



Republic of South Africa

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case number: 9207/2020

Before: The Hon. Mr Justice Binns-Ward

Hearing: 19 August 2020
Judgment: 25 August 2020

In the matter between:

ALG

Applicant

and

LLG

Respondent

JUDGMENT

(Delivered by email to the parties and release to SAFLII.)

BINNS-WARD J:

[1] The applicant, who is the defendant in the principal proceedings in which her husband, the respondent in these proceedings, has sued for the dissolution of their marriage by divorce, claims interim relief *pendente lite* in terms of rule 43.

[2] The parties were married in 2000 out of community property and subject to the accrual system. They have a daughter, who is 15. They no longer live together. The applicant and the parties' daughter live in the erstwhile common home in Noordhoek. The

respondent rents an apartment in Doha, where he is based for work purposes. When he is in South Africa, he lives with his girlfriend in a rented property at Stonehaven in Fish Hoek.

[3] The respondent is a 49-year-old professional pilot, currently employed by Qatar Airways as a transport pilot in the position of 'Captain A330' (I infer that the 'A330' refers to the type of aircraft that he is engaged to fly for the airline.) The applicant is not employed, and it would seem that this has been the case for most of the marriage. The respondent states that the applicant held a position as sales manager at a suburban branch of a new car sales enterprise before the parties moved to Hong Kong when the respondent took up employment with Cathay Pacific, but I gather from his reference in another context to the parties having attended marriage guidance counselling in Hong Kong as long ago as 2008 that the applicant's employment in that position must have been very early in the marriage. It is also suggested that the applicant may have generated some income at some stage as a qualified horse-riding trainer. I accept, however, for present purposes that the respondent has essentially been the sole breadwinner during the marriage, and that on an interim basis at least - which is all that the court is concerned with at this stage - it would not be reasonable to expect the applicant to seek employment in order to sustain herself or contribute towards the maintenance of the parties' daughter.

[4] It is common ground that the parties maintained a comfortable lifestyle during the marriage. The property in Noordhoek is valued at R5,8 million, with an unencumbered margin of approximately R2 million. It also serves as a home for the applicant's father, who lives rent-free in a cottage on the property. The parties' daughter attends a private school in the southern suburbs. The applicant and the daughter are keen horse riders. They currently keep three horses between them. One of these horses is said to be worth at least R650 000. The respondent is the joint owner of a light acrobatic aircraft valued at R3 million and drives an F-type Jaguar that is subject of an instalment sale agreement. The current market value of the vehicle is less than the balance outstanding on the sale agreement, so it is more of a liability than an asset. Its significance is that it is a luxury vehicle. The applicant drives a Ford Ranger. The family regularly travelled abroad for leisure purposes, although it must be said that the cost of these excursions were heavily subsidised by the perks of the respondent's employment as an international airline pilot.

[5] The respondent used to enjoy a generous tax-free income prior to the effective closure of the airline industry from March this year brought about by the international

imposition of strict limitations on travel because of the Covid-19 pandemic. A copy of the respondent's payslip for the month of January 2020 was handed up by the applicant's counsel during argument, without objection. It shows that his total earnings before deductions in that month was nearly QR103 000 (Qatari Riyal), which approximated R400 000 at the time. Most of that amount constituted various allowances, including a housing allowance of QR15 000, of which the applicant is able to apply approximately QR7 000 for general purposes because the rental on his Doha apartment is only about QR8 000 per month. His basic pay was reflected as QR34 532. His total remuneration in January 2020 considerably exceeded that paid in February 2020. It would appear that the difference is mainly accounted for by the fact that his January payslip reflected a 'school fees reimbursement' in the sum of approximately QR35 000, which I infer was an annual once off allowance. It related to the annual fees paid by the respondent in advance in respect of the parties' daughter's schooling in 2020.

[6] The figures in respect of the respondent's net pay for June and July 2020 reflect a considerable drop in his monthly income. It has come down to an amount of approximately QR28 000. This is the result of pay cuts imposed by the airline consequent upon the financial effects on the airline of the severe cutback in global air travel. This has also meant that for the time being the respondent is also not able to put in flying hours, for which he was paid an amount of approximately QR5 500 as part of his January income. The drop in the respondent's income has to some extent been ameliorated, insofar as his South African liabilities are concerned, by a fall in the exchange rate value of the South African currency, which is currently trading in a range of approximately R4,50 to R4,70 the Qatar Riyal.

[7] It seems to me that if one takes the respondent's July 2020 income as a measure to go by, his disposable monthly income is currently approximately QR20 000 (i.e QR28 000 less the QR8 000 that goes for paying the rental for his Doha apartment). The applicant has suggested that the respondent should give up his apartment in Doha as he currently stranded in South Africa. I think that the respondent has effectively rebutted that contention by pointing out that should he give up his Doha accommodation, he will forfeit his QR15 000 per month housing allowance, which, for the reason explained earlier, would result in the effective reduction in his expendable monthly income by QR7 000. It would leave him with only about QR13 000 per month.

[8] Much of the relief sought by the applicant in the current proceedings was already being provided by the respondent, and its continued provision pending the finalisation of the principal proceedings had been tendered. The tender made earlier in the year has, however, been pruned significantly because of the change in the respondent's circumstances since the Covid-19 lockdowns. The main issues in contention that arise for determination at this stage are (i) the amount that the respondent should pay towards the applicant and the parties' minor child's monthly living expenses over and above the items for which the respondent undertakes direct responsibility and (ii) the applicant's claim for a contribution towards her costs in the principal proceedings.

[9] In her notice of motion, the applicant has claimed the following relief *pendente lite*:

1. Payment of R53 600 per month in respect of her and the daughter's expenses, effective as of 1 July 2020;
2. Retention as beneficiaries on the respondent's current medical aid scheme, and payment of all medical expenses not covered by the scheme;
3. Payment of the daughter's educational expenses, including additional tuition and the cost of all extramural and holiday activities;
4. The right to the continued use of her card in respect of the respondent's Doha credit card account to pay for her and the daughter's medical expenses not covered by the medical aid and to make payment of the school fees and further educational expenses in respect of the daughter;
5. Payment all of the expenses incurred in respect of the three horses kept by the applicant and the daughter, including livery costs, veterinarian and grooming costs, and the costs of annual membership for the applicant and the daughter of various equestrian organisations or societies;
6. The reasonable costs relating to the applicant's and the daughter's horse riding, including lessons and shows , the costs relating to admission fees to championships and events, equipment, travel and subsistence costs relating to all championships and events entered by the applicant and the daughter;
7. Payment of the following expenses in respect of the applicant's residence (at the Noordhoek property) and related expenditure:
 - i. The monthly bond instalments

- ii. Rates and services due to the relevant municipality
 - iii. Electricity costs
 - iv. The premiums in respect of the current comprehensive homeowners' household contents and all risk insurance, including any excess
 - v. The cost of telephone landline rental and calls and fibre internet;
 - vi. The premiums in respect of the full bouquet DSTV - PVR subscription;
 - vii. The cost of maintaining the burglar alarm and security;
 - viii. The reasonable costs of repairs and maintenance to any household equipment or appliances and the improvements to the property, including the swimming pool and irrigation system and any electrical or plumbing work.
8. Payment of the wages of the domestic employee three times per week and gardener once per week as well as the annual bonus payable to the domestic staff;
 9. Payment of the veterinarian costs in respect of the family's pets, including annual vaccinations and de-fleaing and de-worming treatment;
 10. Payment of the applicant's and the daughter's gym membership contracts;
 11. Payment of the applicant's retirement annuity contribution;
 12. Payment of a monthly allowance of R500 to the daughter;
 13. Payment of the following costs in respect of the applicant's motor vehicle
 - i. the applicant and the daughter comprehensive vehicle insurance
 - ii. the costs of the tracker, licensing, maintenance, repairs and servicing, including replacement of tires and wheel balancing when necessary and the costs of a higher car when the vehicle is being serviced or repaired
 14. An annual payment of R120 000 on 1 December each year, effective as of December 2020, without deduction or set off, as a contribution towards the costs of annual holidays for the applicant and the daughter

15. A contribution towards the applicant's legal costs in the amount of R650 000;

16. The costs of the rule 43 application, including the costs of senior counsel.

[10] The relief described in subparagraph 4 of the preceding paragraph is nothing more than a mode of performance of that sought as described in subparagraph 3. The respondent has tendered the relief sought in subparagraphs 2, 3, 7, 11, 12 and 13, either substantially or in full. He tenders R2 000 per month in respect of actually incurred electricity costs, and to pay the wages of the indoor domestic worker once a week and the gardener once a month. He also tenders to arrange and pay for the costs of maintenance and repairs to the former common home and its accoutrements upon being informed of what might need to be done in those respects. The respondent tenders payment of monthly living expenses for the applicant and their daughter in the sum of R13 000 per month and has openly offered an amount of R25 000 in respect of a contribution towards costs.

[11] The tender that the respondent has made will permit the applicant and the parties' daughter to continue living at the family home on substantially the same basis they did during the marriage. I think it would be reasonable for the domestic staff to remain engaged as they were before, that is three times a week for indoor domestic worker and once a week for the gardener. I also consider that it would be reasonable for the respondent to continue paying the DSTV subscription, provided that the applicant provides him in writing with the account details which were previously requested for this purpose, but allegedly not provided.

[12] It is clear, however, that the change in the respondent's employment situation necessitates a substantial degree of belt tightening for the foreseeable future and that the applicant and her daughter must reduce their expectations accordingly. In the context of the evident importance of an equestrian element in their lives on an ongoing basis, I think it reasonable that provision be made that they be able to keep one horse each. A third horse seems to be an unaffordable luxury in current circumstances. Even the upkeep for two horses amounts to an appreciable expense, apparently in excess of R10 000 per month. I also consider that any provision for holidays as a special item of expenditure is unwarranted having regard to the intended interim nature of rule 43 relief. The parties should rather focus on bringing the principal proceedings to judgment or resolution as soon as possible. Most people in the world will in any event be foregoing their annual vacations away from home for the foreseeable short-term future.

[13] Having regard to the items that the respondent has tendered to pay for in respect of special items of household expenditure referred to above, I consider that a monthly allowance of R20 000 for non-specified or general living expenses will be adequate to allow the applicant and the parties' daughter to maintain a lifestyle commensurate with what they might reasonably expect in circumstances in which the respondent's income has been significantly reduced and in which both parties are currently incurring extraordinary expenses in relation to the pending litigation.

[14] The applicant's claim for a contribution towards her legal expenses in the amount of R650 000 has not been supported with a detailed breakdown of expenses incurred this far. Only broad-brush description has been given of the type of attendances involved and anticipated instead of an itemised list of expenditure.¹ With little to go on, the claim strikes me as being markedly on the extravagant side. I am also mindful, however, that the respondent, while protesting that the applicant's alleged legal fees far exceed those that he has incurred, has been equally unforthcoming with detail.

[15] Nearly two thirds of the applicant's claim for a contribution towards her costs relates to costs that she says that she has already incurred. The applicant's counsel referred me to the judgment of Davis AJ in *AF v MF* 2019 (6) SA 422 (WCC); [2020] 1 All SA 79 (WCC), which supports the court granting a cost contribution for legal expenses already incurred, and which, with reference to the judgment of Donen AJ in *Cary v Cary* 1999 (3) SA 615 (C), emphasised the importance of the court's duty in such matters 'to promote the constitutional rights to equal protection and benefit of the law, and access to courts [and] requires that courts come to the aid of spouses who are without means to ensure that they are equipped with the necessary resources to come to court to fight for what is rightfully theirs'. As observed in those judgments, the authorities are far from unanimous on whether a contribution towards costs in terms of rule 43 should cover costs already incurred. There are many judgments suggesting they should not. I am in respectful agreement with the observation by Davis AJ that in the main they are conspicuous in their lack of persuasive reasoning in support of the proposition.

¹ Cf. *MCE v JE* [2011] ZAGPPHC 193 (14 September 2011) at para 12, where Makgoka J (as he then was) noted '*There can be no better manner of placing such information [ie costs already incurred and anticipated to be incurred] before court than a draft bill of costs, or at the very least, a summary of fees schedule. This is how courts considering applications for contribution towards costs have, over the years, approached the matter*'; *Cary v Cary* 1999 (3) SA 615 (C) at 618C and *P-R v R* 2017 JDR 1252 (GP) at para 18. In my view, these observations are especially pertinent in respect of any part of a claim for a contribution towards costs that relates to costs already incurred.

[16] My own time-limited, and therefore superficial, enquiry into the basis for that approach suggests that the reason might have been founded in the view that it would be contrary to the Roman Dutch law principles concerning the marital power to hold that the wife, apart from any order of court, could render the husband liable for costs incurred by her without his authority; cf. the judgment of Wessels J in *Van Gorkum and Noonan v Davies* 1914 TPD 572 at 577.² That may have informed the established practice in Natal reported in *Lourens v Lourens* (1928) 49 NPD 412 that an application should be made *in advance* of the principal litigation for a contribution toward costs. Times and *mores* have changed, however, and the marital power has been abolished.³ Whilst rule 43 predates the abolition of the marital power, it falls to be construed and applied in the context of the modern legal environment. I cannot conceive in the circumstances why there should be any obstacle to the making of an order for a contribution towards costs that includes costs already incurred. On the contrary, allowing for the interim payment of accrued, as well as anticipated, costs in the principal proceedings would better promote achieving the relevant objects of the rule 43 procedure.

[17] The purpose of the remedy has consistently been recognised as being to enable the party in the principal litigation who is comparatively financially disadvantaged in relation to the other side to ‘adequately place [his or her] case before the Court’.⁴ Devising the measures necessary to achieve that object have long since been recognised as ‘the paramount consideration’ in such matters.⁵ Describing the rationale for the remedy in terms of ‘constitutional imperative’ does not, in my view, really add anything of substance to its historical character in the Roman Dutch common law; cf. the references to Merula, *Manier van Procedeeren*, Wassenaar, *Practyk Judiciëel* and Leyser, *Meditationes ad Pandectas* in *Van Gorkum and Noonan* supra, at p. 575, and in *Boezaart & Potgieter v Wenke* 1931 TPD 70 at 84-85. There is indeed much in the Bill of Rights that is essentially a codification and entrenchment of the common law and the rules of natural justice. The significance of their constitutional entrenchment is to preclude any law or conduct inconsistent with them⁶ and to

² But, as observed by Mason J in the opening paragraph of the reported section of the judgment, even a century ago, ‘The exact liability of the husband for costs which his wife has incurred or may incur in instituting matrimonial proceedings against him is a matter of controversy and difficulty.’ (My underlining.)

³ In terms of Chapter II (ss 11 and 12) of the Matrimonial Property Act 88 of 1984.

⁴ *Van Rippen v Van Rippen* 1949 (4) SA 634 (C) at 639 fin – 640.

⁵ Id.

⁶ Section 2 of the Constitution.

impose an obligation on the state (including, of course, the courts) to respect, protect, promote and fulfil the rights conferred thereby,⁷ including by interpreting any legislation mindful of those obligations,⁸ and to constrain Parliament's powers of amendment.⁹

[18] The proper approach to the determination of such applications is well established. Ogilvie Thompson J described it in the following terms in *Van Rippen*¹⁰ at p. 639: '... the quantum which an applicant for a contribution towards costs should be given is something which is to be determined in the discretion of the Court. In the exercise of that discretion the 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 in the pending litigation, the wife [or husband, as the case might be] must be enabled to present her [or his] case adequately before the Court.' The essence of the approach encapsulated in those words has been reiterated in countless other reported cases.

[19] It is an approach that recognises that a contribution towards costs is not the same as a warrant to litigate at any scale of the applicant's choosing if that is disproportionate to the apparent reasonable requirements of the case or the means of the parties and the scale upon which the respondent is litigating. An entitlement to a contribution towards costs should also not be seen as equating to a licence to risk-free litigation. To quote once again from *Van Rippen*: 'By ordering a contribution the Court does provide the sinews of war; but, so far as I am aware, the Court has never under the contribution procedure provided the applicant's attorney with complete advance cover for all his fees.'¹¹ That the provision of an equality of arms be balanced with maintaining an equitable exposure of both of the adversaries to the risks of the chilly consequences of the ill considered incurrence of costs is a factor to be borne in mind in the exercise of the court's discretion. It will encourage a realistic approach by both parties to the litigation and incentivise them to focus on reaching early and mutually beneficial settlements where that is reasonably possible.

[20] The current matter does not strike me as one of particular complexity. The respondent's source of income is identified. His local and foreign assets appear to be

⁷ Section 7 of the Constitution.

⁸ Section 39 of the Constitution.

⁹ Section 74 of the Constitution.

¹⁰ Note 4 above.

¹¹ *Supra*, at pp. 638-639.

known, or readily identifiable. Whether or not the applicant would be able, or might reasonably be expected to obtain employment after the dissolution of the marriage can hardly be described as an arcane or especially difficult issue. The question of whether or not the trust to which the respondent donated his pension money pay-out when he left Cathay Pacific should be treated as his alter ego, or as a fund effectively under his control, for the purposes of determining the proprietary consequences of the marriage, more especially the terms of any order that might fall to be made in terms of s 7(3) of the Divorce Act 70 of 1979, also does not strike me as a matter that is likely to give rise to particular difficulty in this case should the action have to go trial. The respondent is availing of the services of a silk in the litigation, while the respondent is represented by a senior junior counsel. My own assessment is that the case looks to be well within the competence of a middle to senior ranking junior counsel experienced in matrimonial work.

[21] In the circumstances I consider that an order directing the respondent to contribute R200 000 towards the applicant's costs in the principal case would meet the justice of the case, as far as I am able to determine it on the rather opaque information that the parties have made available.

[22] The applicant's counsel drew attention to a suggestion made in passing by Rogers J in *CT v MT and Others* 2020 (3) SA 409 (WCC)¹² that consideration might be given to putting a time limit on rule 43 orders so as to avoid the obligated spouse who might be advantaged by 'an unduly parsimonious' interim order being tempted to abuse the resultant situation by improperly dragging out the litigation.¹³ Counsel appeared to suggest that such a time limit might come to be regarded as a standard feature of orders made in terms of rule 43. I do not understand the learned judge to have intended to go that far in his obiter remarks. While I agree that there is nothing to preclude courts incorporating such a provision where thought appropriate, caution should be exercised in attaching conditions that could bring the parties back to court for further interim determinations irrespective of whether the prevailing circumstances warranted or necessitated that. In my opinion, rule 43(6) would adequately avail a party able to demonstrate that he or she was being disadvantaged by a demonstrably abusive protraction of the main proceedings to approach

¹² The case involved a challenge to the constitutionality of the rule 43 procedure because it precluded appeals against and limited the revisitation of orders made *pendente lite* in terms thereof. For pertinent related jurisprudence on that issue see also *S v S and Another* 2019 (6) SA 1 (CC).

¹³ At para 33-36.

the court for amended interim relief. As noted by Rogers J, the scope for such abuse should in any event be limited in the ordinary course by proper judicial case management. I am not persuaded that there is any reason to attach a time limit to the order to be made in the current matter.

[23] Lastly, there is an application by the applicant for the striking out of certain averments in the respondent's opposing affidavit. The basis of the application is that the respondent's averments are in breach of the prohibition in rule 41A(6) against disclosure of all communications and disclosures made at mediation proceedings. The averments in question were made in response to averments made by the applicant in her supporting affidavit with reference to the mediation by Ms Diane Davis SC in the parties' dispute. The applicant alleged that the disclosures, limited and unilluminating as they were, were 'alarming'. That was hyperbole. It was permissible for the respondent to testify in general terms as to the circumstances in which the mediation process came to be suspended and to the fact that there was very little remaining to be determined in respect of a parenting plan. I am nevertheless persuaded that the following passages in the opposing affidavit are technically objectionable and fall to be struck out, together with the annexures therein referred to:

1. That part of paragraph 57 following after the words 'minor issues';
2. The last sentence of paragraph 94; and
3. Paragraph 183.

[24] The striking out application does not merit a separate costs order. The costs of it fall to be treated as costs in the rule 43 application.

[25] The applicant has achieved substantial success in the rule 43 application and is entitled to her costs. For the reasons mentioned earlier, I am not disposed, however, to make a special order, as prayed, that her costs should include counsel's fees charged at the rates allowed on taxation for senior counsel.

[26] The following order is made:

1. Pending the determination of the divorce action between the parties, the respondent shall maintain the applicant and the minor child born of the parties' marriage, as follows:

- 1.1 by payment to the applicant of an amount of R20 000 per month, in respect of the applicant's and minor child's general living expenses not otherwise specifically provided for below, effective as of 1 July 2020, without deduction or set off on the first day of every month, by way of electronic funds transfer or debit order, into such bank account as the applicant may nominate from time to time;
- 1.2 by bearing the costs of retaining the applicant and the minor child as dependant members of the current medical aid scheme and by bearing the costs of all reasonably incurred medical expenses in private health care which are not covered by the medical aid scheme, including but not limited to, medical, dental, surgical, pharmaceutical (including levies and all required supplements) hospital, orthodontic and ophthalmic (including spectacles and contact lenses) expenses, any sums payable to a physiotherapist/chiropractor, psychiatrist, therapist (including psychotherapist or occupational therapist), practitioner of holistic medicine, and other medical expenses including vitamins and supplements which are not covered by the aforesaid medical scheme. The respondent shall reimburse the applicant for any such costs incurred by her or pay the relevant service provider within 5 days of receipt of the relevant invoice or receipt;
- 1.3 by bearing all the costs incurred in respect of the minor child's education, such costs to include all secondary education fees, including school fees (in private education), additional tuition and tutor fees and the cost of all extra mural activities in which she may participate, including coaching, camps, tours and outings, as well as the costs of all books, stationery, uniforms, equipment (including computer hardware, tablets and software and printing consumables), attire relating to her education and the sporting and/or extra mural activities engaged in by her;
- 1.4 by bearing the costs incurred in respect of two horses to be kept by the applicant and the minor child, including livery costs, veterinarian fees,

insurance, food and supplements, tack and grooming, farrier fees, and the costs of licensing, maintaining and insuring the horse box;

1.5 by bearing, with effect from the time that he is able to return to fulltime employment with Qatar Airways, the reasonable additional costs relating to the applicant's and the minor child's horse-riding, including: lessons and shows, the costs relating to admission fees to championships and events, equipment, travel and subsistence costs relating to all championships and events entered by the applicant and the minor child and the costs of annual CVRC, SASJ, SAEF and ESA memberships for them;

1.6 by payment of the following expenses in respect of the applicant's residence (currently the Noordhoek property) and related expenditure:

1.6.1 the monthly bond instalments;

1.6.2 rates and services due to the relevant municipality (including water, refuse removal and sewage);

1.6.3 electricity costs to a maximum of R2 000,00 per month which shall be paid monthly, upon submission by the applicant to the respondent of the relevant invoices;

1.6.4 the premiums in respect of the current comprehensive homeowners, household contents and all risk insurance, and the excess on any claims that fall to be made in terms of such insurance;

1.6.5 the cost of telephone landline rental and calls and fibre internet;

1.6.6 the premiums in respect of the full bouquet DSTV-PVR subscription, which shall become payable once the applicant has provided the respondent in writing with the details of the relevant account;

1.6.7 the cost of maintaining the burglar alarm and security, including ADT armed response security and CMR medical response;

- 1.6.8 the reasonable costs of repairs and maintenance to any household equipment or appliances and the improvements to the property, including the swimming pool and irrigation system and any electrical or plumbing work, which shall be arranged by the respondent promptly upon being advised by the applicant of the need therefor;
- 1.7 by payment of the wages of the domestic employee, three times per week, and the gardener, once per week, as well as the annual bonus payable to the domestic staff;
- 1.8 by payment of the applicant's and the minor child's cellular telephone contracts and call costs;
- 1.9 by payment of the applicant's Momentum retirement annuity contribution;
- 1.10 by payment of the amount of R500.00 (five hundred Rand) per month to the minor child in respect of her allowance, without deduction or set off, on or before the first day of the month;
- 1.11 by payment of the following costs in respect of the applicant's Ford Ranger motor vehicle:
 - 1.11.1 comprehensive vehicle insurance (including excess);
 - 1.11.2 the costs of the tracker, licensing, maintenance, repairs and servicing, including replacement of tyres and wheel balancing when necessary;
2. The amounts referred to in paragraphs 1.1, and 1.10 above shall be adjusted annually in July of each year in accordance with the percentage adjustment in the headline inflation of the Consumer Price Index as published by Statistics South Africa during the preceding year, the first such adjustment to be effective as of 1 July 2021;
3. The respondent shall pay to the applicant's attorneys of record a contribution towards the applicant's legal costs in the amount of R200 000 (two hundred thousand Rand) on or before 30 September 2020;

4. The following passages in the respondent's opposing affidavit, *jurat* 30 July 2020, including the annexures therein referred to, are struck out:
 - 4.1 That part of paragraph 57 following after the words 'minor issues';
 - 4.2 The last sentence of paragraph 94; and
 - 4.3 Paragraph 183.
5. The respondent shall pay the applicant's costs of suit in the rule 43 application.

A.G. BINNS-WARD
Judge of the High Court

APPEARANCES**Applicant's counsel:****L. Buikman SC****Applicant's attorneys:****Catto Neethling Wiid Inc.
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