

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)**

NOT REPORTABLE

Case no: 3622/2023

In the matter between:

L[...] D[...] (born: G[...])

Applicant

and

T[...] D[...]

Respondent

JUDGMENT: RULE 43

Govindjee J

Background

[1] The applicant, the plaintiff in a defended divorce action, seeks an order pursuant to Uniform Rule 43(1)(a) and (b). The parties were married on 15 May 1999 in terms of an antenuptial contract, with the exclusion of the accrual system. There

are no children born of the marriage. A divorce summons was issued on 31 August 2023.

[2] The applicant declares that she does not have any formal employment and requires maintenance *pendente lite* for herself. On her version, the parties enjoyed a high standard of living and the respondent owns significant assets, notably livestock. His company also received revenue, during 2022, of almost R1,5 million. Her assets, by contrast, totals some R300 000.

[3] The applicant attached a schedule reflecting monthly needs to the tune of R43 550,00. This was on the assumption that the applicant would be retained on the respondent's Hospital Plan and Gap Cover. During argument, Ms Watt adopted a pragmatic approach in persisting only with certain claims, and reducing the amounts claimed in some instances.¹ Part of the remaining claim, totalling R21 100,00, is an amount of R3500,00 for fuel, which the applicant explains with reference to necessary treatment in Bloemfontein, and transportation of staff to Burgersdorp. The applicant also claims R10 000,00 as a contribution towards legal costs.

[4] The respondent disputes that the applicant has made a full disclosure of pertinent facts, and highlights the applicant's failure to attach her bank statements, which he has provided. His sworn reply reflects, inter alia, that the couple never undertook overseas vacations or exchanged lavish gifts, each driving bakkies with mileage in excess of 160 000 kilometres on the clock. The respondent highlights loss of livestock during September 2023. His assets, not including liabilities, are reflected at a total value of R7,7 million. He submits that his monthly income, after farming expenses and liabilities are deducted, amounts to R4 000 per month, derived from his company, which earned income of approximately R115 000 during

¹ That amount comprises the following:

a) Groceries, food, personal care:	R6500,00
b) Domestic worker:	R2000,00
c) Garden services:	R2000,00
d) Clothes and shoes:	R500,00
e) Fuel:	R3500,00
f) Medical expenditure:	R2300,00
g) Holidays, entertainment and recreation:	R1500,00
h) Gifts:	R300,00
i) Pets:	R2500,00

September 2023. That account is in debit to the tune of almost R890 000,00, the overdraft limit being R900 000,00.

[5] The respondent summarised his monthly expenses for September 2023. That includes various payments at grocery stores, as well as cash withdrawals totalling R12000,00. He confirms that various expenses incurred by the applicant are presently paid for by his company or farm, including water and electricity, telephone and internet, insurance, vehicle maintenance, medical aid and gap cover, life insurance, retirement annuity and policies and the alarm system. Although it was submitted that the applicant received an allowance of approximately R11 000,00 over and above this, from which the respondent argued that various items claimed could be covered, that amount is more accurately averaged in the amount of R8700,00, paid sporadically.

The supplementary affidavit

[6] The applicant sought to file a supplementary affidavit on the basis that various rights had been violated by misleading statements contained in the respondent's answering affidavit. Uniform Rule 43(5) provides that the court may hear such evidence as it considers necessary and may dismiss the application or make such order as it deems fit to ensure a just and expeditious decision.

[7] I am disinclined to entertain the affidavit for the following reasons. The object of Uniform Rule 43 is that applications for maintenance are to be dealt with as inexpensively and expeditiously as possible. It is for that reason that prolixity in averments and the unnecessary proliferation of papers and affidavits are to be avoided.² As Ms *Beard*, pointed out, while the court may receive further evidence, either orally or adduced by affidavit, such evidence cannot be adduced as of right.³ Notwithstanding the Constitutional Court's remark that Uniform Rule 43 may be given an expansive interpretation,⁴ and the judgment in *E v E*,⁵ proposing amendment to the practice directive in another Division of this court, the present circumstances do not warrant deviation from the general rule.

² *Mather v Mather* 1970 (4) SA 582 (E).

³ *Verster v Verster* 1975 (3) SA 493 (W) at 494C.

⁴ *S v S and Another* 2019 (6) SA 1 (CC) para 56.

⁵ *E v E; R v R; M v M* [2019] ZAGPJHC 180; [2019] 3 All SA 519 (GJ); 2019 (5) SA 566 (GJ) para 59.

[8] On the approach I adopt, a just and equitable outcome is possible without recourse to the supplementary affidavit, given what appears from the papers properly filed in terms of Uniform Rule 43(2) and (3). Considering the limited extent of the supplementary affidavit, and the circumstances that led to it being filed, it is appropriate that there be no order as to costs in respect of that affidavit.

[9] Bearing in mind the nature of the proceedings, and that the object of these proceedings is to provide only interim relief, I am disinclined to adopt too strict an approach to the shortcomings in respect of the manner of disclosure that appears on the papers. While this is not to suggest that a generous approach will always be appropriate, it puts paid to the argument that this court should refuse the application outright.

What is reasonable?

[10] Maintenance *pendente lite* cannot be determined with the same degree of precision as would be possible following a trial. Ultimately, the applicant is entitled to reasonable maintenance *pendente lite* dependent upon the marital standard of living of the parties, the applicant's actual and reasonable requirements and the capacity of the respondent to meet such requirement.⁶ It is generally accepted that such maintenance is to be met from income although in some circumstances inroads on capital may be justified.

[11] It is apparent from the facts emerging from the papers that the parties have not lived a lavish lifestyle. The applicant is unemployed and has limited assets at her disposal. She receives various forms of support from the respondent, including medical aid, gap cover, insurance and retirement provisioning. As Ms *Watt* argued, she clearly also requires a regular monthly cash payment to make ends meet.

[12] What is reasonable requires balancing the applicant's reasonable needs with the respondent's ability to meet those needs, bearing in mind the demonstrated

⁶ See *CMSC v NC* [2021] ZAWCHC 227 para 14.

lifestyle of the parties. Most of the categories of expenditure claimed were not disputed, the real quibble being the extent of the claim, particularly in respect of 'holiday, entertainment and recreation' and 'groceries, food and personal care'. Whether out of pocket medical expenditure and pet-related costs should be paid by the respondent was, however, in dispute. The approach adopted by Ms *Watt* certainly facilitated the court's consideration of these issues, and I have no hesitation in concluding that what has now been claimed is, in broad terms, reasonable.

[13] What is more difficult to ascertain is the respondent's capacity to meet that amount, particularly when considering his monthly expenditure and that portion of his income that remained for discretionary spend. In striving to strike the appropriate balance, I have considered the cash withdrawals reflected on the September 2023 bank statement, as well as the respondent's own grocery bills, bearing in mind that not everything reflected on that statement has been explained. On his own papers, it is apparent that the respondent believed that he paid a monthly amount of R11 000,00 to the applicant. The applicant has satisfied me that she is entitled to more, although I accept Ms *Beard's* argument that there is more to be trimmed from what has been claimed considering what appears on the papers. In the final analysis, I consider an amount of R17 500,00 per month, commencing on 30 November 2023, to be appropriate.

[14] The claimed contribution towards costs in a matrimonial suit is *sui generis*. The sum to be contributed is determined by the court's view of the amount necessary for the applicant adequately to put her case before the court. Determining an appropriate amount requires consideration of the circumstances of the case, the financial position of the parties and the issues involved in the pending litigation. In exercising its discretion as to quantum of the contribution towards the costs to be awarded, the court is bound by the constitutional right to equality before the law and equal protection of the law.

[15] Considering that the applicant is unemployed and that there is a demonstrated disparity in her ability to access funds, I am of the view that the applicant has made out a case for a R10 000,00 contribution to her legal costs.

Considering the assets at the disposal of the respondent, and the amount awarded, there is no basis to order payment in instalments.

Order

[16] The following order is issued:

1. The respondent is directed to pay maintenance to the applicant *pendente lite* in the sum of R17 500 (seventeen thousand five hundred rand) per month, commencing on 30 November 2023.
2. The respondent is directed to make a contribution towards the applicant's legal costs in the sum of R10 000,00 (ten thousand rand) by depositing such amount into the trust account of the applicant's attorneys of record within seven (7) days of this order.
3. The costs of this application, excluding the costs of filing of a supplementary affidavit, are to be costs in the cause.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 07 November 2023

Delivered: 10 November 2023

Appearances:

For the Applicant:

Adv K Watt
St George's Chambers, Makhanda

Instructed by:

Wheeldon Rushmere & Cole Inc.
119 High Street
Makhanda
Email: bbb@wheeldon.co.za

For the Respondent:

Adv M L Beard
St George's Chambers, Makhanda

Instructed by:

Nettelton Attorneys
118A High Street
Makhanda
Email: ilze@netteltons.co.za