

REPUBLIC OF SOUTH AFRICA



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

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

Case Number: 2025-110278

In the matter between:

MVD

Applicant

and

CVD

Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

- [1] This is an opposed application in terms of Uniform Rule 43 for interim relief pending the determination of divorce proceedings between the parties. The application concerns the interim primary residence of the parties' two very young children, the nature and extent of the respondent's contact with them, maintenance for the children and the applicant, a lump-sum payment described

as rehabilitative maintenance, and a contribution towards the applicant's legal costs.

- [2] The applicant seeks an order that the children reside primarily with her and that the respondent's contact remain supervised. She also seeks payment of R25 000 per month in respect of herself and the children, payment of the children's educational and medical expenses, R150 000 described as rehabilitative maintenance and an initial contribution of R300 000 towards her legal costs. The respondent opposes the greater part of the relief but tenders maintenance in the amount of R1 500 per child per month, payment of the children's creche fees, their continued membership on his medical aid and one half of expenses not covered by the medical aid.
- [3] The matter is unusual as prior to the matter being heard by me, the applicant brought an application before the Urgent Family Court that was heard by Mohamed AJ on 20 July 2026. He made an Order in terms of the Draft Order provided and ordered that the parties set down the Rule 43 application within two weeks of his Order.
- [4] This has had the effect that certain of the relief sought in the notice of motion has already been granted by consent by Mohamed AJ and that only the balance of the relief now needs to be determined by me.

The parties and their children

- [5] The parties were married on 27 February 2021 out of community of property with the exclusion of the accrual system. Two children were born of the marriage: L, now a little more than two and a half years old, and I, nearly one and a half years old.
- [6] The marriage has broken down irretrievably and divorce proceedings are pending. The applicant is a hairdresser and conducts a business known as X. The respondent conducts business through entities associated with occupational health and safety services.

- [7] The respondent was substantially involved in the upbringing of the children during the marriage. He regularly cooked for, bathed and fed the children, changed nappies and cared for them while the applicant worked. The information obtained by the Family Advocate supports their finding that there is a good relationship between the respondent and the children.

The legal framework

- [8] Rule 43 regulates the position of spouses and children during the period between the institution of divorce proceedings and their final determination. An order under the Rule is interim and provisional; it does not finally determine the parties' rights and disputed evidence can always be contested at a trial in due course. The Supreme Court of Appeal has recently reaffirmed the essentially interim character of Rule 43 orders and the importance of avoiding piecemeal litigation in relation to them.¹
- [9] Rule 43 expressly empowers a court to make interim orders concerning the care and contact of minor children. Indeed, despite the denial of the court's competence to do so under Rule 43 by the respondent, Courts routinely determine primary residence and contact under the Rule.
- [10] Rule 43, however, must be read together with the concepts of care and contact employed by the Children's Act 38 of 2005 (*"the Children's Act"*). Moreover, any inquiry under Rule 43 regarding care and contact to minor children must take place with the provisions of section 28(2) of the Constitution in mind that stipulate that a child's best interests are of paramount importance in every matter concerning the child. Section 9 of the Children's Act gives legislative expression to the same principle.
- [11] The paramountcy of the children's interests does not mean that the interests of either parent are irrelevant, but it does mean that parental claims must yield where they conflict with the children's safety and welfare. The Court's function is to devise a workable arrangement which protects the children from foreseeable

¹ *B E v N T and Others* (505/2025) [2026] ZASCA 25 (11 March 2026); see also *LJB v CMB* (2025/063958) [2026] ZAGPJHC 742 (24 June 2026).

harm, while preserving, as far as safely possible, their relationship with both parents.

Primary residence and contact

[12] The children have resided primarily with the applicant since the parties separated. The applicant and the children presently live with her parents. The respondent remains in the former matrimonial home. There is no serious suggestion that the children have not been adequately cared for in the applicant's household. They have lived primarily with her since the separation and, given their ages, continuity and stability of the children's environment is important. The children are settled in the applicant's care and she has the benefit of having her parents around to assist her with the day to day care of the children.

[13] In these circumstance, it is appropriate that the children continue to primarily reside with the applicant *pendente lite*.

The respondent's access to the children

[14] The issue of access is complicated by allegations made by the applicant concerning the respondent's use of prohibited substances that resulted in the involvement of the Children's Court, an Order for supervised contact and, ultimately, an investigation by the Office of the Family Advocate.

[15] On 21 January 2026, an Interim Report was submitted to the Court by the Family Advocate that recommended that the plaintiff continues to exercise supervised contact, pending investigation, and that. He undergo a hair-follicle drug test. The respondent failed to attend the initially scheduled hair follicle test on 24 February 2026, but did undergo the required test on 3 March 2026. This test returned a positive result.

[16] Following its investigation, the Family Advocate prepared and filed a further report dated 1 April 2026 that is now before the Court. It materially alters the position that existed when the Rule 43 application was launched. As Upper Guardian of the minor children, it is incumbent upon me to consider the report

and in light thereof, whether the present arrangement regarding access is best protects the children and is in their best interest.

- [17] After the separation, the respondent's contact to the children initially occurred in public places and in the applicant's presence. It later became increasingly restricted by the applicant. The respondent maintains that the applicant has used the substance-use allegation to prevent him and his parents from having a meaningful relationship with the children. He points out that after their separation, the applicant had no difficulty in affording the respondent access to the children; this was at a time when she was aware of his drug use. However, the respondent states that after the applicant engaged the services of attorneys, the applicant started to deny him contact, now under the pretext that he was a drug addict.
- [18] The respondent seeks an order regulating his contact as recommended by the Family Advocate as he states that without an Order, the applicant will restrict his access. The respondent points out that over a fourteen week period the applicant denied him access to the children. He also says that their divorce has become extremely acrimonious and requests that a parental co-ordinator be appointed to regulate any disputes regarding contact.
- [19] Regarding his drug use, the respondent acknowledges that he used CAT on an occasion, although he denies that he was habitually dependent upon drugs. He nevertheless underwent several drug tests and enrolled in a recovery or rehabilitation programme. To support his rehabilitation and his absence of use of drugs, the respondent relies on a negative hair-follicle test obtained in October 2025. He says that, despite supplying these results to the applicant, she continued to restrict him to supervised contact.
- [20] However, sadly for the respondent, in the course of their investigation, the Family Advocate required the respondent to undertake another hair-follicle test in March 2026 that was positive for drug use. The result reflected substance use during a detection period extending backwards for approximately three months to about 3 December 2025. This prompted the Family Advocate to recommend that the respondent's access to the children continue to be supervised until he has demonstrated that over a twelve month period he has passed random drug tests.

- [21] The respondent, however, emphasises that he has had seven negative drug tests and went through a period of rehabilitation. He says that he is prepared to undergo drug tests before he exercises contact with the children if that would enable him to have unsupervised access. If the contact is to be supervised by a social worker from Kidzbuzz, he requests that this take place at the matrimonial home where he resides and not at their offices, which he maintains does not provide a conducive environment for him to exercise contact and maintain a strong relationship with the children.
- [22] The applicant, on the other hand, says she has restricted the respondent's access to the minor children because of his drug use and has been motivated in doing so of concern for the children's safety.
- [23] There is now before me objective evidence supporting the applicant's concern, even if it is not established that the respondent is a drug addict or that he regularly uses drugs. Although the Family advocate reported that the respondent's behaviour was appropriate during the supervised contact session, this does not mean that the risk identified by the Family Advocate may safely be ignored and unsupervised access should be granted. In view of this, I would be remiss in not requiring that the respondent's contact to the minor children be supervised until he can demonstrate his cessation of the use of drugs.
- [24] Moreover, I have been particularly cautious in my approach to unsupervised access at this stage as it became apparent during argument before me that the respondent has a general problem with addiction. It appears from his bank statements that he spends inordinate amounts of money on online gambling. I do not need to have expert evidence presented to appreciate that drug addiction and gambling addiction, as do all sorts of other addictive behaviour go hand in hand.
- [25] My concern is that either the respondent has an addictive personality and has always been drawn to alcohol, drugs and gambling, or, in his earnest attempt to cease his drug use, he has turned to another addiction, namely gambling. Both scenarios are equally troubling and require careful monitoring before unsupervised access should be allowed. But this is not to say that it should never

be allowed; provided the respondent at least keep his drug use under control for an extended period, there is no reason why he should not be permitted to have unsupervised access to the minor children.

[26] It is important to note that despite their concerns, the Family Advocate does not support the complete exclusion of the respondent from the children's lives. On the contrary, the Family Advocate observed that both children were comfortable in his presence and that the respondent interacted appropriately with the children and managed their care effectively during supervised sessions. Indeed, it is reported that L eagerly interacted with the respondent without apparent distress and demonstrated that there was a strong pre-existing bond between him and his the respondent. This is a relationship that the Family Advocate feels should be nurtured and maintained. The Family Advocate also recognised that, because of the children's ages and developmental stage, it was important that their attachment to the respondent should not be allowed to wain through prolonged periods of separation of the respondent from the children and they to him.

[27] The Family Advocate has thus recommended that both parties retain their parental responsibilities and rights, but that the respondent's contact remain supervised and be facilitated by Ms Talita Filmer. This supervised contact regime will only be reconsidered and/or revisited after the respondent demonstrates sustained abstinence by regular and random urine or hair-follicle testing for a period of not less than twelve months. Should he be able to demonstrate this, unsupervised contact will then be granted.

[28] In these circumstances, to my mind, the appropriate course is to adopt the structured and precautionary arrangement proposed by the Family Advocate. It permits the relationship between the respondent and the children to continue, while placing responsibility on the respondent to demonstrate sustained abstinence before unsupervised contact is introduced. He is not being denied access; he is being afforded access, save that that access needs to be supervised until he can demonstrate, by way of regular drug testing, that he has been drug free for a 12 month period. The respondent must bear the cost of the testing and the supervised access arrangements. This is appropriate because the need for these safeguards arises from his substance-use.

[29] However, it is clear that there is a need for a structured contact regime. The evidence suggests that contact has been frustrated by the applicant due to disputes between the parties and by unilateral decisions. This is plainly contrary to the children's best interests. The applicant must realise that the respondent is entitled to regular supervised contact facilitated by Ms Filmer, or another suitably qualified professional agreed upon by the parties.

[30] The applicant's counsel indicated that the applicant has no objection to the respondent exercising supervised contact to the respondent as set out in his tender, save that she does not agree that the Order should include access of his parents to the children's school events as they are not a party to the application.

[31] It needs to be made clear that the applicant may not unreasonably cancel, obstruct or frustrate contact. Where a session is scheduled to allow the respondent to have access to the children but needs to be changed, this must be for a legitimate reason, and before a change is made, the applicant must give reasonable notice and cooperate in arranging a replacement contact session for the respondent.

Maintenance

[32] Maintenance *pendente lite* for a spouse is intended to provide reasonable support during the divorce proceedings. It is not designed to confer a windfall or to determine finally the proprietary consequences of the marriage. The Court must balance the claimant's actual and reasonable needs, the standard of living enjoyed during the marriage and the claimant's ability to maintain herself. With regard to claims for maintenance of children, similar considerations apply including both parties' ability to contribute to the children's maintenance on a *pro rata* basis.

[33] The applicant seeks R25 000 per month maintenance for herself and the minor children without specifying what portion ought to be regarded as spousal maintenance, and how much should be viewed as maintenance for the children. The respondent denies that the applicant is entitled to spousal maintenance as she runs a successful business and tenders R1500 per month maintenance per

child. This he tenders emphasising that he already pays the school and creche fees and medical expenses relating to the minor children.

[34] In deciding maintenance claims, Courts are reliant upon both parties making full and proper financial disclosures.

[35] The applicant says she earns approximately R25 000 per month from her business. The respondent points to deposits reflecting in her business' bank statements which, according to his calculation, average twice that, excluding cash receipts. He indicates that in some months the applicant has earned between R80 000 per month and R100 000 per month.

[36] On the other hand, the respondent insists that his businesses are new and heavily indebted. He claims that of the on average R150 000 income generated by these business, he has loans to repay in the amount of R120 000 per month.

[37] The applicant states that the respondent earns close to R300 000 per month. She also points out that despite his plea of poverty, on the day that she was forced to go to court to obtain an Order that he pay the children's creche and school fees totalling R8000 as well as that he retain them on his medical aid, the respondent spent R16 000 on online gambling. She demonstrated that in a six day period between 20 May 2026 and 16 May 2026, he spent R25 000 on on-line gambling. She maintains that he spends approximately R30 000 per month on gambling.

[38] The applicant has not explained the discrepancy between her stated salary and the amounts deposited into her bank account with sufficient clarity. A self-employed litigant who relies upon a comparatively modest personal income should identify the turnover of the business, its ordinary expenses, the drawings taken by her and any cash income which does not pass through the bank account. Her disclosure falls short of what is expressly required of her in Rule 43 proceedings.

[39] The respondent's disclosure is equally inadequate. He has interests in companies Y and S , while another entity is said to be dormant. He says that his current business is relatively new and that its income is substantially absorbed

by overheads. He owns no immovable property or investments and his motor vehicle is said to be worth less than the amount outstanding under its finance agreement.

[40] Counsel for both parties spent considerable time taking me through the discrepancies between the income and stated expenses of the other party which I do not feel necessary to recount in this judgment. Suffice to say that I am satisfied that whatever maintenance the applicant and the children reasonably need the respondent can afford to pay, at least *pendente lite*.

[41] That being said, I am not convinced that the applicant is in need of spousal maintenance. She claims that she is obliged to pay rental and other expenses to her parents but provides no proof of this. She has said she would like to leave her parents and live in a rented house with the children. She postulates her requiring R50 000 per month to afford this, and on the basis of her stated earnings of R25 000 per month she requires the respondent to make up the shortfall of R25 000 by way of maintenance for herself and the minor children.

[42] The applicant's claim for a single undifferentiated amount of R25 000 for herself and the children makes it difficult to identify the precise amount said to be required for her and by each child. That being said, I do not think that this is an appropriate case for spousal maintenance. The applicant has her own business and during the marriage contributed to the parties' joint household expenses. It is not necessary that the applicant now move out of her parent's home pending the outcome of the divorce proceedings when the financial consequences of their marriage will be determined. This may require that the parties sell the matrimonial home and divide the proceeds between them.

[43] The applicant has also, according to the respondent, removed almost all of the furniture and household effects from the matrimonial home that she spends thousands a month keeping in storage. She could have easily left these items in the matrimonial home until she had found alternative accommodation. It thus appears to be premature to require the respondent finance the cost of another home for the applicant and the children when she is able to reside with her parents. If she can afford to pay rental of a residence for her and the children,

she has the financial ability to do this. The question then becomes how much of that rental, lights, water and electricity can one attribute to the minor children.

- [44] It is also trite that both parties are obliged to maintain their children according to their means. Thus, the total amount of the portion of the expenses that should be attributed to the children need not be born solely by the respondent and the applicant also needs to pay towards these expenses. These costs should be apportioned on a 70:30 basis having regard to their respective earnings.
- [45] The respondent has tendered to contribute R1 500 per child per month in cash maintenance and tenders to pay their school and creche fees and to retain the children on his medical aid and share the uncovered medical expenses. This is not sufficient. The respondent also says that he supplies nappies, formula, wipes and other necessities that on average represents a value exceeding R3 000 per month. There is no reason why this amount cannot be provided to the applicant in cash for her to purchase these items.
- [46] Having regard to the children's ages, the direct expenses tendered and the uncertain financial evidence on both sides, I consider a cash contribution of R5 000 per child per month to be fair. This is in addition to the respondent's payment of the children's creche or nursery-school fees and their continued medical cover.
- [47] The uncovered medical expenses should not be divided equally. The respondent's financial resources appear, notwithstanding their uncertainty, to be greater than the applicant's personal drawings from the business. A division of 70 per cent of these expenses to the respondent and 30 per cent to the applicant is appropriate, provided the expense is reasonably incurred and supported by proof of occurrence.
- [48] The cost for transport, extra lessons and extramural activities needs to be carefully evaluated, particularly in view of the ages of the children. I cannot see why children of such tender age should need extra lessons. They also seem very young for extra-mural activities beyond their creche or nursery school experiences.

[49] I thus feel that it would be fair were the costs for the associated expenses be confined to the expenses actually currently incurred and that further expenses related to extra lessons, extra-mural activities and transport should not be incurred without the consent of the respondent. It would be inappropriate for me to make an unrestricted order obliging the respondent to pay every expense unilaterally incurred under broad headings such as transport, extra lessons and extramural activities for the minor children.

Rehabilitative maintenance

[50] The applicant further seeks R150 000 as “*rehabilitative maintenance*”. She contends that the amount is required to enable her to replace household contents or establish a separate household.

[51] However, rehabilitative maintenance ordinarily refers to maintenance awarded after divorce for a limited period to enable a spouse who has not worked for several years as she has been looking after the parties’ children to become economically self-sufficient. It is conceptually distinct from *maintenance pendente lite*. An unparticularised lump-sum to an amount to enable the applicant to move out of her parent’s house and furnish one of her own is not a claim rehabilitative maintenance.

[52] But it has been recognised that an interim order concerning essential household effects may be competent under Rule 43 where necessary for the care and welfare of the minor children.²

[53] However, there appears to be no reason why the applicant cannot continue to reside with her parents *pendent lite*. Once the parties are divorced, the matrimonial home can be sold and the proceeds divided. That is the appropriate time to provide the applicant with a capital amount for furniture, should this prove necessary and it be established that the respondent can afford it. This is particularly so as the respondent alleges that the applicant removed most of the household contents when she left the matrimonial home.

² *AWF v KSR* (2024/052216) [2025] ZAGPPHC 890 (6 August 2025)

[54] The claim for R150 000 is therefore neither properly characterised nor sufficiently substantiated and must be refused at this stage of the parties' divorce proceedings.

Contribution towards costs

[55] A contribution towards costs is an incident of the reciprocal duty of support. Its object, understood in the light of the constitutional rights to equality and access to courts, is to ensure a reasonable equality of arms in the divorce litigation. It is not an order for payment of all costs incurred or anticipated.

[56] The applicant must establish that she lacks sufficient means to present her case adequately and that the respondent has the ability to contribute. The scale upon which the respondent litigates, the complexity of the divorce, the work reasonably required and the resources available to each party are relevant considerations.

[57] The applicant seeks an initial contribution of R300 000 and relies upon a *pro forma* bill from her attorney as to what he anticipates will be required should he be obliged to litigate a contested divorce on behalf of the applicant. The applicant alleges that she has borrowed money from family members to pay to her attorneys. The applicant's counsel argued that should the divorce be settled earlier than anticipated, the amount not reasonably required up until that point can be refunded.

[58] In reply, the applicant's counsel informed me that the applicant is pays R5000 per month in legal fees to her attorney and is currently in arrears to the tune of R80 000. However, a contribution towards costs is not supposed to be a means to enforce payment of arrear legal fees; it is solely forward looking. The respondent complains that the applicant is unnecessarily litigious and is wasting money on legal fees. He points to the urgent application brought by the applicant when the children plainly remained on his medical aid and he had already entered into a payment arrangement with the school to pay the outstanding school fees.

[59] The respondent's ability to pay a contribution towards costs in the amount of R300 000 has also not been demonstrated. He says that his brother has assisted

with his own legal expenses, that his businesses are relatively new, and that he has no immovable property, savings or investments. While his disclosure is not beyond criticism, the evidence does not reveal readily accessible capital from which such a substantial payment can be made.

[60] In the circumstances, I am not prepared at this stage to award an amount greater than R60 000 to the applicant as a contribution towards costs.

[61] This does not prevent the applicant, should materially clearer financial evidence become available or circumstances change, from seeking a further contribution under Rule 43(6).

Costs

[62] Rule 43 proceedings arise from the subsisting matrimonial relationship and concern interim arrangements. Both parties have achieved a measure of success. The applicant succeeds in preserving the children's primary residence with her and in obtaining supervised contact and maintenance. The respondent succeeds in resisting the claims for spousal maintenance, the R150 000 lump sum and the R300 000 costs contribution.

[63] In these circumstances, there is no reason to depart from the ordinary approach that the costs of the Rule 43 application be costs in the divorce action.

[64] I accordingly make an Order as follows:

Order

Pending the final determination of the divorce action between the parties:

1. The parties shall retain their full parental responsibilities and rights in respect of the minor children.
2. The primary residence of the minor children shall vest with the applicant.
3. The respondent shall exercise supervised contact with the minor children, which contact shall:
 - 3.1 be facilitated by Ms Talita Filmer, or another suitably qualified professional agreed upon by the parties (*"the facilitator"*);

- 3.2 occur regularly at such times and places as the facilitator considers appropriate, having regard to the children's ages, routines and best interests; and
 - 3.3 be progressively reviewed by the facilitator.
4. By consent between the parties, the respondent shall exercise supervised contact to the minor children as follows:
 - 4.1 Every Wednesday or Thursday for a period of 3 hours;
 - 4.2. Every alternative Saturday and Sunday for a period of 4 hours on each day;
 - 4.3 Every day at 18h:00 hours by way of mobile, video call or other virtual devices;
 - 4.4 On the minor children's birthdays for a period of 4 hours;
 - 4.5 On the respondent birthday for a period of 4 hours;
 - 4.6. On Christmas Day for a period of 4 hours; and
 - 4.7 On New Year's Day for a period of 4 hours.
5. The respondent's access set out in paragraph 4 above shall occur at such times and places as the facilitator considers appropriate having regard to the children's best interests.
6. The applicant shall not unreasonably obstruct, frustrate or cancel contact arranged in terms of paragraph 4.
7. The respondent shall be entitled to attend any school events at the minor children's school or creche and make contact with same in order to obtain copies of any reports or school records.
8. Unsupervised contact may be introduced on the written recommendation of the facilitator or another suitably qualified professional after the respondent has:
 - 8.1 demonstrated sustained abstinence from illicit substances and non-prescribed medication for a period of not less than twelve months;
 - 8.2. submitted to regular and random urine and/or hair-follicle testing during that period; and
 - 8.3 complied with any reasonable therapeutic or rehabilitative recommendations made by the facilitator.
9. The respondent shall bear the reasonable costs of:

- 9.1 the testing referred to in paragraph 5; and
- 9.2 the supervision and phasing-in of his contact.
10. The respondent shall pay maintenance for the minor children pendente lite in the amount of R5 000 per child per month, without deduction or set-off, into an account nominated by the applicant. The first payment shall be made within one week of this Order and thereafter on the first day of each successive month.
11. The maintenance payable in terms of paragraph 10 shall increase annually on the anniversary of this order in accordance with the percentage change in the headline Consumer Price Index for the preceding twelve months.
12. The respondent shall, in addition:
- 12.1 pay the minor children's creche or nursery-school fees directly to the institution concerned;
- 12.2 retain the minor children as dependants on his present medical aid or on a medical aid providing substantially equivalent cover; and
- 12.3 pay 70 per cent of all reasonable medical, dental, pharmaceutical, hospital, therapeutic and related expenses not covered by the medical aid, upon presentation of proof thereof.
13. The applicant shall consult the respondent before incurring further educational or extra mural costs relating to the minor children other than those presently being incurred as at the date of this Order, without first consulting with and obtaining the consent of the respondent.
14. The applicant shall consult with the respondent before incurring any extraordinary medical expenses in respect of which a contribution is sought
15. The applicant's claim for spousal maintenance is dismissed.
16. The applicant's claim for R150 000 described as rehabilitative maintenance is dismissed.
17. The respondent is ordered to make a R60 000 contribution towards the applicant's legal costs.
18. The costs of the Rule 43 application shall be costs in the divorce action.

WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:

Adv. D.J.Coetzee
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For the Respondent:

Adv. J.C. Bornman instructed by SKV
Attorneys Incorporated

Date of the hearing: 22 July 2026

Date of the judgment: 26 August 2026