IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 2025-148384

(1)	REPORTABLE: **NO**
(2)	OF INTEREST TO OTHER JUDGES: **NO**
(3)	REVISED.

2026-03-06 . ...
DATE SIGNATURE

In the matter between:

S[...] C[...] (BORN R[...]) Applicant
(Identity number: 6[...])

and

J[...] C[...] C[...] Respondent
(Identity number: 5[...])

JUDGMENT

SCHOEMAN (AJ)

[1] This is an Application in terms of the provisions of Rule 43 of the Uniform Rules of Court, wherein the Applicant prays for certain relief pending finalisation of the Divorce Action between the parties. The redress that the Applicant seeks, *inter alia*, takes on the form of a monthly cash payment, furthermore ostensibly an Order aimed at covering any and all of her medical costs (albeit partially by way of a medical aid of some sorts), as well then for an initial contribution towards her legal costs.

[2] The parties were married to each other on 22 September 2007, out of community of property with the inclusion of the Accrual System, and this marriage still exists.

[3] No children were born from the marriage relationship between the parties. It needs mention that the Applicant is resident with her daughter (which the Court accepts is born of a previous relationship, or marriage), Z[...] J[...], since the parties' separation in March 2025. Why the Applicant's current living arrangements have become untenable and/or unbearable, of late, if at all, is not explained. I shall return to the issue regarding the Applicant's future accommodation hereinunder.

[4] Suffice it therefore to state that the current Application simply concerns the question whether or not the Applicant is entitled to spousal maintenance, *pendente lite*, and in addition to this, whether the Applicant has made out a case for a contribution towards her legal costs.

[5] Both parties are pensioners, and both parties have pension interests kept in a Sanlam Private Pension Plan. The value of the Applicant's pension interest is not made clear in her Financial Disclosure Form (FDF), and the Court cannot say, with any degree of certainty, what the Applicant's current pension fund interest is worth. What the Applicant however does disclose, is that she earns what she refers to as a *"monthly pension benefit of R14 343-28"*. The Applicant claims that this amount is insufficient to sustain herself, <u>or</u> to establish a new residence (my emphasis).

[6] In addition to the aforesaid, the Applicant also submits that she suffers from various medical conditions and ailments, that are to be treated as *"chronic"* conditions and which behoves chronic medication. The Applicant alludes thereto that the parties are both members of a hospital plan, for which the Respondent seemingly pays. It is unclear if the parties were ever members of a comprehensive medical aid scheme during the subsistence of the marriage, or if the parties have always had to fund additional medical expenses, not covered by the hospital plan, from their own pockets. What is however stated by the Applicant is that the Respondent was a dependent on <u>her</u> medical aid scheme until she was retrenched in 2017. Both parties, having regard to their respective affidavits, are of a relatively advanced age, and both suffer from a number of medical conditions and associated illnesses, with the expected co-morbidities associated therewith.

[7] In this regard, the Applicant claims to have medical expenses in the total sum of R2 650-00 per month, while the Respondent professes to spend an amount of R4 042-00 (over an above the premiums associated with the parties' membership to the Hospital Plan) with regards to medical expenses and associated shortfalls.

[8] The Applicant depicts, in her Founding Affidavit, a marital life of little luxury. She in fact states that the parties enjoyed a *"relatively stable and modest"* standard of living. Throughout these proceedings, the Applicant seems to have advanced the current Application on the basis that she is entitled to be kept on the same standard of living as that which the parties enjoyed during the subsistence of their marital relationship, yet the Applicant regrettably discloses very little of the amenities, and luxuries or lifestyle, that the parties in fact enjoyed during their time together. The Applicant does however allude thereto that, since the inception of the parties' marriage, she contributed an amount of R4 000-00 to the parties' shared expenses, and *"as often as she could"* paid for her personal expenses, which includes clothing accounts and chronic medication.

[9] The current Application also seems to be suggestive thereof that the Applicant is of the view that the parties should live their lives on equal footing now that they have separated, and that she is not to be expected to reduce her lifestyle in the least, as a result of the breakdown of the parties' marital relationship. What the Court at first glance found curious, is that the Applicant does not at all disclose how

she managed to supplement her monthly shortfall of approximately R14 000-00 per month, for the better part of a year, since the parties have separated.

[10] At the outset, and in order to properly determine the merits of the current Application, it was incumbent upon the Applicant to distinguish her *wants* from her basic *needs*.[1] The nature of the enquiry into maintenance tasks a Court into having to embark on a wide-ranging enquiry as to the factors set out in Section 7(2) of the Divorce Act, Act 70 of 1979. These are:

10.1 The existing or prospective means of each of the parties;

10.2 Their respective earning capabilities;

10.3 Their financial needs and obligations;

10.4 The age of each of the parties;

10.5 The duration of the marriage;

10.6 The standard of living of the parties prior to the divorce;

10.7 The conduct insofar as it may be relevant to the breakdown of the marriage; and

10.8 Any other factor which, in the opinion of the Court, should be taken into account.[2]

[11] While it is so that in Applications of an interim nature, such as the current Rule 43 Application, the Court cannot determine the issue of

[1] See: ***Botha vs Botha*** 2009(3) SA 89 (W); and ***Grasso vs Grasso*** 1987(1) SA 48 (C)
[2] See: ***Reid vs Reid*** 1992(1) SA 443 (E) at 664

maintenance with the same measure of accuracy as a Trial Court would, it is however still trite that the Court is to make a Maintenance Order which it finds *"just"* as per the statements by Satchell J in ***Botha*** *supra* at Paragraph 43.

[12] The enquiry is necessarily directed towards the interests of both spouses, and the impact which the Order will have on each of them. Justice must therefore be measured as between both spouses.

[13] In considering what is *just*, this in effect signifies that the Court exercises a judicial discretion when coming to a conclusion what is correct and appropriate, and what is fair and reasonable, in the circumstances of each individual case before it. Of course, any *just* Order must be well-founded on fact, and reflect relevant and proper legal principles.[3]

[14] Even though a wife may qualify for maintenance upon Divorce, it by no means follows that the *quantum* thereof should be such as to enable her to live to the same standards as she enjoyed during the subsistence of the marriage.[4]

[15] What is perhaps the most striking feature of the current Application is that the Applicant seems to suggest that she and the Respondent are to remain on equal footing, vis-à-vis their monthly income and

[3] See: ***Botha*** *supra* at paragraphs 45 and 46
[4] See: ***Louis vs Louis*** 1973(2) SA 597 (T) at 5981

expenses, and that as such, she is entitled to receive what can only be described as *"top-up maintenance"*. As has however been stated by Erasmus J in the case of ***Reid vs Reid*** *supra*, it is not the function of the Maintenance Court to achieve parity between the parties. In my view, the same holds true for a Court being confronted with an Application in terms of Rule 43.

[16] I am aware that in ***Davis vs Davis*** 1939 WLD 108 at page 114, Ramsbottom J pointed out that maintenance is an expenditure of a recurring nature which is usually paid out of income, and that the circumstances may be such where the income is inadequate or non-existent, that the value of the assets of the parties may become relevant and material in deciding questions of maintenance (also referred to by Jordaan J in the case of ***Jodaiken vs Jodaiken*** 1978(1) SA 784 (W) at 789 A – D). However, the principal duty to maintain a person, depends upon the reasonable requirements, or needs, of the person claiming it and only thereafter the ability of the party from whom it is claimed to furnish it.

[17] Although the Respondent's ability to pay maintenance, *pendente lite*, is undoubtedly a relevant consideration, the Court must also consider the remarks made by Margo J in ***Louis*** *supra*, at 600 to 601, namely that the fact that a person does not live up to the hilt of his income, or chooses to live frugally, and has a monthly surplus or savings, does not provide a ground for requiring him to hand over something of what he saves, to the other spouse.

[18] As pointed out by the learned author, Van Zyl, in the Handbook of South African Law of Maintenance (2000) at page 50, an improvement in one's financial position after divorce is to one's benefit, since the bonds of marriage no longer exists. The same holds true in Rule 43 applications, and as such, therefore, as was stated by Steyn J in the case of ***Joffe vs Lubner*** 1972(4) SA 521 (C) at 524 F, the fact that a maintenance debtor is able to pay a reasonable amount of maintenance, does not justify extravagant claims.

[19] In as much as the Applicant may rely on a perceived entitlement to interim maintenance, and a contribution towards all of her legal costs, based on the mere averment and presumption that the Respondent earns more than the Applicant and that he can thus afford same, such reliance is misplaced for the reasons that I shall more fully deal with herein under.

[20] The assessment of the Applicant's Application, places the proverbial magnifying glass squarely upon the requirements of Rule 43 in respect of the Applicant's Affidavit, and the contents thereof.

[21] Rule 43(2)(a) of the Uniform Rules requires that:

> *"An applicant applying for any relief referred to in sub-rule (1) shall deliver a sworn statement in the nature of a declaration, setting out the relief claimed and the grounds therefor, together with a notice to the respondent corresponding with Form 17 of the First Schedule".*

[22] The procedure embodied in Rule 43(2)(a) is hybrid in nature, being largely in the form of an Application, but also resembling an Action, since the Affidavits have to be in the nature of a declaration or a plea. The object of this is evident, as the Rule is to confine the Affidavits to a reasonably succinct statement of the parties' respective cases.

[23] The Applicant's sworn statement must therefore contain factual allegations upon which the Court can assess, and evaluate, whether to grant the relief sought. It is not sufficient to make bold statements, or generalised averments, which a party believes may bolster his or her case before the Court. Furthermore, and from a reading of the Founding Affidavit, there needs to be a correlation between the amounts claimed, the Applicant's financial means, and her monthly expenses. This is underscored by the judgment of ***<u>Eksteen vs Eksteen</u>*** 1969(1) SA 23 (O) where it was emphasised that Rule 43(2) embraces factual allegations, and not merely the inference which an Applicant makes and alleges from facts which he or she has not set out.

[24] Upon analysing the Applicant's Founding Affidavit, it is clear that the vast majority of her sworn statement is dedicated to setting the scene, and portraying a picture of the Respondent being a wealthy man with a lifestyle that suits his perceived vast means. Very little of the Founding Affidavit regrettably deals with the Applicant's own financial prosperity, and with the means available to her, from which she is able to maintain herself. The mere fact that the Applicant claims spousal maintenance,

pendente lite of her entire monthly expenditure, notwithstanding the fact that she earns R14 343-28, underscores the notion that no appreciation was had for the requirements of Rule 43(2). To add further proverbial insult to injury, and while already claiming a cash contribution towards her expenses (including her medical expenses), the Applicant additionally also prays for an Order that the Respondent continues to pay for her *"full medical benefits, including the payment of any and all additional medical expenses not covered by the medical aid"*. No matter how clever the wording used in the Applicant's prayers, it does not escape the Court that the Applicant, for lack of a better expression and as referred to by counsel during argument, engages in *"double dipping"*.

[25] The question for determination is accordingly, whether the Applicant has set out sufficient facts and grounds in her sworn Affidavit, in order to make out a case for interim maintenance and a contribution towards her legal costs in the amounts claimed. The first hurdle that the Applicant needs to pass, is to evidence a "*need to be maintained"*. Absent such proof on a balance of probabilities, there is simply no reason to revert, or refer, to the Respondent's papers in great detail.

[26] It is trite that in motion proceedings the Affidavits serve not only to place evidence before the Court, but also to define the issues between the parties. This is not only for the benefit of the Court but also, and primarily so, for the parties, as the parties must know the case that

must be met, and in respect of which they must adduce evidence in the Affidavits.

[27] An Applicant must accordingly raise the issues and facts upon which he or she would seek to rely the Founding Affidavit. He or she must also do so by defining the relevant issues, and by setting out the evidence upon which he or she relies to discharge the onus of proof resting on him or her in respect thereof. By way of example, the Applicant includes a monthly expense of R10 000-00 per month for lodging that is to be taken up somewhere in the future. No further detail is given to substantiate the amount claimed, or how it is derived at, and the Court is left to speculate as to the reasonableness and necessity of this expense.

[28] The facts set out to the Founding Affidavit (and equally in the Answering Affidavit) must be set out simply, clearly, in chronological sequence and without argumentative matter.[5]

[29] In considering the aforesaid principles, I now turn to deal with the Applicant's Application.

[30] However, before considering what would be the Applicant's reasonable maintenance requirements, and whether the Applicant has made out a case in that regard, it must first be considered whether the Applicant has established a need for maintenance.

[5] See: ***Reynolds N.O. vs Mecklenberg (Pty) Ltd*** 1996(1) SA 75 (W) at 78 I

[31] In dealing with her need for maintenance, the Applicant is required to make a full and frank disclosure of all relevant facts to place the Court in a position to assess whether there is truly a need on the part of the Applicant for maintenance.

[32] In the well-known, and often quoted, matter of ***Nilsson vs Nilsson*** 1984(2) SA 294 (C) it was stated, *inter alia*, that an interim maintenance order is not intended as a meal ticket for a spouse who quite clearly would not establish a right to maintenance at trial.

[33] It is therefore only once the need for maintenance has been established, that the next level of the enquiry is to be embarked upon to establish (i) what the marital standard of living of the parties was, (ii) what the Applicant's reasonable maintenance requirements are, and (iii) what the capacity of the Respondent is to meet such requirements. Absent the Applicant passing the first hurdle namely to proof on a preponderance of probabilities a need for maintenance, it is not necessary for the Honourable Court to establish what the marital standard of living of the parties was, what the Applicant's reasonable maintenance requirements are, and what the capacity of the Respondent is to meet such requirements.

[34] *Ex facie* the papers filed of record by the Applicant, the following bears mention:

34.1 The parties are respectively 64, and 71, years old and both are pensioners.

34.2 The Applicant, as alluded to, is resident with her daughter, and since the parties have separated, the Respondent seems to live somewhat of a nomadic lifestyle, by travelling across South Africa and residing in a caravan. The Respondent's accommodation expense in this regard monthly, is less than 50% of the accommodation costs that the Applicant claims.

34.3 Much time is spent in the Applicant's papers, and so too in the Respondent's answer thereto, with regards to alleged historical events that contributed to the breakdown of the parties' marital relationship. In Rule 43 Applications, unless the parties' conduct impact on minor and/dependent children, these allegations (even if true) are of no consequence, and as such I shall not have regard thereto.

34.4 The Applicant furthermore submits that the Respondent, as a result of an alleged *"fraudulent misrepresentation"* sold the parties' lifetime occupation right in a property situated in a retirement village, and that the entire proceeds emanating from such sale were allocated to the Respondent himself. In my considered view, this is something for the trial Court to consider, as it forms part of the patrimonial dispute between the parties. In so far as it may be suggested that the Respondent, by virtue of the possession of these funds, have the *means* necessary to meet the Applicant's maintenance demands, the Applicant should first and foremost still convince the Court, on a preponderance of probabilities, that she has proven a *need* to be maintained.

34.5 With reference to what has been stated in paragraph [8] of this judgment, read together with paragraph 7.10 of the Applicant's Founding Affidavit, the Court is uncertain as to how the Applicant's circumstances have changed since the parties' separation, which would result therein that the Applicant no longer has an amount of R4 000-00 at her disposal – all the more not where the parties no longer have *"shared expenses"*. The Applicant seemingly has no accommodation expense at this stage, as she is resident with her daughter, and it is difficult to understand what now leads thereto that the Applicant claims a contribution for maintenance, thereby expecting of the Respondent to pay 100% of <u>all</u> of her expenses, which includes clothing and shoes, and medical expenses (including medication) which she took responsibility for in the past. The sparsity of the information placed before the Court by the Applicant, sadly does not avail her.

34.6 The Applicant also claims to be in dire financial straits, yet makes the positive averment in paragraph 8.6 of her affidavit that *“my monthly expenses* <u>*are*</u>*”*, and then proceeds to list, *inter alia* the luxury expense of R3 800-00 per month for holidays. Calculated annually, this amounts to a budget of R45 600-00 for holidays alone. This extravagance does not accord with the picture painted by the Applicant of a modest standard of living.

34.7 During argument before me, counsel for the Applicant conceded that the Applicant cannot justify the amount of R10 000-00 claimed as a lodging expense, and requested the Court to merely accept the Applicant’s *“say-so”*. It was further conceded that the expense listed in paragraph 8.6.3 with regards to toiletries should be reduced to R500-00, and similarly that the amount claimed in paragraph 8.6.9.2 should be divided by 12, to make provision for a monthly expense. Since the Applicant is registered on a hospital plan, which the Respondent tenders to fund *pendente lite*, she has no hospital expenses as claimed.

34.8 *Ex facie* the Applicant’s papers filed of record, and considering the concessions made by counsel, the Applicant in my mind (even without any further criticism to any of her other expenses, save for the hospital costs and provision for holidays), has a monthly maintenance need of R13 454-25.

34.9 Having regard therefore to the Applicant’s nett income as compared to her monthly expenses above, it is a plain exercise in arithmetic to see that the Applicant has a monthly excess available to her in the amount of R889-03. This in itself points towards the fact that the Applicant does not have the need to be maintained, and that she has sufficient income from which she is able to pay her reasonably, actual, and necessary monthly maintenance needs.

34.10 The Court has had regard thereto that counsel for the Applicant has advised the Court that he is of the view that the Applicant should receive a cash contribution of R20 000-00 towards her maintenance *pendente lite*, and not the amount of R28 941-75 as initially claimed. However, even with this concession made, the Court is unable to find any justification for any contribution to even the reduced amount claimed.

34.11 The Court is also deeply concerned about the discrepancy in the Applicant version, when paragraph 8.4 (confirming that the Applicant has a monthly pension income of R14 343-28) is compared to paragraph 10.1 where the Applicant suddenly states that *"…[I] have <u>no</u> source of income"*. (my underlining)

[35] If regard is had to the content of the paragraph 2.3 of the Applicant's FDF (undated as it may be), where the Applicant provides details of all personal bank accounts, and the balance in said accounts as at date of deposing to the financial disclosure form, it is evident that the Applicant

has two bank accounts, both with positive balances. Although the balances are not high, this in my mind shows that the Applicant does not have a monthly shortfall, and her accounts are not overdrawn, suggesting any modicum of financial distress.

[36] In addition to the aforesaid, and from a reading of paragraph 2.8 of her FDF, the Applicant further has personal belongings which can be liquidated to supplement her monthly shortfall, if any, alternatively which can be liquidated to further fund her litigation, in the amount of R194 000-00.

[37] The total current value of the Applicant's interest in her personal assets amount to R195 569-97. Added to that, the Applicant also holds a pension interest with the Sanlam Private Pension Scheme. What is crucial is that the Applicant fails to state what the value of this pension interest is if paragraph 2.11 of her FDF is considered. Counsel for the Applicant conceded that the amount ascribed to her pension interest in paragraph 2.19 of the FDF is patently wrong, and rather indicates the monthly benefit derived from the Applicant holding a pension interest in the said Fund. In my view, apart from failing to establish a need to maintenance, this glaring omission is fatal to the Applicant's case for maintenance.

[38] In summary, the Applicant's nett asset value still amounts to some R77 828-86. Add to that the value of her pension fund (whatever it may be), and it is evident that at the time of the launching of the current

Application, the Applicant had assets and/or means at her disposal and that the Applicant did not show, and could not show, a need to be maintained.

[39] In the premise, the Court cannot help but agree with the submissions made by counsel on behalf of the Respondent that the Applicant should fail in her quest to receive maintenance, *pendente lite.*

[40] Absent proof by the Applicant of a need to be maintained, there is no reason for this Honourable Court to scrutinise the Respondent's papers, and the Respondent's ability to meet the financial needs that the Applicant says she has.

[41] During the hearing, counsel for the Respondent however again repeated the following tender, namely, that the Respondent undertakes to retain the Applicant on his Hospital Plan, *pendente lite,* as far as a contribution to the Applicant's medical expenses is concerned. The Court will grant an Order to this effect.

[42] Having regard to the content of the Applicant's FDF, the Applicant's financial situation disclosed therein raises more questions than answers, and leaves this Court in the dark as to what the Applicant's actual financial position, and thus her need, is.

[43] The Court would have rather expected that the Applicant deals with the aforementioned facts, and the content of her FDF, in her Founding

Affidavit, and present material information in this regard, as same has a direct bearing on the Applicant's claim for maintenance, and her related claim for a contribution to legal costs. The Applicant's failure to allude to the content of her FDF in her Founding Affidavit, even if the FDF was not yet deposed to at that stage, results in an inability to establish whether there indeed exists a true need on the part of the Applicant to be maintained, and same also hits on her claim for a contribution to costs.

[44] In the context of full disclosure and the duty of applicants in Rule 43 applications to act with the utmost good faith, it is apposite to refer to the matter of ***Du Preez vs Du Preez*** 2009(6) SA 28 (T) at paragraph 15, where the court held, *inter alia*, the following:

> *"[15] However, before concluding, there is another matter that gives me cause for concern, deserving of mention and brief consideration. In my experience, and I gather my colleagues on the bench have felt the same, there is a tendency for parties in Rule 43 applications, acting expediently or strategically, to misstate the true nature of their financial affairs. It is not unusual for parties to exaggerate their expenses and to understate their income, only then later in subsequent affidavits or in argument, having been caught out in the fact of unassailable contrary evidence, to seek to correct the relevant information. Counsel habitually, acting no doubt on instruction, unabashedly seek to rectify the false*

information as if the original misstatement was one of those things courts are expected to live with in Rule 43 applications. To my mind, the practice is distasteful, unacceptable, and should be censored. Such conduct, whatever the motivation behind it, is dishonourable and should find no place in judicial proceedings. Parties should at all times remain aware that the intentional making of a false statement under oath in the course of judicial proceedings constitute the offence of perjury and, in certain circumstances, may be the crime of defeating the course of justice. Should such occur in Rule 43 proceedings at the instance of the applicant, then relief should be denied.

[16] Moreover, the power of the court in Rule 43 proceedings in terms of Rule 43(5) is to 'dismiss the application or make such order as it thinks fit in ensure a just and expeditious decision.' This discretion is essentially and equitable one and has accordingly to be exercised judicially with regard to all relevant considerations. A misstatement of one aspect of relevant information invariably will colour other aspects with the possible (or likely) result that fairness will not be done. Consequently, I would assume that there is a duty on applicants in Rule 43 applications seeking equitable redress to act with the utmost good faith and to disclose fully all material information regarding their financial affairs. Any

false disclosure or material non-disclosure would mean that he or she is not before the court with 'clean hands' and, on that ground alone, the court will be justified in refusing relief."

[45] In the matter of ***CMA vs LA*** [2023] ZAGPJHC 364 (24 April 2023) at paragraph [25], specifically at paragraph [25.1] the following was stated:

> *"In Rule 43 proceedings, it is prudent that the court should be satisfied that an applicant acts in good faith. Thus, an applicant simply cannot afford to omit facts in the founding affidavit that are vital to the application. Surely, if the applicant was willing not to reveal certain facts in her founding affidavit, she must certainly be willing not to be frank about weighty facts that would reveal the true state of her finances."*

[46] In the matter of ***MNY vs JY*** (2024/013982) [2024] ZAGPJHC 1823 (24 July 2024) Van Aswegen AJ stated:

> *"Without a frank and full disclosure of all material facts a court can simply not make a determination as to the applicant's need and cannot quantify such a need."*

[47] In the premise, no Order can be made by this Court if the Applicant does not get out of the starting blocks as it were, of establishing on a preponderance of probabilities that she has a need. It is thus my view

that the Applicant herein has elected to selectively disclose facts in her Founding Affidavit in an attempt to establish her need but, by virtue of her failure to make a full disclosure, which only came to light once the FDF and the Opposing Affidavit saw the light of day, all the relevant facts have not been placed before me. It is therefore not possible for me to properly assess whether a need exists on behalf of the Applicant, and what the precise extent of that need is. I am thus unable to entertain the Applicant's claim for maintenance, *pendente lite*.

[48] Turning then to the Applicant's claim for a contribution towards her legal costs, it is trite that a claim for a contribution to costs is a claim *sui generis* and it has its basis in the reciprocal duty of support between spouses.[6]

[49] The Applicant claims an amount of R178 636-00 as an initial contribution towards her legal costs. In an attempt to substantiate this claim, a *pro forma* statement of account is appended to the Founding Affidavit as Annexure "FA4". During argument before me, the items listed in this Statement of Account have been scrutinized and debated at length. I need not repeat the parties' competing contentions is this regard, save to state that the Court views the amounts charged in terms thereof overly excessive and not in keeping with the tariffs allowed for particularly junior counsel (as suggested in the said account).

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[6] See: ***Cary vs Cary*** 1999(3) SA 615 (C); ***AF vs MF*** 2019(6) SA 422 (WCC) at 428 E – F

[50] However, a perusal of the Respondent's bank statement shows that he has seemingly placed his current attorneys of record in funds on 13 November 2025, in the sum of R60 000-00. The origin of these monies seems to come from the Respondent's Sanlam Glacier Investment. It was confirmed during argument before me that the proceeds of the sale of the parties' interest in the retirement village, were paid into the Respondent's Glacier Investment. These monies, having regard to the disputes in the main action, are the subject of a pending claim by the Applicant.

[51] There will most certainly not be an inequality of arms between the Applicant and the Respondent, *vis-à-vis* the disputes in the main action, if the Respondent is ordered to make a contribution towards the Applicant's initial legal expenses, in the sum of R30 000-00. This will enable the Applicant to prepare for trial, on a footing similar to that of the Respondent, taking into consideration the criticism levelled against her attorney's statement of account, and her own financial means.

[52] Lastly, and considering the costs of the application, it is trite that this court has a discretion when it comes to the issuing of cost orders, which discretion must be exercised judicially.

[53] In the normal course, and having regard to the facts and circumstances of this matter, including the Applicant's failure to properly set out her financial position in her Founding Affidavit, coupled with the Applicant's failure to proof a need to be maintained, I would have been inclined to

have the costs follow the result, thus ordering the Applicant to pay the costs of this application. However, for the reasons which follow, I am not so inclined.

[54] As an aside, had the Applicant established a need with the enquiry having moved to the next level, the Respondent would have seriously fallen foul of the full and frank disclosure requirements in regard to his financial affairs, especially given the scant information pertaining to the Sanlam Glacier Investment, bank statements for the requisite period of 6 months and wither or not he is *"feathering a second nest"*, so to speak. It also did not go unnoticed, from a perusal of the Respondent's bank statements which he indeed chose to disclose, that many a transaction has been left curiously unexplained.

[55] In the premise, and while it may therefore be that the Applicant, for the reasons alluded to above, was not materially successful with her Application this time around, this is no cause for the Respondent to celebrate, should he feel that way inclined, as any perceived victory on his part, against the backdrop of the foregoing, rings hollow.

[56] In the premise, I am of the view that each party should bear their own costs in respect of this Application.

ORDERS:

In the circumstances, I make the following Order: -

1. The Respondent is to retain the Applicant on his Hospital Plan, and pay the premiums associated therewith, *pendente lite*;

2. The Respondent shall make an initial contribution towards the Applicant's legal costs, in the amount of R30 000-00 (FIFTY THOUSAND RAND), payable in monthly instalments of R5 000-00 (FIVE THOUSAND RAND) per month, the first payment commencing on/before 1 April 2026;

3. The remainder of the relief sought in this Application is dismissed;

4. Each party shall bear his/her own costs in respect of this Application.

AJ SCHOEMAN
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA GAUTENG
DIVISION, PRETORIA

Electronically submitted:	This order was prepared and authored by the Acting Judge whose name is reflected herein and his handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Court Online / CaseLines. The date of this judgment is deemed to be 6 March 2026.
Date of hearing:	3 March 2026
Date of Judgment:	6 March 2026

<u>Appearances:</u>

For the Applicant:	Advocate X. van Niekerk Instructed by: Waldick Incorporated
For the Respondent:	Advocate Z. Marx-Du Plessis Instructed by: Shapiro & Ledwaba Incorporated