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REPUBLIC OF SOUTH AFRICA



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

CASE NR: 2025-027511

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

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

(3) REVISED: ~~YES~~/NO

DATE: 26/09/2025

SIGNATURE:

In the matter between:

B[...] **S[...]**

APPLICANT

and

K[...] **W[...]** **S[...]**

RESPONDENT

Delivered: This judgment was prepared and authored by the Acting 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. The date of the judgment is deemed to be 26 September 2025.

JUDGMENT

MARUMOAGAE AJ

A INTRODUCTION

1. The parties are married out of community of property with the accrual system. There are no children born of their marriage. The parties are currently embroiled in the divorce proceedings, from which this application emanates. In this application, the Applicant is seeking an order that the Respondent pay interim spousal maintenance of R32,120.00 per month to her and contribute to her legal costs in the amount of R200,000.00. The court is called to determine whether the Applicant made out a case to succeed with this application. If she has, then determine whether the Respondent has the financial means to pay the amounts demanded by the Applicant.

B PARTIES ALLEGATIONS

i) The Applicant's case

2. The parties started dating in 2013. At the time, the Respondent was managing two guest houses owned by his parents in Mpumalanga. The Applicant left her employment to work on these guest houses. The parties purchased a guest house of their own in Cape Town with the assistance of the bank. Subsequently, they rented another guest house, which housed some of their employees and generated approximately R600,000 per month. The Respondent managed and controlled the income that was generated by all these properties.
3. The Applicant registered a company called M[...] F[...] Properties (Pty) Ltd (hereafter 'MFP'), which acquired two properties in Cape Town with the

assistance of the bank. The parties stood as sureties for the loans obtained by MFP. The Respondent promised the Applicant that these loans would be paid off through a big project that he anticipated would come along, which did not happen.

4. Both parties came into their marriage with major children. They agreed to appoint their respective daughters as directors of MFP to protect their assets from creditors. Despite their daughters being appointed as directors of this company, the Respondent retained complete control over MFP's business operations and profits. The Respondent failed to settle the debts incurred by the Applicant, and this caused friction in the parties' marriage.
5. The Respondent deposited the income generated by MFP into his daughter's personal bank account. He paid the Applicant an allowance from his daughter's and son's bank accounts. According to the Applicant, the Respondent is a businessman who does not use his own bank accounts for trading and business transactions. Instead, the Respondent uses bank accounts belonging to other people, such as those of his parents, romantic partner, and children, to transact and trade.
6. The parties' fight about the debts escalated, and the Applicant learned that the Respondent was unfaithful. In 2023, the parties separated, and the Applicant left their matrimonial home. The Respondent continued providing the Applicant with an allowance of amounts between R10,000.00 and R30,000.00, which were paid from the Respondent's son's or daughter's bank accounts.
7. The parties signed a settlement agreement where the Respondent agreed to pay the Applicant spousal maintenance of R15,000.00 until she remarries. He also agreed to pay her a lump sum of R1,500,000.00. The Respondent only made a partial payment of R75,000.00. It was argued on behalf of the Applicant that, before November 2024, the Respondent deposited various amounts exceeding R300,000.00 into the Applicant's bank accounts.
8. It was argued further that this is consistent with what the Respondent indicated in paragraph 38.2 of his answering affidavit, that since August 2023, he deposited a

total of R336,050.00 into the Applicant's bank accounts. It was also argued that the Respondent paid various amounts into the Applicant's bank account of R10,000.00 and R15,000.00 before November 2024. These amounts were also not paid to the Applicant through any of the Respondent's bank accounts. This illustrates that the Respondent's money is not placed in his bank accounts but in the bank accounts of third parties. The Respondent does not receive his income in his bank accounts to defeat the Applicant's maintenance and accrual claims.

9. The Respondent ceased making the monthly allowance to the Applicant in November 2024. This was the Applicant's punishment for rejecting the Respondent's new settlement proposal, which deviated from the original settlement agreement signed by the parties. The Respondent also informed the Applicant that he is withdrawing from the settlement agreement because he could no longer afford to pay the agreed lump sum amount to the Applicant. The Respondent's financial circumstances have not changed from the date he committed himself to paying the above amounts to the Applicant.
10. The Applicant alleged that at the time she instituted these proceedings, she was unemployed. She further contended that since the Respondent cut off her allowance, she relies on loans from friends and her father. However, her father informed her that he will not be able to support her further because he is also experiencing financial difficulties. The bank also repossessed the immovable property and the cars she owned. The Applicant's financial difficulties also made it challenging to assist her mother, who is suffering from dementia.
11. The Applicant later secured temporary employment where she earned R 11,000.00. She was also subsequently permanently employed with a gross salary of R10,000.00. This salary is not enough to cover all her expenses. However, her salary has reduced her maintenance needs. During oral argument, the court was urged to exercise its discretion to order the Respondent to pay an interim amount of R15,000.00 in spousal maintenance, which the Respondent had initially agreed to pay in terms of the settlement agreement, rather than the amount claimed in the notice of motion.

12. The Respondent is a man of substantial means, who continues to drive an expensive car and resides in a luxurious residence in Cape Town. He manages the guesthouses he controls and receives substantial amounts from them. He deposits such amounts into the bank accounts of third parties, not his personal bank account.
13. The Applicant initially resided in her repossessed immovable property. At the time she instituted these proceedings, the available bank accounts did not have any rental entries because she was not renting any place. The Applicant started renting two months before the hearing of this matter. The Applicant provided seven months' bank statements that detail her financial transactions, while the Respondent failed to attach any proof of his lodging.
14. The Respondent removed the Applicant's daughter as the MFP's director without the Applicant's daughter's knowledge. The Applicant's new romantic partner was also appointed as a director of MFP, and she purchased one of this company's immovable properties. Currently, the Respondent's daughter is the sole shareholder and director of MFP.
15. The Applicant disputes the Respondent's allegations that his daughter contributed financially towards acquiring any of MFP's assets. The Respondent's daughter did not finance the acquisition of any of MFP's immovable property. The MFP's immovable property was partially funded through cash, with the remaining balance covered by the loan agreement, where the Applicant and the Respondent bound themselves as sureties, to which the Respondent's daughter is not a party.
16. The Applicant alleged that nothing has changed in the Respondent's business operations. The Respondent still generates a substantial amount of money from the guesthouses, which is not paid into his personal bank accounts. The Applicant alleged further that the Respondent is hiding assets and transferring them out of his estate to undermine her accrual and spousal maintenance claims, creating the impression that he is bankrupt.

17. The parties enjoyed a very comfortable standard of living when they were still staying together. The Respondent was always the sole contributor to the parties' marital expenses. He fully supported the Applicant and their household. The Respondent has applied to voluntarily surrender his estate as a way of evading his maintenance responsibilities and frustrate her accrual claim.
18. The Applicant further contends that the Respondent still maintains a high standard of living. The Respondent has enhanced his wardrobe with stylish attire, enjoys high dining at high-end restaurants, and indulges in vacations. The Respondent is registered as a secondary user on his daughter's private wealth credit card, which he can use for his expenses.
19. The Applicant is currently residing with her romantic partner, who is also under financial strain and cannot support her financially. She was forced to borrow money from her father to institute this application. The Respondent has an economic advantage over the Applicant. According to the Applicant, to accurately determine the scope of the transactions made by the Respondent to hide his assets, the Applicant requires the expertise of a forensic investigator. The Applicant also requires the Respondent to provide bank statements of his current girlfriend and children.

ii) Respondent's case

20. According to the Respondent, the bank accounts' statements sought by the Applicant from him are those of third parties, whose bank accounts are private and confidential. The Respondent contends that these statements are irrelevant. He also claims that the Applicant failed to attach her own bank statements to her application. The Respondent also criticised the Applicant for delivering a supplementary affidavit, which he alleges is a disguised replying affidavit, which is not allowed in Uniform Rule 43 applications.
21. It was argued on behalf of the Respondent that the Applicant failed to make out a case why she should receive interim spousal maintenance and contribution to her legal costs from the Respondent. Furthermore, the Applicant failed to make a full and frank disclosure of all her bank accounts.

22. The Respondent alleged that the Applicant's Capitec account statements do not reflect payments for lodging to justify the amount she is seeking from him for rent. Furthermore, if the disclosed bank account statements do not demonstrate any of the alleged expenses, then there may be additional bank account statements that the Applicant did not disclose.
23. The amounts that flowed into the Applicant's accounts over the seven months, as demonstrated by the disclosed bank account statements, were R 385,364.00. It was contended that these amounts do not reflect a person in need of maintenance. The Respondent alleged that the Applicant failed to justify her expenses; instead, she listed exorbitant amounts for toiletries, hair, makeup, nails, and groceries.
24. During oral argument, it was argued that there are transfers and payments reflected in the Applicant's bank statements, the source of which has not been disclosed, which demonstrates that she is not in dire financial need. It was further contended that the Applicant transferred some of the amounts she received from undisclosed bank accounts into her bank account and then immediately into her daughter's bank account. It was argued that this appears to be strange, demonstrating that the Applicant did not come to court with clean hands.
25. The Respondent denied trading and transacting through other people's bank accounts. He claims that, just as he did with the Applicant, he merely advises and guides his daughter and current romantic partner in their business endeavours when required to do so. This enabled his daughter as the 100% shareholder to finance one of MFP's properties.
26. The Respondent alleged that while he has been involved in the hospitality industry in the past, he is neither employed nor a businessman. He maintained that his family members financially support him. The Respondent denies that he has hidden assets and maintains that he is not earning a substantial amount. According to the Respondent, he does not have the financial means to provide the Applicant with the spousal maintenance sought and to contribute towards her legal costs in these proceedings.

27. The Applicant came into their marriage already owning two immovable properties, which were solely registered in her name. The Applicant sold these properties, the proceeds of which were used to settle her debts and cover the parties' and their respective children's living expenses. The Applicant made financial decisions without being influenced by the Respondent. The Respondent contends that he only offered the Applicant guidance and advice when he was required to do so.
28. The Respondent agrees that the Applicant registered MFP while they were staying together and that she was initially a director of the company. While this company did not generate income, it acquired an immovable property where the parties stood as sureties for the loan agreement. The company accumulated a debt of R900,000.00, which became due and payable. This led the creditor to institute action against the company. However, the Respondent's romantic partner purchased the immovable property, leading to the company settling this debt. This prevented the creditor from pursuing the Applicant and Respondent for the debt as sureties.
29. The Respondent conceded that the parties' respective salaries were paid into the Applicant's bank account at some point, but claimed that this was to improve her credit score to qualify for a home loan. The Respondent admitted that when the parties were staying together, they enjoyed various holidays and other luxuries.
30. However, the Respondent claims that these expenses were secured at a discounted rate and paid using credit because they were living beyond their means. The Respondent alleged that he suffered an extreme financial hardship when his business venture failed in 2023. This led to the Applicant leaving him when he was hospitalised from a near-fatal medical incident.
31. The Respondent claims to have attempted in good faith to assist the Applicant since they separated in 2023, financially. He claims to have paid a total amount of R 336,050.00 to the Applicant. It was argued on behalf of the Respondent that he did not pay some of the amounts that are reflected in the Applicant's bank accounts' statements, particularly those that the Applicant appears to have

transferred back to the sender on the same day they were deposited into her bank account.

32. The Respondent further contends that when they separated, the Applicant took his furniture with her because he was at the hospital at the time. The Respondent claims that the Applicant is supported by her romantic partner and is not in dire need of financial support. He claims to have a voice note from the Applicant, where she admits that she has enough money to cover her expenses and buy food.

33. The Respondent admitted that he paid money into the Applicant's bank account, but claims that this was through the assistance of his family members because he was not earning an income himself. He contends that he borrowed R75,000.00 from his parents, which he paid to the Applicant in good faith. However, after signing a settlement agreement, his financial circumstances changed, and he offered to pay the Applicant R15,000.00 for a period of five years. He alleges further that the debts incurred by the Applicant were her own doing, for her own use, and her exorbitant lifestyle.

34. The Respondent alleged further that he rented various properties on a short-term basis and sublet them to receive small profits. He claims to have incurred business expenses and borrowed money from his family members to cover his legal costs. According to the Respondent, despite not earning an income, he was still able to accumulate more debt to assist the Applicant with her finances. The Respondent contends that he is not earning an income and is hugely in debt. He denies being unfaithful to the Applicant.

C APPLICABLE LEGAL PRINCIPLES AND EVALUATION

i) Interim Spousal Maintenance

35. In terms of Uniform Rule 43, a spouse can apply to the court to seek an order that his or her spouse be directed to pay interim maintenance to him or her pending the finalisation of their divorce dispute. This rule is generally intended to

provide expeditious and inexpensive relief to financially weaker spouses from their financially stronger spouses.¹ In *K.F v M.F*, it was held that:

'[e]ach case is dependant on its own facts. However, the general governing principle is that the applicant is entitled to reasonable maintenance pendente lite having regard to the marital standard of living of the parties, the applicant's actual and reasonable requirements and the capacity of the respondent to meet such requirements'.²

36. This means that the Applicant for interim spousal maintenance has a duty to establish his or her reasonable maintenance needs pending the finalisation of the divorce case. The reasonableness thereof will be assessed based on the parties' established standard of living. In other words, the Applicant should not be forced to downgrade his or her living standard simply because he or she does not have access to the financial resources that he or she used to enjoy before the divorce litigation was instituted.

37. Once the parties' standard of living has been established, an inquiry into the financially stronger spouse's ability to continue provisionally providing the financially weaker spouse with the same standard of living that was enjoyed before the divorce litigation was instituted should be made. Should it be established that the financially stronger spouse can provide financial resources that can assist the financially weaker spouse to maintain the same standard of living pending the finalisation of the divorce, the latter will be entitled to receive interim spousal maintenance from the former.³ This was confirmed in *C.A v H.A*, where it was correctly held that:

'[a]mongst others, Rule 43 is aimed at assisting the parties in maintaining the standard of living established over the course of their marriage'.⁴

¹ *S v S and Another* 2019 (8) BCLR 989 (CC); 2019 (6) SA 1 (CC) para 33.

² (10237/2037; 4001/2023) [2023] ZAWCHC 253 (13 October 2023) para 14.

³ See *J.M v S.M* (2020/18792) [2025] ZAGPJHC 351 (24 March 2025) para 36, where it was held that '[o]nce the need for maintenance has been established, then the next level of the enquiry would be to establish what the marital standard of living of the parties was, what the Applicant's reasonable maintenance requirements are and what the capacity of the Respondent is to meet such requirements'.

⁴ (5578/2022) [2024] ZAWCHC 25 (6 February 2024) para 2.

38. In *M.Y v J.Y*, it was held that:

'[a]s a result there is a duty on all 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'.⁵

39. It is now trite that any person who approaches the High Court in terms of Uniform Rule 43 must act with utmost good faith and make full disclosure of their financial circumstances.⁶ It is important to note that this is not the duty that only resides with the Applicant. Both parties have a duty to provide the court with the necessary financial information that will enable the court to adequately assess the financially stronger spouse's means and the financially weaker spouse's needs for interim maintenance. In *I.A.V.H v J.G.R.B*, it was held that:

'[o]ur 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'.⁷

40. The reality is that Rule 43 applications are notorious for general distortion of the parties' true financial circumstances. Some financially weaker spouses may overstate their needs, while financially stronger spouses may understate their means.⁸ Courts are continually confronted with deliberate lack of adequate disclosures or even selective disclosures by litigants whose primary aim is not to comply with their legal duty to maintain their spouses during divorce proceedings.

⁵ (2024/013982) [2024] ZAGPJHC 684 (26 July 2024) para 71. See also *Du Preez v Du Preez* 16043/2008) [2008] ZAGPHC 334 (24 October 2008) para 16.

⁶ See *J.M v S.M* (2020/18792) [2025] ZAGPJHC 351 (24 March 2025) para 34, where it was held that '[i]n dealing with her need for maintenance, the Applicant is required to make full and frank disclosure of all relevant facts to place the Court in a position to assess whether there is truly a need on the part of the Applicant for maintenance'.

⁷ (2024/084226) [2025] ZAGPPHC 940 (29 August 2025) para 51.

⁸ See *Du Preez v Du Preez* (16043/2008) [2008] ZAGPHC 334 (24 October 2008) para 15, where it was held that '... there is a tendency for parties in Rule 43 applications, acting expediently or strategically, to misstate the true nature of their financial affairs. It is not unusual for parties to exaggerate their expenses and to understate their income ...'. To my mind the practice is distasteful, unacceptable and should be censured. Such conduct, whatever the motivation behind it, is dishonourable and should find no place in judicial proceedings. Parties should at all times remain aware that the intentional making of a false statement under oath in the course of judicial proceedings constitutes the offence of perjury, and in certain circumstances may be the crime of defeating the course of justice'.

This behaviour is not only dishonest and regrettable, but it also seriously handicaps the courts from fairly determining Uniform Rule 43 disputes. In *E.W v S.W*, it was held that:

'[t]he court can in such circumstances not exercise its discretion based on the factual reality between the parties, as the court has been made aware of the selective financial disclosure which taints the whole matter in its entirety. A decision made based on incomplete and selective financial disclosure will be unjust and will not serve justice'.⁹

41. There is a duty on the court to be vigilant and establish whether the parties have overstated their needs or understated their means. This can only be done through a thorough assessment of the totality of the facts and evidence before the court. Most importantly, to decide whether the Applicant should receive the interim maintenance that she is seeking from the Respondent, the court must draw certain inferences and weigh probabilities from the affidavits submitted as well as the written and oral arguments made.¹⁰ For this reason, it is essential to evaluate the facts and evidence presented to the court thoroughly.

42. Apart from her founding affidavit, which attaches several annexures, the Applicant in this matter also completed and attached a Financial Disclosure Form. In this form, the Applicant sought to demonstrate her current expenses. She stated that she does not have any assets because her immovable property and car were repossessed.

43. She disclosed four bank accounts: Capitec Savings, Capitec Extra Savings, Tyme Bank, and Nedbank Business Account. She alleges that her Nedbank Business Account is frozen, and she has been unable to access its bank statements. She also indicated various liabilities that she referred to in the founding affidavit, which she alleged she incurred as a result of the Respondent.

⁹ (26912/2019) [2024] ZAGPJHC 465 (29 April 2024) para 44.

¹⁰ *J.P.N v N.A.N* (51791/2020) [2024] ZAGPPHC 1337 (17 December 2024) para 24. See also *S.K v M.N* (D3532/24) [2024] ZAKZDHC 43 (20 June 2024) para 24.

44. The Applicant provided bank statements from 01 August 2024 to 20 February 2025 for both the Capitec Savings Account and Capitec Extra Savings Account. This is close to seven months' worth of bank statements. While there are other entries reflected therein, these statements reflect some of the payments made by the Respondent to the Applicant. However, it is not clear from which account or accounts these payments were made.
45. During oral argument, an impression was sought to be created that all these amounts were received from third parties and that the Applicant failed to demonstrate the need for the interim maintenance she is claiming. It was correctly argued on behalf of the Applicant that most of the money received in this account was paid to the Applicant by the Respondent.
46. The Applicant did not provide the Tyme Bank statements in the Financial Disclosure Form. However, these statements were subsequently provided through a supplementary affidavit. These statements were from 1 February 2025 to 30 April 2025. The Applicant informed the court that her circumstances had changed, and she had acquired employment. She provided further bank statements from February 1, 2025, to May 27, 2025, which illustrate, among others, her salary.
47. It is not clear why the Applicant did not attach the six-month bank statement of this account to her Financial Disclosure Form. No explanation was provided, and this may be regarded as evidence of a lack of frank and full disclosure. However, the Capitec bank accounts are the Applicant's main transacting accounts, which adequately provide a sense of her financial position.
48. Much was made about the fact that the Applicant's bank statements do not reflect the amount of rent she is paying. Arguments made on behalf of the Respondent in this regard were misplaced. It cannot be denied that at the time the statements were printed, the Applicant was still residing in her repossessed immovable property. She was not renting any place at the time she instituted these proceedings.

49. Even though the Applicant did not attach the statements of the frozen account and those of Tyme Bank, I am not convinced that she could be accused of having failed to make a frank and full disclosure. There was no attempt to hide these accounts, and when the opportunity presented itself, she provided some of the statements to the court relating to Tyme Bank.
50. The Applicant provided the court with comprehensive bank statements. She did not try to hide her employment to maintain her claim of the original amount. In fact, she requested that the court order the Respondent to pay the contribution that he had initially agreed to pay. She did not insist on the original amount claimed in the notice of motion because her financial position had somewhat improved. This demonstrates that the Respondent came to this court with clean hands and she has not exaggerated her needs. When she found extra income that partially caters to her needs, she played open cards with the court, which is commendable.
51. In my view, and because: the Applicant incurred debts because of the Respondent; sold her properties to cover the living expenses of herself and the Respondent while they were still residing together; had been forced to forgo the luxurious life that she lived with the Respondent; the Respondent promised to assist her with the payment of her debts but failed to do so; her immovable property and cars have been repossessed; and she is forced to rent out a place and still manage her debts at her R 10,000.00 salary, she has demonstrated the need for spousal maintenance. In my view, the Applicant cannot be accused of either inadequate or selective disclosure.
52. Lack of adequate disclosure or even selective disclosure is evident on the part of the Respondent. Para 2.3 of the Financial Disclosure Form explicitly states that the person who completes this form must provide details of all their personal bank accounts that they hold or have held at any time in the last twelve months and which they are or were either in their name or in which they have had any interest. Most importantly, this form requires the person completing it to provide statements for their bank accounts covering the last six months.¹¹

¹¹ See *H v B* (2016/10540) [2022] ZAGPJHC 844 (31 October 2022) para 29.

53. It does not appear as if the Respondent read this part of the form, or if he did, he did so with comprehension. This is because he pointed out that he had held two bank accounts in the last twelve months, as indicated on this form. The Respondent's first disclosed bank account, which appears to be active, is the ABSA bank account.

54. However, it is interesting that the Respondent only provided statements relating to this bank account from January 29 to April 29, 2025, which only covers a period of four months. There is no explanation for the Respondent's failure to provide the required six months' bank statements for this account. This raises serious questions about what is contained in the statements for the two months that have been omitted.

55. The second disclosed bank account is the one held at Capitec Bank. Surprisingly, this account is now closed, and no statement was provided. It is unclear whether the Respondent received any statement from Capitec before this account was closed that could be provided to the court.

56. This bank account appears to belong to MFP. There is no explanation why the bank statements for this bank account could not be located and provided to the court. It is possible to obtain statements for a closed bank account. In the unlikely event that it was extremely difficult to locate the bank statements of this account, surely there is an option of providing the court with this company's financial statements.

57. The Respondent's failure to provide the bank statements as requested in the Financial Disclosure Form amounts to either inadequate or selective disclosure that prevented this court from establishing his actual financial position. The Respondent also made several sweeping allegations regarding his financial affairs without providing any evidence.

58. For instance, the Respondent claims to have received money from his family members to make payments of various amounts, including R 75,000.00 to the Applicant. However, it is unclear which family member provided the Respondent

with the money and how this money was given to the Respondent, since it was not paid through the Respondent's personal bank account.

59. The Respondent conceded that he made several payments to the Applicant, and he was not using his own bank account to do so. According to his own version, the Respondent paid a total amount of R336,050.00 into the Applicant's bank account since 2023. The Respondent discontinued payments to the Applicant after the Applicant instituted divorce proceedings against him and rejected his revised offer when he started pleading bankruptcy. There is no evidence before the court that demonstrates that the Respondent paid any of these amounts to the Applicant through any of the Respondent's personal bank accounts.

60. This fortifies the Applicant's allegation that the Respondent uses other people's bank accounts for his personal transactions. This proves that the Respondent deliberately keeps his personal bank accounts without money, and his money is placed in other people's bank accounts. The Respondent's allegation that he merely advised the Applicant, his children, and his current wife on their business dealings is false. The evidence before the court clearly demonstrates that the Respondent actively seeks out business opportunities and uses those close to him to pursue those opportunities.

61. The Respondent first used the Applicant and got her into massive debt while benefiting from the sale of her properties, which he conceded that the proceeds thereof were used to pay for their living expenses. He deposited his own salary into the applicant's bank account and took control of it.

62. Secondly, the Respondent used his daughter to acquire MFP and made his daughter the sole shareholder and director of this company. The Respondent is now a secondary user of his daughter's private wealth credit card, which he can use for his expenses.

63. Thirdly, the Respondent also managed to get his romantic partner to purchase MFP's property. Fourthly, the Respondent manages his parents' guest houses and has access to their bank accounts. With all these activities, the Respondent

wants this court to believe that he has no source of income and is supported by his family members. This is simply not true.

64. The only reasonable inference that can be drawn from the totality of the facts and evidence before the court is that the Respondent is engaged in business activities and uses the accounts of third parties in the same way he used the Applicant's account when they started dating. The Respondent's actual income does not end up in his personal bank accounts. The Respondent's latest bank statement balance, as provided to the court, is R455.58. In my view, this does not indicate the Respondent's true financial position.
65. It is highly unlikely that, as soon as the Applicant rejected the Respondent's revised settlement offer, which was contrary to their written settlement agreement and indicated her willingness to proceed with the divorce, the Respondent's businesses started not performing well to the extent that he considered surrendering his estate. The Respondent was clearly able to provide a monthly allowance to the Applicant before the institution of the divorce proceedings. There is nothing that the Respondent presented to the court that suggests that his financial circumstances changed after the divorce papers were instituted, rendering him unable to maintain the Applicant provisionally.
66. The Respondent also alleged that he received financial assistance to oppose this litigation from his family members. However, there is no evidence provided regarding the Respondent's family members who provided him with this financial assistance. It is unclear whether the family member paid the lawyers directly or deposited the money into their bank account.
67. There is not even a single confirmatory affidavit deposed by any of the Respondent's family members to corroborate any of the allegations of financial support he made about them. This makes it difficult to accept the Respondent's version as the truth. It is true that the Applicant can also be accused of not placing a confirmatory affidavit of his father before the court to confirm that he provided the alleged financial assistance, but at least the identity of the person who allegedly assisted her is known.

68. Without any proof, the Respondent also made allegations of the Applicant being financially supported by her current romantic partner. The Respondent should note that there is a duty of support between him and the Applicant, which will only come to an end when the parties divorce and no order of spousal maintenance is made in favour of either of them.¹² The Respondent has a legal duty to support the Applicant and not his current romantic partner.

69. It is also interesting to note that, despite not being the director of MFP, whose sole shareholder and director is his daughter, the Respondent appears to have insights about its financial health. The Respondent alleged that this company has not generated any income. This demonstrates that he is actively involved with this company, as he was when the Applicant was still its director. The Respondent makes this allegation without providing the current bank statements or the financial statements of this company. The only thing placed before this court is this company's closed Capitec bank account.

70. The bank accounts of the guest houses, the Respondent's children, and the partner may well be private. But if the Respondent's income is placed in any of them and uses them to transact, like he did with the Applicant's bank account, it will be difficult to regard them as irrelevant. In other words, if the Respondent's money is deliberately deposited in any of these accounts, then they become accounts in which the Respondent has an interest. Thus, it is reasonable for the Applicant to demand that they should be made available to establish whether the Respondent has the means to meet the Applicant's interim maintenance.

iii) Contribution to costs

71. The parties owe each other a duty of support that extends to the payment of legal costs when the parties are embroiled in divorce litigation. In terms of Uniform Rule 43(1), a financially weaker spouse is entitled to claim a contribution towards the legal costs of a matrimonial action, which is pending or about to be instituted. The essence of this is to place the financially weaker spouse in the position to present her case adequately.¹³ The court retains a discretion to order

¹² *Z.G v J.G.C.G* (77979/2018) [2024] ZAGPPHC 18 (12 January 2024) para 40.

¹³ *Nicholson v Nicholson* 1998 (1) 48 (WLD) at 50.

the financially stronger spouse to pay the legal costs of the financially weaker spouse.¹⁴

72. The discretion to direct the financially stronger spouse to contribute towards the financially weaker spouse's legal costs must be exercised judiciously. Some of the factors that are considered in making such a decision are the parties' respective financial positions, the scale at which the parties are litigating, reasonable litigation needs of both parties, and the financially stronger spouse's ability to make such a contribution.¹⁵

73. In *L.K v B.R.K*, it is held that:

'[t]he law is settled that the contribution towards legal costs ensures that a party litigates on the same scale as the other and is not disadvantaged in the divorce action. The applicant is not entitled to the entire legal costs but a contribution. In determining the contribution, the court must consider the circumstances of the case, the financial position of the parties, and the issues involved in the pending litigation'.¹⁶

74. It is unfortunate that the Respondent chose to play a classical game usually played by financially stronger spouses in divorce proceedings who are hellbent on hiding their assets, usually referred to as 'catch me if you can'. The Supreme Court of Appeal in *B v B*, articulated this problem as follows:

'The attitude of many divorce parties, particularly in relation to money claims where they control the money, can be characterised as 'catch me if you can'. These parties set themselves up as immovable objects in the hopes that they will wear down the other party. They use every means to do so. They fail to discover properly, fail to provide any particulars of assets within their peculiar knowledge and generally delay and obfuscate in the hope that they will not be 'caught' and have to disgorge what is in law due to the other party'.¹⁷

75. This is exactly what transpired in this matter. The Respondent adopted a strategy of placing as little information as he could before the court and denying every allegation of substance made by the Applicant without providing any proof to

¹⁴ *AF v MF* [2020] 1 All SA 79 (WCC) para 28.

¹⁵ *Van Rippen v Van Rippen* 1949 (4) SA 634 (C) at 639.

¹⁶ (2024-116399) [2025] ZAGPPHC 360 (4 April 2025) para 24.

¹⁷ (700/2013) [2014] ZASCA 137 (25 September 2014) para 39.

substantiate his denial. The Applicant resided with the Respondent. She is aware of the Respondent's way of conducting business and how he uses accounts of other persons to advance his business interests. The Respondent failed to rebut this allegation with substantiated evidence.

76. In fact, when the Respondent alleged to have deposited money into the Applicant's bank account, it became clear that he was not using his own bank account, thus proving the Applicant's allegations. He failed to place the bank account statements that illustrate the use of his own bank account when making payments to the Applicant.

77. Most importantly, on his version, the Respondent deposited a total amount of R336,050.00 into the Applicant's bank account. According to the Applicant, these payments were made in aggregate over sixteen months, amounting to an average of R21,003.13 per month. This is a clear demonstration that the Respondent has the means to contribute towards the Applicant's legal costs.

78. It may well be that it would be challenging to pay the entire amount of the contribution as one lump sum. However, there is no indication that the Respondent would struggle to pay the required amount in manageable twenty consecutive monthly instalments of R 10,000.00, with the first payment being made on or before 15 October 2025 and subsequent payments being made on or before the first day of each month. Obviously, the Respondent is not without a remedy. The day he is willing to make full disclosure based on his changed circumstances, he is well within his rights to approach this court under Uniform Rule 43(6) for a variation order.

ii) Prolivity and 'unnecessary' evidence

79. Both parties submitted their initiating affidavits in the form of a declaration and a plea, respectively. They also delivered their supplementary affidavits. In her supplementary affidavit, the Applicant requested indulgence to file an affidavit reflecting her changed circumstances. This is where the court was informed of the Applicant's new employment status and her salary.

80. This triggered the Respondent to respond with a supplementary affidavit of his own, where he objects to the Applicant's supplementary affidavit. He claims that the Applicant took an opportunity to reply to his answering affidavit, which he believes is not allowed, having regard to the nature of Uniform Rule 43 procedure. In my view, there is no prejudice in accepting both supplementary affidavits.

81. The submission of supplementary affidavits adds to the Respondent's main criticisms of the Applicant's application that this application is unnecessarily prolix and amounts to an abuse of court processes. The Respondent alleged that the Applicant included irrelevant documents in her application.

82. The Respondent's criticism of the Applicant's application appears to be a common criticism that often arises in Rule 43 proceedings.¹⁸ In 2024, the Pietermaritzburg seat of the KwaZulu-Natal Division of the High Court in *S.M v N.M.*,¹⁹ had the opportunity to address the issue of prolixity in Rule 43 applications. The court received a court bundle that consisted of three separate volumes, totaling 260 pages. The Applicant's affidavit was approximately 49 pages long, comprising 147 paragraphs and 200 pages of annexures.

82.1. The court criticised the lawyers who brought the application for their perceived failure to heed the contents of Uniform Rule 43 and its specific purpose. The court cautioned that this Rule was established to enable maintenance and matrimonial disputes to be addressed and resolved speedily and expeditiously. It emphasised that the whole purpose of this rule is brevity.

82.2. The court held that if either or both parties to the Rule 43 proceedings delivered prolix papers, that would amount to the abuse of this rule. With reference to the cases of *Patmore v Patmore*,²⁰ *Smit v Smit*²¹ and *Du Preez v Du Preez*,²² where these courts were confronted with court bundles of 47, 69,

¹⁸ See *G.C.L v T.P.L* (14148/2020) [2024] ZAGPJHC 1205 (22 November 2024) para 11, where the respondent in this case stated that '[t]he rule 43 applications are both exceedingly prolix, contain irrelevant and immaterial matter, inadmissible evidence and is repetitive'.

¹⁹ (D6667/2024) [2024] ZAKZDHC 54 (28 August 2024).

²⁰ 1997 (4) SA 785 (W).

²¹ 1978 (2) SA 720 (WLD) 722F.

²² (16043/2008) [2008] ZAGPHC 334 (24 October 2008)

and 192 pages, respectively, the court demonstrated that Rule 43 applications considered lengthy have previously been struck from the roll and not considered due to prolixity.

82.3. The court then opined that the growing trend of presenting lengthy Rule 43 applications must be halted. It emphasised that Judges simply do not have the time to peruse lengthy affidavits that narrate every misstep and alleged wrongdoing of a spouse. It held that this abuse can potentially be halted by an order for costs against a party that is guilty of prolixity. However, it noted that the most suitable order would be to prevent the attorneys who are guilty of this practice from charging their fees. The court went on to strike the matter off the roll.

83. With respect, the approach adopted in *S.M v N.M* of striking off the roll a Rule 43 application because the papers are regarded as being lengthy is wrong. It also appears to be oblivious to the true nature of the matrimonial disputes, particularly where one party is desperately trying to prove that the other party, who is uncooperative and hiding assets, has the financial means to pay the sought-after interim maintenance and contribution to costs. This approach will lead to unjust outcomes, where financially weaker spouses will be reluctant to provide the court with relevant information that demonstrates their spouses' financial means, because such information may be regarded as irrelevant leading to the matter being removed from the roll.

84. This approach appears to be ignorant of the fact that some divorces are incredibly complex, where one or both parties may have various financial products in which they place their assets. There are matrimonial disputes where it is not possible to merely determine the means and needs of the parties based on the required six months' bank statements. There might be a need to seriously reflect on the various payslips over a period of time, financial statements of trusts, share certificates, financial records of companies, and other investment vehicles to determine the means and needs of the parties.

85. Most importantly, where one of the spouses pleads insolvency, the other spouse may need to use other tactics to illustrate the means of his spouse, which may

require the assessment of lengthy documents that indirectly establish such means, such as the financial records of third parties who are accused of holding one of the spouse financial resources.

86. In complex matrimonial disputes, there might also be a need to trace the parties' historical sources of income to have a sound idea of how their finances are currently structured. In *TS v TS*, it was correctly held that:

'[a] court would be unable to determine whether there has been a proper disclosure of available income and the parties respective means to provide for maintenance or be able to litigate on a relative par without assessing the available source of funds that historically have been used to support the family prior to the parties' separation and whether that has changed to any marked degree bearing in mind that the households have been split'.²³

87. It is disappointing that while the court in *S.M v N.M* articulated what it regarded as an unacceptable trend with the Rule 43 applications, it did not provide guidance on what would be acceptable in these applications to prevent matters from being removed from the roll. Since 47 pages appear to amount to prolixity according to the court, what then is an acceptable number of pages when preparing a Rule 43 application?

88. A one-size-fits-all approach in Rule 43 applications is unjustifiable. There are instances where litigants are justified in submitting as much information and evidence to the court as possible to prove their cases. I should not be misunderstood as encouraging litigants or their legal representatives to include irrelevant and unnecessary averments in their affidavits and attach annexures that do not prove or disprove any of the parties' claims. While it is desirable that Rule 43 applications records should not be lengthy, the test should never be their length but the relevancy of what is provided to the court.

89. Judicial officers are constitutionally mandated to carefully review what has been submitted and use only that which is relevant to finalize matters that can be

²³ (28917/2016) [2018] ZAGPJHC 29 (2 March 2018) para 6.

finalized, rather than unnecessarily removing Rule 43 applications from the roll because they may contain irrelevant papers that are part of the record.

90. In my view, the approach adopted in *S.M v N.M* is unsound because it will encourage arbitrary decision-making in Rule 43 matters and lead judicial officers to remove Rule 43 applications from the roll even though there is no universally acceptable standard for fairly determining whether the record is lengthy. It appears that this assessment currently depends on the subjective views of a particular judge who has been assigned a Rule 43 application.

91. With respect, it is also incorrect to remove Rule 43 applications from the roll merely because a judge feels the pages that have been placed before him or her are lengthy. This approach is highly prejudicial to the litigants because it is not easy to get a speedy hearing date in the High Court on a normal roll. This means that spouses in dire need of interim maintenance would have to return on a future date for their matter to be heard once their application has been trimmed down to the judge's satisfaction.

92. This is not a constitutionally compliant approach and would prejudice women the most, who are generally financially weaker spouses in practice. The Constitutional Court in *S v S and Another*, authoritatively observed that:

'[a]pplicants in rule 43 applications are almost invariably women who, as in most countries, occupy the lowest economic rung and are generally in a less favourable financial position than their husbands'.²⁴

93. Rule 43 applications also implicate the best interest of children as provided for in section 28 of the Constitution of the Republic of South Africa, 1996, and given effect to by section 7 of the Children's Act.²⁵ While it may be convenient for the judge to merely remove the matter from the roll, such a decision will undoubtedly

²⁴ 2019 (8) BCLR 989 (CC); 2019 (6) SA 1 (CC) para 4, the court further held that 'The gender imbalance in homes and society in general remains a challenge both for society at large and our courts. This is particularly apparent in applications for maintenance where systemic failures to enforce maintenance orders have negatively impacted the rule of law. It is women who are primarily left to nurture their children and shoulder the related financial burden. To alleviate this burden our courts must ensure that the existing legal framework, to protect the most vulnerable groups in society, operates effectively'.

²⁵ 38 of 2005.

be prejudicial to litigants who need the matter to be heard and determined, particularly women and children, who desperately require interim maintenance.

94. A better approach is that adopted by the full court of the Gauteng Division of the High Court in *E v E; R v R; M v M*, which was referred to in *S.M v N.M* but not followed at all. In *E v E; R v R; M v M*, the court accepted that:

*‘... there should be no limitation to the number of pages filed for as long as what is contained in the affidavit and the annexures thereto is relevant and admissible as evidence’.*²⁶

95. In this case, the court dismissed the points *in limini* based on prolixity. Most significantly, the court made an order that:

*‘[i]t shall not be competent for a court to dismiss an application in terms of Rule 43, only on the basis of prolixity. If the court finds that the papers filed by a party contain irrelevant material, the court only has the power to strike off the irrelevant and inadmissible material from the affidavit in question, and make an appropriate cost order’.*²⁷

96. This approach is consistent with the approach of the Supreme Court of Appeal in *Monyepao v Ledwaba and Others*.²⁸ In this appeal, the Supreme Court of Appeal was confronted with an appeal record comprising four volumes that totalled 544 pages. The five judges of appeal reviewed the entire appeal record and determined that only 147 pages of this record were relevant to the question they were required to decide on appeal.

96.1. The judges of appeal expressed their displeasure with the irrelevant documents, but they did not remove the matter from the roll.

96.2. They saw no reason why any legal representative on either side should be entitled to charge fees and disbursements in relation to the irrelevant portions of the record.

²⁶ [2019] 3 All SA 519 (GJ); 2019 (5) SA 566 (GJ) para 52.

²⁷ *E v E; R v R; M v M* para 64.3

²⁸ (1368/18) [2020] ZASCA 54 (27 May 2020).

- 96.3. They made an order that the legal representatives should not levy fees or disbursement relating to the part of the record that was found to be irrelevant.
97. I am of the view that this is a constitutionally compliant approach that allows the court to perform its function of deciding cases generally, and Rule 43 applications in particular. Rule 43 applications are matters in which litigants are typically in dire financial need. They cannot afford to be punished by having their cases removed from the roll when all the necessary information to finalize those cases is before the court. There is a need for a measure of consistency across all the Divisions of the High Court in South Africa.
98. In this case, I do not agree with the Respondent that the Applicant's Rule 43 application is unnecessarily prolix and an abuse of court processes. I did not find any document submitted by the Applicant that can be deemed irrelevant to the extent that it unnecessarily lengthens the documentation of the application.
99. The Applicant's notice of motion and founding affidavit constitutes 58 pages, with the financial disclosure form together with its annexures constituting 75 pages. The Respondent's answering affidavit, together with its annexures, constitutes 65 pages. His financial disclosure form, together with its annexures, constitutes 64 pages. The parties' supplementary affidavits constitute 34 pages and 6 pages, respectively. This means that the Rule 43 record consists of 302 pages. It would be an injustice of high proportions if I were to remove the matter from the roll because I am not prepared to read 302 pages.

E CONCLUSION

100. Although the Respondent had no interest in placing his true financial affairs before this court, he provided information and made allegations that make it clear that he conducts business through the bank accounts of other people. He conceded that at some point, he used the Applicant's bank account, *albeit* to strengthen the Applicant's credit score. The Applicant's version is that the

Respondent completely controlled her bank account and their finances while they were still residing together and made her incur debts that he promised to settle but never did. There is no doubt that the Applicant's version is true and that of the Respondent is false.

101. It is also clear from the Respondent's version of events that he provides advice and guidance to people with whom he is on good terms, such as his daughter and current romantic partner. The Respondent has significant influence over these people and the financial decisions that they make. For instance, his daughter is the sole shareholder of MFP, the company established by the Applicant, while his romantic partner purchased the immovable property of the same company. It is not a coincidence that people close to him benefit from MFP, a company he conceptualized with the Applicant. In return, the Respondent influences how their finances are structured.

102. The Respondent manages several guesthouses, but his bank accounts do not reflect income generated from his work. All these facts are sufficient for the court to draw inferences and conclude that the Respondent is economically active and has deliberately kept his true income from being deposited into his personal bank accounts. This was with the intention of defeating the Applicant's spousal maintenance and accrual claims. Most importantly, I am not convinced that the Respondent disclosed all his bank accounts to the court. This may justify the forensic investigation that the Applicant desires to undertake.

ORDER

103. In the premises, I make the following order:

103.1. Both the Applicant and Respondent are allowed to file their respective supplementary affidavits.

103.2. The Respondent must pay a monthly cash contribution towards the Applicant's maintenance of R15,000.00, which must be deposited directly

into the Applicant's nominated bank account on or before the first day of each month, with the first payment to be made on or before 15 October 2025.

103.3. The Respondent must make a reasonable contribution to the Applicant's legal costs for R 200 000.00 up to and including the first day of the divorce trial, payable in 20 consecutive instalments of R 10 000.00 a month directly into the Trust Bank Account of Advocate Mariska Henning, Nedbank, Account number 1[...].

103.4. The costs of this application should be the costs of the divorce.

C MARUMOAGAE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

PRETORIA

Counsel for the Applicant : Adv M Fabricius

Instructed By : Adv M Henning (Trust Account Advocate)

Counsel for the Respondents : Adv De Wet

Instructed By : Danie Koekemoer Attorneys

Date of Hearing : 4 June 2025

Date of Judgment : 26 September 2025