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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 2025/059586

(1) REPORTABLE: **NO**

(2) OF INTEREST TO THE JUDGES: : **NO**

(3) REVISED.

DATE: 2025-11-14

SIGNATURE:

In the matter between:

S[...] A[...] D[...] B[...] (BORN K[...])

Applicant

(Identity number: 6[...])

and

S[...] D[...] B[...]

Respondent

(Identity number: 7[...])

JUDGMENT

SCHOEMAN (AJ)

A. INTRODUCTION:

[1] This is an Application in terms of the provisions of Rule 43 of the Uniform Rules of Court, wherein the Applicant prays for the following relief towards her spousal maintenance, pending finalisation of the Divorce Action between the parties. The redress that the Applicant seeks, *inter alia*, takes on the form of a monthly cash payment, contributions towards the payment of the Applicant's storage costs, monthly rental, and relocation costs, a contribution towards the acquisition of a new motor vehicle, as well as an initial contribution towards her legal costs.

[2] The parties were married to each other on 12 October 1996, out of community of property with the inclusion of the Accrual System, and this marriage still exists.

[3] There were two children born from the marriage relationship between the parties, both of whom have already attained the age of majority. By a similar token, both children are self-sufficient and independent, although the parties' daughter, who has recently been admitted as an attorney, still resides with the Respondent. It needs mention that the minor daughter pays monthly rental to the Respondent, which rental the Respondent in turn deposits into a savings account for the parties' daughter. The aim of this exercise, so say the Respondent, is to teach the parties' daughter "*financial responsibility*". In my view, the Respondent cannot be faulted for this.

[4] As such, the current Application simply concerns the question whether or not the Applicant is entitled to spousal maintenance, *pendente lite*, and in addition to this, whether the Applicant has made out a case for a contribution towards her legal costs.

[5] Both parties are employed as educators at M[...] College. The Applicant also alludes thereto that she is Head of the English First Additional Language Department, and that the Respondent, in turn, is the Vice-Principal at the aforementioned school.

[6] It is common cause that the parties no longer reside in the erstwhile matrimonial home. This property has in fact been sold, and the proceeds emanating from this sale have already been divided between the parties. I shall return to this issue herein under.

[7] The Applicant depicts, in her Founding Affidavit, a marital life of some luxury, while the Respondent, to the contrary, refers to a comfortable and ordinary standard of living. Throughout these proceedings, the Applicant seems to have advanced the

current Application on the basis that she is entitled to be kept on the same standard of living as that which the parties enjoyed during the subsistence of their marital relationship.

[8] The current Application also seems to be suggestive thereof that the Applicant is of the view that the parties should live their lives on equal footing now that they have separated, and that she is not to be expected to reduce her lifestyle in the least, as a result of the breakdown of the parties' marital relationship.

[9] At the outset, and in order to properly determine the merits (or the lack thereof) of the current Application, it was incumbent upon the Applicant to distinguish her *wants* from her basic *needs*.¹

[10] The nature of the enquiry into maintenance tasks a Court into having to embark on a wide-ranging enquiry as to the factors set out in Section 7(2) of the Divorce Act, Act 70 of 1979. These are:

- 10.1 The existing or prospective means of each of the parties;
- 10.2 Their respective earning capabilities;
- 10.3 Their financial needs and obligations;
- 10.4 The age of each of the parties;
- 10.5 The duration of the marriage;
- 10.6 The standard of living of the parties prior to the divorce;
- 10.7 The conduct insofar as it may be relevant to the breakdown of the marriage; and
- 10.8 Any other factor which, in the opinion of the Court, should be taken into account.²

[11] While it is so that in Applications of an interim nature, such as the current Rule 43 Application, the Court cannot determine the issue of maintenance with the same measure of accuracy as a Trial Court would, it is however still trite that the Court is to make a Maintenance Order which it finds "*just*" as per the statements by Satchell J in **Botha** *supra* at Paragraph 43.

¹ See: **Botha vs Botha** 2009(3) SA 89 (W); and **Grasso vs Grasso** 1987(1) SA 48 (C)

² See: **Reid vs Reid** 1992(1) SA 443 (E) at 664

[12] The enquiry is necessarily directed towards the interests of both spouses, and the impact which the Order will have on each of them. Justice must therefore be measured as between both spouses.

[13] In considering what is *just*, this in effect signifies that the Court exercises a judicial discretion when coming to a conclusion what is correct and appropriate, and what is fair and reasonable, in the circumstances of each individual case before it. Of course, any *just* Order must be well-founded on fact, and reflect relevant and proper legal principles.³

[14] Even though a wife may qualify for maintenance upon Divorce, it by no means follows that the *quantum* thereof should be such as to enable her to live to the same standards as she enjoyed during the subsistence of the marriage.⁴

[15] What is perhaps the most striking feature of the current Application is that the Applicant seems to suggest that she and the Respondent are to remain on equal footing, vis-à-vis their monthly income and expenses, and that as such, she is entitled to receive what can only be described as “*top-up maintenance*”. As has however been stated by Erasmus J in the case of **Reid vs Reid** *supra*, it is not the function of the Maintenance Court to achieve parity between the parties. In my view, the same holds true for a Court being confronted with an Application in terms of Rule 43.

[16] I am aware that in **Davis vs Davis** 1939 WLD 108 at page 114, Ramsbottom J pointed out that maintenance is an expenditure of a recurring nature which is usually paid out of income, and that the circumstances may be such where the income is inadequate or non-existent, that the value of the assets of the parties may become relevant and material in deciding questions of maintenance (also referred to by Jordaan J in the case of **Jodaiken vs Jodaiken** 1978(1) SA 784 (W) at 789 A – D). However, the principle duty to maintain a person, depends upon the reasonable requirements, or needs, of the person claiming it and only thereafter the ability of the party from whom it is claimed to furnish it.

[17] Although the Respondent's ability to pay maintenance, *pendente lite*, is undoubtedly a relevant consideration, the Court must also consider the remarks made by Margo J in **Louis** *supra*, at 600 to 601, namely that the fact that a person does not live up to the hilt of his income, or chooses to live frugally, and has a

³ See: **Botha** *supra* at paragraphs 45 and 46

⁴ See: **Louis vs Louis** 1973(2) SA 597 (T) at 5981

monthly surplus, does not provide a ground for requiring him to hand over something of what he saves, to the other spouse.

[18] As pointed out by the learned author, Van Zyl, in the Handbook of South African Law of Maintenance (2000) at page 50, an improvement in one's financial position after divorce is to one's benefit, since the bonds of marriage no longer exists. The same holds true in Rule 43 applications, and as such, therefore, as was stated by Steyn J in the case of **Joffe vs Lubner** 1972(4) SA 521 (C) at 524 F, the fact that a maintenance debtor is able to pay a reasonable amount of maintenance, does not justify extravagant claims.

[19] In as much as the Applicant may rely on a perceived entitlement to interim maintenance, and a contribution towards her legal costs, based on the mere averment and presumption that the Respondent earns more than the Applicant and that he can thus afford same, such reliance is misplaced for the reasons that I shall more fully deal with herein under.

[20] The assessment of the Applicant's Application, places the proverbial magnifying glass squarely upon the requirements of Rule 43 in respect of the Applicant's Affidavit, and the contents thereof.

[21] Rule 43(2)(a) of the Uniform Rules requires that:

"An applicant applying for any relief referred to in sub-rule (1) shall deliver a sworn statement in the nature of a declaration, setting out the relief claimed and the grounds therefor, together with a notice to the respondent corresponding with Form 17 of the First Schedule".

[22] The procedure embodied in Rule 43(2)(a) is hybrid in nature, being largely in the form of an Application, but also resembling an Action, since the Affidavits have to be in the nature of a declaration or a plea. The object of this is evident, as the Rule is to confine the Affidavits to a reasonably succinct statement of the parties' respective cases.

[23] The Applicant's sworn statement must therefore contain factual allegations upon which the Court can assess, and evaluate, whether to grant the relief sought. It is not sufficient to make bold statements, or generalised averments, which a party believes may bolster his or her case before the Court. Furthermore, and from a reading of the Founding Affidavit, there needs to be a correlation between the amounts claimed, the Applicant's financial means, and her monthly expenses. This is underscored by the judgment of **Eksteen vs Eksteen** 1969(1) SA 23 (O) where it

was emphasised that Rule 43(2) embraces factual allegations, and not merely the inference which an Applicant makes and alleges from facts which he or she has not set out.

[24] Upon analysing the Applicant's Founding Affidavit, it is clear that the vast majority of her sworn statement is dedicated to setting the scene, and portraying a picture of the Respondent being a wealthy man with a lifestyle that suits his perceived vast means. Very little of the Founding Affidavit regrettably deals with the Applicant's own financial prosperity, and with the means available to her, from which she is able to maintain herself. These means came to light when the Applicant's Financial Disclosure Form was perused and considered.

[25] The question for determination is accordingly, whether the Applicant has set out sufficient facts and grounds in her sworn Affidavit, in order to make out a case for interim maintenance and a contribution towards her legal costs in the amounts claimed. The first hurdle that the Applicant needs to pass, is to evidence a "*need to be maintained*". Absent such proof on a balance of probabilities, there is simply no reason to revert, or refer, to the Respondent's papers in great detail.

[26] It is trite that in motion proceedings the Affidavits serve not only to place evidence before the Court, but also to define the issues between the parties. This is not only for the benefit of the Court but also, and primarily so, for the parties, as the parties must know the case that must be met, and in respect of which they must adduce evidence in the Affidavits.

[27] An Applicant must accordingly raise the issues and facts upon which he or she would seek to rely the Founding Affidavit. He or she must also do so by defining the relevant issues, and by setting out the evidence upon which he or she relies to discharge the onus of proof resting on him or her in respect thereof.

[28] The facts set out to the Founding Affidavit (and equally in the answering affidavit) must be set out simply, clearly, in chronological sequence and without argumentative matter.⁵

[29] In considering the aforesaid principles, I now turn to deal with the Applicant's Application.

[30] However, before considering what would be the Applicant's reasonable maintenance requirements, and whether the Applicant has made out a case in that

⁵ See: **Reynolds N.O. vs Mecklenberg (Pty) Ltd** 1996(1) SA 75 (W) at 78 I

regard, it must first be considered whether the Applicant has established a need for maintenance.

[31] In dealing with her need for maintenance, the Applicant is required to make a full and frank disclosure of all relevant facts to place the Court in a position to assess whether there is truly a need on the part of the Applicant for maintenance.

[32] In the well-known, and often quoted, matter of **Nilsson vs Nilsson** 1984(2) SA 294 (C) it was stated, *inter alia*, that an interim maintenance order is not intended as a meal ticket for a spouse who quite clearly would not establish a right to maintenance at trial.

[33] It is therefore only once the need for maintenance has been established, that the next level of the enquiry is to be embarked upon to establish (i) what the marital standard of living of the parties was, (ii) what the Applicant's reasonable maintenance requirements are, and (iii) what the capacity of the Respondent is to meet such requirements. Absent the Applicant passing the first hurdle namely to prove on a preponderance of probabilities a need for maintenance, it is not necessary for the Court to establish what the marital standard of living of the parties was, what the Applicant's reasonable maintenance requirements are, and what the capacity of the Respondent is to meet such requirements.

[34] *Ex facie* the papers filed of record by the Applicant, the following bears mention: -

34.1 The Applicant a 61-year-old educator, as alluded to before.

34.2 The Applicant vacated the erstwhile matrimonial home on 24 June 2025. The Court does not deem it necessary to delve into the reasons for the breakdown of the marriage, or the reasons why the Applicant submitted that she could no longer reside in the former matrimonial home. The fact of the matter is, and it is common cause between the parties on the papers, that the matrimonial home was sold on 23 May 2025 for an amount of approximately R3.8 million, and that vacating the premises was to be a foregone conclusion. I pause to add that this property was owned by the parties jointly, each party formerly holding an undivided half share therein.

34.3 The Applicant furthermore submits that the Respondent withdrew an amount of R213 000.00 from the parties' joint bond account, without her knowledge and consent. I shall return to this issue briefly herein under.

34.4 The Applicant also avers in Paragraph 7.1 of her Founding Affidavit that she earns a gross salary of approximately R60 000.00 per month, with a nett income amounting to R42 000.00 per month.

34.5 The Applicant additionally states that she drives a 19-year-old Renault Cleo motor vehicle, gifted onto her by the Respondent's mother. This in fact seems to be common cause.

34.6 In Paragraph 7.4 of her Founding Affidavit, the Applicant also confirms that she holds a pension interest. This is of some importance, given the age of the Applicant. I however interpose to state that it is not clear from the papers whether, and if so when, the Applicant is expected, or of the intention, to retire.

34.7 *Ex facie* the Applicant's papers filed of record, she then professes to have a total monthly expenditure amounting to R37 365.00.

34.8 Having regard therefore to the Applicant's nett income as compared to her monthly expenses, it is a simple exercise in arithmetic to calculate that the Applicant has a monthly excess available to her in the amount of R4 635.00. This in itself points towards the fact that the Applicant does not have the need to be maintained, and that she has sufficient income from which she is able to pay her monthly maintenance needs, even if the Court does not criticise any of her monthly stated expenses.

34.9 The Court has indeed had regard to what the Applicant says in Paragraph 7.10 of her Founding Affidavit, namely that the Applicant's expenses, in her estimation, will escalate to an amount of approximately R55 000.00 per month, once, so say the Applicant, she has "*had the opportunity to settle down*". According to the Applicant, she will then have a monthly shortfall of approximately R13 000.00. This is however not the current factual situation and the Court can only look at what the Applicant's actual reasonable, necessary and actual expenses are.

34.10 The whole premise of the Applicant's Application is seemingly found in Paragraph 7.11 of the Founding Affidavit where the Applicant laments about the standard of living which the Respondent made her accustomed to, and which, so say the Applicant, she cannot attain by her own means. The Applicant then makes the allegation that she is "*advised*" that she is entitled to claim maintenance from the Respondent to place her in a situation as close as reasonably possible to what the position was that she was in, prior to the separation of the parties.

34.11 However, and when considering the Applicant's Financial Disclosure Form deposed to on 24 July 2025, said financial disclosure paints a picture that is the complete antithesis of that which the Applicant states. I pause to add that the Applicant's Founding Affidavit was deposed to on 30 June 2025, and the content thereof does not meaningfully deal with the disclosure of the Applicant's financial position, save for alluding to the Applicant's income and expenses.

[37] If regard is had to the content of the Paragraph 2.3 of the Applicant's Financial Disclosure Form, where the Applicant provides details of all personal bank accounts, and the balance in said accounts as at date of deposing to the Financial Disclosure Form, it is evident that the Applicant *inter alia* has an Absa Bank Savings Account with a positive balance of R2 033 199.36, as well as an Absa Tax Free Savings Account with a positive balance of R80 020.06. The total value of the Applicant's interest in all bank accounts, according to the Applicant herself, amounts to R2 115 134.35.

[38] In addition to the aforesaid, and from a reading of Paragraph 2.8 of her Financial Disclosure Form, the Applicant further has personal belongings which can be liquidated to supplement her monthly shortfall, if any, alternatively which can be liquidated to fund her litigation, in the total amount of R226 900.00.

[39] The aggregate current value of the Applicant's interest in her personal assets amount to R2 342 034.35. Added to that, the Applicant also holds a pension interest with ISASA Pension Scheme and Provident Fund with a value of R1 614 184.63. As stated hereinbefore, it is uncertain when the Applicant is of the intention to retire.

[40] In summary, the Applicant's nett asset value amount to some R3 956 218.98.

[41] The Court appreciates, with reference to the balance contained in the Applicant's Savings Account that same includes her 50% of the nett proceeds received from the sale of the erstwhile matrimonial home. In this regard, the Applicant received an amount of R1 712 628.26 on 14 July 2025. The Respondent, in turn, received an amount of R1 362 628.26 on the same date.

[42] While it is so that the receipt of the proceeds emanating from the sale of the parties' property significantly bolstered the Applicant's savings (which proceeds were received subsequent to the Applicant having deposed to the Founding Affidavit), this does not take away from the fact that even if the Court were to subtract the proceeds received from the sale of the house from the Applicant's cash funds available to her

in her Savings Account, the Applicant still had a positive balance in her bank account, at the time of the launching of this Application in the sum of R320 571.10. Add to that, the amount in her Tax-Free Savings Account, as well as the value of her personal belongings, it is evident that at the time of the launching of the current Rule 43 Application, the Applicant had significant assets, and/or means, at her disposal and that the Applicant did not show, and could not show, a need to be maintained.

[43] In the premise, the Court cannot help but agree with the submissions made by counsel on behalf of the Respondent that the Applicant proverbially “*jumped the gun*” with the launching of this Application. By the time that the Founding Affidavit was signed, the Offer to Purchase for the former shared residence had already been signed and if one has regards to the continuous updates received from the transferring attorneys (where the parties’ daughter is co-incidentally employed), it was evident that the registration of transfer would have taken place imminently, resulting therein that both parties would have received a considerable amount of disposable proceeds. This is all the more so where it is common cause that the purchase of the immovable property was a so-called “*cash sale*”, thereby meaning that the registration process would be speedily concluded.

[44] Added to that, and with reference to the contribution that the Applicant seeks towards the purchase of a new motor vehicle, it is common cause that the vehicle that the Applicant currently drives was gifted onto her in 2020 (long before the institution of divorce proceedings) already. It can therefore not be said that the Respondent disrupted the *status quo*, in the light of the pending Divorce Action between the parties, by insisting on the return of the Mercedes Benz motor vehicle that the Applicant has once driven. This is not a situation where the Respondent purposefully disrupted the *status quo* while litigation was already pending between the parties.

[45] Furthermore, and this was something that was canvassed with counsel for the Applicant during argument, the Applicant requests a contribution towards the purchase of a new vehicle in the amount of R5 000.00 per month, and the Court was informed of the fact that the Applicant intends to finance the purchase of a new vehicle. This in variably means that the Applicant is of the intention to apply for Vehicle Asset Finance, thus cementing the fact that she is not over-indebted, and that she full-well accepts (if not guarantees) that she will be able to qualify for credit.

This in itself puts paid the notion that the Applicant on the papers as it currently stands, has a monthly shortfall or a need for maintenance.

[46] Absent therefore, the Applicant's failure to prove a need to be maintained, there is no reason for this Court to scrutinise the Respondent's papers, and the Respondent's ability to meet the financial needs that the Applicant says she has.

[47] During argument before me, counsel for the Respondent however made the following tender, namely that the Respondent undertakes to retain the Applicant on his so-called "*gap cover*" as far as the parties' medical aid is concerned. The Court will grant an order to this effect.

[48] Over and above that, and as alluded to hereinbefore, the Respondent withdrew an amount of R213 000.00 from the parties' bond account. From a reading of the papers, it is evident that the parties still need to account to each other with regards to the joint expenses pertaining to the immovable property and the transfer costs following the sale of the property, which were paid from the proceeds of this withdrawal. It is not for this Court to debate the payments that the parties made, or to mediate this issue between them. However, and as counsel for the Respondent alluded, the Respondent admits in his papers at Paragraph 14.12 of the Opposing Affidavit, that he utilised an amount of R62 863.84 to fund the transfer costs of the new immovable property that he had purchased with his share of the proceeds of the sale of the matrimonial home. During argument before me, the tender was made that the Respondent shall reimburse the Applicant in the aforesaid amount. As such, I am of the intention to also order the Respondent to reimburse the Applicant in the amount of R62 863.84 within 7 (seven) days from date of this Order. It must however be made clear that this amount shall not be in full and final settlement of the issue regarding the withdrawal from the bond account, and the parties are still at liberty to render accounts and to debate same.

[49] During argument, counsel for the Applicant submitted that the Court should grant an Order that the Respondent contributes an amount of R10 000.00 per month, in cash, towards the maintenance of the Applicant. In addition to the aforesaid, the Court was also asked to order the Respondent to contribute an amount of R5 000.00 towards the acquisition of a new vehicle as a so-called "*top-up*" to the monthly premiums that the Applicant is to pay when she finances a new vehicle. Lastly, the Court was also asked to order the Respondent to make a contribution of R15 000.00 per month for a period of 6 (six) months, towards the Applicant's accommodation

expenses. As such, the Court was asked to order the Respondent to pay a total monthly maintenance contribution towards the Applicant in the amount of R30 000.00. The Court immediately pauses to add that it is not certain what the Applicant has done with the proceeds emanating from the sale of the erstwhile matrimonial home, and whether or not she acquired new assets, alternatively whether or not that money is still held to her benefit in her Absa Bank Savings Account. All indications point towards the latter.

[50] Having regard to the content of the Applicant's Financial Disclosure Form, the Applicant's financial situation disclosed therein raises more questions than answers, and leaves this Court in the dark as to what the Applicant's actual financial position, and thus her need is. On the Applicant's own version, she has a monthly excess available to her, and she has a nett asset value just shy of R4 000 000.00.

[51] The Court would have rather expected that the Applicant deals with the aforementioned facts, and the content of her Financial Disclosure Form, in her Founding Affidavit, and that she presents material information in this regard in her papers, as same has a direct bearing on the Applicant's claim for maintenance, and her related claim for a contribution to legal costs. The Applicant's failure to allude to the content of her Financial Disclosure Form in her Founding Affidavit, even if the Financial Disclosure Form was not yet disposed to at that stage, results in an inability to establish whether there indeed exists a true need on the part of the Applicant to be maintained, and same also hits on her claim for a contribution to costs. Notwithstanding the subsequent delivery of her Financial Disclosure Form, the Applicant reasonable should have known what her exact financial position is.

[52] In the context of full disclosure and the duty of applicants in Rule 43 Applications to act with the utmost good faith, it is apposite to refer to the matter of **Du Preez vs Du Preez** 2009(6) SA 28 (T) at paragraph 15, where the Court held, *inter alia*, the following:

"[15] However, before concluding, there is another matter that gives me cause for concern, deserving of mention and brief consideration. In my experience, and I gather my colleagues on the Bench have felt the same, there is a tendency for parties in Rule 43 applications, acting expediently or strategically, to misstate the true nature of their financial affairs. It is not unusual for parties to exaggerate their expenses and to understate their income, only then later in subsequent affidavits or in argument, having been caught out in the fact of unassailable contrary evidence, to

seek to correct the relevant information. Counsel habitually, acting no doubt on instruction, unabashedly seek to rectify the false information as if the original misstatement was one of those things courts are expected to live with in Rule 43 applications. To my mind, the practice is distasteful, unacceptable, and should be censored. Such conduct, whatever the motivation behind it, is dishonourable and should find no place in judicial proceedings. Parties should at all times remain aware that the intentional making of a false statement under oath in the course of judicial proceedings constitute the offence of perjury and, in certain circumstances, may be the crime of defeating the course of justice. Should such occur in Rule 43 proceedings at the instance of the applicant, then relief should be denied.

[16] Moreover, the power of the court in Rule 43 proceedings in terms of Rule 43(5) is to ‘dismiss the application or make such order as it thinks fit in ensure a just and expeditious decision.’ This discretion is essentially and equitable one and has accordingly to be exercised judicially with regard to all relevant considerations. 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 that there is a duty on applicants in Rule 43 applications seeking equitable redress to act with the utmost good faith 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.”

[53] In the matter of **CMA vs LA** [2023] ZAGPJHC 364 (24 April 2023) at paragraph [25], specifically at paragraph [25.1], the following was stated:

“In Rule 43 proceedings, it is prudent that the Court should be satisfied that an Applicant acts in good faith. Thus, an Applicant simply cannot afford to omit facts in the Founding Affidavit that are vital to the Application. Surely, if the Applicant was willing not to reveal certain facts in her Founding Affidavit, she must certainly be willing not to be frank about weighty facts that would reveal the true state of her finances.”

[54] In the matter of **MNY vs JY** (2024/013982) [2024] ZAGPJHC 1823 (24 July 2024), Van Aswegen AJ stated that: -

“Without a frank and full disclosure of all material facts, a Court can simply not make a determination as to the Applicant’s need and cannot quantify such a need.”

[55] In the premise, no Order can be made by this Court if the Applicant does not get out of the starting blocks, as it were, by establishing on a preponderance of probabilities that she has a need to be maintained. It is thus my view that the Applicant herein has elected to selectively disclose facts in her Founding Affidavit in an attempt to establish her need but, by virtue of her failure to make a full disclosure of her financial “*reserves*” and her savings, which only came to light once the Financial Disclosure Form saw the light of day, all the relevant facts have not been placed before me. It is therefore not possible for me to properly assess whether a need exists on behalf of the Applicant, and what the precise extent of that need is. All indications are, even if I were to accept the correctness of the Applicant’s Financial Disclosure Form (and the Applicant’s expenses listed therein) without any reservations, that the Applicant simply does not have a need for maintenance, and as such, I am unable to entertain the Applicant’s claim for maintenance, *pendente lite*.

[56] Turning then to the Applicant’s claim for a contribution towards her legal costs, it is trite that a claim for a contribution to costs is a claim *sui generis* and it has its basis in the reciprocal duty of support between spouses.⁶

[57] In the normal course, and having regard to the facts and circumstances of this matter, including the Applicant’s failure to prove a need to be maintained, and by extension of the same reasoning in declining to entertain the Applicant’s claim for spousal maintenance, *pendente lite*, I am similarly unable to come to the Applicant’s aid with regards to a claim for a contribution towards her legal costs.

[58] There will most certainly not be an inequality of arms between the Applicant and the Respondent. As counsel for the Respondent aptly pointed, the receipt of the proceeds emanating from the sale of the erstwhile immovable property, is to be regarded as the proverbial “*great equaliser*” as far as the parties’ financial footing is concerned.

[59] Lastly, and considering the costs of the Application, it is trite that this Court has a discretion when it comes to the issuing of cost orders, which discretion must be exercised judicially.

[60] In the normal course, and having regard to the facts and circumstances of this matter, including the Applicant’s failure to properly set out her financial position in her

⁶ See: Cary vs Cary 1999(3) SA 615 (C); AF vs MF 2019(6) SA 422 (WCC) at 428 E – F

Founding Affidavit, coupled with the Applicant's failure to prove a need to be maintained, I would have been inclined to have the costs follow the result, thus ordering the Applicant to pay the costs of this application. This is all the more so where the rights of minor and/or dependent children do not feature in this Application. However, for the reasons which follow, I am not so inclined.

[61] Had the Applicant established a need for maintenance and with the enquiry having moved to the next level, the Respondent would have seriously fallen foul of the full and frank disclosure requirements in regard to his financial affairs, especially given the sparse information pertaining to the Close Corporation of which the Respondent is the sole member. It also did not go unnoticed, from a perusal of the Respondent's bank statements, that many a transaction has been left curiously unexplained in the Respondent's papers. It was only during argument, that certain of the transactions (yet by no measure all of them) were clarified.

[62] In the premise, and while it may therefore be that the Applicant for the reasons alluded to above, was not successful with her Application this time around, this is no cause for the Respondent to celebrate, should he feel that way inclined, as any perceived victory in his part, against the backdrop of the foregoing, rings hollow.

[63] In the premise, I am of the view that each party should bear their own costs in respect of this Application.

ORDER:

In the circumstances, I make the following Order: -

1. The Respondent is to retain the Applicant on his "*gap cover*" of his Medical Aid Scheme, *pendente lite*;
2. The Respondent shall reimburse the Applicant in the amount of R62 863.84 (Sixty-Two Thousand Eight Hundred and Sixty-Three Rand and Eighty-Four Cents) within 7 (seven) days of date of this Order, which amount shall **not** be in full and final settlement of the dispute between the parties relating to the Respondent's withdrawal of funds from the parties' previously shared bond account;
3. The remainder of the relief sought in this Application is dismissed;
4. Each party shall bear his/her own costs in respect of this Application.

A.J. SCHOEMAN
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA GAUTENG
DIVISION, PRETORIA

Electronically submitted: This order was prepared and authored by the Acting Judge whose name is reflected herein and his handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Court Online / CaseLines. The date of this judgment is deemed to be **14 November 2025**.

Date of hearing: 5 November 2025

Date of Judgment: 14 November 2025

Appearances:

For the Applicant: Advocate C Jacobs
Instructed by: Hartzenberg Incorporated

For the Respondent: Advocate C Spangenberg
Instructed by: Annemie Fourie Attorneys