

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

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA,  
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2023-110823

|                              |                                        |
|------------------------------|----------------------------------------|
| (1)                          | REPORTABLE: YES/NO                     |
| (2)                          | OF INTEREST TO OTHER JUDGES:<br>YES/NO |
| (3)                          | REVISED.                               |
| <p>...12 March 2024.....</p> |                                        |
| DATE                         | SIGNATURE                              |

In the matter between:

**N.M.C.**

Applicant

and

**C.A.C.**

Respondent

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**JUDGMENT**

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**DELIVERED: -**

This Judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines.

F. MARCANDONATOS A.J.:-

## 1. INTRODUCTION

1.1. When this matter came before me on **21 February 2024**, it was apparent that:-

1.1.1. Applicant, being the husband and Plaintiff in the Divorce action, had launched Rule 43 proceedings in and during **November 2023**, same having been served on Respondent on **01 December 2023** ("**Applicant's Rule 43 Application**");

1.1.2. whilst Respondent had opposed **Applicant's Rule 43 Application**, she had failed to deliver a Sworn Reply therein because, it being averred in the main, Respondent and her attorney had belaboured under the mistaken belief that the *dies non* also applied to Rule 43 Applications;

1.1.3. in the absence of Respondent's Sworn Reply, **Applicant's Rule 43 Application** was enrolled and set down on the unopposed Family Court Roll for the week commencing **05 February 2024**;

1.1.4. on **02 February 2024**, Respondent delivered a Notice of Counter Application ("**Respondent's Counter Application**") and her Sworn Reply to **Applicant's Rule 43 Application**, the late filing in respect of which condonation was sought. **Respondent's Counter Application** was brought on an urgent basis;

1.1.5. an attempt was made to have **Applicant's Rule 43 Application** and **Respondent's Counter Application** heard on an opposed basis in the week commencing **05 February 2024**. The Court was, however, not inclined in the circumstances to do so;

1.1.6. subsequently, Applicant delivered an Answering Affidavit to **Respondent's Counter Application** and the matter was enrolled in the Family Court for the week commencing **19 February 2024**,

the hearing of same having been allocated to me on **21 February 2024**.

- 1.2. ***Applicant's Rule 43 Application*** and ***Respondent's Counter Application*** shall, for ease of reference, be referred to collectively herein as either "***this matter***" or "***the matter***", as "***the matters***".
- 1.3. In ***this matter***, *pendente lite* relief was sought, pertaining to:-
  - 1.3.1. the care and contact of the minor children;
  - 1.3.2. maintenance in respect of Respondent and the minor children;
  - 1.3.3. a legal costs contribution for Respondent.
- 1.4. At the outset, and before the hearing in respect of ***the matter*** commenced, Counsel for Applicant and Respondent requested to stand the matter down, whereafter both Counsel informed me that an agreement had been reached between the parties and in terms whereof there was consensus between the parties as to what was no longer in dispute in ***this matter***, ("***the Agreement***") – see paragraph 8 hereunder.
- 1.5. The issues, which remained in dispute between the parties, were the following:-
  - 1.5.1. the reserved costs occasioned by the removal of the matter from the Roll during the week commencing **05 February 2024**;
  - 1.5.2. whether Applicant had to contribute to Respondent's legal costs and, if so, the quantum thereof;

- 1.5.3. the issue of whether Applicant must pay for the costs of a domestic worker for Respondent and the children, for 1 day or 2 days a week;
- 1.5.4. the issue of the provision by Applicant of a motor vehicle to Respondent;
- 1.5.5. the necessity of the appointment of a social worker, or the Office of the Family Advocate, to consider the following pertaining to contact by Applicant to the minor children, alternatively, for the Court to make a determination with regard to contact:-
  - 1.5.5.1. in respect of the minor boy, Applicant's right:-
    - 1.5.5.1.1. to remove the child on every alternate public holiday and for every alternate long weekend from 16h00 on the day preceding the public holiday and long weekend until 19h00 on the public holiday or last day of the long weekend;
    - 1.5.5.1.2. to remove the child for each alternate short school holiday and for half of every long school holiday, Easter Sunday, Christmas Eve, Christmas Day and Boxing Day to alternate annually between the parties;
    - 1.5.5.1.3. to remove the child from 17h00 on the day preceding Applicant's birthday to 08h00 on the day after Applicant's

birthday and the weekend whereupon Father's Day falls, in the event of which, should Mother's Day or Respondent's birthday fall on a day when the child is in Applicant's care, then Respondent shall similarly be entitled to the same contact with the child;

1.5.5.1.4. to have contact to the child on his birthday, in the event of which contact on the child's birthday is to be shared between the parties, the child to wake up with one party on the morning of his birthday and sleeping over with the other party on the night of his birthday, said arrangement to alternate annually; and

1.5.5.1.5. to have reasonable telephonic contact with the child at all reasonable times;

1.5.5.2. in respect of the minor girl, Applicant's right:-

1.5.5.2.1. to remove the child every alternate weekend and, more particularly the manner of such contact and whether same should be phased in;

1.5.5.2.2. to remove the child on every alternate public holiday and for every alternate long weekend from 16h00 on the day preceding the public holiday and long

weekend until 19h00 on the public holiday or last day of the long weekend;

1.5.5.2.3. to remove the child for each alternate short school holiday and for half of every long school holiday, Easter Sunday, Christmas Eve, Christmas Day and Boxing Day to alternate annually between the parties;

1.5.5.2.4. to remove the child from 17h00 on the day preceding Applicant's birthday to 08h00 on the day after Applicant's birthday and the weekend whereupon Father's Day falls, in the event of which, should Mother's Day or Respondent's birthday fall on a day when the child is in Applicant's care, then Respondent shall similarly be entitled to the same contact with the child;

1.5.5.2.5. to have contact to the child on her birthday, in the event of which contact on the child's birthday is to be shared between the parties, the child to wake up with one party on the morning of her birthday and sleeping over with the other party on the night of her birthday, said arrangement to alternate annually; and

1.5.5.2.6. to have reasonable telephonic contact with the child at all reasonable times.

1.6. Despite Applicant's initial opposition, Applicant did not on the day of the hearing, persist in his opposition to Respondent's seeking of condonation for the late filing of her Sworn Reply in ***Applicant's Rule 43 Application*** and further in respect of the urgency of ***Respondent's Counter Application***.

1.7. I was therefore accordingly only required to hear argument in respect of the issues remaining in dispute between the parties, which I duly did, reserving my judgement in respect of same.

## 2. SALIENT BACKGROUND

2.1. The parties were married to each other on ***28 August 2010***, out of Community of Property, with the inclusion of the Accrual System.

2.2. Applicant instituted Divorce proceedings against Respondent, the Combined Summons in respect of which was served on ***31 October 2023***.

2.3. The Court has noted that there will be triable issues in the main Divorce action in relation to the validity of the Antenuptial Contract, spousal maintenance, and maintenance in respect of the minor children born from the marriage.

2.4. There are two minor children born of the marriage, namely, a boy currently, 12 years old and a girl, currently 10 years old.

2.5. Applicant submits that he is employed by a company belonging to his father, as a gas analyser.

- 2.6. Respondent submits that whilst she runs a small business with her mother, selling health and beauty products, earning approximately R6 500.00, per month, she is not able to make payment of her own needs as well as that of the children and is financially dependent on Applicant.
- 2.7. It is common cause that, since the parties' separation, Applicant has continued to maintain Respondent and the minor children, albeit not to the satisfaction of Respondent.
- 2.8. Applicant's version is that the company belonging to his father has undertaken to provide for certain of the essential maintenance needs of Respondent and the minor children, pending the finalisation of the Divorce.

3. **RESERVED COSTS OCCASIONED BY THE REMOVAL OF THE MATTER FROM THE ROLL IN THE WEEK COMMENCING 05 FEBRUARY 2024**

- 3.1. I have been asked to make a determination with regard to the costs, which were reserved in respect of the removal of the matter from the Roll during the week commencing on *05 February 2024* and, more particularly, as to which party is to bear such costs.
- 3.2. I am of the view that neither party is entitled to the costs and I state so for the following reasons:-
  - 3.2.1. Applicant enrolled the matter on the unopposed roll during the week of *05 February 2024*, due to the absence of Respondent's Opposing Affidavit, this despite notice from Respondent that she intended to oppose *Applicant's Rule 43 Application*;
  - 3.2.2. neither party sought a postponement on *05 February 2024*, requesting the Court to still consider *the matter* as an opposed matter;



3.2.3. the Court refused to hear *the matter* and thus removed the matter from the roll.

4. **RESPONDENT'S CLAIM FOR A CONTRIBUTION TO LEGAL COSTS**

4.1. Respondent seeks a contribution to legal costs in the amount of R518 891.47, (*sic! Error in computation ought to have been R513 891,47*) payable in three instalments.

4.2. The main thrust of Applicant's argument is that:-

4.2.1. the majority of Applicant's income is consumed by his maintenance contribution;

4.2.2. *ex facie* the Bill of Costs, attached to Respondent's Affidavit in the Counter Application, the bulk of the fees is derived from an anticipation that Applicant will act in a dilatory manner in respect of the Divorce action.

4.3. The main thrust of Respondent's argument is that:-

4.3.1. whilst Respondent has limited access to income, it is minimal, and she has been a housewife for all intents and purposes for many years and at the financial mercy of Applicant;

4.3.2. she has no means to pay for legal fees, whereby Applicant has access to resources to litigate;

4.3.3. Respondent already owes her attorney an amount of R50 833,94;

4.3.4. her requirement for a contribution to costs is not unreasonable.

4.4. When considering a claim for a contribution to costs, which a spouse may be ordered to pay, the principles are well established in the various cases over the past few years and recently in this Court, more particularly in the recent (*unreported*) case of B.J.M v W.R.M<sup>1</sup>, which I align myself with. I do not summarise the said cases other than to refer to:-

4.4.1. Van Rippen v Van Rippen<sup>2</sup>, wherein and in respect of the exercise of the Court's discretion it states as follows: "... *the Court should, I think, have the dominant objective 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 must be enabled to present her case adequately before the Court.*"; and

4.4.2. Carey v Carey<sup>3</sup>, wherein and in respect of equality before the law it states as follows: "... *applicant is entitled to a contribution towards her costs which would ensure equality of arms in the divorce action against her husband. The application would not be able to present her case fairly unless she is empowered to investigate respondent's financial affairs through the forensic accountant appointed by her. That is, applicant will not enjoy equal protection unless she is equally empowered with the "sinus of war". The question of protecting applicant's right to and respect for and protection of her dignity also arises in the present situation, where a wife has to approach a husband for the means to divorce him. I therefore regard myself as being constitutionally bound to err on the side of the "paramount consideration that she should be enabled adequately to place her case before the Court". Papers before me indicate that Applicant can afford to pay the amount claimed and that*

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<sup>1</sup> 2023(2) AG PJHC 401

<sup>2</sup> 1949(4) SA 634 (c)

<sup>3</sup> 1999(3) SA 615 (c) at 621

*he will not be prejudiced in the conduct of his own case should he be ordered to do so.”*

- 4.5. Where there is a marked imbalance in the financial resources available to the parties to litigate, there is a real danger that the poorer spouse will be forced to settle for less than that to which she is entitled, simply because she cannot afford to go to trial.
- 4.6. On the other hand, the other spouse, who has resources available to litigate and deploy financial resources to do so, would result in circumstances that are inherently unfair.
- 4.7. To promote the equal protection under the law and access to Courts, it must help a spouse having to go “*open cap in hand*” to family or friends to borrow funds for legal costs or be forced to be beholden to an attorney who is willing to wait for payment of fees and therefore in effect, act as a “*banker*”.
- 4.8. Where a spouse has already incurred debt to litigate, whether to family or an attorney, a Court should protect the dignity of that spouse by ordering a contribution to costs sufficient to repay those debts to the extent the Court considers the expenditure reasonable, and a spouse should be able to adequately place her case before Court. This is part of a spouse’s duty of support.
- 4.9. Save in the respects referred to herein, Applicant did not attack the reasonableness of the costs listed in the pro-forma Bill of Costs attached to ***Respondent’s Counter Application*** in any significant way.
- 4.10. Applicant argued that amongst the fees claimed in the *pro-forma* Bill of Costs attached to ***Respondent’s Counter Application***, it is derived from an anticipation that he will act in a dilatory manner and that historically he has not been dilatory and therefore her claim is unreasonable,

however, what Applicant has not taken into account is that albeit that he may not be dilatory, the need to request further documents, even if provided by Applicant or *via* subpoena, may arise following an analysis of the documents provided by Applicant.

- 4.11. A highly contested issue lies in Applicant's income and his relationship in respect of the company (*his father's business*). He says he is employed, whilst Respondent contends that the business is a family-owned business where his parents can create a number of nominal pay-lips they so wish to assist Applicant in disguising the true amount of income he draws out of the business. Respondent furthermore submits that Applicant has his own dealings in gas detection, separate to his parents' business.
- 4.12. Documents may therefore very well be needed to be subpoenaed and examined and therefore the Discovery process may be important.
- 4.13. Moreover, a claim for spousal maintenance must be determined upon the granting of a Decree of Divorce.
- 4.14. Therefore, the true financial status of Applicant requires to be determined. A failure to do so, may compromise Respondent's claims, including a claim for spousal maintenance and maintenance in respect of the children.
- 4.15. Another issue, which was raised during argument, was whether the Court may allow costs claimed in respect of Interlocutory Applications brought in future.
- 4.16. Applicant contended that Respondent, when bringing an Interlocutory Application, would ultimately be granted, by the Court hearing the Interlocutory Application, the costs of such Application.

- 4.17. Respondent's submission was that whilst it may ultimately be that a Court hearing the Interlocutory Application may grant an Order as to costs, Respondent must be empowered to do whatever she needs to do, to advance her case. I concur.
- 4.18. It is imperative for both parties to comprehensively and transparently disclose their financial circumstances for a fair evaluation of a legal costs contribution.
- 4.19. Both parties completed and deposed to Financial Disclosure Forms.
- 4.20. Other than a generic averment that his employer helps him, Applicant gives little explanation on how he meets his legal expenses. He alleges that he is utilising a loan from his employer and lists a loan to the value of R1 565 954.00 from his employer but does not provide details thereof. This is within the context that he is the party from whom maintenance is claimed and paid for, both in relation to the minor children and Respondent. If I consider the earnings of Applicant and his various financial obligations, the numbers are not adding up.
- 4.21. During argument, Counsel for Applicant tendered an amount of R30 000.00 as a contribution towards Respondent's costs payable in monthly instalments of R5 000.00, but advanced that should the Court be inclined to grant a contribution in excess of R30 000.00, Applicant submitted that an amount of R50 000.00 is fair and reasonable on the basis that Respondent can approach Court again should it be insufficient.
- 4.22. Against the backdrop of the foregoing, I am inclined to infer that Respondent is entitled to a contribution to her legal costs until the 1<sup>st</sup> day of trial and that it is within the means of Applicant to contribute to Respondent's legal costs. I am of the view that the sum of R50 000.00 is unreasonable and inadequate, and that Respondent is entitled to a contribution towards her legal costs, which would ensure the equality of

arms in the Divorce action, as Respondent will not be able to present her case fairly unless she is empowered to do so.

4.23. However, having considered both parties' argument in respect of the contribution to costs, I am not persuaded that Respondent's claim/quantum of costs is entirely reasonable. Accordingly, I have disallowed the costs in relation to and claimed in respect of:-

4.23.1. the difference between the current legal fees of R102 541.47 and the amount owing to Respondent's attorney in the sum of R50 833,94, meaning that I have only allowed in respect of current legal fees an amount of R50 833,94, being the amount Respondent states is owing to her attorney, given that Respondent did not proffer any explanation in respect of the difference, it being inferred that same has been settled;

4.23.2. the costs of this Rule 43 Application and claimed in the total sum of R80 000.00, given that which is stated at paragraph 9 hereunder;

4.23.3. the costs of R32 000.00 allocated in respect of the anticipation that Plaintiff will not serve his Discovery Affidavit as there is no evidence that Applicant will be dilatory in providing his Discovery Affidavit; and

4.23.4. the costs of R32 000.00 allocated in respect of the anticipation that Plaintiff will not serve his Reply to Defendant's Rule 35(3) Notice and his Supplementary Discovery Affidavit for the same reasoning referred to in 4.23.3 above.

4.24. Accordingly, the total disallowed items amounts to R195 707.53, meaning that I am allowing for an amount of R318 183,94.

4.25. Respondent, I submit, is therefore entitled to a contribution to her legal costs in the sum of R318 000.00 (*rounded off to the closest*), payable in 10 equal instalments, the first payment to be made on or before the **1<sup>st</sup>** day of **April 2024** and thereafter on the first day of each and every succeeding month, on the proviso that the first amount of R50 833.94 outstanding to Respondent's attorney, is paid directly to Respondent's attorney.

**5. THE ISSUE OF WHETHER APPLICANT MUST PAY THE COSTS OF THE DOMESTIC WORKER IN RESPECT OF RESPONDENT AND THE CHILDREN FOR 1 DAY OR 2 DAYS A WEEK**

5.1. I am of the view that Applicant must pay for a Domestic worker, 2 days a week, not 1 day a week and I state so for the reason that Applicant, in his Financial Disclosure Form, allocates a cost to a full-time Domestic worker in respect of his own costs totalling R4 000.00 per month. The additional day sought by Respondent, is therefore not unreasonable.

**6. THE ISSUE OF THE PROVISION BY APPLICANT OF A MOTOR VEHICLE TO RESPONDENT**

6.1. Respondent contends that before the breakdown of the marriage, Applicant provided her with a Volkswagen Amarok twin cab bakkie, however, in **July 2023** he took the vehicle for a service and never returned the vehicle to her and instead provided her with a Kia Rio motor vehicle.

6.2. Respondent seeks that Applicant makes available to her the Volkswagen Amarok twin cab bakkie, given that she cannot proceed with her small business and beauty business as she does not have transport to transport goods and that her income is therefore negatively

affected, however, Respondent provides no evidence of this to be the case.

- 6.3. Applicant denies that he owns a Volkswagen Amarok twin cab bakkie and therefore contends that he cannot make same available.
- 6.4. It is therefore in dispute as to the identity of the previous vehicle driven by Respondent. Applicant contends that Respondent previously drove a Pajero, which currently requires gearbox repairs, which he cannot afford.
- 6.5. No evidence is presented to clarify the situation.
- 6.6. In the circumstances, I am not persuaded that Respondent is entitled to seek an Order for the return of the Volkswagen Amarok twin cab bakkie.
- 6.7. During argument, Counsel for Applicant tendered, in respect of the Kia Rio motor vehicle, the following:-
  - 6.7.1. Maintenance costs;
  - 6.7.2. replacement of tyres;
  - 6.7.3. motor vehicle insurance;
  - 6.7.4. statutory licence; and
  - 6.7.5. petrol in the sum of R1 000.00 per month.
- 6.8. In the result, an Order in terms of the aforementioned tender is to be incorporated in respect of the Kia Rio motor vehicle will be made.

**7. THE NECESSITY FOR THE APPOINTMENT OF A SOCIAL WORKER OR THE FAMILY ADVOCATE TO CONSIDER THE FOLLOWING ISSUES PERTAINING TO APPLICANT'S CONTACT WITH THE MINOR CHILDREN, ALTERNATIVELY, FOR THE COURT TO MAKE A DETERMINATION IN RESPECT OF CONTACT**



7.1. It seems common cause that an appointment with the Office of the Family Advocate was secured for **29 February 2024**.

7.2. I have therefore determined that the Office of the Family Advocate is Ordered to urgently complete an investigation in respect of Applicant's contact to the minor children as referred to in paragraphs 1.5.5.1 and 1.5.5.2 above.

**8. ISSUES NOT IN DISPUTE AS PER THE AGREEMENT REACHED BETWEEN APPLICANT AND RESPONDENT ("*the Agreement*")**

8.1. That both parties retain their full responsibilities and rights in terms of Sections 18, 19 and 20 of the Children's Act, Act 38 of 2005, in respect of the minor children born from the marriage relationship between the parties, subject to that hereunder, and all decision making pertaining but not limited to the minor children's religious, scholastic and extra mural activities as well as any medical treatment (*excluding emergency medical treatment*) shall be made jointly between Applicant and Respondent;

8.2. Primary residence of the minor children shall vest with Respondent who shall be their primary caregiver, subject to Applicant's reasonable rights of contact to the minor children, such contact to include:-

8.2.1. the right to remove the minor boy every alternate weekend from 17h00 on Fridays until Sundays at 19h00 when Applicant shall deliver the minor boy to Respondent's residence and contact with the minor girl to be reserved pending the decision of the appointment of a social worker (sic!) Family Advocate;

8.2.2. the right to remove the minor boy at 17h00 on **19 March 2024** until 08h00 on **28 March 2024** for purposes of attending the

South African Baseball National Camp being held at Gqeberha  
(formerly Port Elizabeth);

8.3. that the parties shall maintain the minor children as set out below,  
*pendente lite*:-

8.3.1. Applicant shall pay to Respondent the sum of R9 450.00. per month in respect of a cash contribution, on or before the first day of every month by way of electronic funds transfer into such bank account as Respondent may nominate in writing from time to time (*“cash contribution”*);

8.3.2. Respondent shall utilise the cash contribution referred to in paragraph 8.3.1 supra, towards expenses in respect of the minor children and herself vis-à-vis groceries, airtime for Respondent’s cell phone, books, and stationery;

8.3.3. Applicant shall pay the minor children pocket money in the sum of R500.00, per child, per month, on or before the 1<sup>st</sup> day of every month by way of electronic transfer into their respective bank accounts;

8.3.4. Applicant shall retain the minor children and Respondent, at his cost, as dependents on his current medical aid scheme or on a scheme with analogous benefits, and shall pay the monthly premiums (*and any escalations*) timeously and on due date;

8.3.5. the parties shall be liable in equal shares (50:50) for the payment of the costs of all reasonable and necessary over the counter expenses;

8.3.6. all other reasonable, necessary, and agreed to medical expenses which are not covered by the medical aid shall be paid by Applicant. In the event of a party incurring medical

expenses without the knowledge and consent of the other party, the incurring party shall be liable for such expenses not covered by the medical aid;

- 8.3.7. the parties shall cooperate with each other in respect of obtaining authorisation for medical care and/or submitting claims to the medical aid as agreed upon;
- 8.3.8. Applicant shall be liable for payment of the minor children's educational costs, such costs to include but without limiting the generality of the foregoing, all school fees (*pre-primary, primary and secondary*) at a school agreed to by both parties, *ad hoc* school activities and annual stationary requirements as provided by the school at the commencement of each school year;
- 8.3.9. Applicant shall continue to pay for the minor children's extra mural activities vis-à-vis the minor boy's baseball in the amount of R900.00 per month, and any extra mural activity the minor girl may wish to participate into the same value of R900.00 per month, which payment/s is/are to be made directly to the relevant service provider/s timeously and on due date;
- 8.3.10. Applicant shall retain the minor children, at his cost, on his current cellular and Wi-Fi plans, or on a plan with analogous benefits, and shall pay the monthly instalments (*and any escalations*) timeously and on due date;
- 8.3.11. Applicant shall pay for the purchase of clothing in respect of the minor children bi-annually, on or before the 1<sup>st</sup> day of the month of **April** and **November** respectively and the parties shall alternate to take the children shopping. In addition, Respondent shall prepare a list of the reasonable and necessary clothing items required by the minor children. In the event of

Respondent taking the children shopping, Applicant shall deposit the funds in Respondent's bank account;

8.3.12. Applicant shall continue to pay for the security and alarm subscription with Mamba Security, or any similar security company with analogous services and shall pay the monthly subscription directly to the security provider timeously and on due date;

8.3.13. Applicant shall pay the yearly SABC TV license directly to the SABC timeously and on due date;

8.3.14. the amounts payable in terms of prayer 8.3.1 and 8.3.3 above shall be increased annually on the anniversary date of the divorce order, by the percentage change in the Headline Consumer Price Index ("CPIX") for the Republic of South Africa in respect of the middle income group or in line with the headline inflation rate, which is applicable (*or any replacement inflationary index should the CPIX be discontinued*), as notified from time to time by the Director of Statistics, or his equivalent, for the preceding twelve months;

8.4. Respondent and minor children are to continue residing in the matrimonial property *pendente lite*;

8.5. Applicant shall continue to provide the following maintenance in respect of the matrimonial property to wit: general property maintenance and the weekly gardening service *pendente lite*. Any costs associated with general property maintenance and the gardening service shall be paid to the relevant service provider timeously and on due date;

8.6. Applicant shall make payment of the water and electricity charges as well as any rates and levies due in respect of the matrimonial home, timeously and on the due date.

9. **COSTS OF THIS APPLICATION**

- 9.1. Applicant sought costs of *Applicant's Rule 43 Application* if opposed, whilst Respondent sought costs of *Respondent's Counter Application*.
- 9.2. I am not inclined to grant costs in either party's favour and leave this to the trial to determine.

10. **ORDER**

In the circumstances I make the following Order:-

- 10.1. this Application is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court and any non-compliance with form, service, and time periods, is condoned;
- 10.2. the late filing of Respondent's Opposing Affidavit is condoned;
- 10.3. *the Agreement* reached between Applicant and Respondent is made an Order of Court, *pendente lite*, namely that:-
- 10.3.1. both parties retain their full responsibilities and rights in terms of Sections 18, 19 and 20 of the Children's Act, Act 38 of 2005, in respect of the minor children born from the marriage relationship between the parties, subject to that hereunder, and all decision making pertaining but not limited to the minor children's religious, scholastic and extra mural activities as well as any medical treatment (*excluding emergency medical treatment*) shall be made jointly between Applicant and Respondent;

- 10.3.2. primary residence of the minor children shall vest with Respondent who shall be their primary caregiver, subject to Applicant's reasonable rights of contact to the minor children, such contact to include:-
- 10.3.2.1. the right to remove the minor boy every alternate weekend from 17h00 on Fridays until Sundays at 19h00 when Applicant shall deliver the minor boy to Respondent's residence and contact with the minor girl to be reserved pending the decision of the Family Advocate;
- 10.3.2.2. the right to remove the minor boy at 17h00 on **19 March 2024** until 08h00 on **28 March 2024** for purposes of attending the South African Baseball National Camp being held at Gqeberha (*formerly Port Elizabeth*);
- 10.3.3. the parties shall maintain the minor children as set out below, *pendente lite*:-
- 10.3.3.1. Applicant shall pay to Respondent the sum of R9 450.00. per month in respect of a cash contribution, on or before the first day of every month by way of electronic funds transfer into such bank account as Respondent may nominate in writing from time to time ("*cash contribution*");
- 10.3.3.2. Respondent shall utilise the cash contribution referred to in paragraph 10.3.3.1 supra, towards expenses in respect of the minor children and herself vis-à-vis groceries,

airtime for Respondent's cell phone, books, and stationery;

- 10.3.3.3. Applicant shall pay the minor children pocket money in the sum of R500.00, per child, per month, on or before the 1<sup>st</sup> day of every month by way of electronic transfer into their respective bank accounts;
- 10.3.3.4. Applicant shall retain the minor children and Respondent, at his cost, as dependents on his current medical aid scheme or on a scheme with analogous benefits, and shall pay the monthly premiums (*and any escalations*) timeously and on due date;
- 10.3.3.5. the parties shall be liable in equal shares (50:50) for the payment of the costs of all reasonable and necessary over the counter expenses;
- 10.3.3.6. all other reasonable, necessary, and agreed to medical expenses which are not covered by the medical aid shall be paid by Applicant. In the event of a party incurring medical expenses without the knowledge and consent of the other party, the incurring party shall be liable for such expenses not covered by the medical aid;
- 10.3.3.7. the parties shall cooperate with each other in respect of obtaining authorisation for medical care and/or submitting claims to the medical aid as agreed upon;

- 10.3.3.8. Applicant shall be liable for payment of the minor children's educational costs, such costs to include but without limiting the generality of the foregoing, all school fees (*pre-primary, primary and secondary*) at a school agreed to by both parties, *ad hoc* school activities and annual stationary requirements as provided by the school at the commencement of each school year;
- 10.3.3.9. Applicant shall continue to pay for the minor children's extra mural activities vis-à-vis the minor boy's baseball in the amount of R900.00 per month, and any extra mural activity the minor girl may wish to participate into the same value of R900.00 per month, which payment/s is/are to be made directly to the relevant service provider/s timeously and on due date;
- 10.3.3.10. Applicant shall retain the minor children, at his cost, on his current cellular and Wi-Fi plans, or on a plan with analogous benefits, and shall pay the monthly instalments (*and any escalations*) timeously and on due date;
- 10.3.3.11. Applicant shall pay for the purchase of clothing in respect of the minor children bi-annually, on or before the 1<sup>st</sup> day of the month of ***April*** and ***November*** respectively and the parties shall alternate to take the children shopping. In addition, Respondent shall prepare a list of the reasonable and



necessary clothing items required by the minor children. In the event of Respondent taking the children shopping, Applicant shall deposit the funds in Respondent's bank account;

- 10.3.3.12. Applicant shall continue to pay for the security and alarm subscription with Mamba Security, or any similar security company with analogous services and shall pay the monthly subscription directly to the security provider timeously and on due date;
- 10.3.3.13. Applicant shall pay the yearly SABC TV license directly to the SABC timeously and on due date;
- 10.3.3.14. the amounts payable in terms of prayers 10.3.3.1 and 10.3.3.3. above shall be increased annually on the anniversary date of the divorce order, by the percentage change in the Headline Consumer Price Index ("CPIX") for the Republic of South Africa in respect of the middle income group or in line with the headline inflation rate, which is applicable (*or any replacement inflationary index should the CPIX be discontinued*), as notified from time to time by the Director of Statistics, or his equivalent, for the preceding twelve months;
- 10.3.3.15. Respondent and minor children are to continue residing in the matrimonial property *pendente lite*;

- 10.3.3.16. Applicant shall continue to provide the following maintenance in respect of the matrimonial property to wit: general property maintenance and the weekly gardening service *pendente lite*. Any costs associated with general property maintenance and the gardening service shall be paid to the relevant service provider timeously and on due date;
  - 10.3.3.17. Applicant shall make payment of the water and electricity charges as well as any rates and levies due in respect of the matrimonial home, timeously and on the due date;
- 10.4. the office of the Family Advocate is ordered to urgently complete an investigation in respect of Applicant's contact to the minor children and to make a determination with regard to contact:-
- 10.4.1. in respect of the ***minor boy***, Applicant's right:-
    - 10.4.1.1. to remove the child on every alternate public holiday and for every alternate long weekend from 16h00 on the day preceding the public holiday and long weekend until 19h00 on the public holiday or last day of the long weekend;
    - 10.4.1.2. to remove the child for each alternate short school holiday and for half of every long school holiday, Easter Sunday, Christmas Eve, Christmas Day and Boxing Day to alternate annually between the parties;

- 10.4.1.3. to remove the child from 17h00 on the day preceding Applicant's birthday to 08h00 on the day after Applicant's birthday and the weekend whereupon Father's Day falls, in the event of which, should Mother's Day or Respondent's birthday fall on a day when the child is in Applicant's care, then Respondent shall similarly be entitled to the same contact with the child;
  - 10.4.1.4. to have contact to the child on his birthday, in the event of which contact on the child's birthday is to be shared between the parties, the child to wake up with one party on the morning of his birthday and sleeping over with the other party on the night of his birthday, said arrangement to alternate annually; and
  - 10.4.1.5. to have reasonable telephonic contact with the child at all reasonable times;
- 10.4.2. in respect of the minor girl, Applicant's right:-
- 10.4.2.1. to remove the child every alternate weekend and, more particularly the manner of such contact and whether same should be phased in;
  - 10.4.2.2. to remove the child on every alternate public holiday and for every alternate long weekend from 16h00 on the day preceding the public

holiday and long weekend until 19h00 on the public holiday or last day of the long weekend;

- 10.4.2.3. to remove the child for each alternate short school holiday and for half of every long school holiday, Easter Sunday, Christmas Eve, Christmas Day and Boxing Day to alternate annually between the parties;
- 10.4.2.4. to remove the child from 17h00 on the day preceding Applicant's birthday to 08h00 on the day after Applicant's birthday and the weekend whereupon Father's Day falls, in the event of which, should Mother's Day or Respondent's birthday fall on a day when the child is in Applicant's care, then Respondent shall similarly be entitled to the same contact with the child;
- 10.4.2.5. to have contact to the child on her birthday, in the event of which contact on the child's birthday is to be shared between the parties, the child to wake up with one party on the morning of her birthday and sleeping over with the other party on the night of her birthday, said arrangement to alternate annually; and
- 10.4.2.6. to have reasonable telephonic contact with the child at all reasonable times;

- 10.5. Applicant shall make payment of a contribution towards the legal costs of Respondent in the sum of R318 000.00 (*rounded off to the closest*), payable in 10 equal instalments, the first payment to be made on or before the 1<sup>st</sup> day of **April 2024** and thereafter on the first day of each and every succeeding month, on the proviso that the first amount of R50 833.94 outstanding to Respondent's attorney is paid directly to Respondent's attorney, into the nominated bank account, nominated by Respondent and her attorney respectively;
- 10.6. neither party is entitled to costs in relation to the matter on **05 February 2024**;
- 10.7. Applicant will pay for a domestic worker for 2 days a week *pendente lite*;
- 10.8. *pendente lite*, Respondent will retain possession of the Kia Rio motor vehicle and Applicant shall be responsible for the following costs of the Kia Rio motor vehicle:-
- 10.8.1. maintenance costs;
  - 10.8.2. replacement of tyres;
  - 10.8.3. monthly motor vehicle insurance directly to the relevant service provider to be paid timeously and on due date;
  - 10.8.4. the annual statutory licence directly to the relevant service provider to be paid timeously and on due date; and
  - 10.8.5. petrol in the sum of R1 000.00 per month to be paid directly to Respondent into her nominated bank account, on or before the 1<sup>st</sup> day of each and every month commencing on **01 April 2024**;
- 10.9. costs of the matter to be costs in the Divorce action.
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F. MARCANDONATOS  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING: 21 *FEBRUARY* 2024

DATE OF JUDGMENT: 12 *March* 2024

COUNSEL FOR APPLICANT: ADVOCATE J SCALLAN

COUNSEL FOR RESPONDENT: ADVOCATE G OLWAGEN-MEYER