IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

CASE NO: 5469/2023

(1) REPORTABLE:NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES/NO

DATE: 11 /09/2025

SIGNATURE

In the matter between:

B[...] L[...] M[...] **APPLICANT**

and

V[...] M[...] **RESPONDENT**

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 11 September 2025 at 15:00.

JUDGMENT

Mangena AJ

[1] The parties are involved in divorce proceedings instituted by the respondent on 22 November 2023. Pending the finalisation of the divorce proceedings, the court, per Roelofse AJ, granted a Rule 43 order on 23 February 2024 regulating contact and visitation rights regarding the minor child. The applicant was ordered to pay a contribution towards the legal costs of the respondent in the amount of R50 000.00 and maintenance at a fixed amount of R10 000.00 per month.

[2] The applicant, who is the defendant in the divorce proceedings, seeks an order to vary the Rule 43 order on the basis that there has been a material change in her financial position brought by the natural disasters that befell her farming enterprise situated in KwaZulu-Natal, where she trades in hydrangeas, delphiniums, hellebores, as well as peonies. She says that a snowstorm hit the province around September 2024, resulting in reduced income for her sole business. She put her net income at R17 416.66 per month after deducting all the operational expenses associated with the running of the farm.

[3] In addition to the above, the minor child, who is autistic, has secured admission at a boarding school, and the school fees are in the region of R199 000.00. She states that her parents had undertaken to cover this expense. She, however, remains liable for ancillary expenses, which according to her calculation, amount to R197 233.42. The minor child is also receiving therapeutic treatment for his condition. She is responsible for the payment of the fees charged by the therapist not covered by the medical aid. It is submitted on her behalf that these circumstances constitute a material change as envisaged in Rule 43(6) of the Uniform Rules of Court. She therefore seeks an order in the following terms, as contained in her notice of motion: There shall be no maintenance payable by the applicant to the respondent *pendente lite*.

[4] Over and above the changed circumstances indicated above, the applicant alleges that the respondent is spending the money meant for his maintenance to sustain a life of luxury on plane tickets, alcohol and payment of legal fees. For this

contention, she relies on the entries shown on the bank statement as well as documentation received from the attorneys. The respondent has further secured employment but failed to disclose the details of his salary. He is also not contributing towards the welfare of the minor child, even though he is able to do so. These, according to the applicant, clearly show that the respondent is not a candidate for maintenance.

[5] The respondent opposes the relief sought and contends that the applicant has not made a full and frank disclosure of her financial position to enable the court to assess her affordability to pay maintenance towards him. He denies that he is spending money on alcohol and the legal fees of his attorneys. The legal fees, he says, are paid for by his sister. He prays that the application be dismissed with costs on a punitive scale.

[6] Rule 43 applications are meant to provide interim relief to spouses and children affected by the divorce proceedings pending their finalisation. They are interim in nature because it is envisaged that parties would endeavour to finalise their proceedings expeditiously. It is for that reason that orders issued under Rule 43 are not appealable. As a measure to curb the abuse of the interim payment pending finalisation, Rule 43(6) affords a party affected by an interim order the opportunity to apply for the variation of the order in the event of a material change occurring in the circumstances of either party or a child.

[7] It is clear that the rule is not intended to afford an unhappy spouse the opportunity to rescind the order granted by the court after considering the relevant information at its disposal. The use of the word “material” suggests in the strongest way that it is not every change that will qualify a litigant to find protection under Rule 43(6). The change must be of such a nature that, viewed objectively, it will not be in the interest of justice to leave the initial Rule 43 order undisturbed. The change in circumstances must materially relate to the circumstances of the affected spouse or the child.

[8] The applicant deposed to the affidavit regarding the changed circumstances in October 2024. As part of her financial disclosures, she submitted statements of

cash flows for the period ending 28 February 2024 and management accounts for the period ending 31 December 2024. There was also an undated letter from Absa confirming the rejection of her credit application. She also relies on a statement by the accountant confirming that the business has incurred a loss of R1.9 million as a result of the severe weather conditions which affected her enterprise. The letter further states that the business will require outside funding to remain operational, as there are no reserves.

[9] The applicant bears the onus to prove the occurrence of a material change in her circumstances. It does not appear to be difficult to accept that her business was affected by the snowstorm that hit KwaZulu-Natal in 2024. That much is clear from the payout she received from her insurance policy. What is, however, not clear from her papers is the extent to which the snowstorm affected her cash flow and financial ability to continue with the enterprise. The reliance on the cash flow and management accounts statements is, in my view, inadequate to support the claim that she is unable to continue with the payment of R10 000.00 as ordered by the court. I say so because the applicant has, on her own version, capitalised the business to the tune of R4 110 309.00. She alleges that this money was a loan, but has not disclosed how this money was secured, as well as the terms of repayment, if any.

[10] The applicant has been able to honour her payment obligations to both the school, her business and the respondent for the past 11 months since the storm, and she is up to date with her payments. There is no evidence that the business is in distress and that she has taken steps to reduce its operational expenses. There is no information as to how she is managing to pay all these expenses. The only item she wants off her list of payments is the maintenance of the respondent.

[11] The court has already made a determination that the respondent deserves maintenance pending the divorce. There has not been any change in the respondent's need for maintenance. Whilst I accept that the applicant's business was affected by the storm, I do not accept the contention that the effect is of such a serious nature that it makes it difficult for her to honour the court-mandated obligation towards the respondent. In the circumstances, I am not persuaded that the

applicant has made out a case for the variation of the Rule 43 order made by Roelofse AJ. The application stands to be dismissed.

[12] The parties have each prayed for costs. The applicant's counsel submitted that in the event I am not with her, it will not be in the interest of justice that the applicant, who is the primary caregiver of the minor child, be ordered to pay the costs. With this, I agree. The application was neither frivolous nor malicious. I therefore decline an invitation by Advocate Grobler to award costs in the respondent's favour.

[13] It is ordered as follows:

1. The application is dismissed.
2. There is no order as to costs.

MANGENA AJ

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA DIVISION, MBOMBELA

Appearances

For the plaintiff:	FINLATER ATTORNEYS INC
Counsel for plaintiff:	ADV BERNETTE BERGENTHUIN
For the respondent:	HVH ATTORNEYS INC
Counsel for respondent:	ADV GROBLER
Date heard:	01 September 2025
Judgment delivered**:**	**11 September 2025**