

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

CASE NO: 41492/2018

DATE: 12 December 2025

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

Date: 12 December 2025

In the matter between:

M[...] **S[...]** **R[...]**

Applicant

and

M[...] **A[...]** **R[...]**

Respondent

Coram: M Van Nieuwenhuizen, AJ

Heard on: 3 December 2025

Delivered: 12 December 2025

JUDGMENT

M Van Nieuwenhuizen, AJ:

- [1] This is an opposed Rule 43(6) application for the variation of a Rule 43 order granted by this Court on the 31st of October 2019¹ (*“the Rule 43*

¹ Annexure “**MS1**”, Rule 43 Court Order, CaseLines, R001-16 to R001-19

Order”).

COMMON CAUSE

[2] The following are common cause between the parties:

[2.1] The parties were married to each on the 12th of April 2014 in community of property, which marriage still subsists;

[2.2] Of the marriage between the parties one minor child was born, M[...] who was born on the 7th of July 2011;

[2.3] Primary residence of M[...] is to remain with the respondent, subject to the applicant’s reasonable rights of contact to M[...];

[2.4] A minor child, P[...] was born from a previous relationship of the respondent;

[2.5] An order of the Children’s Court exists in respect of P[...]’s biological father with regards to his parental responsibilities and rights in relation to P[...].

ISSUES IN DISPUTE AND RELIEF SOUGHT

[3] The applicant seeks a variation of the Rule 43 Order in the following respects:

	Relief	Rule 43 Order	Applicant
1.	Cash contribution towards maintenance	R30 000,00 per month for the applicant and both minor children.	R3 000,00 per month in respect of M[...] only

2.	Educational and related expenses for the minor children	Applicant to pay all educational and related expenses in respect of both minor children and pay a cash contribution of R2 000,00 per month for the minor children's lunches	Applicant to pay all educational and related expenses (including transport and lunches) in respect of M[...] only
3.	Clothing for the minor children	Applicant to purchase all clothing	None
4.	Medical aid	Applicant to retain the applicant and both minor children as dependents on his medical aid scheme	Applicant to retain M[...] only as a dependent on his medical aid scheme

APPLICANT'S CONTENTIONS

[4] The applicant seeks a variation of the Order on the following basis:

Material change in circumstances

[4.1] The applicant alleges that there has been a material change in his circumstances as a result of the following:

4.1.1 That at the time of the granting of the Rule 43 Order he was earning a total net income of R94 175,00 per month;

4.1.2 That since the granting of the Rule 43 Order, the applicant's financial circumstances have changed in the following manner:

4.1.2.1 As at 1 January 2025 the applicant has

lost an average of R75 000,00 due to the termination of the applicant's status as a contractor for the Department of Health;

4.1.2.2 The applicant's contract with the Arwyp Medical Centre, in terms of which he earned an estimate of R80 000,00 per month, was terminated during 2020;

4.1.2.3 As a result of the foregoing, the applicant alleges he now only earns an income from his relatively small private practice as a medical practitioner, earning an average of R25 000,00 per month.

[4.2] The applicant alleges that he is now, as a result of the drastic change in his income, unable to pay off debts of an already highly indebted joint estate. In particular, the applicant alleges that:

4.2.1 As of 29 October 2024, the applicant remains liable for an outstanding balance of R367 092,11 in respect of the parties' Porsche 911 Carrera S PDK, which was repossessed during 2024;

4.2.2 Is now unable to maintain regular payments towards the bond of the parties' immovable property located at Serengeti Golf Estate, owing a total arrear amount of R386 183,93 as of 11 March 2025, as well as arrear rates and taxes owing on the aforesaid immovable property;

4.2.3 Is unable to maintain payments towards his debt owed to SARS in an amount of R1 939 496,78 as of the 2024-year assessment;

4.2.4 Has an amount of R100 000,00 owing in respect of his First National Bank credit card and an overdrawn overdraft in an amount of R65 000,00.

[4.3] The applicant states that the respondent's answering affidavit is replete with allegations that the applicant has always been in debt, and that his current situation does not constitute a change in circumstances, and he is simply in contempt of the Order.

[4.4] The applicant states that what the respondent fails to understand is that the applicant's position as a contractor for the Department of Health was a temporary post.

The position regarding P[...] and the Children's Court Order

[4.5] It is common cause that an order was obtained in the Children's Court ("*Children's Court Order*") in respect of P[...]s biological father, Mr Thabo Martin Mofokoane ("*Mr Mofokoane*").

[4.6] The aforesaid Children's Court Order, dated the 22nd of July 2020, incorporates a comprehensive parenting plan setting out the respondent and Mr Mofokoane's parental responsibilities and rights in respect of P[...].

[4.7] The applicant alleges that he has no parental responsibilities in respect of P[...] and this is confirmed by the Children's Court Order, an order which was allegedly made with the

respondent's consent and input.

[4.8] The applicant states that the respondent does not volunteer any further information to this Court with regards to Mr Mofokoane, only stating that he has become unreachable since 11 December 2020. The applicant states that no attempts have been made by the respondent to locate Mr Mofokoane, despite the existence of the Children's Court Order. The applicant states that Mr Mofokoane's alleged absence, and the respondent's inability to locate him, does not create or impose any responsibility or obligation on the applicant to maintain P[...].

[4.9] The applicant argues that based on the foregoing it is submitted that the Children's Court Order ought to be enforced accordingly, and the present Rule 43 Order ought to be amended as to give effect thereto.

RESPONDENT'S CONTENTIONS

[5] The respondent argues that the applicant has not proven a material change in circumstances and relies on the following:

The applicant's version is contradictory and incomplete

[5.1] The applicant alleges a drastic reduction of income yet:

5.1.1 he fails to attach updated bank statements to support this;

5.1.2 he provides selective disclosure of certain debts;

5.1.3 he does not provide a recent financial statement, tax pay balance, or business ledger.

[5.2] The respondent argues that the applicant's disclosure is fragmented and selective (omissions regarding business accounts and recent bank statements). Recent authorities stress the centrality of complete financial disclosure in Rule 43(6) matters.

[5.3] The respondent argues that the lack of disclosure is fatal.²

[5.4] The recent decision in *B.W.H v S.A.H*³ emphasises that the bare assertion of reduced income, without proper corroboration, does not meet the legal threshold.

Timing and motive

[5.5] The respondent argues that the application is made after a contempt process and enforcement steps were instituted by the respondent. The timing strongly suggests the variation application is tactical – to avoid the consequences of non-compliance. The respondent argues that courts have been suspicious of applications timed to delay enforcement rather than to vindicate real changes in needs or means.

The alleged reduction of income is self-created

[5.6] The respondent states that the applicant relies heavily on the termination of his “*additional income streams*” as the basis for

² *Colman v Colman* 1967 (1) SA 291 (C) – A party seeking relief must make comprehensive disclosure

³ *B.W.H v S.A.H* (22802/2021) [2023] ZAGPJHC 1348 (21 November 2023)

the variation. The respondent submits that:

- 5.6.1 these income streams were irregular, temporary and never intended to form the primary basis of support;
- 5.6.2 the applicant voluntarily reduced his professional workload;
- 5.6.3 the applicant maintains a high standard of living inconsistent with alleged financial collapse.

[5.7] The respondent contends that the Rule 43 order was based on the applicant's overall earning capacity – which remains substantial. He is a qualified medical doctor and surgeon with an active medical practice.

[5.8] The respondent alleges that any financial difficulties is either temporary or self-engineered as a result of failure to manage finances responsibly.

No causal link between alleged change and inability to comply

[5.9] The respondent argues that the applicant must establish that the alleged change directly prevents compliance and that the applicant has not done so. The respondent states that even if the applicant's income has fluctuated, the applicant continues to operate a medical practice capable of generating significant revenue.

[5.10] The respondent submits that the applicant is in fact prioritising other financial obligations over maintenance, contrary to the principle that maintenance towards minor children is a first-

charge obligation.

Incomplete/selective disclosure

[5.11] The respondent argues that the applicant has not supplied full bank statements for Thalitha Cumi Holdings and certain Capitec accounts for the contested period, despite the respondent's requests and the respondent's reliance on her disclosed statements of these accounts to contradict the applicant's account.

[5.12] The respondent argues that the applicant places emphasis on SARS debt, bond arrears and vehicle repossession. The respondent argues that these debts:

5.12.1 arose due to the applicant's own mismanagement and failure to honour obligations;

5.12.2 cannot be used to excuse maintenance;

5.12.3 appear inflated and are not fully supported by discovery.

[5.13] The respondent argues that a parent cannot prioritise creditors over a minor child's maintenance needs.

[5.14] The respondent argues that when the applicant chooses to withhold relevant material the Court should treat the application with extreme caution.

[5.15] The respondent argues that the applicant raised the SARS debt dating back to 2020, a period during which he was

supposedly earning sufficient income. Despite this, he failed to fulfil his payment responsibilities, instead prioritising a lavish lifestyle. He asserts that his employment was terminated and that he currently earns only R25 000,00 per month. However, the respondent argues that his bank statements tell a markedly different story. These records show consistent monthly income exceeding R200 000,00 per month.

- [5.16] Moreover, the respondent contends that the applicant's spending habits indicate substantial discretionary income contradictory to his claimed financial hardship. For instance, in April 2023 alone, the applicant spent over R13 000,00 dining out. Despite these expenses, he alleges an inability to service his SARS debt, contributing only R3 000,00. Furthermore, he made payments to Curro Private School only twice in 2023, even though his income exceeded R200 000,00 per month in individual months during the same period, whilst simultaneously neglecting to provide maintenance for his children, who were expelled from two schools due to non-payment. The applicant claims that the respondent changed their schools without his knowledge. The respondent however alleges that this occurred during periods when he was not paying school fees, leading to the children's expulsion.

Additional financial priorities divert funds from his obligations

- [5.17] The respondent argues that the applicant has previously claimed a lack of finances in circumstances where he prioritised other expenses as set out above. In April 2023, he spent R7 000,00 at a liquor store, notwithstanding claims of insufficient funds. Additionally, he routinely purchases clothing every month, despite not maintaining his children financially;

- [5.18] The respondent furthermore argues that although the applicant ceased maintenance payments following a Court order, he claims to have been employed at Sebokeng Hospital immediately thereafter, earning R80 000,00 in addition to holding employment at Arwyp and Tembisa Hospitals. The respondent alleges that this employment history starkly contradicts his assertion of a R25 000,00 income.
- [5.19] The respondent furthermore argues that it is worth noting that the applicant's surgery includes tenants such as dentists, optometrists, and podiatrists. The applicant argues that the respondent has failed to disclose to the Court the rental income derived from these lease agreements. The respondent argues that given the income level suggested by the applicant's expenditure and bank statements, and the recent renovations at the surgery, it is evident that the applicant's financial claims lack transparency.
- [5.20] The respondent furthermore argues that it is reasonable to conclude that an individual earning a monthly income of R25 000,00 cannot reasonably owe SARS the amount of money that the applicant is owing.

Parental responsibilities and rights of P[...]

- [5.21] The respondent argues that even where P[...]'s biological father has a legal duty, the applicant cannot simply walk away from the existing Court order previously imposed in the Rule 43 order. The respondent has urged the Court to reject this approach based on *inter alia* the following:

5.21.1 The respondent informed the applicant of the existence of P[...] when they met in 2010, who was

less than a year old at the time;

5.21.2 The respondent was employed as a flight attendant at Interair South Africa wherein she was solely responsible for the care and upbringing of P[...];

5.21.3 The applicant requested the respondent to stop working in order to assume the responsibility as a housewife;

5.21.4 The applicant has maintained her and the minor child since the relationship began – he even changed P[...]'s surname from the respondent's maiden name to the applicant's surname and the applicant is also reflected as P[...]'s father on his birth certificate ;

5.21.5 P[...] resides with her half-sibling;

5.21.6 The applicant's withdrawal would cause emotional and financial prejudice.

[6] The respondent states that on several occasions the applicant has asserted that he was terminated from his position at the Department of Health, only to be reinstated and referred to Annexure “**RAN6**” attached to the answering affidavit. The respondent alleges that each time an application is brought the applicant claims that his employment contract has been terminated only to subsequently be reinstated. The respondent states that the first occasion on which she has learnt that the applicant was appointed to a position at the Arwyp Hospital subsequent to the granting of the Rule 43 order was during these proceedings. The applicant has failed to inform either the respondent or the respondent's attorney of such employment.

- [7] The respondent asserts that the applicant voluntarily had the Porsche motor vehicle repossessed, which the respondent utilised for herself and the minor children. The respondent alleges that the applicant acted with malice towards herself and the minor children by intentionally having the Porsche 911 motor vehicle repossessed. The respondent states that the applicant's malice is particularly evident in light of the fact that the applicant continues to pay monthly instalments in the range of R12 000,00 to R20 000,00 for the Jeep Grand Cherokee, a vehicle from which he personally benefits while she is left to struggle with the minor children and have no mode of transport.

DELIBERATION

The best interests of the minor children

- [8] The respondent argued that even if P[...]’s biological father exists, the applicant’s historical conduct created legitimate and reasonable reliance.
- [9] The applicant took it upon himself to locate the minor child’s father after the respondent instituted the divorce proceedings and after a Rule 43 Court order was granted, and encouraged him to institute the proceedings against the respondent.
- [10] The parental plan took into consideration the fact that the respondent is going through divorce proceedings and only upon a change of financial circumstances the order will be revised. The following furthermore appears from the parenting plan *“Father to contribute as far as possible. Maintenance to be revised once financial situation change for parents”* and *“To be finalised once mother’s divorce is finalised”*.⁴
- [11] The respondent alleges that P[...]’s father has since disappeared after

⁴ CaseLines, R001-259

the application because he was “*forced to institute the application*”. It was not seriously contested by the applicant that P[...]’s father had disappeared.

- [12] The applicant states that the respondent during the rule 43 proceedings asked that he pay maintenance in respect of the respondent and both the minor child in the amount of R40 500,00 per month. He states that he offered to make payment of the amount of R14 760,00 for the maintenance in respect of both the minor children. He did not include the respondent as it was his view that the respondent was capable of being independent and self-supporting.⁵
- [13] He furthermore states in addition to the above, the respondent asked the Court that he pays medical aid premiums for herself and both the minor children and all excess medical costs for herself and the minor children. The applicant states that he tendered to pay medical aid premiums for the respondent and the minor children in the amount of R4 700,00 per month.⁶
- [14] It is apparent that the applicant during the Rule 43 proceedings tendered an amount in respect of the minor child P[...] and further tendered to pay medical aid for P[...] in a certain amount. He sought parental rights and responsibilities of P[...] including contact to Paballo.
- [15] Although the parenting plan between P[...]’s biological father and the respondent was already made an order of Court during the course of 2020, to the applicant’s knowledge, the applicant only pursued the application for maintenance and ancillary expenses in respect of P[...] to be discharged on the 19th of March 2025 after contempt of Court proceedings had been launched against him.

⁵ Paras 6.1 and 6.2, Founding affidavit, CaseLines, R001-9

⁶ Para 6.3 and 6.4, CaseLines, R001-9

[16] In the Western Cape matter of *N.M v B.M and Others*⁷ Thulare J *inter alia* held the following:

“[5] *The applicant sought the finding that the respondent stood in the place of the parent and voluntarily assumed that role in respect of the children that the applicant brought into the marriage and that was the basis for the court to find that the respondent was liable for the maintenance of her children. In essence the proposition was also that the respondent had no right to unilaterally withdraw from that role or put otherwise, the respondent had no right to terminate a relationship in which he had placed himself as a parent. This was a complex social policy issue and not easy to determine. In contemporary South Africa, is it still offensive to hold one person liable for the maintenance of another person’s child? The further question that arises from the facts of this matter was whether the applicant’s children should be allowed to “double dip” or put otherwise, to receive a double portion, to wit, from their natural father and from the respondent. In our law, in matters involving children, the politics of the birth of the child yields to what is in their best interests. It is not in the best interests of children that a stepparent be permitted to abruptly abandon those children the moment they fall out of love with their parent. Whether the respondent took a properly informed and deliberate intention to assume the liability to maintain the applicant’s children permanently, is a question that is best left for the trial court. This includes the question whether the respondent intended that the applicant’s children should continue to benefit from a double portion from which they benefitted during the happy times in the marriage.”⁸*

⁷ (11384/2024) [2024] ZAWCHC 254 (11 September 2024)

⁸ *N.M v B.M and Others* at para 5

- [17] On the facts before him Judge Thulare ordered the first respondent to pay maintenance and ancillary expenses in respect of the applicant's children from a previous relationship *pendente lite*.
- [18] Having regard to the facts and circumstances of this matter, I am not inclined to *pendente lite* terminate the maintenance liability that the Rule 43 Court order imposed upon the applicant in respect of P[...] as same would not be in the minor child's best interests.⁹ I am not suggesting that all endeavours should not be made by the respondent to locate P[...]’s biological father and to pursue a maintenance claim against him. Whether the applicant should be liable for the maintenance and ancillary expenses of P[...] permanently is a matter best left for the trial Court.

Material change in circumstances

- [19] In an application in terms of Rule 43(6) for a reduction in the interim maintenance payable based on a decline in the financial situation of the applicant, a “*full and frank disclosure in regard to all the numerous and varied elements which make up the broad overview of the applicant’s financial situation*” should be made.¹⁰ The applicant bears the onus of establishing on a balance of probabilities that a material change has occurred. To succeed in that endeavour, an 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 that change in the context of the applicant’s broader financial circumstances.¹¹
- [20] In *casu* the applicant has not made a “*full and frank disclosure in regard*

⁹ Section 28(2) of the Constitution of the Republic of South Africa

¹⁰ *C.I.J v C.L.E* (Unreported, GJ Case No. 34367/19 dated 26 April 2023) at para 22 and the cases there referred to

¹¹ *C.I.J v C.L.E supra* at para 22 and the cases there referred to

to all the numerous and varied elements which make up the broad overview of the applicant's financial situation". The applicant's financial disclosure form is incomplete. The applicant has failed to disclose the bank statements of his business Thalitha Cumi Holdings of 2025 – the business the respondent states he established without the respondent's knowledge. The respondent argues that the applicant has redirected most medical aid and patient payments via Thalitha Cumi Holdings, apparently to make it appear that no funds were deposited into the business account.

[21] The respondent has submitted proof of the bank statements of Thalitha Cumi Holdings for the financial year 2023 to 2024 and evidence as to how the applicant is expending the funds.¹² The applicant also furthermore failed to make full disclosure of his Capitec Bank statements. The applicant has failed to disclose the income derived from his tenants such as dentists, optometrists and podiatrists. The applicant has failed to make a frank, candid and transparent disclosure of his financial position.

[22] For these reasons, the application to vary the Rule 43 order of 31 October 2019 is dismissed. Costs follow the event.

ORDER

[23] Accordingly, I make the following order:

1. The application is dismissed with costs on Scale A.

¹² Annexure "**RAN5**" to the applicant's answering affidavit, CaseLines, R001-120 to R001-195

M VAN NIEUWENHUIZEN*Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

Delivered: This judgment was prepared and authored by the Judges whose names are reflected and is 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 CaseLines. The date for hand-down is deemed to be on 12 December 2025.

HEARD ON:	3 December 2025
DATE OF JUDGMENT:	12 December 2025
FOR APPLICANT:	Marx du Plessis Shapiro & Ledwaba Incorporated
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