


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-110876

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: NO
<u>26/05/2026</u>	
DATE	SIGNATURE

LJ, M

Applicant

and

P, M

Respondent

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**JUDGMENT**

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Naidoo, AJ

*Introduction*

- [1] The applicant and the respondent (“the parties”) are cited in court papers by their full names and their children have also been referred to in the papers by their full names. In order to protect the interests of the parties and minor children, I accordingly deem it appropriate to refer to the parties and their children by their initials only.
- [2] This is an application in terms of Rule 43 of the Uniform Rules of Court (“Rule 43”) brought by the applicant in terms of which she sought interim relief in respect

of contact and care of the minor children; to be retained on the respondent's medical aid; spousal maintenance in the amount of R26 453.00 per month; relocation costs to Johannesburg in the amount of R30 000.00 and a contribution by the respondent towards her legal costs in the amount of R250 000.00 pending the determination of an action for divorce.

- [3] The respondent opposed the application. He accepts his duty to maintain the applicant but contended that the relief sought is beyond his means. As such, he submitted that the court should award the applicant relief as per his tender, which was to pay the applicant R10 000.00 per month for maintenance for 10 months; pay her continued medical aid for a period of 20 months, alternatively R5000 per month to enable the applicant to obtain her own medical aid; a once off relocation contribution in the amount of R60 000.00 or alternatively, R30 000.00 towards relocation costs should she retain all the movable assets and furniture. The respondent further submitted that he was amenable to making a reasonable contribution to the applicant's legal costs, although he did not specify the amount he deemed reasonable.

*Issues for determination*

- [4] I am required to determine the following issues:
- 4.1. Whether condonation should be granted to the respondent in respect of the delay in filing his opposing affidavit.
  - 4.2. The amount payable as spousal maintenance.
  - 4.3. The amount of contribution towards the legal costs of the applicant.
- [5] The respondent accepted that he could not stop the applicant from relocating and the only relevant issue was the amount of relocation costs claimed, and, in this regard, I should determine the amount based on his tender.

*The application for condonation*

- [6] The respondent filed his opposing affidavit more than a month outside the prescribed time limit. He did however, set out under oath an explanation for the late filing, that is, for reasons due to him requiring medical attention and the explanation is a reasonable one.

- [7] There were no arguments presented during the hearing that the delay was excessive or prejudicial or that condonation should be refused. In weighing up the prejudice of condoning the late filing of the respondent's opposing affidavit on the applicant versus the prejudice on the respondent, the balance tips in favour of the respondent, because his affidavit assists the court in determining the dispute for it to have regard to the respondent's opposing affidavit.
- [8] As a result, I concluded that the late filing of the respondent's opposing affidavit be condoned.

*Summary of material submissions*

- [9] The parties married each other out of community of property with the inclusion of the accrual system on 25 October 2003 at Randburg. The marriage still subsists. The applicant is 53 years old.
- [10] Since the application was issued, one of the minor children reached the age of majority and so, the application concerns one minor child. The children are still dependent and have their primary residence with the respondent at this stage.
- [11] There was no dispute that the parties shall retain their parental responsibilities and rights in respect of the minor child D M subject to the applicant's specified parental responsibilities and rights of contact and that the applicant would have contact to the minor child subject to his wishes, as below:
- 11.1. Half of every long South African school holiday and alternating short school holidays, Easter weekend, Christmas and New Year;
  - 11.2. Telephonic and/or video contact every Monday, Wednesday, and Friday at reasonable times.
- [12] The applicant vacated the marital home after an alleged incident of domestic violence on 8 January 2026. She is currently living with her mother in Kroonstad. The applicant wishes to return to Johannesburg and wants to enjoy contact with both the children depending on their wishes. She is not prepared under any circumstances to return to the marital home and seeks accommodation costs for a 3-bedroom accommodation so that the children can enjoy overnight visits with her.

- [13] It is common cause that the applicant is unemployed, having resigned from employment in 2022 as a senior portfolio manager in a telecommunications company. The respondent is employed as a data executive at a major bank.
- [14] The respondent concedes that after the applicant resigned, the respondent bore the sole responsibility of carrying the full financial burden of the household without a single contribution from the applicant.
- [15] The respondent submits that he earns R75 000.00 net per month. His monthly expenses amount to R91 810.00. His liabilities amount to approximately R636 999.33 which arose after the applicant ceased working and he was required to sustain the household alone. He avers that his assets include a retirement annuity, a motor vehicle, work equipment and modest household items. He is maintaining the children and meeting their day-to-day needs including their educational, medical and therapeutic needs. The matrimonial home is jointly owned.
- [16] The respondent filed a financial disclosure form (FDF). In it he declared that his net income is R75 000.00 from his salary and R17 000.00 for the past 6 months from an investment, being a STANLIB annuity to the value of R1 300 000.00. He has one motor vehicle worth R180 000.00, he has no business interests and earns no income from investments e.g. dividends, interest or rental income. He has a pension interest of R10 359 395.89. He is a trustee in a trust but did not disclose any income from the trust.
- [17] Insofar as the respondent's liabilities are concerned, his FDF reflects that he is in debt in the amount of R636 999.33 in respect of his credit card and personal loans. He confirms that even though the matrimonial home is jointly owned, the balance outstanding is R900 000.00 and he pays the full mortgage bond of approximately R13 000.00 per month. His total expenditure per month is R91 810.00.
- [18] Apart from general submissions made during argument by the applicant's counsel that the respondent was not fully declaring the income he receives, the

applicant was not able to meaningfully challenge the respondent's assertions that his fixed monthly income (at least for the previous 6 months) was his salary of R75 000.00 (net) and approximately R17 000 in respect of an annuity payment which would bring his total income per month to R92 474.00 per month.

[19] The applicant's counsel did however attempt to demonstrate that there were other entitlements flowing from the respondent's employment based on his salary advice for December 2025, which reflects that he received in the form of a medical aid contribution as a fringe benefit, an amount in December 2025 being R175 310.00 and in January 2026, R194 687.00. This would mean that his monthly expenses could not truly amount to R91 810.00 and the medical aid amount of R17 400 should be deducted from this amount. In addition, according to the applicant, the respondent's salary advice for December 2025 reflects that the respondent has taxed benefits such as Div/EE Equity Instruments (as at December 2025: R586 071.03) and acquisition of assets (R16 250.98). This is contended by the applicant to mean that the respondent is a member of an employee share scheme or a deferred bonus paid in shares. In addition, on 20 January 2026, the respondent received an unpaid leave payment, and his salary was R112 218.50. The belief by the applicant that the respondent has other income was fortified by the respondent's contention that he and the applicant have access to funds in the form of investments, but he failed to disclose what those are. The respondent did not meaningfully challenge these assertions.

[20] The applicant also contended that the bank statements of the respondent indicated that the respondent is doing business outside his formal employment and this can be gleaned from the payments made out of the account. There was, however, no concrete averments made by the applicant in support of what this business entailed, in order for this court to place any reliance on this submission.

#### *Analysis*

[21] As a starting point, there is no dispute that the respondent owes the applicant a duty of support.

- [22] Courts are required to consider the applicant's reasonable needs and the respondent's ability to meet them.<sup>1</sup> The Court will look at the financial circumstances of both the parties and will make an order accordingly thereto.
- [23] In *Taute v Taute*,<sup>2</sup> the court stated that there is no general principle upon which an application under Rule 43 can or must be based. Each case must depend on its own particular facts. *Taute* also reiterated that the applicant spouse (who is normally the wife) is entitled to reasonable maintenance *pendente lite* dependent upon the marital standard of living of the parties, her actual and reasonable requirements and the capacity of her husband to meet such requirements which are normally met from income although in some circumstances inroads on capital may be justified.<sup>3</sup>
- [24] The applicant has not worked since 2022 and the respondent has from that date maintained her, without it appears, any serious reluctance to do so. However, the standard of living of the parties was based on their actual and reasonable requirements and on a large part on what the respondent's salaried income provided together with his investments.
- [25] Given that the applicant has not worked since 2022, and there was no pressure put on her to work and contribute jointly, it is unreasonable to expect that she finds employment immediately or that she relies on her mother to support her pending the finalisation of the divorce. There is no dispute that her mother is a pensioner.
- [26] A significant dispute between the parties is the cost of the applicant's accommodation. The tender for the applicant to return to the marital home is not one that the applicant may be expected to take up, given the domestic violence allegations. I find that it is not unreasonable for her to want to relocate to Johannesburg where she can be closer to her children and given that she is unemployed, the respondent should be responsible for reasonable accommodation costs.

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<sup>1</sup> *M G M v M J M* [2023] ZAGPJHC 405 para 9.

<sup>2</sup> 1974 (2) SA 675(E).

<sup>3</sup> See *Taute v Taute* 1974 (2) SA 675 (E) at 676 par E-G.

[27] The respondent's tender of R10 000.00 per month seen in that context is thus, wholly inadequate given that this amount must include at the very least, a reasonable contribution towards her accommodation costs (rent), utilities, food, transport and groceries and must be viewed in relation to the fact that the applicant is unemployed. However, this contribution must also be weighed up against the fact that the respondent does not dispute that he will pay the respondent's medical aid, and that of the children and that the children's primary residence is with the respondent and he provides for their needs. Insofar as the respondent's affordability is concerned, he does have access to capital that would see him afford to pay the amounts determined below.

[28] The applicant computes her expenditure in the amount of R26 453.67 being in respect of her needs alone, however, she submits that this amount does not cover an amount of R17 500.00 in respect of the rental for an unfurnished 3 - bedroom townhouse. I find that an amount of R17 500.00 claimed for accommodation alone is inflated and unaffordable for the respondent. An amount of R8500.00 in respect of accommodation would be fair and reasonable.

[29] Insofar as the applicant's other monthly expenditure is concerned, I have had regard to the list of her monthly expenditure, and I regard the following expenditure in the amounts set out below as being reasonable and affordable for the respondent to pay:

- Water: R400.00
- Food Groceries and cleaning materials: R2500.00
- Electricity: R500.00
- Telephone and ADSL: R300.00
- Clothing and personal care: R650.00
- Fuel: R400.00
- Insurance: R1157.00
- Maintenance for the car: R300.00

[30] As a result, I conclude that it would not be unreasonable for the respondent to pay an amount of R14 707.00 in respect of spousal maintenance to the applicant. It must be borne in mind that apart from the amount of R14 707.00 in respect of spousal maintenance, the applicant is being maintained on the respondent's

medical aid. The respondent's capacity to also find employment in the near future (given that she previously held a senior role) should not be underestimated. In addition, the applicant is a joint owner of the immovable property, which may be sold and she has access to a retirement fund.

- [31] The respondent should also pay the applicant R30 000.00 towards relocation costs and the applicant will be entitled to remove the movable assets and furniture listed in annexure LJMT of the applicant's founding affidavit with 24 - hours' notice to the respondent.
- [32] Insofar as legal costs are concerned, in *Dodo v Dodo*,<sup>4</sup> it was held: "The husband's duty of support includes the duty to provide the wife with costs for her litigation with her husband."<sup>5</sup> This is compatible with the provisions of section 9(1) of the Constitution which reads: "Everyone is equal before the law and has the right to equal protection and benefit of the law."<sup>6</sup>
- [33] The applicant produced a *pro forma* account from her attorneys estimating her legal costs to be R250 000.00. Save for one or two items which were disputed, there was no meaningful submission made by the respondent as to why the amount of R250 000.00 was not reasonable or what would be reasonable in the circumstances, when viewed against, for example, what the respondent paid for legal fees. Given the respondent's lack of meaningful disclosure in relation to his legal fees, there is nothing before this court to gainsay the applicant's version that R250 000.00 is more or less what she would incur in legal costs in the divorce especially as the divorce concerns a forfeiture order and the applicant should not be hamstrung in her defence. The respondent is not liable for the whole amount however, and a reasonable contribution must be assessed based on the pro-forma account submitted. On this court's analysis, and while there is no precise mathematical figure, 70 percent of the costs represented are reasonable and necessary. Therefore, the respondent is ordered to contribute R180 000.00 towards the applicant's legal costs payable as follows:

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<sup>4</sup> 1990 (2) SA 77 (W).

<sup>5</sup> *Id* at 96 F.

<sup>6</sup> section 9(1) of the Constitution, 1996.

- 33.1 R30 000.00 on the last day of the month on which this judgment is handed down and;
- 33.2 Thereafter, R30 000.00 on the last day of each succeeding month until the abovementioned amount has been paid in full.

[34] The aforementioned amount in respect of legal costs is to be paid into the trust account of the applicant's attorneys of record, being Du Toit Attorneys.

*Costs of this application*

[35] The costs of this application are costs in the divorce action as per the terms of the order prayed for by the applicant.

*Order*

[36] In the circumstances, I make the following order, *pendente lite*:

1. The parties shall retain their parental responsibilities and rights in respect of the minor child D M ("the minor child") subject to the applicant's specified parental responsibilities and rights of contact.
2. The applicant shall have specific parental responsibilities and rights of contact to the minor child, subject to the wishes of the minor child, as below:
  - 2.1 Half of every long South African school holiday and alternating short school holidays, Easter weekend, Christmas and New Year;
  - 2.2 Telephonic and/or video contact every Monday, Wednesday, and Friday at reasonable times.
3. The respondent shall pay spousal maintenance to the applicant in the amount of R14 707.00 per month into the banking account of the applicant on the first day of the month after this judgment and thereafter, on the first day of each consecutive month.
4. The aforesaid amount of R14 707.00 shall increase on the anniversary date of this judgement at the rate equal to the Consumer Price Index (all areas) for the preceding 12 months, as published by Statistics South Africa or its successor.

5. The respondent shall retain the applicant on his medical aid and pay all excess medical costs in respect of the applicant not covered by the medical aid.
6. The respondent shall pay the applicant's relocation costs in the amount of R30 000.00, and the applicant will be entitled to remove the movable assets and furniture listed in Annexure **LJM7** of the applicant's founding affidavit with 24 hours notice to the respondent.
7. The respondent shall contribute R180 000.00 towards the applicant's legal costs payable as follows:
  - 7.1 R30 000.00 on the last day of the month on which this judgment is handed down and;
  - 7.2 Thereafter, R30 000.00 on the last day of each succeeding month until the abovementioned amount has been paid in full.
8. The amounts in respect of the contribution to the applicant's legal costs is to be paid into the trust account of the applicant's attorneys of record, being Du Toit Attorneys.
9. The costs are costs in the divorce action.

  
[REDACTED]  
NAIDOO AJ  
ACTING JUDGE  
THE HIGH COURT OF SOUTH AFRICA,  
GAUTENG DIVISION, JOHANNESBURG

Counsel for the Applicant: Adv Isa Strydom  
Instructed Du Toit Attorneys

Counsel for the Respondent Adv H Le Roux  
Instructed by J Mahomed Attorneys

Date of argument: 19 May 2026

Date of judgment: 26 May 2025