during 2023 to seek financial assistance. The respondent's version that he has never made any financial contribution towards the applicant should be accepted.
- [60] I asked Counsel for the applicant how did the applicant survive financially for more than two years before she lodged the Rule 43 application in December 2024. This aspect was not addressed in the applicant's affidavit at all and no explanation is given by the applicant in this regard.
- [61] The applicant avers that she earns an amount of R1 146.27 per month from an annuity from her late husband and when necessary, she would ask her mother for R2 000.00. The inference this Court makes is that these amounts cannot be the only money the applicant receives during a month to be able to survive financially.
- [62] In the Rule 43 application the applicant prays for an amount of *pendente lite* maintenance which far exceeds the respondent's salary and her list of expenses are clearly not her current or actual expenses.
- [63] The Applicant has not provided this Court with any reason as to why the *status quo* of almost three years, cannot continue until finalisation of the divorce action.

- [64] There is a total lack of information without any explanation on how she managed to financially survive for more than two years prior lodging the application.
- [65] The applicant does not explain her expenses nor the reasonableness thereof.
- [66] The applicant seeks this court to have reference to her annexed FDF and to try and assess her monthly expenses without expressly dealing with each and every of the listed expenses and the reasonableness thereof.
- [67] The expenses the applicant lists are clearly not current expenses and it is a 'wish list' so to speak.
- [68] The only reason the applicant gives for her need to obtain an alternative place to live is because the retirement village is not good for her mental health. No evidence is provided to this effect. She has been living in the two-bedroom apartment for almost three years. To claim this expense in a Rule 43 application is not reasonable in the circumstances.
- [69] The applicant claims expenses regarding her mother's motor vehicle's maintenance, licensing etc. two years after vacating the common home. The applicant does not give any information who paid these expenses prior to lodging the application.
- [70] The applicant adds to her expenses an amount of R5 000.00 per month for which the respondent should pay towards a pension fund for the applicant. It is common cause that the respondent has never paid any amount towards a pension fund for the applicant. A rule 43 application is a remedy to provide urgent interim relief to applicants with expenses he or she cannot pay, and the respondent is able to meet those requirements. The claim for a pension contribution is not part of the relief sought in the action.

- [71] Furthermore, the applicant claims an amount of R5 000.00 per month for an online software engineering course she is enrolled for, through HyperionDev. No proof of enrolment is provided, no proof of who paid for the enrolment is provided, nothing is said regarding when the applicant enrolled for this course, the duration of the course and when the qualification will be obtained. The applicant is also quiet about how this training will increase her earning capacity when she finishes her studies.
- [72] The applicant claims that the respondent should pay for her comprehensive medical aid with Discovery, doctor/dentist excess and medication excess. On the applicant's own version these expenses were not paid by the respondent during their marriage but by her children. There is no explanation as to who has been paying for the applicant's medical aid en excess payments.
- [73] The applicant claims life insurance of R500.00 per month without explaining the reasonableness of this expense in a Rule 43 application given the fact that this expense was not an expense ever paid by the respondent during the marriage.
- [74] There is a duty on an applicant who seeks redress to act in the utmost good faith and to provide fully all material financial information and explain the reasonableness thereof.
- [75] The applicant also omits to say exactly which expenses her mother has been paying and the amounts thereof.
- [76] In matter **C.M.A v L.A**⁸ it was stated that: *"the Court should consider the reasonable of the amount claimed versus the capacity of the respondent to meet the requirements and interim maintenance orders is not intended as an interim meal ticket for a spouse who, quite clearly, will not establish a right of maintenance at trial. And a court must be circumspect in arming an applicant with an interim maintenance order which she is unlikely to achieve at trial, for*

⁸ 2023 ZAGPJHC 364 (24 April 2023) at par [25]

human nature predicts that she will then seek to delay the finalisation of the action.”

[77] The Applicant's entire application is filled with irrelevant information predating the parties' relationship and does not adhere to the prescripts of Rule 43 which requires a sworn statement which is in the nature of a declaration, which sets out the relief claimed and the grounds on which the claim is based. But rather the Applicant approaches the Court with unreasonable, excessive and inflated claims after being self-supporting for more than two years prior lodging the application. The inference that can be made is that the applicant can support herself until the divorce is finalised.

[78] In **Taute v Taute**⁹ it was held that *“the quantum of maintenance payable must in the final result depend upon a reasonable interpretation of the summarised facts contained in the founding and answering affidavits as indeed is contemplated and intended by Rule 43.”*

[79] No facts are provided to base the reasonableness of the claim for *pendente lite* spousal maintenance.

[80] The applicant's calculation of interim maintenance and the reasonableness of her monthly expenses are not canvassed in her founding affidavit at all. The applicant omitted to fully and in detail explain how she managed to cope for more than two years after she vacated the common home and before lodging the Rule 43 application.

[81] After having perused and considered both parties' papers filed of record, and after having heard both parties' legal representatives and considering the merits of the matter I am of the view that the applicant does not make out a case for *pendente lite* spousal maintenance or any other amounts claimed in her separate prayers contained in the Notice.

⁹ 1974 (2) SA 674

CONTRIBUTION TOWARDS LEGAL COSTS:

- [82] The applicant claims an amount of R174 250.89 towards a contribution to legal costs.
- [83] The respondent avers that the applicant has not made out a case that justifies a contribution towards legal costs in circumstances whereby there are very few issues in dispute, namely the spousal maintenance claim.
- [84] The respondent also avers that the applicant could have obtained free legal services through Legal Aid which would have negated the incurrence of the alleged legal costs. The respondent further held that the applicant elected to appoint a senior counsel in circumstances whereby the only issue in dispute is the applicant's maintenance claim.
- [85] The respondent also alleges that the applicant opposed mediation in terms of the Rule 41A notice thereby forcing litigation and negating the possibility of settlement.
- [86] In **Van Zyl v Van Zyl** it was held that to succeed in an application for contribution towards costs, the applicant must set out sufficient facts which if established by her at the trial on the hearing of the evidence, would justify the Court in granting an order as claimed.¹⁰
- [87] in **Muhlmann v Muhlmann** ¹¹it was stated that the amount to be awarded by way of a contribution is that the applicant 'should be placed in a position adequately to present her case'. What is 'adequate' will depend on the nature of the litigation, the scale on which the husband is litigating and the scale on which she intends to litigate, with due regard being had to the husband's financial position. According to the decision in **Micklem v Micklem** ¹², she is

¹⁰ 1947 (1) SA 251 (T)

¹¹ 1984(1) SA 413 (W)

¹² 1988 (3) SA 259 (c) at 262H-263A

entitled to be put in a position of being able 'adequately to place her case before Court'."

- [88] The above cited case law confirm that the applicant is obliged to state the nature of the litigation for this Court to assess not only the prospects of success but also to determine whether litigation is strictly necessary. On this score, the applicant did not adequately address the events revolving around the appointment of an industrial psychologist. The applicant has failed to discharge her obligation to describe the nature of the litigation.
- [89] Rule 43(1) and (6) provides a mechanism whereby a party can claim a contribution to legal costs at the commencement or prior to the divorce proceedings and two or more such applications can be made before the first date of trial. Should the matter not settle and proceed to trial, the applicant has the remedy in terms of this Rule to approach the Court for a contribution towards her legal costs.
- [90] It is on this basis that I am inclined to refuse applicant's request for contribution towards legal costs.

COSTS DE BONIS PROPRISS:

- [91] The respondent seeks a cost order *de bonis propriis* against Shapiro & Ledwaba Incorporated and Mr Shapiro personally. The applicant's attorney of record has delivered an affidavit resisting the order sought.
- [92] Mr A Shapiro confirms that he is representing the applicant in the divorce proceedings between the applicant and the respondent.
- [93] The Court found that the further evidence should be allowed as the respondent made severe allegations against Shapiro & Ledwaba Incorporated in his answering affidavit.

[94] In paragraph 33 of the answering affidavit the respondent avers that the applicant's attorneys of record are proceeding with irresponsible litigations and any cost order granted in favour of the respondent will be academic, as the applicant might not be able to satisfy a cost order made against her.

[95] The respondent avers that a *de bonis propriis* cost order should be granted against the applicant's attorneys of record for the following reasons –

[95.1] For advising the applicant to oppose mediation and possible settlement;

[95.2] To proceed with a vexatious rule 43 application given the short duration of the marriage, the duration of the parties separation and the applicant's lack of interim maintenance from 27 October 2022 to 23 December 2024;

[95.3] The applicant failed to file her FDF and a cost order was granted against her the applicant;

[95.4] Proceeding with further affidavits without consent of the Court to do so, which does not take the matter further save to increase legal fees.

[96] The respondent therefore seeks *costs de bonis propriis* against Mr A Shapiro personally and against the firm.

[97] Mr Shapiro confirms that he deposes to the affidavit with the knowledge and consent of the applicant as it has become necessary as a consequence of the respondent's frivolous claim that a *de bonis propriis* costs order be made.

[98] The applicant confirms in her affidavit that her attorney of record did not advise her to refuse mediation nor to explore legal aid. She avers that that proceedings have been launched on her express instructions, and it is denied that her attorney negated the option of settlement or mediation.

- [99] The applicant avers that that her attorney of record did not proceed to push her to litigate and 'rack up an account' that would bankrupt her. The applicant avers that she needs a contribution towards costs from the respondent as he is forcing her to litigate against her.
- [100] Counsel representing Mr Shapiro argued that this application for an order for costs *de bonis propriis* is vexatious, malicious and a clear attempt on the part of the respondent and that the respondent be ordered to pay the costs of the application on a punitive scale.
- [101] The applicant's attorneys of record appointed Martin Hayward Attorneys to represent them in the *de bonis propriis* cost claim.
- [102] The Court was referred to correspondence dated 17 February 2025 from Martin Hayward Attorneys to the respondent's attorneys of record asking the respondent's attorneys of record to reconsider the claim that Shapiro & Ledwaba Incorporated pay costs *de bonis propriis*. The respondent's attorneys were also informed that should they proceed with the claim, counsel will be instructed to appear at the hearing of the matter on behalf of Shapiro & Ledwaba Incorporated and a punitive cost order will be sought.
- [103] In reply correspondence dated 17 February 2025 the respondent's attorneys stated that they are still awaiting the supplementary affidavit from the applicant and they will revert after the content of the affidavit has been considered.
- [104] Martin Hayward Attorneys again enquired from the respondent's attorneys whether the respondent is still pursuing the order for costs *de bonis propriis* against Shapiro & Ledwaba Incorporated.
- [105] The respondent's attorneys of record replied on 17 July 2025 informing Martin Hayward Attorneys that the entire basis of the Applicant's claim, together with the amounts claimed and the supporting allegations are questionable.

Mention was also made to the fact that the applicant allegedly has no money and will not be able to pay any costs order and it seems that the Applicant is litigating without caring for the financial implications for the respondent.

[106] A good reason must be present for a *de bonis propriis* cost order to be granted.

[107] **Vermaak's Executor v Vermaak Heirs**¹³ Innes CJ held that: "*the whole question was very carefully considered by this court in Potgieter's Case 1908 TS 982 and a general rule was formulated to the effect that in order to justify a personal order for costs against a litigant occupying a fiduciary capacity his conduct in connection with the litigation in question must have been mala fide, negligent or unreasonable.*"

[108] The applicant avers that she has incurred legal costs in prosecuting claims against the respondent, which she is entitled to prosecute considering that she has a reasonable prospect of succeeding with and the respondent is unreasonably continuing to seek to evade and avoid his responsibilities.

[109] A cost order *de bonis propriis* is only reserved for the most serious of matters, where a Court want to show its displeasure at the conduct of an attorney in any particular context. Examples are dishonesty, obstruction of the interest of justice, grossly negligent conduct, misleading the Court and gross incompetence and a lack of care.

[110] It was held in **Multi-links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd**¹⁴ that Legal practitioners must present their cases fearlessly and vigorously, but always within the context of a set ethical rules that pertain to them. The courts and the profession demand absolute personal integrity and scrupulous honesty of each practitioner.

¹³ 1909 TS 879

¹⁴ 2014 (3) SA 265 (GP at para [35])

[111] It was also stated in **Multi-links Telecommunications Ltd:** *“It is true that legal representatives sometimes make errors of law, omit to comply fully with the rule of court or err in other ways related to the conduct of the proceedings. This is an everyday occurrence. This does not, however, per se ordinarily result in the court showing its displeasure by ordering the particular legal practitioner to pay the costs from his own pocket. Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioners, such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feel compelled to mark its profound displeasure at the conduct of an attorney in a particular context. Examples are dishonesty, obstruction of the interest of justice, irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court, gross incompetence and a lack of care.’*

[112] The basis of the respondent’s submissions are that the applicant’s attorney of record is proceeding with litigation and lodging a rule 43 application knowing very well that the applicant cannot pay any cost order.

[113] The respondent is of the view that the applicant could have approached Legal Aid for free legal services, and she is incurring legal costs knowing that she is unable to pay. The respondent also avers that the applicant’s attorneys knowing very well that she cannot afford the litigation, advised her against mediation and brief senior counsel to represent her in the Rule 43 application.

[114] The applicant makes it clear in her affidavit that her attorneys of record act on her instructions, they have set out the risks but she belief she has a reasonably good case and she has a right to litigate her matter.

[115] If the applicant is not able to pay her attorney’s fees or the fees of senior counsel, it is surely of no concern to the respondent.

[116] The applicant’s attorneys of record did not act unreasonably if they appointed counsel in order to represent their client’s interest.

[117] An attorney should fearlessly and vigorously and within the context of a set ethical rules that pertains to them, deal with their clients' matters even if there is a risk, which the clients excepted, that a cost order may be granted against them.

[118] Surely an attorney doing pro-bono work should still fearlessly deal with their clients' matters without having to fear a *de bonis propriis* cost order against them should their clients not have funds to pay a possible cost order awarded against them.

[119] By considering and applying the guidelines in **Multi-links Telecommunications Ltd** to the matter at hand, I am not convinced that the applicant's attorneys of record conducted themselves in a manner which substantially and materially deviates from the standard expected of the legal practitioners. They applicant's attorneys fearlessly dealt with the matter, and I do not see irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court, gross incompetence nor a lack of care.

[120] The respondent was cautioned in communication prior to the hearing of the Rule 43 that Counsel will be briefed to represent Shapiro & Ledwaba Incorporated in defending the cost order sought and the respondent was further cautioned that a punitive cost order will be sought against him should he persist with the claim.

[121] In my view the respondent has not made out a case for the relief sought.

ORDER:

[1] In the circumstances I make the following order:

[1.1] The Rule 43 application is dismissed with costs.

[1.2] The costs *de bonis propriss* sought by the respondent against Shapiro & Ledwaba Incorporated and Mr Shapiro personally, is dismissed with costs on an attorney and client scale.

**BADENHORST AJ
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

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Matter heard on: 31 July 2025

Judgment handed down: 29 August 2025