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

Case Number: 2025-063958

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
24 June 2026	_____
DATE	SIGNATURE

In the matter between:

B[...]: L[...] J[...]

Applicant

and

B[...]: C[...] M[...] (born T[...])

Respondent

JUDGMENT

CRUTCHFIELD J

- [1] This is a Rule 43 application. The applicant, L[...] J[...] B[...], claims interim relief in respect of shared primary residence of the parties' minor children and relief ancillary thereto.
- [2] The Respondent, C[...] M[...] B[...], opposes the application and claims primary residence of the children, contact to the applicant, maintenance and a contribution towards her past legal costs.
- [3] The parties are in the process of acrimonious divorce proceedings. The children are twin boys, aged 9 years.

- [4] The purpose of rule 43 applications is to regulate the interim period pending finalisation of the parties' divorce proceedings. It is not the function of rule 43 proceedings to replace the divorce trial at which the evidence of the parties and expert and other witnesses will be led and tested under cross-examination.
- [5] It is increasingly evident that litigants are using rule 43 proceedings to circumvent and avoid the divorce trial proceedings. This is evidenced by the numerous, extensive and prolix affidavits, the plethora of annexures and multiple supplementary affidavits, all of which violate the provisions and procedural constraints of rule 43. Courts dealing with these rule 43 applications are faced with multiple lengthy affidavits and supplementary affidavits, multiple annexures and prolix documents overall.
- [6] Such procedural irregularities serve to subvert the true and lawful purpose of rule 43 proceedings being to regulate the interim period in an expeditious, cheap, quick and easy manner, and also to subvert the administration of justice. Such misconduct on the part of litigants will not be tolerated.
- [7] Whilst some flexibility can be afforded to these parties given that this application deals primarily with the interim care and residence of children, it is not such as to permit of the lengthy and prolix affidavits, plethora of annexures and multiple supplementary affidavits that I am faced with.
- [8] The applicant's founding affidavit ran to approximately 27 pages in addition to 25 annexures. The respondent saw fit to deliver an answering affidavit of 89 pages and 16 annexures. Then starts the supplementary affidavits, two from each party although the applicant styles his second as a replying affidavit. The applicant's supplementary affidavits runs to 23 pages and 26 annexures, the respondent's first supplementary affidavit runs to 52 pages and 13 annexures.
- [9] The litigants and their legal representatives failed wholly to consider the purpose of rule 43 applications and the rules regulating the procedure. I do not intend to tolerate such blatant abuse of rule 43 proceedings. The parties and their legal representatives should take note that our courts' tolerance of such abuse in the face of mounting workloads, is wearing thin.

- [10] In the circumstances, I decline to admit or consider the annexures to the various affidavits other than those that are permitted in respect of declarations such as the parties' respective remittance advices.
- [11] In respect of the respondent's rule 43(5) application, I intend to allow the specific supplementary affidavit and the applicant's reply thereto in that they deal with the sale of the matrimonial home in which the parties are residing, subsequent to the deposing of the parties founding and answering affidavits and the respondent's first supplementary affidavit.
- [12] The fact that the parties sold the matrimonial home and thus that both will have to vacate the home shortly is material to the issues before me. In the circumstances, the respondent's supplementary affidavit and the applicant's reply are admitted and the costs of the rule 43(5) application and the respective affidavits will be costs in the cause of the divorce proceedings.
- [13] As regards the remaining supplementary affidavits, they were delivered without prior or any applications requesting leave to do so. This does not accord with the procedure set out in rule 43 for additional affidavits. In the circumstances, I do not intend to consider any of these supplementary affidavits or to take notice of the content thereof.
- [14] Furthermore, I do not intend these rule 43 proceedings or this judgment to take the place of a trial at which the parties and their respective witnesses give oral evidence and are cross-examined on that evidence. For that reason, I intend to keep this judgment short and to refrain from delivering a fully reasoned judgment that may impact in some or other fashion upon the divorce trial proceedings or the outcome thereof.
- [15] The sale of the former matrimonial home ("the home"), will result in the termination of the parties' current living arrangements. Given the parties' inability or refusal to agree on arrangements in respect of the children, the parties require an order of this court to break the impasse.
- [16] The parties approached the application as an opportunity to criticise each other both as parents and as partners. The morass of conflicting averments does not

assist in assessing the best interests of the children or the most appropriate living arrangement *pendente lite* for them. As a result, it is not productive for me to attempt to resolve the conflicting allegations and disputes between the parties as to who is the better or the worse parent. In my view, neither party is better or worse than the other. Both parties on occasion resorted to physical punishment of the children, something that should never occur.

- [17] The applicant's counsel argued that the applicant was entitled constitutionally to an order that the children spend equal time with him and the respondent and that he should not be relegated to a 'weekend father'. The applicant's reliance on his constitutional entitlement to equality is flawed as it is the children's best interests that is the focus of this application and not the applicant's right to equality. The test is well established and is embodied in the Constitution itself, being the best interests of the children.
- [18] The parties jointly appointed clinical psychologist Ms Claire O'Mahony ("O'Mahony"), to undertake an investigation and make recommendations in respect of the residence and contact arrangements that best meet the children's interests.
- [19] O'Mahony's report dated 5 October 2025 made various recommendations including that the children reside with the parties on a shared residency basis such that the children spend two days, two days, three days, on an alternating basis with each parent.
- [20] Whilst O'Mahony recommended shared residence, the specific regime of two days, two days, three days, on an alternating basis with each parent, is not appropriate even on a short term basis pending finalisation of the divorce proceedings. Such a complex arrangement will be disruptive and destabilising for the children and the parties. The respondent justifiably criticised O'Mahony's recommendation.
- [21] Moreover, the respondent rejected O'Mahony's recommendation of a shared residency regime and claimed primary residence with contact to the applicant. Whilst I agree that the particular format or the specifics of O'Mahony's recommended shared residence regime will be disruptive and destabilising for

the children, I am mindful that the children are nine years old and that I am concerned with an interim arrangement pending the finalisation of the trial proceedings. I also intend to request the office of the family advocate to undertake an investigation and make recommendations to the trial court in respect of the best interests of the children.

- [22] The respondent proposed an alternate arrangement in terms of which the children reside on an alternating weekly basis with each party and overnight with the other parent on a Wednesday night so as not to be away from either parent for a full week. The applicant adopted the respondent's proposal of weekly contact in the alternative to O'Mahony's recommendation.
- [23] The fact that the parties managed to find some common ground in respect of the respondent's weekly residence proposal, suggests that the proposal, if ordered, may result in a reduction of acrimony between the parties and some stability for the children, which will facilitate their best interests.
- [24] In the circumstances, I intend to make such an order that is simple, predictable and easy to manage, both for the children and the parties. The respondent's proposal of a weekly arrangement in terms of which the children spend one week with each parent on an alternating basis, with the changeover occurring on a Sunday evening at 17h00 at the home of the parent whose week commences with the handover. In addition, the children will spend the Wednesday night of each week with the parent with whom they are not residing in that week.
- [25] I do not intend to regulate the minutia of the parties' arrangements. It is for the parties to do so on a mature and reasonable basis that focusses on the interests of the children and not on their own personal agendas and wishes. Accordingly, I do not intend to appoint a parenting coordinator. It is time that these parties learnt to make their own parenting arrangements in respect of the children. The money that would otherwise be spent on a parenting coordinator can better be spent by the parties on the children.
- [26] In respect of the financial arrangements concerning the children, the applicant earns a monthly income of approximately R137 057.75 per month including his

annual bonus. The respondent earns approximately R42 804.21 per month, approximately one-third of the applicant's monthly salary. In the circumstances, notwithstanding that each party will enjoy equal contact on a weekly basis with the children, it is appropriate for the applicant to pay maintenance of R10 000.00 per child per month to the respondent commencing from the date that the shared residence arrangement commences.

- [27] Furthermore, I intend to order that the applicant pays monthly in respect of the children, the premiums in respect of the medical aid or hospital plan; the excess medical costs; the agreed extramural activities; the private educational costs including school books, stationery, school uniforms, school tours and extramural activities that are not paid for by the allowance from the respondent's father in respect of educational costs.
- [28] The respondent will continue to pay the monthly instalments, insurance and maintenance costs such as are not covered by the motor plan in respect of the vehicle utilised by the respondent.
- [29] Pending transfer of the home, the applicant will pay the following monthly expenses in respect of the home: the mortgage bond, all insurance premiums in respect of the home; the domestic worker and the gardener's salaries; the utilities and security costs, DSTV, streaming services and fibre in respect of the home.
- [30] In respect of the respondent's claim for a contribution of R1 million towards her past legal costs, I do not intend to deal with such an application at this stage of the proceedings. The respondent is entitled at this stage to a first contribution towards her legal costs and an amount of R100 000.00 payable in monthly instalments of R20 000.00 each, suffices in this regard. The respondent is entitled to approach this Court at a later stage for a contribution towards her trial costs.
- [31] Notwithstanding the report by O'Mahony, it is appropriate in the circumstances of this application, in the light of the allegations made by each party against the other, that the family advocate be called upon to investigate the issues of care,

residence and contact of the parties in respect of the children and to prepare a report together with recommendations for the trial court.

[32] The costs of this application will be costs in the cause of the divorce proceedings.

[33] Accordingly, I grant the following order *pendente lite*:

1. The parties remain co-holders of full parental responsibilities and rights in respect of the minor children, C[...] S[...] B[...] and S[...] K[...] B[...] ("the children), in terms of section 18(1) and (2) of the Children's Act, 38 of 2005.
2. The parties shall implement a shared residence arrangement in respect of the children subject to the children's educational, social, extra-mural and religious activities on the basis that the children reside with the applicant for one (1) week and thereafter with the respondent for one (1) week, with the handover to occur on Sundays at 17h00 at the home of the parent whose week commences therewith.
3. The children will spend a Wednesday night from after school/extra-mural activities with the parent whose week it is not, until Thursday morning when the overnighing parent will transport the children to school.
4. The parties shall have the following contact with the children:
 - 4.1. The applicant shall exercise contact on Father's Day from 17h00 on the evening preceding Father's Day until 17h00 on Father's Day in the event that the children are in the care of the respondent;
 - 4.2. The respondent shall have contact on Mother's Day from 17h00 on the evening preceding Mother's Day until 17h00 on Mother's Day in the event that the children are in the care of the applicant;

- 4.3. The applicant shall be entitled to contact on his birthday from 17h00 on the evening preceding his birthday until 17h00 on his birthday in the event that the children are in the care of the respondent;
- 4.4. The respondent shall be entitled to contact on her birthday from 17h00 on the evening preceding her birthday until 17h00 on her birthday in the event that the children are in the care of the applicant;
- 4.5. Each party shall be entitled to contact for half of the available time on the children's birthday;
- 4.6. Each party shall be entitled to contact for half of each long school holidays provided that:
 - 4.6.1. Neither party shall spend Christmas with the children in consecutive years;
 - 4.6.2. Neither party shall spend Easter with the children in consecutive years;
- 4.7. Each party shall be entitled to contact for alternate short school holidays;
- 4.8. Each party shall be entitled to daily telephonic contact with the children.
- 5. The applicant shall pay in respect of the children:
 - 5.1. The medical aid / hospital plan premiums;
 - 5.2. All reasonable medical, dental, ophthalmic, therapeutic and pharmaceutical costs incurred that are not covered by the medical aid / hospital plan;
 - 5.3. All reasonable and agreed costs of the children's extra-mural activities that are not covered by the education allowance paid by the respondent's father;

- 5.4. The private educational costs including school books, stationery, school uniforms, tours, levies and extra-mural activities and equipment that are not paid by the education allowance paid by the respondent's father in respect of the children's educational costs;
 - 5.5. The costs of maintaining the children at his residence including, *inter alia*, rental, utilities, food, cleaning materials, transport costs, entertainment and clothing and shoes.
6. With effect from the month in which the shared residence regime above-mentioned commences, the applicant is ordered to pay maintenance in respect of the two children to the respondent in the amount of R10 000.00 per child per month and monthly thereafter on or before the first day of each succeeding month.
7. The applicant is ordered to pay:
 - 7.1. The monthly insurance premiums and the instalments due to Investec Bank in respect of the Mercedes Benz vehicle driven by the respondent; and
 - 7.2. The maintenance costs of the vehicle driven by the respondent that are not covered by the motor plan in respect of the vehicle
8. Pending transfer of the former matrimonial home, the applicant will pay the following expenses in respect of the home:
 - 8.1. The costs of all insurance premiums at the home, the mortgage bond payment, the domestic worker's salary, the gardener's salary;
 - 8.2. The utilities, security costs, DSTV, streaming services and fibre in respect of the matrimonial home.
9. The applicant is to pay a contribution towards the respondent's legal costs of R100 000.00 payable in five (5) equal instalments, the first

instalment to be paid on 1 August 2026 and subsequent instalments monthly thereafter on the first day of each succeeding month.

10. The Family Advocate is requested to investigate the issues of care, residence and contact by the parties in respect of the children and to furnish a report, including recommendations in respect thereof, to the trial court.
11. The respondent's supplementary affidavit and the applicant's reply are admitted and the costs of the rule 43(5) application and the respective affidavits will be costs in the cause of the divorce proceedings.
12. The costs of this application are costs in the trial proceedings with costs of counsel on scale B.

I hand down the judgment.

CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:	Adv A A De Wet SC instructed by Deanne Kahn Attorneys.
For the Respondent:	Adv M Abro instructed by Clarks Attorneys.
Date of the hearing:	15 April 2026.
Date of the judgment:	24 June 2026.