REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2022-25422

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

12/4/2026
DATE SIGNATURE

In the matter between:

J[…] J[…] O[…] Applicant

and

T[…] L[…] O[…] Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] This is an application in terms of Rule 43(6) of the Uniform Rules of Court for the variation of an interim order granted on 14 May 2025 regulating, inter alia, maintenance and the care and contact arrangements in respect of the parties' minor children.

[2] The Applicant seeks, first, a reduction of the maintenance payable to the Respondent and, secondly, a substantial alteration of the existing care and contact regime so as to introduce a shared residence arrangement on an alternating weekly basis.

[3] The application is opposed. The Respondent contends that no case has been made out for variation and that the application constitutes an impermissible attempt to re-argue the merits of the original Rule 43 application and in essence appeal the ruling made by Pretorius AJ.

The legal framework

[4] Rule 43 provides a mechanism for interim relief in matrimonial proceedings, designed to afford a swift and inexpensive remedy pending the finalisation of the divorce action.[1]

[5] Rule 43(6) permits a court to vary its order in the event of: (a) a material change in the circumstances of either party or the children; or (b) the emergence of facts which were not disclosed at the time the original order was made.[2]

[6] It is well established that a variation is not intended to afford a litigant a second opportunity to present a case that could and should have been advanced in the initial application.[3]

[7] The threshold for interference with an existing Rule 43 order is accordingly a stringent one. A court will not lightly vary such an order absent clear, cogent and reliable evidence demonstrating a material change in circumstances.[4]

Relevant factual background

[8] The parties are married to one another and are presently engaged in pending divorce proceedings. They have two minor children born of the marriage.

[9] On 14 May 2025, this Court granted an order in terms of Rule 43 directing, inter alia, that the Applicant pay maintenance in the sum of R27 500 per month to the Respondent. That order was made after consideration of the parties' respective financial disclosures and the needs of the Respondent and the children.

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1 *Taute v Taute* 1974 (2) SA 675 (E) at 676H-677A.
2 Rule 43(6) of the Uniform Rules of Court.
3 *Grauman v Grauman* 1984 (3) SA 477 (W) at 480H-481B.
4 *Colman v Colman* 1967 (3) SA 291 (W) at 292G-H.

[10] The present application was launched on 8 September 2025, some four months later.

Issues for determination

[11] The issues that arise for determination are: (a) whether the Applicant has established a material change in circumstances warranting variation; (b) whether the Applicant has made full and frank disclosure of his financial position; (c) whether there exists a basis to revisit the maintenance determination; (d) whether the proposed variation of care and contact arrangements is justified; and (e) whether the application constitutes an abuse of Rule 43(6).

Material change in circumstances

[12] The Applicant contends that his financial position has deteriorated and that the Respondent has, in effect, ceased working or deliberately reduced her income.

[13] These contentions are squarely disputed. The Respondent avers that no material change has occurred and that the Applicant merely seeks to revisit the findings previously made by Pretorius AJ without basis.

[14] A careful reading of the Applicant's founding affidavit reveals that the alleged "change" is not rooted in new facts arising after the order, but rather in a renewed critique of the Pretorius AJ's assessment of the parties' financial positions.

[15] That is impermissible. Rule 43(6) does not provide a litigant with a mechanism to appeal or reconsider an existing order under the guise of variation.[5]

[16] In the absence of objectively verifiable new circumstances, the jurisdictional threshold for variation is not met.

Financial disclosure

[17] The Applicant's case is further undermined by material deficiencies in his financial disclosure.

5 *Maharaj v Maharaj* 1977 (2) SA 11 (N) at 15B-D.

[18] The Respondent has identified multiple inconsistencies in the Applicant's stated income, including differing versions ranging from approximately R50 000 to R100 000 per month.

[19] The Applicant has failed to provide primary documentary proof such as tax returns, audited financial statements or comprehensive bank records substantiating his alleged income.

[20] It is trite that a litigant seeking to vary a maintenance order bears a duty of full and frank disclosure.[6]

[21] In *Ecker v Dean*, the Court emphasised that a failure to make proper disclosure in Rule 43 proceedings is a factor that may justify refusal of relief.[7]

[22] The Applicant's failure to place reliable financial information before the Court is, in itself, fatal to his claim.

Maintenance

[23] The Applicant contends that the maintenance order is excessive relative to his means. However, absent proof of a material change in his financial circumstances, there is no basis to interfere with the existing order.

[24] Moreover, the Respondent disputes that her income has increased or that she is capable of earning at the levels alleged by the Applicant. The Applicant's case in this regard rests largely on speculation and inference rather than substantiated fact.

[25] It is not the function of this Court, in Rule 43(6) proceedings, to engage in a rehearing of the parties' financial positions on the same evidentiary material.

Care and contact

6 *Van Rippen v Van Rippen* 1949 (4) SA 634 (C) at 639.
7 *Ecker v Dean* 1937 AD 254 at 263.

[26] The Applicant seeks to introduce a shared residence arrangement, relying in part on the involvement of the Family Advocate and the children's notes to the court indicating this preference.

[27] The Respondent opposes this, contending that the existing arrangements are functioning well and that the Applicant is not consistently available to exercise extended care and often delegates the children's care to third parties.

[28] It is trite that the best interests of the children are paramount.[8] The evidence before the Court does not demonstrate that the current arrangement is not serving those interests, nor that a shared residence regime would represent an improvement. The children are teenagers and should it prove to be their preference to move weekly between their parents, this can be assessed at the trial between the parties after this has been fully investigated by the family advocate; at an interim stage, it is best that they be settled in one home. Divorce is unsettling enough for children, especially older children and they ought not have to choose between their parents or be asked to write letters expressing their preferences to the court at an interim stage of the proceedings when an order as to their primary residence has already been decided by Pretorius AJ.

[29] This is especially so as the Respondent has provided evidence suggesting instability in the Applicant's availability and inconsistency in exercising contact.

[30] In these circumstances, it would be inappropriate to disturb the status quo on the basis of inconclusive and contested evidence.

Abuse of process

[31] The Respondent contends that the application constitutes an abuse of process and is, in effect, an appeal in disguise. There is merit in this submission. The Applicant's affidavits are replete with criticisms of the reasoning and conclusions of the Court that granted the original order. Such criticisms properly belong in appellate proceedings, not in a variation application.

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8 Section 28(2) of the Constitution of the Republic of South Africa, 1996.

[32] [39] In *Maharaj v Maharaj*, the Court cautioned against the misuse of Rule 43 as a vehicle for re-litigation.[9] To permit such an approach would undermine the purpose of Rule 43 and lead to piecemeal litigation.

Costs

[33] Rule 43 proceedings are ordinarily not accompanied by punitive costs orders, given their interlocutory and family-law nature. However, where a party acts unreasonably or abuses the process of the Court, a costs order may be justified.[10]However, while the present application is ill-conceived, I am not persuaded that it warrants a punitive costs order.

Conclusion

[34] The Applicant has failed to establish a material change in circumstances. He has further failed to make proper and reliable financial disclosure. The relief sought amounts, in substance, to an attempt to re-argue the original Rule 43 application. No basis exists to interfere with the existing order.

Order

[35] In the result, the following order is made:

1. The application in terms of Rule 43(6) is dismissed.

2. The Applicant is directed to pay the costs of the application.

WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT
JOHANNESBURG

9 *Maharaj v Maharaj* 1977 (2) SA 11 (N) at 15B-D.
10 *Senior v Senior* 1979 (4) SA 957 (W) at 962A-C.

For the applicant: V de Wit

Instructed by: K Jordaan and Associates

For the respondent: Greenstein Attorneys

For the Applicant:	A instructed by B
For the Respondent:	X instructed by Y