REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-205942

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

11 May 2026 [redacted]
DATE SIGNATURE

In the matter between:

DS Applicant

and

GLS Respondent

JUDGMENT

DJ Smit, AJ

Introduction

[1] This is an application and a counter-application for maintenance *pendente lite.*

[2] The only question is the proportion in which the applicant (the husband) and the respondent (the wife) are obliged to contribute to the maintenance of their minor children.

[3] The husband contends that, in light of the disparity in income between them, the wife is obliged to contribute towards approximately 70% of the children's maintenance needs while he is obliged to contribute 30%. The wife contends, on the other hand, that the husband's income is more than he has disclosed and that her income is less than the husband contends, primarily because she will no longer perform outside consulting work in addition to her permanent employment.

[4] The ratio for which the wife contended was 56%/44% evened out to 50%/50% in light of what she contends is the husband's significantly larger net asset value. In practical terms, the dispute is whether the husband should pay an amount between R23,513 (for which he contends, although he tendered R27,240 per month) and R39,188 (for which the wife contends).

[5] The dispute is therefore narrow but beset with factual disputes around the quantum of the parties' income and assets. Certain of these disputes are not capable of definitive resolution on motion, even though the parties have delivered five sets of affidavits, outside of Rule 43's requirements. In adjudicating these disputes, I have of necessity had to adopt the robust approach adopted in the case law for disputes of fact in Rule 43 applications.[1]

[6] I want to make it clear that my findings of fact below are therefore limited in their application to these proceedings.

[7] The application and counter-application also dealt with the husband's contact with the minor children, but this dispute has been postponed by order of Allen AJ dated 16 February 2026 pending the finalisation of an investigation by a forensic psychologist and the Family Advocate.

Background

[8] The parties were married out of community of property with the accrual system on 21 February 2012. Two minor children were born from the marriage: a girl (E) aged 9 and a boy (B) aged 6. The couple separated in or about October 2024.

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[1] See *Butcher v Butcher* 2009 (2) SA 421 (C) para 19 in respect of Rule 43, which constitutes interim relief *pendente lite*; and contrast with *Sewmungal and Another, NNO v Regent Cinema* 1977 (1) SA 814 (N) at 819D-821G where final decisions on motion are concerned.

[9] The husband is employed in a senior position at a South African retailer while the wife is employed in a senior position at an international technology company. Both have, in the past, done remunerative work in addition to their salaried employment.

[10] During the marriage and until recently, the parties pooled their income (or substantial parts of their income) to pay for joint expenses. The pooled income arrangement was operated through a single facility account in the husband's name, from which the bond on the former matrimonial home and most joint household expenses were paid.

[11] Both parties contributed to this account (albeit not equally). The husband contends that he typically paid about R56,000 per month into the joint account while the wife paid about R80,000 to R90,000 per month. The household expenses were discharged from the account, to which the wife had access through a payment card.

[12] At some stage after the separation, the wife's payment card was stopped. Further, disputes arose over how much the wife should contribute to the single facility account. The disputes led to the single facility becoming overdrawn with resultant threats of foreclosure on the former matrimonial home. The disputes gave rise to unsuccessful mediation, leading to this application.

[13] The wife continues to reside in the former matrimonial home with the children. The husband now lives in a complex approximately 60 metres from the former matrimonial home.

The issues

[14] The following issues arise against this backdrop:

a. What are the monthly maintenance needs of the children?

b. What is the monthly income of the husband?

c. What is the monthly income of the wife?

d. Should the respective net asset values of the parties be considered in arriving at a fair split of their maintenance obligations? If so, how?

e. Against this backdrop, what is a fair split of the maintenance obligations?

f. How does that translate into an order of this court?

[15] Given that neither party has opposed the other's affidavit(s) delivered outside the framework of Rule 43, I have decided to take them into account given their utility in crystallising the factual disputes between them.[2]

[16] It was not clear on the papers how the ratio for which each party contended translated into the orders they sought, because the orders sought to allocate certain expenses to the husband and others to the wife rather than to order a single cash transfer per month. For this reason, at the hearing I requested the parties to file supplementary submissions. These submissions were of great assistance, and I thank the respective counsel for them.

[17] Unless otherwise specified, all figures are monthly and expressed net of tax.

What are the monthly maintenance needs of the children?

[18] The parties differed on the children's monthly maintenance needs. The wife contended on affidavit that these needs were a total of R78,377 per month while the husband contended they were R69,362. For purposes of the hearing, however, the husband's counsel argued the matter based on the wife's figure.

[19] At the hearing, the wife's counsel submitted that this figure did not, in fact, include various other expenses, but in her supplementary submissions she committed to a figure of R83,365 which includes inflationary increases to school fees and an increased bond instalment subsequent to the filing of the wife's main affidavit.

[20] For ease of calculation and because the parties' means are such that the resolution of any remaining factual disputes will not make a significant difference

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[2] These are: (a) the husband's further affidavit dated 19 December 2025; and (b) the wife's further affidavits dated 3 February 2026 and 20 March 2026.

to the outcome, I find that the reasonable monthly needs of the children amount to approximately **R80,000**.[3]

What is the husband's monthly income?

[21] It is common cause that the husband's basic monthly salary is **R56,587.51**. There are disputes about (purported) further sources of income, including:

a. A monthly figure for an annual discretionary bonus.

b. Payments of R10,000 per month from a company for which he does outside consulting work.

c. Ad hoc payments in irregular amounts from third parties.

d. Ad hoc payments to the husband from his mother.

[22] The husband's discretionary bonus amounted to approximately R40,000 (annual) for 2023 and R42,000 (annual) for 2024. The wife contended that this should be averaged as R4,031 per month while the husband's averaged figure was R3,500 per month. While the husband's figure seems closer to correct based on 2024 figures, one may assume that this would increase by 2026. Accordingly, the husband's counsel argued the matter on the basis of **R4,031** per month.

[23] The husband receives a monthly amount of R10,000 into his account for outside work. The husband contends on affidavit that only R4,000 of that constitutes income while R6,000 is an advance earmarked for *ad hoc* disbursements and is repayable at year-end if unused. The wife contends that the full R10,000 should be considered income, on the basis that the bank statements annexed to the husband's financial disclosure did not show a repayment of any unused amounts. The husband's retort was that these bank statements did not cover the year-end.

[24] Given the robust approach to fact-finding in matters to be adjudicated in Rule 43 proceedings, I cannot second-guess either the husband's or the wife's unsatisfactory and parsimonious versions on affidavit regarding their additional income. (This will benefit the wife more than the husband, as I show below.) I

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[3] I indicate in bold those figures which represent my findings.

therefore find that the husband's additional regular monthly income should be reflected as **R4,000**.

[25] The husband received further payments of R67,900 from third parties over a 12-month period for additional consulting work. The wife contends this should be considered as monthly income of R5,658.00. The husband contends (and this seems to be borne out by his bank statements) that this was a pass-through arrangement of which he only retained an amount of R10,705, yielding an average of R892 per month. While the wife describes his explanation as far-fetched and improbable, again I cannot second-guess it given the lack of cogent evidence before me. I therefore find that an additional **R892** per month accrues to the husband.

[26] The wife seeks to add R11,033 per month to the husband's income by taking into account R66,200 which the husband received from his mother in ad hoc payments over a six-month period. The husband contends that he had been forced to rely on handouts from his mother as a direct result of the respondent's unilateral reduction of her payments into the single facility account, thus leaving him to cover those expenses which he cannot afford.

[27] In my view, gratuitous and irregular financial support from family members should not be taken into account to calculate spouses' income for purposes of Rule 43 proceedings. The husband's counsel quoted authority in this regard, which I find persuasive because family members are not, typically, obliged in law to make these contributions and they are therefore uncertain. Further, their sustainability depends on evidence which is not before the court in Rule 43 proceedings.[4]

[28] Thus, my findings on the husband's income yields a grand total of R65,510.51 per month which I will round down to **R65,000** for ease of calculation.

[4] *CAM v DWM* [2023] ZAGPJHC 1203 (23 October 2023) para 20. See also my decision in *HL v BPAL* [2026] ZAGPJHC 326 (30 March 2026) para 37.

What is the wife's monthly income?

[29] The wife changed employment after the main affidavits in this application had been exchanged, which is one reason why supplementary affidavits were filed.

[30] It is, however, common cause that the wife's new employment will yield approximately **R110,000** per month. (This is subject to currency fluctuations, given that the wife earns in US dollars, but both parties argued on the basis that this figure was more or less correct.)

[31] There were disputes around the wife's annual discretionary bonus and what the husband contended was additional and undisclosed income from third parties.

[32] The wife's new employment agreement provides for an annual performance bonus of 10% of her annual base compensation, paid quarterly. The wife's counsel argued that this should not be taken into account at all, given the fact that there is no history of payment (unlike the husband's discretionary bonus which was paid in at least 2023 and 2024). In my view, this should be reflected as a monthly amount of **R10,000** given that there is no cogent evidence that the wife's contractual (although discretionary) bonus would <u>not</u> be paid.

[33] If it turns out that there is some impediment to the payment of the wife's discretionary bonus, the wife could always approach the court to vary the Rule 43 order.

[34] The wife received payments of approximately R297,000 into her bank accounts during a six-month period last year, i.e. during her old employment. The husband contends that this translates to approximately R50,000 per month in additional income from outside consulting work. (These are gross amounts before tax is taken into account.)

[35] The wife contends that these amounts should be reflected as monthly amounts of approximately R9,000 for "*freelance work*" but that her new employment contract, effective January 2026, constrains her ability to do freelance work. She states on affidavit that she would no longer do freelance work.

[36] As with the husband's work outside of his employment, a lot is left unexplained on affidavit. Further, the wife's new employment contract does not exclude her ability to do freelance work; it only excludes freelance work for competitors. It is not clear to me what the possibilities are for the wife to do freelance work for non-competitors but, at least in the abstract, it could potentially be extensive. As with the husband's outside work, I cannot speculate in this regard and is constrained to accept the wife's submission on affidavit that she will no longer do freelance work. Again, if it this transpires not to be the case, the husband could always approach this Court for a variation of the Rule 43 order.

[37] Accordingly, I find that the wife's monthly income is **R120,000**.

The relevance of the parties' net assets

[38] The wife acknowledged that, on any version, her monthly income would significantly exceed that of the husband. In order to motivate for a 50%/50% split of the maintenance obligations towards the couple's minor children, she contended that the parties' disparate net assets should be taken into account.

[39] There was a great deal of debate on the papers as to the size of the disparity, which is unnecessary to resolve in light of my conclusion. The wife contended that her net asset value is approximately R300,000 while the husband's net asset value exceeds R3 million. Her contention depends to a large extent on the value of the house in which the husband now lives which, it is common cause, his mother purchased. The husband contends that he made a loan from his mother which will have to be paid back if the house is sold. For this reason, the husband contends that his net asset value was approximately R1.2 million consisting mostly of retirement annuities and shares.

[40] In my view, the assets of the parties are not ordinarily taken into account for purposes of Rule 43 proceedings <u>unless</u> the maintenance needs in question exceed the parties' income <u>and</u> the assets are realisable within a reasonable timeframe. Maintenance *pendente lite* is normally met from income, although

inroads into capital assets may be justified in certain circumstances.[5] These circumstances include the situation where income is insufficient.[6]

[41] In this case, there is no need to order either of the parties to liquidate relatively illiquid assets to meet maintenance obligations. Their joint income of **R185,000** per month is more than sufficient to meet the children's needs of R80,000 per month and their own needs.

What is a fair split of the maintenance obligations?

[42] The parties accepted, correctly in my view (and subject to the issue of net asset value addressed above), that they are obliged to contribute to the children's maintenance needs in proportion to their respective income.

[43] I find above that the husband's monthly income for purposes of calculation is R65,000 and the wife's is R120,000, yielding a combined monthly income of R185,000. This means that the husband earns approximately **35%** of the household's monthly income and the wife earns **65%**. This is the appropriate ratio to split the reasonable monthly maintenance needs of the children of R80,000, yielding a contribution of **R52,000** by the wife and **R28,000** by the husband.

How does the split translate into an order of court?

[44] The parties' respective notices of motion (and draft orders) complicated the debate considerably by seeking to translate a monetary split into respective responsibilities for particular household expenses, including the bond on the former matrimonial home; expenses in relation to rates and taxes, levies, utilities, maintenance, insurance, security costs and domestic staff salaries; various expenses in relation to the children directly such as school fees, medical aid, other medical costs, and fees for extracurricular activities; and other educational expenses for the children (such as uniforms, stationery and books).

[45] This led to unproductive and irrelevant debates as to whether it is "*fair*" that one party alone should be responsible for specific items, particularly the bond. This

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[5] *Taute v Taute* 1974 (2) SA 675 (E) at 676E.

[6] *CMH v GNH* [2025] ZAGPJHC 1169 (17 November 2025) paras 5-7 and 14, and the authorities cited there.

is irrelevant because the only issue is what portion of the children's maintenance needs each party should meet.

[46] Fortunately, it seems that the parties were *ad idem* by the time their supplementary submissions were filed as to how the court's conclusions would affect the order to be made. They each provided for a mechanism where:

a. The husband would pay the children's educational expenses, such as school fees, school uniforms, stationery and books and school levies;

b. The wife would pay for expenses in relation to the former matrimonial home such as rates and taxes, levies, utilities, maintenance, insurance, security costs and domestic staff salaries;

c. The wife would pay for other expenses in relation to the children such as medical aid, other medical costs, and fees for extracurricular activities; and

d. The husband would either pay an additional cash contribution to, or would receive a cash refund from the wife, depending on the allocation of the bond.

[47] The husband contended that the wife should pay the bond on the former matrimonial home in which she continues to live, while the wife contended that the husband should pay for it.

[48] This issue only depends on what the court found to be the proper split of the children's reasonable maintenance obligations between the parties, not on what is "*fair*" in that regard. The wife contended for the husband to pay the bond based upon the 50%/50% split she contended for. The husband contended for the wife to pay the bond, based on 70%/30% split he contended for. Given that the court finds that a 65%/35% split is realistic and consistent with the evidence, it follows that the appropriate solution is that the wife should make the bond payment and that the husband should pay a cash contribution in addition to payment of the children's educational expenses.

[49] The amount of that cash contribution is the next issue. The husband's supplementary submissions contends that the monthly value of payment of the

children's school fees is R22,780[7] and that the approximate monthly value of the additional school uniforms, stationery and books and school levies is R460. An additional R4,000 top-up payment would yield a monthly cash contribution of R27,240, which is what he tendered.

[50] This means that the court's finding that a payment of R28,000 per month would discharge the husband's monthly maintenance obligations means that he should be ordered to make a monthly top-up payment of **R4,760.00**.

[51] The single facility account, from which the bond is deducted monthly, has caused friction. For this reason, and by consent of both parties, the Court will order that neither party is permitted to transact on this account save for the monthly bond payment and any further payment (such as bank fees or arrears) required to prevent foreclosure on the former matrimonial home.

[52] The usual order in respect of costs in matters brought under Rule 43 is that costs are in the divorce. I see no reason to deviate from that. In addition, this application partly deals with the husband's contact with the minor children; an issue which is not before me and will be disposed of by another judge.

[53] I reproduce my order below, anonymised in various respects to protect the identity of the minor children. An order containing the redacted detail is made available to the parties separate from this judgment.

Order

[54] I make the following order:

a. The respondent shall pay the monthly instalments in respect of the bond (bond account number: [ ]) held in favour of First Rand Bank Limited over [ ] ("the former matrimonial home"), directly into the aforementioned bond account from the 1st day of the month following the granting of the Rule 43 order and thereafter, on or before the 1st day of each and every successive

[7] The wife's supplementary submissions also values school fees at R22,780.

month and shall also make payment in respect of every other amount needed to prevent foreclosure on the former matrimonial home.

b. The respondent shall make payment of the following monthly expenses in respect of the former matrimonial home:

   i. rates and taxes;

   ii. levies;

   iii. utilities;

   iv. maintenance;

   v. insurance;

   vi. security costs; and

   vii. domestic staff salaries.

c. The respondent shall make payment of the following monthly expenses in respect of E:

   i. Discovery Classic Comprehensive medical aid premium;

   ii. Medical costs not covered by medical aid;

   iii. Gymnastics fees;

   iv. Art fees; and

   v. Play therapy fees.

d. The respondent shall make payment of the following monthly expenses in respect of B:

   i. Discovery Classic Comprehensive medical aid premium;

   ii. Medical costs not covered by medical aid; and

   iii. Swimming lesson fees.

e. The applicant shall pay the respondent a cash contribution of R4,760 per month from the 1st day of the month following the granting of the Rule 43 order and thereafter, on or before the 1st day of every successive month directly into the respondent's nominated bank account. This amount will increase annually on 1 March of each year by such percentage as is equivalent to the percentage change in the Consumer Price Index (CPI) (all items), as published by Statistics South Africa, for the most recent annual period available at the time the increase is calculated.

f. The applicant shall pay 100% of the children's educational expenses, including school fees, school uniforms, stationery, books and school levies.

g. Neither party shall be permitted to transact on the facility account from which the bond on the former matrimonial home is paid, save for the respondent's payment of the amounts referred to in paragraph 1 above.

h. Save as aforesaid, the application and the counter-application are dismissed.

i. The costs of the application and the counter-application shall be costs in the divorce.

[redacted]

DJ SMIT
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 25 March 2026
Date of judgment: 11 May 2026

For the Applicant:	T Lipshitz instructed by Swartz Weil Van Der Merwe Greenberg Inc
For the Respondent:	L Segal SC instructed by Deanne Kahn Attorneys