



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: **2022-052384**

In the matter between:

- | | |
|----|----------------------------------|
| 1. | Reportable – No |
| 2. | Of interest to other Judges – No |
| 3. | Revised – No |

Date of the Order: 27.10.2025

V.M.K.

Applicant

and

P.L.M.

Respondent

JUDGMENT

PRETORIUS AJ

- [1] This is a reserved Judgment in respect of an opposed Rule 43(6) Application and wherein the Applicant is the wife and the Respondent the husband. In the pending divorce action, the Plaintiff is the husband and the Defendant the wife. There is one minor child born from the marriage between the parties, a girl, born on *04 July 2011*, who is currently 14 years of age.¹
- [2] The extant Rule 43 Order in respect of which the Applicant seeks a variation, is an Order granted by Speier AJ on *28 November 2024* ("*the Speier Order*"),² and in terms whereof the Respondent was ordered to make defined monthly maintenance contributions in respect of the minor child, as follows:-
- 2.1. R8,600.00 towards the minor child's school fees and all related increases in respect of the child's school fees;
- 2.2. R6,500.00 towards the nanny's salary and all related increases in respect to of the nanny's salary;
- 2.3. R4,000.00 towards the minor child's clothing and other extra-mural activities;
- 2.4. R750.00 towards the minor child's dance classes;
- 2.5. full payment in respect of the minor child's medical aid premiums.³
- [3] The Respondent was furthermore ordered by Speier AJ to pay the costs of the Application on the party and party scale.⁴
- [4] The relief sought by the Applicant in terms of the Application before me was couched in the alternative, with the primary relief sought being in terms of Rule

¹ Founding Affidavit: paras 6 and 7, CaseLines 12-54

² The Speier Order: CaseLines 22-7 to 22-8

³ Ibid: Prayers 1.1 to 1.5

⁴ Ibid: Prayer 2

43(6) for an increase in the monthly maintenance contribution to R32,837.59, and with the alternative relief being in terms of the provisions of Rule 42(1)(b) for a variation of *the Speier Order* on the basis of the *the Speier Order* allegedly contains an omission that results in ambiguity.⁵ In terms of the the Applicant's amended Notice of Motion, the following relief was accordingly sought:-⁶

4.1. an order in terms of Rule 43(6) of the Uniform Rules of Court:-

4.1.1. that the Respondent be ordered to make a monthly child maintenance contribution in the amount of R32,837.59, *pendente lite*;

4.1.2. that the Respondent's maintenance contribution be paid to the Applicant's Investec bank account on the 27th day of each month, from the month following the granting of the Order;

4.1.3. that the Respondent's maintenance contributions shall automatically increase in accordance with the CPI Index on the anniversary date of the granting of the Order;

4.2. in the alternative, and in terms of Rule 42(1)(b), the variation of *the Speier Order*, by the insertion of the following paragraphs therein:-

"3. *The Respondent's contributions in terms of paragraphs 1.1 to 1.5 are to be paid into the Applicant's Investec Bank Account ... on or before the 27th of each month, from the month following the granting of the Order.*

4. *The Respondent's contributions in terms of paragraphs 1.1 to 1.5 for December 2024, to be paid to the Applicant's Investec Bank Account ... within 7 days of the granting of this Order.*";

⁵ Applicant's Heads of Argument: par 38, CaseLines 12-194

⁶ Amended Notice of Motion: CaseLines 12-98 to 12-100

4.3. that the Respondent be ordered to pay the costs of this Application on an attorney and client scale in terms of Scale C.”⁷

[5] The Respondent also seeks relief in the alternative. The primary relief sought is that the Application be dismissed, with the Applicant’s legal representatives being directed to file an Affidavit within 15 days showing cause: “*why they should not be deprived of the costs and mulcted with costs de bonis propriis*”,⁸ together with directives regarding the filing of further Affidavits and issues pertinent to the enrolment of the aforesaid relief sought. In the alternative, the Respondent seeks that the Application be dismissed with costs.⁹

[6] It is common cause that:-

6.1. no written reasons accompanied *the Speier Order*;

6.2. neither party has placed before me a transcript of the proceedings that took place before Speier AJ on *28 November 2024*.

[7] By virtue of the absence of the transcript of the proceedings which took place before Speier AJ, and upon a query from me in this regard to Applicant’s Counsel during oral submissions before me, specifically in relation to the alternative relief sought by the Applicant in terms of Rule 42(1)(b), the Applicant’s Counsel abandoned the aforesaid relief.

[8] However, the absence of the transcript of the proceedings before Speier AJ also impacts the relief sought in terms of Rule 43(6) and the Respondent’s opposition thereto. I say this for the following reasons:-

⁷ Applicant’s amended Notice of Motion: CaseLines 12-98 to 12-100

⁸ Respondent’s Practice Note: paras 4.1 to 4.4, Caselines 12-175

⁹ Respondent’s Practice Note: par 4.5, Caselines 12-175

- 8.1. it is common cause that the minor child commenced attending a new school with effect from the 2025 academic year;¹⁰
- 8.2. the Applicant states that: *"The expected change in circumstances [the change in the minor child's school] was detailed to the Honourable Court in my Rule 43 application and during the previous hearing, however the Court indicated that it could not deal with circumstances that are not currently in effect."*¹¹;
- 8.3. in this regard the Applicant further states that as a result, *the Speier Order* made no provision regarding maintenance where the minor child was no longer attending her former school;¹²
- 8.4. the Applicant, however, also avers that the change in the minor child's schooling is a material change of circumstances in that most of the costs which were due: *"to different sources and service providers are now paid to [the new] school directly."*¹³
- 8.5. the Respondent disputes the foregoing and in this regard admits that the: *"expected change in circumstances was detailed in the Rule 43 application and during the previous hearing"*, but denies that Speier AJ indicated that he could not deal with circumstances that are not currently in effect.¹⁴ The Respondent further states that the Court had indicated that it has no authority to: *"make such an order that would have [the] effect of directing the parties to enrol the minor child in a particular school. The Court indicate[d] further that this is a matter for the parties to resolve amicably."*¹⁵
- 8.6. the Respondent goes on to say that should the Applicant wish to rely on the transcripts of the proceedings before Speier AJ: *"she must obtain same and place it before this Court."*¹⁶

¹⁰ Founding Affidavit: par 38, CaseLines 12-61; Respondent's Opposing Affidavit: par 107, CaseLines 12-154

¹¹ Founding Affidavit: par 37, CaseLines 12-60 to 12-61

¹² Ibid

¹³ Founding Affidavit: par 40, CaseLines 12-61

¹⁴ Respondent's Opposing Affidavit: par 104, Caselines 12-153

¹⁵ Respondent's Opposing Affidavit: par 105, Caselines 12-153

¹⁶ Respondent's Opposing Affidavit: par 106, Caselines 12-153

8.7. the Respondent further avers that because of what he alleges took place before Speier AJ, that:-

8.7.1. the matter is *res judicata*, as the relief sought by the Applicant in her amended Notice of Motion is the similar relief that Speier AJ considered and pronounced upon and accordingly the Court is *functus officio*;¹⁷

8.7.2. the Applicant is effectively appealing *the Speier Order* by virtue of the relief sought by her;¹⁸

8.7.3. the Application is an abuse of Court process and accordingly the Applicant's representatives should be "*mulcted with costs*" and also be deprived of their legal costs;¹⁹

[9] Rule 43(6) provides as follows:-

"The Court may, on the same procedure, vary its decision in the event of a material change occurring in the circumstances of either party or child, or the contribution towards costs proving inadequate."

[10] It is trite that the Applicant bears the onus of establishing on a balance of probabilities that a material change has occurred since the granting of *the Speier Order*. To succeed, the Applicant must demonstrate, not only that a change or even a significant change in circumstances has occurred but must place sufficient facts before the Court to enable it to determine the materiality of the change in the context of the Applicant's broader financial circumstances.

[11] The question is whether the fact that the minor child changed schools with effect from the 2025 academic year constitutes a material fact that was not available

¹⁷ Respondent's Opposing Affidavit: paras 6, and 7 Caselines 12-131 and Respondent's Heads of Argument: paras 8, 10.1 and 10.2, CaseLines 12-187 and 12-189

¹⁸ Respondent's Heads of Argument: par 10.3, CaseLines 12-189

¹⁹ Respondent's Heads of Argument: par 10.4, CaseLines 12-189 and par 66.2, CaseLines 12-214

at the time of the original hearing before Speier AJ, and thus constitutes a material change in circumstances warranting a variation of *the Speier Order* in terms of Rule 43(6), as sought by the Applicant.

- [12] From what is stated above, it is common cause that at the time of the hearing of the matter before Speier AJ, the fact that the minor child would change school was before him. The dispute lies in whether Speier AJ took this into consideration when granting *the Speier Order*. The Applicant submits that he did not, and that the minor child, in fact changing school with effect from the 2025 academic year, constitutes a material change in circumstances. For the reasons stated above, the Respondent disputes this.
- [13] Prayer 1.1 of *the Speier Order* provides that the Respondent is to pay the sum of R8,600.00 towards the minor child's school fees and all related increases in respect of the child's school fees.²⁰ On the face of it, from the underlined wording, there appears to be scope for the argument that he indeed took this into consideration particularly against the backdrop of the subsequent submission by the Applicant, i.e. on her own version, that the Respondent has been paying R17,200.00 directly to the minor child's new school, which sum constitutes the school fees portion of the minor child's costs at her new school where she is boarding.²¹
- [14] Having said that, in the absence of the transcript of the proceedings, this dispute cannot be resolved nor determined by me. What it does, however, result in, is that the Applicant has not passed the muster as required in terms of Rule 43(6) of establishing a material change in circumstances to justify a variation of *the Speier Order*. Accordingly the Application stands to be dismissed.
- [15] That leaves the aspect of costs. In the normal course the costs would have followed the result. Given, however, that neither party favoured this Court with the transcript of the proceedings before Speier J, yet both of them made

²⁰ The Speier Order: Prayer 1.1, CaseLines 22-7

²¹ Applicant's Supplementary Heads of Argument: par 40, CaseLines 12-231, read with the Founding Affidavit: par 39, CaseLines 12-61, and further read with the Statements from the minor child's school for the period January 2025 to July 2025, uploaded to Caselines at: 12-216 to 12-227

submissions on what would have transpired, and further both of them relied upon what would have transpired in regard to the respective relief as sought by them, I am of the view that, in the circumstances, each party should bear their own costs.

ORDER

Accordingly, I make the following Order:-

1. the Application in terms of Rule 43(6) is dismissed;
2. there is no order as to costs.



H.D.C. PRETORIUS

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Electronically submitted

Delivered: This Order was prepared and authored by the Acting Judge whose name is reflected herein and is handed down electronically by circulation to the Parties / their legal representatives by e-mail and by uploading it to the electronic file of this matter on Court Online/CaseLines. The date of the Judgment is deemed to be 27 October 2025.

Dates Of Hearing:

23 July 2025

Date Of Judgment:

27 October 2025

APPEARANCES:

For Applicant:

Advocate S. Shongwe

Instructed by: T. M. Mahapa Inc. Attorneys

For Respondent:

Mr M. Marweshe (Attorney)

Instructed by: Marweshe Attorneys Inc