

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number. 49275/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE 28 August 2026

SIGNATURE

In the matter between:

A[...] **S[...]**

Applicant

and

C[...] **H[...]** **P[...]** **S[...]**

Respondent

Delivered: This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for hand down is deemed to be on 28 August 2026.

JUDGMENT

MKHABELA

J

Introduction

[1] This is an application brought in terms of Rule 43 of the Uniform Rules of Court. It is common cause that the parties are in an acrimonious divorce that is still pending before the very same Court.

[2] For convenience I will refer to the applicant as the mother, the respondent as the father, and collectively as the parties.. The parties have been married to each other since 1 May 2016 at Centurion.

[3] There are three children born out of the marriage and all the children are still minors.

[4] In the particulars of claim, the mother as the plaintiff alleges that it would be in the best interests of the minor children that the parental rights and responsibilities as provided for in section 18(2)(a)-(d) of the Children's Act,¹ vest jointly in the parties.

[5] Moreover, the mother avers in her particulars of claim that it is in the minor children's best interests that their primary residence be with her, subject to them having reasonable contact with the father.

History of the matter

[6] It is common cause that the application before me is predicated on Rule 43 of the Uniform Rules of Court, mainly for interim care, contact and maintenance pending the finalisation of the divorce proceedings.

[7] The relevant history is that on 14 March 2022, the Honourable Moorcroft AJ granted an interim order regulating care and contact pending the divorce proceedings. In terms of that order, the primary residence was directed to be with the father. However, the father voluntarily agreed that the children could reside with

¹ 38 of 2005.

their mother and that the father should be allowed access to the children on alternative weekends which included sleepovers.

Current relief sought by the mother

[8] The mother seeks an interim order that primary care of the minor children be vested in her, furthermore, that the father be allowed contact with the minor children for four hours. In particular, the mother does not want the minor children to sleepover at their father's home; which is the matrimonial home.

[9] The ground for the mother to refuse overnight visits by the father is essentially that she fears for the safety of the minor children since the father was found guilty of common assault of one of the minor children.

[10] The mother further seeks the appointment of a parental coordinator that should be paid by the father.

[11] In addition, the mother seeks, *inter alia*, interim spousal maintenance, maintenance of the three minor children and a contribution to her legal fees.

[12] On the other hand, the father is opposed to paying the mother any spousal maintenance and contribution toward her legal cost. The refusal to pay any spousal maintenance and contribution towards the mother's legal costs is premised on the incontrovertible assertion that she is currently in a romantic relationship with her boyfriend and is also intending to migrate to Bloemfontein with him.

[13] Three issues arise for determination. The first is whether the mother is justified in refusing to allow the father to have sleepover visits with his minor children.. The second is whether the mother should be paid any spousal maintenance and a contribution towards her legal costs. The third is whether the father should be ordered to pay any interim maintenance of his minor children and the determination of the quantum thereof.

Overnight visits by the minor children at their father's residence.

[14] The fact that the father has been convicted on common assault for administering corporal punishment on one of the minor children is not a sufficient condition to deny him his rights to have the minor children staying overnight.

[15] This Court has carefully read the sentence; it provides for a lengthy suspended sentence. This means that the father can go to jail if he were to assault any of his minor children again before the expiry of the suspended sentence.

[16] The suspended sentence concomitant with the fact that the father pleaded guilty constitutes a chilling effect on the father to administer any further corporal punishment on any of the minor children. There is therefore no logical basis to deny the father his right to have overnight visits by his minor children simply because he has previously administered corporal punishment on one of the minor children.

Spousal maintenance and a contribution towards the mother's legal costs

[17] The father's reasons for not paying interim maintenance for the mother is that she has moved on with her love life and is currently in a romantic relationship with another man. Counsel for the father referred me to relevant authority to the effect that it is against public policy for a woman to be supported by two men at the same time. This principle was enunciated at paragraph 10 in *SP v HP (SP v HP)*².

[18] The mother admits that she is in a relationship with her new boyfriend but denies that he is supporting her. I do not accept her denial. On her own version, the mother was at some stage contemplating to move to Bloemfontein with her boyfriend and to commence employment in a company owned by the boyfriend's father.

[19] In the view of this Court, the dictum in *SP v HP* is applicable on the facts of this case. The contribution towards legal costs stands on a different footing. It is trite that the primary purpose is to level the playing field so that the parties can litigate on an equal footing.

²2009 (6) 223 (O) at para 10.

[20] This Court is alive to the fact that the parties are married out of community of property. However, it appears that the father is the one who has always supported the family and that the mother does not appear to be a person of means when compared to the father.

[21] Accordingly, despite the father's unwillingness to contribute towards the legal costs of the mother, this Court is of the view that a certain contribution should be made. The devil is in the reasonable amount that the father should make. The father has indicated that his business is not doing well.

[22] It is difficult, if not impossible, given the nature of such proceedings to establish conclusively any factual findings. The mother denies that the father's business is insolvent as alleged. In deciding an appropriate amount for the contribution of the legal costs, the Court is going to assume that the father's business is financially viable to enable the payment of the amount the Court intends to order.

Maintenance of the minor children by their father

[23] Counsel for the father informed the Court that the father is not opposed to the mother continuing to have primary residence of the minor children subject to him having reasonable overnight visits, and not visits that are restricted to four hours as per the mother wishes.

[24] The father cannot have his cake and still eat it. If he wishes to have the children sleepover for approximately three nights in alternate weeks, it means that the children will be spending more time with their mother. Accordingly, the need for an interim maintenance order becomes necessary.

[25] It is against these reasons that the Court is inclined to grant the order that the respondent should pay a contribution of R 6 000.00 towards the legal cost of the applicant. This amount should be paid in three months.

[26] Furthermore, given the fact that the father is paying the children's school fees and their medical aid, it would be fair and reasonable for the father to buy groceries in the amount not less than R 6 000.00 per month and retain the relevant receipts when doing so in order to avoid any future disputes about the amount spent.

[27] Order

1. The respondent is ordered to make a payment of R 6 000.00 as a contribution towards the applicant's legal cost. Such payment is to be paid in three consecutive months commencing at the end of October 2026 as the first month;
2. The respondent is also ordered to buy groceries of his three minor children every month in the amount that is not less than R 6 000.00 per month;
3. Both parties retain full parental responsibilities and rights pertaining to the care and guardianship of the following minor children: M[...] S[...], born 23 September 2014, C[...] H[...] P[...] S[...], born 14 May 2017, C[...] S[...], born 29 August 2019;
4. Subject to what is stated in prayer 5 below, primary residence of the minor children will continue to vest with the applicant;
5. The respondent is entitled to the following rights of contact as contemplated in section 18(2)(b) of the Children's Act:
 - a. Contact with removal rights every alternate weekend from Thursday at 17:00 to Sunday at 17:00 (three-night sleepover).
 - b. Contact with removal rights on every alternate public holiday not mentioned elsewhere herein, provided that any public holiday (or incidental school holiday) that falls on day directly before or after a normal contact weekend shall be treated as part of the same contact weekend.
 - c. Electronic contact, either by telephone call, videocall, Teams call (or other similar platform) every Tuesday and every Thursday that is not a sleepover day, between 18:30 and 19:00. The applicant shall have the same contact when the children are in the respondent's care.

- d. Electronic contact, either by telephone call, videocall, or Teams call (or other similar platform) every Sunday that is not a contact weekend, between 18:30 and 19:00. The applicant shall have the same contact when the children are in the respondent's care.
 - e. Contact with removal rights each alternate, rotating short school holiday.
 - f. Contact with removal rights for 50% of each long school holidays exercised in such a way that Christmas and New Year rotates between the applicant and the respondent.
 - g. Contact with removal rights on Father's Day - irrespective of the usual rotation schedule. This means that even if Father's Day falls on a weekend when the applicant would have had the minor children, they will spend the day and the previous night with the respondent. The same applies to Mother's Day and the applicant will be entitled to the same contact with the minor children.
 - h. Contact with removal rights on the respondent's birthday for a period of at least four hours, where same is practical, and irrespective of the normal rotation schedule. The same applies to the applicant's birthday and the applicant will be entitled to the same contact with the minor children.
 - i. Contact with removal rights on each alternative birthday of the minor children, or alternatively, a four-hour portion of any birthday of the minor children, where such an arrangement is practicable and irrespective of the normal rotation schedule.
- 6. The respondent will continue to pay the minor children's school fees directly to the service provider.
 - 7. The respondent will retain the minor children as minor dependents on his current medical aid scheme, or a medical aid scheme with similar or equal benefits.
 - 8. The respondent will continue to pay all reasonable shortfalls of the medical expenses of the minor children not covered by the medical aid scheme.

9. The applicant will retain the use of the Volkswagen Polo, and she will be liable for the costs contingent to maintenance of the vehicle. Respondent will be liable for the licencing fees for said vehicle.
10. The applicant and respondent shall submit themselves for full psychiatric and psychological evaluation within three months of this order. Each party is liable for his and/or her own costs in relation to same.
11. The applicant and respondent shall thereafter submit their respective psychiatric evaluations to the Family Advocate for consideration and incorporation in future recommendations by the Family Advocate.
12. The applicant and the respondent shall undergo joint and separate parent counselling and co-parenting guidance with a recognised service provider at FAMSA and will supply certificates of completion of same to the Family Advocate within six months of this order. Each party shall be liable for their own costs contingent to these services.
13. The costs of the Rule 43 of the Uniform Rules of Court application be cost in the divorce action.

MKHABELA J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Date of the hearing: 11 May 2026
Date of the judgment: 28 August 2026

For the Applicant:	Adv van der Westhuizen
Instructed by:	Schoeman Borman Incorporated
For the Respondent:	Adv Spangenberg
Instructed by:	Potgieter Louw Attorneys