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

Case Number: 21421/2020

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO

(3) REVISED: YES/NO

DATE: 22-09-2025

SIGNATURE:

In the matter between:

E[...] C[...] J[...] S[...]

Applicant

and

H[...] W[...] S[...]

Respondent

JUDGMENT

NKOSI AJ

1. INTRODUCTION

[1] This is an application in terms of Rule 43 (1) (b) of the Uniform Rules of Court which provides that:

"1 This rule shall apply whenever a spouse seeks relief from Court in respect of one or more of the following matters: -

(a)

(b) A contribution towards the costs of a matrimonial action, pending or about to be instituted;

(c)

(d)

[2] The parties are married to each other and there is a pending divorce action instituted by the Applicant. The action has been pending finalisation since the year 2020 when combined summons was issued.

[3] The Applicant prays for an order directing the Respondent to contribute towards her costs of the divorce action. She has argued that the costs amount to R 2 000 000.00 (Two million rand). The application is opposed by the Respondent.

BRIEF HISTORICAL BACKGROUND

[4] The Applicant is a Human Resource Management Consultant in the motor industry. She renders services on a contractual basis through M[...], a Close Corporation of which she is the sole member. She resides in Somerset, Western Cape in her bonded property.

[5] The Respondent is a specialist consultant in dams and hydro-power, is an engineer and a business man who serves as a director and shareholder in various local and international companies. He is also a Trustee and beneficiary of a Trust. He is currently residing in the United Kingdom.

[6] The parties got married to each other on 17 January 2010 out of community of property with the accrual system applicable to their marriage. I must add that the interpretation of the antenuptial agreement is in dispute.

[7] Sometime in February 2020, the Respondent left the common home and in May 2020, the Applicant issued the divorce summons.

[8] The Respondent resides in the United Kingdom in a property worth about R20 000 000.00. It would seem he owns 50% of its value and the other half is owned by his current romantic partner. The Applicant lives in the Western Cape in her bonded property worth R3 000 000.00.

[9] The Respondent owns several properties locally and abroad, the total value of which amounts to millions of rands. One of his local properties worth more than R2 900 000.00 has been left vacant for years.

[10] Ever since his desertion, the Applicant has been solely responsible for her monthly expenses including her medical needs because the Respondent removed her as a beneficiary on his medical aid. Further, she owes her current and past Legal Practitioners legal costs relating to the divorce action effectively without a cost contribution from the Respondent. The Respondent has argued that she is able to finance her divorce action adequately from her own financial resources.

[11] According to the Applicant, the parties lived a lavish lifestyle characterised by frequent overseas trips and a taste for opulence. Most of her personal expenses were catered and paid for by the Respondent. She was then accustomed to the opulent lifestyle.

FACTORS TO BE CONSIDERED

[12] The list of factors to be considered in Rule 43(1)(b) application is not constrained but unlimited depending on peculiar circumstances of each case.

[13] The cause for the delay in finalising the matrimonial action, the complexity of the issues to be determined by Court and the anticipated legal costs required to finalise the matter are some of the factors to be taken into account.

[14] An accusation was levelled against the Respondent to the effect that he is deliberately stalling the finalisation of the divorce action. It is conceivable that a party's conduct which is geared towards frustrating the finalisation of a matrimonial

matter with the intention to cause the opponent to succumb, may be a factor to be considered by the Court. A party who flexes financial muscle as a show of strength with no regard to the expeditious finalisation of a matrimonial matter will lead the Court to come to the aid of the vulnerable party to promote and protect that party's constitutional right.

[15] It was argued by Applicant's counsel and correctly so that factors a Court normally considers when adjudicating upon a claim of this nature include:

15.1 the financial resources of both parties;

15.2 the level of complexity in the divorce case, and

15.3 the anticipated expenses for proper legal representation.

[16] An investigation into these factors is intended to enable the spouse to litigate on equal footing with the other party. This will correct a marked imbalance of financial resources necessary for a spouse to litigate. In so doing a spouse's right to equality and equal protection of the law which are at the heart of a Rule 43 application will be achieved and the Applicant's right to dignity restored.

[17] In *BJM v WRM*¹ Bezuidenhout AJ stated:

"In Cary² Doney AJ referred to constitutional imperatives ... observed at the outset that he was required to exercise his discretion under Rule 43 in the light of the fundamental right to equality and equal protection before the law. He held that... -

"...Applicant is entitled to a contribution towards her costs which will ensure the quality of arms in the divorce action against her husband. The Applicant will not be able to present her case fairly unless she is empowered to investigate the Respondent's financial affairs through the financial accountant appointed by her..."

¹ *BJM v WRM* 2023 JDR1316 (GJ) at para 44)

² *Cary v Cary* 1999 (3) SA615(C)

[18] The decision in Carey's case supports the principle established in Van Rippen v Van Rippen³ namely that the financially disadvantaged spouse should be enabled to adequately present her case uninhibited by lack of funds in particular where the other spouse has the financial means.

FINANCIAL RESOURCES OF THE PARTIES

[19] The Respondent completed a Financial Disclosure Form ("FDF") on 24 July 2020 and took an oath to confirm that its contents were true, complete, and correct⁴. He disclosed that his net assets amounted to R 34 323 517.00. This amount comprises of: -

- 19.1 Fixed property - R 13 083 500.00;
 - 19.2 Personal assets - R 19 113 037.00;
 - 19.3 Business interests - R 3 420 000.00;
 - 19.4 Pension interest- R 4 141 940.00; and
- His total liabilities amount to R 5 434 960.00.

[20] However, it is evidently clear from the Applicant's submissions that the sum of the disclosed assets is not conclusive and therefore unreliable.

[21] He is a director of various companies, namely A[...] Construction Eng (Pty) Ltd, A[...] Investment cc, and A[...] Dam (Pty) Ltd. There is a marked difference between what he declared in his FDF of 2020 compared to his FDF of 2025. He failed to mention the value of his shareholding in A[...] Construction Eng (Pty) Ltd and A[...] Dam (Pty) Ltd. He has also failed to declare the value of his property in France in his FDF of 2025.

[22] A further complicating factor is the lack of full disclosure about the unbundling of A[...] Construction Eng (Pty) Ltd, which gave birth to many private companies. He retained interest in all these private companies, yet the monetary value of his shareholding is not disclosed. This leads me to believe that there are huge sums of

³ Van Rippen v Van Rippen 1949(4) SA 634 (C)

⁴ Caseline 03-211

money not being disclosed, compared to the assets mentioned in the 2020 FDF. His expenditures are also not fully disclosed in his FDF of 2020. I cannot therefore conclude that there is a clear picture of his assets and liabilities either in respect of the 2020 or 2025 FDF.

[23] In *Du Preez v Du Preez*⁵ Murphy J said:

"...A misstatement of one aspect of relevant information invariably will colour other aspects with the possible 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 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 the Court will be justified in refusing relief."

[24] The Applicant's net assets, are declared in her FDF and amount to R 4 464 665.00. The major assets are her fixed property, worth R4 400 000.00. She has personal assets and business interests amounting to R3 041 670.00 and R51 614.00, respectively. Her liabilities, mainly the bond, amount to R3 028 619.00.

[25] She is the sole member of M[...] CC, which is the main source of her monthly income. M[...] also pays a substantial amount for her monthly expenses. In her FDF of 2020, her monthly income was R65 000.00, and the annual revenue was R2 700 000.00. The 2025 FDF discloses a monthly income of R48 056.37 and R950 000.00 in respect of revenue.

[26] She explained the decline in her monthly income and revenue by stating that it is inherent in the nature of her business which is mainly consultancy services offered to the motor industry. Her services are engaged as and when they are required.

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

[27] She was criticised for inaccurate disclosure of her income and expenses and correctly so. This became apparent when counsel for the Respondent demonstrated that it was not possible for the Applicant to have been granted a loan by the bank to purchase a house for R3 000 000.00 whilst earning a monthly salary of R 19 747.41 and having monthly expenditure of R64 345.00. Her explanation amounted to a concession that indeed her monthly income was understated. She submitted that the said monthly expenditures were paid by M[...] on her behalf. The Court invited her to produce a copy of her application for the said loan. The application was not disclosed. However, it was only available on the third day of the Court hearing. I accept her explanation why the application was not available in the first place. She produced proof of her efforts to retrieve a copy of the application months before the hearing of this application.

[28] The loan application revealed that her monthly income was R73 000.00 as on 11 January 2021, when she applied for a loan of R3 000 000.00. This suggest that her annual income was R876 000.00, compared to R1 780 619.00 disclosed in her 2020 FDF and R576 676.20 estimated annual income as indicated in the 2025 FDF.

[29] In CA v HA⁶ the Court went further and said:

"In a Rule 43 proceedings, it is prudent that the Court should be satisfied that an applicant acts in good faith. Thus, an applicant simply cannot afford to omit facts in the founding affidavit that are vital to the application. Surely, if the applicant was willing not to reveal certain facts in her founding affidavit, she must certainly be willing not to be frank about weighty facts that would reveal the true state of her finances".

[30] What the Court said in CA v HA is distinguishable from the circumstances of the present case. In this matter, there is no indication that the Applicant is unwilling to disclose details of her financial affairs. She has been correctly criticised for inaccuracies in her disclosure but not failure to disclose at all. The differences do not amount to large sums which would have influenced the amount of cost contribution

⁶ CA v HA (5578/2022) [2024] ZAWCHC 25 (6 February 2024) at para 27.

she is asking for and compelled me to conclude that she has the means to fund her legal costs.

[31] In my considered view, the inaccuracies do not lead me to believe that she is acting in bad faith. Material facts relating to her source of income, assets, and expenses were disclosed, but the source for the payment of her expenses were inaccurately stated. Furthermore, the amount of her annual income was incorrect. As I have already stated, the difference between what is disclosed and uncovered does not significantly put her in a better financial position. Instead, her true financial affairs justify this application.

LEVEL OF COMPLEXITY

[32] The Respondent is linked to at least ten companies and a Trust. A[...] (Pty) Ltd is not mentioned in the divorce pleadings. The value of his shareholding is not stated in monetary form but only in percentages. His real income remains a mystery, and the Applicant is justified to call for an investigation. These companies are spread across many overseas countries. A forensic investigation into the true state of the financial affairs of the Respondent is necessary and it can only be conducted by a qualified professional team.

[33] Having regard to the Applicant's constitutional rights to equality before the law, equal protection of the law, and the right to dignity which in the circumstances of this case may not be achieved in the absence of equal arms, I am of the view that an investigation into the financial affairs of the Respondent should be undertaken to unravel the intricate business structure created by the Respondent.

ANTICIPATED COSTS

[34] The Applicant seeks a contribution towards the costs of her legal team and the costs for investigating the financial affairs of the Respondent.

[35] She received a quotation from ACT Solutions Pretoria Inc for the envisaged investigation. The total estimate costs amount to R1 007 500.00. There is nothing of

note to suggest that the quotation is exaggerated. The Applicant will suffer prejudice if the envisaged investigation is not undertaken. A possible settlement of the divorce action is unlikely at this stage and if achieved, it would not be grounded on fairness for as long as the true state of the financial affairs of the Respondent are not known.

[36] In respect of attorney's costs, I am referred to a document entitled:

"Estimate of fees and disbursements due to Messis Loots Basson attorneys, attorneys for the plaintiff, draw as between attorney and client⁷."

I have not been referred to a proforma invoice for fees and disbursements for the divorce action which should have been presented to the Applicant by her Legal Practitioner before the prosecution of the divorce action. A fee agreement between the Applicant and her Legal Practitioner has not been referred to in her heads of argument and no copy thereof before Court.

[37] The attorney's estimates consist of several items which amount to R1 421 327.30. The fees amount to R210 343.00 and disbursements R1 210 984.30 largely because of the investigation costs I already referred to and Counsel's costs. In the absence of a fee agreement between the Applicant and the attorney, I am compelled to scrutinize the attorney's estimates.

[38] I noticed that the attorney charges R2 900.00 per hour and counsel charges R3 500.00 per hour. It seems to me that the attorney is senior and should have a right of appearance in the High Court. If not, then he qualifies to receive such a right of appearance. That being said I am aware of a litigant's right to legal representation by a legal representative of her choice, but I have not heard from the Applicant why her attorney could not appear in Court instead of Counsel. The Respondent has not made submissions about the Applicant's lack of efforts to mitigate the legal costs.

[39] Counsel for the Respondent challenged the reasonableness of the costs of the investigation whose submission caught the attention of the Court. I am equally

⁷ Caseline 01-41q

concerned by the fact that the Applicant has not demonstrated any cost saving measures on her part.

[40] The Applicant has not utilised the remedies provided for in Uniform Rule 35(3) and Rule 21. If applied effectively the Applicant would most probably obtain the records relating to the financial affairs of the Respondent and consequently the costs envisaged for the investigation would be considerably reduced. These rules set time frames within which to comply and failure to comply has serious consequences which may lead to the strike out of the party's defence with costs.

[41] It was further submitted by counsel for the Respondent that an order for costs of this application on an attorney and client scale will amount to a duplication if the Applicant is awarded the entire amount sought. I support her submission. It is clear from the proforma invoice of the Legal Practitioner that a significant number of sections on caselines relate to both the divorce action and the Rule 43 application. A duplication of the legal costs should therefore be avoided.

CONCLUSION

[42] The FDF of the Respondent confirmed that he is a man of financial means and can meet not only his legal costs but those of the Applicant as well. The Applicant's counsel correctly submitted that the Applicant seeks contribution towards legal fees of R 2 000 000,00 and not merely the payment of the full R 2 000 000,00. My view is that the Applicant is able to cover a negligible amount towards her legal costs compared to the financial strength of the Respondent.

[43] Considering the amount which may be allowed when a bill of costs of this application is taxed or settled, the fact that the Respondent is able to contribute some amount towards her cost, the existence of alternative means to save a portion of the costs of investigation and a possibility of the divorce action being settled and unopposed, I am of the view that a reasonable cost contribution should be R2 000 000.00 less 25%. Any perceived shortfall or overcharge in the award will be mitigated by an order that, payment be made in four equal instalments.

[44] This matter was heard on 15 September 2025 and the parties had agreed in their joint minute that the hearing would last only 1 hour. However, the matter was heard and rolled over to the next day. On 16 September 2025 the matter was further rolled over to 17 September 2025 partly heard and eventually finalised on that day. The agreed duration for the hearing was exceeded by approximately 5 hours. I will therefore not benefit either party by ordering costs of the application which exceed 1 hour in order to demonstrate the Courts displeasure.

[45] The Applicant has provided the Court with a draft order which does not stipulate any amount but suggests that an amount awarded may be paid in instalments. Regarding costs, Counsel for the Applicant argues that the Respondent should be ordered to pay the costs of this application on an attorney and client scale. The Court is not persuaded that in the circumstances of this case a punitive cost order is warranted.

ORDER

[46] For the reasons aforementioned, I make the following order:

1. The Respondent is to make a contribution towards the Applicant's legal costs in the amount of R1 500 000.00 paid in four equal instalments of R375 000.00 with the first instalment payable on or before the 11th of October 2025 and subsequent payments to be made on or before the 7th of each subsequent month.
2. The contribution set out in paragraph 1 above is to be paid into the Trust Account of the Applicant's attorney of record, Loots Basson Attorneys Inc.
3. The Respondent shall pay the costs of the application including Counsel's costs on a party and party scale C which costs shall include the cost of the hearing on the 15 September 2025 only.

NKOSI AJ

**JUDGE OF THE HIGH COURT
PRETORIA**

Date of Hearing 15, 16, 17 September 2025

Date of Judgement: 22 September 2025

Appearances:

For the Applicant:	Adv Riani Ferrerra
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