

**IN THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

**Case No.: 461/2025**

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

DATE 15 SEPTEMBER 2026

In the matter between:

**R[...] O[...]**

**APPLICANT**

And

**M[...] J[...] O[...]**

**RESPONDENT**

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**JUDGMENT**

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**FOURIE AJ:**

**INTRODUCTION:**

[1] The Applicant before this court is the Plaintiff in the main action, being a pending divorce action, and in this application seeks interim relief under the auspices of Rule 43 of the Uniform Rules of Court from her erstwhile husband, the Respondent.

- [2] Matrimonial litigation, including divorce actions, Rule 43 applications, or ancillary maintenance, care, and contact applications, is inherently emotional.
- [3] Unfortunately, these litigious processes are also often acrimonious, hostile and drawn out.
- [4] The rationale for the aforesaid is almost certainly because it deals with the resolution of heartbreak, the finalisation of a love relationship, and the manner in which financial redistribution ought to occur between the parties, all of which intertwine with one another.
- [5] What transpires is, more often than not, a ticking time bomb for emotions to boil over.
- [6] It accordingly often transpires that scorned lovers, in litigating for their own maximum profit and benefit, seem to conveniently forget that their erstwhile spouse was, for many years leading up to a divorce, involved in the finances of a communal home, and the personal finances of each individual. Once divorce proceedings are instituted and applications for maintenance, either final or *pendente lite*, are brought, litigants then attempt to hide their full estate and income values or to overstate their expenses in the hope that the judge ultimately hearing the matter will find them favourable. Litigants then attempt to feign surprise when opponents lay their financials bare.
- [7] Rule 43 applications are intended to be a quick and effective interim remedy pending the finalisation of divorce proceedings. It ought to be a factual enquiry dealing with 3 essential questions, namely:

- [7.1] What was the position that existed between the parties prior to the breakdown of their marriage and the divorce proceedings being instituted.
- [7.2] What are the needs of the Applicant; and
- [7.3] Is the Respondent in a financial position to cater for such needs.
- [8] Unfortunately, courts rarely get to make a decision simply confined to these three questions in Rule 43 applications, as Rule 43 applications have seemingly evolved to be utilised by litigants and their legal representatives as the first round of the proverbial litigious boxing match between the parties, in which the parties seek to exchange litigious blows, one towards the other, to gain some sort of traction in the ultimate action that is to come. The practice has seemingly evolved to insert as much emotional ammunition into a Rule 43 application as possible to establish the ultimate high- and low-water marks parties can expect to encounter when the matter ultimately proceeds to trial.
- [9] These practices, as they are evolving, should be discouraged in the strongest possible terms. Rule 43 applications should be short, concise and to the point, containing necessary factual statements to such a degree that reasonable litigants evaluating the papers would be capable of resolving most of the issues amongst themselves, for the court only to intervene in the truly deserving aspects on which parties cannot agree.
- [10] A full, frank, and honest disclosure of relevant material facts by both parties in Rule 43 applications, substantiated where necessary, with supporting evidence, rarely leads to acrimonious litigation. It is where litigants attempt to claim interim maintenance for items or amounts that

have never formed part of their living standards, where material assets and income are hidden away, where emotions boil over.

- [11] Courts use Rule 43 orders to provide interim justice between litigants, ensuring their income and expenses are dealt with as closely as possible to how they were handled before the divorce proceedings were instituted.
- [12] Where the income-earning ability of the litigants remains constant, pre- and post the commencement of the divorce proceedings, the court will surely order that the financial obligations of the respective parties to one another would similarly remain the same, and it would only be to expenses that were not in existence during the marriage of the respective parties that a court will be required to evaluate in what way such expenses are to be dealt with.
- [13] One such expense is the costs of litigation, obviously an expense that did not exist before the litigious process was instituted, and even on this point, the ultimate decision lies in equality, and both parties need to be on equal footing to finalise the litigious process.

**MATERIAL FACTS:**

- [14] At the time of the application, the parties had been married for approximately 14 years, during which marriage no children were born.
- [15] Irrespective of the submissions made by the respective parties, neither the Applicant nor the Respondent can be regarded as indigent or destitute. Both parties seemingly own several properties used to earn monthly or short-term rentals, as the case may be.

- [16] In the current application, the Applicant seeks maintenance *pendente lite* in the amount of R 8 500.00 (eight thousand five hundred rand), that the Respondent is to pay 100% of all excess payments associated with any medical procedure or medical expenses incurred by the Applicant not paid by the Applicant's medical aid, and a cost contribution for the pending divorce action in the amount of R 50 000.00 (fifty thousand rand).
- [17] A significant portion of the founding and opposing papers were designated to a joint business partnership between the Applicant and the Respondent for the management of certain immovable property and bookings in respect of same.
- [18] It is unfortunate that, without justification and a clear, concise statement as to why it has any relevance to the application at hand, this argument found its way into the submissions to the court. The divorce court will deal with irrelevant issues such as these.
- [19] The Applicant states her average monthly income to be approximately R 31 500 (thirty-one thousand five hundred rand), and her average monthly expenses to be approximately R 36 303.83 (thirty-six thousand three hundred and three rand and eighty-three cents). The Applicant's shortfall on her calculation is accordingly R 4 775.45 (four thousand seven hundred and seventy-five rand and forty-five cents).
- [20] Perhaps the best way to indicate the perplexing manner in which parties present their financials to court is the Respondent, stating to be the holder of an estate with a net value in excess of R 5 000 000.00 (five million rand), indicating his monthly expenses to be on average R 53 721.00 (fifty-three thousand seven hundred and twenty-one rand) and

his income to be on average R 11 000.00 (eleven thousand rand) per month.

[21] On the Respondent's version, it would accordingly mean that the Respondent has a monthly shortfall of approximately R 42 000.00 (forty -two thousand rand).

[22] The Applicant complains that the Respondent has materially failed to disclose certain income streams and financial assets that the court could have taken into consideration.

[23] Basic arithmetic indicates that, if the Respondent was truly subjected to a monthly shortfall of R 42 000.00 since the Applicant and the Respondent parted ways in 2024, the Respondent would have been confronted with a debt of close to a million rand by this stage. On the information, scarce as it may be, that has been provided to the court, the court cannot accept this proposition.

[24] Unfortunately for the Applicant, the court's lack of persuasion on the Respondent's disclosure does not automatically mean success for the Applicant. The Applicant, strangely so, elected to present argument rather in the form of ultimate maintenance than interim maintenance. Counsel for the Applicant, for instance, premised the whole of the argument on the difference between the Applicant's income and expenses. The argument by the Applicant ought rather to have been premised upon the marital standard and the subsequent void left by the divorce proceedings. The clearest example of the aforesaid is the fact that the Applicant, in vacating the matrimonial home, did not seek to receive maintenance by being accommodated in a similar home resembling the standard of living she was used to during the existence of

the marriage relationship, but rather elected to seek maintenance for the small garage-like unit she is currently residing in.

[25] The perplexing manner in which the Applicant ultimately argued binds the Applicant to a maximum monthly contribution equal to the shortfall after her expenses are subtracted from her income.

[26] The manner in which the Applicant and the Respondent ultimately elected to present their case to court was one of personal attack on the *bona fides* of the other party and the material non-disclosure by the respective parties rather than a true investigation and evaluation of the interim change in circumstances. Had the litigants seriously considered the change in circumstances after the institution of the divorce proceedings, and its ultimate effect on the estates of the respective parties, the evaluation this court was asked to make would have been resolved long before the matter found its way on the court roll.

[27] The only true change that has occurred, and which is evident from the papers presented to the court, is the fact that the Applicant and the Respondent are no longer residing together, and in this regard a duplication of certain expenses is occurring. The Respondent remains resident in the erstwhile matrimonial home with his new partner, whilst the Applicant occupies a small unit for which she pays approximately R 4 500.00 (four thousand five hundred rand) per month.

[28] The court did not have enough evidence to indicate how matrimonial expenses were dealt with before the divorce proceedings were instituted, to make any determination in that regard in favour of either party.

[29] The court accepts that the Applicant's rental, ancillary expenses, and certain grocery expenses are being incurred as a duplication in the

respective estates. Other than the aforesaid, the evidence presented to the court indicates that all other aspects, income and expenses, remain the same.

[30] Upon the breakdown of the relationship between the parties, the Applicant did not remain resident in the matrimonial home, forcing the Respondent to vacate, rather, the Applicant was forced to vacate. The evidence before the court indicates at least to a great degree that the Respondent previously provided housing for the Applicant, a position that needs to remain constant pending the finalisation of the divorce proceedings.

[31] Factoring in rental and groceries, the Applicant's monthly expenses in respect of these two heads of expense average around R 4 800.00 (four thousand eight hundred rand) per month. Coincidentally, this is also the amount the Applicant complains as a shortfall in her monthly budget. The court is, however, not persuaded that the Applicant would not have contributed to the joint household's monthly groceries, and as such at least an apportionment in respect of groceries needs to be applied.

[32] The Applicant's claim for R 8 500.00 (eight thousand five hundred rand) maintenance has simply not been substantiated nor proven. On the facts presented to the court, an amount of interim maintenance, to place the parties in the position they were in prior to the divorce proceedings being instituted, is determined as fair and reasonable at R 4 000.00 (four thousand rand) per month.

[33] The Applicant has prayed for a cost contribution to act on equal footing with the Respondent. The Applicant and the Respondent made several allegations of non-disclosure and maliciousness towards one another, specifically in dealing with communal properties and funds.

- [34] On the evidence presented to the court, the Applicant has simply failed to adduce evidence justifying a contribution to costs being made in her favour. The Applicant did not address reserve funds, the availability of liquid assets, or the possibility of an offshore account in her papers to the degree that the court can evaluate the disparity as prayed for to be resolved by way of cost contribution.
- [35] The manner in which both the Applicant and the Respondent are able to deal with their finances, and the purchasing and renovation of ancillary projects and homes stands opposite to the submissions as made by both parties as far as it relates to the availability of funds at their disposal.
- [36] It might very well be that facts exist that are deserving of the court's intervention in respect of these heads of contribution, but those facts were not presented to the court in such a manner that it is deserving of the Court coming to the aid of the Applicant. Rule 43 applications are still applications, and the parties must state and make out their case in their papers.

### **APPLICABLE LEGAL PRINCIPLES:**

- [37] The financial aspects of a Rule 43 are directed at providing child maintenance, spousal maintenance, or a contribution towards costs. The relative financial obligations of each spouse have nothing to do with the patrimonial consequences of a divorce but everything to do with the application of S7(1) of the Divorce Act 70 of 1979<sup>1</sup> and, in respect of a contribution towards costs, by ensuring a level playing field when it comes to the litigation between them<sup>2</sup>.

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<sup>1</sup> W v H 2017 (1) SA 196 (WCC).

<sup>2</sup> Cary v Cary 1999 (3) SA 615 (C) AT 621 D-E.

- [38] A court would be unable to determine whether there has been a proper disclosure of available income, and the parties' respective means to provide for maintenance will be able to litigate on a relative par without evaluating the available source of funds that historically have been used to support the family prior to the party's separation and whether that has changed to any marked degree, bearing in mind that the household has been split.<sup>3</sup>
- [39] These various structures may also provide readily available or recurring revenue streams that one or both parties habitually use to maintain the family lifestyle. The mere fact that the revenue is not reflected in a regular payslip or IRP5 return is of no consequence – at best these documents are pieces of evidence. They, however, can never be conclusive in such circumstances as they are unlikely to account for funds received in the form of loan account repayments or of other benefits having an economic value such as the *de facto* indefinite occupation or residential property in the name of the Trust, the use of a company card or the provision of groceries through a company credit card to name but a few examples.<sup>4</sup>
- [40] All be it in a different setting than the current Rule 43 spectrum, further and better discovery of financial records was ordered in the matter of *Makate v Vodacom*<sup>5</sup> on the grounds that failing to do so would inhibit the settlement process by precluding a genuine settlement and would defeat the broader considerations of the interests of justice.<sup>6</sup>
- [41] Generally, Rule 43 applications should be expeditious, and the documents filed on behalf of the parties should not be overburdensome or exorbitant.

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<sup>3</sup> TS v TS [2017] ZAGPJHC 244 AT paragraph 6.

<sup>4</sup> TS v TS *supra* AT paragraph 8.

<sup>5</sup> Makate v Vodacom (Pty) Ltd 2014 (1) SA 191 (GJ) AT paragraph 29.

<sup>6</sup> RTS v TTS 207 JOL 3876 (GJ), Case 28917/2016 delivered on 7 August 2017.

[42] The need for full and frank disclosure of a party's financial position cannot be overemphasised in Rule 43 applications.<sup>7</sup>

[43] In *Du Preez v Du Preez*<sup>8</sup> the Court stated that:

“However, before concluding, there is another matter that gives me cause for concern, deserving of mention and brief consideration. In my experience, and I gather my colleagues on the bench have found that same, there is a tendency for parties in Rule 43 applications, acting expediently or strategically, to misstate the true nature of their financial affairs. This is not unusual for parties to exaggerate their expenses and to understate their income, only then later in subsequent affidavits of in argument, having been caught out in the face of unassailable contrary evidence, to seek the correct and relevant information. Counsel habitually, acting no doubt on instruction, unabashedly seek to rectify the false information as if the original misstatement was one of those things Courts are expected to live within Rule 43 applications. To my mind the practice is distasteful, unacceptable and should be censured. Such conduct, whatever the motivation behind it is, is dishonourable and should find no place in judicial proceedings. Parties should at all times remain aware that the intention making of a false statement under oath in the cause of judicial proceedings constitutes the offence of perjury and, in certain circumstances, may be a crime of defeating the cause of justice.”

[44] More weight will be attached to the Affidavit of the Respondent to evince willingness to implement his lawful obligations than to that of one who is seeking to evade debt.<sup>9</sup>

## **CONCLUSION:**

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<sup>7</sup> *Abouchabki v Abouchabki* 2020 JDR 1035 (GP) page 5 paragraph 13.

<sup>8</sup> *Du Preez v Du Preez* 2009 (6) SA 28 (T) AT 32 paragraph 15.

<sup>9</sup> *Taute v Taute* 1974 (2) SA 675 (E) AT 676 H.

- [45] The current application is a stark reminder of the unnecessary information that finds itself in court papers in Rule 43 applications. The bundles filed by the respective parties total nearly 450 pages, when the relevant information the court considered could have been stated and answered to in less than 20 pages. The information the court would have appreciated to receive during evaluation of the papers and ultimate argument by Counsel for the Applicant was omitted, and the issues raised both by the Applicant and the Respondent were irrelevant for purposes of the current Rule 43 application. The court indicated, and continues to hold, that this court will not entertain issues other than maintenance *pendente lite*.
- [46] This court is designed, at the current juncture, to deal with crisp, narrow, and clearly defined issues that are easily identifiable on the honestly discovered information of the respective parties. If parties cannot identify those issues and confine their argument to them, a court will be slow to embark on a full evaluation of all underlying issues between the two litigants to assist a party seeking *pendente lite* maintenance.
- [47] The only aspect in which the Applicant has indicated to the court a change in her factual position as from the time of matrimony to the date of hearing relates to her relocation into a new residence and the monthly rental occasioned thereto. On the information before the court, the explanation provided by the Respondent as to his ability to afford a contribution to maintenance in this regard to the Applicant is similarly wholly unsatisfactory. The Respondent presented his case vaguely and without explanation on certain crucial elements at his own peril. On all other aspects, the Applicant has failed to adduce evidence and argument to substantiate the relief she is seeking.

### **COSTS:**

- [48] Costs are a discretionary order in the hands of the court to ensure that a litigant who has been successful in a litigious process is not out of pocket for having to institute litigious processes to protect their interests.
- [49] Neither the Applicant nor the Respondent was outright successful in the current application and, having regard to the pending processes between the parties, making any cost order that either party could use against the other for some or other strategic advantage in future would not be justice done.
- [50] As such, each party ought to pay their own costs for the current application.

### **ORDER:**

- [51] For the aforesaid reasons, the following order is made:

[51.1] The Respondent is ordered to pay maintenance to the Applicant *pendente lite* in the amount of R 4 000.00 (four thousand rand) per month as from 1 October 2026 until the date of finalisation of the divorce.

[51.2] The Applicant's claim for contribution to medical expenses and legal costs is dismissed.

[51.3] Each party shall pay their own costs.

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**HF FOURIE  
ACTING JUDGE OF THE HIGH COURT,  
MPUMALANGA DIVISION**

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Instructed by: CRONJE DE WAAL SKHOSANA INC

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Date of hearing: 4 September 2026

Date of judgment: 15 September 2026