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

Not Reportable

Case no: 2025-127498

In the matter between:

J[...] M[...] V[...] W[...]

APPLICANT

and

R[...] M[...] V[...] W[...]

RESPONDENT

Coram: COOKE AJ

Heard: 23 October 2025

Judgment: 7 November 2025

ORDER

[1] From the date of this order, and pending the determination of the divorce action between the parties, the respondent shall maintain the applicant and the parties' major children as follows:

(a) by payment to the applicant of an amount of R25 000 per month, each such payment to be made without deduction or set-off, on or before two working days before the first day of every month, by way of electronic funds transfer or debit order, to be received into such bank account as the applicant may nominate from time to time (for the avoidance of doubt the first such payment shall be made at the end of November 2025);

(b) that the amount referred to in paragraph 1(a) above shall increase annually in accordance with the percentage increase in the Consumer Price Index as published by Statistics South Africa during the preceding year, the first such increase to be effective as of November 2026;

(c) by effecting payment of the monthly premium in respect of the medical aid subscription and gap cover for the applicant and the children;

(d) by effecting payment of the full cost of the children's tertiary education fees; and

(e) by effecting payment of the costs of all medical expenses reasonably incurred by the applicant and the children, in private health care, which are not covered by the respondent's medical aid scheme, including but not limited to, medical, dental, surgical, pharmaceutical (including levies) hospital, orthodontic and ophthalmic (including spectacles and contact lenses) treatment required by the applicant and the children, and any sums payable to a physiotherapist/chiropractor, psychiatrist, therapist (including psychotherapist, speech therapist or occupational therapist), practitioner of holistic medicine, and other medical expenses which are not covered by the aforesaid medical aid scheme. The respondent shall reimburse the applicant for any such costs incurred by her, or pay the relevant service provider, within five days of receipt of the relevant invoice or receipt.

[2] The applicant shall also continue to pay the further expenses related to the applicant and the children which were listed in the schedule handed up at the hearing of the rule 43 application, save for the R15 000 (R5 000 x 3) for groceries which is included in the monthly amount set out in para 1(a) above.

[3] The costs of this application shall be costs in the trial.

JUDGMENT

[1] The applicant is a 53-year-old pre-school teacher. The respondent is a director of an entity known as L[...] T[...] E[...] Development Enterprise. He is 59 years old. The parties were married to each other on 16 December 1992 out of community of property by antenuptial contract, incorporating the accrual system. In the antenuptial contract the parties both declared that the assets in their respective estates were nil. Two sons were born of their marriage. Both are now majors.

[2] On about 29 April 2024 the applicant instituted divorce proceedings against the respondent. In her particulars of claim she sought a decree of divorce and orders for maintenance to be paid to the children¹ until they become self-supporting. She also sought personal maintenance for herself until her death or re-marriage as well as various other ancillary orders. The respondent delivered a plea and claim in reconvention in which he sought a decree of divorce and an order implementing the terms of the antenuptial contract, together with an order relating to payment of maintenance for the children until they reach the age of 25. The pleadings in the divorce action have closed and the applicant's attorney has taken steps to have the matter placed on the continuous roll and applied for a date for a pre-trial hearing. It appears that the parties attempted to engage

¹ See *Z v Z* 2022 (5) SA 451 (SCA) which found that ss 6(1)(a) and 6(3) of the Divorce Act vest parents with the requisite legal standing to claim maintenance for and on behalf of their dependent adult children upon their divorce.

in mediation but, for reasons which are not relevant to this application, the attempts failed.

[4] This is an application in terms of uniform rule 43 in which the applicant seeks the following relief:

- (a) cash maintenance for her and the children in the sum of R45 500;
- (b) the maintenance be increased annually in accordance with the consumer price index;
- (c) the respondent continues to pay the premium of the children's medical aid subscription and gap cover;
- (d) the respondent continues to cover the costs of the children's tertiary education fees;
- (e) the respondent pays the medical expenses not covered by medical aid for the applicant and the children;
- (f) the respondent pays an initial contribution to the applicant's legal costs in the sum of R310 000; and
- (g) the respondent be directed to pay the costs of the application.

[5] Both parties criticised the other for not having made a full disclosure. For his part, the respondent complained that the applicant had not annexed documentation to support the assertions made in her affidavit. In my view, for the reasons given by Davis AJ in *AF v MF*, the applicant

was not required to do so.² Both sets of affidavits contained some errors and omissions. But I do not think these indiscretions were of such a nature that either the claim or the defence should be dismissed on that ground alone.

[6] The parties raised several further contentions in their affidavits, and in full oral argument. Having regard to the nature of rule 43 proceedings, I do not think it is appropriate to deal with all the contentions in this judgment. Although I have carefully considered all contentions, in what follows I focus on what I consider to be the primary issues.

[7] The applicant provided a schedule of expenses for her and the children, which showed that her total monthly expenses are about R73 500. She acknowledged that the respondent is currently paying certain of these expenses in the amount of about R7 500 a month, and in addition he is contributing an amount of R15 000 towards a credit card every month. The applicant alleged that she receives post-tax income from the school of R20 404 a month, as well as rental income from her sister of R11 000 a month (of which she pays tax of R3 327). Based on these figures the applicant contended that she has a monthly shortfall of about R23 000. Having regard to the amount of about R22 500 already being paid by the respondent, she claims a total maintenance contribution from the respondent of R45 500.

[8] I consider that the applicant's assessment of her expenses is not excessive. The respondent took issue with the reduced rental offered to

² 2019 (6) SA 422 (WCC) (AF) para 22.

the applicant's sister. However, I agree with the applicant that it is prudent to rent the cottage to a family member rather than taking a risk with a stranger for the sake of an additional couple of thousand Rand per month.

[9] As regards the respondent's income, his most recent payslip indicates that he receives a nett monthly income of about R93 000. Last year the respondent was also paid a Christmas bonus of R57 000. With respect to his expenses, the schedule annexed to his answering affidavit contained several errors. A revised schedule was handed up at the hearing. According to the revised schedule his current monthly expenses are slightly less than R100 000. This schedule includes the expenses incurred in relation to the applicant and their children. In my view there are certain items in this schedule which could reasonably be reduced. For instance, a retirement annuity payment of just over R15 000 appears to be very high in the circumstances, especially as his employer also makes a contribution towards his retirement annuity of about R5 700 a month. The respondent also included an item of R5 000 for legal fees which should not, in my view, form part of the schedule of expenses (the applicant did not include any such item in her schedule).

[10] To my mind there is scope for the respondent to contribute a further R10 000 per month to the applicant, over and above his existing contributions. I also think that it is reasonable to require the respondent to pay any medical expenses reasonably incurred by the applicant and the children, which are not covered by the medical aid. In so far as the respondent is already paying R15 000 a month to the applicant, the

additional contribution will mean that this monthly payment will increase to R25 000.

[11] Such a payment will not meet the whole of the applicant's shortfall, but the applicant's demands must be shaped by the respondent's means. One of the fundamental principles for an award of maintenance is an ability to pay on the part of the spouse from whom maintenance is claimed. This is a factual matter. A spouse has no right to receive maintenance from the other spouse unless that spouse is in a financial position to provide it.³ I have also taken into account the fact that at least one of the children appears to earn sufficient money to contribute to the applicant's household costs.

[12] I note that the respondent's counsel indicated at the hearing that his client intended to carry on paying all the amounts listed in the revised schedule. Some of these amounts, such as the costs of medical aid and tertiary education, are covered by the relief specifically sought by the applicant. I will, however, make an order that the respondent shall also continue paying the balance of the items, not specifically addressed, which are currently being paid by him. This does not include the item in the schedule for groceries of R15 000 (3 x R5 000), which is covered by the monthly amount of R25 000.

[13] I turn now to the issue of the contribution to costs. To justify such an order the applicant must show that having regard to the circumstances of the case, the financial position of the parties, and the particular issues

³ *Reyneke v Reyneke* 1990 (3) SA 927 (E) at 932J-933F.

involved in the pending litigation, a contribution is necessary to enable her to present her case adequately before the court.⁴

[14] In my view, in this matter it is appropriate to have regard primarily to the parties' respective assets in assessing whether such a contribution should be made by the respondent. At the hearing, counsel for the applicant contended that regard should also be had to the income of the respondent, and it was suggested that because the respondent earns a far greater salary, he should be able to finance the applicant's legal costs. Having regard to the increased monthly maintenance that the respondent will be required to make, there is unlikely to be much remaining in his income for the respondent to contribute to the applicant's legal costs. The respondent will not be 'cash flush', as suggested by the applicant. In fact, both parties' income will probably be exhausted by their expenses. It follows, to my mind, that they will both have to either loan money, or draw on their capital, to pay for their ongoing legal costs. The respondent's greater salary is therefore of little moment in determining whether he should be directed to contribute to the applicant's costs.

[15] As regards the parties' respective financial positions, the applicant has assets valued at about R4.7 million. This is based on a valuation of the immovable property which is now three years old. It is therefore likely that the applicant's asset position is in fact better than this. According to the applicant her only liabilities are the balance on the mortgage bond (about R290 000) and loans from family and friends (R70 000). The applicant's nett asset position is therefore at least some R4.3 million.

⁴ *Van Rippen v Van Rippen* 1949 (4) SA 634 (C) at 637.

[16] On the other hand, according to the applicant, the respondent has total assets amounting to about R3.5 million and total liabilities amounting to about R140 000. This was based on an assessment in August 2024. Although the respondent was invited to provide an updated disclosure of his assets and liabilities, he failed to do so. This is regrettable. The applicant did, however, state in her affidavit that she did not expect that the respondent's financial position would have changed in any material way since the date of the previous assessment. The applicant's counsel also rejected a suggestion that the respondent be permitted to file a further affidavit clarifying his current situation. In these circumstances, and having regard to the fact that the applicant bears the onus,⁵⁵ it seems to me that I must decide the matter on the figures available to me. On these figures the respondent has nett assets of about R3.4 million.

[17] Having regard to the respective nett positions, it appears that the applicant is in a significantly stronger financial position, having nett assets of at least R4.3 million, compared to the respondent's nett assets of about R3.4 million. Although in the divorce action the applicant seeks an order that the respondent be directed to pay her an amount equal to one half of the difference between the accrual of their respective estates, it is instructive that the applicant concedes in these rule 43 proceedings that 'at this stage' she does not have any such claim. Having regard to the joint declaration of nil value in the antenuptial contract, it is implicit in this concession that the applicant's assets currently exceed those of the respondent.

⁵⁵ *MY v JY* (2024/013982) [2024] ZAGPJHC 684 (26 July 2024) para 48.

[18] The applicant owns the matrimonial home. She alleged that the respondent took funds out of the bond on this home over the period 1 March 2022 to 31 May 2023. She did not suggest that she would not likewise be entitled to access funds in the home loan. It appears from the monthly statement annexed to the answering affidavit that the total loan amount is R800 000, and the balance owed is just over R290 000. It seems to me that it is likely that the applicant will be able to access funds from the home loan, at least up to this loan amount (the balance available is thus about R500 000).

[19] This is not a case where the husband controls the family resources, and the wife has no access to resources.⁶ Nor is there a marked imbalance in the financial resources available to the parties to litigate.⁷ Granted, the respondent earns substantially more than the applicant. But the effect of the maintenance order is that the parties' nett income position will be roughly the same. In these circumstances, I do not consider that a contribution to costs is required to enable the applicant to present her case adequately.

[20] Finally, regarding the costs of this application, it is usual to order that the costs should be in the trial.⁸ I do not think that there is any reason to depart from the usual order.

⁶ *SH v MH* 2023 (6) SA 279 (GJ) para 76.

⁷ *AF* para 41.

⁸ *Senior v Senior* 1999 (4) SA 955 (W) at 967D–H

[21] The order granted follows the wording of the notice of motion, albeit with certain adjustments which I consider to be logical and necessary.

Cooke AJ:

DJ COOKE
ACTING JUDGE OF THE HIGH COURT

Appearances

For applicants:	C Reilly
Instructed by:	Norman, Wink & Stephens
For first respondent:	G Potgieter
Instructed by:	Rickma Coxon & Associates Inc.