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

Case Number: 2025/153456

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
_____	_____
DATE	SIGNATURE

In the matter between: -

P[...] **W[...]** **S[...]**

Applicant

and

M[...] **T[...]** **S[...]**

Respondent

JUDGMENT

Van Aswegen AJ

INTRODUCTION:

- [1] This Rule 43 Application concerns two talented musicians who, after confronting significant career setbacks, adapted to a changing music industry and redirected their work to provide for themselves and their son. The Applicant commenced working as an actress and television presenter (freelancer artist), whilst the Respondent worked as a musician disc jockey (DJ). The transition placed the marriage under increasing strain, leading the Applicant to institute divorce proceedings.
- [2] The Applicant in this application seeks maintenance *pendente lite* for herself and the minor child, together with a contribution to costs.

FACTUAL MATRIX:

- [3] The parties were married *out of community of property*, subject to the accrual system, on *10 January 2014* at *Randburg*.
- [4] One minor child was born of the marriage, namely *M[...] N[...] S[...] (“M[...]”)*, a boy born on the *08 August 2013* with visual impairment disability.
- [5] The Applicant issued a divorce summons on *2 September 2025*. At her insistence, the Respondent then vacated the matrimonial home situated at *[...] Z[...] Lane, H[...], Extension 5, Sandton, Gauteng Province*, where he had been living with the Applicant and the minor child.
- [6] The Applicant sketches a picture of herself as being unemployed and in financial distress, whilst describing the Respondent as a self-employed musician, disc jockey (DJ), and businessman. She contends that the Respondent “*is a successful singer, songwriter, music producer, a disc jockey and a performer, who performs at major international venues with internationally recognised disc jockeys.*” The Respondent furthermore, she pleaded, has savings-, investment accounts and a share portfolio. He also derives profits or dividends from a company named *Yin Holdings*.¹

¹ PW 9 at 018-28

- [7] The Applicant further alleges that her unemployment resulted from the Respondent's unilateral dismissal of her from her position as manageress of his two companies – *S[...] Group* and *S[...] Music (Pty) Ltd* - of which he is the sole director. In her capacity as manageress of the Respondent's companies she had earned at least *R100 000.00 nett* per month. According to the Applicant, the dismissal followed the institution of divorce proceedings against the Respondent.
- [8] Before joining the Respondent's companies, she stated that she had worked as a television personality. She alleges that the Respondent told her to stop working as such, which left her financially dependent on him.
- [9] The Applicant states that she relied entirely on the Respondent to meet the household expenses and the financial needs of both herself and the minor child. She says she has no savings or other source of income to support herself and the child, and that she has had to rely on credit cards and had to borrow money to survive.² In addition, she took out a micro-loan which she is struggling to repay.³
- [10] The Applicant contends that her monthly expenses total *R87 000.00*, comprising *R64 850.00* for herself and *R21 700.00* for her son.
- [11] Since the commencement of the divorce proceedings the Respondent has only been providing an amount of *R5000.00* in respect of maintenance for M[...].⁴ This amount is according to the Applicant tantamount to letting them starve to death.
- [12] However, the Particulars of Claim show that the Applicant, as Plaintiff, claims *R5 000.00* for the maintenance of their son, M[...].⁵

² Case Lines PW 2 at 018-7

³ PW 3 at 018-11

⁴ Para 8.5 at 017-16

⁵ Para 6.1.8 at 001-11

[13] In the Applicant's Financial Disclosure Form (FDF) signed and commissioned on *12 November 2025* she describes her occupation as a freelancer artist.⁶ No mention was made of the fact that she was the manageress of the Respondent's two companies. The Applicant also indicated that she did not earn a gross income for the last financial year.⁷ This allegation is in direct contradiction to her allegation that prior to the divorce she had earned at least *R100 000.00* nett a month.

[14] In her FDF, *November 2025*, the Applicant also asserts that her total monthly expenditure totals *R44 876.26*.⁸ Upon issuing the Rule 43 Application she now claims that her total monthly expenditure is *R87 000.00*.⁹ As to the parties' standard of living she remarked as follows:

"We didn't want for anything. He enjoyed buying me luxury bags, shoes, expensive perfume. I drove the Porsche mostly over the last year. Always had my nails and hair done and made sure all the kids had everything they needed."

[15] The Respondent's FDF dated *27 November 2025* depicts the parties' standard of living in the following words:

"Through the assistance of my close friend, Nathi, we were able to live a comfortable life. He assisted us with school fees for the kids and sometimes even bought luxury bags, shoes and perfumes for my wife. I also made sure the household expenses were taken care of."

[16] The Respondent gives a different account of the parties' standard of living. He depicts the household also as one providing a comfortable life. However, one which was sustained through the generosity and extended hand of his friend – Mr. Nkosinathi Maphumulo ('Mr. Maphumulo').

⁶ Case Lines 010-3

⁷ Case Lines 010-11

⁸ Case Lines 010-19

⁹ Paragraph 6 at 017-10

- [17] The Respondent states that, when their son was about one year old, he was diagnosed with bilateral retinoblastoma (eye cancer), which placed the household finances under strain. He further pleads that his income declined as the local music industry changed and the genre in which he performed lost popularity. The Applicant, he adds, also struggled to find work in music, acting, or presenting.
- [18] At the time, the parties owned three vehicles, which they sold, but the proceeds remained insufficient to fund their son's medical treatment. The Applicant disputes this and alleges that only two vehicles were sold, while a Hyundai vehicle was retained. The bond repayments on the Bloubosrand property, jointly owned by the Respondent and his former partner, became unaffordable and fell into arrears. In short, the Respondent was unemployed and over-indebted, M[...] urgently required treatment, and the Applicant's career prospects were similarly limited.
- [19] After their son's diagnosis became public, Mr. Maphumulo contacted the Respondent and offered to assist with M[...]’s medical expenses. As their contact increased, he became aware of the severe financial distress facing the Respondent and his family. That distress is outlined below:
- [19.1] The bond on the Bloubosrand property, jointly owned by the Respondent and his former partner, Ms. Thabisa Yoyo, was in arrears. Ms. Yoyo had issued summons to compel a sale and terminate the joint ownership. As a result, the parties faced a real risk of homelessness as they were residing in this property.
- [19.2] The parties had owed school fees at their son's school being Lucca Special Needs School with the overdue fees quite substantial;
- [19.3] With neither party owning a motor vehicle, they relied on public transport; (the Applicant disputes this)

[19.4] Neither party had a meaningful source of income. The Respondent had been blacklisted for defaulting on the WesBank vehicle finance agreement and for unpaid Planet Fitness membership fees.

[20] Mr. Maphumulo then offered to help the parties improve their financial position and stabilise their lives, careers, and their children's education and maintenance. His contributions included the following:

[20.1] He helped settle a deficit after the sale of the Bloubostrand property in the amount of *R25 451.82*.

[20.2] He then assisted the Applicant to improve her credit profile by depositing funds into her bank accounts over about three consecutive months, creating the appearance of a steady income. This enabled her to apply for a bond and acquire a house in Hurlingham Manor in her name for the parties to reside in.

[20.3] He paid every bond instalment and lump-sum payment due to Standard Bank on the matrimonial home. He deposited these funds into the Respondent's business or personal account, after which they were transferred to the Applicant's bank account. As a result, the property, purchased on *13 May 2022* for *R3 500 000.00* (Three Million Five Hundred Thousand Rand), was paid off in full by *August 2025*. The Applicant, as the sole registered owner, has possession and control of the bond statements.

[20.4] He also paid for all of Milo's prosthetic eyes, with the bill amounting to an approximate figure of *R100 000.00*.

[20.5] He also invited the Respondent to accompany him on his world tours, where he acted as an *ad hoc* agent coordinating and managing the trips. This was not a formal offer of employment, but an act of assistance from a friend in need.

- [20.6] He paid the school fees for M[...] at Lucca Special Needs School in Randburg, from then to the present date.
- [20.7] Purchased a Volvo XC60 2014 vehicle for the Applicant and
- [20.8] Purchased a 2016 Porsche Cayenne for the Respondent.
- [21] These contributions were confirmed by Mr. Maphumulo in a confirmatory affidavit.¹⁰ The Respondent states that the contributions did not arise from any formal work or consultancy agreement between him and his friend, nor were they a loan, but rather as “*simply a manifestation of the abundant compassion in his heart.*”
- [22] Travelling with Mr Maphumulo, a well-known and recognised DJ, gave the Respondent an opportunity to improve his DJ skills and expand his career beyond South Africa. This exposure led to his securing a residency at Cipriani in Ibiza, where he served as the resident DJ for a fixed period. In 2025, this engagement earned him approximately R1 450 000.00, less 20% agency commission, leaving a balance of about R1 160 000.00. The appointment lasted two months, from 26 June 2025 to 31 July 2025. Thereafter, the Respondent sought other opportunities until the Applicant sent him a voice note on 22 August 2025 informing him of the divorce.¹¹
- [23] The Respondent returned to South Africa upon word of the divorce on 30 August 2025 and received the summons on 8 September 2025.
- [24] The Respondent states that he sent all his earnings to the Applicant so that she could manage the household expenses. The funds were paid in foreign currency into his South African bank accounts. Once he received email confirmation of a transfer, he forwarded it to the Applicant, who would then

¹⁰ CA1 at 020-118

¹¹ MTS2 to MTS4 at 020-89 to 020-91

clear, withdraw, and use the money.¹² He described it as “*such a liberating experience to be able to work and send money to my wife after so many years of dependency on the benevolence of my friend Nathi.*”

[25] Since the end of his residency at Cipriani, the Respondent states that he has resumed travelling with his friend on world tours, filling in as a stop-gap DJ when needed, while hoping to secure another residency. At present, he says he is unemployed and survives through his friend’s kindness. He adds that his friend is under no obligation to continue supporting his family.

[26] The Applicant contends that the Respondent’s two companies - incorporated during 2007, had grossed a combined revenue of approximately R2 000 000.00 between May 2025 and September 2025. She relied upon entries made as sundry credits in excess of R300 000.00 per month.¹³ An inward payment was also effected on 8 January 2026 to one of the Respondent’s companies in an amount of (\$5 050.00) R82 870.50.¹⁴

[27] The Applicant alleges that the Respondent is employed by Black Coffee as his tour manager and right-hand man, which the Respondent denies. He states that he was offered \$3 000.00 (R49 230.00), currently under negotiation to \$4 000.00 (R65 640.00), for a three-day run per week.

[28] The Respondent pleads that during the marriage the parties discussed all matters openly, including their finances.

[29] The Respondent contends that the Applicant worked as a television presenter on MultiChoice Mzansi Wethu’s programme *Abandoned*. He states that, as is common in the entertainment industry, she worked under short-term fixed-term contracts or on an *ad hoc* basis. In respect of *Abandoned*, he states that she was engaged on successive three-month contracts. The last contract known to him ran from April 2025 to May 2025, during which she received the following payments:

¹² PW 6 at 018-15

¹³ PW 6 at 018-15

¹⁴ PW 7 at 018-26

- [29.1] R126 000 on *30 April 2025*;
- [29.2] R70 000 on *23 May 2025*; and
- [29.3] R66 000 on *30 May 2025*

[30] In this matter there is a clear dispute in respect of the parties' employment status and their earning capacities.

[31] The Applicant alleges that she is unemployed, financially dependent on the Respondent, and that the Respondent is gainfully employed and able to pay the maintenance sought. She further alleges, in broad terms, that she worked as a manageress in the Respondent's businesses and became unemployed only after he terminated her employment following the institution of the divorce. The Respondent denies these allegations.

ASSESSMENT OF EVIDENCE:

[32] In evaluating the evidence tendered I will firstly deal with the nature of Rule 43's and the onus which an Applicant bears in such applications.

[33] Rule 43 Applications provide swift interim relief in matrimonial matters, ensuring fairness pending the final determination of the divorce.

[34] In a successful application for interim maintenance the Applicant bears the onus to establish, on a balance of probabilities:¹⁵

- [33.1] the financial needs of the Applicant and minor child;
- [33.2] the Respondent's ability to meet those needs; and
- [33.3] the reasonableness of the relief sought.

¹⁵ Taute v Taute 1974 (2) SA 675 (E); Rademeyer v Rademeyer 2002 (2) SA 223 (C)

[35] The Applicant in a Rule 43 Application must act with the utmost good faith, and provide full and frank disclosure of the financial affairs and material facts. Failure to be honest or hiding assets/income can lead to the dismissal of the application.¹⁶

[36] In *Du Preez v Du Preez*¹⁷ the court held as follows pertaining to the duty on an Applicant in Rule 43 and the effect of a misstatement of facts and non-disclosure:

"Moreover, the power of the court in Rule 43 proceedings, in terms of Rule 43(5), is to "dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision". The discretion is essentially an equitable one and has accordingly to be exercised judicially with regard to all relevant considerations. A misstatement of one aspect of relevant information invariably will colour other aspects with the possible (or likely) result that fairness will not be done. Consequently, I would assume, there is a duty on applicants in Rule 43 applications seeking equitable redress to act with the utmost good faith (uberrime fidei) and to disclose fully all material information regarding their financial affairs. Any false disclosure or material non-disclosure would mean that he or she is not before the court with "clean hands" and on that ground alone the court will be justified in refusing relief." (own emphasis)

[37] Accordingly there has to be a full and frank disclosure of the Applicant's and the Respondent's financial affairs in order for the court to:

[37.1] evaluate whether the Applicant has a genuine and pressing need for the interim relief¹⁸ and

[37.2] whether the Respondent has the ability to meet the needs.

¹⁶ H.X v G.X (017721/2023) [2025] ZAGPPHC 11 (3 January 2025);
M.Y v J.Y (2024/013982) [2024] ZAGPJHC 684 (26 July 2024)

¹⁷ (16043/2008) [2008] ZAGPHC 334 (24 October 2008)

¹⁸ Levin v Levin 1997 (4) SA 481 (W)

[38] The purpose of Rule 43 applications was described in *Nilson v Nilson 1984 (2) 294 (C)* as follows:

"Primarily Rule 43 was envisaged to provide temporary assistance for women, who had given up careers or potential careers for the sake of matrimony with or without maternity, until such time as at a trial and after hearing evidence maintenance claims and, if children had been born, custody claims could be properly determined. It was not created to give an interim meal ticket to women who quite clearly at the trial would not be able to establish a right to maintenance. The grey area between the two extremes causes problems."

[39] A Court can only exercise its discretion with reference to the actual evidence placed before it. The Applicant's right to maintenance is dependent upon her full disclosure of her own income and earning capacity.

[40] Without full and frank disclosure of the Applicant's financial position, the court cannot properly assess her needs. Any assessment based on selective or inaccurate financial information lacks a sound foundation and may cause real prejudice. Absent accurate facts, any finding on need would be unsupported by the evidence.

[41] Rule 43 applications accordingly require careful scrutiny of the disclosure of a party's true financial needs. I turn to deal with the Applicant's pleaded case as set out in her affidavit and FDF.

[42] The Applicant claims that she became unemployed after being dismissed from the Respondent's companies because of the divorce proceedings. As the divorce was instituted during *September 2025*, this suggests that she was still earning a monthly salary during that year. Yet, on her SARS ITA34 form, she declared that she had earned no income in 2025.¹⁹

¹⁹ Case Lines 010-3

- [43] In her FDF the Applicant declared that she was a freelance artist. Significantly, she omitted to mention that she was a manageress of the Respondent's two companies. In the application before me she declares that she is unemployed.
- [44] The Applicant relies on an email she sent to Socialista Ibiza Cipriani (*Annexure PW1*) to prove her employment with the Respondent's company, S[...] Music.²⁰ In my view, that email alone does not establish employment, particularly in the absence of an employment contract, the commencement date, the duration of the employment, or any salary slips or bank statements.
- [45] The declaration of no income in 2025 is also inconsistent with the Applicant's alleged employment by the Respondent's companies until the divorce. She further failed to disclose that she earned approximately R262 000.00 as a television presenter between *April* and *June 2025*. This contradicts her claim that she had stopped working as a television personality before joining the companies and was financially dependent on the Respondent.
- [46] This court cannot assess the Applicant's financial circumstances because she failed to make full and honest disclosure of her income.
- [47] The Applicant's litigation stratagem of disclosing selective evidence to the court is highly relevant as the court views such conduct as non-ethical and worthy of censor.
- [48] Murphy J in *Du Preez v Du Preez*²¹ remarks on the misstatement of facts or the failure to disclose fully all material information regarding a party's financial affairs that such conduct by an Applicant is fatal and that such conduct must lead to dismissal in Rule 43 Applications.

²⁰ Case Lines 018-2

²¹ (16043/2008) [2008] ZAGPHC 334 (24 October 2008)

- [15] *“However, before concluding, there is another matter that gives me cause for concern deserving of mention and brief consideration. In my experience, and I gather my colleagues on the Bench have found the same, there is a tendency for parties in Rule 43 applications, acting expediently or strategically, to misstate the true nature of their financial affairs. It is not unusual for parties to exaggerate their expenses and to understate their income, only then later in subsequent affidavits or in argument, having been caught out in the face of unassailable contrary evidence, to seek to correct the relevant information. Counsel habitually, acting no doubt on instruction, unabashedly seek to rectify the false information as if the original misstatement was one of those things courts are expected to live with in Rule 43 applications. To my mind the practice is distasteful, unacceptable and should be censured. Such conduct, whatever the motivation behind it, is dishonourable and should find no place in judicial proceedings. Parties should at all times remain aware that the intentional making of a false statement under oath in the course of judicial proceedings constitutes the offence of perjury, and in certain circumstances may be the crime of defeating the course of justice. Should such conduct occur in Rule 43 proceedings at the instance of the applicant then relief should be denied.”*
- [16] *Moreover, the power of the court in Rule 43 proceedings, in terms of Rule 43(5), is to “dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision”. The discretion is essentially an equitable one and has accordingly to be exercised judicially with regard to all relevant considerations. A misstatement of one aspect of relevant information invariably will colour other aspects with the possible (or likely) result that fairness will not be done. Consequently, I would assume, there is a duty on applicants in Rule 43 applications seeking equitable redress to act with the utmost good faith (uberrime fidei) and to disclose fully all material information regarding their financial affairs. Any false disclosure or material non-disclosure would mean that he or she is not before the*

court with “clean hands” and on that ground alone the court will be justified in refusing relief.” (my underlining)

- [49] The Court disapproves and takes a dim view of the Applicant’s non-disclosure of her real financial status in this Rule 43. The Applicant had an obligation to act in the utmost good faith, yet decided to portray a skewed picture of her financial reality.
- [50] The Applicant had an onus to prove both her and the minor child’s entitlement to maintenance. Her income is an essential and important factor to be taken into account when assessing whether there is a real need.
- [51] The Applicant’s FDF, made under oath, does not accurately reflect the parties’ true financial position. In it, she states that she co-owns the marital home with the Respondent and is entitled to half its value, namely R1 627 500.00, based on a market value of R3 275 000.00. However, the bond cancellation letter makes clear that the loan was solely in the Applicant’s name and that she is the registered owner.²²
- [52] The Applicant’s FDF, under oath, does accordingly not reflect the true position in respect of the ownership of the marital home. This reflects negatively on the Applicant’s *bona fides* in her application.
- [53] In *TS v TS* 2018 (3) SA 572 (GJ) (7 August 2017) the court held that the purpose of an FDF deposed to under oath is to enable each party to more properly assess their respective positions, to present argument based on a more informed position, to have an available remedy for misrepresentation or material non-disclosure and to enable the court to make an order based on an informed decision. Whilst in *E v E and related matters* [2019] 3 All SA 519 (GJ) the Full Court said that the benefit of financial disclosure is that parties will not have to file lengthy affidavits, that it will force the parties to be transparent with each other and with the court from an early stage, thereby making early settlement possible and placing the court in a better position “to

²² PW at 018-1

decide the matter in a manner that does justice to the parties and takes care of the best interests of the minor children.”

[54] On the first page of the FDF the party completing it is notified that:

“[48.1] You have a duty to the court to give a full, frank and clear disclosure of all your financial and other relevant circumstances;

[48.2] A failure to give full and accurate disclosure may result in an adverse court order if you are found to have been deliberately untruthful, criminal proceedings or perjury and/or fraud;

[48.3] The information given in this form must be confirmed under oath or affirmation. Proceedings for contempt of court may be brought against a person who makes or causes to be made, a false statement in a document verified under oath or affirmation;

[48.4] You must attach documents to the form where they are specifically sought ...

[48.5] Essential documents that must accompany this statement are detailed in the form.”

[55] In *B v B [2014] ZASCA 137 (25 September 2014)* the Supreme Court of Appeal stated the following about those who fail to fully disclose their financial status:

'The attitude of many divorced parties, particularly in relation to money claims where they control the money, can be characterised as “catch me if you can”. These parties set themselves up as immovable objects in the hopes that they will wear down the other party. They use every means to do so. They fail to discover properly, fail to provide any particulars of assets within their peculiar knowledge and generally delay and obfuscate in the hope that they will not be “caught” and have to disgorge what is in law due to the other party.' (my emphasis)

[56] It is apparent that the Applicant in her FDF and her affidavit did not make full, frank and candid disclosure of her income and financial position. The result is that this court cannot evaluate her financial needs. A reality created on selective facts leads to a distortion of the truth. Any order granted on a skew reality results in the mal-administration of justice leading to prejudice to one of the parties. A court can not turn a blind eye on the misstatement of facts and must penalise a party that engages in this type of litigation.

[57] As alluded to here in before the Applicant's and minor child's expenses during *November 2025* amounted to *R44 876.26*.²³ During *January 2026*, two months later, it escalated to *R87 000.00* as set out in her founding affidavit.²⁴ The difference being *R42 123.74*. The Applicant failed to explain the significant increase in her expenses in her affidavit.

[58] The Respondent's counsel furthermore pointed out that the Applicant's expenses are inflated. I was referred to:

[58.1] her monthly transport expense of *R20 000.00*, without any detailed explanation for the expense.

[58.2] the Applicant's bank statements reflecting:

[58.2.1] expensive Bolt e-hailing trips;

[58.2.2] take aways sometimes thrice daily;

[58.2.3] money which was spent on gambling.

[59] These expenses appear to be excessive as there is no detailed disclosure in the Applicant's papers as to the necessity thereof.

²³ Case Lines 010-19

²⁴ Case Lines 017-12

- [60] In *Taute v Taute*²⁵ it was held that a claim supported by reasonable and moderate details carries more weight than one which include extravagant or extortionate demands.
- [61] The Applicant's maintenance claim lacks particularity and her expenses remain largely unexplained and unsubstantiated.
- [62] The Supreme Court of Appeal in *EH v SH*²⁶ held that:
- "a person claiming maintenance must establish a need to be supported by the other spouse and that if no such need is established, it would not be "just" for a maintenance order to be issued. Therefore, proving a need for maintenance is vital for obtaining maintenance"*
- [63] The Applicant accordingly had to particularise her income and monthly expenses in order to establish her and M[...]’s needs.
- [64] The Applicant’s failure to make full disclosure of her true income undermines her maintenance claim. In particular, she did not disclose:
- [64.1] her income earned from Abandoned during 2025. An amount of R262 000.00 earned had not been disclosed.
- [64.2] that the matrimonial home, with a municipal value of R3 275 000.00, is registered solely in her name and is fully paid for.
- [65] In *Kroon v Kroon*²⁷ it was held that “*means*” refer to a person's financial resources and includes not only i) capital assets but also ii) income from employment and other sources as well as iii) property such as a matrimonial home that can be used to generate income.

²⁵ 1974 (2) SA 675 (E) at par 22

²⁶ *EH v SH* 2012 (4) SA 164 (SCA)

²⁷ 1986 (4) SA 616 (E)

- [66] There was therefore a non-disclosure of the Applicant's means which directly affects, impacts and filters through to any calculation of her and the minor's needs.
- [67] The Applicant for interim maintenance bore the onus to establish, on a balance of probabilities:
- [67.1] the financial needs of the Applicant and minor child;²⁸
- [68] The court cannot properly assess the Applicant's and the minor child's needs in the face of clear misstatements about her income and assets (in the absence of full and frank disclosure regarding their needs and the reasonableness of the expenses claimed). If those needs are not established, the court need not consider the Respondent's ability to meet them, because the Applicant has failed to discharge the onus.
- [69] The Applicant had failed to establish that she and M[...] are entitled to maintenance as she has sketched a distorted reality of her means and their needs.
- [70] The Respondent has been paying maintenance towards his son, M[...], in an amount of R5 000.00. This amount accords with the maintenance sought in the Applicant's Particulars of Claim to the Divorce action. He tenders to continue to pay this amount.
- [71] This application highlights the importance of full and honest disclosure in Rule 43 proceedings. Since Rule 43 is a fast-track, affidavit-based procedure, the court must rely entirely on the accuracy and candour of the parties' financial disclosures, including bank statements, payslips, assets, and liabilities.

²⁸ Taute v Taute 1974 (2) SA 675 (E); Rademeyer v Rademeyer 2002 (2) SA 223 (C)

[72] This Court expected the Applicant to disclose all relevant facts material to her maintenance claim and her related claim for a contribution to legal costs. Her failure to do so, tied this Court's hands as it is unable to determine her and M[...]’s needs. Their needs are essential factors in establishing and calculating the maintenance contribution and a contribution to costs.

[73] In *C.M.A. v L.A* (2022/20502) [2023] ZAGPJHC 364 (24 April 2023) Liebenberg AJ reaffirmed that an Applicant in Rule 43 proceedings must act in the utmost good faith and make full and frank disclosure of his or her finances. The sanction for non-disclosure may extend to dismissal of the application.

[74] In *C.A v H.A*²⁹ the following was stated pertaining to good faith and disclosure:

“In Rule 43 proceedings, it is prudent that the Court should be satisfied that an Applicant acts in good faith. Thus, an Applicant simply cannot afford to omit facts in the founding affidavit that are vital to the application. Surely, if the applicant was willing not to reveal certain facts in her founding affidavit, she must certainly be willing not to be frank about weighty facts that would reveal the true state of her finances.”

[75] Similarly, in *M.N.Y v J.Y*³⁰ the court held:

“Without a frank and full disclosure of all material facts a Court can simply not make a determination as to the applicant’s need and cannot quantify such a need.”

[76] In my view, the Applicant has selectively disclosed facts in an attempt to establish need, but her failure to make full disclosure means that all relevant facts are not before this Court. I am therefore unable to properly assess whether the Applicant has established a need for maintenance, or the extent

²⁹ (5578/2022) [2024] ZAWCHC 25 (06 February 2024)

³⁰ (2024/013982) [2024] ZAGPJHC 1823 (24 July 2024)

of that need. In the circumstances, I cannot grant an order for maintenance *pendente lite*.

CONTRIBUTION TOWARDS COSTS

[77] It is trite that a claim for a contribution to costs is a claim *sui generis* and has its basis in the reciprocal duty of support between spouses.³¹

[78] In *Van Rippen v Van Rippen*³² it was held that:

"The claim for a contribution towards costs in a matrimonial suit is sui generis. Its basis is the duty of support the spouses owe each other. An applicant for a contribution towards costs must show that: (i) if she is the plaintiff in the main action, that she has a prima facie case; if she is the defendant, that she is defending in good faith; and (ii) that she has insufficient means of her own".

[79] For the same reasons that I decline to entertain the Applicant's claim for maintenance *pendente lite* - namely, her failure to establish need through full and frank disclosure of her financial affairs - I am likewise unable to entertain her claim for a contribution towards legal costs.

COSTS

[80] In respect of costs I am of the view that costs must follow the event.

[81] The Applicant elected to launch an application reliant on distorted facts. There was a clear absence of full and proper disclosure.

[82] The Court disapproves and takes a dim view of the Applicant's non-disclosure of her real financial status in this application. The Applicant had an obligation to act in the utmost good faith, yet decided to portray a skew

³¹ Cary v Cary 1999 (3) SA 615 (C)

³² 1949 (4) SA 634 (C)

picture of her financial reality. The Applicant's lack of disclosure is conduct which should not be condoned in litigation.

[83] I accordingly make the following order:

Order

1. The Rule 43 Application is dismissed;
2. The Applicant is to pay the costs of this application on a party and party scale, including that of legal counsel on scale B.

**S VAN ASWEGEN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

Delivery date: 9 June 2026

For the Applicant:

Adv R Maisela
082 665 5382
raymondmaisela@rsabar.com
Instructed by Mbazima Dickson Inc.
Attorney

For the Respondent:

Adv E Nhutsve
073 000 6400
edmond@advocatesa.co.za
Instructed by Moyana Barry Incorporate

