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

Case Number: 2025/097786

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

DATE SIGNATURE

In the matter between:

J[…] M[…]	Applicant
and	
K[…] W[…] M[…]	First Respondent
STRIVING MIND TRADING 519 CC	Second Respondent

JUDGMENT

WENTZEL J

Introduction

[1] This is an application in terms of Rule 43 of the Uniform Rules of Court in which the applicant seeks interim relief pending the final determination of divorce proceedings instituted between herself and the first respondent. The relief sought includes interim maintenance for the applicant, a contribution towards her legal costs, ancillary relief regulating certain financial obligations, and the joinder of the second respondent, Striving Mind Trading 519 CC, on the basis that it is alleged to constitute the alter ego of the first respondent and to be the repository of assets and income which ought properly to be taken into account in assessing his financial means.

[2] Although applications brought under Rule 43 are ordinarily disposed of in summary fashion, the present matter bears little resemblance to the ordinary application for

interim maintenance. It has generated an unusually voluminous record comprising successive financial disclosure forms, supplementary affidavits, extensive documentary annexures, updated banking records, comparative schedules of expenditure and detailed heads of argument.

[3] The parties have each accused the other of material non-disclosure, but the gravamen of the applicant's case is that the first respondent has persistently failed to make full and frank disclosure of his true financial position and has deliberately structured his affairs through the second respondent in order to conceal his actual means. The first respondent rejects those allegations and contends that any inconsistencies in his financial disclosure arose from poor advice received from his former legal representatives rather than from any intention to mislead the Court.

[4] It is therefore immediately apparent that the application raises issues extending beyond the mere quantification of interim maintenance. The Court is required to determine the proper approach to conflicting financial disclosure, the consequences of procedural delay in Rule 43 proceedings, the extent to which the financial affairs of a closely connected corporate entity may be considered in assessing a spouse's means, and the weight to be attached to allegations of incomplete or misleading disclosure.

[5] Those issues require more detailed consideration than is commonly undertaken in Rule 43 applications, not because the Court is required finally to determine disputed proprietary rights, but because the exercise of its equitable discretion must be informed by the most reliable assessment possible of the parties' respective financial positions.

The background

[6] The parties are married and divorce proceedings are presently pending before this Court. It is common cause that the marriage relationship has broken down irretrievably. Their patrimonial disputes, together with the ultimate determination of maintenance and proprietary consequences, will fall to be determined in the principal action. Pending that determination the applicant contends that she has been left without adequate financial support and that the first respondent possesses substantially greater financial resources than those disclosed in his financial statements.

[7] The applicant accordingly seeks interim maintenance commensurate with the standard of living enjoyed during the marriage together with an appropriate contribution towards her legal costs. She further contends that the second respondent has been utilised as a vehicle through which the first respondent receives income and accumulates assets, thereby frustrating a proper assessment of his true financial position. On that basis she seeks the joinder of the second respondent and invites the Court to look beyond the formal distinction between the first respondent and the corporate entity in determining his means.

[8] The first respondent disputes virtually every material allegation advanced by the applicant. He denies that the second respondent is being employed improperly or that its separate legal personality should be disregarded. He further denies that he possesses the financial means attributed to him by the applicant and contends that his present financial disclosure accurately reflects his income, liabilities and expenditure. He maintains that any discrepancies between earlier and later disclosure forms are attributable to the manner in which his previous attorneys prepared those documents rather than to any deliberate attempt at concealment.

The procedural history

[9] The procedural history of the matter is regrettably protracted. It appears from the papers that the applicant initially launched a Rule 43 application during 2025. That application did not proceed to determination and was subsequently followed by the present application. Thereafter further affidavits were exchanged and additional documentation was produced as the litigation progressed.

[10] Matters were further complicated by a substantial delay in the delivery of the first respondent's answering affidavit that was delivered approximately eight months after it fell due. The applicant accordingly submits that the first respondent has defeated the very purpose of Rule 43 proceedings, which are intended to provide expeditious interim relief to spouses who would otherwise suffer financial hardship while divorce proceedings remain pending. She further contends that no proper application for condonation accompanied the late filing and that the explanation advanced by the first respondent is legally insufficient.

[11] The first respondent does not dispute that there was a substantial delay. His explanation is that his former legal representatives failed properly to advise him regarding the conduct of the litigation and that, upon instructing new attorneys,

considerable time was required to reconstruct the litigation, examine the existing financial documentation and prepare what he contends is a complete and accurate answering affidavit together with an updated financial disclosure. He further states that he only subsequently appreciated that earlier financial disclosure had been prepared without sufficient care and that he signed those documents without fully appreciating their significance.

[12] The procedural history has therefore resulted in successive financial disclosure forms, supplementary affidavits and updated documentary material being placed before the Court. The applicant argues that these successive disclosures reveal a pattern of inconsistency which demonstrates deliberate concealment of assets and income. The first respondent, by contrast, submits that the later disclosure should simply replace earlier inaccurate material and should be accepted as reflecting his true financial position. The Court must therefore determine not merely which figures should be accepted, but also whether the evolution of the respondent's disclosure has any bearing upon his credibility.

The applicant's case

[13] The applicant's case rests upon two interrelated propositions. The first is that she has established a clear need for interim financial assistance pending the divorce. The second, and considerably more important proposition, is that the first respondent's disclosed financial position bears little resemblance to his true financial means.

[14] In support of that contention the applicant relies upon successive financial disclosure forms, banking records, company documentation, comparative expenditure schedules, property-related documents and various annexures which, she contends, reveal a lifestyle and expenditure pattern wholly inconsistent with the level of income disclosed by the first respondent. She argues that the documentary evidence demonstrates that the respondent exercises effective control over financial resources substantially exceeding those which he now admits to.

[15] The applicant further submits that the respondent's repeated revision of his financial disclosure cannot plausibly be explained as the product of attorney error alone. Rather, she contends that each successive disclosure has been made only after shortcomings in earlier disclosure were exposed. She accordingly invites the Court to draw the inference that the respondent has failed to comply with the obligation resting

upon every litigant in matrimonial proceedings to make full, frank and honest disclosure of all material financial information.

The first respondent's case

[16] The first respondent rejects the allegation that he has attempted to mislead the Court. He accepts that earlier disclosure contained inaccuracies but attributes those deficiencies to the manner in which his previous legal representatives prepared the documentation. He explains that he provided banking information to those attorneys, relied upon their advice and signed the financial disclosure without appreciating that it did not accurately reflect his circumstances. Only after instructing his present attorneys, so he says, was a careful examination undertaken which resulted in the preparation of a complete and accurate disclosure.

[17] The respondent therefore submits that the Court should evaluate his present financial position on the basis of the updated disclosure rather than upon historical documents which he says are now acknowledged to have been inaccurate. He disputes that the second respondent is being used improperly and maintains that the applicant's allegations concerning concealed income and corporate manipulation are speculative and unsupported by admissible evidence.

The proper approach under Rule 43

[18] The object of Rule 43 is neither to determine finally the proprietary rights of spouses nor to resolve every factual dispute that may arise between them. Rather, it exists to provide a speedy and inexpensive mechanism by which interim relief may be afforded pending the determination of divorce proceedings. The Court exercises a broad equitable discretion directed towards preventing hardship during the period before the principal action is finally adjudicated.

[19] That discretion, however, is not exercised in a factual vacuum. Rule 43 assumes that each spouse will make full and candid disclosure of his or her financial circumstances. Only if that obligation is faithfully discharged can the Court properly balance the reasonable needs of one spouse against the ability of the other to contribute. Where disclosure is incomplete or misleading, the Court's task becomes significantly more difficult and it may, in appropriate circumstances, be entitled to draw adverse inferences from the absence of reliable financial information.

[20] It follows that the present application is not, in truth, primarily concerned with the mathematical calculation of monthly expenditure. The real issue is whether the Court can confidently determine the first respondent's true financial means from the material placed before it. If it cannot, the Court must consider whether the deficiencies in the evidence justify drawing inferences adverse to the party who bears the obligation of disclosure.

[21] Before turning to the competing financial evidence, it is necessary first to consider the procedural objections raised by the applicant concerning the delayed delivery of the answering affidavit, for those objections bear not only upon the admissibility of the respondent's evidence but also upon the credibility with which that evidence should ultimately be approached.

The procedural objections

[22] The applicant's first submission is that the Court ought to attach little, if any, weight to the respondent's answering affidavit because it was delivered approximately eight months out of time without an accompanying application for condonation. She submits that Rule 43 exists to provide expeditious interim relief and that to permit a litigant to delay the proceedings for such an extended period undermines both the purpose of the Rule and the interests of justice. She further contends that the explanation ultimately advanced - that the delay was attributable to former attorneys - is wholly inadequate and does not constitute the full and satisfactory explanation ordinarily required where condonation is sought.

[23] There can be no doubt that Rule 43 proceedings are intended to be disposed of with expedition. Their very purpose is to alleviate hardship pending the final determination of matrimonial litigation. Delay is therefore antithetical to the Rule itself. A spouse who is genuinely dependent upon interim maintenance cannot ordinarily be expected to endure many months without financial assistance while the respondent remains in breach of the Rules and the time limits imposed upon him for the filing of affidavits.

[24] That said, the Court must remain mindful of the essential nature of Rule 43 proceedings. The object is not to punish procedural default but to make an order that is fair to both parties upon the best evidence available at the time of the hearing. It would ordinarily be contrary to the interests of justice to disregard material evidence concerning the parties' true financial circumstances merely because it was belatedly produced. The Court's paramount obligation remains the making of an order that is just and equitable.

[25] One must also not lose sight of the respondent's explanation that he changed attorneys and the whole file had to be reconstructed and they then need to become *au fait* with the evidence and his financial situation.

[26] In my view, the procedural delay cannot therefore be treated as determinative of the application. The respondent should not be precluded from relying upon his updated financial disclosure solely because it was produced late. However, that conclusion does not render the delay irrelevant. Quite the contrary. The circumstances giving rise to the delay, together with the evolution of the respondent's financial disclosure during that period, bear directly upon the credibility of his explanations and the weight to be attached to his present version.

[27] The applicant is accordingly correct in submitting that the delay forms part of the factual matrix against which the respondent's disclosure must be assessed. If successive versions of his financial affairs have emerged only after deficiencies were identified, that may legitimately influence the Court's assessment of whether his present disclosure represents a complete and candid account of his financial circumstances.

[28] The second procedural objection concerns non-compliance with previous orders.

[29] The papers show that orders made on 3 December 2025 and 16 March 2026 required the filing of financial disclosure forms, supporting bank statements and heads of argument, and recorded obligations on the first respondent to file an FDF by 30 March 2026 and to pay wasted costs. It is common cause that the first respondent failed to comply fully and timeously with those obligations.

[30] The first respondent again attributes the non-compliance to attorney-related difficulties and confusion over prior filings. Those explanations do not adequately justify failure to comply with clear court orders, particularly in proceedings designed to provide urgent interim relief.

[31] Such non-compliance warrants censure. It is also relevant to the Court's assessment of the first respondent's candour and to the costs order that should follow.

[32] The third complaint is less meritorious. The applicant argues that the answering affidavit and financial disclosure forms are defective because the commissioner of oaths failed to initial all pages and annexures, and that the answering affidavit constitutes a further affidavit filed without leave in breach of Rule 43(5).

[33] Although the irregularities are concerning, the affidavit bears the signatures of the deponent and commissioner on the attestation page, and there is no positive indication of fraud or fabrication on the face of the document.

[34] Having regard to the nature of Rule 43 proceedings, the Court declines to disregard the answering affidavit in its entirety on technical grounds alone.

The obligation of full and frank financial disclosure

[35] The proper administration of Rule 43 depends upon the complete candour of the parties. Unlike ordinary motion proceedings, Rule 43 applications are designed to be determined summarily upon affidavit, without discovery, oral evidence or the ordinary procedural mechanisms by which incomplete evidence may later be exposed. The Court is therefore required to exercise a broad equitable discretion upon financial information that lies peculiarly within the knowledge of the parties themselves. The efficacy of the Rule accordingly depends upon each spouse making full, frank and honest disclosure of his or her financial circumstances.[1]

[36] The obligation extends beyond merely avoiding positive falsehoods. It requires each litigant to disclose fully all material information concerning income, assets, liabilities, business interests, investments, benefits received from juristic entities and any other financial resources capable of influencing the Court's assessment of means. A party who provides a technically accurate but materially incomplete account of his financial affairs has not discharged the duty imposed by Rule 43. The obligation is one of complete transparency because only then is the Court able properly to balance the needs of one spouse against the ability of the other to contribute.

[37] The rationale for the rule is readily apparent. Financial information is seldom equally available to both spouses. Frequently one spouse has exclusive control over family finances, business affairs and banking arrangements. The other spouse is often compelled to rely upon inference, secondary documentation and lifestyle evidence in attempting to establish the true financial position. Our courts have repeatedly recognised that the spouse in possession of the relevant information bears a correspondingly heavier obligation of disclosure.[2]

[38] The obligation of candid financial disclosure is not merely procedural but derives from broader constitutional values of fairness, equality before the law and the proper administration of justice. Matrimonial litigation cannot fairly be conducted if one party is permitted to control the financial information upon which the Court's discretion

depends while simultaneously withholding or obscuring material facts. Such conduct frustrates not merely the opposing litigant but the Court itself.

Incomplete disclosure and adverse inferences

[39] It follows that where the Court is satisfied that financial disclosure is materially incomplete, inconsistent or evasive, it is not required to accept the disclosed financial position at face value. Although Rule 43 proceedings do not permit final findings upon disputed evidence, neither does the Court sit as a passive recipient of whatever information one spouse chooses to disclose. The Court must evaluate the probabilities upon the material before it and may draw such inferences as are justified by the objective evidence.

[40] This principle has particular force where the deficiencies in the evidence arise from the conduct of the party possessing the relevant information. Were the Court to insist upon precise proof of undisclosed income in circumstances where that proof lies almost exclusively within the knowledge of the defaulting spouse, the obligation of full disclosure would become largely illusory. The law does not permit a litigant to benefit from uncertainty which that litigant has himself created.

[41] It is therefore well established that, where reliable financial disclosure is withheld, the Court may adopt a robust approach to the evidence and draw adverse inferences. Such an approach does not amount to punishment; rather, it reflects the practical necessity of exercising the Court’s discretion upon incomplete information. The uncertainty thereby created falls to be resolved against the party who has failed to discharge the obligation of candid disclosure rather than against the financially weaker spouse who has been deprived of the relevant information.[2]

[42] That does not mean that every discrepancy justifies an adverse inference. Financial disclosure frequently contains innocent inaccuracies, particularly where business affairs are complex. Nor does every inconsistency demonstrate dishonesty. The Court must distinguish between immaterial error and material omission. It is only where the cumulative effect of the evidence demonstrates that the financial picture presented is probably incomplete that adverse inferences become justified.

[43] This is particularly relevant as the respondent insists that his prior inaccurate disclosure was not his fault but that of his attorneys.

[44] However, the obligation resting upon spouses in matrimonial proceedings extends beyond the avoidance of positive falsehoods. It requires the disclosure of all material financial information necessary to permit the Court to understand the party's true means. The withholding of relevant information, the selective production of documents or the presentation of a financial picture which is technically accurate but materially incomplete is inconsistent with the spirit of Rule 43.

The respondent's financial disclosure

[45] The applicant contends that the respondent's financial disclosure has changed materially over time. Earlier disclosure forms, subsequent revised forms, banking documentation and further explanatory affidavits are all before the Court. The applicant argues that these successive revisions demonstrate that the respondent has repeatedly understated his income and financial resources until confronted with objective documentation requiring further explanation.

[46] The respondent does not deny that there are differences between the various disclosure forms. His explanation is that the earlier disclosure was prepared almost entirely through former attorneys who extracted information from bank statements but failed properly to appreciate the significance of the information supplied. He states that he signed the earlier disclosure without understanding its importance and that only after consulting his present attorneys did he appreciate that a more complete and accurate disclosure was required.

[47] That explanation cannot simply be rejected out of hand. Experience demonstrates that litigants often place considerable reliance upon legal representatives when preparing financial disclosure. Errors can undoubtedly occur. Nevertheless, where successive disclosure forms reveal material differences rather than minor corrections, the Court is entitled to examine with particular care whether the explanation adequately accounts for those discrepancies.

[48] What concerns the Court is not merely that amendments have been made. It is that the amendments appear to have occurred incrementally as the litigation progressed and as further questions were raised by the applicant. That chronology does not necessarily establish dishonesty. It does, however, justify careful scrutiny of the respondent's present version before accepting it as a complete account of his financial affairs.

The objective documentary evidence

[49] Much of the applicant's case rests not upon mere assertion but upon objective documentary material. She has placed before the Court banking records, lease documentation, property-related documentation, schedules comparing the parties' expenditure and various annexures which she contends demonstrate financial resources inconsistent with the respondent's stated income.

[50] The comparison schedule illustrates that the respondent's disclosed expenditure in several categories substantially exceeds that of the applicant notwithstanding his assertion that his available income is relatively modest. Standing alone, such a comparison proves very little. Individuals allocate expenditure differently. Nevertheless, expenditure patterns remain relevant because persistent expenditure substantially exceeding disclosed income may justify an inference that additional financial resources exist from undisclosed sources.

[51] The banking records and property documentation likewise require consideration, not because they necessarily establish concealed wealth, but because they provide objective benchmarks against which the respondent's explanations may be tested. Documentary evidence frequently possesses greater evidential weight than broad assertions regarding income, particularly where the latter have evolved during the course of litigation.

Striving Mind Trading 519 CC

[52] Considerable emphasis has been placed by the applicant upon the role of the second respondent. She submits that the close corporation is little more than the respondent's alter ego and that income and assets are channelled through it in order to minimise his apparent personal wealth. On that basis she seeks its joinder and invites the Court effectively to disregard its separate legal personality for purposes of the present application.

[53] The respondent disputes that contention. He maintains that the second respondent is a separate juristic entity and that the applicant has failed to establish any basis upon which the Court should pierce the corporate veil. He further submits that Rule 43 proceedings are ill-suited to determining complex disputes concerning company law or beneficial ownership.

[54] The present application does not require the Court finally to determine whether the second respondent's separate legal personality should be disregarded. Nor is the Court called upon finally to determine proprietary rights as between the respondent

and the close corporation. Those questions may ultimately arise during the divorce action if appropriate pleadings are delivered.

[55] The narrower question presently confronting the Court is whether the respondent derives financial benefit from the close corporation to an extent relevant to the assessment of his means. A spouse cannot avoid maintenance obligations merely by arranging his affairs so that income is received through an entity over which he exercises effective control. Conversely, the mere existence of such an entity does not justify treating all corporate assets as though they belonged personally to the respondent. The enquiry remains factual and directed towards identifying the respondent's true financial capacity rather than the legal ownership of every asset.

[56] The evidence presently before the Court suggests that the financial affairs of the respondent and those of the second respondent are closely connected. Whether that connection ultimately justifies relief against the second respondent is a matter that may require fuller ventilation at trial. For present purposes it is sufficient to recognise that the corporation's financial affairs constitute relevant evidence in assessing the respondent's means.

[57] Considerable attention was devoted in argument to the proposition that the second respondent constitutes the alter ego of the first respondent and that the Court should pierce the corporate veil in determining the respondent's means. In my respectful view, that submission conflates two distinct enquiries.

a. The first concerns the exceptional circumstances in which a court disregards the separate legal personality of a company or close corporation because it has been abused for an improper purpose. That doctrine finds statutory recognition in section 20(9) of the Companies Act 71 of 2008 and has been developed in decisions of both the Supreme Court of Appeal and the Constitutional Court. The enquiry ordinarily concerns abuse of corporate personality, fraud, dishonesty or the use of the company as a façade concealing the true facts.[3]

b. The second enquiry is considerably narrower and arises more frequently in maintenance litigation. It asks not whether the corporate entity should cease to exist as a separate juristic person, but whether the spouse derives financial benefits from that entity which properly fall to be considered in assessing his or her ability to pay maintenance. The Court is concerned with economic reality rather than formal legal ownership.

[58] Those enquiries should not be confused. A court determining interim maintenance need not finally disregard the separate legal personality of a company before taking account of the financial benefits enjoyed by a spouse through that company. A spouse who enjoys the use of company assets, receives benefits in kind, controls the disposition of corporate income or regulates the timing of distributions cannot insist that the Court ignore those financial advantages merely because they arise through a juristic entity. To do so would elevate legal form above financial substance.

[59] The present application illustrates the distinction. Whether the second respondent's separate legal personality should ultimately be disregarded is an issue that may arise during the divorce trial upon a fuller evidential record. For present purposes the narrower enquiry suffices, namely whether the respondent's relationship with the second respondent materially enhances his financial capacity beyond that reflected in his personal financial disclosure. That enquiry is entirely consistent with the Court's obligation to assess the respondent's true means.

Credibility

[60] Ultimately this application turns less upon arithmetic than upon credibility. If the respondent's present disclosure is accepted as accurate and complete, the applicant's claim must necessarily be assessed upon one financial foundation. If, however, the Court concludes that the respondent has failed fully to disclose his financial affairs, a different conclusion may legitimately follow.

[61] I do not consider that the evidence presently before the Court justifies a definitive finding of deliberate dishonesty. Such findings are seldom appropriate on affidavit alone. Nevertheless, the cumulative effect of the delayed answering affidavit, the successive revisions to financial disclosure, the objective documentary material relied upon by the applicant and the respondent's evolving explanations gives rise to legitimate concerns regarding the completeness of his disclosure.

[62] Those concerns do not justify rejecting the respondent's evidence in its entirety. They do, however, require the Court to approach his assertions concerning his financial means with a degree of caution and to evaluate them against the objective documentary evidence rather than accepting them at face value. Where discrepancies remain unexplained, the Court is entitled to draw such inferences as appear justified by the probabilities.

[63] It is against that factual background that the Court must now determine the appropriate interim relief, bearing in mind both the applicant's reasonable needs and the respondent's probable ability to satisfy them pending the final determination of the divorce action.

Evaluation

[64] Having considered the affidavits, the financial disclosure forms, the extensive documentary material and the submissions advanced on behalf of the parties, I am satisfied that the determination of this application ultimately depends not upon whether every item of expenditure claimed by the applicant can be justified to the last rand, but rather upon whether the Court can confidently accept the first respondent's account of his financial circumstances. In my respectful view, it cannot do so without reservation.

[65] That conclusion does not rest upon any single inconsistency. Litigation of this nature frequently reveals minor discrepancies in financial disclosure. Rather, it is the cumulative effect of several features of the evidence which gives rise to legitimate concern. These include the prolonged delay before the respondent's answering affidavit was delivered, the production of successive and materially different financial disclosure forms, the evolving explanations advanced for those differences, and the objective documentary evidence which appears, at least *prima facie*, to sit uneasily with the financial picture which the respondent ultimately seeks to present.

[66] I have already indicated that I do not regard the delay in filing the answering affidavit as sufficient reason to exclude the respondent's evidence from consideration. Nevertheless, the delay remains relevant when evaluating the reliability of that evidence. Had the respondent's present financial disclosure been produced promptly and consistently from the outset, his explanation that earlier inaccuracies were attributable to previous attorneys might have carried greater persuasive force. Instead, the Court is confronted with a progressively developing account of his financial affairs which appears to have altered as further questions were raised by the applicant.

[67] I accept that litigants frequently rely heavily upon their legal representatives when preparing financial disclosure forms and that mistakes may occur. However, the obligation imposed upon a litigant making disclosure in matrimonial proceedings is a personal one. The responsibility for ensuring that the Court receives an accurate

account of the litigant's financial circumstances cannot ultimately be delegated to attorneys. Consequently, although deficiencies on the part of former attorneys may explain some inaccuracies, they cannot wholly neutralise the significance of repeated revisions to financial disclosure. This is particularly so as it is the respondent, and not his attorneys that are required to sign his financial disclosure forms.

The respondent's means

[68] The applicant submits that the respondent enjoys a standard of living and incurs expenditure which materially exceeds the income disclosed in his financial statements. She relies upon banking records, property-related documentation and the financial affairs of the second respondent to support that conclusion. The respondent disputes those allegations and maintains that the applicant has invited the Court to engage in speculation rather than inference.

[69] It is important not to overstate the position. Lifestyle evidence is seldom conclusive. Persons may finance expenditure through savings, borrowing, assistance from family members or the disposal of capital assets. Equally, apparent expenditure reflected in banking records does not necessarily represent disposable income. The Court must therefore avoid simplistic assumptions.

[70] A further consideration is that after separation and divorce, even a wealthy husband cannot afford to maintain two households as he did when the parties lived together and he only had one household to maintain.

[71] Nevertheless, where objective financial documentation consistently appears inconsistent with the level of income disclosed by a litigant, the Court is entitled to ask whether the disclosed income represents the whole picture. In the present matter I am satisfied that sufficient unanswered questions remain concerning the respondent's financial affairs to justify the conclusion that his disclosed income probably understates his actual financial capacity.

[72] I deliberately express that conclusion with caution. Rule 43 proceedings are interlocutory. The Court is not called upon finally to determine the respondent's income for all purposes. Nor is it required to resolve every factual dispute relating to the parties' patrimonial affairs. It is required to exercise a practical discretion upon incomplete evidence in circumstances where one party possesses substantially greater knowledge of the relevant financial information than the other.

The significance of the second respondent

[73] I have likewise concluded that the applicant's submissions concerning the second respondent should not be approached as an invitation finally to pierce the corporate veil. That would be both unnecessary and inappropriate at this stage of the litigation. The divorce trial will provide the proper forum for determining any disputes concerning ownership, beneficial interests or the legal consequences flowing from the respondent's relationship with the close corporation.

[74] It does not follow, however, that the existence of the second respondent must be ignored. The Court is entitled to examine the extent to which the respondent derives financial benefit from that entity. Maintenance obligations are determined according to substance rather than form. If a spouse effectively controls the disposition of corporate income or assets in a manner that materially enhances his ability to meet maintenance obligations, the Court would be remiss were it to disregard those financial realities simply because they arise through the medium of a juristic person.

[75] I therefore regard the financial affairs of the second respondent as relevant, not because the Court is disregarding its separate legal personality, but because they form part of the broader factual enquiry into the respondent's actual means. To that extent the applicant's reliance upon the second respondent is justified. Whether more extensive relief against the second respondent should ultimately be granted is a matter which must await the trial.

The applicant's financial position

[76] In her founding affidavit, the applicant was still employed as general manager of Striving Mind and said she earned a net salary of R72 000 per month. She listed monthly expenses of approximately R70 500, including bond instalments, levies, utilities, food, transport, vehicle finance, medical costs and domestic assistance.

[77] By the time of the supplementary affidavits, her circumstances had changed materially. She says she became unemployed after her dismissal, had to rent out her residential property and move in with her sister, and faces financial distress including the threatened repossession of a vehicle registered in her name.

[78] She further explains that rental income from the Krugersdorp property barely covers bond and property-related charges, and that she lost an opportunity to rent out the commercial property because the first respondent allegedly failed to remove

company firearms from the premises despite an order granting her exclusive occupation.

[79] The applicant has therefore established, at least *prima facie*, present financial need. While there are some questions regarding her corporate interests and property holdings, the papers support the conclusion that she currently lacks stable employment income and is unable to sustain herself at anything approaching the marital standard without interim support.

The applicant's needs

[80] Turning to the applicant herself, it is common cause that she presently requires financial assistance pending the divorce proceedings. The principal disputes concern neither the existence of need nor the categories of expenditure claimed, but rather whether the amounts claimed accurately reflect the standard of living enjoyed during the marriage and whether the respondent possesses the financial ability to contribute at the level sought.

[81] The comparison table prepared by the applicant is helpful in identifying areas of agreement and disagreement between the parties' respective expenditure. It demonstrates that the applicant's claim is not markedly extravagant across every category, although certain items may ultimately require moderation. The Court's function is not to undertake a forensic audit of every grocery receipt or item of domestic expenditure. Rule 43 requires a robust assessment of reasonable interim needs viewed against the parties' accustomed standard of living.

The first respondent's means

[82] The first respondent is the sole member of Striving Mind, a close corporation operating in the security industry, historically through government contracts. He says that his business has declined, that only one material contract remains and that it is due to expire in July 2026.

[83] The first respondent contends that his drawings from the business were approximately R70 000 to R100 000 per month and rejects the applicant's assertion that he earns substantially more. At the same time, the applicant points to financial statements showing operating costs of approximately R15 million and to unexplained transfers from Striving Mind into the first respondent's personal bank accounts in varying sums, including R70 000, R50 000, R20 000 and R10 000.

[84] The first respondent has not fully explained these payments, has not attached an IRP5, and has not provided a coherent breakdown of the close corporation's financial position in support of the reduced income he asserts. His disclosure is incomplete and inconsistent, including differing salary, expense and asset figures in successive financial disclosure forms.

[85] In those circumstances, the Court is satisfied that the first respondent has access to greater resources than he is willing to disclose. His lifestyle, business structure and unexplained bank activity justify the drawing of adverse inferences against him for the purpose of this interim application.

The applicant's reasonable needs

[86] Turning to the applicant's own financial position, it is necessary to bear in mind the limited purpose served by Rule 43. Interim maintenance is not intended either to impoverish the respondent or to confer upon the applicant every financial advantage enjoyed during the marriage irrespective of present circumstances. The objective is to maintain, insofar as reasonably possible, the standard of living appropriate to the parties' means pending the final determination of their respective rights.

[87] Counsel for the respondent criticised several items appearing in the applicant's schedule of monthly expenditure. It was submitted that certain amounts claimed in respect of clothing, transport, domestic assistance and household expenses exceed what is reasonably required. Some criticism of individual items is justified. Certain figures appear to have been estimated generously rather than conservatively.

[88] It would, however, be contrary to the purpose of Rule 43 to undertake a meticulous accounting exercise in respect of every item of expenditure.

The relief sought

[89] In broad terms, the applicant seeks interim maintenance of approximately R70 000 per month, reinstatement on the Bonitas medical aid previously enjoyed by the parties, a contribution towards legal costs, and ancillary interdictory relief relating to harassment, access to property and the use of a Mercedes-Benz motor vehicle.

a. *The maintenance claim*

[90] The applicant claims interim maintenance of approximately R70 000 per month. The first respondent says this is extravagant and unaffordable.

[91] In determining a fair interim amount, the Court must balance the applicant's reasonable present needs against the first respondent's probable means, bearing in mind the standard of living enjoyed during the marriage and the temporary nature of Rule 43 relief.

[92] Some items in the applicant's budget can be moderated on an interim basis. Equally, the first respondent's attempt to portray the applicant as entirely self-sufficient cannot be accepted on the papers. Taking into account the applicant's current unemployment, her property-related burdens, the first respondent's incomplete disclosure and the overall standard of living during the marriage, an amount of R45 000 per month is fair and equitable as interim maintenance pendente lite.

b. *Medical aid*

[93] The applicant also seeks reinstatement on the Bonitas medical aid previously enjoyed during the marriage. Access to healthcare is a significant component of reasonable interim support, and the first respondent has not established that such relief would be beyond his means.

[94] It is therefore appropriate to direct the first respondent to restore the applicant's medical aid cover on a plan equivalent to that previously enjoyed, alternatively on a comparable scheme, pending the finalisation of the divorce action.[file:2][file:3]

[95] Approached in that manner, I am satisfied that the applicant has demonstrated a genuine need for interim financial assistance. Although some adjustment of particular items may ultimately be appropriate, I do not accept the respondent's submission that her claim is so excessive as to justify substantial reduction across the board.

The constitutional context

[96] The discretion conferred by Rule 43 is today exercised within a constitutional framework that differs materially from that which existed when many of the leading authorities were decided. The Constitution affirms the foundational values of dignity, equality and access to courts. Those values inform both the substantive law of maintenance and the procedural mechanisms through which maintenance is secured pending the determination of matrimonial disputes.[4]

[97] Maintenance pending divorce serves an important constitutional function. It preserves, insofar as reasonably possible, equality between litigants during the

course of matrimonial proceedings and prevents economic disparity from distorting the administration of justice. A spouse who lacks the financial means to maintain herself or to litigate effectively is placed at an inherent forensic disadvantage. Rule 43 exists precisely to avoid that result.

[98] The Constitutional Court has repeatedly emphasised that procedural rules exist to facilitate, rather than impede, the achievement of substantive justice. That principle has particular significance in Rule 43 proceedings. The Court's task is not to conduct an exhaustive accounting exercise but to fashion practical interim relief that promotes fairness until the parties' rights can be finally determined after the hearing of oral evidence.

Contribution towards legal costs

[99] The applicant also seeks a contribution towards her legal costs. The governing principles are well established. The purpose of such an order is not to finance litigation without limit but to place the financially weaker spouse in a position adequately to present her case. Equality of arms remains an important consideration in matrimonial litigation.

[100] The present litigation has already become unusually extensive. The allegations concerning financial disclosure, the documentation generated by both parties and the complexity of the issues make it unrealistic to expect the applicant to prosecute the divorce action without meaningful financial assistance. Were no contribution to costs ordered, there is a substantial risk that the respondent, by reason of his superior access to financial resources, would enjoy a significant forensic advantage.

[101] At the same time, the contribution ordered should remain proportionate to the interim nature of the proceedings. It is neither necessary nor appropriate that the respondent should underwrite every future litigation expense irrespective of its reasonableness. The contribution should instead reflect what is reasonably necessary to enable the applicant properly to prepare for trial.

[102] Such an award is not intended to place both parties in precisely the same financial position, nor to require one spouse to finance litigation without limit. Its object is more modest but no less important: to enable the financially weaker spouse properly to present his or her case and thereby secure a fair hearing.

[103] The Court exercises a broad discretion having regard to the complexity of the litigation, the parties' respective means, the nature of the issues likely to arise at trial and the amount reasonably necessary to enable effective participation in the proceedings. The contribution should be realistic rather than token, yet proportionate to the interim nature of the relief.

[104] The present matter demonstrates why that jurisdiction exists. The litigation has become unusually complex. It involves allegations of incomplete financial disclosure, extensive documentary evidence, business interests and disputed financial arrangements extending beyond the parties' personal banking affairs. It would be unrealistic to expect the applicant adequately to prepare for trial without a meaningful contribution towards her legal expenses if, as appears probable on the present papers, the respondent enjoys substantially greater financial resources.

[105] The Court must therefore ensure that the contribution ordered is sufficient to place the applicant in a position to litigate effectively while avoiding any suggestion that the respondent is required to underwrite every future litigation expense. The objective remains fairness rather than equality of expenditure.

[106] Having regard to the complexity of the matter and the first respondent's superior access to funds, a contribution of R100 000 towards legal costs is reasonable.

The costs of the application

[107] The remaining issue concerns the costs of the present application. Although Rule 43 applications frequently reserve costs for determination in the divorce action, that course is not invariable. The Court retains a discretion to make such order as fairness requires in the particular circumstances of the case.

[108] Counsel for the applicant submitted that the respondent's conduct has unnecessarily prolonged proceedings which were intended to provide expeditious interim relief. Particular reliance was placed upon the lengthy delay in delivering the answering affidavit, the successive revisions to the respondent's financial disclosure and the need for the applicant to file further affidavits in response to material which ought properly to have been disclosed at the outset. It was submitted that those circumstances justify an immediate adverse costs order.

[109] There is considerable force in that submission. The chronology of the litigation demonstrates that the applicant has repeatedly been required to address revised

financial information as the respondent's disclosure evolved. Even accepting that part of the delay may be attributable to difficulties experienced by the respondent's former legal representatives, the responsibility for ensuring compliance with the Rules ultimately rested with the respondent himself. Rule 43 proceedings are intended to alleviate financial hardship swiftly. Delay of the magnitude encountered in the present matter is inconsistent with that objective.

[110] On the other hand, I remain mindful that the parties will continue to litigate against one another in the pending divorce action. The issues presently before the Court are interlocutory and many of the factual disputes concerning the parties' financial affairs will ultimately be resolved at trial after the hearing of oral evidence. In those circumstances it would ordinarily be undesirable to make findings concerning litigation conduct which might be understood as prejudging matters yet to be determined.

[111] Although both parties have contributed to the acrimonious nature of these proceedings, the first respondent's delays, incomplete disclosure and non-compliance with court orders materially worsened the litigation and caused prejudice to the applicant.

[112] In the exercise of the Court's discretion, the first respondent should therefore bear the costs of this Rule 43 application on the party-and-party scale.

The remaining relief

[113] The remaining relief sought in the notice of motion is not competent in Rule 43 proceedings.

Order

(1). The first respondent is directed to pay to the applicant interim maintenance pendente lite in the amount of R45 000 (forty thousand rand) per month, payable on 8 July 2026 and thereafter monthly in advance on or before the 1st day of each month, with effect from the first day of the month following the date of this order, pending final determination of the divorce action under case number 2025-097786 or until further order.

(2). The first respondent is directed, within 10 (ten) days of the date of this order, to reinstate the applicant as a dependant on the Bonitas medical aid scheme on a plan at least equivalent to that previously enjoyed, alternatively to enrol her on a comparable medical aid scheme on similar terms, and to pay all monthly premiums timeously, pending final determination of the divorce action or until further order.

(3). The first respondent is directed to pay to the applicant a contribution towards her legal costs in the amount of R100 000 (one hundred thousand rand), payable in two equal monthly instalments of R50 000 each, the first instalment within 20 (twenty) days of the date of this order and the second on or before the same day of the following month.

(4). Save as provided above, the balance of the relief sought is postponed sine die, to be dealt with at the trial or on further application to this court.

(5). The first respondent is ordered to pay the costs of this Rule 43 application on the party-and-party scale.

WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT
JOHANNESBURG

HEARING
Date of the hearing: 12 May 2026
Date of the judgment: 30 June 2026

APPEARANCES
Adv. Simelane (assumed to be acting with a Fidelity Fund Certificate)
Adv. Morland instructed by Manitha Nara Attorneys Inc.