IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GQEBERHA)

CASE NO: 3913/2024

In the matter between

M. A Appellant

and

A. A Respondent

JUDGMENT

Nobatana AJ:

[1] The applicant has applied for the following relief in terms of rule 43 of the uniform rules of this court:

1.1 That the respondent shall contribute towards the maintenance of the applicant and the applicant and the respondent's "*the parties*" minor children:

1.1.1 an amount of R23 000 per month to the applicant, and for the maintenance in respect of the applicant and the parties' children, without set off deduction, with the first payment to be made to the applicant on the last day of the month in which the order of this court is granted and thereafter on the last day of each consecutive month;

1.1.2 the schooling and college expenses of the parties children, including but not limited to college fees, any medical care and lessons requirements, all extra-mural and extra-curricular school and sporting activities, school uniforms and equipment and attire, sporting and/or extra-mural and extracurricular activities including the costs of all flight tickets, gym and private athletic coaching expenses as well as costs relating to tours and competitions;

1.1.3 retain the applicant and the parties' children as dependent members on his current medical aid scheme, at his expense.

1.1.4 pay the applicant and the children's reasonable and necessary medical expenses and necessary medical expenses that are not covered by the medical aid, including but not limited to medical, dental, orthopedic, pharmaceutical, pathological, surgical, specialist, radiological, therapeutic, physiotherapeutic, chiropractic and anesthetic expenses.

1.1.5 pay the cell phone contract of the parties' adult child, directly to the service provider.

1.1.6 provide the parties minor child with a working laptop on the last day of the month in which the order of this court is granted, to be used by her *pendente lite*.

1.1.7 deliver and allow the applicant continued use *pendente lite* of the Corsa bakkie which she formerly used or provide the applicant with a similar vehicle and pay the licensing fees, short term insurance premiums, annual maintenance and service, reasonable repairs (including replacement, as required of shocks, brakes and brake pads) and the replacement of tyres (as well costs incurred in respect of wheel balancing and alignment) as an when required;

1.1.8 deliver to the applicant and allow her and the parties' children the continued use, *pendent light*, of one working television set.

2 That the parties' minor child, *pendente lite*, remains in the applicants' primary care, subject to the respondent's right of reasonable access to her:

3 That the respondent shall contribute an amount of R190 000 towards the applicant's legal costs, with such payment to be made:

3.1 in monthly installment of R20 000 each, with the first such payment to be made on the first day of the month, on which the order of this court is granted in this matter and thereafter on the last day of each subsequent month; and into the trust account of the applicant's attorney of record,

3.2 the costs of this application be costs in the cause and that such cost includes the costs of counsel at scale B;

[3] The parties were initially married to each other in terms of Islamic Law on the 20th of April 2002. On the 19th of July 2014, they entered into a marriage out of community of property in terms of the Marriage Act, 1961 (Act No. 25 of 1961), with the exclusion of the accrual system.

[4] There are two children born of the marriage, who are girls, namely H.A, who is presently a major, she is however not self-supporting and is a fourth-year student at the M[...] S[...] Arabic Girls College, and B.A, who is a minor female who is currently in Grade 9 at W[...] Secondary School.

[5] On the 9th of April 2024, the applicant instituted an action for divorce against the respondent. The said divorce proceedings are pending before this court. In the divorce proceedings the applicant seeks the following relief against the respondent:

5.1 a decree of divorce

5.2 that the parties retain full parental responsibilities and rights in respect of the minor child, as provided for in the Children's Act, 2005 (Act 38 of 2005);

5.3 That the minor child primary resides with the applicant, subject the respondent's rights of reasonable access to her.

5.3.1 That the respondent be ordered to contribute as follows toward the maintenance of the minor child; by,

5.3.2 payment of an amount of R2 500 per month, to the applicant.

5.3.3 retain the minor child as a dependent member on his medical aid scheme, at his expense.

5.3.4 pay all the minor child's expenses that are not covered by the medical aid; and

5.3.5 pay the costs of her tertiary education and all costs associated with it.

5.4 That the respondent be ordered to pay these costs until the minor child becomes self-supporting.

5.5 That the respondent pays the cost of the minor child's tertiary education, and all costs associated with it, should the minor child display the necessary aptitude to receive such education.

5.6 That the respondent be ordered to pay to the applicant spousal maintenance to the applicant until her death or remarriage-which ever occur as follows:

5.5.1 an amount of R20 000,00 per month to the applicant,

5.5.2 retain the applicant as a dependent member on his medical aid scheme, at his expense, and

5.5.3 pay all medical expenses that are not covered by the medical aid,

5.7 The respondent be ordered to pay the applicant a resettlement allowance of R1 300 000, to the applicant for costs of housing and a motor vehicle, alternatively, that the respondent be ordered to transfer half of the net value of his estate to the applicant, in terms of redistribution order.

[6] The action for divorce is defended by the respondent, in his defense the respondent does not put into issue the fact of the irretrievable breakdown of the marriage but pleads different reasons therefor.

[7] The respondent denies that the applicant is entitled to spousal maintenance, resettlement allowance and a redistribution order.

[8] The respondent also claims primary care of the minor child, without an obligation of the applicant paying him for her maintenance, in the alternative, the respondent pleads that should the applicant be ordered to retain primary care of the minor child, the respondent has tendered to pay the following as maintenance of the minor child:

8.1 An amount of R2 500 per month, until the minor child becomes self-supporting.

8.2 Payment of the costs of retaining her his medical aid, including payment her medical expenses not covered by the medical aid; and

8.3 Payment of the reasonable costs of her school education, as well as tertiary education.

[9] The respondent has further tendered to make similar payments towards the major child, except for the fact that, for the monetary part of the maintenance, he has tendered pay for the major child is R3 500 per month.

[10] The pleadings in the divorce action have closed, no trial date has as yet been allocated, and because, the primary care of the minor child has been put in issue, the family advocate has been requested to conduct an investigation, and prepare a report to advise on what is in the best interests of the minor child, in the circumstances.

[11] The report of the family advocate has not yet been finalised. It is common cause that the delays in the finalization of the family advocates report is caused by a backlog in the family advocates office, as the family advocate has already consulted with the applicant and the respondent, as early as the 14th of February 2025.

[12] In support of the present claim for herself and the parties' children, the applicant in her Financial Disclosure Form has stated that since 2024 she has been employed as a kitchen help at Mr. Chows Take always. She works for 6 days a week and earns a basic salary of R1 100 per week, as well as overtime, which is usually R220 per week. The applicant further states that she also receives an additional

R100 per week, as contribution to her fuel expenses. UIF is deducted from her salary. On average the applicant earns an amount of R1 406.80 per week (in a four-week month).

[13] The applicant states that she does not have an additional source of income other than what she earns from her employment. The applicant further states that she has been unemployed for a period of 19 years before being employed, as aforesaid in 2024.

[14] The applicant alleges that the reason for her to stop working was a result of an agreement that was reached between the applicant and the respondent, in order to look after the family

[15] The applicant's lists the following as her and children's monetary expenses:

15.1 She states that she currently has the following bank accounts:

15.1.1 A Standard Bank account with account number 1[...] (MYMOACC). This is an account which was opened in approximately 2022 in applicants name and into which the respondent had deposited funds from time to time – usually around R1 000 per month. Some of the parties household expenses and some of the Respondent's expenses were paid from this account, for example repairs to his motor vehicles and repairs to his residences. The respondent stopped making payments into this account at the end of 2023 and the current available balance on this account is R363.38.

15.1.2 A Standard Bank account, with account number 1[...]. (ACCESSACC). After the death of the respondent's father in 2012, the Respondent inherited approximately R32 000 from the estate. The respondent told the applicant that he would give her these funds as a gift towards her *Hajj* expenses. The applicant thus opened this bank account at Standard Bank, and the inheritance was placed into this account. The applicant states that she further supplemented these funds with whatever was left over from the R1 000 or so that the Respondent would pay into her above-mentioned Standard Bank account (15.1.1. above), as well as any funds gifted to her. These funds were used to pay applicants *Hajj* expenses in 2020. There is currently a negative balance of (-R13.67) on this account.

15.1.3 A Standard Bank account, with account number 1[...]. (TAXFREECALL). This is a tax-free call account. The respondent advised the applicant that when he retires his pension would not be enough to look after applicant. He thus asked that the applicant open an account into which the respondent deposited monthly payments to provide for applicant on respondent's retirement. The applicant states that from March 2024 the respondent ceased to put funds into this account. At that time there was a balance of approximately R32 000 in this account. The applicant has been transferring these funds to the account mentioned at paragraph 15.1.1 and using these funds to support herself and the parties' daughters. There is currently an available balance of R2 509.92 in it, according to the applicant.

15.1.4 A Standard Bank account, with account number 1[...]. This is an account which the applicant opened a few months after she obtained employment in 2024 and into which the applicants employer deposits her salary. There is currently an available balance of approximately R 2 205.41 in this account.

[16] Other than the nominal amounts, the above-mentioned balances on the bank accounts and a few personal belongings, such as clothing, the applicant states that, she does have any assets. She also does not have liabilities.

[17] The applicant states that she has made a list of the reasonable monthly expenses of the parties' children which amount to a total of R29 195.00 in her Financial Disclosure Form. The combined expenses amount to R28 195.00 per month, excluding their medical aid contributions, the children's educational expenses

and HA’s cell phone contract, which are paid by the Respondent directly to the service providers.

[18] The applicant states that, considering the fact that she earns an average net salary of R5 627.20 per month, the children and the applicant, thus have a combined shortfall of R22 570.80 per month.

[19] The applicant further states that, she does not currently incur the expense of R10 000 for lodging, the expense of R1 200 for a domestic, or the expense of R695 for WIFI, as indicated on applicants list of expenses in her Financial Disclosure Form, rather, these are reasonably anticipated expenses, as explained further below, according to the applicant.

[20] The applicant states that, on the 26th of January 2024 the Respondent married a second wife in terms of Islamic Law. Up until then, the Respondent had been residing with the applicant and their daughters at [...] P[...] Street, Parkside, which was the parties’ matrimonial home. Shortly after their marriage, the respondent and his new wife, according to applicant, moved into a flat downstairs on the same property.

[21] The applicant states that she was not prepared to accept the second marriage, and as a result she vacated the former common home and instituted the divorce action referred to above.

[22] Both children chose to come and reside with the applicant at the applicant’s parents’ house at 3[...] J[...] Street, Salt Lake.

[23] During the course of the marriage, according to the applicant, the parties’ children each had their own room at the former common home, and the children shared a bathroom, whilst the Respondent and the applicant shared a room upstairs with an on-suite bathroom. There was also a spare room which the respondent utilized as his gym.

[24] According to the applicant, applicants' parents are both retired and are of meager means. Their residence is small and has two bedrooms, both of which her parents use. The applicant's father is not in good health, and, due to his health condition, he sleeps in one room by himself, and the applicant's mother in the other. The applicant and the parties' children use the servants' quarters at the back of the property. This consists of one room with no ablution facilities. The children and the applicant cannot, according to the applicant reside like this indefinitely. The applicant intends to secure their own accommodation, as soon as possible, but she is not in a financial position to do so, without assistance from the respondent.

[25] The applicant states that the Respondent was formerly obtaining rental for one of his other immovable properties, situated at [...]2 P[...] Street, Parkside, which not far from the former common home. The respondent earned rental income of R10 000 per month in her financial disclosure form. The applicant is of the view this is indicative of a rental amount for a similar type of residence that they were residing in when still living together, and the applicant has accordingly included this amount, as a reasonable rental expense in her list of expenses, in her financial disclosure form.

[26] Wi-Fi was installed at the former common home. At the applicant's parents' residence, there is no Wi-Fi. The applicant furthermore states that she does not have the necessary funds to have this installed. Both children need access to Wi-Fi for their studies and entertainment. Axxess internet according to the applicant is currently advertising an uncapped LTE data Package at R695 per month. The applicant submits it would be preferable to use a mobile router as opposed to the installation of a fiber line until such time as they take up permanent residence.

[27] The applicant further states that she currently has no television, whilst the Respondent has approximately seven.

[28] During the course the marriage, according to the applicant, it was part of applicant's duties to take the applicants' children to school and see to it that they got to the various places they needed to be. For this purpose, she used a Corsa bakkie that belongs to the Respondent. In addition to the Corsa, the Respondent also owns

and drives a 7-seater VW Caddy. The applicant no longer has access to the Corsa bakkie, but she still must take the children to school and various places that they need to be. The applicant's parents' residence where they now reside is further away from both children's places of education. For this the applicant now has to make use of her father's motor vehicle, which is the only one they have. The applicant has to pay the petrol expenses for this vehicle and contribute to the running expenses. The vehicle is old and unreliable. In the event that it should be damaged, neither the applicant parents nor she would be able to replace same.

[29] BA, according to the applicant, needs a laptop so that she can do homework and do assignments. According to the applicant, the price of laptops ranges from R7 000 to R10 000 for a basic laptop.

[30] The applicant states that she currently has to make do without a domestic servant. She works 6 days a week and requires some form of assistance with household work at least once a week. The applicant states that she had a domestic assistant during their marriage.

[31] The applicant further states since she vacated the common home, the Respondent has made the following payments:

31.1.1 He has made no contribution towards applicant's maintenance, except for paying applicants medical aid contribution.

31.2.2 In respect of HA:

- 31.2.1 August 2024 – R5 000
- 31.2.2 September 2024 – R5 000
- 31.2.3 November 2024 – R5 000
- 31.2.4 The Respondent pays her medical aid contribution.
- 31.2.5 The Respondent pays her cell phone contract.

31.3 In respect of BA:

- 31.3.1 August 2024 – R2 000
- 31.3.2 The respondent pays her medical aid contribution.

31.4 Educational Fees:

31.4.1 The respondent has settled the parties' children's school and college fees for 2024.

31.4.2 The college fees for 2025 for HA will be R1 700 per month. As far as the applicant knows, the Respondent has made no payment in respect of the college fees for this year.

31.4.3 The school fees for 2025 for BA will be R2 700 for the year. To the best of my knowledge, the Respondent has made no payment in respect of the school fees for this year.

[32] With respect to the respondent's income, the applicant states as follows, the respondent is a senior lecturer at NM and holds a PhD (Chemistry). He initially worked as a lecturer at V from February 1997 until December 2003. He was then transferred to NM in January 2004 and is still employed there. He has approximately 30 publications accredited to his name. Due to his employment at NM, the parties' children would be entitled to study there for a significantly reduced tuition fee.

[33] The applicant states that she is not in possession of any financial records of the Respondent. During the course of the marriage, the respondent, according to the applicant, was extremely secretive regarding his personal finances and the applicant never had access to any of his accounts. The applicant, however, knows that the respondent holds various bank accounts, *inter alia* a current account and a credit card account. In addition to this, he has a retirement annuity and holds unit trust with *inter alia* Old Mutual.

[34] The applicant has the following information regarding respondent's financial position:

34.1 In an application for a fiber line to be installed at the former matrimonial home, dated 13 March 2021. The Respondent records therein that his income is R45 000 per month. The applicant states that, considering the fact that this document is almost four years old, and the respondent has obtained yearly increases since then, the applicant submits that the salary he now earns must be well in excess of this amount.

34.2 A Standard Bank form, listing the Respondent's insurance and investment portfolio as at 29 September 2004.

34.3 A NM Retirement Fund benefit statement as at 31 December 2013.

34.4 An IT3(s) Income Tax Certificate in respect of an investment, dated 1 March 2021.

34.5 The applicant states that she has also received papers from Neethling Tax and Accounting Solutions. This firm was appointed by the Respondent, the applicant has had no dealings with them, other than signing documents which the Respondent said she must sign. It is reflected in the papers that the Respondent pays a salary to the applicant. The applicant states that she does not know what the alleged salary was for, as she was never employed by the respondent.

[35] In addition to the above, the respondent, according to the applicant, receives bonuses or commissions for the articles that he has published and is planning to publish. The applicant, however, has no information as to the amounts paid to him in this regard.

[36] Further in addition to the above, the respondent during the marriage rented out fixed properties of which he is the registered owner. As far as the applicant knows there is no bond on [...] P[...] Street, Parkside (the former matrimonial home). There is only a small bond at [...]2 P[...] Street, Parkside.

[37] The applicant has knowledge of the following cash income derived from these rentals:

37.1 [...]2 P[...] Street, Parkside. This residence consists of a main residence and two flats. The main residence is rented out for R5 500 per month and one of the flats for R2 500 per month. Payment of the rent is done in cash. The respondent and his new wife now reside in the other flat at these premises, which also used to be rented out in the past.

37.2 The former matrimonial home, this residence consists of a main residence and one flat. The main residence was the parties' former matrimonial home. The flat at this residence is rented out for a cash amount of R3 500 per month.

37.3 It has come to applicant's knowledge that, after she vacated the former matrimonial home, the respondent started to run a bed and breakfast establishment from main residence, called B[...] V[...]. The applicant does not have knowledge as to the income earned from this venture.

[38] At the end of 2024 the applicant received information that the South African Hajj and Umrah Council (SAHUC) was giving refunds for expenses for persons who went on *hajj.* The Respondent's and the applicant's expenses for *hajj* were in the region of R120 000 each. The applicant made application for a refund of her expenses but was told that the refund had already been paid to the respondent and the applicant was thus not entitled to a refund. She was not advised as to what amount was in fact refunded to the respondent. The respondent has, however, not made any payment to the applicant in respect of these funds.

[39] Other than what the applicant has stated above, she states that she does not know what else the Respondent's estate consists of and what his income and expenses are.

[40] The applicant, in respect her claim of claim for contribution to legal costs from the respondent, states that she is entitled to claim for contribution for costs, as she is unable to fund her litigation, in support of this claim, the applicant states, that the Respondent is defending the divorce action, and the following main issues remain in dispute:

40.1 BA's primary care.

40.2 The amount payable in respect of the parties children's maintenance.

40.3 Applicant's entitlement to spousal maintenance, and the duration and *quantum* thereof.

40.4 Applicant's claim for a settlement allowance, alternatively a redistribution order.

40.5 The costs of the divorce action.

[41] She is advised that she has good prospects of succeeding with her claims in the divorce action on the following grounds:

41.1 Insofar as far as BA's primary care is concerned, the applicant has been her primary caregiver her whole life, she is currently in applicant primary care, and she is her main emotional attachment figure. She also wants to remain in applicant's primary care, and she is of sufficient age and stage of development that significant weight should be attached to her wishes in this regard.

41.2 Insofar as their children's maintenance are concerned, the amount tendered by the respondent is inadequate. On the contrary according to the applicant the amounts claimed by her are reasonable and the Respondent can afford to pay them.

41.3 Insofar as her claim for spousal maintenance is concerned, the duration of the marriage (being 22 years), the reasons for the breakdown of the marriage (being the fact that the Respondent has taken a new wife), applicant's age (being 51) and her lack of qualifications all favor the granting of a lifelong spousal maintenance claim. In the last-mentioned regard, applicant's highest qualification is, according to her, a matric certificate.

41.4 Insofar as her claim for a resettlement allowance, alternatively, for a redistribution order, is concerned, she has dedicated her life to raising the parties' children and, in so doing, enabled Respondent to advance his career and to grow his estate.

[42] Applicant states that her legal costs to date amount to approximately R45 995.83.

[43] The respondent has according to the applicant access to funds to pay his attorney and she has been advised that she has a right to litigate against the respondent on equal footing.

[44] The applicant states that she does not have the funds to give her attorney of record the necessary cover for the pending litigation. She has no assets to liquidate

in order to fund the litigation. She will not be able to proceed with the pending divorce proceedings without obtaining a contribution towards her legal costs.

[45] She will need to provide her attorneys of record with funds to cover the various expenses that will have to be incurred during litigation, including, *inter alia,* the following:

45.1 Counsel must be briefed to prepare or settle further pleadings, attend pre-trial conferences, consult with the applicant and her witnesses and prepare for trial and attend trial.

45.2 Applicants attorney will have to make various attendances in order to prepare the matter for trial and attend at trial.

45.3 She must appoint an auditor to investigate and compile a report on the value of the Respondent's estate, and she must obtain formal valuations of his assets.

45.4 She must appoint an industrial psychologist to provide a report with the necessary expert testimony pertaining to my inability to secure gainful employment in support of her claim for lifelong spousal maintenance. The estimated costs of R30 000.00 excl VAT, which does not include pre-trial consultations, and court attendance which will entail additional costs.

45.5 Various witnesses must be subpoenaed *duces tecum* for documents in their possession.

45.6 Copies of discovered documents must be made in order to prepare a trial bundle.

[46] As pointed out above applicant is claiming contribution of R190 000-00 towards her legal costs to be made to her instructing attorney in monthly installments of R20 000-00.

[47] The respondent, as stated above has opposed this application, in this regard he has filed an answering affidavit.

[48] The respondent in his answering affidavit states as follows in relation to the allegations set out in the applicants founding affidavit and Financial Disclosure Form. He admits the Standard Bank account referred to in paragraph 15.1.1. above. He disputes that he paid an amount of approximately R1 000, 00 in this account, he states that he paid an amount of R4 500, 00 per month into this account. He also disputes the balance.

[49] He admits account no 1[...] (standard Bank) referred to in 15.1.2 above, and that he paid an amount of inheritance that he received as a result of the death of his father to be used by the applicant for the Hajj expenses, and that the amount was utilized by the applicant for that purpose. The respondent also makes a bare denial of the current balance in the account, which as stated above, amounts to -R13.67. He also admits the Standard Bank account 1[...] (tax free call) which is referred to in paragraph 15.1.3 above. The respondent admits that this account was used by the parties as a saving account for emergencies, and that he used to deposit an amount of R36 000 annually. The respondent states that he does not have knowledge about the account in which the applicant's salary is paid, referred to in paragraph 15.1.4 above.

[50] The respondent states that the amount R22 570, 80 claimed by the applicant as a shortfall per month, being applicant's estimation of what the respondent is able to pay monthly as maintenance expenses for the applicant and the daughters, is unreasonable for the following reasons:

> 50.1 The respondent states that in making an estimation for the costs of accommodation the applicant is using [...]2 P[...] Street as a benchmark. The respondent states in this regard that the rental for that house is not R10 000 as claimed by the applicant, the actual rental income is R6 200, 00, and accordingly the amount of R10 000, 00 claimed by the applicant as costs of accommodation should be reduced to R6 200, 00.
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> 50.2 The respondent also states that the monthly bill for groceries for the respondent, the applicant and the two daughters when they were staying together amounted to R 6000, 00 per month. This according to the respondent included personal hair cosmetics and toiletries.

50.3 In respect of electricity he confirms that the amount of R600 per month, claimed by the respondent, was reasonable.

[51] The respondent states that the amount of R695 which is claimed by the applicant for Wi-Fi which is derived from an offer advertised by Axess for uncapped internet data package, is excessive the respondent contends that in the Telkom plan that he presently has he pays R107 per month.

[52] He admitted that they previously had a domestic assistant. He states that he currently does not utilize a domestic worker, and he submits that for this reason that this is an unreasonable expense, given the standard of living that the parties enjoyed during the course of the marriage.

[53] In respect of the clothing and shoes the respondent states that he tenders to make payments in respect of the children's clothing and shoes and ensure that they have the necessary items.

[54] In respect of fuel he states that the applicant does not have far to drive, she can do with only 10km per day and accordingly tenders R1000,00 per month, he also tenders to occasionally pay pocket money for the children as he used to do during the subsistence of the marriage.

[55] The respondent concludes that in his calculation both children's monthly expenses come to R14 300, 00 per month with each child share being R3 400 per month and he tenders to pay R3 400, 00 per month per child. The respondent thus tendered no payment of maintenance for the applicant. The respondent has accordingly tendered to pay any amount of R11 560, 00 of the shortfall, which excludes any maintenance for the applicant.

[56] The respondent has also offered the minor child access to his old laptop computer.

[57] The respondent further states that from the issue of summons he has been paying the following in respect of the daughters:

For the major daughter:

57.1 Her medical contribution on a monthly basis,

57.2 Her cellular phone contract on a monthly basis,

57.3 An additional R5000 which has been paid to her account from the 3rd of June 2024 to December 2024 from when the applicant was residing with the respondent till, she moved out in August 2024. He then reduced the amount to R35000 which he has been paying since January 2025,

57.4 All her medical and dental contributions on a monthly basis,

57.5 All of her education expenses and her school fees for 2025 have been paid,

57.6 Additional R2500 which he has been paying since January 2025,

[58] The respondent denies that he has been secretive with his finances during the marriage and states that 'this was just an issue that was never discussed between the applicant and (sic) (him)'.

[59] The respondent states his income is stated as follows:

Net salary from N[...] M[...] University	R 34 357, 00
Rental income from [...]2 P[...] Street	R 8 500, 00
Rental from Airbnb per month – approximately	R 8 600, 00
Total income	R51 457, 00

[60] The Respondent states his expenses to amount to R48 526, 54 these are set out in a document entitled "*assets, expenses and liabilities*," annexed to respondents answering affidavit marked "D". The respondent denies having an investment and insurance portfolio with Standard Bank and confirms that he has a retirement fund which is currently worth R 372 938, 83, he also has a tax-free savings account with a current balance of R 50 912.32.

[61] In respect of the applicant's claim for contribution for legal costs the respondent does not dispute the balance of the issues that are in dispute in the divorce action; the respondent disputes that the applicant has prospect of success in the divorce action and the consequential relief claimed by her, in this regard he states that the applicant has mental health issues, and that the prospect of success regarding the primary care of the minor child cannot be assessed until the family advocate report is available, **in** respect of the maintenance of the minor children he states that he has tendered the amount as claimed by the respondent, in relation to applicants employability, he states that the applicant has the capacity to earn more than what she is currently earning, as a data typist, a position that he held before leaving her employment.

[62] The respondent further submits that he has to date paid his attorney R10 000, 00 in legal fees, the respondent states that the number of attendances charged by the applicant's attorney which form part of applicants estimate for her legal fees, relate to the present rule 43 application in terms of which the applicant seeks a costs order, and that these costs must be excluded, according to the respondents calculations the applicants costs for the rule 43 application amount to R20 700, 00 inclusive of vat. The applicant denies that it is necessary for auditor to be appointed to compile a report on the respondent's estate, as he has a simple estate.

[63] The respondent states in this regard that he does not have a business; everything is on his personal name and that the value of his estate can be calculated utilizing the document that will be made available to the applicant during the discovery. The respondent denies that there is a need for the appointment of an industrial psychologist, as the applicant, according to him, can obtain alternative employment. The respondent accordingly denies that he can afford the amount claimed by the applicant and states that if the court granted the order in respect of contribution towards cost of the applicant, this would depreciate his savings resulting in him not being able to pay his attorney and the applicant being in a better position than him.

[64] On the 12th of March 2025 a pretrial conference was held by the parties in an attempt to narrow the issues between them in this application, and in terms of the

minutes that was prepared and signed by the parties arising from such a conference, the following issues were resolved:

64.1 It was recorded that there is no dispute with regard to the interim care and contact of the minor child and that this aspect does not form part of the rule 43 application,

64.2 In respect of the maintenance of the children the respondent has tendered to pay R 3 400 per month per child *pendente lite* to the applicant the first such payment to be made on the last day of the month of being so ordered and thereafter on the last day of each consecutive month,

64.3 To pay the schooling and college expenses of the parties children , including but not limited to schooling and college fees, and remedial care and lessons requirements, extra mural and extracurricular schooling and sporting activities, school uniforms and equipment and attire , sporting activities , school uniforms and equipment and attire, sporting and / extra mural and extracurricular activities including costs of all flight tickets, gym and private athletic expenses as well all costs relating to tours and competitions;

64.4 To retain the parties' children as dependent members on his current medical aid scheme at his expense.

64.5 To pay the children's reasonable and necessary medical expenses that are not covered by medical aid, including but not limited to medical and dental, orthodontic, pharmaceutical, pathological, surgical, specialist, radiological, therapeutic, physiotherapeutic, chiropractic, ophthalmic and anesthetic expenses.

64.6 To pay all cell phone contracts of the parties' adult child directly to the service provider and by providing the minor child with a cell phone contract and paying for that directly to the service provider.

64.7 To provide the parties minor child with a working laptop within 48 hours of the order being granted, to be used by her *pendente lite*

64.8 To deliver to the applicant and allow her and the parties' children the continued use of a working television set;

64.9 In respect of the applicant:

64.9.1 The applicant persists in her prayers in respect of maintenance *pendente lite* in respect of herself, cover in respect of her medical costs, delivery of the Corsa bakkie and continued use thereof, *pendente lite*;

64.9.2 The respondent is not prepared to pay any contribution in respect of the maintenance of the applicant *pendente lite* cover her medical costs *pendente lite* or deliver the Corsa bakkie to the applicant for her continued use *pendente lite*;

64.9.3 The applicant persists that she is entitled to a contribution for costs from the respondent,

64.10 The respondent is not prepared to pay any contribution to the applicant's costs,

64.11 The parties agreed to refer the dispute for mediation by Ms. L Van Rooyen. Applicant undertook to make the necessary arrangements in this regard.

[65] The mediation was partially successful, as a result, when the matter was argued before this court, only the following issues remained outstanding between the parties to be decided by this court:

65.1 The applicant's maintenance *pendente lite* in her personal capacity and the applicant's medical costs;

65.2 The contribution towards the applicant's legal costs; the amount in respect of the *pendente lite* contribution in respect of the children is alleged to be insufficient and thus the amount of *pendente lite* maintenance of the children is to be determined

65.3 Delivery to the applicant and allowing her the continued use *pendente lite* of the Corsa bakkie which she formerly used and by paying the vehicle licensing fees

[66] Uniform Rule 43 properly used is a speedy and temporary relief designed to assist disadvantaged, often destitute, litigants, and quite properly in terms of the paramountcy principle enshrined in s 28(1)7 of The Constitution of the Republic of South Africa 1996, to protect children.

[67] In *Taute v Taute*[1] the court stated that there is no general principle upon which an application under Uniform Rule 43 can or must be based. Each case must depend on its own particular facts. Taute also reiterated that a claimant for maintenance *pendente lite* was not entitled, as of right, and without more, to maintenance sufficient to keep him or her in the same lifestyle as that enjoyed during the marriage. Hart AJ stated thus:

> 'The applicant spouse (who is normally the wife) is entitled to reasonable maintenance *pendente lite* dependent upon the marital standard of living of the parties, her actual and reasonable requirements and the capacity of her husband to meet such requirements which are normally met from income although in some circumstances inroads on capital may be justified[2].'

[68] In this matter the applicant has, in my view, detailed what her maintenance requirement are and has stated that the respondent who has been the family's sole provider for over 19 years. The respondent is employed as Senior Lecturer at NM with a total monthly his own version of the amount of R51 452, 00 which included rental for the properties owned by the respondent registered in the respondent's name. This income has historically been sufficient to support the applicant and their family.

[69] In my view, the respondent has not presented sufficient evidence to effectively counter the Rule 43 Application. The respondent has not made full disclosure of his income, and he merely stated that the claim for a shortfall by the applicant is unreasonable[3].

[70] The respondent in this regard has for instance:

70.1 misstated his additional income from his properties, in that in paragraph 16.1 of his answering affidavit, he stated that the rental income for the main house for No. [...]2 P[...] Street is R6000 in response to the

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[1] 1974 (2) SA 675 (E)
[2] Ibid at 676 H
[3] See in this regard S […] and M […] m […] case no: D353/24 K2NLD, Durban at paragraph 38. Judge this citationis not right and I cannot pick up the case

allegation by the applicant that the total rental income received by the respondent in respect of No [...]2 P[...] Street was R10 000, 00. However, in paragraph 32.1 of the same answering affidavit, he says the income he received for the same property is 8500,00.

70.2 his list of expenses its contained in the document entitled “assets, expenses and liabilities” deals with maintenance to his properties, as respondents’ expenses.

70.3 the respondent has not stated how he intended to maintain the applicant (if she did not institute the divorce action), and the second wife, if his present income is not sufficient to maintain the applicant and the party’s two children.

70.4 The respondent does not dispute that during the course of the marriage he was secretive with his finances.

70.5 He is refusing to tender any payments for the maintenance of the applicant who he used to maintain during the marriage, from the same income; he provides no reason for this.

70.6 The respondent did not advise the applicant of the refund from SAHUL amounting to R120 000-00, he appropriated the refund for himself.

70.7 The respondent states that he has a simple estate, on the contrary he appointed a firm – Neethling Tax and accounting Inc Solutions to deal with his tax affairs, this conduct is inconsistent an administration of the tax affairs of a simple estate.

[71] In the circumstances, I am of the view that the respondent has not made out a case that seriously suggest that the expenses claimed by the applicant are unreasonable and that he is no position to pay for the relief claimed by the applicant, for the reasons stated above. I am of the view, for the reasons stated above that the respondent can pay the amounts claimed by the applicant for herself and the children including the claim for contribution costs. It is settled law that a spouse is entitled to a reasonable maintenance *pendente lite*, depending on the living standards of the parties, her actual and reasonable requirements are normally met out of the income of the respondent[4] in some cases in roads on capital may be

[4] See in this regard CC v N C (16742/2021) [2021] ZAWCHC 227 (9 November 2024) at para 34).

justified. As such, the applicant's Rule 43 application should be granted. The use of the Corsa bakkie is for the benefit of the minor children. It is not in dispute that the respondent has another vehicle, and that this vehicle was used by the applicant for the benefit for the parties children, when the parties were living together.

[72] There is a significant disparity in the income of the applicant and the respondent, and that the respondent has through the years paid for most expenses of the parties and the children. He has always paid for his family's living expenses and they are entitled to live with a similar standard of living to which they were used to.

[73] In relation to the applicants claim for contribution for costs I am similarly of the view that the applicant has made out a case that she is unable to fund the litigation[5] she has prospects of success, and she has demonstrated her inability to pay the costs, she is entitled to litigate on the same footing with the respondent, for reasons stated above.[6] The importance of equality of arms in divorce litigation should not be underestimated, where there is a disparity of income between the parties where there is a risk that the poorer party might be forced to settle for less. This is so even in marriages out of community of property and profit and loss as the situation in this case.[7] The defence of the respondent that he cannot pay the amount claimed by the applicant and that if he is so ordered, as this will deplete his savings is without merit it. In relation to the allegation that some of the items in the applicant's estimation for his contribution to costs are related to the present Rule 43 application, this issue can suitably be dealt with at taxation.

[74] I therefore make the following order:

1.1 That the respondent shall contribute towards the maintenance of the applicant and the applicant and the respondent's "*the parties*" children:

1.1.1 an amount of R23 000 per month to the applicant, and for the maintenance in respect of the applicant and the parties' children,

[5] De Villiers v De Villiers 1965 (2) SA 884 [C]; van Niekerk v van Niekerk 1947(2) SA 8 (T); Smallberger v Smallberger (supra).
[6] See in this regard Smallberger v Smallberger 1948 (2) SA 309 (0).
[7] this case has not been cited before/supra. Full ciatation needed here

without set off deduction, with the first payment to be made to the applicant on the last day of the month in which the order of this court is granted and thereafter on the last day of each consecutive month;

1.1.2 the schooling and college expenses of the parties children, including but not limited to collage fees, any medical care and lessons requirements, all extra-mural and extra-curricular school and sporting activities, school uniforms and equipment and attire, sporting and/or extra-mural and extracurricular activities including the costs of all flight tickets, gym and private athletic coaching expenses as well as costs relating to tours and competitions;

1.1.3 retain the applicant and the parties' children as dependent members on his current medical aid scheme, at his expense.

1.1.4 pay the applicant and the children's reasonable and necessary medical expenses and necessary medical expenses that are not covered by the medical aid, including but not limited to medical, dental, orthopedic, pharmaceutical, pathological, surgical, specialist, radiological, therapeutic, physiotherapeutic, chiropractic and anesthetic expenses.

1.1.5 pay the cell phone contract of the parties' adult child, directly to the service provider;

1.1.6 provide the parties minor child with a working laptop on the last day of the month in which the order of this court is granted, to be used by her *pendente lite*;

1.1.7 deliver and allow the applicant continued use *pendente lite* of the Corsa bakkie which she formerly used or provide the applicant with a similar vehicle and pay the licensing fees, short term insurance premiums, annual maintenance and service, reasonable repairs (including replacement, as required of shocks, brakes and brake pads) and the replacement of tyres (as well costs incurred in respect of wheel balancing and alignment) as an when required;

1.1.8 deliver to the applicant and allow her and the parties' children the continued use, *pendent lite*, of one working television set;

2. That the parties' minor child, *pendente lite*, remain in the applicants' primary care, subject to the respondent's right of reasonable access to her:

3. That the respondent shall contribute an amount of R190 000 towards the applicant's legal costs, with such payment to be made:

   3.1 in monthly installment of R20 000 each, with the first such payment to be made on the first day of the month, on which the order of this court is granted in this matter and thereafter on the last day of each subsequent month; and into the trust account of the applicant's attorney of record;

[75] The costs of this application will be cost in the cause.

M W NOBATANA

ACTING JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicant	:	Advocate L Ellis
Instructed by	:	Vic Skelton Attorneys 18 Gipson Road Mount Croix
Counsel for the Respondent	:	Advocate Ramsey
Instructed by	:	Swarts Attorneys 80 Stanford Road, Korsten, Gqeberha

Date heard	:	Tuesday 17 June 2025
Date delivered	:	Thursday 04 September 2025