

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

Case Number: 2026-170194

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

DATE

SIGNATURE

In the matter between:

L[...] S[...] P[...]

Applicant

and

R[...] S[...] P[...]

Respondent

JUDGMENT

NDLOKOVANE, AJ

Introduction

[1] This matter comes before me on the urgent family court roll for the week of 27 July 2026. It concerns two competing applications arising from a divorce action that has been pending since 2014—a period now exceeding twelve years. The Plaintiff/Applicant, Mrs L[...] P[...], seeks a further contribution towards her legal costs in terms of Rule 43(6) of the Uniform Rules of Court, to enable her to prepare for and run the trial scheduled for 31 August 2026. The Defendant/Respondent, Mr R[...] P[...], opposes the application and brings a counter-application seeking maintenance pendente lite and a contribution towards his own trial costs, together with various ancillary forms of relief.

- [2] At the heart of this matter lies the question whether the Applicant has demonstrated that she lacks the means to fund the impending trial and whether the Respondent has the financial ability to contribute towards her costs. The counter-application raises the further question whether the Respondent, who appears on the papers to be the wealthier of the two spouses, can plausibly claim maintenance from the Applicant.

Background

- [3] The parties were married. The divorce action was instituted in January 2014. The matter has been set down for trial on multiple occasions: first on 8 March 2018 (postponed sine die), again on 31 January 2020 (postponed by agreement due to the Respondent's bicycle accident), and again on 20 November 2023 (postponed due to the Respondent's failure to comply with a Rule 43(6) order granted in contemplation of that trial). The current trial date is 31 August 2026.
- [4] This litigation has been protracted and acrimonious. There have been three previous Rule 43 applications and two urgent applications. The most significant order was granted by Windell J on 1 March 2018, attaching the proceeds of the Respondent's pension fund. At that time, the fund stood at approximately R12 million, although the Respondent had already made withdrawals.
- [5] On 9 November 2023, Acting Justice Thupaatlatshe granted an order (Annexure "FA2") requiring the Respondent to make a contribution towards the Applicant's legal costs. The Respondent has not complied with this order. The Applicant contends that the funds she received in terms of that order have been consumed by further interlocutory litigation necessitated by the Respondent's conduct, leaving her without the means to prepare for the trial now set down.

The Applicant's Case

- [6] The Applicant's founding affidavit sets out her position in considerable detail. She is an adult female, the Plaintiff in the divorce action, and the Applicant in

these proceedings. She brings this application in terms of Rule 43(6), which has become necessary by virtue of the Respondent's failure, refusal, or neglect to provide her with a contribution to her legal costs in respect of the divorce action.

- [7] The Applicant avers that she is entitled, to the extent possible, to be placed on an equal footing with the Respondent for purposes of funding, pursuing, and finalising the divorce action. This is the principle of "equality of arms" that underpins Rule 43(6) applications, a principle well-established in our jurisprudence.
- [8] The Applicant's financial position is dire. She deposes that she has no assets that she can utilise to fund this litigation; she has even had to sell her engagement ring to make ends meet. She lives with her two minor children in Durban, having lived with her parents until their recent deaths. She faces eviction proceedings because the monthly bond instalments on her parents' home have not been met due to the delay in the winding up of their estates and her own inability to pay the bond instalments.
- [9] The Applicant's average monthly earnings are set out in Annexure "FA17" to her founding affidavit. Her monthly expenditure on herself and the two children is detailed at paragraphs 35 to 36 of the affidavit: she calculates her total average monthly expenditure as R65,495.14. This includes the R3,000 per month maintenance that the Respondent was ordered to pay for the children, but which he has not paid for three years.
- [10] The Applicant has compiled a comprehensive schedule of expenditure on the minor children from November 2023 to May 2026, totalling R1,575,977.05. This includes school fees, medical aid, clothing, groceries, extracurricular activities, and various other expenses. This expenditure has been borne by the Applicant alone, without any contribution from the Respondent despite the existing maintenance order.
- [11] The Applicant argues that the Respondent has significant undisclosed assets and income. She points to:

- a. Unexplained deposits totalling R5,910,750 into his Standard Bank account between 20 January 2020 and 31 December 2022;
- b. An undisclosed annuity payment of R47,641.03;
- c. A R1 million credit on 29 November 2022;
- d. Cash deposits of R99,900 on 28 August 2023 and R40,000 on 2 October 2023;
- e. A Body 20 franchise allegedly bought for his girlfriend Ms W, which he initially denied owning;
- f. A shareholders' loan of R3,453,000 as at 28 February 2018;
- g. Inheritance from his late mother's estate (he is a one-third heir);
- h. A property in the United Kingdom at 2[...] O[...] S[...] Drive, H[...], North Lincolnshire;
- i. A watch collection and a flat in Cape Town.

[12] The Applicant also highlights the Respondent's failure to make full disclosure in response to her Rule 35(3) notice. Only a partial response has been received. This, the Applicant contends, has exacerbated the difficulty of calculating the accrual—the central issue in the forthcoming trial.

[13] The Applicant seeks an order for a contribution towards her legal costs. The amount sought is set out in the Notice of Motion. She argues that this amount is both affordable by the Respondent and justified in the circumstances, given the complexity of the matter, the need for expert evidence on the accrual calculation, and the Respondent's failure to make full disclosure.

The Respondent's Case And Counter-Application

[14] The Respondent has filed a Notice of Motion in which he seeks a range of reliefs. He applies for condonation of his non-compliance with the time periods

stipulated in the Applicant's Notice of Motion, alternatively with Rule 43(3)(a). He also seeks leave to deliver a supplementary affidavit confined to certain specified matters.

[15] The Respondent applies for the Applicant's Rule 43(6) application to be struck from the roll for want of urgency, alternatively to be dismissed with costs on the attorney-and-client scale.

[16] In addition, the Respondent brings a counter-application seeking:

- a. An order that the Applicant pay maintenance pendente lite to the Respondent in the sum of R30,000 per month, with effect from 1 August 2026;
- b. An order that the Applicant pay a contribution towards the Respondent's costs of the trial in the sum of R179,600;
- c. Alternatively, that the amounts ordered be paid out of the funds attached and held in trust in terms of the Windell J order of 1 March 2018;
- d. That the admitted arrear maintenance of R96,000 (being 32 months at R3,000 per month, December 2023 to July 2026) be paid to the Applicant out of the attached funds for the benefit of the minor children;
- e. That each payment be brought to account in the determination of the accrual at the trial.

[17] The Respondent appears to contend that the Applicant's application is not urgent, that she has not demonstrated a material change in her circumstances, and that she has not provided a sufficiently detailed bill of costs to justify the amount claimed.

[18] Rule 43(1)(b) provides that a spouse may seek relief from the court in respect of a contribution towards the costs of a matrimonial action, pending or about to be instituted. Rule 43(6) permits the court, on the same procedure, to vary its decision in the event of a material change occurring in the circumstances of

either party or a child, or where the contribution towards costs proves inadequate.

The Legal Framework

[19] The Respondent's claim for maintenance and a contribution to his costs is surprising, given that the papers indicate that the Applicant has no assets and is facing eviction, while the Respondent has had access to substantial funds and has a frozen pension fund running in the millions. However, I will consider the counter-application on its merits, as I am required to do.

[20] The purpose of a contribution towards legal costs is to ensure that a spouse who is less financially advantaged is able to adequately present his or her case before the court. The quantum of the contribution lies within the discretion of the presiding judge, guided by the object of ensuring that the spouse seeking the contribution will be able to present their case adequately.

[21] In *Van Rippen v Van Rippen*,¹ Ogilvie Thompson J articulated the guiding principle as follows:

"(T)he Court should, I think, have the dominant object in view that, having regard to the circumstances of the case, the financial position of the parties, and the particular issues involved, the wife must be enabled to present her case adequately before court."

[22] This guideline has been elaborated in more recent cases. In *H.E.D v D.D.*,² Kumalo J observed:

"[42] This formulation neatly encapsulates the twin criteria of reasonable needs and financial means which feature in the test for ordinary maintenance. When assessing a spouse's reasonable litigation needs, a court will have regard to what is involved in the case, the scale on which the parties are litigating or intend to litigate, and the parties' respective means."

¹1949 (4) SA 634 (C).

²*H.E.D. v D.D.* (2022/14582) [2025] ZAGPJHC 465 (13 May 2025).

[23] When assessing a spouse's reasonable litigation needs, the court has regard to what is involved in the case, the scale on which the parties are litigating or intend to litigate, and the parties' respective means. The legal rules relating to the reciprocal duty of support between spouses are gender-neutral, so that an indigent husband may claim support from an affluent wife . However, the reality must be acknowledged that, given traditional child-care roles and the wealth disparity between men and women, it has normally been women who have had to approach the courts for a contribution towards costs in divorce litigation.

[24] Rule 43(5) empowers the court to "hear such evidence as it considers necessary and may dismiss the application or make such order as it deems fit to ensure a just and expeditious decision." This broad discretion must be exercised judicially, with due regard to the constitutional imperative of ensuring access to justice.

Issues for Determination

[25] The following issues arise for determination:

- a. Whether the Applicant's Rule 43(6) application is urgent;
- b. Whether the Applicant has established a need for a further contribution towards costs;
- c. Whether the Respondent has the means to pay such contribution;
- d. Whether the Respondent is entitled to maintenance pendente lite and a contribution towards his costs;
- e. What costs order is appropriate.

Urgency

[26] The Respondent applies for the Applicant's application to be struck from the roll for want of urgency. I do not find this objection persuasive.

[27] The trial is scheduled to commence on 31 August 2026—a date now less than five weeks away. The Applicant states that without a contribution, she will not

be able to prepare for trial with her legal team, and that she would suffer incalculable prejudice if forced to represent herself in what is not a straightforward matter.

[28] The Applicant's attorneys are not prepared to operate on risk and to assume liability for counsel's fees in terms of trial preparation and the first day trial fee. This is a realistic position: attorneys are not obliged to fund litigation on behalf of impecunious clients. Without a contribution, the Applicant will be unable to secure legal representation for the trial. This constitutes irreparable harm.

[29] The fact that the matter has been pending for over twelve years and has been postponed on multiple occasions—at least one of which was due to the Respondent's conduct—also militates in favour of urgency. The Applicant has been waiting for a trial date for over a decade. The prejudice to her if the matter is further delayed is significant.

[30] I am accordingly satisfied that the matter is urgent. The Applicant has demonstrated that she will suffer irreparable harm if the relief is not granted before the ordinary court roll can hear the matter. The Respondent's application to strike the matter from the roll for want of urgency is dismissed.

The Applicant's Need For A Contribution

[31] The Applicant's financial position is set out in detail in her founding affidavit. She has no assets. She has sold her engagement ring to make ends meet. She faces eviction proceedings. She has spent over R1.5 million on the minor children since November 2023 without any contribution from the Respondent. She cannot afford to pay her legal team for trial preparation and the first day of trial.

[32] The Applicant has provided a detailed schedule of her monthly expenditure and her earnings. She has also provided a pro forma bill of costs (Annexure "FA1" and "FA9"). In my view, she has made full and frank disclosure of her financial position, as she is required to do.

[33] The Respondent, by contrast, has not made full disclosure. The Applicant has raised serious allegations of non-disclosure: unexplained deposits of millions of rands, hidden assets (the Body 20 franchise, the UK property, the watch collection, the Cape Town flat), and a failure to disclose the full extent of his inheritance from his late mother's estate. The Respondent's financial position is opaque, and this opacity appears to be deliberate.

The Respondent's Means

[34] The Applicant is clearly the less financially advantaged spouse. She is effectively impecunious. She cannot fund the litigation herself. She is entitled, in terms of the principle of equality of arms, to a contribution towards her costs to enable her to present her case adequately.

[35] The Respondent's means are disputed. The Respondent professes to be unemployed and claims his only source of income is rental. However, the Applicant has raised compelling evidence that the Respondent has received substantial funds in the recent past.

[36] The Respondent's bank statements, as analysed by the Applicant, show unexplained deposits totalling over R5.9 million between 2020 and 2022. He has received inheritance from his late mother's estate. He has a Body 20 franchise. He has a property in the UK. He has a flat in Cape Town. He has a watch collection. He lent R2.9 million to his girlfriend Ms Weiss, interest-free, without adequately explaining the source of those funds. He spent R47,200 at Pandora jewellery, R15,999 at Hugo Boss, R7,600 at Freddy SA, R90,000 to Mike Designs Jewellery, and R80,000 for a diamond—all while claiming to be impecunious.

[37] These lavish expenditures are inconsistent with a state of impecuniosity. The Respondent appears to have access to substantial funds, the source of which he has not adequately explained. The inference is that he is concealing assets and income, and that his claim of poverty is a fabrication.

[38] In any event, even if the Respondent does not have ready cash, he has a frozen pension fund of approximately R12 million. The court may have regard

to assets as well as income when determining a party's ability to pay. It is not a sufficient answer for a party to say "I have no cash" when they have assets that can be liquidated or utilised.

[39] I am satisfied that the Respondent has the means to pay a contribution towards the Applicant's costs. The question is the quantum.

Quantum Of The Contribution

[40] The Applicant seeks a contribution to cover the costs of trial preparation and the first day of trial. She has provided a pro forma bill of costs in Annexure "FA1". The amount sought is specified in the Notice of Motion.

[41] The quantum of a contribution lies within the discretion of the court. The court must have regard to what is involved in the case, the scale on which the parties are litigating or intend to litigate, and the parties' respective means.

[42] This is a complex matter. The accrual calculation is the central issue. The parties have been married for a long time and their financial affairs are interwoven. The Respondent has not made full disclosure, which will necessitate forensic investigation. The trial is set down for a substantial period. Senior counsel will be required.

[43] The Respondent has also been litigating "above the level of the Applicant". He has been represented throughout the litigation by counsel. He has appointed a chartered accountant to perform a calculation of the accrual. In order to ensure a reasonable degree of equality in the litigation, the Applicant ought to be able to appoint her own expert to perform the same calculation, if necessary. It is not acceptable for the Respondent to deploy expert resources and deny the Applicant the means to do the same.

[44] The Applicant has previously been granted a contribution in terms of the 9 November 2023 order. However, the contribution towards costs has proven inadequate: those funds have been consumed by further interlocutory litigation, much of it necessitated by the Respondent's conduct. This is precisely the

situation envisaged by Rule 43(6), which permits a variation where the contribution towards costs proves inadequate.

[45] I have considered the amount sought by the Applicant, the complexity of the matter, the scale on which the Respondent is litigating, and the Applicant's reasonable litigation needs. In my view, a contribution in the amount of (Six Hundred and Seventy Thousand and Twenty-One Rand and Ninety-Eight Cents is reasonable and just in the circumstances.

The Respondent's Counter-Application

[46] The Respondent seeks maintenance pendente lite from the Applicant of R30,000 per month, and a contribution towards his trial costs of R179,600. I find these claims to be without merit.

[47] The Respondent appears to be the wealthier of the two spouses. He has received substantial funds in recent years, has a frozen pension fund, and owns various assets. The Applicant, by contrast, has no assets, is facing eviction, and has sold her engagement ring to make ends meet. The Respondent's claim for maintenance from the Applicant is implausible on the papers before me.

[48] The Respondent's claim for a contribution towards his costs is equally without merit. A contribution is designed to place the less financially advantaged spouse on an equal footing. The Respondent is not the less financially advantaged spouse; indeed, the Applicant's evidence suggests the reverse is true.

[49] The Respondent's counter-application appears to be a tactical response to the Applicant's application rather than a genuine claim for relief. It is dismissed.

Costs

[50] The Applicant seeks the costs of this application on the scale as between attorney and client. The Respondent seeks an order that the Applicant pay the costs of his counter-application on the same scale.

[51] The general principle in Rule 43 applications is that costs are costs in the cause of the divorce action. However, the court has a discretion to depart from this rule where one party has been unreasonable or has conducted the litigation in a manner that increases costs unnecessarily.

[52] In the present case, the Respondent has failed to comply with the 9 November 2023 order. He has not made full disclosure of his financial position. He has raised technical objections that appear to be designed to delay the matter. He has brought a counter-application that is without merit.

[53] In my view, the Respondent's conduct warrants a punitive costs order. The Applicant was entitled to bring this application, and the Respondent's opposition has been unreasonable. I will order that the Respondent pay the costs of the Applicant's application on the scale as between attorney and client, and that the Respondent pay the costs of his counter-application on the same scale.

Order

[54] In the premises, I make the following order:

1. The Applicant/Plaintiff's non-compliance with the forms and time periods prescribed by the Uniform Rules of Court is hereby condoned, and the matter is heard as one of urgency.
2. The Respondent/Defendant is ordered to pay to the Plaintiff a contribution towards her costs of the trial of the divorce action in the sum of (Six Hundred and Seventy Thousand and Twenty-One Rand and Ninety-Eight Cents).
3. The said contribution shall be paid into the trust account of the Plaintiff's attorneys of record.

4. In the event of the Defendant failing to make payment as provided for in paragraph 3 above, the Plaintiff shall be entitled to:
 - 4.2 issue a writ of execution against the Defendant's movable assets; and/or
 - 4.2 apply to Court on the same papers, duly supplemented, for an order striking out the Defendant's Plea and Counterclaim, alternatively for such other relief as may be appropriate.
5. The Defendant's counterapplication for an order releasing funds from the assets attached in terms of the Order of Windell J dated 1 March 2018 under case number 2014/2941 is hereby dismissed.
6. The Defendant's counter-application for maintenance and a contribution towards his costs is hereby dismissed.
7. The Defendant shall pay the costs of the Plaintiff's Rule 43(6) application on the scale as between attorney and client.
8. The Defendant shall pay the costs of his counter-application on the scale as between attorney and client.
9. Such costs shall include the costs of counsel.

N NDLOKOVANE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Appellants	: Adv M Nowitz
Instructed	: Hirschowitz Flionis Attorneys
For the Respondent	: Adv G Olwagen-Meyer
Instructed	: Cummings Attorneys
Date of hearing	: 28 July 2026
Date of Judgement	: 01 September 2026