IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

Case Number: 27271/2016

(1) REPORTABLE : NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) Revised: NO

G[…] K[…] **APPLICANT**

(ID : 6[…])

AND

S[…] K[…] **RESPONDENT**

(ID : 6[…])

JUDGMENT

This Judgment was handed down electronically and by circulation to the parties' legal representative by way of email and shall be uploaded on CaseLines. The date of the hand down is deemed to be on the

MAKUME J:

1. In this matter, the Applicant seeks an order of variation in terms of rule 43(6) of the Uniform Rules of Court to vary an

interim maintenance order granted against him by this Court during November 2024.

2. The applicant is represented whilst the Respondent is now on her own, her attorneys of record having withdrawn.
3. The Applicant seeks an order relieving him totally of the obligation towards payment of spousal maintenance as well as payment of a contribution to the legal costs of the Respondent.
4. In the order granted by Miennaar AJ on 11 November 2024, the Applicant was directed and ordered to pay to the Respondent spousal maintenance of R20 000 per month with effect 1 December 2024 and also to pay an amount of R150 000 being a contribution to legal costs, which amount was to be paid in 15 monthly instalments.
5. In paragraph 21 of his founding affidavit, the Applicant says that he has not been able to make payment of the R20 000 as well as the R150 000 as he says "I simply do not possess the necessary funds to pay the Respondent R20 000 per month and to contribute to her legal fees in the sum of R150 000".
6. He alludes to the fact that his financial position has changed drastically since the issuing of the order in November 2024 and that his business has taken a financial toll.
7. Over and above, the payment of spousal and contribution to legal fees, the Applicant was also directed to allow the Respondent to stay free of charge and remain in occupation of the immovable property situated at 30 Agapanthus Road, Brackenhurst and to provide her with a suitable roadworthy motor vehicle within 30 days.
8. The Applicant fell into arrears, as a result on 7 August 2025, the payment of maintenance was restructured and allowed the Applicant to pay to the respondent seven equal payments of R40 205.49 to defray arrear maintenance with effect 15 August 2025. He was further granted leave to pay R15 000 per month instead of R20 000, pending the outcome of his rule 43(6) application, which was pending.

9. During submissions in this application, it would seem that Applicant has been able to comply with the terms of the revised order dated 7 August 2025, which order was only to take care of the arrears that had built up since the order granted in November 2024.
10. It is also worth noting that this would be the third or fourth application involving the parties. The first such application and order having been granted in November 2016, where after the parties reconciled for a short period.
11. This matter is being litigated on grounds which have now become difficult to tell who between the parties is telling the truth and who is not. I say this judging by what appears from their disclosed financial records. On the one hand, the Applicant at paragraph 42 of his founding affidavit, says that he and his wife, the Respondent, personally and jointly own several companies and immovable properties. Despite this revelation, he still maintains that he does not possess necessary funds to maintain the Respondent. He says his monthly salary from one of the companies is a sum of R46 327.71.
12. He has referred this Court to Annexure GK8, which is a copy of his Standard Bank account. The is transaction therein are in my view, difficult to understand. There are items of income, which are not explained as well as payments and withdrawals, which leaves one confused as to what those transactions are for.
13. Annexure DK13 is a copy of the applicant's personal credit card statement, which shows that he has a credit limit of R125 000. I find it difficult how on a salary of R46 000 he is able to service that account. The statement does not indicate what he uses this money for and it is not detailed.
14. Annexure GK19 is a Standard Bank statement in the name of Two Sun Trade Investment (Pty)Ltd. This is the company that owns the immovable property situated at 8[...] R[...] C[...]

Street, B[...], Alberton. The statement is dated 4 September 2025 and covers the period 30 June 2025 up to 28 July 2025. On 30 June 2025, an amount of R29 000 is paid into that account from a Capitec account. that same amount is withdrawn on 1 July 2025. There is no explanation about that transaction.

15. The Applicant then attaches as GK20, his 3 months' payslip from his employer Dynamic Supply Chain Management Consultants. The 3-month payslip shows fluctuation in income, for example, for June 2025, he earned a net income of R46 327.71 and yet the following month he had a net salary of R52 046.46.

16. I have also had a look at the expenditure items set out in paragraph 48 of the founding affidavit and in my view, the following items of expense should be gotten rid of at this stage, namely lawyer's fees R4 000, credit card R10 500, clothing R500, overdraft R7 500.

17. I also find it strange that at paragraph 49, the applicant says that the figures stated in paragraph 48 are estimates, not actual. It is in my view not sufficient to enable this Court to put any reliance on the Applicant's version. In any case, the Applicant does not allude to the fact that some of the expenses that are deducted from his bank account, are reimbursed to him by the company DSCM, in the sum of R73 896.08. It is the same company that was under business rescue for a short period and came out of that.

18. The Applicant says further that due to his chronic kidney disease he has been seeing medical practitioners in India and travels there occasionally for such treatment. The Applicant does not prove that there are no kidney specialists in South Africa, who treat such ailments. There is in my view no basis to allow those expenses. The report by Professor Girish Modi, attached as GK22 to the founding affidavit, does not propose that Applicant needs to see specialist in India. All it says the

doctor requested Discovery Medical Aid to authorise a treatment here in South Africa.

19. In Annexure GK23, there is a comparison of medical fees for India, UK, USA, Finland and UAE, there is no indication how much it would cost the Applicant in South Africa as compared to India.

20. It is also disturbing to know that the Applicant says he needs to pay for an overseas trip lasting 3 months from 15 December 2025 to 20 March 2026. The question is where will he be getting the income to fund such a trip.

21. Rule 43(6) provides as follows:

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

22. It is common cause that in this matter there are no minor children involved who are beneficiaries of the order granted in November 2024. Ms Kantilal is the only person affected by this order. It must also be emphasised that this application is not and should never be treated as an appeal against the order and judgment by Miennaar AJ it is tried law that rule 43(6) interim maintenance orders are not appealable.

23. In her opposing affidavit, Ms Kantilal alludes to the fact that the Applicant has not disclosed all his financial interest. Amongst others that he recently received an amount of R4 million. She has set out what she considered to be her reasonable expenses, judging by her income, which she gets for training clients in yoga at her house in Alberton.

24. I am not convinced that the Applicant has succeeded to demonstrate any material changes, justifying a setting aside of the order by Miennaar AJ. Rule 43 was not designed to

resolve issues between divorced litigants neither was it intended to last for extended periods. It remains interim until all issues that have been ventilated. In this matter, it is the parties themselves who have since 2016 been at loggerheads and not brought a matter to finality. The marriage has broken down and should be dissolved. There are no minor children involved, as a result, no issues about children are withholding finalisation. It is the hidden wealth of the parties, which is a stumbling block and for that, both are to blame.

25. The parties and their legal representatives must seriously consider case management, which may lead to mediation in order to curtail further disputes, regarding the rule 43 order. In the result I make the following order.
    1. The application is dismissed.
    2. The applicant is ordered to pay the respondent's cost of the application.

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MAKUME J

JUDGE OF THE HIGH COURT

JOHANNESBURG

For the Applicant: Advocate L Liebisch

Instructed by: Swanepoel Attorneys, Johannesburg

For the Respondent: In Person