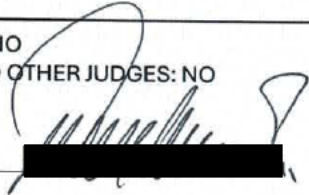


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-056214

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
02.02.2026	
DATE	SIGNATURE

In the matter between:

S. [....] J. J [....]

Applicant

And

M. [....] M. J [....]

Respondent

JUDGMENT

KHABA AJ:

Introduction:

1. The applicant has brought an application in terms of Rule 43 of the Uniform Rules of Court in which she, *inter alia*, seeks interim maintenance pending the divorce action for the minor children, as well as a contribution towards herself for spousal maintenance, including a contribution towards her legal costs. The applicant *inter alia* further seeks defined rights of contact with the minor children born in the marriage between the parties.
2. The respondent has opposed the relief sought by the applicant. The respondent disputes the applicant's entitlement to maintenance *pendete lite*, and her entitlement to a contribution towards legal costs. The respondent instituted a counter application in terms of Rule 43(6) for increased contact and residence of the two minor children.

Factual Background:

3. The parties were married to each other on 13 October 2012 at Johannesburg, out of community of property with the inclusion of the accrual system, which marriage still subsist.
4. There are two minor children born of the marriage a son *L M J*, born on 10 January 2018, he is currently 9 years of age, and a daughter *H A J*, born on 30 August 2022, who is currently 4 years of age ("*the minor children*").
5. As a consequence of the breakdown of the marriage between the parties, the respondent vacated the matrimonial home on 31 December 2023. The applicant vacated the matrimonial home on 14 September 2024. The respondent has since moved back into the matrimonial home. The parties have been separated since 31 December 2023 and have not lived together since.
6. I deal first with the respondent's counter application in terms of Rule 43(6) for increased contact and shared residency of the two minor children.

7. The minor children reside primarily with the applicant. The respondent has very limited and controlled contact with the minor children. The respondent has contact with the minor children every Thursday from 16h30pm until 18h30pm as well as every Saturday from 09h00 until 17h00pm.
8. At the hearing of the application, it was common cause that the matter will be referred to the office of the Family Advocate for an investigation. The respondent's counsel submitted that the issues pertaining to contact between the applicant and residency of the minor children may be resolved upon the parties having received the recommendations from the office of the Family Advocate.
9. During the Rule 43 proceedings, it was agreed upon by both counsel that the respondent can be afforded sleep over contact with the minor children every alternative Saturday in addition to the normal contact allowed. I am mindful of the agreement reached between the parties during the hearing of this application. This Court as upper guardian of all minor children has an unfettered discretion to make any order in relation to the best interest of the minor children in its area of jurisdiction as this Court may deem fit. At this stage this Court is not going to interfere with the current *status quo* that exist between the parties. This Court is not placed in possession of sufficient evidence as to determine what is in the best interest of the minor children pertaining to the respondent being afforded sleep over contact with the minor children every alternative Saturday.
10. The matter concerning the best interest of the minor children, specifically the issue of shared contact rights and residency is referred to the office of the Family Advocate for investigation and to generate a report that contains findings and recommendations which must be furnished to the parties.

The role and function of the Family Advocate:

In **Soller NO v G and Another**¹ Satchwell J gave some consideration as to what the role and functions of the Family Advocate are:

"[21] The Mediation in Certain Divorce Matters Act 24 of 1987 provided for the appointment of persons in the public service at each division of the High Court to be styled "the Family Advocate". The powers and duties of the Family Advocate are set out in section 4 of the legislation and provide, inter alia that "The Family Advocate shall ... after an application has been lodged for the variation ... of an order with regard to the custody ... or access to a child, made in terms of the Divorce Act, if so requested by any party to such proceedings ... institute an enquiry to enable him to furnish the Court ... with a report and recommendations on any matter concerning the welfare of each minor or dependent child of the marriage concerned or ... regarding such matter as is referred to him by the Court."

The office of the Family Advocate was created in terms of the appropriately named "*Mediation in Certain Divorce Matters Act*". The title of this legislation comprises within its use of the words "*mediate*" the concepts of "*negotiation*" perhaps leading to "*settlement*" and in so doing acting as a sort of go-between between the parties. If such attempts at mediation of disputes through discussion and counselling are unsuccessful then the Family Advocate, as required by legislation, reports to the Court on the facts which it will find to exist and makes recommendations based on professional experience. In so doing the Family Advocate acts as an advisor to the Court and perhaps as a mediator between the family who has been investigated and the Court.²

*"The Family Advocate is not appointed the representative of any party to a dispute – neither the mother, father or any child. In a sense, the Family Advocate is required to be neutral in approach in order that the wishes and desires of disputing parties can be more closely examined and the true facts and circumstances ascertained".*³

*"The function of the Family Advocate has been described to be of assistance to a Court by placing facts and considerations before the Court. The Family Advocate should make a balanced recommendation and should not take sides against one party in favour of the other."*⁴

In **Terblanche v Terblanche**⁵ the Court described the Family Advocate as:

"... particularly well equipped to perform such functions and duties, having at his or her disposal a whole battery of auxiliary services from all walks of life, including family counsellors appointed in terms of the Act and who are usually qualified social workers, clinical psychologists, psychiatrists, educational authorities, ministers of religion and any number of other persons who may be cognisant of the physical and spiritual needs or problems of the children and their parents or guardians, and who may be able to render assistance to the Family Advocate in weighing up and evaluating all relevant

¹ 2003 (5) SA 430 (W)

² **Soller NO v G and Another** *supra* at paragraph [22]

³ **Soller NO v G and Another** *supra* at paragraph [23]

⁴ **Whitehead v Whitehead** 1993 (3) SA 72 (SE) and **Soller NO v G and Another** *supra* at paragraph 24

⁵ 1992 (1) SA 501 (W) at 503E-I

facts and circumstances pertaining to the welfare and interests of the children concerned."

11. The current *status quo* between the parties remains, pending the finalisation of the Family Advocate's report, such a referral has been made in the Court order below. An objective investigation and recommendation is therefore imperative in order to assist the Court ultimately in finding what arrangements would serve both minor children best interests. The office of the Family Advocate has been established by virtue of legislation, as both parties have agreed to the appointment of the Family Advocate.
12. I now deal with the applicant's claim for maintenance. This claim must be evaluated against the purpose of Rule 43. That purpose has been stated as follows:

*"Primarily Rule 43 was envisaged to provide temporary assistance for women, who had given up their careers or potential careers for the sake of matrimony with or without maternity, until such time as at trial and after hearing of evidence maintenance claims... could be properly determined. It was not created to give an interim meal- ticket two women who clearly at the trial would not be able establish a right to maintenance. The grey area between the two extremes causes problems."*⁶

The Applicant's State of Financial Affairs:

13. Amongst others, Rule 43 is aimed at assisting the parties in maintaining the standard of living established over the course of their marriage. As far as the financial position of the parties is concerned, this case presents unusual circumstances in relation to the disclosure of material facts, and I shall I return to this aspect in some detail later.
14. The applicant asserts that following the birth of their son, they both agreed that it would be in the family's best interest for the applicant to cease formal employment, despite having a secure position and a competitive salary at the time. The decision was made on the respondent's assurance that he would

⁶ *Nisson vs Nisson* 1984 (2) SA 294 C at 295 F- cited in *B v S*, unreported case decisions of the Gauteng Local Division High Court (16158/160 [2018] ZAGPJHC 534 (16 August 2018) para 9.

provide full financial support to sustain their household and lifestyle and throughout the marriage he was the primary breadwinner, meeting all related expenses.

15. The parties lived in a comfortable three-bedroom free standing home. The minor son attended private schooling and classes, the parties regularly dined at restaurants. The respondent paid for the bond, levies, utilities, Wi-Fi, solar, medical aid, school fees, and other family expenses.
16. The applicant contends that she vacated the family matrimonial home due to ongoing coercive control and financial abuse from the respondent. The applicant is now renting a two- bedroom, one-bathroom unit from her grandmother at an amount of R 12 000.00 (twelve-thousand rands) per month on loan account basis as she can only afford R 8000.00 (eight thousand rands) at the moment.
17. The applicant asserts that she was placed on the payroll of the respondent's company in the position of administrator and receiving remuneration of R 13 000.00 (thirteen- thousand rands) per month. This arrangement was initiated by the respondent.
18. The applicant has since secured employment as a contractor trainee at Life Day Spa, where she earns on average R 10 000.00 (ten thousand rands) per month.
19. The applicant contends that she is currently responsible for the daily care of both minor children and expenses associated with them, as the respondent has failed or refused to contribute despite request for additional financial assistance.
20. The applicant has only received an amount R 1000.00 (one thousand rand) cash contribution from the respondent without any warning and/or explanation which makes it impossible for the applicant to maintain the financial demands, as she has to rely on her parents for constant financial support.

The Applicant's Financial Position as set out in her Founding Affidavit:

21. The applicant seeks an order that the respondent be ordered to contribute towards the maintenance in the amount of R 10 000.00 (ten thousand rands) per child per month as an interim maintenance, pending the finalisation of the divorce action.
22. The contends that the figures are reasonable reflection of minor children needs, she is unable to meet these costs alone, as her income is limited and she is the primary caregiver of the minor children. The respondent has financial means to contribute meaningfully towards these costs. The respondent owns 20% (twenty percent) shares in the company and its free subsidiaries. According to the applicant the respondent earns an amount of approximately R 200 000.00 (two hundred-thousand rands) per month with a 13th cheque and 14th cheque various benefits and perks.
23. The applicant seeks an order directing the respondent to pay interim spousal maintenance in the amount of R 30 000.00 (thirty-thousand rands) per month. The applicant contends that this amount is necessary to supplement her current income and to enable her to maintain her as far as possible, the standard of living she had during the marriage.
24. The applicant contends that she exited the formal job market at the respondent's request to raise the minor children, she has limited work experience and earning capacity. The job at Life Day Spa is contract based and variable in income due to the flexibility needed around the minor children schedules. There is no surety with her employment.
25. The applicant contends that their standard of living during the marriage was well above average, and she is entitled to be maintained in a manner consistent with that standard of living until the finalisation of the divorce. The applicant asserted that for the duration of the marriage, the respondent was

the primary breadwinner, while she took primary responsibility of caring for the children and managing the household, at the respondent's request. The applicant ceased full time employment after the birth of their first-born son and remained financially dependent on the respondent for much in their marriage.

26. The applicant seeks a costs contribution of R 80 000.00 (eighty-thousand rands), towards her legal costs as her parents are currently funding her legal costs, as she is unable to litigate on the same level as the respondent. The cost contribution will enable her to prosecute the divorce action meaningfully and secure the rights of the minor children and herself.
27. Consequently, the applicant seeks the following relief:

[1] The respondent be ordered to pay maintenance for the minor children in the total sum of R 20 000.00 (twenty thousand rands) per month *pendente lite*, the first payment payable within Five (5) days of the granting of the court order and thereafter on or before the 28th day of each following month.

[2] The respondent be ordered to pay spousal maintenance in the sum of R 30 000.00 (thirty thousand rands) per month, *pendente lite*, the first payment payable within five (5) days of granting of the court order and thereafter on or before the 28th day of each following month.

[3] The respondent be ordered to contribute to the applicant's costs in the sum of R 80 000.00 (eighty thousand rands), payable within 60 (sixty) days of the granting of this court order, payable instalments of R 20 000.00 (twenty thousand rands) per month on or before the 28th day of each month.

[4] The respondent be ordered to pay all school fees and related activities pertaining to the minor children.

[5] The respondent be ordered to maintain the applicant on his medical aid.

[6] That an independent social worker, Mrs Alda Smit in the alternative the Office of the Family Advocate be appointed to investigate and complete an assessment as the minor children and their family environment and to generate a report on his/her findings. The respondent is ordered to offer his full co-operation to the social worker and do everything necessary, without unreasonable delay, to ensure that the social worker is able to timeously complete the report.

[7] The vehicle currently in the applicant's possession be transferred into the applicant's name so that it may be sold and replaced with safer and more reliable vehicle for the transport of the minor children. The respondent to contribute an amount of R 250 000.00 (two hundred and fifty-thousand rands), or a maintenance place to the value of the same in addition to the process of the sale of the current vehicle to enable the purchase of a suitable replacement vehicle to the value of approximately R 350 000.00 (three hundred and fifty thousand rands). The applicant has abandoned this prayer- correctly so in my view.

The Respondent's Contentions in summary:

28. The respondent contends that the applicant has failed to take the Court into her confidence and is misleading the Court. The applicant claims that the respondent only contributes R 1 000.00 (one thousand rands) cash contribution per month in her founding affidavit. The respondent in fact, contributes the sum of R 14 100.00 (fourteen thousand, one hundred rands) per month from his company, and in addition the respondent makes payment of the monthly expenses related to the children in the amount of R 24 658 00. (twenty-four thousand- six hundred and fifty-eight rands) in total the respondent pays an amount of R 37 758. 00 (thirty-seven thousand, seven hundred and fifty-eight rands). per month for the minor children and the applicant.
29. The applicant receives an amount of R 14 100.00 (fourteen thousand, one hundred rands) as cash contribution directly from the respondent and earns a

salary of R 10 000.00 (ten thousand rands) per month. In addition, the respondent makes payment of directly expenses in the amount of R 24 658.00 (twenty-four thousand-six hundred and fifty-eight rands) per month.

30. The applicant claims that the respondent owns 20% shares in the company that he works for. The respondent further claims that the respondent earns R 200 000.00 (two hundred thousand rands) per month with the thirteen and fourteenth cheque plus other employee benefits. In terms of the FDF, the respondent earns a net income of approximately R 94 000.00 (ninety-four thousand rands) per month.
31. The respondent denies that the minor children's maintenance costs over R 20 000.00 (twenty thousand rands) per month, in addition to other expenses that he already incurs. The respondent contends that, this has been the case, and the applicant is massively inflating the minor children's expenses. The applicant has provided no proof in this regard, and no evidence is submitted by the applicant to substantiate the children's monthly expenses.
32. The applicant claims that she is now renting a two- bedroom, one bathroom unit from her grandmother at an amount of R 12 000.00 (twelve thousand rands) per month on loan account basis as she can only afford R 8000.00 (eight thousand rands) at the moment. The respondent pointed out that no rental agreement was provided by the applicant as proof that she is renting the unit or any proof that the applicant is making such payments on a monthly basis.
33. The respondent contends that she he is paying for *L M J* school fees, the applicant has not provided any evidence for the extra related costs that she is paying for. The respondent asserts that the minor children are on his medical aid plan and they have savings to cover any medical costs.
34. The respondent contends that the applicant has not provided any proof of any entertainment costs or petrol expenses but in all practicality same can be

agreed as incurred. These amounts can also be easily covered by the cash amount of R 14 100.00 (fourteen thousand, one hundred rands), she obtains from the respondent monthly and her monthly salary that she receives every month considering that she does not contribute to school fees and medical expenses of the minor children. The respondent argues that the applicant has failed to prove any expenses claimed, and that her income has not been disclosed.

35. The respondent denies that the applicant has limited work experience. The respondent contends that the applicant is able to earn an income and there is no basis for her to obtain spousal maintenance. The applicant was only out of work a period of 6 (six) years. She is only 36 years old and more than able to support herself with her degree and skills. The respondent asserts that he has maintained the applicant already for the past two years since he vacated the matrimonial home, as well as the cash payment of R 14 000.00 (fourteen thousand rands), that she receives monthly from the respondent to be used for her and the minor children.
36. The respondent argued that the applicant was employed for period of time during their marriage and she contributed to the household financially. The applicant also paid for her own motor vehicle. It was after the birth of their minor son when he was forced to take over the financial load as the applicant wanted to be a stay home mom with their son.
37. The applicant argued that he was in fact not able to support their lifestyle on his income, at the time alone, he supported his family by obtaining debt. The respondent contends that he sees no logical reason why he would insist on the applicant being a stay home mom if he could not have afforded it at the time.

Non-Disclosure by the Applicant:

38. In an application in terms of Rule 43, the applicant is expected to make a full disclosure in her founding affidavit of all material assets beneficially owned by her.
39. The question for decision in this matter is therefore reduced to this: whether the applicant was frank with this Court when she set out her financial position.
40. It is fundamental in our law that the courts generally impose a high duty of disclosure upon an applicant who seeks an equitable relief. Likewise, in every Rule 43 application the parties owe the court a duty; a duty that compels full, honest, and clear disclosure. Full disclosure in Rule 43 proceedings applies with particular force. Therefore, an absolute obligation rests upon the parties in such an application to *inter alia*, disclose the true state of their financial affairs. Hence, in every Rule 43 application, the essential question is: “*did the applicant make full disclosure of all material facts?*”. Failure to disclose such material facts to the court, makes it difficult for the court to determine the issues before it.
41. It follows then that a court will take a dim view if an applicant in Rule 43 is not candid and open with the court. And, as such, it is clear from the authorities that a misstatement or a suppression of a fact in a Rule 43 application is a ground for denial and worthy of a cost order. To show that this is not a new problem, in **D.C.S v G.R.S**⁷ an unreported judgment of this Court, case number 21228/17 by Thulare J, dated 15 September 2023, in paragraph 14, the court made the following remarks:

“[14] The applicant purposefully failed to take the court into her confidence by failing to make an honest disclosure of her monthly income, especially since 2018. She had failed to provide same when the respondent asked for them when she first raised the issue of interim maintenance in 2020. She failed to be honest and did not disclose material and relevant information regarding her true financial position, including her business revenue and the business valuation which was prepared on the basis of information from the financial statements she provided to an independent accountant, which information stood in direct contradiction to the allegations of her financial position. There is no doubt that if the position of revenue was materially different as at 2022, the applicant would have replied to the respondent’s answer. From the past revenue, it being deliberately being withheld from the court, and the general conduct of the applicant including not only dishonesty but attempting to dribble her need and

⁷ D.C.S v G.R.S [06 February 2024] WCHC 5578/2022 at 14.

means past the respondent and the court, the conclusion I reach is that the applicant earned sufficiently to cater for her financial needs and did not require interim maintenance."

42. In *Du Preez v Du Preez* 2009 (6) SA 28⁸, at page 32 B-J-33A, the following is stated:

"[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 found 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 to exaggerate their expenses and to understate their income, only then later in subsequent affidavit or in argument, having being caught out in the face 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 censured. 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 constitutes the offence of perjury, and in certain circumstances may be the crime of defeating the course of justice. Should such conduct occur in rule 43 proceedings at the instance of the applicant then relief should be denied. Own underlining:

[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 to ensure a just and expeditious decision". The discretion is essentially an 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, 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."

43. The applicant claims that the respondent only contributes R 1000.00 (one thousand rands) cash contribution per month (*founding affidavit: para 6.11, CaseLines 002-12*). In his answering affidavit the respondent pointed out that the applicant failed to mention that in fact, the respondent contributes the sum of R 14 100.00 (fourteen thousand, one hundred rands) per month from his company and in addition, he makes payment of the monthly expenses related to the children in the amount of R 24 658.00 (twenty-four thousand six hundred

⁸ *Du Preez v Du Preez* 2009 (6) SA 28 , at page 32 B-J-33A.

and fifty-eight rands). In total, the respondent pays an amount of R 37 758.00 (thirty-seven thousand, seven hundred and fifty-eight rands) per month for the children and the applicant (*respondent's answer: para 25, CaseLines 005-23 to 005-24*).

44. The applicant receives an amount of R 14 100.00 (fourteen thousand one hundred rands) as cash contribution directly from the respondent and earns a salary of R 10 000.00 (ten thousand rands) per month. (*founding affidavit: para 6.8, CaseLines 002-11*). In addition, the respondent makes payment of direct monthly expenses in the amount of R 24 658.00 (twenty-four thousand six hundred and fifty-eight rands), (*respondent's answer: para 25, CaseLines: 005-23 to 005-24*).
45. The applicant pleaded being indigent and expected to found lacking. In my view a material omission of this kind falls short of what may be expected in rule 43 proceedings. Because she failed to take the court fully into her confidence she did not act with utmost good faith and should be denied relief on that score.

Application of the Law to the Facts:

46. The applicant needs accommodation, but not that which may be beyond her means. Just like every average South African on finances, she must cut her cloth to the size of her dress. Where the parties have equal, although not similar earnings, and they share care and contact equally, without more, in my view it was not established that the applicant deserved to be paid anything by the respondent for the period that the children are with her. The respondent is solely responsible for financially maintaining the two minor children. I fail to see the wisdom of redirecting that expense from the respondent to the applicant. This kind of conduct, where on the eve of divorce or immediately after service of divorce summons the role of a party in the maintenance of the spouse or the children was sought to be erased or the effect thereof scraped out, whilst the liabilities and expenses are inflated or amassed ostensibly to make up a case for a rule 43 application, need not be encouraged.

47. The inclusion of minor children's expenses, including maintenance of R10 000.00 (ten thousand rands) per month per child, when the respondent is paying and has tendered to continue paying such expenses and he is solely responsible for financially maintaining the two minor children suggests that the items were included simply to inflate and increase the expenditure on the of the minor children.
48. The expeditious nature of a rule 43 application, in my view, in itself was sufficient reason to not allow for a complex enquiry of the nature of an involved maintenance order. In my view, complex enquiries should preferably be pursued in the maintenance courts, which now have the power to make an interim order as envisaged in section 10(6)(b) of the Maintenance Act, 1998 (Act No. 99 of 1998) (the "MA"). The power of a maintenance court to make an interim order before the maintenance enquiry was heard is a new development, which was introduced by section 4 of the Maintenance Amendment Act, 2015 (Act No. 9 of 2015) which came into operation on 9 September 2015. Section 10(6)(a) of the MA provided the legislative voice to the urgency of maintenance enquiries. Where the issue is simply the determination of a reasonably appropriate amount to be paid for the support of the spouse or the children, the proper machinery is the maintenance recovery regime of the MA. It provides for a proper investigation and an enquiry. In that machinery, a maintenance investigator is available to run the errands to help determine the difference in value between two bob and twenty cents, whilst the maintenance officer and the parties have the time to use a calculator to add, subtract, divide and multiply the figures where necessary, to help the parties and the magistrate to determine reasonable amounts to be admitted as expenses.
49. The requirement in Rule 43(5) for a just order, in my view, placed a duty not only on the courts but also on applicants to base their applications and their conduct according to what is morally right and fair. It requires a dispassionate approach to the application, which is guided by truth and reason. In as much as family law matters are in their very nature emotionally charged, it is

expected of an applicant to strive not to be influenced by strong emotions and affected by personal bias. This will allow some measure of calm, so that they can be rational and be able to think clearly and to make good decisions. A Rule 43 application remains a process of balancing the scales for a just divorce process and provides temporary assistance for the support of the spouse and the children and to enable a party in an unfair position to present its case adequately before the court.

50. The rule was enacted to ensure justice in that the parties are treated fairly *vis-à-vis* one another. I have to add that the rule was also not intended to result in an order which will for all intents and purposes be a certificate of exemption of legal practitioners to some risk, to wit, that their fees were covered in advance. The totality of what is covered by the rule has its basis in the duty of support that the spouses owe each other [*Carry v Carry* 1999 (3) SA 615 (C) at 619H-I⁹] and parents owe to their children.
51. The applicant exaggerated her expenses and understated the support that the respondent was providing to her and the children. This is dishonourable conduct which has no place in judicial proceedings [*Du Preez v Du Preez* 2009 (6) SA 28 (TPD) at 32D-E¹⁰]. The parties in rule 43 proceedings have a duty to act in utmost good faith and to disclose fully all material information regarding their financial affairs, and failure to carry out this duty would justify refusal of the relief sought¹¹.
52. In my view, the rule was not envisaged for the parties to have similar means. If that was the case experience taught that some divorce actions would run for the lifetime of the parties therein engaged and for as long as the legal practitioners' fees were covered in advance. The Rule was intended for the parties to have equal means so that they can on an equal footing adequately engage with the issues between them. Equality includes the paradox of similarities and differences in one whole. It is necessary to indicate that equality is sometimes a logically self-contradictory concept which has the

⁹ *Carry v Carry* 1999 (3) SA 615 (C) at 619H-I.

¹⁰ *Du Preez v Du Preez* 2009 (6) SA 28 (TPD) at 32D-E.

¹¹ *Du Preez v Du Preez*, above, at 32G-H.

propensity to run contrary to other people's expectations. Equality may involve contradictory yet interrelated elements. I understand equality, in the context of a Rule 43 application, to accept the difference between available means between the parties, for as long as that difference does not amount to an unfair advantage for one party at the expense of the other and lead to unjust divorce proceedings.

53. For these reasons, I find that the applicant has failed to establish that she is entitled to interim maintenance under Rule 43.

Contribution to Costs:

54. I now turn to the applicant's claim for contribution for costs. Is applicant's entitled to her contribution costs and if so, in what amount?
55. The claim for a contribution towards costs is one *sui generis* deriving originally from Roman Dutch law. It is based on the duty of support owed by spouses to each other.¹² The spouse claiming a contribution towards costs is required to show that he or she has inadequate means of his or her own to fund the litigation.¹³
56. Whether or not an applicant is entitled to a contribution towards costs, and if so at what amount, is a matter for the discretion of the court.¹⁴ The paramount consideration is that the party claiming a contribution should be enabled adequately to place his or her case before the court.¹⁵
57. This remains the essence of the claim even though a court may more liberally assess the requirements of a spouse married in community of property as opposed to one married out of community.¹⁶ The object is not to release the

¹² Van Loggerenberg Erasmus Superior Court Practice D1-580

¹³ *Greyling v Greyling* 1959 (3) SA 967(W)

¹⁴ *Van Rippen v Van Rippen* 1949 (4) SA 634 at 639; *Dodo v Dodo* 1990 (2) SA 77 (W) at 98 C-D; *Nicholson v Nicholson* 98 (1) SA 48 (W) at 50D

¹⁵ *Van Rippen*, above, at 638-9

¹⁶ *Van Rippen*, above, at 637-8

whole half of the joint estate to the applicant, nor is it to require the respondent to make over to the applicant's legal advisers the sum they would be entitled to receive if the applicant were ultimately to be successful, as this may be to the prejudice of the respondent spouse should the applicant not achieve that success.¹⁷ This means that an applicant is not entitled to all their costs even if the respondent can afford to pay them.¹⁸ Attorneys are expected to bear some risk with regard to their fees,¹⁹ although attorney's fees may be included.²⁰

58. The quantum of the contribution will depend on the financial position of the parties, the issues involved in the pending litigation, the scale on which the respondent spouse is litigating, and the disbursements essential to the applicant's case. The court must factor into its discretion the constitutional injunction to guarantee the right to equality before the law and the equal protection of the law.²¹
59. The applicant has further not placed any evidence before the Court with regards to the steps that need to be taken by her to bring the matter to trial readiness and trial, her estimated future litigation costs, amounts already expended in the divorce action, what is required to properly prepare her case and place it before the Court at the hearing of the action or the costs incurred by the applicant in the divorce litigation.
60. The applicant contended that she requires a contribution towards her legal costs in the amount of R80 000,00 (eighty-thousand rands). The applicant attached an invoice from her attorneys of record evidencing that an amount of R 154 383.53 (one hundred and fifty-four thousand, three hundred and eighty-three rands and fifty-three cents) is due and owing to her attorneys of record. Upon considering the invoice submitted by the applicant's attorney of record

¹⁷ *Van Rippen*, above, at 638

¹⁸ *Van Rippen*, above, at 640-1; *Dodo*, above, at 98F; *Nicholson*, above, at 52B-C

¹⁹ *Van Rippen*, above, at 639

²⁰ *Nicholson*, above, at 52B-C

²¹ *Carey v Carey* 1999 (3) SA 615 (C) at 621B-D

and attached to the papers it appears that such amount is due for professional services rendered in respect of the Rule 43 application and not for trial.

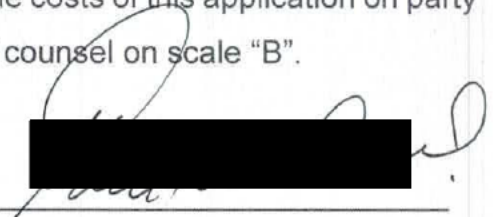
61. The applicant has failed to make out a *prima facie* case for contribution towards her legal costs, and she is not entitled to the relief that she seeks. To make out a *prima facie* case, the applicant ought to have shown firstly, a duty of support, second, a need to be supported and third, adequate resources on the part of the respondent to support him. The applicant has failed on three counts.
62. The applicant has not placed evidence before the Court that the respondent is able to afford the contribution to her legal costs sought. Consequently, the Court finds that the applicant has failed to make out a case for a contribution towards her costs in the divorce action as claimed.

Costs:

63. The general rule in matters of costs is that the successful party should be given his costs, and the Rule should not be departed from except where there are good grounds shown for doing so, such as misconduct on the successful party or other exceptional circumstances. I cannot think of any reason as to why I should deviate from this general rule. The respondent should therefore be ordered to pay the costs of the applicant including costs of Counsel in this application.
64. Accordingly, the following order is made:
 1. The application is dismissed.
 2. The current *status quo* between the parties remains. The issue pertaining to the best interest of the minor children, in relation to the contact and residency of the minor children is referred to the office of the Family Advocate for an investigation and to generate a report

that contains findings and recommendations, which report shall be made available to the parties.

3. The applicant is ordered to pay the costs of this application on party and party scale including cost of counsel on scale "B".



KHABA AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Delivered: This judgment was digitally delivered on 02 February 2026 by circulation to the parties' representatives by email and by uploading the judgment to the electronic file of this matter on CaseLines. The date of the delivery of this judgment is deemed to be 02 February 2026.

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Date of Hearing:

03 December 2025

Date of Judgment:

02 February 2026