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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 12442/24

In the matter between

A[...] Y[...] APPLICANT

AND

D[...] D[...] E[...] Y[...] RESPONDENT

Heard: 16 October 2026

Delivered electronically: 06 November 2026

ORDER

(a) The application is dismissed.

(b) No cost order made.

JUDGMENT

THULARE J

[1] This is an opposed Rule 43 application for interim relief pending the final determination of the divorce action pending between the parties. The applicant sought maintenance for two minor children, spousal maintenance, contribution towards legal costs and the regulation of primary care, which she sought for both children and contact, by the respondent, with the children. The minor son, a teenager at 15 years of age, has been residing with the respondent since August 2025 and the mother exercises contact; and both parents exercise alternating blocks of care of 2-2-3 days each with the minor daughter, a 4-year-old and exercise contact.

[2] The applicant sought maintenance for the children in the amount of R12 000-00 per month and that the respondent contributes towards all reasonable educational, medical, pharmaceutical, school-related child-care and extramural expenses incurred on behalf of the minor children; spousal maintenance in the amount of R10 000-00 per month and a contribution to legal costs in the amount of R85 000-00. The parties agreed to a provisional parenting plan in terms of which they shared care and contact. It has drifted to a situation where the son is with the respondent, with the applicant having reasonable contact, and in respect of the daughter the parties exercise shared care and

contact. The initial parenting plan, before the provisional one, had provided for the children to be in the primary care of the applicant with the respondent having reasonable contact and care.

[3] The main issue between the parties concerns the adequacy of the respondent's contribution and the extent of his maintenance obligations. The respondent contributes R5850-00 per month towards the maintenance of the daughter for the period that the daughter is with the applicant. The applicant made no monthly contribution to the maintenance of the son. The applicant and the children are on the respondent's medical aid. The respondent made a tender to continue to contribute R5850-00 per month and to retain both the applicant and the children on his medical aid scheme. The respondent broke down the figure of R5850-00 as follows: R1300-00 for the son's tutor and the rest for the daughter at R2500-00 which is half of the nanny's fees, R1400-00 half of her school fees, R650-00 lunch fees. He made payments of R154-29 as playball reimbursements which are only payable per school term. He pays for the living expenses of the son in full, as well as for the daughter for half of the time of the month that she is with him. He expects the applicant to also cover all the costs of the daughter for half of the time that she is with her. He also paid for a Vodacom contract which covers four devices which are his phone, the son's phone and the applicant's phone and laptop.

[4] The applicant is self-employed and derives her income from the operation of her own business. The income is irregular and seasonal with payments fluctuating from month to month. The business provides professional hair and make0up services primarily for weddings, bridal bookings and other special events and as such affected by wedding seasons, bookings, deposits received in advance and payments made in respect of future events. Deposits do not constitute personal disposable income. Many relate to future bookings and are

required to be retained or utilized for future business obligations including stock, products, subcontractors, freelance artists, travel, equipment, refunds, bank charges and other operating expenses, payments to assistants, suppliers, insurance and other business-related expenses.

[5] The applicant did not receive a fixed monthly salary from the business but drew funds from the business as and when available to meet personal expenses, household expenses, the needs of the minor children and the liabilities which the respondent previously contributed towards. The applicant attached her business bank statements for the period December 2025 to May 2026, but did not, under oath, indicate how much even on average, she earned from her business monthly.

[6] In his response, the respondent alleged that the applicant sought, through this application, to change the current care and contact arrangements without any input from experts. He took issue with her claiming maintenance for the children on the basis that they both lived with her full-time, which was not the case. In his calculations, her business bank accounts showed that she received on average about R181 000-00 per month and earned approximately R110 000-00 per month after paying business expenses. The respondent, referring to the applicant's bank statements, showed that the applicant received between R141 500-00 and R223 000-00 per month. Payments to freelance artists were about R63 000-00 per month, stock and supplied about R3800-00 per month, bank charges, website and accounting fees about R2500-00 per month. Approximately R109 800-00 remained available monthly to the applicant. The applicant's personal expenses were paid by the business. These included school fees, electricity, groceries, takeaways, clothing, fuel, policies and two vehicle

instalments. The bank statements showed that she spent R47 344-79 on household necessaries and R32 240-00 on her own personal expenses.

[7] He attached his own pay slips for June, July and August 2026 which showed total earnings of between R52 916-92 and R57 661-98 with he averaged at R54 598-68. The net averaged R32 838063 which went to R35 574-63 when he worked in the bonus. These amounts included emergency overtime and standby allowances, without which his income would be lower. Save for a voluntary life cover for which he paid R254-87, all his deductions were compulsory deductions, which included medical aid in which the applicant and the children were registered as his dependents. His expenses included R1533-23 each for himself and the son, R3066-47 for the applicant payable to Vodacom contracts, R5451-86 to service a personal loan with Absa, R899-98 for security company, R599-00 for Vitality, R5118-14 for food, R2572-87 for fuel, R3011-78 for uber transport, R414.29 for electricityR933-66 for children activities, R529-57 for airtime and data, R323-67 for pharmacy, R1558-84 for clothing and personal care, R1389-58 for bank interest and fees and R1895-28 miscellaneous. He has a monthly shortfall of just over R4000-00 between his income and expenses.

[8] Rule 43 serves an important purpose, to wit, to provide a speedy and inexpensive remedy, primarily for the benefit of women and children and remains a valid mechanism for urgent relief in matrimonial matters [*S v S and Another* [2019] ZACC 22; 2019 (8) BCLR 989 (CC); 2019 (6) SA 1 (CC) (27 June 2019)]. It ensures the equality of arms principle, as both parties in a specific matter should be treated in a manner that ensures they are in a procedurally equal position to make their case [*S v S and Another* para 40 and

41]. In his article titled **Interim maintenance – how to use Rule 43 in divorce proceedings,** Simon Dippenaar (23 August 2019) wrote:

Modern relationships are complex

In the not-so-distant past, it was common for the man to be the breadwinner and the woman to be the homemaker, particularly where there were children. Now it is normal for both spouses to be working, but there may be significant differences in income. This may lead to one party having the means to afford "luxurious litigation" while the other must make do with a more frugal legal representation.

It is also not unusual for the woman to be the main earner or for both spouses to be of the same sex. This introduces new complexity into the unravelling of a marriage and may find either party making a Rule 43 application for a range of reasons, including the cost of litigation. Furthermore, the financial affairs of one or the other may be intertwined with family trusts or businesses in South Africa or offshore in which they are beneficiaries.

Therefore, interim maintenance, or any other terms of a Rule 43 order, must be carefully considered to avoid either party suffering a severe disadvantage, which may haunt them long after the divorce is finalised.

[9] I am not persuaded that the applicant took this court into her confidence and disclosed her true financial position, in particular her monthly income from her business. The respondent's answer is not far-fetched, clearly untenable or fictitious. The respondent did not simply state bare denials but provided real factual rebuttal. I am not persuaded that the applicant is entitled to obtain an order, which is not appealable, in the face of facts which are genuinely disputed by a plausible response. The Family Advocate will investigate and help provide an expert report on the care and contact of the children, and there is no reason to disturb the current arrangements in the absence of prejudice or circumstances which are not in the best interest of the children. For these reasons I make the order.

(a) The application is dismissed.

(b) No cost order made.

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JUDGE OG THE HIGH COURT

Appearances

Applicant Counsel: Adv. R-L Potgieter

Instructing Attorney: Mr H Zwiegers

Respondent Counsel: Unknown

Instructing Attorney: DDR Y[…]