

REPUBLIC OF SOUTH AFRICA



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

DELETE WHICHEVER IS NOT APPLICABLE:

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES YES/NO

(3) REVISED:

5 FEBRUARY 2024

DATE

SIGNATURE: _____

CASE NR: 053357/2022

In the matter between:

MD

APPLICANT

and

RJD

RESPONDENT

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to

the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 05 February 2024

JUDGMENT

MARUMOAGAE AJ

A INTRODUCTION

- [1] Parents are expected to honour their duty to financially maintain their children when they have the means to do so. However, there are times when this duty is either not honoured or one of the parents fails to fully honour it despite being able to do so. When child-related maintenance disputes arise during divorce proceedings, parents vested with the residency and care of the children can approach courts in terms of Rule 43 of the Uniform Rules of Court for the other parents to be ordered to financially support the children.
- [2] These applications are interlocutory in nature and orders sought are provisional. In these applications, courts are confronted with relatively easy disputes that are constantly rendered unnecessarily complex by deliberate misstatements of financial positions, dishonest and inadequate disclosures, and submission of voluminous documentation that seldom assist in determining the true financial position of both parents and the ability of parents from whom maintenance is sought to provide the requested maintenance.
- [3] It is becoming a norm for one or both parties to understate their income, overstate their expenditure, and hide assets in divorce litigation making it difficult to adequately determine the question of maintenance. This leads to protracted divorce litigation with multiple costly interlocutory applications. Parties often choose to litigate disputes that arise pending their divorce at great costs rather than attempting in good faith to seek well-structured collaborative or mediated solutions to those disputes. It appears that some of

the lawyers who are approached to assist the parties in dissolving their marriages are not doing enough to encourage their clients to negotiate meaningfully and fairly to resolve their disputes. In my view, this conduct must be discouraged.

[4] This is yet another unnecessary litigation that the parties could have easily avoided had they attempted in good faith to meaningfully negotiate their dispute. This is an application for interim maintenance of the parties' three children pending the dissolution of their marriage. The main issue the court is called to determine is whether the respondent should be ordered to make a cash contribution towards the maintenance of these children. If so, to further determine the reasonable amount that the respondent should pay to the applicant.

[5] This application is opposed. The respondent requested condonation for the late service and filing of his answering affidavit. There appears to be no objection to condonation being granted. As is often the case in applications of this nature, the parties made accusations and counteraccusations for overstating their expenses and understating their respective incomes. This calls for a delicate assessment of the parties' actual incomes and expenses to determine whether it is justifiable for the respondent, in addition to the payments that he already makes, to also make a cash contribution towards the children's maintenance.

B FACTS AND CONTENTIONS

[6] The parties are married to each other out of community of property without the application of the accrual system. There are three children born of the parties' marriage, all of whom are still minors. The parties are in the process of divorcing each other and reside in two different places. The applicant is currently residing with the children. The respondent exercises reasonable contact rights with the children.

[7] Both parties receive appreciable financial assistance from their parents. The respondent's mother used to reside with the parties in their matrimonial home

and she contributed towards the household expenses, including cooking for the parties and their children. The applicant's father provided the applicant with money that was used to cover some of the parties' expenses when they resided together. It appears that the respondent's mother and the applicant's father also contributed to the payment of the parties' respective legal fees.

[8] Upon realising that the marriage was over, the applicant decided to relocate with the children to Mossel Bay in the Western Cape province. The respondent did not consent to this relocation. According to the respondent, the applicant with the assistance of her father abducted the children. This left him with no choice but to approach this court on an urgent basis to have the children returned to the Gauteng province. The applicant was ordered to return the children.

[9] At the time the urgent applicant was lodged, the respondent was residing with his mother at the matrimonial home. Among others, the court granted the respondent the care and residency of the children pending the investigation and assessment by an expert appointed by the parties relating to who between them should be granted the care and residency of the children.

[10] The applicant did not return to the matrimonial home because the respondent and his mother refused to vacate therefrom. The applicant found a place to rent close to the children's schools where she claims to be paying the rental amount of R 19 500.00 per month. The respondent disputes this amount and alleges that the applicant, with the assistance of her father, is paying the rental amount of R 28 000.00 per month. The respondent alleges that the applicant's rental is too high and suggested that she should find relatively cheaper accommodation of about R 9 000.00.

[11] The parties reached an agreement to sell their matrimonial home. The respondent's mother successfully lodged a claim against the proceeds of the sale of the house which significantly reduced the amount of money the applicant received therefrom. This claim was due to the improvements the respondent's mother made to the house as well as the instalment of a solar

system thereto. After the sale of the matrimonial house, the respondent and his mother moved into a three-bedroom townhouse with a flatlet where the respondent claims to be paying a rental amount of R 20 999.00 per month. The applicant alleges that the respondent previously indicated that his rent is R 11 000.00.

[12] The parties had a meeting and agreed that they would share the joint residence of the children. They agreed that the respondent would pay 70% and the applicant 30% of all the children's expenses such as the cost of all the stationery, school uniforms, and required school equipment. The respondent also agreed to pay school fees in full which amounts to R 7 400.00 directly to the school, plus R 900.00 for squash. Further, they would both contribute to the children's everyday expenses for food and lodging. The respondent claims that he cannot afford to make any cash contribution towards the children's maintenance.

[13] The parties appointed an expert to investigate and recommend how they should exercise their parental responsibilities and rights. This expert recommended that the applicant should exercise primary care and residency subject to the respondent exercising reasonable contact with the children. It is for this reason that the applicant requires the respondent to make a cash contribution towards the maintenance of the children. The applicant earns an amount of R 24 348.54 per month. The applicant contends that she needs the cash contribution from the respondent because her salary is not enough to cover the children's expenses. She claims that her total expenditure is R 65 123.75, of which R 31 878.45 is spent on the children per month. The respondent denies that the applicant spends over R 30 000.00 on the children per month.

[14] The applicant alleges further that she was able to make some means because her father assisted her by paying into her bank account an amount of R 25 000.00 per month. However, the applicant alleges that her father will be retiring in 2024 and indicated that he will no longer be able to financially assist her. The applicant claims that if the respondent does not make a cash

contribution she will be forced to relocate to her parents' house in the Western Cape where she will receive accommodation, food, and electricity for free and save an amount of R 30 000.00 per month.

[15] The respondent earns a salary of R 53 895.20 per month. The applicant is of the view that the respondent can afford to make a cash contribution because he earns an amount of R 29 546.66 more than she does, and he also receives financial assistance from his mother. According to the respondent's financial disclosure form commissioned on 20 June 2023 which the applicant attached to her founding affidavit, the respondent's total monthly expenditure is R 53 738.05, and R 14 599.70 of which is spent on the children. This document was commissioned at the police station.

[16] There is another respondent's financial disclosure form uploaded on Caselines 15. It is not clear from the document as to when it was commissioned. It was commissioned by an attorney who failed to provide a date on which it was commissioned. It is not clear which of these two financial disclosure forms is the main document and which is a supplementary document. What is clear, however, is that certain contents of these documents differ in material respects. For instance, in the undated financial disclosure form, the respondent stated under oath that his monthly expenditure is R 54 022.66, R 8 300 of which was spent on the children.

[17] The respondent alleges that his liabilities amount to just over one million rand. He alleges that the debt on his credit card is R 307 829.93. He also claims that the outstanding amount on his vehicle finance is R 429 903.93. Further, he owes his mother an amount of R 3 44 669.75. According to the respondent, the applicant is in a better financial position because her stated liabilities amount to R 323 841.12.

[18] According to the applicant, the respondent overstated his expenses in his financial disclosure forms. The amount of expenses reflected in the financial disclosure forms are different from those disclosed to the car dealership when the respondent purchased his vehicle. The applicant contends that the

respondent indicated to the dealership that his monthly expenses amount to R 23 950.00 and that he pays R 11 000 rent. The respondent alleges that an official at the car dealership made an error when recording his rental amount which was recorded as R 11 000.00 as opposed to R 20 999.00.

- [19] The applicant contends further that the respondent paid for all the children's expenses when they lived together. Further, the respondent was able to pay for the children's school fees, provide for their maintenance needs with his current salary, and cover medical aid for her and the children. The applicant contends that she was responsible for groceries and the payment of the domestic worker. The respondent denies that he solely supported the children when the parties were staying together. He contends that both parties contributed towards the children's maintenance during this time.
- [20] The applicant believes that the respondent can afford to pay the requested cash contribution because, among others, he transfers between R 10 000.00 and R 20 000.00 to his credit card per month. Further, if the respondent is expected to transfer only R 5 500.00 per month, he would have between R 10 000.00 and R 15 000.00 to make a cash contribution. The respondent alleges that the limit on the bank requires that he should have R 15 000.00 transferred before deducting his monthly payment of R 5 000.00 interest on the capital balance. He contends that he transfers R 10 000.00 back into his cheque account.
- [21] The respondent believes that the applicant is requesting a cash contribution to fund her lifestyle. The respondent is of the view that the applicant is not honest about the extent to which her father is supporting her. The respondent contends that he should not be overburdened to pay unreasonable maintenance through the required cash contribution. According to the respondent, the applicant received a combined amount of R 119 179 from her father and R 253 179 from the sale of the house which has significantly strengthened her financial position.

[22] The respondent further alleges that the applicant received about R 415 984.00 in her bank account between December 2022 and March 2023 and spent about R 401 114.00 of this money during this period. The respondent contends further that the applicant's father offered to purchase property for her if she relocated to Mossel Bay. As such, there is no reason why her father cannot assist her in buying a property in Pretoria. Further, the applicant's father always paid for her expenses and will continue to do so. The applicant alleges that her father will not continue to provide her with financial assistance due to his imminent retirement.

[23] The applicant initially requested a cash contribution of R 7 000.00 per child per month. However, during the oral argument, it was argued that the respondent may not be able to afford this amount but can afford amount of R 3,500 per child per month. The respondent contends that he cannot afford to pay this reduced amount. According to the respondent, he was forced to borrow money from his mother to pay the fees of the expert that the parties hired to assess and investigate the best interests of the children. The respondent alleges that his mother currently resides in an adjoining flatlet at his new residence which is one of the ways of paying her back for assisting him with the legal fees.

C POINTS IN LIMINE

[24] The respondent started with a condonation application and an account of why his affidavit was submitted late. The applicant appears not to have any difficulty with condonation being granted. The respondent then raised three points *in limine*. First, the respondent claims that the applicant failed to comply with Rule 41A of the Uniform Rules of Court. The respondent is of the view that the applicant should have taken a conciliatory approach or mediation before launching this application. In my view, there is no merit to this point.

[25] Rule 41A of the Uniform Rules of Court clearly refers to new actions and applications and not interlocutory applications as is the case in this matter. The party that instituted the divorce action was duty-bound, at the time the

summons was issued, to comply with this rule.¹ The party that was served with the summons would then indicate when delivering the notice of intention to defend whether s/he agrees that the matter should be referred to mediation.²

[26] The purpose of this rule is to ensure that parties explore alternative dispute resolution methods at the commencement of their matters in court to avoid protracted litigation. Even if parties do not agree to mediate their dispute immediately after the summons has been served, they are not precluded from considering mediation anytime thereafter. This, however, does not mean that whenever an interlocutory application to their main action is brought by any party, such a party should always comply with the provisions of Rule 41A of the Uniform Rules of Court. It would be ideal for lawyers to advise their clients not to rush to lodge court papers before alternative dispute resolution measures have been adequately explored. Alternatively, to do so immediately after papers have been issued.

[27] Secondly, the respondent claims that the relevant practice directive required the parties to exchange their respective financial disclosure forms with supporting documentation no later than five days after the respondent delivered his replying affidavit to the applicant's application. According to the respondent, the applicant served her financial disclosure form prematurely and failed to attach all her supporting documentation. For this reason, the respondent is of the view that this application must be postponed with punitive costs. This might well be the case, but I doubt this is a technical point that would justify the court dismissing the matter or postponing and unnecessarily delaying the finalisation thereof and, in the process, escalating the parties'

¹ Rule41A(2)(a) of the Uniform Rules of Court states that '[i]n every new action or application proceeding, the plaintiff or applicant shall, together with the summons or combined summons or notice of motion, serve on each defendant or respondent a notice indicating whether such plaintiff or applicant agrees to or opposes referral of the dispute to mediation'.

² Rule41A(2)(b) of the Uniform Rules of Court states that '[a] defendant or respondent shall, when delivering a notice of intention to defend or a notice of intention to oppose, or at any time thereafter, but not later than the delivery of a plea or answering affidavit, serve on each plaintiff or applicant or the plaintiff's or applicant's attorneys, a notice indicating whether such defendant or respondent agrees to or opposes referral of the dispute to mediation.

legal costs. This will not be in the interest of justice. I am of the view that this matter should finalised.

[28] Thirdly, the respondent submitted that the applicant failed to deliver the affidavit attached to her application in the form of a declaration together with the notice to the respondent in a prescribed form. Rule 43(2)(a) of the Uniform Rules of Court provides that the initiating affidavit must be drafted in the form of a declaration.³ In my view, there are practical reasons for this. Among others, the prescribed format is intended to force those who draft these affidavits to be pointed and concise and only raise relevant facts. By following the approach of the declaration, these affidavits are meant not to be unnecessarily long.

[29] However, in practice, even when this format is followed, some of the drafters of these affidavits still find a way to include collateral issues that render these affidavits extremely long. At times, they also attach many annexures, some of which are often found unnecessary in the determination of the issues before the court.

[30] It is worth noting, however, that the Uniform Rules of Court are not immutable and should not be rendered inflexible. While these rules play an extremely important role in ensuring efficiency in the adjudication of matters, the High Court retains its inherent jurisdiction to regulate its own process. As such, when it is justifiable and in the interest of justice to do so, the High Court is well within its right to deviate from its own rules.⁴

[31] In any event, '*... the rules are meant for the court, not the court for the rules*'.⁵ In the context of this application, I am not convinced that much weight should

³ See *E v E and related matters* [2019] 3 All SA 519 (GJ) para 23, where it is held that 'Rule 43 applications as presently structured, are a deviation from normal motion proceedings in that the rule does not make provision for a third set of affidavits. The applicant is confined to what is set out in the founding affidavit, which must be in the nature of a declaration, setting out the relief claimed and on what grounds. On receipt, the respondent is required to file an answering affidavit in the nature of a plea'.

⁴ See *PFE International Inc (BVI) and others v Industrial Development Corporation of South Africa Ltd* 2013 (1) SA 1 (CC) para 30.

⁵ *Collatz v Alexander Forbes Financial Services (Pty) Ltd* (A 5067 of 2020) [2022] ZAGPJHC 75 (31 January 2022) para 23.

be attached to the fact that the applicant failed to follow the format of the declaration when drafting her founding affidavit. I believe that this requirement should be relaxed in this matter so that the parties can move towards finalizing their divorce. However, some circumstances may justify another court reaching a different conclusion.

D APPLICABLE LEGAL PRINCIPLES AND ANALYSIS

[32] The procedure provided for in Rule 43 of the Uniform Rule of Court allows financially weaker spouses and children who need maintenance to access the necessary financial support pending the finalisation of the main matrimonial disputes before the court, usually divorces.⁶ Both parents have the common law duty to financially maintain their children proportionally in accordance with their respective means and circumstances as well as the needs of their children.⁷ In *Bestuursliggaam van Gene Louw Laerskool v Roodtman*, it was held that:

'[t]he scale upon which parents must provide support for their child is determined by the reasonable needs of the child, viewed against the background of the standard of living of the parents and their economic and social circumstances'.⁸

[33] It was correctly emphasised in *NVH v SAVH*, that:

'[t]he court has a duty to grant a maintenance order which it finds just after having due regard to the prospective means of the parties and their respective needs and earning capacities'.⁹

[34] It is worth noting that there is no general principle upon which an application for interim maintenance under Rule 43 should be based because each case must be decided based on its own facts.¹⁰ It has been persuasively held that:

⁶ *AEP v HASP* [2012] JOL 29209 (GNP) para 11.

⁷ See *B v B and another* [1999] 2 All SA 289 (A) 291.

⁸ [2003] 2 All SA 87 (C) 94.

⁹ [2020] JOL 52376 (GJ) para 17.

¹⁰ *Taute v Taute* 1974 (2) SA 675 (E) 678.

'[a] claim supported by reasonable and moderate details carries more weight than one which includes extravagant or extortionate demands - similarly more weight will be attached to the affidavit of a respondent who evinces a willingness to implement his lawful obligations than to one who is obviously, albeit on paper, seeking to evade them'.¹¹

[35] In applications of this nature, the parties must act with utmost good faith and disclose all the material information that will assist the court in understanding their respective financial positions. False disclosures or material non-disclosures will make it difficult, if not impossible, for any presiding officer to make a balanced and informed judgment on the need for maintenance and the ability to pay the amount requested.¹²

E ANALYSIS

[36] I found most of the documentation provided in this matter particularly unhelpful. From the evidence provided, two things are clear. First, the parties are both duly employed, with the respondent earning a much higher salary than the applicant. Secondly, the applicant's father regularly provides her with money and the respondent's mother also financially assists him. Both parties received generous assistance with the payment of their legal fees from their parents.

[37] The financial assistance that the parties continuously receive from their respective parents has somewhat clouded the issue that needs to be decided in this matter. The court is not concerned with the interim maintenance of one of the parties, but that of the children born of their marriage. Both parties have the responsibility to provide for their children proportionally in accordance with their respective means. This is not a duty that must be executed by the children's grandparents, even though they may be willing to assist. The position would be different if the parties, as the children's parents, were unable to financially maintain their children.

¹¹ Ibid 676.

¹² See *NPS v SKYS* [2021] JOL 53290 (FB) para 13.

- [38] In an attempt to illustrate that he is not able to pay the cash contribution that the applicant is requesting, the respondent attempted to demonstrate that the applicant lives a luxurious life and that he should not be forced to fund her lifestyle. The issue before the court is not the applicant's lifestyle, even though this may be a factor that can be considered together with other relevant factors. The court must determine the needs of the children and the ability of both parents to provide for such needs. The applicant receives a significantly lower salary than the respondent and is burdened with the children's daily financial needs. The applicant can determine the daily maintenance needs of the children and assess whether her income sufficiently caters for their needs. The fact that the applicant's father provides some assistance, does not absolve the respondent from his responsibility to financially support his children.
- [39] The respondent cannot hide behind the financial support that the applicant's father is currently providing to the applicant. I accept the applicant's explanation that being forced to remain in Gauteng is an expensive exercise for her and that life would be more affordable for her, and her children had she been allowed to relocate to the Western Cape province. This is because she would be living in her parents' house and not forced to pay for accommodation and food. I am of the view that while the applicant's father assists her with her rent, the respondent should assist her with the cash contribution towards the children's daily expenses.
- [40] The respondent claims that he cannot pay the required amount of cash contribution because he has a debt of just over one million rand. This debt constitutes the repayment of the loan on his car, credit card, and the money he allegedly owes her mother. Notwithstanding, the confirmatory affidavit deposed by the respondent's mother, I am not convinced that the respondent owes her mother any money, or if he does, he is pressured to repay this money as a debt. From his R 53 895.20 salary, the respondent seems to be coping very well with the repayment of his vehicle loan and servicing of his credit card account.

- [41] The respondent repays just over R 4 000.00 to the bank for his car and R 5 000.00 into his credit card per month. The respondent claims that his expenses amount to R 54 022.66 per month. However, this amount is different from what he recorded when he purchased his vehicle, which is R 23 950.00. This suggests that the respondent overstated his expenses in this application. Further, some of the activities that the respondent listed as contributing to his expenses make it difficult not to conclude that his expenses are overstated.
- [42] For instance, the respondent claims that it is cheaper for him to eat takeaways daily than to cook. The court is expected to believe that the respondent survives on takeaways even though he resides with his mother who used to cook for his family when he was residing with the applicant and their children. In that the respondent's mother was more than happy to cook for six people including herself but is not interested in cooking for only two people. I find it hard to believe this. This is another example that demonstrates that the respondent's expenses are exaggerated.
- [43] It is important not to create an impression that the respondent is not willing to financially support his children. He is currently paying about 70% of the children's expenses and their school fees as indicated above. Even though the applicant is responsible for the payment of 30% of these expenses, she resides with the children and does cover all the daily expenses as and when they arise. It is for this reason that the applicant realised that she needs the respondent's financial assistance because she cannot adequately provide for the children with her salary of R 24 348.54, which is much less than what the respondent earns.
- [44] Both parties criticized each other about their respective habits of eating with the children at restaurants or taking holidays with the children. I did not find the facts upon which these criticisms were based particularly useful regarding the needs of the children and the parties' ability to financially provide for their children. It is important however, for courts not to be sidetracked by such allegations and make orders that would contribute towards one of the parents becoming a fun parent who is allowed to have fun with the children while the

other is seen as a boring and inflexible parent who is not fun to be around. Both parties are entitled to entertain their children within their means.

[45] I am of the view that the way parties wish to entertain their children when in their presence should be left to them. I am not convinced that this is an issue that courts should regulate. However, courts should not allow cases of blatant abuse where one parent wishes to force another to make a cash contribution that will be used to maintain his or her luxurious lifestyle and not for the benefit of children. I doubt that the applicant is requesting a cash contribution to advance or maintain her own lifestyle.

[46] Initially, the applicant sought a cash contribution of R 7 000.00 per child on which she reflected and correctly concluded that the respondent may not be able to afford it. She sensibly reduced this amount to R 3 500.00 per child per month. The central question is whether the respondent can afford to make this cash contribution, not what the applicant's father or the respondent's mother financially contributed to the parties. The respondent already pays 70% of the children's monthly expenses, plus R 900.00 squash. He also pays R 7 400.00 in school fees per month. The respondent also has an uncontested expense of R 9 000.00 toward the repayment of his car loan and credit card.

[47] In addition, the respondent claims to be paying R 20 999.00 rent. There is, however, a contrary version regarding the rent. When the respondent purchased his vehicle, he stated that his rent was R 11 000.00. The respondent wishes to distance himself from this averment by merely saying that this was an error made by the official at the dealership. However, the respondent does not indicate what efforts, if any, he took to correct this. This creates an impression that the respondent is prone to creating versions that suit the occasion. It is thus, not clear to the court as to what amount he pays for rent.

[48] In his answering affidavit, the respondent merely stated that the correct rental amount is R 20 999.00 without providing the lease agreement or confirmatory affidavit from the landlord.¹³ The respondent does not dispute that the recorded amount of rent in his application form for car finance is R 11 000.

¹³ This averment is contained in paragraph 46.1 of the respondent's answering affidavit which seeks to respond to paragraphs 6.9 to 6.10 of the applicant's founding affidavit.

There is nothing that suggests that this amount was recorded in error, otherwise the respondent would have corrected it. This figure was central to the applicant receiving a loan from the bank to purchase his car and was taken as correct by the bank. Absent a lease agreement stating the contrary, there is no reason why the court should not accept that the applicant's rental is R 11 000.00.

[49] Concerning the respondent's monthly expenses for the children, there are two contradictory amounts placed before the court. On the one financial disclosure form, the respondent quotes these expenses at R 14 599.70. On the other financial disclosure form, these expenses are quoted as R 8 300,00. It is not clear which of these amounts reflects the actual money that the respondent spends on his children per month. The respondent appears not to be truthful about the actual money he spends on the children per month. I must note that I find the applicant's claim that she spends over R 30 000.00 per month on the children also exaggerated.

[50] It seems to me that it is reasonable to accept that the respondent's major monthly expenses are R 7 400.00, R 900.00, R 11 000.00, and R 9 000.00. To the extent to which the respondent spends R 14 599.70 per month on the children, which I doubt he does, half of this money can easily be paid to the applicant as a cash contribution. When considering all these amounts, it appears to me that the respondent can make a cash contribution to the applicant for the maintenance of the parties' children.

[51] If R 14 599.70 is added to the uncontested amounts that form part of the respondent's expenses, the rough estimate of the respondent's expenses would be R 42 899.70. It seems to me that the amount of R 14 599.70 was inserted to overstate the respondent's expenses to create an impression that he cannot afford to pay the requested cash contribution.

[52] If an amount of R 8 300.00 is considered, which in my view is more likely, then the respondent's likely expenses would amount to R 36 699.00 per month. I am mindful of the fact that courts should not lazily reflect on the parties' finances and burden them with maintenance obligations with which they will struggle to comply. It appears to me that even on this calculation, it

may be difficult for the applicant to comply with the required amount of case contribution having regard to his other financial commitments that were not considered in this calculation.

- [53] If the court accepts this version, this means that the applicant will be left with about R 17 300.00 from which he would be expected to make the requested cash contribution. In other words, he would be expected to pay R 10 500.00 per month from this amount. In my view, given the respondent's other financial commitments, it would be unreasonable to expect him to make a cash contribution of R 10 500.00 per month. It seems to me that it may be reasonable under the circumstances for the respondent, at the very least, to make a cash contribution of R 2 000.00 per child per month. Should this be burdensome, the respondent can always approach the maintenance court to place true facts that demonstrate his inability to pay child maintenance.

E CONCLUSION

- [54] The documentation before the court paints a picture of parents who, despite their feelings towards each other, are committed to providing the best for their children. The respondent is certainly not evading his maintenance obligations and he is interested in playing a pivotal role in his children's lives. Otherwise, he would not have instituted an urgent applicant to force the applicant to bring back the children to Gauteng. Equally so, the applicant's relocation to the Western Cape appears to have been an act of love. The applicant and the children were going to benefit from the support that the applicant's parents were prepared to provide.
- [55] The parties' current circumstances appear to be an act of compromise and one hopes that they will cease their litigious behaviour and meaningfully engage each other to amicably finalise their divorce so that their financial resources can be directed to their children and not legal costs. In my view, there is no winner or loser in this application and there is no need to burden any party with the costs thereof.

ORDER

[56] In the results, I make the following order:

1. The late filing of the respondent's answering affidavit is condoned.
2. The applicant is awarded the primary residency and care of the three children born of the parties' marriage.
3. The respondent is awarded reasonable contact with the children which should be exercised as follows:
 - 3.1 The respondent shall have the children every alternate weekend by collecting them from school on Friday afternoon and returning them to school on Monday morning.
 - 3.2 The respondent shall have the children every alternate Wednesday afternoon by collecting them from school and bringing them back to school on Thursday morning in the preceding week where the respondent would not be exercising contact with them.
4. The respondent should pay the children's school fees in full, including 70% of costs relating to additional tuition fees, sporting and extra-mural activities, stationery, school uniform, clothes, and school equipment that may be required.
5. The applicant should pay 30% of costs relating to additional tuition fees,
sporting and extra-mural activities, stationery, school uniform, clothes, and school equipment that may be required.
6. The applicant shall retain the minor children on her medical aid and pay the monthly premiums.

- 7 The respondent shall pay 70% of all the children's reasonable medical aid costs not covered by the applicant's medical aid.
- 8 The applicant shall pay 30% of all the children's reasonable medical aid costs not covered by her medical aid.
- 9 The respondent shall make a cash contribution in the amount of R 2 000.00 per child, which amount is payable on the first day of each month starting from 1 March 2024, directly into the applicant's bank account of choice.
- 10 Each party to pay his or her own costs.

C MARUMOAGAE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

Counsel for the applicant: Adv S Strauss

Instructed by: Grove & Dormehl

Counsel for the respondent: Adv L Keiser

Instructed by: Pistorius Scheepers

Date of the hearing: 20 October 2023

Date of judgment: 05 February 2024