



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

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

SIGNATURE

DATE: **8 SEPTEMBER 2021**

Case No: 29301/2020

In the matter between:

**MC**

Applicant

and

**JC**

Respondent

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**JUDGMENT**

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**WILSON AJ:**

- 1 The applicant ("Mrs. C") approaches the court in terms of Rule 43 seeking interim maintenance pending the finalisation of her action for divorce from the respondent ("Mr. C"). Mrs. C also seeks a contribution to her legal costs in that action.

- 2 Applications under Rule 43 are, ideally, swift and simple matters, since they seek only to arrange the parties' financial affairs equitably for what should be a limited period before the divorce is finalised. The aim is to ensure that neither party is prejudiced during the divorce proceedings by a lack of resources to maintain a reasonable standard of living, or to pursue their case in the main action.
- 3 Unless the residence and care of children is involved, the issues raised in Rule 43 applications are straightforward. They relate to the applicant's reasonable needs, and the respondent's ability to meet those needs. The applicant's entitlement to maintenance must be assessed having regard to the standard of living enjoyed by the parties during the marriage (see *Taute v Taute* 1974 (2) SA 675 (E), 676D-H).
- 4 The aim of any Rule 43 order is, then, to avoid substantial prejudice to either party pending divorce. It is not to provide a precise account of what is due to or from either party, according to the parties' or the court's sense of morality, propriety, the blameworthiness of the parties' conduct during the marriage, or their habits of living after the separation.
- 5 Unfortunately, straightforward though the issues are, the way in which Rule 43 applications tend to be pleaded and argued often constitutes an obstacle to the achievement of the purposes underlying the Rule. Applicants have been known to overstate their needs, and respondents to understate their means. The parties, and, to a lesser but still unfortunate extent, their legal representatives, are sometimes unable to resist the temptation to cast the case in moralistic, rather than practical, terms. Counsel are, on occasion,

unable to keep the understandable emotional heat of a separation out of the courtroom.

6 The upshot of this is often that a simple and straightforward calculation of needs and means becomes hopelessly clouded in irrelevant recrimination. No allegation, no matter how irrelevant or outlandish, can be left unmade, and still less can the temptation to answer it in needlessly heated terms be avoided. The result is, unfortunately, that a court is often left with the impression that it has not been told a great deal that it needs to know, and that it is necessary to pick through a series of obscure or misdirected allegations on the papers to pinpoint the material facts.

7 There have been commendable efforts to encourage the parties to make full and proper financial disclosure, and to hew as closely as possible to the material facts in their papers (see generally *E v E* 2019 (5) SA 566 (GJ)). However, it remains the case that the papers filed in Rule 43 applications are often needlessly voluminous, and replete with irrelevant and sometimes misleading material.

8 This case has many of these unfortunate features. The record runs to over 650 pages, and contains allegations and counter-allegations of unreasonable conduct and profligate spending, the relevance of which I struggle to ascertain. This can only redound to the prejudice of the parties themselves. It is in both their interests, and those of their children, that I make an order that is fair and equitable, having regard to their reasonable means and needs. If they do not place information before me that enables me to make such an order, then there is a real risk of an unduly burdensome order being made.

- 9 Happily, Ms. Rosenberg, who appeared for Mrs. C, and Ms. van Aswegen, who appeared for Mr. C, were able to compensate for many of the shortcomings of the papers. Their argument assisted me in isolating the relevant facts and formulating what I believe to be a fair order pending the finalisation of the divorce action.
- 10 Mr. C is a senior banking executive. He is coy about his wealth, but there is little doubt that he has a substantial income. This is made up, in the main, from annual bonuses and investments. While Ms. van Aswegen emphasised his net basic salary in argument (which is just under R100 000 per month), Mr. C's financial disclosures reveal a true net income of just under R7 million in the last financial year. Those disclosures seek to emphasise that, of this, there is only a R4 million "cash component", but the fact remains that Mr. C is a man of considerable resources. His financial disclosures estimate his net worth at just over R40 million. On his own version, Mr. C's average monthly cash income is at least R300 000.
- 11 There is no real dispute that, when they lived together, Mr. and Mrs. C enjoyed a very comfortable lifestyle. Mrs. C qualified as a teacher, but she gave that career up to work as a homemaker, and to look after the couple's two children. The children remain with her. Having concentrated on looking after the children, she has not developed a lucrative source of income or a successful career outside the marital home.

### **Maintenance *pendente lite***

- 12 Mrs. C seeks maintenance in the sum of R46 123.69 per month for herself, and R21 289.31 per month for each of the parties' minor children. She seeks

an order directing Mr. C to continue to meet the children's educational and medical costs, and an order that he pay for the rental accommodation they now occupy. Mrs. C also seeks an order directing Mr. C to contribute to the costs of setting up her new household where she lives with the parties' children. She asks that Mr. C reimburse her for some of these costs, which she financed by going into debt. In the context of the standard of living enjoyed by the parties when they shared a home, and Mr. C's obvious means, it does not seem to me that these requirements are unreasonable.

13 It is to be emphasised that I am asked to make a temporary order pending the finalisation of the main action. The amounts sought and ordered are not in any way finally determinative of the parties' rights and obligations. It is accordingly unnecessary and undesirable for me to go through Mrs. C's stated requirements and seek to inquire, line-item by line-item, whether each of them is individually necessary or appropriate. That is not the level at which the inquiry takes place. It is enough that I am satisfied that, overall, the maintenance requirements are reasonable, and that Mr. C can meet them. I am so satisfied, and I will make an order substantially as prayed for by Mrs. C.

14 I am not persuaded, however, that I should link any of the amounts Mrs. C seeks to the consumer price index. In the (in my view unlikely) event that inflation so eats in to the maintenance due as to materially affect her financial position, or that of the children, then Mrs. C is at liberty to approach the court again alleging a material change in circumstances.

- 15 Nor am I persuaded that I should make an order that Mr. C should pay Mrs. C's and the parties' children's rent, regardless of what that amount might be. A contribution capped at R20 000 per month is, in my view, more than adequate.

### **Contribution to costs**

- 16 Mrs. C seeks a payment of R91 995 in arrears due her attorneys, and a contribution to costs in the sum of R1 480 950.05 until the trial certification stage. That amount has been justified by reference to a bill of costs included in the papers. Ms. Rosenberg also justified these amounts by reference to the complexities raised by division of the accrual in the main action. Given Mr. C's apparent wealth, and the complexity of his financial affairs, there is some weight to the argument that determining the accrual may be a difficult and contentious task.
- 17 A court in Rule 43 proceedings is, in principle, entitled to direct the payment of legal costs that a party has already incurred (*AF v MF* 2019 (8) SA 422 (WCC), paragraph 45). There is accordingly no barrier to an order that Mr. C pay the legal costs that Mrs. C has already run up. As to the contribution to costs yet to be incurred, the amount justified by the bill of costs is not disproportionate to the size of the marital estate, or the complexity of the issues likely to be raised in the main action in determining the division of that estate.
- 18 For all of these reasons, the contribution to costs sought appears to me to be reasonable. It is, of course, open to the parties to forestall the expenditure of those costs by coming to a reasonable agreement as to the division of the

marital estate. In that event, any unexpended funds will have to be repaid to Mr. C. The amounts due to him will no doubt form part of the calculation of any such settlement.

19 In light of the amounts involved, I do not think it is appropriate to order a contribution to costs to be incurred after the trial certification stage, or during the trial itself. I will postpone those prayers *sine die*. Ms. Rosenberg accepted that a contribution to the costs of the trial itself should not be ordered at this stage, but I think that the amounts sought to fund the proceedings after trial certification should also be determined at a later stage. Once the nature of the issues between the parties have been defined at the trial certification stage, a more realistic picture of the legal costs involved will be available, and a more informed determination can then be made. If the litigation continues beyond the trial certification stage, the parties ought, in my view, to be given the opportunity to come to an agreement on the nature and extent of the contribution to costs that is then due.

20 For all of these reasons, I make the following order –

20.1 Pending the finalisation of the main action for divorce the respondent is to pay –

20.1.1 maintenance to the applicant in the sum of R46 123.69 per month, from 1 October 2021; and

20.1.2 maintenance in the sum of R21 289 per month for each of the parties' minor children; and

- 20.1.3 the applicant's rent for the residential accommodation in which the applicant resides with the parties minor children, or R20 000 per month in respect of such accommodation, whichever is the lesser amount; and
  - 20.1.4 the utilities due in respect of that residential accommodation, if they are not included in the rent charged; and
  - 20.1.5 the parties' minor children's schools fees, and any costs associated with extra-mural activities that are pursued under the auspices of the children's schools; and
  - 20.1.6 the applicant's and the parties' minor children's medical aid contributions, and any costs for non-elective medical treatment not covered by those medical aid contributions; and
  - 20.1.7 a contribution of R34 656.39 towards Ms. C's costs in relocating from the marital home.
- 20.2 The respondent will make the following contributions to the applicant's legal costs, on or before 1 October 2021 –
- 20.2.1 R91 995.75 in settlement of the applicant's arrears; and
  - 20.2.2 A contribution to the applicant's costs up to the trial certification stage of R1 480 950.05.



- 20.3 If the main action is settled before the trial certification stage, any unexpended funds must be returned to the respondent.
- 20.4 The prayers for a contribution to costs between the trial certification stage and the first day of trial, and for a contribution to the costs of the trial itself, are postponed *sine die*.
- 20.5 The costs in this application will be the costs in the main action.



**S D J WILSON**  
Acting Judge of the High Court

This judgment was prepared and authored by Acting Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 8 September 2021.

HEARD ON: 3 August 2021

DECIDED ON: 8 September 2021

For the Applicant:

R Rosenberg SC

Instructed by CL Gorfil Attorneys

For the Respondent:

S van Aswegen

Instructed by SWVG Attorneys Inc