IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

Case No.: **2026-009742**

In the matter between:

R[...] D[...] C[...] N[...] Applicant

and

C[...] M[...] N[...] Respondent

Coram: Montzinger AJ

Heard: 11 March 2026

Delivered: 11 May 2026

Summary: Rule 43 — applicant seeks interim maintenance for herself, and the two minor children – maintenance for rental residence, personal maintenance for applicant and children and contribution to past and future legal cots – respondent relies on informal agreement not to pay for accommodation – respondent refuse to make contribution towards legal costs claiming that Namibian law does not recognise a redistribution order similar to South African law – interim order granted with variations in the amounts.

ORDER

1. The respondent shall, with effect from 25 May 2026, and thereafter on or before the 25th day of each subsequent month, pay to the applicant into such bank account as the applicant may from time to time nominate in writing, the following amounts:

   1.1 R35,000.00 (thirty-five thousand rand) towards the rental of the accommodation occupied by the applicant and the minor children;

   1.2 R20,000.00 (twenty thousand rand) as personal maintenance for the applicant; and

   1.3 R17,500.00 (seventeen thousand five hundred rand) per child as child maintenance, in respect of each of the minor children:

2. The respondent shall retain the applicant and the minor children as beneficiaries on his current medical aid scheme, alternatively a scheme providing similar benefits, and shall be responsible for all reasonable medical, dental, optical, ophthalmic, surgical, hospital, therapeutic (including, inter alia, speech therapy, occupational therapy, physiotherapy and psychotherapy), orthodontic and pharmaceutical expenses incurred and not covered by the medical aid scheme, by paying such expenses directly to the service provider.

3. The respondent shall be responsible for all the minor children's educational expenses, which he shall pay directly to the relevant service providers, including the cost of their education at Reddam House Constantia or any

similar school, school fees, school uniforms, school books, stationery, and equipment as listed in the school's annual or termly requirement lists, compulsory school tours, levies, school excursions, and extra lessons or remedial tuition where the school provides written recommendations for them.

4. The respondent shall continue to pay the monthly salary of the applicant's live-in helper, Ms Kasongo Kunda.

5. The respondent shall pay to the applicant, as a contribution towards her past legal costs in the divorce action, the amount of R50,000.00, payable into the trust account of the applicant's legal practitioner within 30 days of the date of this order.

6. The respondent shall pay to the applicant, as a contribution towards her future legal costs in the divorce action, the amount of R125,000.00, payable into the trust account of the applicant's legal practitioner within 30 days of the date of this order.

7. The costs of this application shall stand over for determination by the court hearing the divorce action.

JUDGMENT

Montzinger AJ

Introduction

[1] This is an application in terms of Uniform Rule 43.

[2] The applicant seeks interim maintenance for herself, and the two minor children born of the parties' marriage, payment of the rental of the house in which she and the children currently stay, the continuation of payments, by the respondent, for educational, medical and certain other expenses, and a contribution towards her past and future legal costs in the pending divorce action. The respondent opposes the application in part.

[3] The respondent has always paid for many of the items claimed and tenders to continue doing so. The disputes are accordingly narrow, but the parties approached the remaining disputes from very different positions.

Contextualising the matter

[4] The parties were married to each other on 24 August 2014 at Windhoek in the Republic of Namibia. They married out of community of property, and the accrual system was excluded by their antenuptial contract. Two daughters were born of the marriage. During March 2016 the family moved to Johannesburg, South Africa where they lived until their separation at the end of October 2023. The applicant the minor children continued to reside in Johannesburg at the marital home, but in December 2024 the applicant relocated with the children to Cape Town while the respondent by that has returned to Windhoek where he resides with his current partner.

[5] The applicant was never gainfully employed during the marriage. The respondent has, throughout, been the principal source of financial support. She alleges that when they left Johannesburg, in 2024, the respondent agreed to continue to pay for the children's school fees and educational expenses, the medical aid for all of

them, and accommodation. They agreed on a cash maintenance component of R15,000.00 per month for the applicant and R15,000.00 per month per child. The respondent would also continue to pay the salary of the live-in helper[1].

[6] The children are now 13 and 7 respectively and attend school in the Cape Town southern suburbs. The applicant and the minor children live in a home that they rent. They initially rented another property from December 2024 until 31 May 2025 that was renewed until 30 November 2025. The monthly rental was R28,800.00. The applicant and the children moved to a different house during the end of 2025 and the rental amount for that home is R35,000.00 per month.

[7] The applicant issued summons for divorce in June 2025. To effect service on the respondent in Windhoek, Namibia the applicant was obliged to obtain orders for substituted service and edictal citation. In the divorce action the applicant claims, among other relief, a redistribution of fifty percent of the respondent's estate in terms of section 7(3) of the Divorce Act 70 of 1979, on the strength of the judgment of the Constitutional Court in *EB (born S) v ER (born B) NO and Others; KG v Minister of Home Affairs and Others* 2024 (1) SA 297 (CC). The respondent disputes that South African law governs the patrimonial consequences of the marriage and contends that those consequences are regulated by Namibian law and by the parties' antenuptial contract. Consequently, a distribution order will not be competent claim against his estate.

[8] There is also the Miroca SA Trust (the "Property Trust"), of which both parties are trustees and beneficiaries that is the registered owner of the parties' former common residential home in Johannesburg. An amount of R250,000.00 from the

[1] who has been in the household since the oldest child was an infant

Property Trust was, by agreement, channelled into an account controlled by the applicant in October 2025. From those funds the deposit and seven months' rental for the house the applicant and children currently occupy could be covered. However, the Property Trust funds will be exhausted by approximately end of July 2026.

[9] The respondent had, at the time he deposed to his answering affidavit, intimated that the proceeds of the sale of the former common home would be R6,250,000.00 and would be made available to the applicant *ex gratia* in full and final settlement of any claim she might have against him in the divorce. He further tendered an additional R2,500, 000.00 to be paid sixty days after the final order of divorce, alternatively by July 2026. After the answering affidavit was filed the sale of the property fell through. In a supplementary affidavit the respondent confirmed that the R6,250,000.00 is no longer available, but persisted with the tender to pay R2,500,000.00 before July 2026.

[10] It is against that background that the present application must be considered.

The parties respective cases

[11] The applicant's case is, in essence, that the cash component which the respondent has been paying is no longer adequate to maintain her and the children at a standard of living broadly commensurate with that to which they were accustomed during the marriage. Her schedule of monthly household expenses totals R108,115.00. She maintains that the respondent's means are substantial and that the disparity between his current lifestyle and her own justifies an upward adjustment to the cash maintenance and an order that the respondent should pay

the rental, which is at present being financed from funds that in truth belongs to the Property Trust. As regards her claim for a contribution to legal costs, she points that she has to litigate with the respondent in Namibia where all if not most of his assets are located. The applicant justifies the contribution to legal costs since the divorce heightens the possibility of a forensic enquiry into the true value of the respondent's estate, and also whether she is entitled to redistribution of the respondent's estate in terms of section 7(3) of the Divorce Act.

[12] The applicant therefore seeks payment of R35,000.00 per month towards rental of accommodation for her and the minor children; R30,000.00 per month as interim maintenance for her personally; R20,000.00 per month per child as child maintenance; the continuation of the payments which the respondent has historically paid; and a contribution of R350,000.00 towards her past and future legal costs.

[13] The respondent's case is that he has, throughout he and the applicant's separation, met almost all the expenses of the applicant and the children and that he tenders to continue doing so. He tenders to continue to pay R15,000.00 per month as personal maintenance for the applicant for two years and R16,500.00 per month per child, being R15,000.00 cash plus an additional R1,500.00 to cover ancillary costs associated with Ms Kunda. He will continue with the payment of the school fees, medical aid and additional medical costs, the salary of Ms Kunda and the cellphone account.

[14] In respect of the applicant's legal costs he offers R50,000.00 as a contribution towards legal costs payable in three monthly instalments. He refuses to pay any amount towards rental because, on his version, the applicant has access to the

R250,000.00 in the Property Trust and the applicant's own savings of approximately R225,000.00 and she stands to receive a substantial amount from him in due course. He further disputes the applicant's entitlement to any contribution towards her legal costs over and above the R50,000.00 that he is tendering, and contends that her schedule of expenses is overstated.

A court's approach in a Rule 43 application

[15] The legal principles which govern a court's approach to Rule 43 applications are clearly articulated in the authorities *Taute v Taute*[2], *AF v MF*[3] and *JK v ESK*[4]. In essence, in an application in terms of Rule 43 the Court is not called upon to decide the parties' rights finally, nor to conduct a trial on affidavit, but to make a swift, robust and equitable interim arrangement *pendente lite* on the information, even if limited, placed before it.

[16] The Court therefore assesses, in broad outline, the applicant's actual and reasonable needs (and those of any children), measured against the standard of living established during the marriage, and then weighs those needs against the respondent's ability to meet them, having regard to the parties' respective means, earning capacities, resources and reasonable obligations.

[17] In respect of an interim claim for a contribution towards legal costs I have had regard to what the court set out in *Van Rippen v Van Rippen*[5] and *ALG v LLG*[6] the approach should be.

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[2] *Taute v Taute* 1974 (2) SA 675 (E)
[3] *AF v MF* 2020 (1) All SA 79 (WCC),
[4] *JK v ESK* 2024 (1) All SA 775 (WCC)
[5] *Van Rippen v Van Rippen* 1949 (4) SA 634 (C)
[6] *A.L.G v L.L.G* (9207/2020) [2020] ZAWCHC 83 (25 August 2020)

Contribution to rental

[18] The respondent's contention that he should not be required to pay any rental in the interim rests on three propositions. First, that he only agreed to pay rental for one year and that obligation ended in November 2025. He expected the applicant to have obtained employment by then. Second, that the applicant has access to the residue of the R250,000.00 paid out of the Property Trust in October 2025, which is sufficient to defray the rental until approximately the end of July 2026. Third, that she has her own savings of approximately R225,000.00 and that, in due course, she will receive an amount of money from him in the divorce.

[19] Each of these propositions must be tested against the principles set out above. Even, if I accept, as the respondent contends, that he and the applicant concluded an agreement that he will only be liable for one year to provide accommodation, that cannot overcome the duty of support which subsists *pendente lite* by operation of law. The duty of support is not displaced by an expectation that one spouse will become economically self-sufficient by a given date.

[20] The second and third propositions amount, in substance, to a contention that the applicant should be required to consume capital, which is hers and the parties' shared resource held by the Property Trust, to discharge what is actually the respondent's *pendente lite* duty of support. There are difficulties with that proposition. The R250,000.00 in question came from the Property Trust, of which both parties are trustees and beneficiaries. The respondent himself accepts that this is, in substance, capital accumulated during the subsistence of the marriage. However a court may ultimately decide to treat these funds in the divorce, requiring the applicant to deplete it to discharge the respondent's interim

maintenance obligation that he ought himself to meet is to permit the respondent to displace his ongoing duty of support by relying on funds whose disposition has not yet been determined. Likewise, the applicant's own savings of approximately R225,000.00 modest in the context of the parties' marital lifestyle, ought not to be applied to maintenance which the respondent has the means to provide.

[21] The R6,250,000.00 which the respondent had said would be paid to the applicant from the proceeds of the sale of the former common home is no longer imminent because the sale has fallen through. Whatever may eventually be paid to the applicant on account in the divorce will, on the respondent's own version, be a capital tender in full and final settlement, alternatively on account, of her divorce claim. The capital tender is not a substitute for the ongoing duty of support *pendente lite*.

[22] The amount sought for rental is the actual rental of the premises in which the applicant and the children currently live. It is not a figure plucked from the air by the applicant. It is the amount fixed by the lease that was concluded in November 2025 to replace the previous lease. The respondent has not seriously contended that R35,000.00 per month is unreasonable for the kind of accommodation the family requires in Constantia. Indeed, before the funding of the rental was shifted to the Trust, the respondent had been concluding the leases for and paying the full rental himself.

[23] I therefore find that the applicant has made out a case for an order requiring the respondent to pay R35,000.00 per month towards the rental of accommodation for herself and the minor children.

Personal maintenance for applicant

[24] The respondent does not contest his liability to pay personal maintenance for the applicant *pendente lite*. He tenders R15,000.00 per month, being the amount currently paid. The applicant claims R30,000.00 per month.

[25] The applicant has been unemployed throughout the marriage of more than eleven years. There is no suggestion in the papers that she will be in a position, in the near future, to generate any meaningful income. The respondent's contention that she ought already to have done so is a contention for consideration in the divorce action; it does not affect the quantum of *pendente lite* maintenance which falls to be assessed against the applicant's present circumstances.

[26] The marital standard of living was, on the affidavits read as a whole, comfortable. The parties resided in an upmarket secure estate; they travelled internationally; the children attend an expensive private school; the household engaged a live-in helper and other domestic assistance. Whether the lifestyle is properly described as one of luxury, as the applicant contends, or as one of ample comfort, as the respondent contends, the differences are immaterial. What matters is that on either characterisation it is significantly above ordinary middle-class living or that the applicant ought, *pendente lite*, to be maintained on a scale broadly commensurate with that standard.

[27] The applicant's schedule of household expenses totals R108,115.00 per month. That figure is, however, a household figure, not a personal one. It includes food, utilities and household running costs for herself, the children and Ms Kunda, and certain items already paid directly by the respondent. As the respondent correctly

points out, several items appear in the schedule which the respondent already discharges, such as the cellular telephone account and certain education-related costs. On the other hand, the respondent's analysis is, in places, expressed in bald assertions and cannot, without more, displace the applicant's averments.

[28] Allowing for the items already paid directly by the respondent and bearing in mind that the rental is now to be the subject of a separate component of the order, the schedule supports a level of household expenditure in the region of R65,000.00 to R70,000.00 per month for the applicant, the children and the live-in helper combined. Of that, the personal component attributable to the applicant alone, taking into account the children's own cash maintenance addressed below, falls in my assessment to be fixed at R20,000.00 per month.

Maintenance for children

[29] The applicant claims R20,000.00 per child per month over and above the items the respondent pays directly. The respondent tenders R16,500.00 per child per month, while he currently pays R15,000.0 per child. The respondent's tender includes R1,500.00 said to be in respect of additional costs associated with Ms Kunda.

[30] The cash component of child maintenance must cover, in the main, the children's food, clothing, transport, toiletries and incidental expenses, together with the household-share of consumables in the home in which they live. The respondent has not seriously contended that the children should be maintained at a standard lower than that which they enjoyed during the marriage. He has, indeed, recently taken the children on holidays which involved jet-skiing, snorkelling, and dining out, and has set up bank accounts into which he deposits at least R1,000.00 per

month for each child. The disparity between the children's experience in his home in Windhoek and in their mother's home in Cape Town has been the subject of complaint in the founding affidavit. While I do not propose to engage with that disparity beyond what is necessary, it suggests that the children's reasonable maintenance in the applicant's home should be measured against the lifestyle to which they were accustomed and to which they continue to be exposed when in the respondent's care.

[31] In the exercise of the discretion which I have, and bearing in mind that the school fees, medical and educational expenses and Ms Kunda's salary are paid directly by the respondent, I consider that R17,500.00 per child per month, payable as part of the cash maintenance, is a reasonable amount.

Maintenance towards past legal costs

[32] The applicant seeks a contribution of R350,000.00 in respect of both past and future legal expenses. As regards past legal expenses, the applicant has not annexed an itemised bill of costs in respect of the past attendances. Consequently, I can do my best, but the absence of detail will cause a conservative approach to determining an amount[7].

[33] On the material before me certain past costs are reasonably evident. The application for substituted service and edictal citation was an attendance reasonably required to commence the divorce action when the respondent was outside the court's jurisdiction. The correspondence with the respondent's attorneys during 2025 was likewise an unavoidable attendance. The drafting and issuing of the summons in the divorce action was a necessary step. The aborted

[7] ALG v LLG; *Manitsas v Manitsas* (unreported case 8698/19, WCC, 10 July 2019)

urgent Rule 43 application of October 2025 stands on a different footing as the work was done in circumstances that, on the applicant's own version, were rendered moot by the respondent's consent to the use of the R250,000.00 from the Property Trust to fund accommodation.

[34] Doing the best I can, on the limited material before me, an aggregate allowance of approximately R50,000.00 in respect of past legal costs, excluding the costs of the present rule 43 application[8], appears to me to be reasonable.

Contribution towards future legal costs

[35] The applicant has identified, in fairly broad terms, the kinds of attendances that will be required: further consultations with the legal team and experts; discovery and procedures under Rule 35(3); pre-trial procedures under Rule 37; expert valuations of the respondent's assets and liabilities; the possible briefing of senior counsel; and trial preparation. She tells the court that her advocate charges R3,500.00 per hour and R35,000.00 per day, which she contrasts with what she anticipates the respondent's legal team will charge.

[36] The respondent contends that none of this is necessary. His position, in summary, is that there is no redistribution claim that can succeed because the patrimonial consequences of the marriage are governed by Namibian law and by the parties' antenuptial contract, that there is no need for a forensic enquiry into his estate, and that, in any event, the applicant has the resources to fund such litigation as may be necessary out of the substantial capital tender that he has made.

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[8] *Micklem v Micklem* 1988 (3) SA 259 (C) at 263B

[37] Two preliminary observations are necessary. First, it is not for this court, at Rule 43 stage, to determine which legal system governs the patrimonial consequences of the parties' marriage, or whether the applicant's claim under section 7(3) of the Divorce Act is sustainable. Those are substantive questions for the trial court. Second, it does not follow, however, that the prospect that those issues will be raised at trial is irrelevant to the assessment of a contribution to costs. What matters at this stage is the apparent scale and complexity of the litigation that lies ahead, and the resources required to enable the applicant to meet the respondent's case at trial.

[38] Whether the applicant succeeds in establishing the substantive premises of her case is not for this court to decide. What is clear is that, in order to put her case to the court at trial, she will need to engage in discovery, secure expert evidence, prepare for trial and, in all likelihood, retain counsel for trial. The principle of equality of arms, which is the dominant consideration in the assessment of a contribution to costs[9] requires that she not be left in a position where her financial inferiority precludes her from prosecuting her claim adequately.

[39] A contribution to costs is not, however, a warrant to litigate at any chosen scale[10]. The applicant's claim of R350,000.00, including both past and future costs, is not supported by an itemised estimate of the kind that would assist the court to interrogate it line by line, and her articulation of the prospective work bears the hallmarks of generality.

[40] Doing the best I can, and taking into account the conservative approach due to the absence of detail, the apparent scale and complexity of the trial work, and the

[9] *AF v MF supra* paras 41–42
[10] *ALG v LLG* para 19

desirability of placing the parties on a footing of approximate equality at this stage of the proceedings, an additional contribution of R125,000.00 in respect of future costs, over and above the R50,000.00 in respect of past costs, is, in my view, reasonable. The total contribution to costs will therefore be R175,000.00. The applicant's entitlement to seek a further contribution as the matter progresses, is preserved by Rule 43(6).

Conclusion

[41] The applicant has substantially succeeded on the substantive issues. The respondent has not. There is, however, no reason in this matter to depart from the approach which is conventionally adopted in this Division of leaving the costs of a Rule 43 application to be determined by the court that hears the divorce action.

[42] Consequently, the following order is made:

1. The respondent shall, with effect from 25 May 2026, and thereafter on or before the 25th day of each subsequent month, pay to the applicant into such bank account as the applicant may from time to time nominate in writing, the following amounts:

    1.1 R35,000.00 (thirty-five thousand rand) towards the rental of the accommodation occupied by the applicant and the minor children;

    1.2 R20,000.00 (twenty thousand rand) as personal maintenance for the applicant; and

    1.3 R17,500.00 (seventeen thousand five hundred rand) per child as child maintenance, in respect of each of the minor children:

2. The respondent shall retain the applicant and the minor children as beneficiaries on his current medical aid scheme, alternatively a scheme providing similar benefits, and shall be responsible for all reasonable medical, dental, optical, ophthalmic, surgical, hospital, therapeutic (including, inter alia, speech therapy, occupational therapy, physiotherapy and psychotherapy), orthodontic and pharmaceutical expenses incurred and not covered by the medical aid scheme, by paying such expenses directly to the service provider.

3. The respondent shall be responsible for all the minor children's educational expenses, which he shall pay directly to the relevant service providers, including the cost of their education at Reddam House Constantia or any similar school, school fees, school uniforms, school books, stationery, and equipment as listed in the school's annual or termly requirement lists, compulsory school tours, levies, school excursions, and extra lessons or remedial tuition where the school provides written recommendations for them.

4. The respondent shall continue to pay the monthly salary of the applicant's live-in helper, Ms Kasongo Kunda.

5. The respondent shall pay to the applicant, as a contribution towards her past legal costs in the divorce action, the amount of R50,000.00, payable into the trust account of the applicant's legal practitioner within 30 days of the date of this order.

6. The respondent shall pay to the applicant, as a contribution towards her future legal costs in the divorce action, the amount of R125,000.00, payable into the trust account of the applicant's legal practitioner within 30 days of the date of this order.

7. The costs of this application shall stand over for determination by the court hearing the divorce action.

A MONTZINGER

Acting Judge of the High Court

Appearances:

Attorneys for applicant:	Advocate Muhammad Aduroaf
	Per: Mr M Aduroaf
Attorneys for respondent:	Ceri von Ludwig Attorneys
	Per: C von Ludwig
Counsel for respondent:	Adv L Buikman SC