IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Not Reportable

Case No: 2026-035198

In the matter between:

L[...] F[...] **APPLICANT**

and

A[...] J[...] F[...] **RESPONDENT**

Neutral citation : *F[...] v F[...]* (Case No 2026-035198) [2026] ZAWCHC (28-07-2026)

Coram : **MAPOMA AJ**

Date of hearing : 17 June 2026

Date of judgment : 28 July 2026

Summary - O*pposed Rule 43 application – claim for interim maintenance pendite lite – contribution towards legal costs for divorce action – relevant factors to consider – interests of minor child paramount consideration – possible settlements – contribution towards legal costs declined where mediation is appropriate mechanism.*

ORDER

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1. Pending the finalisation of the divorce action:

1.1. The applicant shall enjoy the exclusive use of the fully furnished holiday home at Betty's Bay which is registered in the name of the A[...] Trust (the Trust).

1.2. The respondents shall maintain the applicant and the parties' minor son in the following terms:

1.2.1. The respondent, alternatively the Trust, shall be liable for monthly costs pertaining to rates and taxes, water, electricity, Wi-Fi, DSTV and reasonable maintenance and upkeep of the Betty's Bay property;

1.2.2. The respondent shall pay to the applicant an amount of R15 000 *(Fifteen Thousand Rand)* towards maintenance of the applicant and the minor child;

1.2.3. The respondents shall be liable for the reasonable maintenance of the Toyota Corolla motor vehicle used by the applicant, including costs for general maintenance and repairs, services, replacement of tyres when necessary, insurance and licencing thereof;

1.2.4. The respondent shall contribute by payment of R1 500.00 (One Thousand

1.2.5. The respondent shall retain the minor child on his current medical aid, and GAP cover and shall be liable for all medical expenses not covered by the medical aid fund, including payment of the minor child's ADHD medication;

1.2.6. The respondents shall continue to pay all reasonable educational expenses in respect of the minor child, including his school fees, extramural costs and costs of his school uniform, books, stationary and any electronic equipment reasonably required by him for the purposes of his school education;

1.2.7. the respondent shall pay the monthly costs of the minor child's school transport.

2. Costs shall stand over for determination in the divorce action.

JUDGMENT

MAPOMA AJ:

[1] This is an opposed application in terms of Rule 43 of the Uniform Rules of court. The applicant seeks relief for *interim* maintenance pending the finalisation of the divorce action between her and the respondent, including ancillary reliefs in respect of herself and the parties' minor child, as well as the respondent's contribution towards her legal costs of the divorce action.

[2] More precisely, the applicant seeks from the respondent

(a) Monthly payment of R25 000 for the applicant's rental of alternative accommodation to the matrimonial home;

(b) Once off payment of R50 000 for rental deposit of the alternative accommodation;

(c) Monthly payment of R15 630 for maintenance;

(d) Payment of an unquantified amount for the purchase of new furniture and equipment for the alternative accommodation, and other ancillary reliefs for household necessaries; and

(e) Payment of R385 000.00 as contribution to the applicants past and future legal costs to prosecute the divorce action.

[3] In her own version, the applicant has no liabilities. She has personal assets that are valued at R1 587 184.00. According to the applicant, the respondent's personal estate, against which she is entitled to accrual upon divorce, is worth R12 798 986.21, from which she is entitled to 50% accrual.

[4] It is also common cause that the marriage relationship has irretrievably broken, but the contestation is only in relation to the terms of divorce. The main issues that are outstanding for the finalisation of the divorce at this stage are the *quantum* of the applicant's accrual against the respondent's personal estate and the assets in the parties *inter vivos* Trust, and the *quantum* and duration of the applicant's maintenance and that of the minor child.

[5] On 28 April 2026, the parties sought to settle the divorce action and reached some agreement, but regrettably, they could not finalise and sign the deed of settlement. According to the respondent, on the day in question the parties have settled the matter, but on the following day the applicant changed her mind and reneged on the agreement. This version is disputed by the applicant.

[6] Whilst on the papers before Court, both parties seem desirous of mediation of the disputes in the divorce action, they have not pursued that dispute resolution mechanism. In his opposing papers and during the hearing of this matter, the respondent expressed his desire for mediation and requested the Court to direct them to explore the mediation process.

[7] In my view, now that the issue as to whether or not the divorce was settled on 28 April 2026 is in dispute, that issue is not a matter for this Court to determine in these proceedings. It is a matter that remains to be resolved in the pending divorce proceedings.

[8] The brief relevant facts, which are not in dispute, are that the parties got married to each other on 13 December 2003 out of community of property with accrual system. There are three children born of the marriage, the first and second born of whom are now majors and university students but still dependant on the parties particularly the respondent for their maintenance. The third child, who is a 16-year-old minor, is a child who is autistic and requires specialised care.

[9] During the subsistence of the marriage, the parties established an *inter vivos* trust named A[...] Trust ("the Trust") in which both are Trustees and beneficiaries together with their children. Over the years the Trust accumulated

an estate comprising of six immovable properties that are registered in its name. The total net-value of the estate properties is worth approximately RI8 012 791.00. It is also not in dispute that the applicant is entitled to the accrual in the assets of the Trust.

[10] In August 2025, the applicant instituted divorce action against the respondent. In the divorce action, both the applicant and the respondents are also cited as second and third defendants in their respective official capacities as the trustees of the Trust. In the divorce action, the applicant sues the trustees for termination of the Trust and division of the assets for the applicant's accrual benefits to be realised from the Trust.

[11] The applicant is 48 years of age, employed as an occupational therapist. She earns a monthly net salary of R26 000. The applicant receives a less than adequate salary because, as per arrangement between the parties, she works half a day in order to look after the minor child. The respondent is 50 years old. He is employed as a structural engineer. He earns a monthly net salary of R68 841.63.

[12] The parties agree that they cannot live together in the same matrimonial home anymore. The respondent is not prepared to move out of the family home, which means that the applicant has to obtain alternative accommodation for herself and the minor child. In this regard, the applicant seeks accommodation to rent within the Somerset West area, because amongst other things, the minor child attends school in that area. According to the applicant, rental of the appropriate accommodation in Somerset West ranges between R21 000 and R32 000 per month, hence she seeks payment of R25 000 for monthly rental.

[13] The applicant's contention is that, given her earnings, she cannot afford the rent of a suitable accommodation at Somerset West and requires the respondent

to pay for such costs. The respondent acknowledges that the applicant has to move out of the matrimonial home, however he pleads that he cannot afford to pay the demanded rental costs, same as payment for the purchase of a new furniture, given his salary of R68 000. In this regard, the respondent submitted his income and expenditure statement which the Court has perused. It appears in the income and expenditure statement that after payment of the respondent's monthly liabilities, the respondent has a shortfall in the amount of R6000.

[14] The respondent proposed that instead of incurring the rental costs he cannot afford, the applicant should take accommodation at the family's furnished holiday home at Betty's Bay, which is situated at about 40 kilometres from Somerset West. The applicant is not amenable to that proposal, as she contends that it would necessitate that she travels that distance and negotiate the mountain daily.

[15] Regarding contribution towards legal costs, the applicant contends that since the divorce proceedings are still pending, she requires an adequate contribution from the respondent towards her legal cause at least up to the first day of the trial. In this regard, she submitted an invoice from her attorneys of record, depicting that she had incurred legal costs in the amount of R78,489.99 of which she still owes R14,979.98. In the notice of motion, the applicant further seeks an order directing the respondent to pay an amount of R385 000.00 as contribution towards the applicant's legal costs.

[16] In light of the above facts, the issues for determination in these proceedings are whether the applicant has made out a case for the interim maintenance pending the finalisation of the divorce and the respondent's contribution towards her legal costs, and if so, to what amounts; and whether the respondent is financially capable of meeting the applicant's demands in the relief sought.

[17] While every Rule 43 application has to be decided on its facts, the general principles applicable to the Rule 43 applications have been crystalised by our courts. In *L.S v J.S,*[1] the court provided a useful summary of the general principles applicable to Rule 43 applications. Primarily, what Rule 43 provides for is an efficient mechanism that regulates the procedure to be followed in applications of an interim nature in relation to the pending matrimonial matters. Its purpose is to provide a quick and inexpensive relief.

[18] The original purpose of the rule is to assist the claimant, usually the women, who finds themselves in a weaker financial position than the other spouse in divorce proceedings. The fundamental basis of the rule is to enforce the duty of support that the spouses owe to each other and that the parents owe to their children.[2]

[19] Its objective is to resolve ancillary disputes in an inexpensive and expeditious manner to ensure just and expeditious decision pending the finalisation of the matrimonial matter.

[20] As the Rule 43 relief is intended to be interim and temporary in nature, it cannot be determined with that degree of precision and closer exactitude afforded by detailed evidence.[3] Further, care must be taken to ensure that Court does not award the interim relief that would incentivise the parties to derive comfort in unduly prolonging the finalisation of the divorce.[4]

Alternative accommodation and maintenance

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[1] Unreported, GJ Case 23967/2012 dated 2 August 2024. See also D1 Rule 43-2 Service 28, 2025
[2] *Carry v Carry* 1999 (3) SA 615 (C) at 619H-I
[3] *Taute v Taute* 1974(2) SA 675 (E) at 676B-C
[4] *B.A.R v D.G.R* 2023 JDR 1210 (WCC) at para 3

[21] The parties are *ad idem* that they cannot live together in the matrimonial home as husband and wife. They are also in agreement that the applicant will have to move out to an alternative accommodation. The question is whether to rent or to take occupation in the family's Trust furnished property at Bettys Bay. Importantly, whatever the course the Court directs, the best interests of the minor child are paramount, and both parties will have to take joint responsibility.

[22] In my view, it cannot be disputed that the rental accommodation will come at a considerable cost. On the facts, the respondent is the main income earner in the marriage relationship between the parties. He is the main provider of reasonable maintenance for the family, education of the children, which he does from his salary of R68 000. In his income and expenditure statement, the respondent has demonstrated that he cannot afford to pay the rental costs required by the applicant out of his salary income.

[23] I am also mindful of the concerns advanced by the applicant regarding taking occupation at Bettys Bay, in particular, the distance to and from Somerset West, the school interest of the minor child, and general inconvenience. However, given that the Rule 43 relief is an interim measure pending the finalisation of divorce, I am of the view that the benefit of utilising for accommodation what is already owned by the parties far outweighs the costs incidental to the option of the new rental accommodation.

[24] To support the applicant's travelling needs and the costs of ensuring that the best interests of the minor child, particularly requiring special educational needs are taken care of, the respondent will have to bear the costs of ensuring that the applicant motor vehicle is well serviced and fit for purpose. The

respondent will have to ensure that the child is adequately transported to school, and the applicant is fully supported in this regard.

[25] Upon consideration of the facts, I am satisfied that the respondent has a duty to maintain his wife and minor child in the interim. In my view the *quantum* claimed by the applicant for maintenance of both her and the minor child is reasonable for their needs and is well founded well founded.

Contribution towards legal costs

[26] Rule 43(1)*(b)* applies whenever a spouse seeks relief from the court in respect of contribution by the other spouse towards costs of a pending or about to be instituted matrimonial action. A claim for contribution by a spouse towards another's costs in a matrimonial matter is *sui generis*. It is based on the underlying principle that the spouses owe a duty of support to each other.[5]

[27] The high watermark of the applicant's argument is that there is a marked disparity in the financial resources of the parties and thus their ability to litigate meaningfully with equal arms.

[28] Indeed, in *AF v MF*,[6] the court held that where there is marked imbalance in financial resources available to the parties to litigate, there is a real danger that the poorer spouse, usually the wife, will be enforced to settle for less than what she is legally entitled to simply because she cannot afford to go to trial. Where the husband who controls the purse strings and is well able to deploy financial resources to the services of his cause, that would be inherently unfair.

[29] In this case, the applicant's basis of the contended disparity is the respondent's salary whose current liabilities outmatch the salary. She further

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[5] *A.G v L.G* (unreported) WCC Case No 9207/2020 dated 25 August 2020 at paragraph 16

[6] 2019 (6) SA 422 (WCC) at para 42

refers to the respondent's bond free matrimonial home worth R5.7 million and his pensions funds worth R3.6 million as illustrative of the disparity. In my view, these two assets are not liquid and thus not accessible to the respondent excusive of the applicant. They are effectively co-owned by both parties because the applicant has accrual claim against them.

[30] In her own version the applicant has R235 000 in cash, yet she has no liabilities. Also, in the same way as the respondent, she has access to her loan account in the Trust, which she can utilise to litigate. It would be manifestly unjust to expect the respondent to fund the applicant's legal fees from his loan account when the applicant can do so from her own loan account.

[31] In *Nilsson v Nilsson*,[7] the court stated that rule 43 is not meant to provide an interim meal ticket to a person who quite clearly at the trial will not be able to establish a right to maintenance. In my view, with the same measure, the right to maintenance is assessed based on factors that are relevant for the right to contribution to legal costs. From the facts of this case, it seems to me that the applicant will be entitled to a portion of accrual of the assets of the Trust. This will enable the applicant to pay her legal costs.

[32] Thus, on the evidence before Court, the applicant has not shown where the financial resources of the respondent are that from which she would fund her legal costs except by selling the assets of the parties' estate, which the respondent has no exclusive access to. In the circumstances, I am not persuaded that the applicant's claim against the respondent for contribution towards her legal cost has been established. If anything, the applicant has a right to her loan account from the Trust if her personal resources are depleted.

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[7] 1984(2) SA 294 (C) at 295F; See also B.R v DR WCC (unreported

[33] Having considered this matter, my view is that it is not to any of the parties’ interest to endlessly litigate on this matter. This is more so in circumstances where the parties have gone to some length towards reaching amicable settlement of this matter. My view is fortified by the fact that the parties will have to dig deep from their assets and investments to fund litigation. In the circumstances, I hold the view that mediation process is the appropriate avenue to be utilised by the parties to reach settlement.

[34] Regarding the costs of this application, I have considered the respective arguments on behalf of both parties for the award of costs of this application in either party’s favour. I am not persuaded that a distinct cost award for this application is justified in the circumstances. The general approach in matters of this nature is to stand over the issue of costs for final determination of the matrimonial action. I find no reason to deviate. I hold the view that costs of this application should be costs attendant to the divorce action.

[35] I therefore make the following order that pending the finalisation of the divorce action:

(a) The applicant shall enjoy the exclusive use of the fully furnished holiday home at Betty’s Bay which is registered in the name of the A[...] Trust (the Trust).

(b) The respondents shall maintain the applicant and the parties' minor son in the following terms:

(i) The respondent, alternatively the Trust, shall be liable for monthly costs pertaining to rates and taxes, water, electricity, Wi-Fi, DSTV and reasonable maintenance and upkeep of the Betty’s Bay property;

(ii) The respondent shall pay to the applicant an amount of R15 000 *(Fifteen Thousand Rand)* towards maintenance of the applicant and the minor child;

(iii) The respondents shall be liable for the reasonable maintenance of the Toyota Corolla motor vehicle used by the applicant, including costs for general maintenance and repairs, services, replacement of tyres when necessary, insurance and licencing thereof;

(iv) The respondent shall contribute by payment of R1 500.00 (One Thousand Five Hundred Rand);

(v) The respondent shall retain the minor child on his current medical aid, and GAP cover and shall be liable for all medical expenses not covered by the medical aid fund, including payment of the minor child's ADHD medication;

(vi) The respondent shall continue to pay all reasonable educational expenses in respect of the minor child, including his school fees, extramural costs and costs of his school uniform, books, stationary and any electronic equipment reasonably required by him for the purposes of his school education; and

(vii) The respondent shall pay the monthly costs of the minor child's school transport.

[36] Costs shall stand over for determination in the divorce action.

ZL MAPOMA

ACTING JUDGE OF THE HIGH COURT

Representatives

Counsel for the Applicant	:	Adv Thelma-Ann Pratt
Instructed by	:	Hanlie Visser Incorporated, Somerset West
Counsel for the Respondent	:	Adv Alma De Wet
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