

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-177461

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
31/3/2026	
DATE	SIGNATURE

In the matter between:

CMN

Applicant

and

NN

Respondent

JUDGMENT

DJ Smit, AJ

Introduction

[1] This is an opposed application in terms of Rule 43 of the Uniform Rules of Court.

[2] I will refer to the applicant as "the husband" and the respondent as "the wife".

[3] The husband claims the following from the wife:

- a. Interim maintenance of R4,500 for the minor child.

- b. Shared control of the rental income from the jointly owned property.
- c. That costs be reserved for trial.¹

Background

- [4] The parties were married to each other on 28 April 2022, in community of property. At that stage, the husband was 30 years old while the wife was 46 years old. No minor children were born of the marriage, but the husband fathered a child with another woman, who was born on 12 June 2025 ("the minor child").
- [5] The wife instituted a divorce action on 17 September 2025, as a result of what she describes as the husband's extra-marital affair that led to the birth of the minor child. Notwithstanding the pending divorce proceedings, the husband still lives on the marital property and also eats food purchased by the wife.
- [6] It is common cause that the husband is unemployed; has no income; and has a maintenance duty to the minor child. He says that his maintenance needs are R2,500 per month (in respect of food and nappies for the minor child) and R2,000 in respect of transport for him and the minor child. His papers make it clear that before the divorce proceedings he supported the minor child (and the mother of the child) from a part of the proceeds of the rental.
- [7] The wife is also unemployed and derives her only income from rental of the cottages. It is common cause that around the same time as she instituted divorce proceedings, the wife notified the tenants to pay their rental to her personal account from 1 October 2025, and that is what happened.
- [8] The major dispute between the parties is the disposal of income from the rental of cottages situated on the property where they live. The property is situated in Germiston. The value of the property is in dispute, but it is common cause that it is registered in the wife's name and that she owned it before she married the husband. There are eight cottages on the property that can be rented out. When fully occupied, the rental cottages could produce about R24,500 of income per

¹ This is the exact words of paragraph 8.1 of the husband's replying affidavit, which was filed outside of the strictures of Rule 43 that only allows for two affidavits.

month, but it is common cause that they currently only produce approximately R7,200 per month.

- [9] At issue is whether the wife is obliged to pay the husband maintenance to enable him to maintain his minor child; and whether he is entitled *pendente lite* to a part of the rental income produced by the cottages on the property where the marital home is situated.

Maintenance pendente lite

- [10] The husband's pleadings make it reasonably clear that the maintenance he seeks is a cash amount to support the minor child's primary caregiver, L. He annexes proof of payments to her to his founding affidavit. These cash payments stopped when the wife instructed the tenants to pay their rental into her private account. The husband also submits that the relief he seeks is necessary and urgent to secure the infant's maintenance and to prevent unilateral diversion of the "joint rental income" pending the trial.
- [11] Thus, on a conspectus of his pleadings, and given the fact that he still lives and eats at the matrimonial home, the conclusion is inescapable that the primary – if not the sole – purpose of his application is to secure maintenance for his minor child (whom the wife views as a child born out of wedlock). Insofar as his own need for transport money is mentioned, it is entirely devoid of detail or quantification (separate from the minor child).
- [12] On the evidence before me, the wife has never undertaken duties of support to the minor child. In these circumstances she has no inherent duty to support the child born to her husband outside the marriage. Our law no longer considers it against public policy to afford a spouse maintenance after divorce even though that spouse has been cohabiting with another person as a romantic couple before divorce.² But our law also does not recognise a minor child's claim for support

² *EH v SH* 2012 (4) SA 164 (SCA) para 11, overturning several older High Court decisions.

against a person married to their biological parent unless such a person has explicitly undertaken duties of support.³

- [13] I therefore find that the husband has not made a case for maintenance *pendente lite* in this matter, in particular because his needs for shelter and food are already being met through the joint estate.

The claim for a part of the rental proceeds

- [14] Relief sought pursuant to Rule 43 pertain only to the matters enumerated in Rule 43(1), namely spousal or child maintenance, a contribution to legal costs or childcare and contact. The proceedings are not intended nor suitable to adjudicate other matters regarding the joint estate, such as to whom rental income accrues. Claims for support *pendente lite* should not be used to pre-empt remedies that could (only) be made upon the dissolution of the marriage.⁴
- [15] Therefore, I make no finding regarding the lawfulness or not of the wife's actions in instructing the tenants to pay the rental income to her (rather than into an account controlled by the husband); or whether the husband is or should be entitled to any part of this income from the joint property given the possibility of a forfeiture order which the wife asks for in the divorce. These are matters for the trial court.
- [16] Thus, on the papers before me, I cannot make any order in favour of the husband and the application should be dismissed.
- [17] The husband submitted that costs should be reserved for trial. The wife submitted that I should make a costs order against the husband. In the circumstances of this matter, I consider that the usual position should prevail and that costs should be costs in the divorce.

³ Compare e.g. *NM v BM* [2024] ZAWCHC 254 (11 September 2024) paras 4-6 and the authorities cited there.

⁴ *Reyneke v Reyneke* 1990 (3) SA 927 (E) esp. at 932J-933B referred to in *LS v JS* [2024] ZAGPJHC 653 (2 August 2024) para 4.9.

Order

[18] I make the following order:

- a. The application is dismissed.
- b. The costs of this application will be costs in the divorce.



DJ SMIT
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 25 March 2026

Date of judgment: 31 March 2026

For the Applicant:

CMN in person

For the Respondent:

D Ndlovu instructed by NA Nkabinde
Attorneys