

IN THE HIGH COURT OF
GAUTENG LOCAL DIVISION,



SOUTH AFRICA
JOHANNESBURG

CASE NO: 2021/3737

1. Reportable: No
2. Of interest to other judges: No
3. Revised:yes

Wright J
24 October 2022

In the matter between:

NJIYELA, LUNGHILE PATIENCE SAMANTHA

APPLICANT

And

NJIYELA, ISAAC VUSI

RESPONDENT

JUDGMENT – WRIGHT J

WRIGHT J

1. The applicant for rule 43 relief, which relief includes claims for maintenance money does not set out at all, either in her founding affidavit or in a supplementary affidavit filed without leave and with no accompanying application for condonation, what her income is.
2. It is unreasonable to expect a judge to try and work out what an income might be from vague allegations in a founding affidavit read with a few attached bank statements. It is unfair to expect an opposing litigant to trawl through annexes in an attempt to work out what the case is that needs to be answered.
3. The applicant's heads of argument were uploaded to caselines today, 24 October 2022, the day of hearing, without explanation. This is hopelessly out of time.
4. Applicant's counsel, Adv V Rikhotso, is a highly competent counsel and did her best in an attempt to salvage the hearing.
5. A draft order, presented to me on behalf of the applicant was very difficult to read. Ms Rikhotso corrected it. I had called for a draft order from both sides so that I could know what order each side was seeking.
6. Sadly, just before the hearing may have started, Mr Du Plessis, for the respondent informed me that he had just received news that his wife was dying. I immediately excused him. Ms Diedericks, his attorney requested that the matter proceed. She clearly knew her papers and had even done a calculation of the applicant's income based on the annexes to the founding affidavit. She submitted that the applicant made more than enough money and that the application should be dismissed.

7. Ms Diedericks may be correct, but I need to do justice between the parties. I do not know why the applicant's case was presented like it was. Ms Rikhotso made mention of there perhaps being some urgency. There is no urgency in the present application. It is an ordinary rule 43 case.
8. Ms Diedericks opposed the admission into evidence of the applicant's supplementary affidavit. I make no finding on the admissibility into evidence of the supplementary affidavit.
9. In my view, given all the circumstances, it is in the interests of justice that I make the following order.

ORDER

1. The matter is postponed sine die, costs reserved.
2. The applicant is to deliver a supplementary affidavit by 5pm on 4 November 2022.
3. The respondent may deliver a supplementary affidavit within ten court days thereafter.

HEARD : **24 October 2022**

DELIVERED : **24 October 2022**

APPEARANCES

APPLICANT : Adv Vivian Rikhotso

073 221 3395

vrikhotso86@gmail.com

Jurgens Bekker Attorneys

011 622 5472

RESPONDENT : Adv C R Du Plessis and then Ms Diedericks

082 852 3505

charl@litigationssa.com

Diederiks Oudegeest Attorneys Inc

010 110 9612/082 951 9575

diedericks@diedericksattorneys.com