IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

Case no: **D6667/2024**

In the matter between:

S[…] M[…] **APPLICANT**
(IDENTITY NUMBER: […])

and

N[…] M[…] **RESPONDENT**
(IDENTITY NUMBER: […])

Coram: Mossop J
Heard: 28 August 2024
Delivered: 28 August 2024

ORDER

The following order is granted:

1. The matter is struck off the roll.
2. There shall be no order as to costs.
3. The applicant's attorney shall not be permitted to charge the applicant any fees in respect of this application.

JUDGMENT

MOSSOP J:

[1] This is an ex tempore judgment.

[2] The applicant has brought a rule 43 application against the respondent, her husband. From the papers before me, it does not appear that the respondent has delivered a sworn reply to the applicant's sworn statement and the indexed papers accordingly indicate that the matter is unopposed at the moment. The papers before me thus are comprised solely of documents that the applicant has presented to the court.

[3] Uniform rule 43(2)(a) reads as follows:

'An applicant applying for any relief referred to in subrule (1) shall deliver a sworn statement in the nature of a declaration, setting out the relief claimed and the grounds therefor, together with a notice to the respondent corresponding with Form 17 of the First Schedule.

[4] In *E v E*,[1] a full court agreed with what was stated in *Maree v Maree*,[2] namely that:

'(t)he procedure envisaged in rule 43 is not of a normal application commenced by way of a notice of motion. It is a succinct application, aimed at providing the applicant interim relief, speedily and expeditiously.'

I shall return to the words in the second sentence of this extract later in this brief judgment.

[5] This application is contained, and presented, in three separate volumes. Practice directive 9.4.5 of this division prescribes that papers in all opposed motions shall be secured in separate, conveniently sized and clearly identified volumes of approximately 100 pages each. The fact that there are three such volumes in this

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[1] *E v E* 2019 (5) SA 566 (GJ) para 25.
[2] *Maree v Maree* 1972 (1) SA 261 (O) at 264A.

Rule 43 application gives an immediate indication of the length of the applicant's papers. From first page to last page, they cover some 260 pages.

[6] Turning to consider those, the relief that the applicant claims covers five pages of the notice of application. The applicant's sworn statement commences at indexed page 8 of the papers and terminates at indexed page 57. It is comprised of some 147 individually numbered paragraphs. The annexures to that sworn statement commence at indexed page 58 and run to indexed page 258. There are thus 200 pages of annexures. The final two pages of the 260 pages that make up the application contains the notice of set down.

[7] Those who compiled this application obviously have paid no heed whatsoever to the contents of Uniform rule 43 and its specific purpose. That rule was crafted to allow, pendente lite, for disputes involving maintenance and associated relief in matrimonial proceedings to be, as was stated in the extract quoted from *E v E* earlier, to be 'speedily and expeditiously' addressed and resolved. The whole purpose behind Rule 43 is brevity.[3] This is entirely understandable, as the relief that is granted is not final relief but interim in nature that will, in normal circumstances, not be in place for very long.

[8] Thus, where a party, or both parties, deliver prolix papers, the very essence of the Rule 43 is abused. The reference in Rule 43 to a sworn statement in the form of a declaration is a relic of the original rule, but it is a significant relic. When the rule was first fashioned, the parties were required to file an unsworn statement in the nature of a declaration or a plea. The introduction of a sworn version of these documents occurred later, but the references to a declaration and a plea were retained in the wording of the rule. There was a reason for that. It was to emphasise that brevity, as in a declaration or a plea, was still required.

[9] Rule 43 applications that are lengthy, but which are much shorter than the one before me presently, have previously been struck from the roll and not considered

[3] *Colman v Colman* 1967 (1) SA 291 (C) 292A.

because of prolixity: in *Patmore v Patmore*,[4] this was the fate of an application that ran to 47 pages; in *Smit v Smit*,[5] the application was 69 pages in length and in *Du Preez v Du Preez*,[6] the papers comprised 192 pages.

[10] The applicant's sworn statement is prolix in the extreme. It contains irrelevant allegations and has attached to it literally dozens of photographs, the precise relevance of which is not clear. Examples of these photographs are a photograph of a Michael Kors handbag allegedly purchased by the respondent, a photograph of the 'Respondent's lipstick and semen stained T-shirt' and messages recorded on a cellular telephone relating to an incident involving Viagra pills. It is, quite frankly, scandalous that the applicant's legal advisors have permitted such irrelevancies to find a place in this application.

[11] This court is entitled to regulate proceedings before it and to prevent the abuse of its own processes by a litigant.[7] This application is such an abuse. The fact that I do not have any opposing papers from the respondent does not alter the view that I take of the matter. The applicant must first present an application that complies with the prescripts of Rule 43 if she wants her application to be considered and adjudicated upon. Until she does so, and even in the absence of opposition from the respondent, it will not be considered.

[12] In my view, the growing trend of presenting Rule 43 applications that are lengthy and that do not comply with the prescripts of Rule 43 must be halted. Judges simply do not have the time to peruse lengthy affidavits that narrate every misstep and alleged wrongdoing of a spouse. Often these allegations are included simply to colour the court's mind against a particular party. One way of potentially halting these abuses is to order costs against a party that is guilty of prolixity.

[13] I am, however, prepared to assume and accept that the applicant personally had no knowledge of what her application should contain. Those that had such knowledge, and who must have known that the application that was prepared for the

[4] *Patmore v Patmore* 1997 (4) SA 785 (W).
[5] *Smit v Smit* 1978 (2) SA 720 (WLD) 722F.
[6] *Du Preez v Du Preez* [2008] ZAGPHC 334.
[7] *Smit v Smit* supra; *M N v A L N* [2024] ZAGPPHC 402 para 15.

applicant offended the provisions of Rule 43, were her legal advisors. It may therefore be unfair to punish the applicant's pocket with a costs order against her. Far better in my view, is the approach that was adopted in *Visser v Visser*,[8] where the court directed that the attorneys acting for both parties where the papers presented by both sides were prolix should not be able to charge their respective clients for work done in respect of the rule 43 application. That reasoning commends itself to me and I shall follow its lead. Hopefully, such an order will cause legal practitioners to show greater discipline in preparing these types of applications.

[14] I accordingly grant the following order:

1. The matter is struck off the roll.
2. There shall be no order as to costs.
3. The applicant's attorney shall not be permitted to charge the applicant any fees in respect of this application.

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MOSSOP J

APPEARANCES

[8] *Visser v Visser* 1992 (4) SA 530 (SECLD) 531.

Counsel for the applicants:	Mr Patel
Instructed by:	Sasha Lee and Associates 119 Stella Road Hillary Queensburgh
Counsel for the respondent:	No appearance