



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 13239/2024

In the matter between:

F[...] V[...]

Applicant

And

M[...] I[...]

Respondent

REASONS FOR JUDGMENT

LEKHULENI J:

1. Introduction

[1] The applicant and the respondent were married by Islamic rites on 11 November 2019. The parties have two minor children, a girl born on 6 January 2021 and a boy born on 20 May 2023. The applicant has a son from a previous marriage born on 14 July 2014. The minor children are currently in the care of the applicant. The respondent has reasonable rights of access to both minor children. On 5 May

2024, the respondent arrived with a local Imam at the parties' common home and issued a third Talaaq (divorce). According to Sharia law, the parties are officially divorced.

[2] Despite the final Talaaq being issued, the applicant asserts that the provisions of section 7(3) of the Divorce Act 70 of 1979 ('the Divorce Act') apply to their marriage. The applicant has thus issued summons in this court seeking an order for the redistribution of assets, rehabilitative maintenance for herself, maintenance for the parties' minor children and for an order regulating the care and contact arrangements in respect of the children. Pending the determination of her claim for maintenance and the redistribution of assets in terms of section 7(3) of the Divorce Act, the applicant filed an application under Rule 43 of the Uniform Rules. In this application, she seeks an order directing the respondent to pay interim maintenance in the sum of R38,100, provided she continues to reside in Knysna. This payment is intended to support both her and their minor children. The applicant also prayed for an order that the minor children live with her, subject to the respondent's right of contact with them.

[3] In addition, the applicant prayed for an order that the respondent reinstate her as a dependent on his medical aid or a scheme with analogous benefits on which she will be the main member and shall pay the premiums in respect of her cover and continue to retain the children on his current medical aid scheme as his dependents. The applicant prayed for an order for the respondent to pay the mortgage bond instalment for the residence where the applicant and their children live. Furthermore, the applicant prayed for an order requiring the respondent to pay for additional related expenses, including but not limited to rates, levies, wages for the domestic worker and the gardener, security, and any other reasonable and necessary costs associated with the maintenance and repairs of the property where the applicant resides.

[4] The applicant also sought a contribution to her legal costs. The applicant prayed that the respondent be directed to pay an initial contribution to her legal costs in the sum of R100,000, with such payment to be made directly to the applicant's attorney of record within 10 days of the court granting such an order. In addition, the

applicant sought an order granting her permission to engage a health care expert to assess whether relocating with the children to Cape Town is in their best interests. Furthermore, the applicant prayed for an order for the respondent to bear the costs associated with the appointment of the childcare expert.

[5] After hearing arguments from the legal representatives of both the applicant and the respondent, and after considering the matter, I granted an order in the following terms:

1. *Pending the final determination of the divorce action between the parties, the parties' minor children shall primarily reside with the applicant, subject to the respondent's right of contact with them, which, for as long as the applicant resides in Knysna, shall take place as follows:*
 - 1.1. *Every Wednesday from 16h00 to 19h00.*
 - 1.2. *Fridays from 11h00 to 17h00 at the respondent's residence.*
 - 1.3. *Every alternate weekend commencing on a Saturday afternoon from 14h00 until 18h00.*
2. *The Respondent is ordered to enlist the applicant and the two minor children on his medical aid as his dependents. If the applicant and the children incur any reasonable medical costs, excluding elective procedures, which are not paid for or covered by the medical aid scheme, the respondent shall pay those necessary costs on presentation of the invoice.*
3. *The respondent is ordered to pay the mortgage bond instalment in respect of the home in which the applicant resides with the children as well as the following expenses in respect of their accommodation:*
 - 3.1. *Rates, water, and electricity.*
 - 3.2. *Levies in respect of the property.*
 - 3.3. *Wi-Fi and landline.*
 - 3.4. *All insurance pertaining to the home and the contents, including the applicant's motor vehicle insurance, wages of the domestic worker.*
 - 3.5. *All reasonable and necessary maintenance and repairs to the property when called upon to do so.*
 - 3.6. *Wages of the gardener.*
 - 3.7. *Should the children attend school in 2025, the respondent is ordered to pay the children's comprehensive educational costs, which include but are not*

limited to their preschool fees, school fees, extramural tuition, stationery and books if prescribed by the school, and fees of the school.

- 4. The respondent is ordered to pay maintenance pendente lite in respect of the minor children in the sum of R4000 per month per child and R10 000 per month for the applicant on or before the first day of the month following the granting of this order and thereafter, on or before the first day of each succeeding month into an account nominated by the applicant without deduction or set off.*
- 5. The respondent is ordered to make an initial contribution towards the applicant's legal costs in the sum of R60 000. Such payment shall be made directly to the applicant's attorneys of record in monthly instalments of R10,000 per month as of 1 October 2024.*
- 6. The family advocate is directed to investigate the care and contact of the minor children and to file a report with recommendations.*
- 7. The respondent is ordered to pay the costs of this application on Scale A.*

[6] On 31 July 2025, the parties' legal representatives approached this court in chambers and requested it to clarify the above order, particularly in respect of the payment of electricity, wages of the domestic worker and those of the gardener. For the sake of simplicity and completeness, I have decided to give reasons for the whole order. What follows are the reasons for that order. To provide clarity regarding the order I have granted, I will present a summary of the cases put forth by both parties, along with the principal submissions made by their legal representatives during the hearing.

2. The applicant's case

[7] The applicant averred that she married the respondent on 11 November 2019, according to Islamic rites. They have two minor children from their marriage: a daughter born on 6 January 2021, and a son born on 20 May 2023. Additionally, the applicant has a son from her previous marriage, who was born on 14 July 2014. The applicant did not claim any maintenance for her son born out of her previous marriage, as the respondent has no obligation to support him. She issued summons in this court under case number 13239/2024 wherein she claims a redistribution of assets, maintenance for herself and for the children as well as the determination of their rights and responsibilities in respect of their children.

[8] According to the applicant, the parties separated in March 2024 when the respondent moved out of their common home. The respondent currently lives with his parents in Knysna. The applicant lives in Knysna with the minor children in their shared home. The applicant indicated that she wished to move from the common home in Knysna and return to Cape Town, where she has a support system and can resume her e-commerce business of selling turbans to earn an income. The relief she sought was intended to regulate the financial arrangements between the respondent and the applicant *pendente lite* and to authorise a care and contact assessment considering her wish to relocate to Cape Town.

[9] According to the applicant, this application was necessary because, since the respondent moved out of the common home in March 2024, he has gradually withdrawn his financial support to her. In addition, the respondent removed the applicant as a dependent from his medical aid, disconnected the Wi-Fi and stopped their domestic worker from coming to the house by threatening her. The applicant explained that the respondent expects the applicant to survive on R5500 a month, comprising R2500 for the applicant and R3000 for the minor children. In a tender made in a letter from the respondent's attorneys, the respondent proposed that instead of paying the applicant maintenance, the applicant should send him a list of grocery items that she needed so that he could purchase the items and have them delivered to the common home where the applicant resides.

[10] The applicant asserted that on most occasions, the respondent did not even purchase the items on the list. Instead, he chose what he would buy and had it sent to the applicant and the children. In the applicant's view, this was not only patronising but controlling in the extreme. The applicant asserted that the respondent always paid for their domestic worker. However, since their separation, the respondent threatened the domestic worker not to return to the house. As a result, the applicant had no choice but to hire a new domestic worker, which costs her R4,500 per month. This expense leaves the applicant with only about R1,000 to purchase essential day-to-day items, as the respondent intentionally fails to buy all the items on the grocery list. The applicant asserted that the respondent and her attorney seem to believe that

the applicant's claims are not legally competent, given that the applicant and the respondent were married and divorced according to Sharia law.

[11] When she met the applicant in Cape Town, the applicant was running an e-commerce business selling turbans online and at markets. After their relationship commenced, the respondent persuaded her to move to Knysna, where he had a thriving and established dental practice. After the move, she tried to continue the business but didn't generate much income because she didn't have the same client base in the Garden Route as she did in Cape Town. From the outset, she was thus financially reliant on the respondent. According to her, she made small contributions to their shared expenses and paid her own personal expenses. The applicant asserted that her earning capacity was eventually stifled by the respondent when he forbade her from attending large pop-up markets outside Knysna, insisting that she care for the children instead.

[12] As a result, for most of the marriage, the respondent supported her. The applicant also stated that she receives rental income of R8550 from a property which her father bought and registered in the applicant's name. From the rental received, the applicant pays rates of R1200 per month and a monthly levy of R1350. The remaining balance is used for maintenance work on the property and for unforeseen expenses, such as special levies for general upkeep and expenses for her eldest son from her previous marriage. The applicant contended that the respondent is generating enough income from his dental practice to adequately support her and the minor children. To this end, the respondent bought his father an X3 BMW. The respondent bought several properties, five in number, which are unbonded. The total value of his assets is around R8 475 000. The respondent received rental income in some of these properties. The applicant prayed for the order in the notice of motion and a contribution to costs in the sum of R100 000.

3. The respondent's case

[13] The respondent refuted the claims of the applicant. The respondent opposed the applicant's proposal to relocate with their minor children to Cape Town. In the respondent's view, the applicant's relocation to Cape Town is only to serve her

interests and not in the best interests of the children. The respondent contended that removing the children from Knysna would mean they would be taken away from the respondent's parents, who have been actively involved in their lives. The respondent asserted that he pays for all the household necessities the applicant requested in her application. In addition, he has reconnected the Wi-Fi at the applicant's premises. He will commit to paying the same amount if the applicant and the children are staying at the common home in Knysna. Respondent stated that he pays the house insurance in the sum of R825.6 and garden services in the sum of R290 per day, with services provided twice per month.

[14] Concerning a domestic worker, the respondent stated that the applicant engaged the services of a new domestic worker. The previous domestic worker worked three to four days a week for 200 per day. If the current domestic worker works at the premises for three days a week, her total monthly salary will be R2400. The respondent indicated that he is willing to pay this amount towards the domestic worker. The respondent asserted that the applicant should pay any amount in excess of the specified limit of the medical aid cover. The respondent mentioned that he has contributed to the repairs of the applicant's vehicle by replacing the tyres in 2023 and occasionally covering fuel expenses. The respondent also asserted that he reinstated the applicant on his medical aid. According to the respondent, the applicant has inflated some of her expenses, such as eating out, hairdresser, beautician and entertainment at home.

[15] As far as grocery is concerned, the applicant averred that he had been doing the shopping and paying for the groceries during the subsistence of the marriage and thereafter, and had it delivered to the common home. When he still lived at the shared residence, their grocery expenses were approximately R8000 per month. The grocery expenses since he left the premises are between R4000 and R5000, and these are paid from his credit card. During the subsistence of the marriage, he primarily did the monthly grocery shopping, and the applicant provided the shopping list. According to him, this was never patronising or controlling; the applicant found it convenient to prepare the list while he attended to do the shopping. Throughout the subsistence of the marriage, the applicant was satisfied with this arrangement.

[16] The respondent denied that he deliberately did not purchase items on the grocery list. According to the respondent, items would occasionally not be in stock, and he would buy them later. He denied the applicant's requests for maintenance, stating that he had continued to provide reasonable support for her and their minor children since their separation. The respondent insisted that the applicant has never been financially reliant on him and has always had substantial funds for herself.

[17] The respondent explained that he receives a net monthly salary from his practice as a dentist of R30 285,55. He gets a commission from Dr Meyer Inc. His net monthly wage fluctuates between R30 000 and R45 000. According to the respondent, almost all the items the applicant sought as maintenance are already being paid for, and he will continue to do so. In the respondent's view, the amounts listed in paragraph 3 above, should not be included in the interim maintenance claimed by the applicant. According to him, it will be more practical for him to keep paying them, as some of these amounts are paid by debit orders. The respondent also stated that he was under a bona fide impression that he had no duty of support to the applicant after their divorce in terms of Sharia law, hence he tendered maintenance of R2500 to the applicant until May 2025. However, after consulting with his attorneys of record, he was informed of his legal duty. He confirmed his willingness to support the applicant in the interim pending the finalisation of the main case in this court.

[18] The respondent stated that his parents are retired, and he supports them, as according to Islam, they have a duty to look after their parents. The BMW X3 is a company vehicle and was not purchased for his father, as alleged by the applicant. He pays for his parents' medical aid; however, his sisters reimburse him for the amount spent. The respondent also explained the number of properties he owned and how he purchased them. He explained that the property in Hillcrest, where he now lives with his parents, was purchased with a loan from his sister in 2017, and the respondent is still paying it off. Both Johannesburg properties were purchased with loans from his mother, which he is still paying. According to the respondent, the rental income goes to his mother to pay off the loan. His practice purchased the B[...] Street property in Louisiana as an investment, as it was a new development. There are currently no tenants occupying this property.

[19] The respondent explained that he was willing to contribute to the applicant's legal costs in the sum of R20 000. According to the respondent, the applicant's claim for the contribution of R100,000 for future costs is excessive and unreasonable in the circumstances where both parties are eager to settle their matrimonial action.

4. Principal submissions by the parties

[20] At the hearing of this matter, Ms Bartman, counsel for the applicant, submitted that the applicant brought the Rule 43 application because, firstly, the respondent removed the applicant from the medical aid. The respondent disconnected the Wi-Fi and stopped the domestic worker from going to the applicant's house to assist her. Counsel submitted that the respondent did not deny on the papers that he removed the applicant from his medical aid scheme. Instead, he asserted that he has reinstated her, reconnected the Wi-Fi, and confirmed that the domestic worker is now regularly attending to the shared residence. Counsel submitted that the applicant needed to bring this application. Ms Bartman stated that the applicant sought an order requiring the respondent to pay her a cash amount of R40,534 for as long as she resides in Knysna.

[21] This amount is inclusive of the cost of the domestic worker, the gardener and the electricity. This was added to the maintenance claim that the applicant sought. Counsel submitted that, if they are going to be living separately, and there is bad blood between them, the respondent should pay those items. According to counsel, the electricity is a prepaid meter that she must top up. The applicant should not have to phone the respondent every time she wants electricity, or when it is running out. To this end, counsel submitted that they have topped up the original amount of R38 100 claimed in the application, bringing it to R40 534, which is the amount the applicant sought.

[22] Ms Bartman submitted that the applicant has sufficient means to pay maintenance and contribution to costs sought by the applicant. Counsel further pointed out that the bank statement submitted by the respondent indicates that the

respondent pays R6 000 for a rental for a friend. The respondent did not deny this. Instead, he stated that as a Muslim, it is his obligation to do so. Counsel argued that the respondent did not acknowledge his legal obligation to his wife. In fact, from the outset, his attitude was that he had no duty to support the applicant.

[23] Ms Bartman asserted that from June 2023 to May 2024, a total of R1.5 million, representing income from the respondent's dental practice, was deposited into the respondent's FNB investment account, averaging R132,000 per month. The salary reported by the respondent is more than four times lower than his actual earnings. Counsel submitted that the respondent receives significantly more than the R35,000 to R40,000 that he has presented to the court. Ms Bartman has also suggested that this discrepancy could be indicative of perjury, as it is inappropriate for the respondent not to be honest, frank and candid with the court in matters of this nature. Counsel implored the court to grant the prayers as prayed for in the notice of motion.

[24] On the other hand, Mr Van der Schyf, counsel for the respondent, submitted that if one has regard to the notice of motion initially filed by the applicant in this matter, every single item which the applicant claimed in that notice of motion is being paid by the respondent. Mr Van der Schyf submitted that everything has context, and context is important. To this end, counsel argued that the parties in this matter were married by Muslim rites. In terms of Sharia law, it was believed that the applicant is not entitled to any maintenance after the divorce (Talaq) and that the only dispute would then be access or a right to claim a portion of the respondent's estate. However, the applicant would not receive any part of the respondent's estate because, according to Sharia law, the parties are considered married out of community of property.

[25] Counsel further emphasised that the respondent is paying for all the expenses listed by the applicant in the notice of motion. The respondent covered every expense related to maintaining the common home where the applicant resides with the minor children, including water, electricity, rates, and levies. Mr Van der Schyf argued that the respondent ensured that the Wi-Fi was reconnected and is paying for it. Additionally, the respondent is paying for the children's clothing as and when

necessary. The respondent buys groceries, pays for gardening and domestic services, and contributes to transport costs.

[26] Mr Van der Schyf submitted that the applicant is not spending any money on maintenance issues, as she is adequately covered. Counsel further submitted that the entire house bill is being paid. When pressed by the court regarding the cash contribution and the dignity the applicant should enjoy in buying her own groceries, Counsel submitted that the respondent was prepared to offer R9000 in lieu of groceries and R4500 as a cash contribution for the applicant and the children.

[27] As far as contribution to costs is concerned, Mr Van der Schyf submitted that in terms of the Muslim marriage, whether the applicant is entitled to a portion of the respondent's estate is an issue that still must be determined. In counsel's view, this case is one of those matters tailor-made for Rule 33(4) application. According to Mr Van der Schyf, the issues should be separated, and merits should be determined first. If the applicant has the right to claim, costs can be incurred to obtain an expert to value the estate. However, if it is established that she does not have that right, there is no need to incur hundreds of thousands of expert witnesses' reports. To this end, counsel applied that the applicant's application be dismissed with costs.

5. Discussion

[28] The applicant and the respondent were married according to Sharia law. In his sworn reply, the respondent stated that he genuinely believed he had no obligation to provide support to the applicant after their divorce. In one of the email correspondences from the respondent's legal representatives addressed to the applicant's attorneys, dated 18 May 2024, the respondent's attorneys asserted that their instructions are that, according to Islamic Law, once the third divorce (Talaaq) has been pronounced, their client's responsibility to maintain the applicant ceases. It was also stated in that correspondence that it was crucial for both parties to understand their rights and obligations following their divorce. In addition, the email correspondence emphasised that any claim the applicant makes for maintenance for

herself after divorce will be subject to accountability and that the applicant must consider this matter carefully.

[29] In considering a matter such as this, it is crucial to remind ourselves that the Constitution guarantees the protection of fundamental rights of all people in South Africa. The Constitution is the supreme law of the Republic and any law or conduct that is inconsistent with it, either for procedural or substantive reasons, is invalid and will not have the force of law. The obligations imposed by the Constitution must be fulfilled. The preamble to the Constitution envisions a society based on democratic values, social justice and fundamental human rights where the law equally protects every citizen. Section 9(1) of the Constitution guarantees everyone equal protection and the benefit of the law. Section 10 of the Constitution guarantees everyone the right to have their dignity respected and protected.

[30] In giving content to these rights, the Divorce Act was recently amended by the Divorce Amendment Act 1 of 2024 ('the Divorce Amendment Act') in relation to the recognition of Muslim marriages. The preamble to the Divorce Amendment Act states that the purpose of the amendments, is to amend the Divorcer Act to insert a definition for a Muslim marriage, to provide for the protection and to safeguard the interests of dependent and minor children of a Muslim marriage, to provide for the redistribution of assets on the dissolution of a Muslim marriage, to provide for the forfeiture of patrimonial benefits of a Muslim marriage and to provide for matters connected therewith. Section 6 of the Divorce Amendment Act provides as follows:

‘This Act applies to all subsisting Muslim marriages, including a Muslim marriage -

- (a) Which was terminated or dissolved in accordance with the tenets of Islam and where legal proceedings for the dissolution of the said Muslim marriage in terms of the Divorce Act, 1979 (Act. No. 70 of 1979) have been instituted but not yet finalised, and
- (b) which subsisted as of 15 December 2014.’

[31] Plainly, the marriage of the applicant and the respondent fall within the definition of section 6 of the Divorce Amendment Act. Furthermore, the applicant clearly regards herself as a spouse. The parties lived together as husband and wife since 2019 when they married and only separated in 2023. There is a pending matrimonial action between the parties in which the applicant seeks a distribution of assets and spousal maintenance in terms of section 7(2) of the Divorce Act.

[32] In *Zaphiriou v Zaphiriou*,¹ Trollip J explained that Rule 43 was merely designed to provide a streamlined and inexpensive procedure for procuring the same interim relief in matrimonial actions as was previously available under the common law in regard to maintenance and costs.² Trollip J held that the word 'spouse' in sub-rule (1) of Rule 43 must be interpreted as including not only a person admitted to be a spouse but also one who alleges that he or she is a spouse, and that allegation is denied. In other words, Rule 43 also applies where the validity of the marriage or its subsistence is disputed.

[33] From the above, there is a reciprocal duty of support between the applicant and the respondent. The scope of the duty of support is determined *inter alia* by the social status of the parties, their means or income and the costs of living. It is common cause that the applicant is unemployed. The applicant is dependent on the respondent for her needs. To meet her needs, she has been selling turbans. The respondent, on the other hand, is well-resourced, generating a sufficient income and accumulating considerable wealth in the form of real estate properties. The bank statements discovered in these proceedings show that the respondent earns adequate income to support the applicant and her children comfortably. This financial stability suggests a capacity to meet their needs with ease.

[34] The respondent does not state in his sworn reply that he cannot afford to pay maintenance for the applicant and the children. He has, however, determined the amount of R5500 as maintenance for the applicant and the two minor children. It is not clear what informs this amount. The respondent does not want to provide maintenance in the form of a cash component to the applicant, allowing her to

¹ 1967 (1) SA 342 (W).

² At 345E-G.

manage it and buy what she and the minor children need for groceries at home. The respondent determined what groceries the applicant and the children would need. The applicant stated that he recently provided the respondent with a list, and all that the respondent delivered were nappies for their son and water. In my view, it is not for the respondent to determine what the applicant and the children require.

[35] Their children are in the care of the applicant, and she takes responsibility for cooking and attending to their day-to-day needs. The applicant carries the heavy responsibility of tirelessly tending to the needs of their children, ensuring their well-being and nurturing their growth. The applicant must have the freedom to shop and choose what she wants for the children. The applicant's counsel astutely pointed out that the respondent's demand for the applicant to provide a list of items, with the respondent selectively purchasing only those he deemed necessary, was not merely patronising; it was an exertion of control that was strikingly oppressive. This situation undermined the applicant's autonomy. It violated the applicant's dignity and worth as a wife and mother of the respondent's children. The applicant and the children cannot be expected to have groceries that they dearly need at the whim of the applicant. The applicant must take pride in providing for his family adequately from his means.

[36] The respondent has been paying the applicant a cash contribution of R5500, comprising the maintenance for the children and the applicant's maintenance. In my view, this amount is too little to cover the needs of the children. I accept that the respondent pays the other expenses related to the common home. However, the respondent must take pride in paying adequate maintenance for his children, which is his primary obligation. The respondent is generating enough income of over R132 000 per month in his dental practice. I find it unsettling that the respondent donates R13,800 per month to charity while neglecting to provide adequate support for his children. Additionally, he is paying R6,000 in rent for a friend, prioritising others over his own children.

[38] In contrast, the respondent demonstrates commendable responsibility by adequately supporting his parents. During September 2023, the respondent was able to spend R37 224.55 on his parents' airfare to the UAE, which included extra

baggage. Furthermore, his parents have their own credit cards linked to the respondent's account, on which they spent R26 882.93, excluding flight expenses during their time in the UAE, without refunding the respondent for these purchases. The respondent states that he paid for the flights because it was his privilege to do so for his elderly parents to visit his siblings.

[39] The respondent is doing an admirable duty of caring for his parents, which reflects his strong sense of duty and compassion. However, his primary responsibility is to his children and his wife. Children have a fundamental right to nurturing and proper parental care, as they are unable to care for themselves and rely on their parents for support. Therefore, the responsibility of providing for his children's needs must take priority over all other expenses. As enshrined in sections 28(1)(b) and (c) of the Constitution, children have a right to family care or proper parental care. The duty of support for minor children extends to accommodation, food, clothes, medical and dental attention, and other necessities of life on a scale that is in line with the social position, lifestyle, and financial resources of the parties.³

[40] As foreshadowed above, the applicant is not working and is dependent on the respondent. She is looking after the respondent's children. The respondent is burdened with looking after their children. The respondent must play his part in supporting the applicant pending the finalisation of the *lis* between the parties. It was for this reasons that the court granted the order mentioned in paragraph 5 above.

6. Clarification of the Rule 43 order

[41] As mentioned above, the court was requested to clarify its order in respect of electricity, domestic worker and garden services. From the papers filed, these issues were not disputed, save for the amount that must be paid. In her founding affidavit, the applicant stated that the respondent paid all their living costs, including electricity, the medical aid premium for the applicant and the children, household insurance, Wi-Fi, and the wages for the domestic worker. The respondent admitted these assertions in his sworn reply. It was also argued that the respondent is paying for all

³ *Du Toit v Du Toit* 1991 (3) SA 856 (O) 860, 861.

these expenses. It was on that basis that the respondent was ordered to continue paying for those expenses.

6.1 Electricity

[42] Incontestably, the cost of electricity is very high. To the extent that there may be some misunderstandings, particularly regarding the amount and manner in which the respondent must purchase electricity for the applicant, it is ordered that the respondent must provide the applicant directly with an electricity token of no more than R5000 per month. The respondent is ordered to provide the applicant with the electricity token within five hours of the applicant's request to provide the same.

6.2 Domestic worker

[43] Concerning the domestic worker, the respondent agreed to pay R2400 per month. The domestic worker who currently assists the applicant works five days a week and must be paid her salary. The respondent must ungrudgingly and with love pay the sum of R4500 at the end of each month towards the domestic worker who assists the applicant in looking after the parties' children. This amount will increase annually with CPI percentage.

[44] I must add that I find it very disheartening that the respondent is prepared to make donations of almost R1400 monthly to various people and charities but finds it difficult to pay R4500 for a domestic worker who looks after his children. The respondent must learn to prioritise his priorities. The respondent possesses adequate assets, and should he encounter difficulties in meeting his financial obligations (which I think not), it is incumbent upon him to liquidate those assets to comply with his maintenance responsibilities.

6.3 Gardener

[45] Similarly, the respondent must pay for the garden services (which mow the law) and the gardener the total sum of not more than R1500 per month. This amount will increase annually with the CPI percentage. The respondent is to pay the said

amount directly to the applicant, who will, in turn, pay it to the respective service providers. The respondent must pay this amount on the first day of each month, upon receiving proof of the payment made by the applicant to the respective service providers.

7. Costs

[46] As far as costs are concerned, on 6 August 2024, Samela J granted an order by agreement in respect of care and contact of the parties' children. The matter was subsequently postponed to 30 August 2024 to address the remaining relief. Cost stood over for later determination. In my view, each party must pay its own costs in respect of the costs incurred on 30 August 2024. On 30 August 2024, the matter was crowded due to the unavailability of the presiding officer. The matter was postponed to 13 September 2024. No order as to costs was granted in respect of those proceedings.

[47] In my view, the postponement of the matter was not due to the fault of the parties, and each party must pay its own costs for that sitting. On 13 September 2024, Justice Fortuin considered the applicant's application in terms of Rule 43(5), and granted the applicant leave to file a supplementary affidavit and postponed the matter to 10 October 2024. The applicant was successful in that application and must be paid her costs. To this end, the respondent is ordered to pay the costs of the remand of 13 September 2024 and of that application.

[48] Furthermore, the Rule 43(5) application was necessary as it clearly showed that the respondent did not fully and honestly disclose his income. The court was in a better position to make an informed decision after perusing the supplementary affidavit and annexures pursuant to the Rule 43(5) order. Each party is ordered to pay its own costs in respect of the clarification application.

LEKHULENI J

JUDGE OF THE HIGH
COURT

APPEARANCES

For the Applicant: Adv Bartman

Instructed by: Cluver Markotter Inc

For the Respondent: Adv Van der Schyf

Instructed by: Mosdell, Pama, & Cox