



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

Case No: 4017/2021

In the matter between:

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

Applicant / Defendant

And

J [...] M [...]

Respondent / Plaintiff

JUDGMENT

BESHE J:

[1] Applicant is the defendant in the divorce action between the parties. He instituted a *Rule 43* application for an order that respondent (plaintiff in the main action) makes a contribution towards his legal costs. In addition to opposing the application, respondent is making a counter-application that applicant be ordered to contribute towards the parties' minor child's maintenance *pendente lite*.

[2] At the outset, it is apposite to remind all concerned that the object of *Rule 43* is that the applications that are provided for by this rule should be dealt with as inexpensively and as expeditiously as possible. Further that prolixity in averments and the unnecessary proliferation of papers and affidavits should be avoided.¹ Papers filed in this matter are a far cry of what is

¹ See *Erasmus Superior Court Practice Volume 2 D1-578*.

envisaged in *Rule 43* applications. Papers run into some 184 pages excluding applicant's replying affidavit. As if that is not enough, the court is referred to bundle relating to *Rule 35* notice with papers that are as voluminous if not more than those filed in respect of the *Rule 43* application. The problem starts with the notice in terms of *Rule 43* where there is no indication of what exactly the applicant will be seeking in terms of this rule (*Rule 43*). It is only at the end of 23 pages of the affidavit that the court is told that the applicant seeks a provisional payment as contribution towards applicant's legal costs *pendente lite*. To crown it all, the affidavit has very sparse details about applicant's earnings and monthly expenses. It is only in his reply to the counter-application that the applicant refers the court to his reply to the *Rule 35* notice regarding his financial position. This reply does not shed much light either. This is unacceptable for two reasons:

(i) A party is required to make his/her case in the founding affidavit.

(ii) Rule 43 proceedings should be self-contained, the court should not be required to peruse other files of papers or indices.²

This in my view calls for an adverse inference to be drawn against the applicant, that he has not come to court with clean hands, is not playing open cards in regard to the issues at hand in this application in particular his earnings and monthly expenditure / expenses. The manner in which the applicant conducted these proceedings is not acceptable. I dare say it an abuse of the court process.

[3] As indicated earlier, in the counter-application respondent seeks an order for payment of maintenance *pendente lite* in respect of the parties' minor child of R5000.00 per month; half of the medical aid premium payable in respect of the child; half of reasonable medical expenses not covered by the medical aid scheme; half of reasonable costs of the minor child's schooling as

² *Cartens v Cartens* 1985 (2) SA 345.

well as the minor child's extramural and extracurricular schooling and sporting activities etc.

[4] Notably in his reply, the applicant (in the main application), does not deny the need for maintenance as outlined by the respondent in respect of the minor child. He resorts to his refrain that the respondent is responsible for the action not having been settled yet they have agreed to settle during 2021. He also makes the point that given respondent's financial position she is able to afford her monthly expenses with the *proviso* of course that excluding her legal fees. Applicant does not take issue with the figures provided as monthly expenditure in respect of the minor child which came to R12 647.50 per month. I am of the view that the amount given by the respondent is reasonable and the items thereon do not amount to extravagant demands. Both parents, if they have the means to do so, have a duty to support their children. Respondent has shown that her monthly expenditure exceeds her earnings.

[5] Due to the paucity of information provided by the applicant in respect of both his application for a contribution towards costs as well as the counter-application for payment of a contribution towards the minor child's maintenance, I am unable to find that applicant has made out a case for a contribution by the respondent towards his legal costs. I am also not persuaded that he is not possessed of means to contribute towards the maintenance of the parties' minor child *pendente lite*.

[6] Accordingly, the following order will issue:

The main application is dismissed.

The relief sought in the counter-application is granted as it appears in the respondents' notice in terms of *Rule 43 (1)*, being paragraphs 1, 1.1, 1.2, 1.3, 1.4 and 3 thereof.

N G BESHE
JUDGE OF THE HIGH COURT

APPEARANCES

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Date Heard : 16 May 2023

Date Reserved : 16 May 2023

Date Delivered : 18 May 2023