IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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

30 March 2026

Date **K. La M Manamela**

CASE NO: 2023/047712

In the matter between:

D[...] T[...] N[...] Applicant

and

J[...] M[...] Respondent

DATE OF JUDGMENT: This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge's secretary. The date of the judgment is deemed to be **30 March 2026**.

JUDGMENT

Manamela, J

Introduction

[1] The applicant, Ms D[...] T[...] N[...], seeks relief in terms of Rule 43[1] of the Uniform Rules of this Court. The applicant and her estranged husband, Mr J[...] M[...], the respondent, were married to each other in September 2019 in terms of customary law. In May 2023, the applicant initiated divorce proceedings in this Court. The respondent had by then already left the common household in November 2021. The applicant says that, in fact, she has been separated from the respondent as husband and wife since August 2021. Two minor children were born from their relationship (prior to the marriage) in September 2012 and December 2018.

[2] Both parties say that they are currently unemployed. The applicant voluntarily resigned from her job as head of internal audit at the South African Police Service ('SAPS') on 31 March 2024. The respondent had also resigned from his employment, a few years earlier, in December 2019. Naturally, they have both already received their pension benefits. But both of them now say that their respective pension funds have been depleted. The applicant says she is without any source of income and requires maintenance for herself and the minor children from the respondent. The respondent, in turn, says that he has no money, as he survives on the R350 government unemployment grant.

[3] The relief sought by the applicant from the respondent in this Rule 43 application is, essentially, in the following terms: (a) payment in the amount of R3 000 per month, as maintenance, for each of the two minor children; (b) school fees and other educational

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[1] Uniform Rule 43(1) provides as follows: '[t]his rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters: *(a)* Maintenance *pendente lite*; *(b)* A contribution towards the costs of a matrimonial action, pending or about to be instituted; *(c)* Interim care of any child; *(d)* Interim contact with any child.'

expenses for the minor children in the amount of R2 519; (c) payment in the amount of R10 000 per month as the applicant's spousal maintenance; (d) primary residence of the minor children to continue vesting in the applicant, with the respondent granted specific parental responsibilities and rights as to contact with the children, and (e) contribution towards the applicant's costs in the amount of R150 000. The application is opposed by the respondent.

[4] The matter came before me in the Family Court on 23 March 2026. Ms R Andrews appeared for the applicant and Mr K Makobe appeared for the respondent. I reserved this judgment after listening to oral submissions by both counsel. The judgment also benefited from counsel's written submissions filed.

Applicant's case (including submissions on her behalf)

[5] The applicant, as already mentioned, is currently unemployed. She resigned from her employment as the SAPS' head of internal audit in March 2024. She cited financial constraints as the reason for her resignation. She wanted to access her pension benefits earlier in order to provide for herself and the minor children. She had by then been separated from the respondent for approximately three years.

[6] According to the applicant, the respondent has not made any financial contribution towards maintenance of her and the minor children since their separation in August 2021. She had to utilise the pension benefits she received to support herself and the children. It is notable that the applicant has not disclosed the amount she received as pension benefits in her papers pivoting this application. But she says that, as at the time of the launch of this application, which was around June last year, she only had about R135 000 left from her pension funds. With the passage of time the benefits have been depleted, it is submitted by her counsel.

[7] The applicant and the children are now staying with her mother in Mamelodi East,

within the Tshwane Metropolitan. But she desires to find a place of her own to share with the children. They require an amount of R60 837.93 per month as maintenance from the respondent to defray their monthly living expenses, including lodging. She says this amount would, actually, not be enough to cover *ad hoc* expenses, such as the children's extra mural activities, day-to-day expenses and unexpected medical expenses. She has no remaining assets or financial resources to deploy towards these expenses, she contends.

[8] It is the applicant's view – said to be without a doubt - that the respondent has the ability to pay the amount of R60 837.93 sought for monthly maintenance for her and the minor children. The respondent, she points out, received a large amount as pension and has been extravagantly spending it on luxury and exorbitant items, including alcohol, fast food, lottery or gambling, and large online purchases. His defences to the relief sought in this application, including that he is without any income or means, ought to be rejected by the Court, it is argued.

[9] The issues in the divorce action were previously referred to the office of the Family Advocate for investigation. The Family Advocate furnished a report in June 2025. The report includes the following conclusions and/or recommendations: (a) the relationship between the minor children and the respondent is strained and would benefit from rebuilding measures; (b) contact by the respondent with the older minor child ought to be facilitated through bonding therapy sessions overseen by a social worker or a therapist, and (c) contact between the respondent and the younger minor child ought to be, mainly, on alternate weekends.

[10] The applicant supports her claim for contribution by the respondent towards her costs in the divorce action in the amount of R150 000 as follows. The contribution is required to ensure that there is an equality of arms between the respondent and her, as parties in the

divorce litigation.[2] I hasten to point out a glaring fact that the respondent is legally represented in these proceedings by Legal Aid South Africa ('Legal Aid'). I don't think Legal Aid charges anything for its services. This aspect has been specifically raised by the respondent, but was not addressed in the submissions.

[11] Still on the issue of the contribution sought, the applicant also raises the following: (a) the respondent has frustrated the litigation process; (b) failed to offer his cooperation during the process of discovery of documents and in respect of the Court orders compelling him to effect discovery, and, (c), generally, the respondent has failed to comply with other processes of the Court.

[12] It is submitted on behalf of the applicant that the right to dignity would have no meaning where a spouse is deprived of the necessary means to litigate. The quality of this right is lessened when a person (such as the applicant in this matter) has to go around to friends, family or, even, an adversary (such as the respondent in this matter) with a begging bowl seeking a gift or contribution towards costs.

[13] Also, the mutual duty of support owed by the one spouse to the other binds the spouse with sufficient means to fund, partly or fully, the reasonable litigation of the other spouse lacking such means. It is submitted that the respondent in this application is the spouse with a means. All these, it is further submitted, confirm the tenets of the right to equal protection and benefit of the law[3] and the right to human dignity.[4]

[14] An assessment of the *quantum* of the appropriate contribution to be ordered to enable the seeker of the contribution to adequately present its case before the court involves a consideration of the following circumstances of the case before the court: (a) the respective

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2 *Cary v Cary* 1999 (3) SA 615 (C) at 621.
3 Section 9(1) of the Constitution of the Republic of South Africa Act, 1996.
4 Section 10 of the Constitution of the Republic of South Africa Act, 1996.

financial position of the warring parties; (b) the nature and extent of the issues in the pending litigation; (c) essential disbursements to be incurred; (d) the scale at which the prospective contributor was conducting its own side of the litigation.[5]

[15] The determination of the quantum of the appropriate contribution towards costs enjoins the Court to apply the provisions of section 9(1)[6] of the Constitution of the Republic of South Africa Act, 1996 ('the Constitution') guaranteeing the right to equal protection and benefit of the law to every person.[7] The essence of this exercise is to bear in mind that contribution towards costs would be justified where it would ensure the equality of arms in the pending divorce action between the seeker and the contributor. The mischief guarded against by this principle or rule is that the party who is to receive the contribution sought would be incapacitated to present its case fairly without such contribution, which could be employed, for example, towards a comprehensive investigation of the financial affairs of the contributor where there is non-disclosure of same.[8]

[16] In this matter, contribution is also considered warranted due to what is viewed as a clear attitude of the respondent to protract the divorce proceedings in order to avoid payment of maintenance towards the children and the applicant in breach of his duty of support.[9] The respondent has no appetite for an early divorce or settlement of any aspect thereof. Even in this rule 43 proceedings, he did not bother to make any tender regarding the amount for a legal contribution. Consequently, the applicant ought to brace herself for a long haul in the progression of the divorce, a plight which would require a considerable amount of funding towards continued retention of her attorneys and the relevant experts towards trial, the

[5] *Cary v Cary* 1999 (3) SA 615 (C) at 619-620.
[6] Section 9(1) of the Constitution.
[7] *Cary v Cary* 1999 (3) SA 615 (C) at 621.
[8] *Ibid*.
[9] *Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others ; Thomas and Another v Minister of Home Affairs and Others* 2000 (3) SA 936; 2000 (8) BCLR 837 (7 June 2000) [31].

submission concludes.

[17] Overall, it is submitted that the amount of R150 000 sought as contribution towards the applicant's costs is reasonable and affordable to the respondent.

Respondent's case (including submissions on his behalf)

[18] The respondent, as already stated, is opposing this application. He labels these proceedings an abuse and quest on the part of the applicant to unnecessarily escalate costs. Paramount amongst the respondent's defences is that he finds the monetary part of the relief sought by the applicant unaffordable, as he is unemployed. It is common cause that the respondent resigned from his job in December 2019. The respondent considers the applicant's claim for interim maintenance to be incompetent as no claim for spousal maintenance forms part of the divorce action. But this was not persisted with at the hearing. I, also, don't think it deserves any further attention.

[19] The respondent also raised a preliminary objection or point in *limine* in his opposition of this application regarding the deposition (or prescribed oath) to the founding affidavit. He says that the prescribed oath was not properly administered when the affidavit was signed in breach of regulations 2 and 4 of the Regulations Governing the Administering of Oath or Affirmation.[10] It is common cause that the affidavit did not indicate when the oath was administered to the applicant when signing same. The applicant - after the fact - had to acquire from a Mr Stefan Bezuidenhout, said to have been the commissioner of oaths involved in the deposition, a confirmatory affidavit. Mr Bezuidenhout explained that the

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10 Regulation 2, deals the questions to be posed by the commissioner of oaths when administering to any person an oath or affirmation, and regulation 4 concerns the certification by the commissioner of oaths below the signature by the deponent that the latter has acknowledged that she or he 'knows and understands the contents of the declaration and [she or he has stated] the manner, place and date of taking the declaration', as well as the signature by and other details of the commissioner of oaths. The Regulations Governing the Administering of an Oath or Affirmation were published under Government Notice R1258 in the Government Gazette 3619 of 21 July 1972 in terms of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963.

applicant appeared before him on 23 June 2025 and was administered the prescribed oath. But, I now realise that this does not appear to be correct, as in terms of CaseLines filing platform, the notice of motion and founding affidavit were electronically filed on 19 June 2025. This, if the date stated by Mr Bezuidenhout for the deposition is correct, would have preceded the alleged deposition. I also note that the commissioner of oaths to Mr Bezuidenhout's confirmatory affidavit is Mr Richard Bollaert, the applicant's attorney.[11] I do not know what to make of all these. It doesn't appear that those involved take these matters of deposition seriously and it's a concern to the Court. The respondent, through his counsel, appeared to have let go of the objection. I also do not think that anything should turn on the deposition issue, as I am not aware of any prejudice or was alerted to it. But, above all, I am buoyed - in adopting this approach - by the interests of the minor children involved in this matter. To allow these matters to derail the application or its outcome, would unfairly disregard those interests. Hopefully, there would be a change in attitude by those involved.

[20] The respondent appears to be slightly surprised at being hauled before the Court by the applicant. The applicant, he says, knows he is unemployed. This fact is also recorded in the report by the Family Advocate, he adds. He would contribute towards maintenance of the children should he secure employment. He says that he relies on the government social grant of R350 per month for survival. But he appears to be saying that this was only the case after he had used up the proceeds from the sale of the matrimonial home in 2022 until the years 2024, and not beyond.[12]

[21] The respondent, as stated above, resigned from his job on 31 December 2019. On 25 February 2020 he received payment, ostensibly as pension funds, in the amount of R2 245 247. It is common cause that he was not yet separated from the applicant by this date.

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11 CaseLines 23-2. See regulation 7 of the Regulations Governing the Administering of an Oath or Affirmation.

12 Answering affidavit par 7.3, CL 25-82.

The separation is said to have occurred in August 2021. He denies the applicant's allegation that he was paid an additional amount of R1 765 261. Similarly, to the applicant, the respondent says that he resigned his job due to financial hardship. He used his pension money to the benefit of the joint household and to settle the debts of the joint estate. He had hoped to resume gainful employment, thereafter, but in vain. He says that once his funds were exhausted, conflicts ensued between the applicant and him. He had become expendable to the applicant from a financial point of view. He denies that he receives pension income of R39 839 alleged by the applicant. He would have not satisfied the means test to qualify for representation by Legal Aid, he pointed out.

[22] The respondent alleges that the applicant has hidden her pension funds and does not believe that she is only left with an amount of R135 000, as she claims. She has failed to disclose or account for the amount of R3 million she received as pension benefits. The applicant also took with assets worth over R250 000 upon division of the joint estate, the respondent's contention concludes.

[23] Further, the respondent denies that he never made any contribution to the children since his separation from the applicant. He lists his contributions as follows: (a) on 11 October 2022 he paid R90 000 as school fees for the children, as part of his proceeds from the sale of the matrimonial home; (b) he waived his right to his share from the proceeds in the amount of R100 000 in favour of the children, and (c) he received only R300 000 from the proceeds whilst the applicant received R500 000, as the custodian parent. He labels the omission of these facts from the applicant's papers as her quest to incorrectly portray him as an irresponsible parent.

[24] The respondent points to the fact that the applicant received a pension pay-out in the amount of around R3 million. He says these funds were meant to be preserved until the

finalisation of the divorce, but only to learn from the papers in this application that they have been apparently depleted. He attributes this to the applicant's lifestyle.

[25] Regarding contact with the children, the respondent blames the applicant. He says his persistent attempts to regain contact with the children has been frustrated by the applicant. She even blocked his communication with them. He places his hope on the Family Advocate's report and the outcome of the divorce. He agrees with the recommendations by the Family Advocate as to the primary residence and contact with the children. The report by the Family Advocate was released on 10 June 2025. The applicant has denied him contact with the children, despite the recommendations in the report on contact.

[26] The criticism by the respondent of the applicant's claim for interim maintenance includes what appears next. The respondent says that the expenses reflected by the applicant are grossly inflated and has no relevance to the applicant's actual standard of living. The figures are exaggerated and do not correspond with the standard of living during the period the parties stayed together. For example, the applicant and the children do not have lodging expenses. They stay for free in Mamelodi West at the applicant's parental home. And in that part of Tshwane the utilities do not amount to R3 766.11 per month, as claimed by the applicant. One of the minor children obtained a scholarship or fee exemption to attend Curro Mamelodi and, thus, pays no school fees. The applicant's claim ought to be dismissed with costs, the respondent urges the Court.

Issues to be determined

[27] To recap, the applicant in this opposed rule 43 application seeks from the respondent the following relief: (a) monthly maintenance for the two minor children; (b) her own monthly maintenance as the respondent's spouse; (c) primary residence of the minor children (with the respondent afforded specific parental rights and responsibilities as to contact), and

(d) contribution by the respondent towards her costs in further litigation in the divorce. The first two (i.e. a and b) will be discussed together under the rubric ‘maintenance’.

[28] These issues appear to accord with the cases put forward by the parties as dispositive of this matter. These are the primary issues and, no doubt, secondary issues may arise in the discussion. The monetary part of the relief sought, also involves a concomitant determination whether the respondent has the necessary means to pay the amount(s) which may be established as payable for the benefit of the children and the applicant.

Maintenance

[29] The applicant says she requires a minimum of R60 837.93 on a monthly basis as maintenance for her and the kids. But at the end of the hearing – in the draft order the applicant’s counsel urged the Court to adopt – only R8 519 per month was stated as required for the children. Of this amount R6 000 (i.e. R3000 each) is towards maintenance and R2 519 the children’s school fees and educational expenses. It is common cause that one of the children is exempted from paying school fees. These figures appear to be reasonable.

[30] The applicant says she requires R10 000 for herself. I am not certain how this amount is calculated, but it also appears reasonable when determined from its constituent individual amounts as stated in the financial disclosure form (‘FDF’). But it is critical that the applicant has not bothered to reveal how much she received as pension benefits. The respondent says it is around R3 million. The applicant says that she resigned in March 2024. This is about two years or twenty four months ago. She resigned to access her pension to settle her debts, but does not take the Court into her confidence by providing details of how her pension pay-out (whatever the size thereof) was disbursed. At a monthly rate she would have had to spend R125 000 of the R3 million to be penniless by now. She is also said to have received R500 000 from the sale proceeds of the parties’ matrimonial home. This too was not

disclosed by the applicant, but only came from the respondent. The applicant also disclosed that she owns an Audi Q3 motor vehicle valued between R430 000 and R600 000. She does not appear to be owing anything to a bank or financier on the vehicle. She did not disclose when she acquired this or if she used her pension pay-out to purchase same, seeing that she does not appear to owe anything on the vehicle. These issues are obviously not irrelevant to the determination.

[31] It is submitted that the respondent can afford to pay maintenance now in the reduced amount of R18 519 (from R60 837.93) per month for the applicant and the children. His means is said to be the amounts of R2 245 247, R1 765 261 and R39 839 received by the respondent. The first two as pension lumpsums and R39 839 as monthly pension income. The respondent denies receiving the latter two amounts and I have nothing before me to suggest the contrary.

[32] But the respondent has not provided any FDF detailing his financial and other relevant information or circumstances. It is common cause that he received the admitted payment of R2 245 247 on 25 February 2020. This is six years or 72 months ago, as at the end of February 2026. He has also disclosed that he received an amount of R300 000 from the proceeds of the sale of the joint home, but did not provide the date of receipt. He says that he qualified for representation by Legal Aid due to his financial hardship.

[33] During the hearing counsel for the applicant referred to possible investments, cryptocurrencies and an amount of R1, 5 million possible being held with Discovery by the respondent. There are also interbank transfers made in millions by the respondent, it was submitted. The Court is referred to the respondent’s bank statements to confirm these. These I have noted, are for the period between 2020 and 2022.

[34] I agree with the submissions on behalf of the applicant that litigants need to approach

the Court 'with the utmost good faith (*uberrimae fidei*) and to disclose fully all material information regarding their financial affairs',[13] but this applies both ways. Although the respondent has not provided any explanation or documents regarding how he spent the R2 245 247 he received on 25 February 2020, the applicant hasn't even disclosed how much she received. She may have taken a better step than the respondent by providing the FDF, but the Court is in the dark as to how she utilised the R3 million, she allegedly received after March 2024. When she deposed to the affidavit in support of this application on 23 June 2025 she stated to be having only R135 000 left from her pension funds. Assuming she received her pension pay-out within three months after she resigned from her job in March 2024 (i.e. by June 2024) it means she exhausted same within twelve months. Therefore, the respondent does not seem to be alone in the game of hide and seek, which, it is submitted by the applicant's counsel, he is playing with the Court. He appears to have the applicant for a companion. The same applies to the respondent's alleged guilt of a 'catch me if you can' attitude.[14] Perhaps, the applicant fared better by providing the mandatory FDF, but what did she do with her pension payment only received less than two years ago, remains the question.

[35] On the basis of what appears above, I have nothing before me which clearly establishes that the respondent has a financial means to afford the R18 519 per month sought from him for maintenance of the applicant and the children. In fact, from the evidence I believe that both parties, having cited their unemployment statuses and comparatively lacking candour in how their respective pensions were spent, may have equal means of supporting the children and themselves. Therefore, I will hold the respondent 50% liable for the amount of R18 519 sought as monthly maintenance and direct that he should pay an amount of R9 259, 50 per month with effect from 1 May 2026.

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13 *Du Preez v Du Preez* 2009 (6) SA 28 (T) [16].

14 *B v B* (700/2013) [2014] ZASCA 137 (25 September 2014) [39]-[40].

Primary residence of the minor children and the non-custodian parent's rights as to contact

[36] Under this part, the draft order proposed on behalf of the applicant appears to accord with the recommendations of the Family Advocate. I will adopt same to form part of the order to be made. I will also hold the respondent liable for costs, if any, of a social worker or therapist for the bonding therapy sessions to facilitate contact between the respondent and the older minor child.

Contribution towards the applicant's costs

[37] To recap, the applicant also seeks that the respondent be ordered to pay the amount of R150 000, as contribution towards her costs. She says that this is reasonable and affordable by the respondent.

[38] The applicant says that she requires an equality of arms between the respondent and herself as parties in the divorce litigation.[15] This, it is among others submitted, would be for her to realise the protection of her right under section 9(1)[16] of the Constitution which guarantees equal protection and benefit of the law to every person.[17]

[39] But it is common cause that the respondent's arms or army (read, legal representation) in this litigation is provided by the office of Legal Aid. This is also the case in the divorce. The applicant has retained attorneys in private practice from the beginning.

[40] Therefore, based on what I have stated immediately above and with regard to the issue of maintenance further above, I consider doing justice between the parties by holding that the respondent,[18] at this stage, is not required to make any contribution towards the applicant's costs.

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15 *Cary v Cary* 1999 (3) SA 615 (C) at 621.

16 Section 9(1) of the Constitution.

17 *Cary v Cary* 1999 (3) SA 615 (C) at 621.

18 *Buttner v Buttner* (382/2004) [2005] ZASCA 86; [2006] 1 All SA 429 (SCA); 2006 (3) SA 23 (SCA) (23 September 2005) [24].

Conclusion and costs

[41] The applicant, also, sought costs of this application, including costs of counsel on scale B. She is partially successful, but the same sentiments expressed above regarding the apparent financial position of the parties would apply here.

[42] Therefore, I consider an appropriate costs order to make under the circumstances to be that costs of this application be costs in the divorce action. The Court, when disposing of the divorce action at a later stage in the absence of an amicable settlement of the issues between the parties, would be better placed to direct as to the overall liability for costs.

Order

[43] In the premises, I make the order, that:

1. The respondent, *pendente lite*, is liable to pay the amount of R1 500 (one thousand five hundred rand) per month per child in respect of maintenance of the two minor children.
2. The respondent, *pendente lite*, is liable to pay the minor children's school fees and educational expenses in the amount of R1 259.50 (one thousand two hundred and fifty-nine rand and fifty cents).
3. The respondent, *pendente lite*, is liable to pay the amount of R5 000 (five thousand rand) per month in respect of spousal maintenance to the applicant.
4. The amounts in 1, 2 and 3 of this order, totalling R9 259,50, shall be paid without deduction or set-off and into a bank account nominated by the applicant. The first payment of all the amounts is to be made to the applicant on or before 1 May 2026, and subsequently on or before the last day of each consecutive month thereafter.
5. Both parties, in the interim, shall retain full parental rights and responsibilities in respect of the minor children, provided that:
   5.1 primary residence of the minor children shall continue to vest with the applicant;

5.2 the specific parental responsibilities and rights with regard to contact with the minor children, as contemplated in section 18 of the Children's Act 38 of 2005, is awarded to the respondent, in the following manner (but not limited thereto):

5.2.1 the respondent's contact with the minor child, Blessing, be in the following manner (but not limited thereto):

5.2.1.1 every alternative weekend from Friday at 17h00 until Sunday at 17h00;

5.2.1.2 short holidays are alternated between the parties;

5.2.1.3 long school holidays are shared equally by the parties with Christmas and New Year's Day rotating between the parties;

5.2.1.4 the minor child should be with the respondent on Fathers’ Day and the respondent’s birthdays. He should be with the applicant on Mothers’ Day and the applicant’s birthdays;

5.2.1.5 the minor child's birthdays to be alternated between the parties;

5.2.1.6. regular and structural telephone contact be maintained as agreed to by the parties.

5.2.2. the respondent's contact with the older minor child, N[...], is to be phased in with the assistance of a social worker or a therapist rendering bonding therapy, costs of which, if any, to be paid by the respondent.

6. At this stage, no contribution by the respondent towards the applicant’s costs is ordered.

7. The costs of this application shall be costs in the divorce action.

Khashane La M. Manamela
Judge of the High Court

Date of Hearing	**:**	**23 March 2026**
Date of Judgment	**:**	**30 March 2026**

Appearances:

For the Applicant	:	Ms R Andrews
Instructed by	:	RM Bollaert Attorneys, Fourways, JHB
For the Respondent	:	Mr K Makobe
Instructed by	:	Legal Aid South Africa, Middleburg c/o Legal Aid South Africa, Pretoria