IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable / Reportable

Case no: 4599/2024

In the matter between

R[…] V[…] H[…] **APPLICANT**

And

S[…] P[…] V[…] H[…] **RESPONDENT**

Neutral citation: *V[…] H[…] v V[…] H[…]* (4599.2024) [2026] ZAFSHC 94 (11 March 2026)

Coram: NAIDOO J

Heard: 5 June 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 11 March 2026.

Summary: Rule 43 order breached – contempt of court proceedings and counter application for variation of Rule 43 order in terms of rule 43(6) – no changed circumstance exist and no exceptional circumstances shown to invoke s 173 of the Constitution – counter application dismissed – application for contempt of court granted.

ORDER

1 The respondent is found to be in contempt of the court order issued out of this Court, in terms of Uniform Rule 43, on 10 October 2024, under the hand of Acting Judge De Kock (the Rule 43 order);

2 The respondent is sentenced to 90 days' imprisonment, which is suspended for three (3) months on condition that the respondent complies with the Rule 43 order;

3 Leave is granted to the applicant to approach this court on the same papers, duly amplified, to put into operation the suspended term of imprisonment, mentioned in para 2 above, should the respondent fail or neglect to comply with the Rule 43 order;

4 The counter application is dismissed with costs

5 The costs of the contempt of court application shall be costs in the cause.

JUDGMENT

Naidoo J

[1] The applicant obtained an order in terms of Uniform Rule 43, in terms of which the respondent was ordered to pay interim maintenance to the applicant and a contribution to her legal costs. He was also ordered to facilitate the removal by the applicant of household items, from the communal home, which the applicant required. He did not comply with the order. The applicant launched the current application for an order finding the respondent to be in contempt of the court order and sanctioning him with imprisonment (the main application). The respondent opposed the application and filed a counter application seeking the dismissal of the main application and an order varying the Rule 43 order by deleting the paragraphs directing him to pay spousal maintenance and the contribution to the applicant's legal costs. The applicant opposed the counter application. The respondent further sought the striking out of certain portions of the applicant's opposing affidavit (to the counter application) and replying affidavit in the main application, but subsequently abandoned this quest. I will, accordingly, not deal further with this aspect. I pause to mention that this is a bitter and

acrimonious marital dispute.

[2] The applicant sought the following relief in the main application:

a the respondent be found in contempt of the court order of this court issued by acting judge De Kock on 10 October 2024 (the Rule 43 order);

b the respondent be committed to imprisonment for 90 days or such other period as the court may deem fit;

c Alternatively, the imposition of any other form of penalty that the court may deem fit;

d Suspension of the term of imprisonment referred to in (b) or the penalty imposed in (c) above for such period as the court may determine, on condition that the respondent complies with the Rule 43 order;

e Leave be granted to the applicant to approach this court on the same papers, duly amplified, for putting into operation the suspended period of imprisonment, in the event that the respondent fails or neglects to comply with the alternative prayer in (c) above;

f Costs of the application.

[3] For completeness, I set out the terms of the Rule 43 order:

‘1. The respondent shall pay maintenance in the amount of R33 000.00 per month pendente lite, which excludes payment of the medical aid of the applicant currently paid by Rene Boerdery Trust. The first payment be on the first of November 2024 and thereafter on each first day of each succeeding month.

2. The respondent shall make a contribution towards the applicant’s legal costs in the amount of R10 000 within 10 days of this order.

3. The respondent shall cooperate at(sic) facilitating the retrieval of household items that the applicant reasonably requires to furnish her residence, from the communal home. The parties are ordered to make the necessary arrangements within 10 days of this order.

4. Cost of this application shall be costs in the cause.’

As I indicated earlier, the respondent failed to comply with the Rule 43 order, hence the applicant launched this application.

[4] The applicant’s version is that shortly after the Rule 43 order was granted, her attorneys wrote to the respondent’s attorneys on 16 October 2024, providing the latter with the details of their bank account, into which the respondent was required to pay the

R10 000.00 in respect of his contribution to the applicant's legal costs. The response from the respondent's attorneys, on the same day, was that the respondent's view was that the Rule 43 order was patently wrong and unjust and cannot be complied with, as the respondent was not a beneficiary of the Rene Boerdery Trust and cannot use the Trust as his personal 'war chest'. He offered to pay the contribution to legal costs off, at the rate of R300.00 per month. The applicant's response was that the order was granted against the respondent and if he did not comply, the applicant would seek a contempt of court order against him. The applicant and respondent are co-trustees of the Rene Boerdery Trust (the Trust) and the Envan Boerdery Trust (Envan). On 30 October 2024, immediately before the respondent was due to commence payment of maintenance in terms of the Rule 43 order, he removed the applicant's signing powers, as a trustee, on the bank accounts of those two trusts, without a resolution from the trustees of the two trusts, authorizing such action.

[5] The Trust had also been paying for the applicant's medical aid. Her attorneys wrote to the respondent's attorney advising that the monthly premium in respect of the medical aid had been increased. This was done on the basis that the respondent is the person who has authority to operate the Trust's bank account. He responded that he was not ordered by the court to pay the medical aid premium and that the Trust had never paid the medical aid. The applicant stated that the amount was, however, paid to her and she paid the medical aid. Similarly, with regard to the retrieval of household assets that the applicant required, she alleges that the respondent packed certain items into bags and left them outside the home, and the applicant was not allowed access into the communal home. She alleged that she did not receive all the items she had requested. A slew of correspondence was exchanged between the parties' legal representatives in this regard, and reasons why the applicant could not have certain items. I do not deem it necessary to go into the details of their squabbles over specific items. It appears that the applicant did receive some items *pendente lite*, and whatever disputes remain will surely be resolved when the divorce action is dealt with.

[6] The thrust of the respondent's opposition is that he does not have the financial means to comply with the Rule 43 order, as he receives a modest income from the Trust, which covers his basic expenses. He is not a beneficiary of that Trust or the other trusts mentioned in the papers; he is only a trustee. For this reason, he is of the view

that the Rule 43 order is patently wrong and unjust. The respondent acknowledges that there is no change in circumstances on which he relies for requesting a variation of the order. He alleges that the exceptional circumstances in which he finds himself, which prohibit his compliance with the Rule 43 order, are what he relies on. What is evident from his version, is that he has financial control of the various trusts, even though the applicant is a co-trustee or director of an entity which allegedly owns some of the assets she claims are marital assets. The respondent detailed what is allegedly the precarious financial position of the Trust.

[7] He also gave extensive details of the assets which he uses and benefits from, but which belong to one or other entity which he ostensibly manages in the capacity of trustee or director. From this he attempts to demonstrate that he has no personal assets or income to maintain the applicant or contribute to her legal costs. The respondent, according to him, is a trustee of Envan, which sold the property it owned to the South African Government, and the proceeds of the sale were transferred to the Trust. Envan holds a 25% shareholding in an entity called Sebenzani Farming Group (Pty) Ltd, which is allegedly a dormant company. Envan has no significant income stream, he argues. The respondent is also a trustee of the SP V[…] H[…] Trust , which has no income stream, but which owns a property on which the applicant's mother resides rent-free. He is a director of an entity known as De Pan Boerdery (Pty) Ltd (De Pan), which owns the two farms it leases to another farmer and for which it receives rental of R400 000.00 per month. He receives no financial benefit from De Pan as all rental income had been used by the 'Trusts' to conduct 'its' farming operations. It is noted that no specific details are provided as to who controls the operations and finances of these various entities, but the tone of his narrative suggests that he does. It is also evident that millions of Rands are generated by these various entities each month, but the respondent alleges that he receives no income for the work he does for and on behalf of these entities.

[8] The respondent as I indicated, brought a counter application in which he sought the following relief:

'1. The main application to be dismissed with costs.

2. The Rule 43 order granted by the Honourable Acting Judge De Kock be varied by the deletion of:

2.1 Paragraph 1, directing the payment of spousal maintenance; and

2.2 Paragraph 2, directing the payment of a contribution towards the applicant's costs.

3. Costs of the Counter Application.'

It warrants mentioning that the answering affidavit to the main application was also the founding affidavit in the counter application.

[9] I will deal briefly with the applicant's exposition in her replying affidavit, which was also the opposing affidavit to the counter application. She reiterated what she said in her founding affidavit and responded to the allegations made by the respondent in his answering affidavit, particularly that he used the Trust and other entities as his personal bank account. I will merely cite a few of such responses. She disputed the number of sheep allegedly leased by the Trust, claiming it was a lesser number than claimed by the respondent. She also indicated that the respondent sold three truckloads of sheep during December 2024 and January 2025. All this was done without a proper resolution by the trustees, demonstrating the respondent's unilateral use of trust assets as though they were his personal assets. The applicant further alleged that the Trust appeared to have other banking or investment accounts and tabulated a list of transactions, which she claimed proves her allegations. In addition, she countered the respondent's allegations regarding the Trust's precarious financial position by arguing that the court cases he referred to were already dealt with in the Rule 43 earing, as was the issues with the lease of the ewes. There is therefore nothing new in the respondent's answering affidavit and the circumstances remain unchanged since the granting of the Rule 43 order.

[10] The applicant further alleges that the Trust receives rental income from leasing out its property. However, the lease agreement was entered into by the respondent, without a proper resolution by the trustees. The applicant pointed out various expenses reflected on the bank statements of the Trust, which indicated that the respondent was using the trust funds to pay personal expenses. She listed a number of expenses from August 2024 to January 2025, as appear on the Trust's bank statements, many of which were clearly personal or household expenses, as well as expenses incurred in different parts of the Cape Province, and a few in other provinces. The respondent apparently visited the parties' daughter in Cape Town in August 2024. He made three more trips to Cape Town between December 2024 and January 2025. She also put up documents which she alleged was proof that certain of the respondents medical expenses were

paid to the service provider from the Trust's bank account. The applicant provided various other examples which, she argued, indicate that the respondent uses the Trust's bank account as his personal account.

[11] The narrative continued in this vein, with the applicant providing information, supported by documentation, to counter the allegations of the respondent, creating a picture of him as someone who continues to treat Trust monies as his own. The applicant repeatedly asserted that these issues were all canvassed at the Rule 43 hearing. The respondent clearly confirms this, when regard is had to the opening paragraph under the heading in his answering affidavit marked '*The Factual Context in Respect of My Financial Position*', which is at para 8 and reads '*The facts set out below are not new to these proceedings; They were fully ventilated in my affidavit in opposition to the applicant's Rule 43 application . . .*' He ostensibly repeated the facts to underscore that his failure to comply with the Rule 43 order was not willful or deliberate disobedience, but due to an inability to meet the payment obligations imposed by the Rule 43 order. Elsewhere, he again repeated that the issues were canvassed and debated at the Rule 43 hearing.

[12] The respondent's counter application is brought in terms of rule 43(6), which provides that: 'The court may, on the same procedure, vary its decision in the event of a material change occurring in the circumstances of either party or a child, or the contribution towards costs proving inadequate'. The respondent alleges that he seeks a variation of the Rule 43 order on the basis that the order is patently wrong and manifestly unjust. As I indicated, the respondent concedes that the counter application is not predicated on a change in circumstances, but on exceptional circumstances. Where there are no changed circumstances, he argued, the court can still vary a rule 43 order in terms of the inherent power conferred by s 173 of the Constitution of South Africa. The respondent referred the court to *S v S and Another*.[1] There, the Constitutional Court held:

'There may be exceptional cases where there is a need to remedy a patently unjust and erroneous order and no changed circumstances exist, however expansively interpreted. In those instances, where strict adherence to the rules is at variance with the interests of justice, a court may exercise its inherent power in terms of s 173 of the Constitution to regulate its own

[1] *S v S and Another* [2019] ZACC 22; 2019 (6) SA 1 (CC) para 54-58.

process in the interests of justice'.[2]

[13] The respondent has repeated in this application much of what was said in the papers and argued before the court in the Rule 43 application. The respondent's alleged exceptional circumstances were canvassed and considered by the court hearing the Rule 43 application, which then issued the Rule 43 order. The role of this court is to consider the merits of the main application and the counter application in the context of the Rule 43 order. What the respondent attempts to do is oblige this Court to delve into trust law and make a finding that, in terms thereof, the Rule 43 order is patently wrong and unjust. In my view, that amounts to this Court reviewing the judgment of the Rule 43 court and setting aside the order it has made, ultimately resulting in this Court performing an appellate function, which is impermissible in law, and cannot, in my view, be read into rule 43(6). The respondent has not asked for a variation of the Rule 43 order by reducing the amount of the maintenance or the contribution towards legal costs. He seeks a setting aside of such order under the guise of a 'variation'.

[14] The purpose of a rule 43 order is to provide a speedy and inexpensive remedy –it is interim in nature and is granted pending the finalization of the divorce action. Any inconvenience or difficulty is usually cured in the divorce proceedings, where the court is able to entertain detailed evidence regarding the financial position of the parties, enabling it to make an order which more accurately reflects the needs and means of each party. Section 16(3) of the Superior Courts Act 10 of 2013 stipulates that orders in terms of Rule 43 are not appealable. Although the constitutionality of this section was challenged in *S v S*, it was found to pass constitutional muster. The constitutionality of rule 43 is not in issue in this matter. It appears that the respondent is attempting to circumvent the non-appealability of the Rule 43 order and to extend the parameters of rule 43 by asking the court to read into rule 46(3), that the exceptional circumstances exist in this matter, which would trigger the provisions of s 173 of the Constitution. Such a contention, in my view, is unsustainable. The counter application, therefore, falls to be dismissed.

[15] I turn now to the main application. Both parties have correctly alluded to the requirements to be met by the applicant with regard to contempt of court proceedings.

[2] Ibid para 58.

The applicant is required to prove that a court order exists, that the order has been brought to the knowledge of the respondent and that the respondent has not complied with the order. Once the applicant has established these elements, willfulness or *mala fides* on the part of the respondent is presumed. The evidentiary burden then shifts to the respondent to show that there was no willful disobedience of the order or that he did not act in bad faith. In this matter, it is common cause that the applicant has established all the elements required of her. The respondent has conceded this. He then bore the burden of showing that his non-compliance with the Rule 43 order was not willful or *mala fide*. He claims that he has no assets nor the financial means to pay the maintenance he was ordered to do.

[16] Approximately a week after the order was granted, the respondent's view was that the order was patently wrong and unjust. A day before he was due to make the first maintenance payment in terms of the Rule 43 order, he unilaterally removed the applicant as a signatory to the bank accounts of the Trust and Envan, of which she was a co-trustee. No resolution of trustees authorising this action was produced. The respondent, after claiming that he could not pay the maintenance ordered, offered to pay R300 per month toward his contribution to the applicant's legal costs. The applicant pointed out that there was a court order in place, and he was required to comply with it. The respondent took this as a rejection of his offer, completely ignoring the existence of the court order and failing to comply with his obligations in terms thereof. In my view, if he genuinely intended to pay the amounts ordered but only to the extent he could afford, he would have paid the amounts to the applicant or her attorney, as he was provided with the latter's banking details.

[17] Up to the time of the hearing of this matter, he made no payments at all in terms of the Rule 43 order. He suggested that the applicant, as a trustee of the Trust, should take a loan from the Trust to cover her expenses. The Rule 43 order was made against him. There is evidence on record that he utilized the money of the Trust for personal expenses, but that it was reflected as a loan account in the books of the Trust, to alleviate the tax burden (presumably on him and on the Trust). If he respected the court order, even though he thought it was wrong, he would have utilised his own loan account in the Trust, or in one of the many other entities whose finances he controls, to honour the court order, which the law obliges him to do. Even if he did so in part, it

would have demonstrated his *bona fides*. As an astute businessman, he would have known that this was a logical option open to him. I can only conclude that his conduct indicates an intentional and deliberate non-compliance with the Rule 43 order. The respondent’s actions, furthermore, lend credence to the applicant’s allegation that the respondent threatened to ruin her financially, evidencing deliberate and willful conduct on his part. I am satisfied that the applicant has shown beyond reasonable doubt that the respondent is in willful default of the Rule 43 order.

[18] I refrain from dealing with the specifics of the various allegations about the involvement of the parties in the numerous entities I have mentioned, their alleged conduct in respect of those entities, their conduct towards each other and the many other acrimonious allegations levelled at each other. Such are not relevant for the determination of the applications before me.

[19] In the circumstances, I make the following order:

1 The respondent is found to be in contempt of the court order issued out of this Court, in terms of Uniform Rule 43, on 10 October 2024, under the hand of Acting Judge De Kock (the Rule 43 order);

2 The respondent is sentenced to 90 days’ imprisonment, which is suspended for three (3) months on condition that the respondent complies with the Rule 43 order;

3 Leave is granted to the applicant to approach this court on the same papers, duly amplified, to put into operation the suspended term of imprisonment, mentioned in para 2 above, should the respondent fail or neglect to comply with the Rule 43 order;

4 The counter application is dismissed with costs

5 The costs of the contempt of court application shall be costs in the cause.

S NAIDOO

JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	Adv JC Coetzer
Instructed by:	Honey Attorneys Honey Chambers Northridge Mall Bloemfontein (Ref: M Van Aardt)
For the Respondent:	Adv WA Van Aswegen
Instructed by:	McIntyre Van Der Post 12 Barnes Street Bloemfontein (Ref: BCH109/LHW Cato/jb)