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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, JOHANNESBURG

CASE 4392/2022

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: **YES**

28/10/25

In the matter between:

MCO

APPLICANT

and

CTO

RESPONDENT

*Judgment handed down electronically via email by circulation to the Registrar of the Court, the parties Legal Representative and uploading in the case file on Caselines.
The date of the judgment handed down shall be deemed to be 28 October 2025.*

JUDGMENT RULE 43 APPLICATION

Matthys AJ

A. INTRODUCTION

[1] This is an opposed application in terms of Uniform Rule 43.

The applicant (Mrs O) seeks an order *pendente lite* against the respondent (Mr O), for spousal maintenance and a contribution towards her legal costs related to their ongoing divorce action.

[2] In brief, the parties jointly own an immovable property, which was their former matrimonial home. The applicant seeks an order compelling the respondent to pay all property costs, including the mortgage bond, all municipal expenses (rates, water, electricity, and refuse) and maintenance. She further claims spousal maintenance of R20,000 per month and a contribution towards her legal costs in the amount of R2 700 000, payable in six equal instalments of R450 000. Lastly, the applicant requests a cost order for this application against the respondent. The respondent opposes the application in its entirety and prays for the application to be dismissed with punitive costs.

B. BACKGROUND

[3] The applicant is a practicing Attorney and the respondent is the Group Chief Technology Officer (CTO) and Co-Founder of the company Genasys. On 25 November 2006, they entered into a marriage, out of community of property with the accrual system, as provided for by Chapter 1 of the Matrimonial Property Act, 88 of 1984.

- [4] The parties separated in December 2021, but the marriage subsists for about nineteen years. Both parties are relatively young, in their forties, and they have no children together. As their marital relationship has irretrievably broken down, it is agreed that the union should be dissolved.
- [5] The applicant instituted divorce proceedings in February 2022, to which the respondent pleaded and counterclaimed. In the divorce action, they reciprocally, pray for a decree of divorce and the calculation of the accrual in their separate estates, to determine any claim as provided for by section 3(1) of the Matrimonial Property Act. The respondent specifically seeks for the sale of their jointly owned immovable property, whereas the applicant requests that a receiver/liquidator be appointed to handle its disposal.
- [6] Pleadings in the main action closed on 27 July 2022 and a trial date was set for 5 August 2024. However, in March 2024, the applicant challenged the interpretation of their antenuptial contract (ANC). The respondent then deemed it prudent, to bring a separation application under Rule 33(4), seeking a declaration that his Genasys shares and all proceeds from it, are excluded from the accrual calculation, by virtue of Clause 6.1 of the ANC and for the interpretation of the ANC, be separated, from the remaining issues in the divorce. This separation application was since heard, and has been dismissed.
- [7] The applicant launched this application on 5 July 2024, one month before the scheduled trial date, which has since pass. A notice of intention to amend the applicant's particulars of claim is also on file. The proposed amendment seeks to hold forth, that

certain terms of the ANC are contradictory, rendering the ANC void, and that the parties should therefore be declared married in community of property. The respondent opposes this proposed amendment and a date for the opposed application for leave to amend remains pending.

C. THE APPLICATION

Spousal Maintenance

[8] In this regard, I take guidance from the flexible standard set for Rule 43 applications, as established in *Taute v Taute*¹. The court must exercise its discretion based strictly on the particular facts of each case. Crucially, the judgment defined the limits of interim maintenance, to the extent that, whilst the marital standard of living is a factor for consideration, an applicant is not guaranteed the maintenance necessary to sustain that precise lifestyle. Hart AJ held, the entitlement is to reasonable maintenance, which must be balanced against the applicant's actual and reasonable requirements and the respondent's capacity to pay, which may, in exceptional circumstances, require using capital, instead of income².

[9] In this matter, both parties successfully pursued their respective professions and generated income throughout the marriage. While it is acknowledged that the respondent was not the sole financial provider, he is nonetheless the financially stronger party, considered his monthly income and assets³. The applicant earns an average of

¹ *Taute v Taute* 1974 (2) SA 675 (E)

² Also see *B R v D R* (14189/2022) [2023] ZAWCHC 28 (17 March 2023) para 4

³ *Inter alia* his Shareholding in Genasys ; and other Investments .

R64,577 per month, whereas the respondent's income is approximately R147 424 monthly.

[10] The applicant's current monthly expenses are estimated at R69 255 and that of the respondent estimated at R166 859. I considered that, whilst cohabiting, the parties sustained a high standard of living, evidenced by, *inter alia*, residency in their upmarket matrimonial home, luxury motor vehicles, domestic staff, extensive local and international travel, entertaining, gifting, and personal grooming. However, the ensuing separation has introduced new financial burdens, not limited to separate accommodation and exorbitant legal costs. It is therefore required of both parties to curtail their current expenditure and to adapt to their new reality.

[11] The evidence regarding the parties' utility disputes with Eskom and the municipality is astonishing. Specifically concerning the electricity account, it is alleged that the dispute with Eskom arose because no accounts were ever provided for the entire period of supply. Furthermore, it is alleged that the respondent failed to ensure an account was opened with Eskom, and through dishonest means, he secured electricity supply to the property for over 12 years. The applicant avers that she was unaware that the electricity was unpaid. Eskom has since advised that it will be back-billing from the date the property was acquired. Consequently, an astronomical electricity account is anticipated.

[12] The evidence shows, that around September 2023, while the applicant exclusively occupied the former matrimonial home, the water account incurred a R12,000 arrears. The respondent settled the account in full. A month later, the bill surged to over R87 000. As the water meter was likely not faulty, and the high usage occurred over

only one month, the respondent suspects the applicant maliciously caused the exorbitant bill, exploiting his earlier good-faith undertaking to pay this account. The respondent now pays a fixed average of R4500 monthly towards the water account.

[13] The applicant no longer resides in the property, because there has been no water or electricity supply since November 2024. Consequently, the applicant avers that it would be impossible to sell the property for an amount sufficient to cover the outstanding bond, COJ account and Eskom costs.

[14] The evidence demonstrates that the utility account disputes, constitute a counterproductive 'blame game,' stemming from the parties' refusal to cooperate effectively. This self-destructive attitude, fundamentally fails to meet the expected standard of conduct for joint property owners of their standing. It is however not overlooked, that whilst the applicant has had sole occupation of the matrimonial home, between December 2021 and November 2024 (about 3yrs), the respondent continues to contribute R36 147.54 monthly towards the property. This sum covers the bond (R28 242.54), insurance (R3 405), and the COJ water account (R4 500). Importantly, this contribution is maintained even though the applicant has terminated her usual R15 000 contribution.

[15] I find that as co-owners of their immovable property, who benefited from the utility supply, both parties were and remain jointly responsible for ensuring settlement of these accounts and there is no equitable basis to absolve the applicant from this obligation.

[16] Furthermore, upon review of the parties' monthly expenses, it is clear that several listed items, particularly amongst that of the applicant are not necessities. Divorce inevitably brings about a change in circumstances and expenditures must be reasonably curtailed to ensure financial prudence and sustainability.

[17] The general judicial trend appears to be to award minimal or no maintenance when an applicant is characterized by factors such as being relatively young, well-qualified, having no children, working consistently, being in good health, or having a short-lived marriage. This approach is consistent with the goal of achieving a "clean break" and the principle that maintenance should not be awarded to a party who can support him/herself ⁴. This context is critical because the applicant in this matter has acknowledged this reality, by maintaining herself thus far, and not claiming spousal maintenance in the main action.

[18] Given the evidence that the applicant is gainfully employed and successful in her chosen career, there can be no doubt that she is able to maintain herself. Save for the expenses the respondent currently pays towards their jointly owned immovable property, I am inclined to find that the applicant has not established the necessary jurisdictional facts, upon which additional maintenance *pendente lite*, may be granted in her favour. Consequently, there shall be no additional interim spousal maintenance awarded to the applicant, beyond the respondent's current contributions.

⁴ Consider *Kroon v Kroon* 1986 (4) SA 616 (E) ; *Nilsson v Nilsson* 1984 (2) 294 (C)

Legal Costs

[19] In considering the applicant's claim for a contribution to her legal costs, I recognize that although she can maintain herself, the vast difference in the parties' financial resources creates an imbalance. The applicant may be prevented from effectively pursuing her case against the financially stronger respondent without such a contribution.

[20] It is further common cause that the parties intended to enter into a marriage out of community of property with the accrual system, as evidenced by their ANC. The foundational legal principle of this marital regime is that during the subsistence of the marriage, each spouse's estate remains separate, allowing them to independently manage their respective assets and liabilities. The spouses' right to a share in the net growth, or accrual, of the combined estates arises only upon the dissolution of the marriage. This principle, therefore, continues to govern the financial relationship between the parties pending the grant of a divorce decree.

[21] Notwithstanding their marital regime, the parties retain a reciprocal duty of support to each other, throughout the marriage, an obligation inherent to the bonds of marriage. Consequently, the applicant's claim for a contribution towards her legal costs is *sui generis* as it is rooted in the reciprocal duty of support between spouses⁵.

[22] Furthermore, I considered that the remedy under Rule 43(1)(b) must be interpreted consistent with the Constitution, particularly the right to equality and equal protection of the law. The core aim of providing a contribution toward legal costs is to secure equality

⁵ *Cary v Cary*: 1999 (3) SA 615 (C); *AF v MF*: 2019 (6) SA 422 (WCC)

of arms for the financially weaker party in the divorce action, ensuring due regard for the rights to dignity and access to courts ⁶.

[23] In light of the general principles and having regard to the specific circumstances of this case, including the financial positions of the parties and the issues germane to the pending divorce action, I now proceed, in the exercise of my judicial discretion, to make an equitable determination concerning the applicant's claim for a contribution toward her legal costs.

[24] The Applicant's claim for a contribution to her legal costs is in the amount of R2 700 000 incorporating legal costs of R622 390.88 up until the first day of trial and an estimated R1 803 200 for a forensic audit.

[25] Having regard to the issues in the main action, I am of the view that while the determination of the accrual entails a degree of complexity for the trial, its ultimate resolution is largely contingent upon the parties' approach to the litigation and their sincerity in pursuing alternative dispute resolution. I am advised, that effective settlement engagements or mediation have not yet taken place, as mandated by the court's practice directive.⁷

[26] The level of acrimony evidenced by the parties' repeated initiation of litigation against one another over the years, constitutes a significant impediment to amicable resolution.

⁶ See sections 9; 10;34 of the Constitution 1996

⁷ Introducing mandatory mediation in the Gauteng division effective from 22 April 2025.

This history of litigation has demonstrably resulted in personal hardship and the accumulation of unnecessary legal expenditure⁸.

[27] I further note the respondent's acknowledgement (albeit on a without prejudice basis) of the applicant's need for a contribution toward her legal costs. Crucially, I find that the respondent's financial position, characterized by his monthly income and capital assets, renders such a contribution both possible and affordable.

[28] Having regard to the applicant's projected legal costs, and acknowledging that an applicant is only entitled to a contribution and not all anticipated costs, even in a case where the respondent may be able to afford to pay, I deem an amount of R400 000 payable in equal instalments, as a reasonable contribution.

[29] Although the preceding finding has been made, the applicant's claim for the costs of a forensic audit must be rejected. The application provides no factual foundation to substantiate the general allegation of the respondent's lack of transparency. Critically, the supporting quotation is entirely unreliable. It was provided by Mr. Mashamba of JM Capital (Pty) Ltd on 3 July 2024, before the entity was legally incorporated. On the available evidence, I also harbor doubts regarding the expert's regulatory competency. The unsworn scope of work quoted for, is too vague to establish a necessary and reliable cost estimate. Whereas it may be required for both parties to employ this type of service, I find the applicant's claim insufficiently substantiated and premature.

⁸ Including an action for Defamation; Domestic Violence applications and Criminal charges.

[30] Considered the divided success in this Rule 43 application, I deem it a just order as to costs, to order costs in the cause of the divorce action. The following order shall issue.

Order

1. The respondent shall continue to make monthly payment of the Mortgage Bond in the amount of R28 242.54; Insurance premium in the amount of R3 405 and the COJ water account in the amount of R4 500, directly to the respective service providers, in respect of the immovable property situated at 132 Sixth street, Parkmore, Sandton, Johannesburg;
2. The respondent shall make contribution to the applicant's legal cost in the amount of R400 000 (four hundred thousand) payable in 10 (ten) equal installments of R40 000 (forty thousand) per month, on or before the last day of the first month after the granting of this order and thereafter on or before the last day of each subsequent month until the contribution is paid in full.
3. The instalments referred to in paragraph 2 herein, shall be paid into the Trust Account of the applicant's attorneys (Bulus Attorneys) the details of which appear hereunder:

TRUST ACCOUNT DETAILS

NEDBANK: MELROSE ARCH

ACC HOLDER: BOLUS ATTORNEYS TRUST ACCOUNT

ACC NO: 1[...]

BRANCH CODE: 1[...]

REFERENCE: C[...]

4. Costs in the cause of the divorce action.

**MATTHYS AJ
JUDGE (ACTING) OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Appearance:

On behalf of the applicant: Advocate N Riley instructed by Bolus Attorneys

On behalf of the respondent: Advocate. Ilse Vermaak - Hay SC and Advocate S Bosch instructed by Hannes Pretorius Bock & Bryant Attorneys