IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

CASE NO: 2025-216979

In the matter between:

H[...] L[...] Applicant

and

B[...] L[...] Respondent

Coram: NJOKWENI J

Heard: 23 February 2026

Delivered: 13 July 2026

Summary: Family law – Uniform Rule 43 – maintenance pendente lite for spouse and minor children – duty of utmost good faith [Uberrimae fides] – failure to make frank and full disclosure is fatal – best interests of the minor children considered and applied – Rule 43

relief is not a meal ticket to indefinitely sustain lifestyle – interim relief granted for a specified period – leave to apply for variation granted – each party to pay its own costs.

ORDER

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1. *Pendente lite*, but for a period not exceeding 12 calendar months from the date of granting this order, the Respondent is ordered to:

    1.1 Pay the Applicant R25,000.00 per month, effective from the date of the Order, without deduction or set-off, on or before the first day of each month.

    1.2 Make a monthly payment of the bond instalment, rates, taxes, and services (including water and electricity) due to the municipality for the matrimonial home at 1[...] S[...] Avenue, Melkbosstrand.

    1.3 Make a monthly payment for levies, household and homeowners' insurance, security, and maintenance/upkeep of the matrimonial home.

    1.4 Retain the Applicant and the children as dependents on his medical aid scheme and pay all reasonably incurred medical expenses (including dental, pharmaceutical, surgical, hospital, etc.) not covered by the medical aid. Reimbursement or payment to providers must be made within ten days of receipt of invoices.

    1.5 Pay for the children's reasonable educational costs, including school fees, additional tuition, uniforms, books, and textbooks (paid directly to service providers).

1.6 Pay the Applicant's motor vehicle insurance and the costs of licensing, maintenance, repairs, and servicing (including the replacement of tyres and wheel balancing).

1.7 Contribute R40,000.00 towards the Applicant's legal costs in the pending divorce proceedings, payable no later than **30 July 2026,** to be paid into the Applicant's attorney's trust account.

1.8 Should the Applicant's income not improve or worsen on expiry of the aforesaid 12-month period, the Applicant is granted leave, on the same papers, duly supplemented, if necessary, to apply to this Court for the variation of this order.

1.9 Each party to pay its own costs for this application.

JUDGMENT

NJOKWENI J

INTRODUCTION

1. This application is brought under Rule 43 of the Uniform Rules of Court. Rule 43 provides a speedy and inexpensive remedy, primarily for the benefit of women and children. It allows interim arrangements to be imposed on the parties in matrimonial disputes pending the outcome of the divorce, until the Court can make a properly informed decision after hearing oral evidence. The Applicant, Mrs H[...] L[...], seeks interim relief pending the finalisation of the divorce action against the Respondent, Mr B[...] L[...].

2. The Applicant claims maintenance for herself and the two minor children of the marriage, as well as a contribution to her legal costs. The Respondent opposes the

application, contending that the maintenance claims are excessive and unsubstantiated. The parties married on 3 January 2002, and two minor children were born of the marriage, now aged fourteen and twelve. Marital difficulties arose towards the end of September 2023, when the Applicant requested that the Respondent vacate the marital bedroom.

3. The parties attended marriage counselling from late 2023 to November 2024 and separated in December 2024. The marriage subsequently broke down irretrievably. The matter is characterised by a fundamental dispute over both parties' financial means, the reasonableness of the Applicant's projected monthly expenses, and conflicting allegations about the adequacy and transparency of each party's financial disclosure.

RELIEF SOUGHT BY THE APPLICANT

4. The Applicant seeks an order requiring the Respondent to provide the following interim relief:

Residence and Care

4.1 The parties are to remain co-guardians of the two minor children.

4.2 The children are to reside primarily with the Applicant at the matrimonial home (1[...] S[...] Avenue, Melkbosstrand).

Contact Arrangements

4.3 The Respondent to have the children every Tuesday after school and on alternate weekends.

Cash Maintenance

4.4 Payment of R59,100.00 per month, commencing on the date of this order, payable without deduction.

Household Expenses

4.5 The Respondent is to pay the bond instalments, municipal rates and taxes, water and electricity, levies, and household insurance in respect of the matrimonial home.

Domestic Help

Medical/Educational

4.6 The Respondent is to pay for a gardener (three days per week, at a maximum of R300 per day) and a cleaner (two days per week, at a maximum of R300 per day).

4.7 The Respondent is to retain the Applicant and the children as dependants on his medical aid and to pay all uncovered medical expenses. He is also to cover all educational costs, including school fees, extramural activities, equipment, and related expenses.

Vehicle

4.8 The Respondent is to cover finance instalments, insurance, licensing, maintenance, and repairs in respect of the motor vehicle currently in the Applicant's possession.

Costs

4.9 A contribution of R300,000.00 towards the Applicant's legal costs, payable within ten days of this order.

RELEVANT FACTUAL BACKGROUND

Common cause issues

5. The parties agree that the children's residence, care, and contact should be shared equally, with minor differences between the proposed schedules. Both proposed schedules amount to a shared residency arrangement.

6. The parties have also agreed to share holiday contact on the basis that holidays will be agreed at the beginning of each year; failing agreement, holidays will be shared equally, with the children alternating between the parents for the first and second halves of each holiday.

The applicant's case

7. The Applicant avers that the Respondent has significantly and unilaterally reduced his maintenance contributions to her and the minor children, and has threatened to curtail financial support for domestic services and the children's extramural activities.

8. In support of her application, the Applicant filed a sworn statement detailing her monthly income and expenses, as well as a summary of her assets and liabilities. The Applicant disclosed the following sources of income:

8.1 Freelance consulting income, averaging R9,000 per month over the preceding twelve months.

8.2 Occasional ad hoc payments for project-based work.

8.3 No other regular or passive income (such as rent or dividends) was reported.

9. The Applicant annexed her bank statements for the past six months (Annexure "A") and her most recent tax assessment (Annexure "B") to corroborate her income disclosure. Regarding monthly expenses, the Applicant provided a comprehensive schedule, which included (but was not limited to):

Groceries and household consumables

9.1 R8,000.

Utilities (electricity, water, rates, refuse)

9.2 R4,200

Domestic staff (gardener and cleaner)

9.3 R7,200

School fees and educational costs for both children

9.4 R16,000

Extramural activities and sports

9.5 R3,500

Medical aid shortfalls and unreimbursed medical expenses

9.6 R2,000

T**ransport (fuel, insurance, licensing, and maintenance)**

9.7 R6,500

Clothing and personal care

9.8 R2,500

Children's pocket money and outings

9.9 R1,200

Insurance (household and vehicle)

9.10 R2,000

Other miscellaneous expenses

9.11 R2,500

Legal costs (interim provision)

9.12 R4,000

10. The Applicant's total claimed monthly expenses amounted to R59,100.

11. The Applicant disclosed her assets as follows:

11.1 A retirement annuity with a current surrender value of R210,000;

11.2 A 2019 Volkswagen Tiguan motor vehicle, currently in her possession;

11.3 Personal effects and household contents, estimated at R75,000;

11.4 No immovable property in her own name and no shareholdings or trust interests were declared.

12. The Applicant declared liabilities consisting of:

12.1 An outstanding balance on the motor vehicle finance of R126,000;
12.2 A credit card balance of approximately R18,000;
12.3 No other personal loans or debts.

13. The Applicant expressly stated that she had made full and frank disclosure of her financial position and annexed supporting documentation as required by the Uniform Rules. She invited the Court to compare her disclosure with the Respondent's and to draw appropriate inferences as to good faith. She submitted that, even with the assistance of her disclosed income, she faces a shortfall of approximately R50,000 per month, and that the Respondent's reduced contributions have rendered her unable to meet necessary expenditures for herself and the children.

14. The Applicant contends that her income is neither consistent nor sufficient to meet her and the children's monthly needs, and that the Respondent, as the party with the higher and more stable income, has a legal duty to bridge the shortfall and to support the children and herself in line with their previous standard of living. She

argues that the Respondent's abrupt reduction in maintenance is a deliberate attempt to undermine her financial security, and that his claim of financial hardship is inconsistent with his previous earnings and assets.

The Respondent's case

15. Despite this level of disclosure, the Respondent criticised the Applicant for allegedly failing to disclose interests in a family trust, understating her earning capacity, and inflating certain claimed expenses.

16. The Respondent, in his opposing affidavit, challenges both the completeness and the accuracy of the Applicant's sworn financial disclosure. He asserts that the Applicant has materially understated her means and overstated her expenses, thereby inflating the interim maintenance she seeks.

17. The Respondent's key criticisms are as follows:

Understated income

18. The Respondent contends that the Applicant's consulting income is understated, citing prior years in which her declared earnings were substantially higher. He further alleges that the Applicant has failed to account for cash payments received for certain private consulting projects and for any possible rental income from a vacant outbuilding on the matrimonial property.

Non-disclosure of assets

19. The Respondent claims that the Applicant has failed to disclose an investment portfolio, and he attaches bank statements showing transfers to and from an account in her name. He alleges that the Applicant is a discretionary beneficiary of the [L[...] Family Trust], which holds significant assets and makes annual distributions, though the Applicant denies receiving any such distributions.

Inflated monthly expenses

20. The Respondent contends that several items on the Applicant's schedule are excessive or unnecessary in the current circumstances, including domestic staff (two employees for three people), luxury grocery and clothing budgets, and high spending on children's entertainment and extramural activities. He specifically challenges the inclusion of private gym memberships, regular restaurant outings, and premium insurance products.

Failure to seek employment

21. The Respondent submits that the Applicant is well-qualified, in good health, and capable of securing full-time employment to increase her income, yet has made no serious effort to do so since separation.

Double counting and overlapping items

22. The Respondent alleges that certain expenses (such as vehicle insurance, maintenance, and fuel) are duplicated across separate headings in the expense schedule, thereby inflating the total.

Omission of certain contributions

23. The Respondent states that he continues to pay several major expenses directly (including the bond, rates and taxes, school fees, medical aid, and insurance), but that the Applicant's expense schedule fails to credit him for these ongoing contributions, thereby creating a misleading impression of her monthly shortfall.

Legal costs

24. The Respondent disputes the quantum of legal costs claimed, arguing that the Applicant's demand for a R300,000 contribution is excessive and not supported by itemised attorney invoices.

25. The Respondent further alleges that the Applicant failed to annex all source documentation for her claimed income and assets and provided incomplete bank

statements containing unexplained cash deposits. He requests that the Court draw an adverse inference from these alleged deficiencies in disclosure and either reduce the maintenance award accordingly or direct the Applicant to provide further and better particulars.

26. The Respondent submits that the Applicant's alleged financial distress is exaggerated and that the relief sought is both unaffordable for him and unnecessary for her, given her true means and the direct payments he is willing to continue making for the children's benefit.

27. The Respondent contends that he cannot afford the Applicant's maintenance demands, stating that their previous lifestyle was unsustainable and financed by debt and property sales rather than by a steady income. He asserts that he cannot access additional funds, that the financial buffer is depleted, and that paying the requested amount would require selling their property, leaving both parties without assets.

28. He does not refuse to pay maintenance but makes a formal tender of R25,000.00 per month, plus payment of specific costs, such as medical aid and bond payments.

Relevant financial details

29. In his affidavit, the Respondent provided a detailed account of his financial circumstances, supported by bank statements, salary slips, and schedules of assets and liabilities.

30. The Respondent's monthly income is as follows:

Basic salary (net after deductions)

30.1 R75,000

Variable income (average monthly share of annual bonus)

30.2 R10,000

Total average monthly income: R85,000

31. The Respondent's monthly expenditure is set out below:

Bond instalment on matrimonial home

31.1 R22,500

Municipal rates and taxes

31.2 R3,000

Water and electricity

31.3 R3,500

Household insurance

31.4 R1,200

School fees and educational costs for minor children

31.5 R14,000

Medical aid premiums (family plan)

31.6 R5,000

Additional medical expenses (uncovered)

31.7 R1,000

Motor vehicle finance, insurance, fuel, and maintenance

31.8 R7,500

Groceries and consumables

31.9 R6,000

Rental on current accommodation (post-separation)

31.10 R8,000

Personal expenses (clothing, cell phone, personal care)

31.11 R3,500

Domestic help (contribution to shared domestic staff)

31.12 R2,000

Other regular expenses and insurance

31.13 R2,000

Total disclosed monthly expenditure: R79,200

32. The Respondent asserts that, after covering these expenses, he faces a monthly deficit of approximately R4,200, which he has previously covered from personal savings and performance bonuses. In addition to monthly expenses, the Respondent has disclosed the following assets:

Pension fund

32.1 R1,250,000

Share portfolio

32.2 R480,000

Bank savings account

32.3 R50,000

Motor vehicle (market value): 2021 Audi Q5

32.4 R420,000

Personal effects and household contents

32.5 R110,000.

33. No immovable property is in his sole name, as the matrimonial home is registered in both parties' names.

34. The Respondent's liabilities are set out below:

Outstanding bond on the matrimonial home (joint liability)

34.1 R1,850,000

Motor vehicle finance (Audi Q5)

34.2 R165,000

Credit card debt

34.3 R48,000

Personal loan (bank)

34.4 R120,000

Total liabilities: R2,183,000.

35. The Respondent asserts that his net asset position is modest, particularly when set against his share of the outstanding bond and other debts. He further notes that his pension fund and share portfolio are not readily accessible without significant

tax and penalty implications, and that his only liquid savings are those held in his bank account.

36. The Respondent contends that, given these financial circumstances, he cannot afford to meet the full maintenance claimed by the Applicant without jeopardising his own financial stability and the children’s security in the matrimonial home. The Respondent disputes the Applicant’s income and assets, alleging that she under-discloses her financial position.

The supplemented papers

37. On 18 February 2026, and after the filing of the Respondent’s opposing affidavit (sworn reply), the Applicant filed an application to file a supplementary affidavit, the Applicant filed an application in terms of Rule 43(5) for leave to file a supplementary affidavit. The respondent initially opposed this application on the grounds of procedural abuse and continued financial misrepresentation and filed an answering supplementary affidavit on 19 February 2026.

38. The Applicant avers that she is entitled to deliver a supplementary affidavit because the Court has the inherent power under Rule 43(5) to receive further evidence it considers necessary. She frames the supplementation as an attempt to address material allegations in the Respondent's earlier answering papers to avoid adverse inferences.

39. The Respondent strongly objected to the filing of the Applicant’s supplementary sworn statement, characterising it as an impermissible “second bite at the cherry”. He argues that the Applicant knew these facts in December 2025 and chose not to raise them until the last minute, effectively attempting to remedy serious deficiencies in her initial case on the eve of the hearing. However, the Respondent has since withdrawn his opposition to the application for leave to file a supplementary affidavit.

40. I now turn to set out the Applicant’s relevant averments as contained in the supplementary sworn statement and the Respondent’s reply thereto.

41. In the supplementary sworn statement, the Applicant denies being a registered ethnomedicine practitioner in South Africa and claims that her international qualifications don't confer local earning rights. She attributes her low income to the emotional toll of the divorce, her role as the primary caregiver, and the struggles of her business, Coconut Apps (Pty) Ltd (“Coconut Apps”). She relies on the letter from Coconut App’s Accountants, KARE Consulting (annexure “SA2”) to show her business is barely profitable and that her travel to Zurich was a "high-risk, costly attempt to salvage" her reputation, not a sign of financial success.

42. Annexure “SA2” is a financial summary issued by Kathryn Jacobs of KARE Consulting (a Professional Accountant) regarding the financial position of Coconut Apps (Pty) Ltd and the personal income of Ms. H[...] L[...]. The letter provides the following breakdown for the 2024, 2025, and 2026 financial years:

Financial Performance by Period

<u>2024 Financial Year (01 July 2023 – 30 June 2024)</u>

Business (Coconut Apps)

43. Income of R517,533 and expenses of R551,601, resulting in a net loss of R33,919.

Personal

44. A salary of R95,000 was declared.

45. A R200,000 loan previously advanced to the business by Mr. B[...] L[...] was written off during this period due to the business's non-profitable situation. It further states that the business reflects an “assessed loss of approximately R1.4 million.

2025 Financial Year (01 July 2024 – 30 June 2025)

Business (Coconut Apps)

46. Income of R354,477 and expenses of R382,000, resulting in a net loss of R24,523.

Personal

47. No salary was declared in the Applicant's name.

2026 Financial Year (01 July 2025 – Current)

Business (Coconut Apps)

48. Income of R230,896 and expenses of R216,776, resulting in a net profit of R14,119.

Personal

49. No salary has been declared or paid to the Applicant for this period.

50. The Respondent criticises the letter from the Applicant's accountants and regards the figures with deep scepticism. He argues that citing an assessed loss of R1.4 million is an attempt to create a narrative of a struggling entity, which he claims is unverifiable without supporting documentation. He notes that the Applicant failed to disclose the primary supporting documents, such as the Annual Financial Statements and specific ITA34 tax assessments, at the time of the initial application.

51. In the letter, the Accountants explicitly state that the director's ability to operate and grow the business has been materially affected during this period by ongoing legal proceedings, which have directly reduced revenue-generating capacity. The Respondent contends that this is the Applicant's attempt to blame him for her business's poor performance. He argues that this is a subjective, self-serving statement intended to elicit the court's sympathy. He contends that an accountant's letter should focus on factual, historical financial data rather than offering a narrative excuse for the business's failure.

52. The Respondent disputes the Applicant's calculation that he realized R5.6 million from the sale. He provides proof (Annexures BL21 and BL22) that the net proceeds were approximately R2.9 million. He emphasizes that the Applicant had full access to these documents when she launched her initial application, suggesting her current narrative is a calculated attempt to make him appear wealthier than he is.

53. Annexure "BL21" is a screenshot of a WhatsApp conversation between the Applicant and the Respondent, dated 24 March 2025. The screenshot shows two files being shared: a Transferor Final Account.pdf and POP - B L[...].pdf

54. Annexure "BL22" is a statement of account from Guthrie Colananni Attorneys, the conveyancing attorneys, regarding the transfer of Section 216 and Parking Bay P[...], Muizenberg Beach.

55. The statement records the following:

55.1 Purchase Price: R5,600,000.00

55.2 Total Deductions: agent's commission (R322,000), Investec bond cancellation (R2,323,460.94), and various municipal and compliance costs.

55.3 Net Payment to Respondent: The final amount paid to the Respondent is R2,922,010.81.

56. In the supplementary affidavit, the Applicant admits to what she calls errors and double-counting in her initial maintenance schedule in the sworn statement (e.g., listing gardener and domestic wages, car expenses, and medical costs twice). She apologises for these errors and provides a revised, lower maintenance figure (approximately R44,000 per month). The Respondent is unimpressed by the apology. He argues that these "regretful" errors prove his point that her initial figures were inflated and unreliable. He further contends that her revised figures remain unreasonable, noting that she increased her demand for children's extramural activities without justification and based her grocery budget on a false assumption of 50/50 time-sharing.

57. The Applicant further clarifies that the August 2025 mediation minute was merely a “record of discussion”, not a binding agreement. She disputes the need for a “week-on/week-off” contact schedule, arguing that it isn't in the children's best interests, and maintains that no conflict of interest existed with her attorneys, Maurice Phillips Wisenberg. The Respondent views her stance as evidence of bad faith. He argues that, although the mediation minute may not be legally binding in the strictest sense, it clearly shows that agreements were reached, which the Applicant is now trying to ignore to prolong the litigation. He insists that he will accept her proposed contact arrangement only if the Court rejects his own 50/50 proposal.

ISSUES FOR DETERMINATION

58. The issues for determination in this application have crystallised as set out below:

58.1 Whether the Respondent has the means to satisfy the Applicant’s claim.

58.2 Whether the Applicant has made full and frank disclosure of her financial circumstances, and the legal consequences of any non-disclosure in relation to this Rule 43 application.

APPLICABLE LAW AND ANALYSIS

59. Rule 43 orders are interim and temporary. They are not intended to be decided with the precision afforded by a full trial with detailed evidence. Their purpose is to provide a speedy and inexpensive remedy, primarily for the benefit of women and children, pending the divorce. The Applicant is entitled to “reasonable maintenance” pendente lite, determined by the marital standard of living, her actual and reasonable requirements, and the Respondent’s capacity to meet them.

60. In Rule 43 applications, the paramount duty is to act in the utmost good faith and to make full disclosure of all material information relating to financial affairs. Any false or material non-disclosure may mean the Applicant is not before the court with

“clean hands” and may justify a refusal of relief. An Applicant has a mandatory obligation to make a “full and frank disclosure” of their finances. The penalty for failure may be dismissal of the application. In casu, the Applicant’s case focuses predominantly on the Respondent’s failure to properly disclose his financial position and to take his bonus into account. The Respondent denies the allegations and provides a sufficient explanation in his answering affidavit.

61. In particular, the Applicant contends that the Respondent’s bonus significantly increases his average monthly income, enabling him to meet the Applicant’s maintenance demands, despite the Respondent’s advice that he does not anticipate receiving such a significant bonus in 2026 because the targets at his employer have not been met. The Applicant’s counsel submitted that the Respondent had received these bonuses in previous years, although only the 2025 bonus is alleged in the founding affidavit. It was further submitted that past conduct is the best indicator of future conduct, and, for this reason, the Respondent’s bonus, which he has not yet received, should be taken into consideration.

62. The respondent points out numerous instances of double accounting and over-inflated expenses in the applicant’s monthly expenses in his answering affidavit. The applicant alleges that it is *“regretful*” that some errors and double accounting made their way into her schedule of monthly expenses and apologises for them. The applicant’s supplementary affidavit is silent on *why* or *how* such errors occurred, which is undesirable, especially in a supplementary affidavit. The respondent points out discrepancies in the applicant’s revised expenses in his answering supplementary affidavit and further highlights that the applicant’s expenses remain *inflated,* with certain expenses (i.e., the children’s extramural activities) having increased from R2500 per month to R8000 per month. I agree with the Respondent’s counsel that the Applicant inflated her expenses to extract as much maintenance from the Respondent as possible.

63. The Applicant fails to explain her reduction in grocery expenditure from R19,000-00 to R15,000-00, despite conceding in her draft Order that the children will be in her care for only 50% of the time, not 60% as alleged. Since the children will be with the respondent for 50% of the time, the grocery expenditure remains inflated and should be reduced further.

64. It is noteworthy that the Applicant's maintenance need, as set out in her supplementary affidavit, has been reduced from R59,100-00 to R44,000-00. When the R5,500-00 increase for extra-murals is taken into account, the Applicant's need further decreases to R38,500-00. This represents a total reduction of R20,600-00, amounting to 34.85% of the Applicant's claim in her notice of motion. I agree with the Respondent's counsel's submissions that this amount could be further reduced when the overstated grocery budget is taken into account. Against the Applicant's overstated expenses and the deliberate non-disclosure of her finances, neither the Court nor the Respondent is in a position to determine whether the Applicant has in fact established a need for maintenance.

65. The Applicant's founding affidavit alleges the following:

"40. I am indebted to friends and family in the approximate amount of R840 000.00. It has been <u>necessary to incur such debt to ensure that the reasonable needs of the children and me are met following the Respondent's and my separation</u>." [emphasis added]

66. The Respondent's answer to this allegation is as follows:

*"55. The Applicant's allegations are denied. In this regard, I annex hereto the schedules as **"BL17,"** which reflect the Applicant's personal loans. The two personal loans total approximately R823,000.00 (R221,000.00 + R702,000.00). This makes up the bulk of the R840,000.00 debt she has allegedly incurred.*

56. From the schedules it is clear that all the capital amounts, save for the R3,000.00 of 12 February 2025 from H Spies, were incurred prior to our separation."

67. The applicant alleges the following in her supplementary affidavit:

"*38. Lastly, I point out that <u>the debts that I have incurred, exceeding R840 000, have not been incurred by me only since our separation in December 2024</u>, as alleged by the*

Respondent, but rather since 2016 when the Respondent and I experienced financial distress due to a builder stealing our savings, as explained in my founding affidavit."

68. The Applicant's accounts of the loans she incurred contradict each other in the founding and supplementary affidavits. The allegations regarding the Applicant's loans in her founding affidavit were made solely to depict the Respondent as financially abusive towards her, creating the impression that the Applicant has been left with no money to care for herself and the children. Of further concern is that the Applicant alleges in her supplementary affidavit that her loans *exceed* R840,000-00, yet she fails to disclose to the Court the value of the loans or with whom she incurred them. Since the Applicant's allegations in her supplementary affidavit confirm the Respondent's allegations in his answering affidavit, it can be accepted that the Applicant intended to paint a picture to suit her narrative, which was far from the truth.

69. The Court and the Respondent are left in the dark as to how much the Applicant actually owes, especially in view of the fact that the Applicant had a further opportunity (in her supplementary affidavit) to make a full and frank disclosure, yet elected not to do so.

70. The Applicant alludes vaguely to her business and income in her founding affidavit, yet she fails to provide details of what her business is and how much she earns. In her supplementary affidavit, the Applicant attempts to address her non-disclosure. However, she still failed to provide the Court with a full and frank disclosure of her business and income.

71. The Applicant alleges that the Respondent's reliance on her website and marketing biography is *a superficial attempt to manufacture a reality that does not exist*. In her supplementary affidavit, the Applicant first discusses her three sources of income (book sales, speaking opportunities, and consultation fees) and states that the income derived therefrom is negligible because her expenses are extremely high. This does not shed any further light on or provide any greater certainty regarding her financial position, as the Applicant *still fails to disclose her actual income*. The

Applicant should have made this full and frank disclosure in her founding affidavit and had the opportunity to do so in her supplementary affidavit, yet she elected not to.

72. An applicant has a mandatory obligation to make a full and frank disclosure of their finances, with the penalty for failure being the dismissal of the application.[1] If an applicant is willing to omit facts in a founding affidavit, the court cannot trust them to be frank about weighty facts.[2] Without full disclosure, the Court cannot quantify the need for maintenance.[3]

73. The Respondent attaches a printout of the Applicant's website to his answering affidavit. In Annexure "BL3", the Applicant advertises a reset course for $99.00 USD from 28 January 2026 to 18 February 2026. By the time the Applicant deposed to her supplementary on 18 February 2026, the course would have ended, yet she is silent about the income she earned from it. Again, it is telling that the Applicant is deliberately silent on this point, when proof of this income would certainly prove (or disprove) her need for maintenance.

74. Annexure "SA2", the letter from the Applicant's Accountants, records the Applicant's annual expenses for financial years ending in 2024, 2025 and 2026. However, no explanation is provided for the business expenses, which the Applicant could and should have provided, especially in view of the fact that she filed her supplementary affidavit to address material allegations and to avoid adverse inferences arising from her failure to do so.

75. Although reference is made to supporting documents, none are disclosed for consideration, and the Applicant has subsequently failed to substantiate her allegations that she has *not* fully disclosed her financial position. It is concerning that, despite the Respondent raising her non-disclosure in his answering affidavit, the Applicant *still* fails to make full and frank disclosure in her supplementary affidavit,

[1] *CMA v LA* [2023] ZAGP JHC 364 (at par 25).

[2] *CA v HA* (4478/2022) [2024] ZAWCHC 25.

[3] The case of *MNY v JY* (2024/013982) [2024] ZAGPJHC 1823 concludes.

leaving only the conclusion that she does not want the Respondent or the Court to know her actual income.

76. In South African law, Rule 43 applications are designed to be fast-track procedures. Because they are intended to be quick, the Court cannot act as a detective to uncover hidden assets or verify every bank statement. Therefore, our law places the entire burden of honesty on the applicant. The Applicants must be fully transparent. If an Applicant withholds information, they fail in their duty to the Court. If an Applicant comes to court with a dishonest narrative, the Court is entitled to turn the Applicant away without considering the merits of the Applicant's claim. If the Applicants do not provide clear financial data, the Court cannot calculate their maintenance needs. If the Court cannot determine the need, it cannot (and should not) grant the order. Failure to provide material facts leaves the court in the dark, making it impossible to determine the applicant's true financial position or need.[4]

77. A landmark case on Rule 43 holds that exaggerating expenses and understating income to gain an advantage is "distasteful, unacceptable, and should be censured". It finds that such conduct constitutes a failure to act in good faith, and the court is justified in refusing relief on that ground alone.

78. The Applicant's spouse (usually the wife) is entitled to reasonable maintenance *pendente lite*, which depends on:

78.1 The marital standard of living.

78.2 Her actual and reasonable requirements.

78.3 The husband's capacity to meet those requirements (usually assessed by income, though capital can sometimes be used). Claims supported by "reasonable and moderate" details carry more weight than extravagant or extortionate demands. Similarly, an affidavit from a respondent who demonstrates a willingness to meet lawful obligations carries more weight than one that clearly seeks to evade them.[5]

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[4] *J.M v S.M* (2020/18792) [2025] ZAGPJHC 351

[5] *Taute v Taute,* fn3 *supra*.

79. A fundamental principle is that the Respondent must be able to pay the maintenance claimed.[6]

80. In *this case*, I am persuaded that the Respondent is not a husband and father who is shying away from his duty to maintain his spouse and children. To the contrary, the evidence shows a husband and father who has gone and still goes all out to provide, within his means, for the reasonable maintenance needs of his estranged wife and children. The Respondent simply cannot afford the unreasonable demands of the Applicant.

81. The Applicant, based on the evidence the Respondent uncovered from her website, appears to be a professional with the earning capacity to reduce her dependence on the Respondent and to meet her independent legal obligations to support her children.

82. Rule 43 is designed to provide temporary assistance for dependent spouses, traditionally homemakers who sacrificed their careers for the marriage, pending the finalisation of the divorce trial. It was never intended to give an indefinite “meal ticket” to a spouse who clearly would not be able to establish a legal right to maintenance at the main trial. The Gauteng Division reaffirmed that the rule's true purpose is to ensure fairness and uphold the reciprocal duty of support, rather than to provide an unjust, permanent-style meal ticket. The Gauteng Division reaffirmed that the rule's true purpose is to ensure fairness and uphold the reciprocal duty of support, rather than providing an unjust, permanent-style meal ticket.[7] Rule 43 exists for temporary, interim relief and not as a long-term safety net.[8]

CONCLUSION

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[6] *Buttner v Buttner* 2006 (3) SA 23 (SCA) ([2006] 1 All SA 429).

[7] *C.S v H.C.S* [2025] ZAGPPHC 276.

[8] S*.J. J v M.M. J* [2026] ZAGPJHC 57.

83. The Court must weigh the parties' respective financial positions, the documentation provided, and the legal framework set out above when deciding on the interim relief to be granted.

84. In this matter, and for the reasons provided above, I was inclined to dismiss the Applicant's application for interim relief pending finalisation of the divorce action. However, because it also implicates maintenance for the parties' minor children, I decided against my initial inclination (to dismiss the application) and instead granted an order rebuking the Applicant's demeanour in this application while still providing a judicially sanctioned maintenance regime for her and the minor children *pendente lite*.

85. Accordingly, I am satisfied the order I make is just an equitable and reflects the sentiments expressed in this judgment.

86. As a result, I make the following order:

1. *Pendente lite*, but for a period not exceeding 12 calendar months from the date of granting this order, the Respondent is ordered to:

   1.1 Pay the Applicant R25,000.00 per month, effective from the date of the Order, without deduction or set-off, on or before the first day of each month.

   1.2 Make a monthly payment of the bond instalment, rates, taxes, and services (including water and electricity) due to the municipality for the matrimonial home at 1[...] S[...] Avenue, Melkbosstrand.

   1.3 Make a monthly payment for levies, household and homeowners' insurance, security, and maintenance/upkeep of the matrimonial home.

   1.4 Retain the Applicant and the children as dependents on his medical aid scheme and pay all reasonably incurred medical expenses (including dental, pharmaceutical, surgical, hospital, etc.) not covered by the medical aid. Reimbursement or payment to providers must be made within ten days of receipt of invoices.

1.5 Make payment for the children's reasonable educational costs, including school fees, additional tuition, uniforms, books, and textbooks (paid directly to service providers).

1.6 Pay the Applicant's motor vehicle insurance and the costs of licensing, maintenance, repairs, and servicing (including the replacement of tyres and wheel balancing).

1.7 Contribute of R40,000.00 towards the Applicant's legal costs in the pending divorce proceedings, payable no later than **30 July 2026** (to be paid into the Applicant's attorney's trust account).

1.8 Should the Applicant's income not improve or worsen on expiry of the aforesaid 12-month period, the Applicant is granted leave, on the same papers, duly supplemented, if necessary, to apply to this Court for the variation of this order.

1.9 Each party to pay its own costs for this application.

P NJOKWENI

Judge of the High Court

<u>Appearances</u>

For the Appellant: Adv. A Thiart

Instructed by: Maurice Philips Wisenberg

For the Respondents:	Adv. M De Wet
Instructed by:	C & A Friedlander Inc.