

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: **2025-055441**

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

Date: 23 January 2026

CM

Applicant

And

JH

Respondent

JUDGMENT

DE VOS AJ

- [1] The parties are divorcing. They have a child, DH, who is currently 16 years old. Pending the divorce, the applicant seeks the primary care and residence of DH; maintenance of DH in the amount of R 10 000 per month; spousal maintenance of R 75 000 per month and a contribution of R 226 880.94 for legal costs pending the

divorce action. The respondent in turn launched a counter-application in which R 5 000 per month maintenance of DH is sought.

Primary care and residence of DH

- [2] The Court first considers what is in the best interests of DH. The relief sought by the applicant is for DH to relocate from Pretoria (where DH currently lives with the respondent) to Limpopo (to reside with the applicant).
- [3] DH is of an age and maturity where their views and wishes must be given due consideration as contemplated in section 6(5) and 10 of the Children's Act, 38 of 2005. In addition, there was a dispute on the papers regarding where DH wished to reside. To resolve the dispute and to give consideration to DM's wishes, the court met with and weighed DH's views.
- [4] The Court also weighed the objective facts that DH has lived in Pretoria their whole life, they go to school in Pretoria, has social and community connections in Pretoria. DH has no connections, save for the respondent, to Limpopo. DH has no group of friends nor are they settled in a school in Limpopo.
- [5] The Court weighs the applicant's reasons for wishing to relocate DH to Limpopo. The applicant's concern is that the respondent will become verbally and emotionally abusive towards DH. The applicant states clearly that no such conduct has occurred. It is the fear of future conduct which motivates the applicant. No primary facts are pleaded to support this fear of the applicant. There is no factual basis on which the Court can conclude that there is any potential harm for DH to remain with the respondent.
- [6] DH has been in Pretoria their whole life, is settled in the care of the respondent who has solely been caring for DH for a year. No factual basis has been provided to uproot DH. The Court has weighed DH's wishes and they carry significant weight. The Court cannot conclude that moving DH to Polokwane would be in DH's best interests.

- [7] This resolves the first two prayers requested by the applicant, as DH is not to relocate to Limpopo, consequently, the applicant's prayer for DH's maintenance also is refused.

Spousal maintenance

- [8] The applicant alleges that during the marriage, they were financially dependent on the respondent, who was the sole breadwinner. The applicant further alleges that since moving out of the marital home, the respondent has cut off all financial support, including cancelling their access to and bank account and cards, leaving them without any means to support themselves. The applicant has had to request money from the respondent for chronic medication and diesel to visit DH. The applicant has been forced to borrow funds from their partner's parents to meet basic living expenses.
- [9] The respondent's defences are that the applicant is now supported by their new partner and that the maintenance sought is financially impossible.
- [10] It is openly acknowledged that the applicant is in a new romantic relationship. The applicant pleads that whilst they have found a new romantic partner, the partner is "unable to assist me financially". This is then repeated "I must immediately state that [the new partner] is not maintaining me financially whatsoever, in fact they do not have the means to assist in supporting me at all". The applicant further alleges that their "partner who earns a mere R 13 000 gross income per month, is unable to provide any financial support to me, as [the partner] can barely sustain themselves on the meagre salary they earn".
- [11] The applicant further alleges that in July 2025 they approached a bank to get a credit card, as they had no savings and needed to find a way to maintain themselves. The applicant now has debt of R 7500. The applicant has no way of repaying this credit card. The applicant also alleges that they moved in with their romantic partner's parents "for a few months, as I had nowhere else to go."

- [12] The principle and the case law relied on by the respondent only apply if the new partner supports the person seeking maintenance. The pleaded facts place the present case outside the realm of the case law relied on by the respondent. The respondent has not factually disputed that the applicant's new partner does not maintain them, but rather has criticised this pleading for not being fully supported. The court sees no reason, on these papers, to go behind the pleaded facts. In any event, the allegation that the applicant is not being maintained is supported by other allegations, such as that they had to incur debt in order to maintain themselves, have no income and had nowhere else to go after they left the marital home.
- [13] Having dealt with the main defence against paying maintenance pendente lite, the Court considers what is reasonable and whether it is affordable.
- [14] The purpose of Rule 43 applications is to ensure that no party is substantially prejudiced and lacks resources to maintain a reasonable standard of living enjoyed by the parties during the marriage when pursuing their cases in the main divorce action. Courts are required to consider the applicant's reasonable needs and the respondent's ability to meet them.
- [15] The applicant claims R 75 000 per month as spousal maintenance. The claims that make up the largest portion of this amount is housing, car payments and insurance.
- [16] During the hearing, an undertaking was given that the applicant would continue to pay the car payments, the medical aid costs and insurance of the applicant pending the outcome of the divorce. Whilst the undertaking came during the hearing, it seems that this was always the applicant's intention.
- [17] The Court considers that the applicant claimed R 15 000 for lodging. This is lodging for the applicant and DH. For reasons set out above the Court is not amenable to grant this order. Counsel for the applicant readily conceded that if DH does not live with the respondent then these costs would decrease.

- [18] The remaining claims that the Court is willing to grant are food groceries and cleaning material (R 5 000); toiletries (R 1 000); water (R 500); electricity (R 2 000), phone (R 2 000); domestic worker (R 3 000); gardener (R 1 500); clothing and personal care (R 2 650); fuel (R 4 000); household expenses (R 10 000). These amounts together with the reduced accommodation is in the region of R 50 000 per month.
- [19] The applicant alleges that “the amounts are extremely similar to my expenses during the marriage, however it is lowered a bit, as I am advised that I am only allowed to ask for the bare necessities, and so I will not seek any additional amounts which I would ordinarily have had access to”.
- [20] The respondent did not dispute this allegation with any substance. The applicant is requesting to be maintained in the manner they were prior to the divorce. The fact that it is not disputed that this was the means of living to which the applicant was accustomed to prior to the divorce, means it was (with the exception of lodging associated costs) financially possible for the respondent to provide these amounts.
- [21] The Court therefore grants maintenance of R 50 000 per month, having taken into consideration the undertaking of the respondent to pay the car costs, insurance and medical aid.

Cost contribution

- [22] The applicant has no financial resources to fund the legal costs of the divorce action as they are entirely dependent on the loans from their partner’s parents which all need to be paid back and which they cannot do. The Court been presented with a free breakdown and the costs are reasonable.

Counter-claim

- [23] In relation to the counter-claim, it is undisputed that the applicant is not gainfully employed and has never contributed financially to DH’s upbringing. The applicant has not been employed for 16 years and holds no qualifications. The applicant assert

and it cannot be denied (other than a bare denial) that they have made application for all reasonable employment opportunities.

[24] It is financially impossible for the applicant to provide maintenance.

Costs

[25] The full set of facts have not emerged. The Court believes it appropriate to provide that costs should be costs to be determined in the divorce proceedings.

Condonation

[26] The respondent brought an application for condonation for the late filing of their answering affidavit. The reason for the lateness was that the applicant had, after filing the founding affidavit in this application, requested directly from the respondent that the proceedings be held in abeyance pending settlement discussion. The Court was provided with this correspondence. The respondent did not file their answering affidavit in response to this request from the applicant. Once it became clear that the applicant did not wish to hold these proceedings in abeyance and wish to proceed, the respondent filed their answering affidavit and sought condonation.

[27] The explanation for the delay is sound and supported by contemporaneous and objective evidence. The Court accepts that there may be dissonance between what was conveyed from the applicant and discussions between the attorneys. Regardless, it is common cause that the applicant requested the respondent to wait in opposing these proceedings. It is unclear why the applicant would then oppose the condonation application when the cause of the delay was the applicant's request.

[28] The Court inquired as to what prejudice the applicant suffered. The explanation was that the applicant now had to proceed with the matter being opposed. This is not prejudice of the nature that is to be weighed in considering the granting of condonation. It is not prejudicial for a party to have their day in court, it is the exercise of a right.

[29] Conclusion

[30] The Court orders:

1. The application for primary care and residency of DH is dismissed.
2. The application for maintenance for DH is dismissed.
3. The respondent is to pay spousal maintenance pending the outcome of the divorce to the applicant in the amount of R 50 000 per month, payable on or before the first day of each month into an account provided by the applicant.
4. The respondent is to make a cost contribution to the applicant in the amount of R 226 880.94, payable within two months of this order into an account nominated by the applicant's attorneys.



I de Vos
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be e-mailed to the parties/their legal representatives.

Counsel for applicant: Xavier van Niekerk
Instructed by: Waldick Inc

Counsel for respondent: L van der Westhuizen
Instructed by: F van Wyk attorneys

Date of hearing:	19 and 20 January 2026
Date of judgment:	23 January 2026