

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 2024-048160

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: YES

DATE: 2 June 2026

SIGNATURE OF JUDGE:

In the matter between:

V[...] D[...] P[...]

Applicant

and

J[...] G[...] D[...] P[...]

Respondent

JUDGMENT

Woodrow, AJ:

Introduction:

- [1] This is a rule 43 application.
- [2] In the pending divorce action between the parties, the applicant in the rule 43 application is the defendant, and the respondent in the rule 43 application is the plaintiff.
- [3] By the time the rule 43 application was heard, the papers filed under the heading “Rule 43 Application” had ballooned to over 600 pages.¹ There were further various ‘interlocutory type skirmishes’ between the parties before the matter could be heard. I deal with these briefly below. Somewhat ironically, apart from the various ‘interlocutory-interlocutory’ arguments, the only real issue that was left for determination was a claim for a contribution towards legal costs.
- [4] Rule 43 proceedings are aimed at swift, robust and equitable interim relief *pendente lite* on the information, even if limited, placed before the court. The unacceptably long record and the numerous, meritless, technical objections in this matter serve to defeat the object of rule 43 – namely, the expeditious and efficient determination of prescribed interlocutory matters in pending divorce proceedings.

¹ These included *inter alia* the rule 43 application papers, a supplementary affidavit, a notice of amendment, a notice of objection in terms of rule 28(3), a notice of complaint in terms of rule 30A, and the financial disclosure forms of the parties.

[5] Be the aforesaid as it may, I heard the matter and have determined the issues remaining between the parties in the rule 43 application.

Issues:

[6] The applicant, in her attorney's updated practice note, identifies the issues that fall for determination as follows:

- 3.1 The granting of condonation for the Applicant's filing of a supplementary affidavit.
- 3.2 Whether the Applicant has made out a case for the granting of an order for a contribution towards her legal costs, in an amount of R50 000.00 (fifty thousand rand). When assessing a spouse's reasonable litigation needs, a court will have regard to what is involved in the case, the scale on which the parties are litigating or intend to litigate and the parties' respective means.
- 3.3 Based on the averments made by the Respondent, it is quite clear that the Applicant / Defendant will have to appoint an expert witness, a forensic auditor, in order to determine the true value of the accrual of the Respondent's / Plaintiff's estate. This will come at a considerable cost.
 - 3.3.1 The conduct of the Respondent pertaining to the calculation of accrual and his insistence that the Applicant has abandoned her claim with respect to the application of accrual, leaves the Applicant with no other option but to prepare for trial.

- [7] The applicant initially in her notice of motion claimed R20,000 (twenty thousand rand) as a contribution to legal costs. In November 2025, the applicant served a notice of intention to amend her claim for a contribution to legal costs from R20,000 (twenty thousand rand) to R50,000 (fifty thousand rand). In the same month, the applicant sought leave to file a supplementary affidavit in order to place further evidence before the court as contained in such supplementary affidavit.
- [8] The respondent raised a number of technical objections. The respondent opposed the amendment and the introduction of the supplementary affidavit into evidence.
- [9] I dealt with these at the hearing of the matter. I did not uphold the technical objections. I granted the amendment sought and admitted the supplementary affidavit into evidence.
- [10] The respondent then sought a postponement of the rule 43 application from the bar. Having heard argument on behalf of the parties, I refused the postponement for the reasons provided *ex tempore* at the hearing of the matter. I then heard argument regarding the merits of the claim for a contribution to legal costs.
- [11] The manner in which the respondent has approached the divorce action is mirrored in the way in which he approached the rule 43 application. The approach referred to by the Supreme Court of Appeal eschewing highly

technical defences,² applies in my view with all the more force in interlocutory matrimonial proceedings.

Applicable legal principles:

[12] Rule 43(1)(b) provides as follows:

(1) This rule shall apply whenever a spouse seeks relief from the court in respect of one or more of the following matters—

...

(b) A contribution towards the costs of a matrimonial action, pending or about to be instituted;

...

[13] A claim for a contribution towards the costs of a matrimonial action is *sui generis*. It is an incident of the reciprocal duty of support between spouses. The purpose of the remedy is to ensure that a spouse that is less financially advantaged compared to the other is still able to adequately place his or her case before the court.³

[14] The quantum of the contribution to costs lies within the discretion of the presiding judge. The discretion is guided by the object of ensuring that the spouse seeking the contribution will be able to present his or her divorce case adequately.

² **National Director of Public Prosecutions v Bacela and Another** (1072/2023) [2026] ZASCA 33 (23 March 2026) par [36].

³ **SH v MH** 2023 (6) SA 279 (GJ) par [74], and the authorities there cited.

[15] The presiding judge will have regard to *inter alia* the financial position of the parties, their respective means, and the particular issues involved in the divorce action.⁴

[16] Other factors that may be relevant include the scale on which the parties are litigating, as well as the likely steps that the parties shall need to follow in the litigation process.

Contribution to costs:

[17] The parties married on 27 August 2022, out community of property, subject to the accrual system. There are no children born from the marriage.

[18] The respondent instituted the divorce action in May 2024. Pleadings in the divorce action are closed, and both parties have filed financial disclosure forms.

[19] It appears that the main contentious issue in the divorce action is the calculation of the accrual in the respective estates of the parties. The respondent does not appear to agree with this and contends in his answering affidavit that: "*It is important to note, that the Applicant makes no accrual claim in her Counter-Claim.*" With reference to the pleadings in the present matter, this strikes me as a rather rigid and technical approach. In

⁴ **SH v MH** 2023 (6) SA 279 (GJ) par [95], and the authorities there cited.

the pleadings of the applicant, the applicant expressly places paragraph 7 and 8 of the respondent's particulars of claim in dispute and pleads *inter alia* further that the "... extent of the growth in the respective estates will be confirmed via the filing of Financial Disclosure Forms and will the estate of the Defendant have a claim in terms of the application of accrual, against that of the Plaintiff, upon dissolution of the marriage." It is evident from the aforesaid, but also from her affidavits, her attorney's correspondence, and the submissions made on her behalf, that the applicant intends to pursue her accrual claim.

[20] Based on the approach adopted by the respondent, and if the respondent is correct, it appears inevitable that the applicant will have to file notice of intention to amend her counter claim, and thereafter, if the respondent opposes such amendment, the applicant will need to bring an application for leave to amend.

[21] The applicant was compelled to bring an application to compel the respondent to file his financial disclosure form. The applicant has been faced with various technical objections. The respondent raised various technical objections in the rule 43 application proceedings. The respondent has done the same in the divorce proceedings. This is apparent from the notices served by the respondent and filed on record. Of course, the respondent is entitled to utilise the court rules to his own perceived benefit, but this has cost implications. Technical objections to less than perfect pleadings and conduct come at a price. The respondent has demonstrated that he will

require the applicant to jump through various litigation hoops before the matter is trial ready. There is little doubt that the applicant will be compelled to bring various proceedings to ensure that the matter is trial ready. Based on the fee disclosed by her attorney of record of R2,000 per hour, legal costs of R50,000 (fifty thousand rand) constitutes two and a half days (or twenty-five hours) work only in respect of her attorney. This does not include the instruction and briefing of counsel, nor any other disbursements.

[22] The respondent has appointed a chartered accountant to perform a calculation of the accrual in an effort to confirm that there is no accrual. The applicant has suggested the appointment of an independent qualified person to act on behalf of both parties whose fees are to be paid by the respondent, as she cannot afford to make such payment. This has not been accepted by the respondent. In the circumstances, in order to ensure a reasonable degree of equality for the parties in the litigation, the applicant ought to be able to appoint her own expert to perform such calculation.

[23] In my view, the respondent is further litigating above the level of the applicant. The respondent has the means to appoint experienced counsel as well as an expert. The imbalance ought to be rectified in order to obtain some form of balance in the litigation.

[24] In order to ensure equality before the law and consequent access to courts, a contribution to costs is necessary in the present matter.⁵

⁵ **SH v MH** 2023 (6) SA 279 (GJ).

[25] The actual earnings of the parties is vastly different. According to the applicant, the respondent earns eight times that which she earns. According to the financial disclosure form filed by the respondent, his “*Gross income for last financial year*” (as shown on his IRP5 document) is in the sum of R2,740,834.03, and his net income (gross income less income tax and UIF) is in the sum of R1,632,023.76. On his own version, his net income is in a sum in excess of R130,000 per month.

[26] The applicant has done herself no favours by failing to provide a detailed and itemised bill of costs (and future estimated costs) in support of her claim for a contribution to legal costs. However, in my view this does not in and of itself render the claim of the applicant without merit. I have adopted a conservative approach in determining the quantum of the claim.⁶

[27] Based on the factors and the facts set out, and adopting a conservative approach, and with the object of placing the parties on a footing of approximate equality in the conduct of the litigation at this stage, in my view a contribution towards the legal costs of the applicant in the sum of R50,000 (fifty thousand rand) is fair and appropriate.

Costs

⁶ Unreported decision of **R.D.C.N v C.M.N (2026/009742) [2026] ZAWCHC 214 (11 May 2026)**

par [32], and the authorities there cited.

[28] In my view, the costs of the present application ought to be costs in the cause of the divorce action. There are factors that weigh against granting costs in favour of either party. Without being exhaustive, the applicant sought relief that cannot be granted in rule 43 proceedings which had to be abandoned. The respondent raised a plethora of technical objections.

[29] The costs of the present application shall be in the cause of the divorce action.

Order

[30] Accordingly, I make the following order, *pendente lite*:

1. The respondent is directed to make payment of a contribution towards the legal costs of the applicant in the sum of R50,000 (fifty thousand rand), such amount to be paid in two instalments, the first in the sum of R25,000 (twenty-five thousand rand) on or before 30 June 2026 and the second in the sum of R25,000 (twenty-five thousand rand) on or before 31 July 2026 , such amounts to be paid into the trust account of the applicant's attorney of record.
2. The costs of the rule 43 application shall be costs in the cause of the divorce action between the parties under the above case number.

WOODROW AJ

ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties and or parties' representatives by e-mail and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on the 2ND of June 2026.

Appearances:

Attorney for the Applicant: Isa Vorster (with right of appearance) of Isa Vorster Attorneys

Counsel for the Respondent: AJ Schoeman

instructed by: AL Maree Inc

Date of Hearing: 13 March 2026

Deemed date of Judgment: 2 June 2026