

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2022-016053

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

F. MARCANDONATOS

01 December 2025

In the matter between:

S: D M

Applicant

and

S: C J

Respondent

This judgment was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded to Case Lines. The date and time for hand-down is deemed to be 10h00 on 01 DECEMBER 2025

JUDGMENT

MARCANDONATOS AJ:

INTRODUCTION

- [1] The parties herein have been cited by their full names. In the interests of the parties, I shall follow standard practice, to refer to the parties themselves by initials only and I shall interchangeably refer to Applicant as "*Mrs S*" and to Respondent as "*Mr S*".
- [2] This is an opposed Application for the rescission of a Rule 43 Judgment/Order granted by Mahosi J on *05 December 2024*, in terms whereof the following Order was made, *pendente lite*:-¹
- 2.1. *Mrs S* (Respondent in the Rule 43 Application) to pay maintenance to *Mr S* (Applicant in the Rule 43 Application), in the sum of R30 000.00 from *15 December 2024* and thereafter on or before the 1st day of each consecutive month;
- 2.2. *Mrs S* to retain *Mr S* on her medical fund and cover all reasonable medical expenses not covered by the medical aid;
- 2.3. *Mrs S* to pay for the finance instalment, maintenance plan, repairs and insurance premiums for the BMW 4 series used by *Mr S*;
- 2.4. Anthony Townsend, appointed by the parties, to conduct a comprehensive psycho-legal investigation, file a Report and to make recommendations regarding the minor child's care and contact;

¹ FA: annexure "FA1", CL008-29 to CL008-31

- 2.5. *Mrs S* to pay for the costs of the investigation as contemplated in paragraph 2.4 above;
- 2.6. pending the finalisation of the investigation as contemplated in paragraph 2.4 above:-
 - 2.6.1. both parties to retain full parental responsibilities and rights regarding the care, contact, guardianship and maintenance of the minor child as contemplated in Section 18(2)(a) of the Children's Act, 38 of 2005;
 - 2.6.2. the primary residence of the minor child to remain with *Mrs S*;
 - 2.6.3. Anthony Townsend to facilitate supervised contact and after monitoring the development and emotional wellbeing of the minor child, phase out supervised contact and phase in external contact between the minor child *Mr S*. Should Anthony Townsend not have the capacity to conduct the aforesaid, the parties to appoint a suitable qualified professional to facilitate supervised contact between the minor child and *Mr S*;
 - 2.6.4. each party to nominate a parenting co-ordinator and if they cannot agree, they are to approach the South African Association of Mediators (*SAAM*) for the nomination;
- 2.7. *Mrs S* to contribute to *Mr S's* future legal costs in the amount of R150 000.00;
- 2.8. costs of the Rule 43 Application are costs in the cause of the divorce action.

[3] The Application herein is launched in terms of Rule 42(1)(a) and the common law.

- [4] *Mrs S* also seeks condonation for the late filing of the Application.

CONTEXTUAL INFORMATION

- [5] *Mrs S* and *Mr S* are married in community of property and are presently involved in divorce proceedings. *Mrs S* is the Plaintiff in the main divorce action and *Mr S* is the Defendant therein.
- [6] *Mr S* brought an Application in terms of Rule 43, which Application was opposed by *Mrs S*. At the time that the Rule 43 Application was heard by Mahosi J, whilst *Mr S* was initially represented in the Rule 43 Application, he acted in person and *Mrs S* was represented by her erstwhile attorney, Mr Johnathan White, but she herself was not present in Court when the Application was heard by Mahosi J on *05 December 2024*.
- [7] Prior to the institution of the Rule 43 Application, *Mrs S* and *Mr S* concluded a written Agreement of Settlement on *12 December 2023*, headed "*Interim Settlement in relation to financial aspects of divorce to be incorporated into a Final Decree of Divorce and is binding inter partes with an attorney's release from liability*" (hereinafter referred to as "*the Interim Settlement Agreement*").²
- [8] In terms of *the Interim Settlement Agreement* the intention was to settle the financial aspects in relation to the divorce matter.³

CONDONATION APPLICATION

- [9] Given that there was no significant opposition to the Condonation Application, and having considered the explanation by *Mrs S* for the delay, which delay was modest, that there was no prejudice to *Mr S*, the nature and importance of the relief sought, the interests of justice, the convenience of the Court and the avoidance of unnecessary delays in the administration of justice, I therefore

² FA: annexure "FA5", CL008-61 to CL008-67

³ FA: annexure "FA5", CL008-61

concluded that the granting of the Condonation would be in the interests of justice. Condonation was accordingly granted.

MRS S's CASE, IN SUMMARY

[10] At the commencement of the proceedings, in argument by Counsel for *Mrs S*, Counsel advised of an amendment to the Notice of Motion, in the following respects:-

10.1. prayer 2, that only paragraphs 1, 2, 3, 7 and 8 of Mahosi J's Order dated *05 December 2024*, be rescinded; and

10.2. prayer 4, be deleted in its entirety.

[11] Counsel for *Mr S* objected thereto on the basis that the Rescission of only part of the Order by Mahosi J dated *05 December 2024*, results in the nature of the Application no longer being an Application for a Rescission but rather an Application for a Variation.

[12] Having considered submissions from both Counsel and given that *Mrs S* is, in terms of the amendment seeking to limit the scope of the Rescission to only the financial component of Mahosi J's Order dated *05 December 2024*, in my view, this does not amount to a Variation Application as contended for by *Mr S's* Counsel. The amendment is therefore granted.

[13] *Mrs S* submits, *inter alia*, that:-

13.1. *the Interim Settlement Agreement* was relevant to the Rule 43 proceedings brought by *Mr S*;⁴

13.2. Mahosi J was not aware of *the Interim Settlement Agreement*;⁵

⁴ Applicant's HOA: par 13.1, CL008-212

⁵ Applicant's HOA: par 13.2, CL008-212

- 13.3. had Mahosi J been aware of *the Interim Settlement Agreement*, the *05 December 2024* Rule 43 Order (*pertaining to the financial relief sought by Mr S*), would not have been granted;⁶
- 13.4. *Mr S* was obliged to disclose *the Interim Settlement Agreement* to Mahosi J and deliberately did not do so and acted fraudulently;⁷
- 13.5. *Mr S's* assertion that *the Interim Settlement Agreement* was not relevant, is disingenuous;⁸
- 13.6. *Mrs S's* legal representative did not disclose *the Interim Settlement Agreement* to Mahosi J on *05 December 2024* as he was obliged to do, however, *Mrs S* was not aware that he had not disclosed *the Interim Settlement Agreement* (*as stated above, she was not present in Court on the hearing date*), however, the conduct of *Mrs S's* legal representative is not relevant in regard to *Mr S's* fraudulent conduct and the consequences thereof for the purposes of this Application;⁹
- 13.7. *Mr S* contradicts himself as, on the one hand, he denies that *the Interim Settlement Agreement* was concluded,¹⁰ yet on the other hand, he admits the conclusion thereof;¹¹
- 13.8. *Mr S* did not dispute¹² that *the Interim Settlement Agreement* was given effect to by way of *Mrs S* making payment to *Mr S* of two payments of R100 000.00 on *11 December 2023* and *31 October 2024*, totalling

⁶ Applicant's HOA: par 13.3, CL008-213

⁷ Applicant's HOA: par 13.4, CL008-213

⁸ Applicant's HOA: par 12, CL008-212

⁹ Applicant's HOA: par 13.5, CL008-213

¹⁰ AA: par 19.1, CL008-142, par 19.2, CL008-143; par 20, CL008-143; par 21, CL008-143, par 32, CL008-150; par 33, CL008-151

¹¹ AA: par 19.1, CL008-142, par 25 second par, CL008-145; par 35, CL008-152; par 40, CL008-154; par 41, CL008-154 to CL008-155; par 48, CL008-157

¹² FA: par 18, 18.1 to 18.5, CL008-12 to CL008-13 and annexures "FA6.1" and "FA6.2", CL008-68 to CL008-69; AA: par 21, CL008-143; FA: par 25, CL008-15, AA: par 25, CL008-145, par 29, fourth par, CL008-148 to CL008-149; par 33, second par, CL008-151

R200 000.00 and *Mrs S* continuing to be responsible for the bond payments on the property and *Mr S* retaining the BMW 4 series and having had the use thereof;

13.9. *Mr S* later admits having signed *the Interim Settlement Agreement* but alleges that he did so “under duress from Mr White...”¹³ yet no details whatsoever of the alleged “duress” are given by *Mr S* and despite that, *Mr S* was represented by attorneys at the time of the conclusion of *the Interim Settlement Agreement* and pursuant thereto, he received two payments of R100 000.00 totalling R200 000.00, he retained the BMW 4 series, he had the use thereof and he uploaded *the Interim Settlement Agreement* to CaseLines; and

13.10. in respect of *the Interim Settlement Agreement*, *Mrs S* argued that same was in final settlement of the proprietary issues and maintenance in respect of the divorce action, confirmed in correspondence dated 08 September 2023¹⁴ from *Mr S*’s erstwhile attorney to *Mrs S*’s then attorney, which correspondence is not disputed by *Mr S*.¹⁵

[14] Accordingly, *Mrs S* submits that the 05 December 2024 Rule 43 Order falls to be rescinded and set aside and the consequential relief sought by *Mrs S* in terms of her Notice of Motion (*as amended*), should be granted in that:-

14.1. despite *Mr S* being aware of *the Interim Settlement Agreement*, he deliberately did not disclose same to Mahosi J and the Rule 43 Order was thus granted pursuant to a fraud on the part of *Mr S*;¹⁶

14.2. the Rescission of the 05 December 2024 Rule 43 Order is sought on the basis of fraud on the part of *Mr S* and is sought in terms of the common law;¹⁷

¹³ AA: paras 45 and 47, CL008-156

¹⁴ FA: annexure “FA4.1”, CL008-59 to CL008-60

¹⁵ FA: par 15, CL008-8; AA: paras 19.1 and 19.2, CL008-142 to CL008-143

¹⁶ Applicant’s HOA: par 4.1, CL008-205

¹⁷ Applicant’s HOA: par 4.2, CL008-206

- 14.3. *Mrs S* made payments totalling R120 000.00 to *Mr S* pursuant to the impugned Rule 43 Order dated *05 December 2024*;
- 14.4. *Mr S* cannot benefit from his fraud by retaining the payments received by him pursuant to the impugned *05 December 2024* Rule 43 Order and he must repay the amount of R120 000.00 to *Mrs S* (as well as any further payments made by *Mrs S* to *Mr S* pursuant to the impugned *05 December 2024* Order).¹⁸

MR S's CASE, IN SUMMARY

[15] *Mr S* submits, *inter alia*, that:-

- 15.1. *Mrs S* failed to meet the requirements for a rescission in terms of Rule 42(1)(a) based on fraudulent misrepresentation;
- 15.2. no fraud was committed by *Mr S* and the purported *Interim Settlement Agreement* was not only entered into under duress, but was subject to the above Honourable Court's approval in the divorce action and not relevant to the Rule 43 Order sought and granted;
- 15.3. accordingly, same would not have materially influenced the Rule 43 Order granted by Mahosi J;
- 15.4. *Mr S* did not actively conceal the document from Mahosi J, as same was available in the CaseLines bundle;
- 15.5. *Mrs S* did not raise *the Interim Settlement Agreement* in her Affidavits or through her instructed attorney in the Rule 43 Application;

¹⁸ Applicant's HOA: par 14, CL008-213

15.6. *the Interim Settlement Agreement* does not address various aspects of the Rule 43 Order, which relates to the minor child and therefore *Mrs S* fails dismally in making out a proper case that the Rule 43 Order should be rescinded;

15.7. the conclusion of *the Interim Settlement Agreement* does not stand in the way of *Mr S's* right to have approached the above Honourable Court in respect of maintenance, *pendente lite*, for an Order in terms of Rule 43 and therefore cannot constitute a fraudulent act by him.

[16] *Mr S* concludes that:-

16.1. *Mrs S* failed to adequately meet the first, second and third requirements for a successful claim for rescission based on fraudulent conduct, those being:-¹⁹

16.1.1. the successful litigant, *in casu*, *Mr S* was a party to the fraud;

16.1.2. evidence before Mahosi J was in fact incorrect;

16.1.3. said incorrect evidence was presented fraudulently with the intention to mislead;

16.1.4. that it is divergent to such an extent from the true facts that the Court would, if the true facts had been placed before it, have given a judgment other than, which it was induced by the incorrect evidence to give; and

16.2. even if either party had expressly addressed *the Interim Settlement Agreement*, the Rule 43 Order would have not have materially deviated from what was handed down by Mahosi J.

¹⁹ Respondent's HOA: par8.1.1, CL099-83

THE LAW

- [17] Rule 43 Orders are interim and are not intended to be appealed or frequently amended.²⁰ A party seeking a variation in terms of Rule 43(6) must demonstrate that his/her financial or personal circumstances have materially changed in a manner that significantly impacts his/her ability to comply with the Order.
- [18] *Mrs S* in the present matter does not rely on Rule 43(6) and instead, she seeks to rely on Rule 42(1)(b).
- [19] *Mrs S* contends that, in addition to Rule 42(1)(b), she is entitled to common law relief for the rescission of the judgment, on the grounds of fraud.
- [20] It is trite that for *Mrs S* to succeed on the ground of fraud, she must allege and prove the following:-²¹
- 20.1. that the successful litigant was a party to the fraud;²²
 - 20.2. that it was wrong, made fraudulently and with the intent to mislead the Court;²³
 - 20.3. that such false evidence diverged from the true facts, to such an extent that the Court, had it been aware, would have given a different judgment.²⁴

²⁰ *S v S* (2019) ZACC 22, par 33

²¹ *Childerley Estate Stores v Standard Bank of SA Limited* 1924 (OPD) 163 at 169

²² *Fraai Uitzicht 1798 Farm (Pty) Limited 2017 v McCullough* (unreported SCA: case no: 118/2019 dated 05 June 2020) at 16

²³ *Fraai Uitzicht 1798 Farm (Pty) Limited 2017 v McCullough* (unreported SCA: case no: 118/2019 dated 05 June 2020) at 16

²⁴ *Robinson v Kingswell* 1915 (AD) 277 at 285; *Swart v Wessels* 1924 (OPD) 187 at 189 to 190; *Smit v Van Tonder* 1957 (1) SA 421 (T) at 426H; *Groenewald v Gracia Eiendomms Beperk* 1985(3) SA 168 (T) at 971E; *Rowe v Rowe* (1997) ZASCA 54 1997(4) SA 160 (SCA) at 1661; *Fraai supra*

- [21] In the matter of **J.A.N v N.C.N**²⁵ the Court confirms the test to be applied in Rescission Applications on the basis of fraud under the common law and sets same out as follows:-

“Considering that the judgment was not taken by default, the test to be applied is stringent, as elucidated by Moraitis: ‘A judgment can be rescinded at the instance of an innocent party if it were induced by fraud on the part of the successful litigant, or fraud to which the successful litigant was party. As the cases show, it is only where the fraud – usually in the form of perjured evidence or concealed documents – can be brought home to the successful party that restitutio in integrum is granted and the judgment is set aside. The mere fact that a wrong judgment has been given on the basis of perjured evidence is not a sufficient basis for setting aside the judgment. That is a clear indication that, once a judgment has been given, it is not lightly set aside, and De Villiers JA said as much in Schierhout.²⁶ [own emphasis]

*Apart from fraud the only other basis recognised in our case law as empowering a court to set aside its own order is justus error. In **Childerley**,²⁷ where this was discussed in detail, De Villiers JP said that “non-fraudulent misrepresentation is not a ground for setting aside a judgment” and that its only relevance might be to explain how an alleged error came about. Although a non-fraudulent misrepresentation, if material, might provide a ground for avoiding a contract, it does not provide a ground for rescission of a judgment. The scope for error as a ground for vitiating a contract is narrow and the position is the same in regard to setting aside a court order. Cases of justus error were said to be “relatively rare and exceptional”.²⁸*

- [22] It is important to note that the complaint regarding the fraud, pertains to **Mr S** and not to his legal representatives arguing the matter. Counsel for **Mr S**, in argument emphasised that **Mr S** had not had attorneys of record until late in

²⁵ (2283/2021) [2022] ZAECKMKHC 14 (17 May 2020) at par 26

²⁶ Moraitis Investments (Pty) Limited & Others v Montic Dairy (Pty) Limited & Others [2017] ZASCA 54 2017 (5) SCA 508, Schierhout v Union Government 1927 AD 94

²⁷ see footnote 20 supra

²⁸ see footnote 25 supra

these proceedings and that his and his instructing attorney's mandate herein only arose pursuant to this matter being enrolled and they were not the attorneys of record prior thereto.

COURT'S DETERMINATION

[23] *Mrs S* obtained a transcript of the proceedings before Mahosi J on *05 December 2024*.²⁹

[24] In the determination of this matter, it is fundamental that this Court has regard thereto.

[25] It is evidenced from the transcript of the said proceedings that *Mr S*, whilst appearing in person, was afforded and had ample opportunity to present and argue his case.

[26] In my view, the following summarised extracts from the transcript are pertinent, namely, *inter alia*, that:-

26.1. *Mr S*, by virtue of him being an American citizen, was not permitted to conduct work;³⁰

26.2. *Mr S* is not employed and therefore relies on spousal maintenance;³¹

26.3. *Mr S* states that the lifestyle that the parties enjoyed, was very privileged, they were very comfortable and he was the primary caregiver to their son, his wife having finished her Bachelor's degree at UNISA and holds an Honours degree at GIBS and is very successful;³²

²⁹ FA: annexure "FA8", CL008-76 to CL008-121

³⁰ FA: annexure "FA8", CL008-89

³¹ FA: annexure "FA8", CL008-90

³² FA: annexure "FA8", CL008-91

- 26.4. *Mr S* was the homemaker, having done the school runs, organised play-dates, did all the doctor's visits and would take the child to Karate and swimming twice a week;³³
- 26.5. *Mr S* states that he approached the Rule 43 Court out of desperation;³⁴ (*own emphasis*)
- 26.6. *Mr S* submits that he has no funds and has no resources and has no money;³⁵ (*own emphasis*)
- 26.7. *Mr S's* friends raised money, over R50 000.00, to pay for the Advocate in relation to a bail application he needed to bring;³⁶ (*own emphasis*)
- 26.8. *Mr S* seeks a contribution to his legal costs to deal with the main divorce action for the future;³⁷
- 26.9. *Mr S* states that to be taken into consideration in considering his maintenance claim, is that *Mrs S* had provided six months' bank statements and in those six months bank statements, she spent R582 000.00 on luxury items, including Louis Vuitton, Dolce & Gabbana and Mytheresa and on and on, while *Mr S* was penniless for sixteen months and spent 13 of those months in Diepsloot as a "squatter";³⁸ (*own emphasis*)
- 26.10. it has only been friends who have helped *Mr S* and he being on a friend's couch for about a year, which friend lives in Broadacres but he lets him sleep in the study, on a long couch, he has not had money to take care of most things in life and when he was discharged from the house, he left with seven bags, seven suitcases of clothing, he does not own a fork,

³³ FA: annexure "FA8", CL008-92

³⁴ FA: annexure "FA8", CL008-94

³⁵ FA: annexure "FA8", CL008-95

³⁶ FA: annexure "FA8", CL008-95

³⁷ FA: annexure "FA8", CL008-97

³⁸ FA: annexure "FA8", CL008-106

plate, chair, table, sheet, bed and owns nothing for himself.³⁹ (*own emphasis*)

- [27] In my view, it is therefore apparent from the aforesaid extracts of the transcript, that *Mr S*, *inter alia*, portrayed himself to the Court, as a homemaker, reliant solely on *Mrs S* having an extravagant lifestyle and *Mrs S* spending extravagant funds on herself to his exclusion, whilst he was in effect left penniless having to rely on friends for accommodation and financial help.
- [28] It is also evident from the transcript, that albeit that *Mr S* contends that a copy of *the Interim Settlement Agreement* was uploaded by him onto CaseLines, that:-
- 28.1. same was not uploaded in terms of the Rule 43 Application or within that section, before Mahosi J, but instead uploaded in a random section, headed "*miscellaneous 2*", at CL006-113; and
- 28.2. Mahosi J was not aware thereof.
- [29] Whilst *Mr S*, on the one hand, denies that *the Interim Settlement Agreement* was concluded, on the other hand, he received and accepted two payments of R100 000.00 on *11 December 2023* and on *31 October 2024*, totalling R200 000.00 and *Mrs S* continuing to be responsible for the bond payments on the property and *Mr S* retaining the BMW 4 series and having the use thereof.
- [30] Whilst it is common cause that *the Interim Settlement Agreement* did not preclude *Mr S* from seeking maintenance, *pendente lite*, it is, however, in my view, highly relevant that *Mr S* had received, in terms thereof, two payments of R100 000.00 on *11 December 2023* and *31 October 2024*, totalling R200 000.00 and it being significant that the second payment he received on *31 October 2024* in the sum of R100 000.00, was received a month prior to Mahosi J's Order, on *05 December 2024*.

³⁹ FA: annexure "FA8", CL008-117 to CL008-118

- [31] It is trite that in terms of Rule 43 Applications and as enunciated by Murphy J in **Du Preez v Du Preez**⁴⁰: *“(16)... a misstatement of one aspect of relevant information invariably will colour other aspects with the possible (or likely) result that fairness will not be done. Consequently, I would assume, there is a duty on applicants in Rule 43 applications seeking equitable redress to act with the utmost good faith (uberrime fidei) and to disclose fully all material information regarding their financial affairs. Any false disclosure or material non-disclosure would mean that he or she is not before the court with “clean hands” and on that ground alone the court will be justified in refusing relief.” [own emphasis]*
- [32] Furthermore, in **C.M.A v L.A**⁴¹ Liebenberg AJ reiterated that there is an obligation on an Applicant in Rule 43 Applications to act with the utmost of good faith and make full and frank disclosure of his/her finances. The penalty of non-disclosure may be as high as the refusal of the Application. In paragraph 25 of the said Judgment the following is said:
- “(25) Whilst every application for maintenance pendente lite must be decided on its own facts, certain basic principles have been distilled in the authorities.
- (25.1) There is a duty on an applicant who seeks equitable redress to act with the utmost good faith, and to disclose fully all material financial information. Any false disclosure or material non-disclosure may justify refusal of the relief sought.”
- [33] **Mr S** had an obligation to act in the utmost good faith and to make a full and frank disclosure of his finances, including receipt by him of the two payments totalling R200 000.00, as aforesaid, the one payment of R100 000.00 having been received by him one month prior to the Mahosi J Rule 43 Order, yet he failed to do so and thus portrayed a skew picture of his financial reality in failing to disclose fully all material financial information, irrespective that it was not

⁴⁰ (16043/2008) [2008] ZAGPHC 334 (24 October 2008)

⁴¹ [2023] ZAGPJHC 364 (24 April 2023) at 25

dealt with in any of the Affidavits. The receipt of the funds totalling R200 000.00 was within his knowledge, this was not disputed. His failure to therefore have informed the Court thereof in the Rule 43 Application and/or in argument, indicates and creates the impression that he concealed material information and documentation (*i.e. the receipt of an amount of R200 000.00 and the Interim Settlement Agreement*), he was a party thereto and he thereby misled the Court with wrong evidence pursuant thereto.

- [34] Without derogating from the generality of the foregoing, I am of the opinion, that had the true facts, as referred to in paragraph 33 above, been placed before Mahosi J, she may have given a Judgment other than which was induced by the evidence provided by *Mr S* and may, if it were brought to her attention that *Mr S* had not fully disclosed his financial information as alluded to hereinabove in this Judgment and given the material non-disclosure, it may have resulted and/or justified Mahosi J in refusing him the relief, specifically the financial relief as sought by him, and as granted, in the Rule 43 Application.
- [35] To my mind, the enforceability of *the Interim Settlement Agreement* is irrelevant. What is relevant is that *Mr S* received the sum of R200 000.00 and other payments, yet did not disclose same.
- [36] It is my opinion and I am therefore persuaded by the argument on behalf of *Mrs S*, that a case has been made out for the relief sought by her and as reflected in the Order hereunder.

RELIEF SOUGHT BY MRS S THAT MR S BE DIRECTED TO REPAY MRS S AS PER PRAYER 2 OF THE NOTICE OF MOTION

- [37] Flowing from my decision to rescind the financial component of Mahosi J's Rule 43 Order dated *05 December 2024*, and as contained in paragraphs 1, 2, 3, and 7 thereof, and further following the reasoning in the matter of **J.A.N v N.C.N.**, as dealt with *supra*, *Mr S* is to repay to *Mrs S*, in full, within 30 (*thirty*) days of the date of the granting of the Order herein, all amounts paid by *Mrs S* to *Mr S*

pursuant to paragraphs 1, 2, 3, and 7 of Mahosi J's Order, including any payments made up to and including the date of the Order herein.

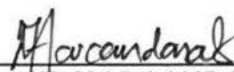
COSTS

- [38] Each of the parties has sought costs against the other on a scale as between attorney and client (*Scale C*).
- [39] It is trite that a Court has a discretion in respect of costs, which should be exercised judicially, upon a consideration of all the facts as to an appropriate Order relating to costs.
- [40] Arising from my reasoning and findings, as detailed above in this Judgment, I am of the view that it would be appropriate for *Mr S* to be liable for *Mrs S's* costs, as sought by her.

THE ORDER:

- [1] After having heard Counsel for Applicant and Respondent and having considered the documents filed on Record, the Court directs that the following Order is made:-
- 1.1. the late filing of Applicant's Application and the Applicant's Amendment to the Notice of Motion, is condoned and granted;
 - 1.2. paragraphs 1, 2, 3, and 7, of the Rule 43 Order of the Honourable Mahosi J, dated *05 December 2024*, are rescinded;
 - 1.3. Respondent is directed to repay to Applicant within 30 (thirty) days of the date of this Order, all amounts paid by *Mrs S* to *Mr S* pursuant to paragraphs 1, 2, 3, and 7 of the Order of Mahosi J dated *05 December 2024*, including any amounts paid up to and including the date of the Order herein;

- 1.4. Respondent to pay Applicant's attorney and client costs, including the costs of Counsel, on Scale C.



F. MARCANDONATOS

Acting Judge of the High Court
Gauteng Division, Johannesburg

Heard:
Judgment:

11 August 2025
01 December 2025

Appearances

For Applicant:
Instructed by:

Advocate L. Hollander
Nowitz Attorneys

For Respondent
Instructed by:

Advocate D. J. Coetzee
Christo Mulder Attorneys Inc