THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case no 2024-127910

(1) REPORTABLE: Yes

(2) OF INTEREST TO OTHER JUDGES: Yes

(3) REVISED: Yes

Date: 10 February 2026

In the matter between:

T[...] P[...] C[...] (BORN J[...]) Applicant

And

L[...] I[...] C[...] Respondent

Summary: Rule 43 – interim maintenance – adult dependent children – revival of maintenance for major child after prior independence – failure to show involuntary loss of self-support – marital standard of living – frugality versus lifestyle expectations

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JUDGMENT

DU PLESSIS J

Introduction

[1] Intimate relationships, by their very nature, carry within them the seeds of grief. As Julian Barnes observes, "Every love story is a potential grief story. If not at first, then later. If not for one, then for the other. Sometimes, for both."[1]Grief, often manifesting as anger, is frequently encountered in Rule 43 applications, where the underlying loss arises from an impending divorce and the Court must determine each party's interim entitlements and obligations on the strength of limited affidavits and legal submissions. This exercise takes place under considerable emotional strain, which can obscure the real issues the Court is required to decide in the Rule 43 context. The Court must sift through these emotions and allegations to chart a way forward that minimises conflict and provides a workable interim regime until the divorce is finalised. This case is no exception.

[2] The parties have been married since 2001. There are three adult children: J[...], adopted by the respondent in approximately 2002 and now in his late twenties; S[...], aged approximately 22; and R[...], aged approximately 20. All three are enrolled at the University of the Witwatersrand and, according to the applicant, remain dependent on their parents for support. They all do au pair work and earn between R2100 and R2700 per month.

[3] It is common cause that the marriage relationship has irretrievably broken down. The applicant instituted divorce proceedings in November 2024, which the respondent is defending, and the respondent has delivered a counterclaim.

[4] Following their separation, both parties continued to reside in what respondent's counsel referred to as a "palatial" home, occupying separate areas of the residence and conducting independent lives. After the applicant obtained an interim protection order in September 2025, the respondent vacated the matrimonial home and has since established residence elsewhere.

[1] In Levels of Life (2013), Barnes writes this in the context of losing a loved one to death, the idea also applies to divorce. It shows that the pain isn't caused by how the relationship ended, but by the fact that something once united has now been separated.

[5] During the subsistence of the marriage, the respondent carried the bulk of the fixed expenses: the costs associated with the immovable properties, the medical aid premiums, school and later university fees for the children, and a debit card facility used by the applicant for groceries and household necessities. The applicant met other personal and incidental expenses from her own income.

[6] The applicant is a qualified educator but has never worked full-time in the field and is currently a self-employed home baker operating a bespoke cake business from the matrimonial home. Her financial disclosure form ("FDF") reflects variable net income averaging R19 000–R20 000 per month over a 12–14-month period. The applicant states that her income is in the region of R13 000 per month.

[7] The respondent is a businessman with interests in various motor industry companies. He also derives income from various ancillary activities ("hobbies") and from an annuity. His FDF discloses unbonded ownership of the matrimonial and Plettenberg Bay properties, various vehicles, firearms, boats, watches and investment accounts, as well as a claimed loan liability to the Family Trust.

The applicant's case

[8] The applicant seeks, pendente lite, maintenance for herself and all three adult children, as well as a substantial contribution to her legal costs in the divorce action.

[9] In her Rule 43 notice and subsequent draft order, she claims, in essence:

a. Monthly maintenance for herself in the amount of R32 770.
b. Monthly maintenance for J[...], S[...] and R[...], each in the amount of about R37 000.
c. That the respondent continues to pay, directly to the relevant service providers, all rates, taxes, levies, water, electricity, refuse removal, security and alarm charges, Wi-Fi, and insurance premiums for household contents in respect of the Linksfield and Plettenberg Bay properties.

d. That the respondent bears the full monthly costs in respect of her motor vehicle and those of S[...] and R[...], including insurance, tracking, licence fees and fuel.
e. A payment of R285 171.25 is claimed, which is said to be money the applicant's father lent her, to cover counsel's fees for this application.
f. Payment of a contribution to her legal costs totalling R5 138 831.79, comprising roughly R827 800 for costs already incurred, R2.99 million up to trial certification, and R1.32 million up to and including the first day of trial (the last component to stand over).

[10] Shortly before the hearing, a draft order combining the respondent's tender with the applicant's claim was sent to the Court. This draft order will be discussed after setting out the respective positions of the parties.

[11] The applicant avers that, as a home baker with a fluctuating and modest income, she is unable to meet her own reasonable monthly needs and those of the three adult dependent children. Her maintenance schedule and adjusted FA5 place the combined reasonable monthly expenses of herself and the children at over R100 000, even after taking into account certain direct payments tendered by the respondent.

[12] She alleges that, since the de facto separation around May 2024, the respondent has failed properly to maintain her and the children. She states that from September to November 2024, the respondent ceased all cash maintenance payments and unilaterally assumed responsibility for grocery purchases, and that he only began paying her R26 000 per month in two instalments from around December 2024, which she characterises as arbitrarily fixed and often late.

[13] The applicant's narrative is that the respondent is a man of substantial means who is seeking to understate his income and obscure the true extent of his assets through business entities, offshore investments, and cash transactions, in a "catch me if you can" manner. The applicant states that she is not aware of the respondent's gross or net income because he has always been secretive about it.

[14] The applicant relies on extensive bank and investment statements, foreign-account records, and other financial documentation to demonstrate, inter alia, significant movements of funds through Barclays, Investec, and Nedbank, and through various other accounts, large deposits and withdrawals, and the maintenance of offshore balances in British Pounds ("GBP") and US Dollars ("USD").

[15] She further alleges that the respondent has historically dealt in cash, kept cash and valuables in safes at the matrimonial home and in safety deposit boxes, and that CCTV footage and the discovery of cash in a safe when the interim protection order was executed contradict his denials in this regard.

[16] On the strength of this documentation, she submits that the respondent's disclosed net asset value in his FDF is understated, that he is living beyond the means he avers, and that he plainly has the capacity to maintain her and all three adult children at the marital standard of living and to make the costs contribution claimed. The applicant calculates the respondent's assets at R14 million, excluding the substantial amounts of cash she avers he keeps.

[17] The applicant denies that the Rule 43 application is abusive, contending that the volume of annexures is necessitated by the complexity of the respondent's financial affairs and by his failure to make full and frank disclosure. She says the financial documents obtained during settlement discussions are admissible as objective evidence of his means and that their deployment accords with recent authority on full financial disclosure in Rule 43 proceedings.

The respondent's case

[18] The respondent opposes the application in its entirety and tenders to continue paying a wide range of expenses directly, coupled with limited cash allowances.

[19] The respondent raises, as a preliminary contention, that the applicant's papers are impermissibly long and contain extensive material irrelevant to the narrow interim enquiry, including documents furnished on a without-prejudice basis during

settlement discussions. He submits that the size and content of the record constitute an abuse of process and justify the dismissal of the application with costs.

[20] On the merits, the respondent denies that the applicant has established any bona fide financial need for spousal maintenance. He emphasises that she is economically active, runs what he describes as a successful bespoke cake business, and, on his reconstruction of her own FDF spreadsheets and cash receipts, earns net income of at least R25 000 per month and likely between R35 000 and R45 000 per month as she receives cash payments for many of the orders.

[21] The respondent contends that many of the applicant's claimed expenses are overstated, duplicated, or inconsistent with her historical spending patterns and that, once items he already pays directly are stripped out, her residual personal needs are modest and can be comfortably met from her income. He relies on an expenses comparison schedule, which, on his analysis, shows the applicant's reasonable residual needs at approximately R11 800 per month. His narrative is that the applicant is seeking a "meal ticket" through her inflated expenses – in other words, not because of genuine need, but as an easy, ongoing source of income.

[22] The respondent sets out his own financial position as follows:

a. Prior to being required to move out of the marital home, his monthly earnings were R96 700. This included his salary from M[...] L[...], as well as income from watch trading, fishing activities, cartridge servicing, hunting logistics commissions, and an annuity.
b. As a result of losing access to equipment stored at the matrimonial home, certain side-line income streams have fallen away, and he now earns about R61 700 per month.
c. His monthly expenses, including the costs of supporting the applicant and the children, and the two properties, total R168 000, generating a substantial monthly deficit that he funds from capital and investment accounts.
d. His FDF shows a net asset value of R10.6 million, which he says is steadily eroding due to the need to meet these shortfalls.

[23] The respondent accepts that he bears a duty of support towards S[...] and R[...] as adult-dependent children and that he is already discharging this obligation by paying, inter alia, all their reasonable tuition costs, medical aid, uncovered medical expenses (excluding R[...]'s ADD medication), fuel, and their share of household accommodation and groceries, as well as cash allowances of R1 500 per month each as tendered.

[24] The respondent refuses to pay maintenance for J[...]. J[...] lived abroad for about 5 years and has not received financial support from the respondent since 2019. He was enrolled to study at the University of Johannesburg in 2019, but was not allowed to write exams as he did not attend lectures. He re-enrolled at the University of the Witwatersrand in 2025. Not being self-supporting, he resides in the matrimonial home and receives food there. The respondent contends that any renewed dependency is attributable to J[...]'s own choices rather than incapacity. He notes that, notwithstanding this stance, J[...] continues to benefit indirectly from the respondent's payment of household expenses at the matrimonial home.

[25] In relation to the applicant's reliance on the volume of financial documentation, the respondent maintains that Rule 43 is not the forum to resolve disputes about the ultimate value of his estate. He submits that he cannot reasonably be required, on a sustainable basis, to fund the level of interim maintenance and costs contribution claimed.

[26] As to the contribution to costs, the respondent accepts the general principle that a spouse may be ordered to contribute towards the other's reasonable litigation costs but contends that, in the present matter, the amount sought is exorbitant, disproportionate to the value and complexity of the issues in dispute, and premature in circumstances where the parties have not yet meaningfully engaged in mediation. On his version, granting the contribution sought would risk dissipating a substantial portion of the very estate fought over in legal fees alone.

[27] The respondent accordingly seeks an order dismissing the Rule 43 application with attorney-and-client (or at least Scale C) costs, and an order in terms of his draft counter-application, in which he tenders to continue meeting the bulk of

the household and tertiary-education expenses by direct payment, together with limited allowances for the two younger sons.

Expenses of the parties

[28] It is not immediately clear what the parties' shared standard of living was during the marriage. What is striking is that the averments made by the applicant are that the respondent is keeping her and the children in the dark about his finances, and that the respondent has maintained them "albeit inadequately in certain aspects". In short, the papers indicate that the respondent was parsimonious, which caused great unhappiness in the marriage. The applicant states that the respondent would become angry and verbally abusive if she requested additional funds, and that her cake business was an attempt to avoid such irate outbursts.

[29] The applicant states that, prior to the separation, she used the respondent's debit card to purchase groceries (R7000–R9000 per week). He paid the property taxes, insurance, and maintenance, and covered household expenses. She travelled locally and internationally, often with about R10 000 in birthday money she would receive from the respondent.

[30] The children all have part-time jobs as university students, making between R2100 and R2700 per month. They attended private schools and participated in extra lessons and extramural activities.

[31] The matrimonial home is, in the words of counsel for the applicant, "palatial", and valued at around R20 million. It has an industrial generator, a full solar system, a borehole, and a fully equipped gym, and is set on an acre of land. All this suggests a high-end urban lifestyle.

[32] The respondent indicates that during happier days, he paid for all immovable property expenses, medical aid for the applicant and the children, and school and university fees, and, towards the end, gave her a card with R26 000 for groceries, detergents, toiletries, and household items. He states that these are the family's reasonable needs.

[33] From the above, the following points of stark disagreement emerge. Firstly, the applicant seeks maintenance for herself of R32 770 per month and for each child of about R37 000 per month. The respondent only tenders cash amounts of R1 500 per month for S[...] and R[...] (including education, medical aid, and fuel costs), and nothing in cash for the applicant or J[...], although he agrees to continue paying the R26 000 per month for food and household expenses.

[34] The respondent tenders to pay the fixed costs associated with the property (e.g. rates, taxes, levies, security, insurance, Wi-Fi, TV licence, staff, property maintenance).

The draft order "tendered" by the applicant

[35] The day before the hearing, the applicant tendered the following "with prejudice" order:

> "1.1 The Respondent shall pay _____ per month as maintenance for the applicant into her Standard Bank account […]. The first payment shall be made on or before the first day of the month following the granting of this order, and thereafter on or before the first day of each succeeding month, pro rata for the month in which this order is granted.
>
> 1.2 The Applicant shall be entitled to the full use and enjoyment of the motor vehicle being a Volkswagen T Cross, registration number […] (the "Applicant's motor vehicle"), which is registered in the respondent's name.
>
> 1.3 S[...] A[...] C[...] ("S[...]") shall be entitled to the full use and enjoyment of the motor vehicle being a Kia Rio, registration number […] ("S[...]'s motor vehicle"), which is registered in the respondent's name.
>
> 1.4 R[...] L[...] C[...] ("R[...]") shall be entitled to the full use and enjoyment of the motor vehicle being a Toyota Yaris, registration number […] ("R[...]'s motor vehicle"), which is registered in the respondent's name.

1.5 The Respondent shall pay the monthly costs in respect of the applicant's motor vehicle, including insurance, tracking, licence fees and fuel.

1.6 The Respondent shall pay the monthly costs in respect of S[...] and R[...]'s motor vehicles that are registered in the respondent's name, including insurance, tracking, licence fees and fuel.

1.7 The Respondent shall pay _____ per month as maintenance into the aforesaid account in respect of S[...], a dependent major son, on the same terms as set out in paragraph 1.1.

1.8 The Respondent shall pay ______ per month as maintenance into the aforesaid account in respect of R[...], a dependent major son, on the same terms as set out in paragraph 1.1.

1.9 The amounts payable in terms of paragraphs 1.1, 1.7 and 1.8 above shall increase annually on the anniversary of the date of the granting of this order in accordance with the average increase in the Consumer Price Index during the preceding year, as published by the Department of Statistics.

1.10 The Respondent shall pay the following costs in respect of 3[...] F[...] Avenue, Linksfield North ("the matrimonial home") and 5[...] S[...] Estate, Keurbooms ("the Plettenberg Bay property") (collectively "the properties") directly to third parties to whom such costs are owed, within 7 days of presentation of an invoice:

1.10.1 Rates and taxes

1.10.2 electricity, water and refuse removal charges

1.10.3 Levies

1.10.4 Security and alarm

1.10.5 Insurance premiums for household contents at the properties

1.10.6 Wi Fi

1.10.7 TV licence

1.10.8 The replacement and repairs of household appliances

1.10.9 The costs of household, garden and swimming pool maintenance and repairs

1.10.10 The costs of pet food and veterinary expenses

1.10.11 The Respondent shall pay the food and salaries of the two domestic assistants employed by the applicant, instead of Mbuso and Prince.

1.11 The Respondent shall pay R285 171.25 to the applicant in respect of monies lent and advanced to the applicant by her father in respect of counsel's fees.

2. The Applicant, J[...] D[...] C[...] ("J[...]"), S[...] and R[...] shall be entitled to use the Plettenberg Bay property, free of charge, for holiday purposes.

3. The Respondent shall pay the following expenses within 7 days of receipt of invoice:

3.1 The tertiary educational costs for S[...] and R[...].

3.2 The premiums required to retain the Applicant, S[...] and R[...] as dependants on the respondent's hospital plan.

3.3 The medical and related expenses incurred by the Applicant, S[...] and R[...], which are not covered by the respondent's medical aid/hospital plan.

3.4 The monthly costs of fuel for S[...] and R[...] on presentation of an invoice.

3.5 Uber transportation costs in the amounts of R1 000.00 for J[...], R250.00 for the Applicant, R250.00 for S[...] and R250.00 for R[...].

4. The Respondent shall pay _____ maintenance in respect of J[...] as follows:

4.1 Maintenance per month on the same terms as paragraphs 1.1, 1.7 and 1.8 above.

4.2 The tertiary educational costs for J[...] on the same terms as provided for in paragraph 3 and 3.1.

4.3 The medical and related expenses incurred by J[...] which are not covered by the medical aid/hospital plan, on the same terms as provided in paragraphs 3, 3.2 and 3.3.

5. The Respondent shall pay a contribution towards the applicant's legal costs as follows:

5.1 R827 799.19 in respect of legal costs already incurred.

5.2 R2 988 008.20 up to the stage of trial certification.

5.3 R1 323 024.40 up to and including the first day of trial, such relief to be postponed sine die.

6. In the event of the main action being settled before the trial certification stage, any unexpended funds shall be refunded to the respondent."

[36] This was a helpful starting point to frame the reasons for my order.

The law

Maintenance pendente lite

[37] This Rule 43 consisted of almost 3,000 pages and is a far cry from what this rule provides: a sworn statement from the applicant, with the respondent replying within 10 days, to be heard expeditiously. From the volume of the record, including the supplementary affidavits filed, it is evident that the parties view the outcome of Rule 43 as a precursor to the divorce proceedings. If I am correct in this understanding, the parties should be warned that this cannot be the case. The purpose of Rule 43 is clear: interim and temporary relief, based on the information before the Court, which may not be as detailed as the evidence that will be led in the divorce action.

[38] Rule 43 is designed to secure temporary maintenance and ancillary relief pending divorce, not to refashion the parties' financial relationship or to confer a level of support markedly more generous than that enjoyed during the marriage. The usual point of departure remains the manner and extent in which the financially stronger spouse historically maintained the household, with reference to the parties' marital standard of living. Interim relief should, so far as reasonably possible, preserve that standard of living, subject always to demonstrated need and the other spouse's ability to pay from their income, rather than elevate it.

[39] It is important to state expressly that this is not final maintenance and that it rests on different principles and evidence that will be considered in the divorce proceedings. What the Court is required to do is, on the available evidence, determine the applicant's needs against the respondent's means. In this particular case, it is important to stress that the object is not to upgrade or punish, but to maintain the marital standard of living until the divorce is finalised.

[40] This means that the applicant is not entitled, pendente lite, to a standard of living better than what she enjoyed during the marriage, merely because the

respondent has money but is frugal. The Rule 43 cannot be used to correct a perceived historic parsimony.

[41] This brings me to the maintenance claimed by the applicant for herself. The anticipated expenses schedule includes payments the respondent tendered directly to service providers (rates, levies, medical aid, etc.). Counsel for the applicant usefully removed those expenses from the table and deducted her income and the children's income from their claims. The amounts inserted then were R11 325 pm for the applicant, R8 625 pm for S[...] and R8 925 pm for R[...].

[42] I am satisfied with the information at hand that these amounts are reasonable. It is also not far from the respondent's R26 000 per month cash payment, which he regarded as reasonable expenses.

[43] This brings us to the question of whether the claim for the adult children should succeed.[2] The duty to support a child does not automatically end at the age of majority (18 years of age)[3] but continues until the child becomes self-supporting or financially independent.[4] An adult child can remain dependent, for instance, because they are engaged in tertiary studies, are unemployed or underemployed in circumstances where economic or personal factors prevent self-support, or suffer from a disability or health barrier that limits earning capacity.[5]

[44] [44] It is common cause that S[...] and R[...] remain dependants. The only concern is that the respondent is not kept informed about their progress, but is still expected to pay. The respondent is entitled to receive proof of the tuition fees and reasonable confirmation that S[...] and R[...] are indeed pursuing their studies. However, it is neither necessary nor suitable to make payment conditional on academic performance. In my view, it is sufficient for the applicant to provide the respondent with the invoices issued by the university, along with the official results

[2] *Z v Z* 2022 (5) SA 451 (SCA) allows parents to claim maintenance on behalf of adult dependent children.

[3] *Bursey v Bursey* 1999 (3) SA 33 (SCA).

[4] *Vermaak v Vermaak* 1945 CPD 89; *In re Estate Visser* 1948 (3) SA 1129 (C).

[5] *Z v Z* 2022 (5) SA 451 (SCA) para 16 lists a few examples. TL Da Silva Pfafferott, *The Maintenance of Adult but Dependent Offspring* (LLM dissertation, University of Pretoria, 2019) at Chapter 2.

as they become available, without establishing a “no pass, no pay” scheme at the Rule 43 stage.

[45] The real dispute concerns J[...]. The applicant claims R13 725 pm cash for J[...], as well as the tertiary educational costs. J[...] is currently employed as an au pair, earning around R2 700 per month. He lived independently in Israel for approximately five years and now resides in the matrimonial home with the applicant. His relationship with the respondent is strained, as evidenced by allegations that he scratched the respondent's car with keys.

[46] Although it is not immediately clear from the documents that he can meet all his reasonable needs, he currently has no expenses for necessities such as food and lodging. He is enrolled to study at the University of the Witwatersrand, which the respondent refuses to fund, pointing to J[...]'s lack of prior commitment to his studies.

[47] The difficulty the applicant faces in relation to J[...] is that he was once dependent, then moved to Israel, where he was independent and self-supporting for a considerable time, only to return and now claim dependency again, without placing clear evidence before the Court as to why he cannot resume self-support or what efforts he has made to do so. The papers do not disclose any mental or physical disability that would preclude him from becoming self-sufficient.

[48] I accept that, in certain circumstances, parents' maintenance obligations may be revived, as some adult children might later be unable to earn an income due to supervening ill-health, disability, or other involuntary changes in circumstances. However, I am not persuaded that this case justifies such a revival. The difficulty lies in the fact that J[...] made specific choices, including deciding to leave his independent lifestyle in Israel after a period of independence to pursue his studies in South Africa, without evidence of involuntary incapacity or circumstances beyond his control that compelled him to do so.

[49] Comparative law is instructive in this regard. The German Federal Court of Justice held[6] that while a maintenance obligation may arise where an adult child involuntarily loses independence, "parents can generally assume that their children will maintain this independence" once achieved. The Italian Supreme Court[7] has stressed that maintenance for an adult child is justified only to support a serious, diligently pursued path to independence (through study or training) and is confined by the principle of self-responsibility. The child must actively seek to free themselves from the family nest, and parental support cannot continue indefinitely, or at any level the child prefers. In that case, a 33-year-old employed individual was denied continued maintenance because he had not demonstrated diligent efforts toward full independence.

[50] Even in jurisdictions that recognise "transitional support" for delayed adulthood,[8] courts refused relief where the adult child makes no real effort. The Alberta Court (Canada) in *KMR v IWR*[9] held that while contemporary economic conditions may justify a reasonable transitional period (between finishing education and finding employment), "[t]his is not a situation where an adult child tried to find a full-time job, but it took him or her several months to do so. [The child] has not tried at all."[10]

[51] It might thus be that where an adult child, after a period of dependency, elects to return to studies and shows a genuine, renewed commitment to completing a realistic course of study with a view to becoming self-sufficient, a case may be made out for some (likely limited and time-bound) support. Foreign courts have allowed transitional or educational support in such circumstances, but only where the evidence clearly establishes genuine commitment and progress. The German

[6] In *BGH XII ZR* 91/10 (18 July 2012). The case does not directly concern interim maintenance, but the principles are similar and address the parents' duty to maintain.

[7] in Judgment No. 17183/2020 (28 July 2020). I relied on Google Translate to translate this judgment into English.

[8] *Gamache v. Gamache*, 1999 ABQB 313 para 3.

[9] 2020 ABQB 77.

[10] Paragraph 44.

Federal Court of Justice[11] held that an adult child has a duty to start education within a reasonable time, considering the position of the person paying. The older and more independent they are, the more responsibility shifts from their parents to them. If they delay too long in pursuing further education, they may lose their right to maintenance for education and may have to support themselves during their studies. The Court there also held that there is no fixed age cut-off. Rather, in each case, the question is whether, given all the circumstances and the parents' means, it is still reasonable to expect the parents to fund further training.

[52] This is where things become complicated for J[...]. The papers indicate that J[...] failed to complete his first year at university due to non-attendance, left for a considerable amount of time and lived independently in Israel, and upon returning, enrolled at the University of Pretoria (with registration fees paid by the respondent), only to change his mind a month or so later and register at Wits. This pattern is not indicative of a focused, credible plan to attain self-sufficiency through study. Furthermore, the applicant has placed no medical evidence of incapacity before the Court, no evidence of renewed commitment to make work of J[...]'s studies, and no evidence of diligent job-seeking efforts in South Africa since his return. There simply is no indication that J[...] is otherwise unable to provide for himself.

[53] Based on this information, I have to conclude that one sadly does not remain in childhood forever. Reliance on maintenance cannot serve as insurance for the choices one makes. One also needs to distinguish between a legal duty and any moral duty that might rest on parents.

[54] On the evidence before the Court, J[...]'s situation is not one of involuntary loss of capacity due to ill-health, disability, retrenchment, or economic hardship beyond his control. The authorities, both South African and comparative, which permit the revival of (a right to) maintenance all presuppose an involuntary loss of capacity or a genuine transitional need, coupled with diligent effort and credible

[11] In *BGH XII ZB* 192/16 (8 March 2017). The case does not directly concern interim maintenance, but the principles are similar and address the parents' duty to maintain.

commitment. This is not such a case. On this record, J[...] has not established any of those elements, and his claim to ongoing maintenance should therefore be refused.

[55] The draft order submitted by the applicant specifies the use of motor vehicles, along with the monthly costs associated with them and fuel. The respondent indicates that, in principle, he does not have an issue with paying these amounts but wishes traffic fines to be paid by the offender and the "cost of fuel" to be reasonable. It is always a risk to include a word like "reasonable" in an order where the acrimony during a divorce clouds reasonableness. And based on the information before me, it is impossible to set a hard cap on fuel. In this context, "reasonable" should be understood as broadly corresponding to the average monthly fuel expenditure over the 12 months preceding this order.

[56] As for the property-related expenses, the respondent has tendered payment of those, and they will be so recorded in the order. Similarly, there seems to be agreement on the medical aid and related expenses.

[57] Initially, the respondent tendered the use of the holiday home in Plettenberg Bay for holidays, rather than paying R10 000 per month for holiday expenses. During the trial, he withdrew the tender out of fear that the applicant and the children would trash the home due to the acrimony between the parties. Instead, he tendered R24 000 per annum toward holidays, reimbursable upon proof of payment for accommodation and flights.

[58] I accept that holidays are not essential. However, given that the family previously used the Plettenberg Bay holiday home at no cost and must now pay for their holidays, a reasonable amount would cover transport for the applicant, S[...] and R[...], as well as accommodation for two weeks. To continue this lifestyle, and in light of the respondent's position, a fair balance between the parties is R60 000 per annum, payable upon submission of invoices.

Contribution to costs.

[59] In her draft order, the applicant seeks R827 799,19 for legal costs already incurred, almost R3 million to the state of trial certification and R1,3 million up to and including the first day of trial (to be postponed *sine die*). The respondent regards the legal costs already incurred as inflated and, in his draft order, offers R500 000. He offers R200 000 to the state of trial certification. This was not raised during the trial, where he requested that she should receive the equivalent of what he had spent so far, which was in the region of R300 000.

[60] The claim for contribution towards costs is regarded as an incident of the duty of support.[12] The applicant is not entitled to payment in full of the costs that will be incurred, but must be enabled to present her case adequately.[13] This must be understood in the constitutional framework of the right to equality (section 9 of the Constitution), in that an applicant is entitled to a contribution towards costs to ensure equality of arms, which, in some instances, may include the power to investigate the respondent's financial affairs.[14]

[61] Of course, a party that must approach the other spouse in an acrimonious divorce to ask for such a contribution also risks having their right to dignity (section 10 of the Constitution) infringed. Dignity also comes into play when such a spouse has already had to borrow money from family to litigate. Lastly, Rule 43 also impacts the right of access to courts, in that an applicant who cannot afford to litigate on the same footing as the respondent might not be able to exercise this right.[15]

[62] It should be noted that the principles underpinning contributions to costs differ from those applicable to interim maintenance. Interim maintenance aims to preserve, as far as reasonably possible, the parties' standard of living during the divorce process. In contrast, a contribution to costs is intended to ensure equality of arms in litigation. The focus is not on the historically imposed household lifestyle but on

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[12] *Van Rippen v Van Rippen* 1949 (4) SA 634 (C) at 637.

[13] *Dodo v Dodo* 1990 (2) SA 77 (W).

[14] *AF v MF* 2019 (6) SA 422 (WCC) para 40.

[15] *SH v MH* 2023 (6) SA 279 (GJ) para 90.

whether the financially stronger spouse can and should fund the other's ability to litigate effectively. In this case, the frugal lifestyle the respondent allegedly sought to impose, despite having substantial means, is therefore not the relevant benchmark.

[63] The real questions are what level of legal representation the respondent can afford and what contribution is required to enable the applicant to match it, at least to a reasonable extent. This is especially significant where, as in this case, the main dispute revolves around the composition and value of the accrual, as well as the applicant's entitlement to it. These issues, if the conduct of the litigation so far is a guide, are complex enough to necessitate the services of a skilled forensic accountant.

[64] The Court must therefore decide whether the applicant has shown that she is entitled to be placed in a position to effectively present her case, justified the extent of litigation based on her financial circumstances, and then evaluate whether the respondent is capable of paying such maintenance. Once this is established, the Court must determine the amount to be awarded.[16] The respondent did not appear to object to paying for past costs, which is possible in certain circumstances under Rule 43,[17] though he considers the bill of costs inflated. It is therefore for this Court to determine the amounts

[65] In *Senior v Senior*[18] the following principles are summarised that courts must take into account when determining an amount [references omitted]:

> "(i) 'The test to be applied in considering the amount is that the plaintiff should be placed in a position adequately to present her case.'
> (ii) 'The fact that respondent may be wealthy does not entitle the wife to unlimited spending, there being a difference between what she wants and what she needs.'
> (iii) What is 'adequate' would depend on the nature of the litigation, the scale on which the husband is litigating and the scale upon which she intends to litigate, with due regard being had to the husband's financial position.

[16] See *IR v HR* [2020] ZAGPJHC 52 from para 8 onwards.

[17] *Z G v J G* (77979/2018) [2024] ZAGPPHC 7.

[18] *Senior v Senior* 1999 (4) SA 955 (W) para 9.

(iv) The applicant is not entitled to all her costs of the trial but merely a 'contribution towards' her costs up to, as previously stated, the first day of the trial.

(v) There appears to me to be no reason in logic or equity that such a contribution should be limited to disbursements only and to exclude therefrom the attorney's reasonable fees."

[66] While the matter may require further investigation to establish the true extent of the respondent's accrual and to resolve the disputes concerning the Linksfield house, it should also be noted that this dispute, despite the hostility, is capable of resolution through mediation. However, this does not mean that the applicant is disqualified from receiving a contribution towards costs until mediation has been attempted. Rule 43 exists to provide effective interim relief, not to leave a financially weaker spouse without means while awaiting a process that may or may not succeed. Therefore, a contribution must be set on a rough-and-ready basis. If the matter is settled at or before trial certification, or if less is reasonably spent than the amount currently ordered, any remaining balance can be considered or reimbursed as part of the final costs or settlement arrangements.

[67] This is similar to the approach by Wilson AJ (as he then was) in MC v JC.[19] A Rule 43 court cannot be expected to scrutinise every line item, effectively conducting a detailed assessment to determine what a party is entitled to or not. Instead, it must make a pragmatic judgement of the contribution reasonably required to prevent substantial prejudice and to secure a measure of equality of arms pending trial.

[68] The applicant's demand for R827 799,19 in respect of costs already incurred, together with a further amount approaching R4,3 million to trial certification and the first day of trial, plainly overshoots what can be justified at this stage. The respondent, for his part, tenders R500 000 towards arrear costs and R300 000 towards future costs.

[69] Bearing in mind both the complexity of the accrual dispute (and the likely need for a forensic accountant and counsel) and the respondent's obligation also to fund

[19] ZAGPJHC 373.

his own representation, I regard a contribution of R500 000 towards the applicant's costs already incurred as reasonable, especially because his bill thus far was substantially less. Rule 43 refers to contributions, not the full payment of costs. In addition, and to ensure that the applicant can adequately challenge the issues in dispute, I direct the respondent to pay a further R400 000 as a contribution towards the applicant's future legal costs up to the stage of trial certification. This is intended, on a rough-and-ready basis, to allow her to retain appropriate representation and necessary expert assistance to bring the matter to that point; it is not a licence to litigate without regard to cost.

[70] If the main action is settled before the trial certification stage, or if the applicant's reasonable legal costs up to that stage are in fact less than the contribution now ordered, any unexpended funds must be repaid to the respondent. Any question whether the applicant's attorneys have overcharged is best left for determination, if necessary, on taxation after the main action has been finalised. To ensure that this can be done, the costs of this Rule 43 application shall be costs in the cause.

[71] The prayers for any contribution to costs between trial certification and the first day of trial, and for a contribution to the costs of the trial itself, are postponed *sine die*.

[72] The applicant also seeks repayment of R285 171,25 said to have been borrowed from her father to fund counsel’s fees in this application. In light of the contribution I grant here below in respect of past legal costs, that amount is subsumed within the broader contribution order and does not warrant separate, itemised relief at this stage. Any residual indebtedness between the applicant and her father is a matter to be regulated inter partes or addressed when the parties’ patrimonial claims are finally settled or determined.

[73] It has already been stated that the costs of this Rule 43 application will be costs in the cause of the main action. The allocation of those costs will be for the trial court to determine. In making this determination, the trial judge may consider that both parties retained senior and junior counsel, and that neither can be categorised

as entirely successful in the interlocutory application. This consideration serves merely as guidance; the trial court retains full discretion regarding the allocation of costs.

Order

[74] Accordingly, the following order is made:

1. Maintenance *Pendente Lite*:
    1.1. The respondent shall pay R11,325.00 per month as maintenance for the applicant into her Standard Bank account, number 4[...]. The first payment shall be made on or before the first day of the month following the granting of this order, and thereafter on or before the first day of each succeeding month, pro rata for the month in which this order is granted.

    1.2. The applicant shall be entitled to the full use and enjoyment of the motor vehicle, being a Volkswagen T-Cross, registration number J[...] ("the applicant's motor vehicle"), which vehicle is registered in the respondent's name.

    1.3. S[...] A[...] C[...] ("S[...]") shall be entitled to the full use and enjoyment of the motor vehicle, being a Kia Rio, registration number C[...] ("S[...]'s motor vehicle"), which vehicle is registered in the respondent's name.

    1.4. R[...] L[...] C[...] ("R[...]") shall be entitled to the full use and enjoyment of the motor vehicle, being a Toyota Yaris, registration number H[...] ("R[...]'s motor vehicle"), which vehicle is registered in the respondent's name.

    1.5. The respondent shall pay the monthly costs in respect of the applicant's motor vehicle, including insurance, tracking, licence fees and the reasonable cost of fuel. "Reasonable" in this context means corresponding to the average monthly fuel expenditure over the 12 months preceding this order.

1.6. The respondent shall pay the monthly costs in respect of S[...] and R[...]'s motor vehicles that are registered in the respondent's name, including insurance, tracking, licence fees and the reasonable cost of fuel. "Reasonable" in this context means corresponding, in broad terms, to the average monthly fuel expenditure over the 12 months preceding this order.

1.7. Traffic fines incurred in respect of the applicant’s/S[...]’s/R[...]’s motor vehicle shall be for the account of the driver at the time of the offence and shall be paid within 30 days of notification of the fine. Any arrears of fines must be paid by the driver at the time of the offence, within 30 days of this order.

1.8. The respondent shall pay R8,625.00 per month as maintenance into the aforesaid account in respect of S[...], a dependent major son, on the same terms as set out in paragraph 1.

1.9. The respondent shall pay R8,925.00 per month as maintenance into the aforesaid account in respect of R[...], a dependent major son, on the same terms as set out in paragraph 1 above.

1.10. The amounts payable in terms of paragraphs 1, 8 and 9 above shall increase annually on the anniversary of the date of the granting of this order in accordance with the average increase in the Consumer Price Index during the preceding year, as published by Statistics South Africa.

1.11. The respondent shall pay the following costs in respect of 3[...] F[...] Avenue, Linksfield North ("the matrimonial home") directly to third parties to whom such costs are owed, within 7 days of presentation of an invoice:

1.11.1. Rates and taxes;

1.11.2. Electricity, water and refuse removal charges provided that such charges fall within 10% of the average charges for the past 12 months;

1.11.3. Levies;

1.11.4. Security and alarm;

1.11.5. Insurance premiums for household contents at the properties;

1.11.6. Wi-Fi;

1.11.7. TV licence;

1.11.8. The reasonable costs of replacement and repairs of household appliances, limited to R500, unless agreed with, and arranged by the respondent;

1.11.9. The reasonable costs of household, garden and swimming pool maintenance and repairs as agreed with, and arranged by the respondent;

1.11.10. The reasonable costs of pet food and veterinary expenses of all the pets; and

1.11.11. The food and salaries of two domestic assistants employed by the applicant.

1.12. The respondent shall pay the following expenses within 7 days of receipt of invoice:

1.12.1. The tertiary educational costs for S[...] and R[...] until they complete their degrees;

1.12.2. The premiums required to retain the applicant, S[...] and R[...] as dependants on the respondent's hospital plan;

1.12.3. The medical and related expenses incurred by the applicant, S[...] and R[...], which are not covered by the respondent's medical aid/hospital plan, save for R[...]'s ADD medication, which shall remain the applicant's responsibility;

1.12.4. The monthly costs of fuel for S[...] and R[...] on presentation of invoice; and

1.12.5. Uber transportation costs in the amounts of R250.00 per month for the applicant, R250.00 per month for S[...], and R250.00 per month for R[...].

1.12.6. The tuition costs and necessary prescribed course material for S[...] and R[...], upon presentation to the respondent of the invoices issued by the relevant university, together with the official examination results for each semester as they become available.

1.13. The respondent shall contribute R60,000.00 per annum towards the holiday costs of the applicant, S[...], and R[...], payable within 7 days of the applicant submitting invoices for accommodation, airfare, or other travel expenses.

2. The respondent shall pay a contribution towards the applicant's legal costs as follows:
   2.1. R500,000.00 in respect of legal costs already incurred;
   2.2. R400,000.00 up to the stage of trial certification.
   2.3. In the event of the main action being settled before the trial certification stage, or if the applicant's reasonable legal costs up to that stage are in fact less than the contribution ordered in paragraph 14.2, any unexpended funds shall be repaid to the respondent.
   2.4. The applicant's claims for a contribution to costs between trial certification and the first day of trial, and for a contribution to the costs of the trial itself, are postponed sine die.

3. The costs of this Rule 43 application, including the costs of two counsel so employed, shall be costs in the cause.

WJ du Plessis
Judge of the High Court
Gauteng Division,
Johannesburg

Date of hearing:	21 and 22 January 2026
Date of judgment:	10 February 2026
For the applicant:	RR Rosenberg SC and D Block, instructed by Ian Levitt Attorneys
For the respondent:	L Segal SC and T Lipshitz, instructed by Deanne Kahn Attorneys