IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 003160/2023

(1) REPORTABLE: **NO**

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

(3) REVISED: **NO**

(4) Date: 10 February 2026

Signature:

In the matter between:

R[...] M[...] G[...] (born R[...]) Applicant

And

D[...] J[...] M[...] G[...] Respondent

JUDGMENT

NYATHI J

A. Introduction

[1] This is an opposed application brought in terms of Rule 43 of the Uniform Rules of Court. The Applicant seeks pendente lite relief comprising (a) a cash maintenance component in addition to the Respondent's existing direct payments, and (b) a contribution towards her legal costs in the pending divorce action. Both aspects are strenuously opposed by the Respondent, who alleges that the application constitutes an abuse of process and should be dismissed with punitive costs.

B. Background and Common Cause Facts

[2] The parties are married to each other, and three children were born of the relationship: one major son and two minors. The Applicant is resident with the children in South Africa, while the Respondent has resided and worked in Scotland since 2021.

[3] The Respondent pays a range of household and child-related expenses directly, including the mortgage bond, school fees, medical aid, insurance, rates and taxes, security services, and certain personal and educational expenses of the children. The cumulative value of these items amounts to approximately R59 834 per month, representing 57% of his net income of £4 548 (RXX depending on exchange rate).

[4] The Applicant was retrenched from her primary employment in December 2024 but resumed new employment on 10 March 2025, earning approximately R30 000 per month, in addition to retaining her secondary bookkeeping income of R8 640. Her combined net income is thus R38 640 per month.

C. Issues for Determination

[5] The issues requiring determination are:

5.1 Whether the Applicant has made out a case for *pendente lite* monetary maintenance beyond what the Respondent is already paying;

5.2 Whether the Applicant has established an entitlement for a contribution towards her legal costs; and

5.3 Whether this Rule 43 application constitutes an abuse of process.

D. Applicable Legal Principles

[6] The purpose of Rule 43 is to provide quick and interim relief to a spouse who may otherwise be left destitute or unable to prosecute or defend pending matrimonial litigation. It is not intended as a mechanism to obtain a financial advantage or to pre-determine issues reserved for trial.

[7] In *Nilsson v Nilsson*[1], the court warned that Rule 43 was not designed to operate as an "interim meal ticket" for applicants who would ultimately fail to establish a right to maintenance at trial.

[8] In *ACC v ALC*[2], Makgoka J (as he then was) stressed the need to scrutinize whether the disputes are genuinely raised, noting the recurring pattern of parties weaponizing interim orders to secure benefits unattainable at trial.

[9] In *Du Preez v Du Preez*[3] it was held that the principle of *uberrima fides* applies with particular force to Rule 43 applications. A party who fails to disclose full and accurate financial information, or who presents contradictory or misleading information, risks dismissal of the application.

E. Evaluation

Monetary Maintenance:

[10] The Applicant premised her request for substantial cash maintenance on alleged financial distress following her retrenchment. However, the evidence reveals that she resumed full-time employment eight days after launching this application, increasing her net monthly income to approximately R38 640 — materially higher than her pre-retrenchment salary. Despite this, she did not seek leave to supplement her evidence by affidavit, as required.

[11] The Respondent has demonstrated that he already pays the overwhelming majority of the children's fixed and predictable expenses, amounting to more

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[1] 1984 (2) SA 294 (C) at 295F.

[2] (27058/2012) [2012] ZAGPPHC 193 (24 August 2012), par 4.

[3] 2009 (6) SA 29 (T) par 15 and 16.

than half of his total net income. The Applicant does not dispute these payments as a matter of fact.

[12] The Applicant's claimed monthly shortfalls are (a) unsubstantiated on the evidence, (b) materially inflated in various categories, and (c) contradicted by her own bank statements which reflect discretionary spending inconsistent with the claimed financial hardship.

[13] On the totality of the evidence, the Applicant has not shown a need for urgent interim relief. Rule 43 is reserved for cases where one party cannot meet basic living needs. This is not such a case.

Contribution to Legal Costs:

[14] A contribution to costs is only awarded where necessary to ensure equality of arms, and where the applicant shows she lacks sufficient means. This requirement is not met.

[15] The Applicant earns R38 640 per month, has alternative income, and has not demonstrated any inability to fund litigation preparation. Furthermore, the nature of the divorce issues is not so complex as to necessitate extraordinary upfront costs.

[16] The Respondent, by contrast, demonstrates limited surplus income after meeting extensive direct expenditures for the children and household.

[17] On these facts, the Applicant has not discharged the onus of proving insufficient means. The relief cannot be granted.

Abuse of Process

[18] The Respondent alleges that this application constitutes a tactical attempt to align interim maintenance with the significantly higher relief sought in the counterclaim.

[19] Several factors support the view that the application is not bona fide:

19.1 The Applicant relied on an outdated financial disclosure (17 months old).

19.2 She launched the application on the basis of unemployment while knowing she was imminently re-employed.

19.3 She supplemented her financial disclosure informally and irregularly.

19.4 The relief claimed exceeds what would be reasonable even *pendente lite*.

[20] These features are consistent with the concerns identified in *ACC v ALC*[4], where courts warned against applications driven by ulterior purpose rather than genuine interim necessity.

[21] I am satisfied that this application amounts to a misuse of the Rule 43 procedure.

F. Conclusion

[4] Supra at para [14].

[22] The Respondent’s existing contributions cover the bulk of the children’s objectively necessary maintenance needs. The Applicant has not demonstrated financial incapacity or entitlement to the additional relief sought.

[23] Further, the irregularities and contradictions in the Applicant’s presentation of her financial circumstances, combined with the absence of interim necessity, lead me to conclude that the application constitutes an abuse of the process of this Court.

[24] The application therefore falls to be dismissed.

G. Order

The Applicant’s Rule 43 application is dismissed.

The Applicant is directed to pay the costs of this application, such costs to include the costs of counsel, on the scale as between party and party to be taxed at scale B in terms of the provisions of Rule 67A.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 12 June 2025
Date of Judgment: 10 February 2026

On behalf of the Applicant: Adv. Y van der Laarse
Instructed by: A. Engelbrecht Attorney.

On behalf of the Respondent: Adv. T. Ellerbeck
Instructed by: Sulandi du Plessis Attorneys

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 10 February 2026.