

Editorial note: Certain information has been redacted from this judgment in compliance with the law.



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No: 1931/2020

In the matter between:

A[...] B[...]

Applicant

And

C[...] C[...]

Respondent

JUDGMENT

BESHE J:

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[1] The parties in this matter are embroiled in a divorce action. Following a *Rule 43* application by the respondent, the parties agreed to the issuing of an order on the 17 November 2020, in the following terms:

"1. The Minor Children's primary place of residence shall be with the Applicant, the Applicant shall be the Minor Children's primary caregiver, with the Respondent to have reasonable rights of access.

2. That the Respondent shall make payment of maintenance to the Applicant in the sum of R20 000.00 per month on the 1st day of each month, such payment to begin on 1 December 2020.

3. That the Respondent shall make payment of all minor children's reasonable school fees, school uniforms, school-related extra-mural activities, costs and uniforms and equipment required for school extra-mural activities.

4. That the Respondent shall attend to the payment of the monthly instalments, insurance and maintenance of the Mercedes Benz [...] model.

5. That the Respondent shall make payment of the sum of R7 500.00 for a contribution to legal costs, such payment to be made to the Applicant's attorneys of record by 10 December 2020.

6. That the Respondent shall make payment of the monthly lease amount in the sum of R7 750.00 for the residence in which the Applicant and the minor children reside.

7. That costs of the application shall be costs in the cause."

[2] The then respondent who is the defendant in the divorce action approaches this court as an applicant in terms of *Rule 43 (6)*, seeking the setting aside of the abovementioned rule and replacing it with an order in the following terms:

"That the respondent be ordered to pay maintenance *pendente lite* towards the minor daughter in the amount of R10 870.00 per month on or before the first day of the month directly into the applicant's nominated bank account."

Reference to respondent in this prayer appears to be an error as later in her papers applicant prays that the "applicant" be ordered to make the abovementioned payment.

[3] *Rule 43 (6)* provides for the varying of a court's earlier decision in the event of a material change occurring in the circumstances of either party or a child or the contribution towards costs proving inadequate.

[4] It emerges that what the applicant seeks is a variation of the order of the 19 November 2020 on the basis of changed circumstances. Those changes being:

(a) The respondent has since secured a job and earns R14 000.00 per month.

(b) One of the party's minor children has reached majority age, has secured a job and is no longer being supported by the respondent.

(c) His business has come to a standstill with the result that his income was in effect reduced to zero.

As far their son **J[...]** is concerned, applicant makes the point that the extant *Rule 43* order was made on the basis that **J[...]** was living with respondent. He further makes the point that he has for an extended period funded his monthly shortfall from his inheritance from his mother and loans from his life partner.

[5] He then goes on to tabulate his monthly expenses and annex a FNB business account statement. Applicant contends that respondent is not interested in having the divorce action finalised, refuses to go for mediation, is content in dragging the divorce action whilst she enjoys maintenance *pendente lite*.

[6] The amount of R10 870.00 he is tendering to pay is towards the maintenance of their daughter.

[7] The application is opposed by the respondent on *inter alia* the following grounds: The applicant has not made a full and frank disclosure of his circumstances. That the attainment of majority by their son does not constitute a material change warranting the variation of the order because he was in any event not staying with the respondent on a full time basis, only came home during school holidays. On the contrary, that means less expenses towards **J[...]** from applicant's part. She explains why she has not availed herself for mediation. She does not deny that there could be a decline in a sale of exotic plants to overseas markets but asserts that there was a significant amount of local sales to keep the business afloat. Assails the applicant for not disclosing his alternative bank accounts held with Standard and ABSA banks. She demonstrates that applicant continues to enjoy the same standard of living they enjoyed prior to their separation if not higher. Including the fact that he paid for their son and a friend flight tickets to travel to Spain in 2022 and

maintained them for three months whilst overseas. It was pointed out on behalf of the respondent that in his tender, applicant ignores respondent's need to be maintained *pendente lite*, is only prepared to pay maintenance towards his daughter. Further that all indications point away from him having a zero income. This, it was argued is apparent from the following: One of his listed expenses is payment of R19 000.00 per month towards his motor vehicle. Yet, there is no indication of such payment on the disclosed bank statement. Recently, he bought his daughter an expensive iPhone. Also from expenditure towards his son's travel to Spain and France and his stay there together with his friend.

[8] The monthly expenses tabulated by the respondent are said to be reasonable. I am inclined to agree with this assertion.

[9] Even though from what emerges from both parties there has been changes in their circumstances such as the fact that their son has attained majority status, and the fact that the respondent earns a salary, I am not persuaded that such warrant the variation of the *Rule 43* order issued on the 19 November 2020. The applicant has also not succeeded in showing that he is not possessed of means to contribute towards the respondent's maintenance *pendente lite*. The applicant has not made out a case for the variation he seeks.

[10] Accordingly, the application is dismissed with costs.

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant	:	Adv: Badenhorst
Instructed by	:	ISABELLE BUHR ATTORNEYS C/o NOLTE SMIT INC. 51A Hill Street MAKHANDA Ref: T Kingwill/ISA6/0001 Tel.: 046 – 622 7209
For the Respondent	:	Adv: Watt
Instructed by	:	DEREK LIGHT ATTORNEYS C/o DOLD & STONE INC. 10 African Street MAKHANDA Ref: Mrs Wolmarans Tel.: 046 – 622 2348
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