

SOUTH AFRICA / JUDGMENT

# C.B v M.R.B (5645/2021) [2024] ZAGPPHC 805 (5 August 2024)

[2024] ZAGPPHC 805

## COURT

North Gauteng High Court, Pretoria

## BEFORE

JA Kok

## CASE / FILE NUMBER

5645/2021

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## Source record

## FLYNOTES:

FAMILY – Divorce – Contribution to costs  
– Further contribution – Applicant failing to show material change in her circumstances – Not a bar to her application for further contribution – Applicant's position as unemployed housewife with no post-matric qualifications – Applicant should not at this stage be expected to fund her own legal expenses – Court warning that grace shown towards an applicant should not be abused to prolong litigation, nor abused to maliciously empty respondent's pockets – Contribution to applicant's legal costs of R200,000 – To be funded from respondent's portion of proceeds of sale of matrimonial home – Uniform Rule 43(6).  
SAFLII  
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REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF  
SOUTH AFRICA  
GAUTENG DIVISION,  
PRETORIA

CASE NO: 5645/2021  
(1)  
REPORTABLE: YES/NO  
(2) OF  
INTEREST TO OTHER JUDGES: NO  
(3)  
REVISED: NO  
Date: 5 August 2024  
JA Kok  
In

the matter between:

B[...],  
C[...]  
APPLICANT  
and  
B[...],  
M[...] R[...]  
RESPONDENT

## JUDGMENT

Kok AJ

### Introduction

- [1] This is an opposed application in terms of Rule 43(6). The applicant seeks a further contribution towards her legal costs and an increase in the amount of maintenance payable by the respondent to the applicant. The initial Rule 43 order granted on 18 February 2022 allowed for R15 000 monthly maintenance payable by the respondent to the applicant and a contribution of R20 000 by the respondent to the applicant for her legal costs. The parties were married out of community of property with the inclusion of the accrual regime.
- [2] Both parties submitted written heads of argument in addition to their oral submissions. Where appropriate I relied on the written heads in crafting this judgment.

### Facts

- [3] The applicant asserted as follows. She makes application that her monthly maintenance be increased from R15 000 to R25 000 and that a contribution of R500 000 be made to her legal costs. In her own words she is an "unemployed housewife".

In the main divorce proceedings, the respondent has been scant in providing information about his financial affairs and she will have to employ the services of a forensic auditor to obtain an expert report on the respondent's assets and monthly income. She provided a quotation from a forensic auditor of R150 000 and a cost estimate from her attorney to run the trial to conclusion of R635 375.

[4] The respondent replied as follows. He pointed out that in the applicant's initial financial disclosure form, she indicated R34 687 as her monthly expenses. In her current form she lists R40 373 as her expenses - an increase of R6000. Her lodging expenses increased from R7000 to R12000, but she is ostensibly renting from her brother and a copy of the lease agreement was not provided. He obtained a quotation from a forensic auditor of R56 000 for similar work to be undertaken as that of the applicant's auditor. This amount excludes any court appearance. One of the annexures to his affidavit contains the

auditor's quotation, which indicates that he charges R25 000 per day for court appearances. The respondent pointed out that the trial cost estimate of the applicant does not contain a quotation from counsel, their identity, seniority, of professional fees per hour. Her attorney's professional fees per hour as also not indicated. The respondent submitted that the anticipated R635 375 costs amounts to overreaching. As a pragmatic way forward, the respondent submitted that the applicant and respondent each be allowed to withdraw R100 000 from the proceeds of the sale of their matrimonial home that is being held in an interest-bearing trust account of the transferring attorneys. At the date of the commissioning of the respondent's affidavit there was approximately R1.5 million available to the applicant and respondent each. The respondent denied that he had not been forthcoming about his financial affairs.

Applicant's

### **submissions**

[5] The applicant made the following submissions.

[6] The applicant can no longer survive and meaningfully provide for the maintenance of the parties' minor child with the maintenance contribution as initially ordered. The initial contribution towards her legal fees is no longer sufficient and the applicant is in need of a further contribution towards her legal fees.

[7] The initial court order did not provide for an escalation in the monthly maintenance payable. A material change in circumstances occurred in the sense that no one at the time of the granting of the original Rule 43 order could have foreseen the significant escalation in daily living costs, particularly food, fuel and clothes. This escalation could not have reasonably been foreseen and if it was, the court would have provided for an escalation in the Rule 43 order.

[8] In divorce proceedings, the party who is in control of the purse strings has an advantage. It is usually the husband who has built up a substantial estate and is in control of substantial assets, and who is then able to afford experienced attorneys, appoint senior counsel, and incur whatever costs are necessary to further his case. The wife on the other hand is prejudiced in the sense that she would be less able to afford experienced legal representatives and has to count her pennies in respect of expenses incurred to advance her case.

- [9] The applicant has been unemployed since 2001 and prior to that worked for the respondent. The applicant only has matric and has sacrificed the possibility of a career and any attempt at employment to raise the parties' children and to cater to the respondent's needs.
- [10] To achieve equity in litigation, a court should be inclined to entertain an application for a contribution to the legal costs in circumstances such as these.
- [11] The court normally orders an initial contribution towards legal costs based on the principle that an applicant should at least have some form of cover for initial expenses such as issuing the divorce summons or defending the initial summons. This so-called "initial contribution" is normally ordered at an early stage of the proceedings and before substantial costs are incurred for preparation for trial and is usually ordered on the principle that the applicant is entitled to a contribution for costs.
- [12] However, when preparation for trial commences and the nature and extent of preparation which would be needed to properly prepare for trial becomes clear, a litigant will realise that she (as it is normally the wife) is not in a financial position to incur the substantial costs in respect of numerous consultations with counsel, expert evidence and other expenses necessary incurred in the normal run-up to a trial. For this specific reason, Rule 43(6) entitles an applicant to approach the court on the same procedure to vary the initial order if the initial contribution towards costs proves to be inadequate.
- [13] Rule 43(6) distinguishes between a material change in circumstances insofar as the maintenance, custody, or access of minor children are concerned, and a provision that the (initial) contribution towards costs must be "inadequate". It is therefore not necessary for an applicant to prove "material change in circumstances" to obtain a further contribution towards costs. All that is required from an applicant in an application of this nature, and in an application where a further contribution towards legal costs are sought, is to show that the previous contribution ordered by the court is now inadequate.
- [14] In an application of this nature, it is necessary for the applicant show that she has a bona fide defence as defendant in the main divorce action, as the court will not likely award a contribution towards costs to an applicant who is clearly involved in frivolous litigation - *Smallberger v Smallberger* 1948 (2) SA 309 (O).
- [15] The applicant is further required to show that there is an inability to fund the upcoming litigation. The applicant is required to show that she does not have the necessary funds to incur the expenses associated with running a divorce trial. Although the applicant may have her portion of the money received for the sale of the matrimonial immovable property currently invested in a trust account, it is not expected of the applicant to denude herself to fund the litigation and if the other party is in a position to provide a contribution, then the contribution should be ordered - *De Villiers v De Villiers* 1965 (2) SA 884 (C).

- [16] It is evident from the applicant's updated financial disclosure that she has no other means of income and no other means of funding this litigation. The applicant has always been completely reliant upon the respondent's for her maintenance, and it was never necessary for her to think about the future and in what way she will be able to maintain herself. In this difficult economic climate, the applicant is unable to find employment and does not have the means to litigate on the same scale as the respondent.
- [17] The parties are entitled to litigate on the same scale, commensurate with the means of the parties during the subsistence of the marriage. *Glazer v Glazer* 1959 (3) SA 928 (N). In respect of the quantum of contribution, the court takes into account the scale upon which the applicant intends to litigate, which scale is determined with due regard to the respondent's financial position and the parties' standard of living throughout the marriage relationship - *Nuhlman v Nuhlman* 1984 (1) SA 413 (ON).

Respondent's

### **submissions**

- [18] The respondent made the following submissions.
- [19] It is patently evident that the main purpose of the current application is a quasi-appeal of the initial court's order. All that the applicant is attempting to do, is to reduce this court to an appeal court, in an attempt to get a more favourable order, *pendente lite*, than what was granted during February 2022. No appeal lies against a Rule 43 order in the light thereof that same is not final relief, neither in form, nor in nature - *S v S & another* [2019] ZACC 22. The original Rule 43 application was properly argued, and fully ventilated, and the court fully considered the matter before granting the order that it did. Despite the applicant's protestations to the contrary, this application amounts to little more than a "re-hearing" or "appeal" of the original Rule 43 application.
- [20] No material change in circumstances occurred since the granting of the original order. The status quo pertaining to the minor child and the parties' financial affairs that prevailed at the time of the granting of the original Rule 43 application has not changed, and nothing advanced in the applicant's papers constitutes a material change in circumstances that would warrant a variation of the prevailing Rule 43 order.
- [21] Courts have held that Rule 43(6) must be strictly interpreted and that parties are to be held to a strict standard in as far as the existence of a material change in circumstances is concerned
- *Jeanes v Jeanes* 1977 (2) SA 703 (W) 706G; *Andrade v Andrade* 1982 (4) SA 854 (O) 855G. Every so often, aggrieved parties rush off to court under the guise of Rule 43(6) in an attempt to have a proverbial "second bite at the cherry" - this ought to be jealously guarded against.

- [22] "A considered reading of rule 43(6) suggest to me that, in order to succeed in demonstrating a material change in circumstances, one must make a full and frank disclosure in regard to all of the numerous and varied elements which make up the broad overview of the applicant's financial situation"
- P.E.O.I v W.A.H (97132/16) [2021] ZAGPPHC 60 para 14.
- [23] The applicant has not made such full and frank disclosure. The applicant's "lodging expense" has for instance increased in a period of two years with R5 000. This is an increase of nearly 80% for a property in which the applicant has been residing all along. The Applicant does not explain this increase, and she did not append her lease agreement in this regard. Even more suspect, is the fact that the applicant "rents" this property from her brother. Having regard to the applicant's financial disclosure form, the applicant failed to play open cards with the court.
- [24] A Rule 43(6) order is not there for the mere taking. E v E; R v R; M v M (12583/17; 20739/18; 5954/18) [2019] ZAGPJHC 180 para 60.
- [25] That the current application is nothing more than a revisitation of the original order, by a party dissatisfied therewith, is evident from a reading of paragraph 11 of the founding affidavit.
- [26] The current application seems to be premised on S v S and another [2019] ZACC 22 para 58: "There may be exceptional cases where there is a need to remedy a patently unjust and erroneous order, and no changed circumstances exist, however expansively interpreted. In these instances, where strict adherence to the rules is at a variance with the interests of justice, a court may exercise its inherent power in terms of section 173 of the Constitution to regulate its own process in the interests of justice".
- [27] However the applicant does not submit that the current application falls squarely in this category as stated by the Constitutional Court, which then presupposes that the applicant does not regard this matter as an "exceptional case". Even more so, the applicant has not managed to put up any cogent reasons why this matter should be regarded as an "exceptional case" and it is therefore denied that there is a need to remedy the current order, as same is patently not unjust and erroneous in the present circumstances. It cannot be said that the original Rule 43 court misdirected itself in any manner whatsoever, that would result therein that the present matter is to be regarded as an exceptional case. In any event this matter is in no manner whatsoever "exceptional" in nature and the order granted by the court a quo is not "patently unjust and erroneous".
- [28] The applicant is seeking a re-hearing of a Rule 43 application where she is unsatisfied with its outcome, and then attempts to bring the re-hearing of the matter under the guise of that she has "commenced preparation for the trial in all earnest". It is telling that the applicant does not even address the issue of a material change in circumstances. She states in the last sentences of paragraph 11 in her founding affidavit that "It shows my monthly expenses,

which have significantly increased since the last order was made. This, I have been advised, represents a change in circumstances". The conclusion drawn is not only artificial premised on the alleged facts, but also not the onus that the applicant must meet to warrant a variation of the initial Order.

- [29] The applicant asserts in paragraph 11 that a "change in circumstances" has occurred. The respondent denies this, but in any event what the Rule requires is a "material" change in circumstances. On the applicant's own version, this did not happen. Having regard to the contents of the founding affidavit, it seems that the applicant's case is simply that she needs a better contribution towards her legal costs, and that she "cannot survive" on the amount of maintenance ordered. This is not sufficient.
- [30] The respondent referred me to *AF v MF* 2019 (6) SA 422 (WCC) for comprehensive guidance on how a court should consider a contribution towards legal costs in terms of Rule 43(6).
- [31] Another court should be loath to interfere in issues regarding costs where the court a quo has judicially exercised its discretion.
- [32] The applicant in fact does have means of her own. The applicant admits as much in her papers, but attempts to downplay it. She has R1 500 000 available in an interest bearing trust account.
- [33] No material change in circumstances has occurred, and the respondent does not have the financial means to meet the applicant's unsubstantiated and inordinate financial demands. The respondent has experienced a change in circumstances (namely a significant and properly explained increase in his medical aid fund contributions), yet dutifully meets his monthly maintenance obligations. The respondent is a father that does not shy away from his responsibilities to maintain his family since the parties have separated.

## Analysis

- [34] Rule 43(6) allows for a variation of an earlier Rule 43 order. An order made in terms of Rule 43 is not appealable in terms of section 16(3) of the Superior Courts Act 10 of 2013. Section 16(3) had been found to be constitutional in *S v S* and another 2019 (6) SA 1 (CC).
- [35] Rule 43(6) allows for a variation of an earlier Rule 43 order in two instances: (i) if a material change has occurred since the granting of the earlier order in the circumstances of the applicant; and (ii) if an earlier contribution towards the applicant's legal costs proves to be inadequate. These are two separate instances. The qualifier "material change in circumstances" does not apply to a subsequent application for a further contribution to the applicant's legal costs; for a subsequent contribution to legal costs the applicant must show that the earlier contribution was inadequate. See *E.W v S.W* (26912/2019) [2024] ZAGPJHC 465 as a recent example where this approach was followed. I disagree with the approach taken in *Z.G v J.G.C.G* (77979/2018) [2024] ZAGPPHC 18 that

the qualifier "material change in circumstances" also applies to an application for a further contribution to legal costs.

[36] Older caselaw relating to Rule 43(6) for the most part seem to follow the approach that I set about above. *Grauman v Grauman* 1984 (3) SA 477 (W) relates to the first instance listed in Rule 43(6). In *Grauman* the applicant argued that the interim maintenance order be amended; the issue of a further contribution to legal costs did not arise. The ratio in *Grauman* (480B-C) clearly only speaks to the first instance listed in Rule 43(6): "Rule 43(6) should be strictly interpreted to deal with matters which it says has to be dealt with, that is, a material change taking place in the circumstances of either party or child" (emphasis added). *Micklem v Micklem* 1988 (3) SA 259 (C) explicitly deals with the two instances separately; "material change" in relation to a variation of the interim maintenance

order at 263B-264D and a further contribution to costs at 264D-265C. Likewise in *Dodo v Dodo* 1990 (2) SA 77 (W) the court treats the Rule 43(6) application as two separate enquiries; 81A-87E of the judgment deals with the "material change" qualifier in relation to a variation in the maintenance order and 96E-101A deals with the query whether a further contribution to the applicant's legal costs is warranted.

[37] Both parties referred me to *Maas v Maas* 1993 (3) SA 885 (O). The judgment is not clear on the "material change" qualifier in relation to a further contribution to costs. At 887I-J of the judgment it seems as if the court is of the view that the "material change" qualifier applies to a further

contribution to costs as well. At 889B-890A the court then seems to hold that one way to succeed in an application for a further contribution to costs is to prove a material change in circumstances; another way would be to prove that it is necessary that the contribution be made forthwith and that the applicant cannot continue with her preparation for trial if the contribution is not made.

[38] *Maas* illustrates the problem if "material change" is read to apply to a subsequent application for a further contribution to legal costs - the court had to create a further qualifier that is not contained in the clear wording of Rule 43(6) to prevent injustice to an applicant who is out of pocket and therefore cannot prepare for trial. The ordinary and clear meaning of Rule 43(6) should be followed in a subsequent application for a further contribution to costs - the applicant must merely show that the initial contribution to her legal costs was inadequate. An applicant may be in need of a further contribution to her legal costs without a "material change" in her circumstances having occurred - except that she has run out of funds to litigate her divorce proceedings to finality.

- [39] The post-constitutional purpose of Rule 43(6) must be kept in mind. The Constitutional Court in *S v S* and another 2019 (6) SA 1 (CC) para 3 provides the context against which Rule 43(6) should now be interpreted and applied. Rule 43 applications are for the most part brought by women who are usually in a more disadvantageous financial position than their husbands. Gender inequality persists in South African society. Courts should therefore apply Rule 43 in such a way that gender inequality is alleviated.
- [40] Pre-constitutional caselaw relating to Rule 43(6) must be read with some caution. The same considerations that applied pre-1994 do not necessarily still apply. Two recent High Court judgments analyse and apply Rule 43(6) through the prism of the Constitution, particularly in relation to the right to equality: *AF v MF* 2019 (6) SA 422 (WCC) and *SH v MH* 2023 (6) SA 279 (GJ).
- [41] *AF v MF* make the following salient points. It is for the most part still so that women have to utilise Rule 43 to obtain a contribution from their husbands to fund their litigation, seeing that wives are not remunerated for their household and childcare responsibilities and that their husbands are usually in a better financial position (para 30). Courts should aim to establish an equality of arms in divorce litigation (para 41). Courts must alleviate a marked imbalance of financial resources between the parties (para 41). *SH v MH* paras 73-79 and 83-105 make similar points. Both judgments hold that a lumpsum contribution to costs may be ordered. Both judgments hold that a Rule 43(6) order must be granted through an equality of arms prism.
- [42] Although not relevant to the current proceedings, *AF v MF* held that an applicant may also recoup legal costs already incurred in terms of Rule 43(6). *AF v MF* preferred the approach taken in *Cary v Cary* 1999 (3) SA 615 (C) and *Du Plessis v Du Plessis* [2005] ZAFSHC 105 to that taken in *Nicholson v Nicholson* 1998 (1) SA 48 (W), *Senior v Senior* 1999 (4) SA 955 (W) and *Petty v Petty* [2002] 2 All SA 193 (T). *Cary* and *Du Plessis* both applied Rule 43(6) through the prism of the right to (substantive) equality. *Du Plessis* para 7 held explicitly that the "material change in circumstances" qualifier does not apply to an application for a further contribution to costs. Likewise in *Cary*, in an application for a further contribution to legal costs, the court made no reference to the "material change in circumstances" qualifier.
- [43] *S v S* does not explicitly deal with a further contribution to costs. The dispute in *S v S* only related to the amount of maintenance ordered by the original Rule 43 court. It therefore makes sense that the Constitutional Court only referred to the "material change in circumstances" qualifier in its judgment.
- [44] As I read *S v S* paras 57-59, Rule 43(6) allows for a "re-hearing" or "appeal" (in the respondent's words) of the original Rule 43 application in the circumstances set out in the subrule itself, as well as if the applicant can make out a case for a variation of the original order on the basis of exceptional circumstances, a patently unjust and erroneous original order and the interests of justice. Rule 43(6) cannot ensure an equality of arms between the litigating spouses if a subsequent application cannot be brought based on a material change

in circumstances or if the initial contribution to costs proves to be inadequate.

[45] It is so that the applicant has not shown a material change in circumstances. In her own words, in her founding affidavit, she only asserts that there has been a "change" in her circumstances, but tellingly, not a "material" change. The judgments I have read in preparing this judgment, where a Rule 43(6) order was granted, all entailed an applicant who made a full and frank disclosure of their financial position. I agree with the respondent that the applicant has not satisfactorily

set out her financial circumstances and that the largest part of the increase in her expenses seem to relate to her rental expenses, of which very scant detail was provided.

[46] Contrary to the respondent's assertion that an increase in living costs does not constitute a "material" change in circumstances, stands Micklem 263F-G and Dodo 93D-E. It is so that in both these matters there were further circumstances, over and above inflation's effect, which led these courts to find a material change in circumstances. I do not have to belabour this point as I have already held that the applicant did not make a full and frank disclosure.

[47] I disagree with the respondent that Rule 43(6) must be "strictly interpreted" - whatever it is that respondent wished to mean. The cited judgments (Jeanes and Andrade) were delivered pre-1994 and S v S para 56 held that Rule 43 must be expansively interpreted. On my reading of Jeanes and Andrade, both judgments confirm the current legal position that a further application may be brought if the requirements in Rule 43(6) are met. A "second bite at the cherry", as respondent referred to it, is allowed in terms of Rule 43(6) in terms of the requirements stated in this subrule.

[48] The application does not seem to be premised on the further avenue created for Rule 43(6) applications in S v S para 58. The applicant did not make out a case based on exceptional circumstances, a prior unjust and erroneous order, and the interests of justice.

[49] That said, the applicant's failure to show a material change in her circumstances is not a bar to her application for a further contribution to her legal costs. The respondent does not take issue with the applicant's position as that of an "unemployed housewife", with no post-matric qualifications, and that she has been unemployed since 2001. The applicant is reliant on the respondent's maintenance payments. She has no independent means to fund her own legal costs, bar the R1.5 million held in a trust account.

[50] It has been held that a wife is not expected to realise her own assets to fund her litigation costs where her husband is able to contribute to her costs - De Villiers v De Villiers 1965 (2) SA 884 (C) 888D-F and Glazer v Glazer 1959

(3) SA 928 (W) 931.

[51] The amount to be awarded as a contribution to costs is within the court's discretion - AF v MF para 28. In exercising this discretion, Van Rippen v Van Rippen 1949 (4) SA 634 (C) 639-640 is still to some extent good law, taking in mind that a constitutional gloss must now

be put on Rule 43(6): The court must consider the circumstances of the case, the respective financial positions of the parties, and the likely issues that will be in dispute at trial, and then award such costs to enable the applicant (wife) to adequately present her case. *S v S*, *AF v MF* and *SH v MH* now require equality of arms, and not mere "adequate" representation.

[52] The applicant asserts that the respondent is a man of some financial means. The respondent disputes this, although it is clear that he has been faithfully making substantial interim maintenance payments. The divorce proceedings to date have been acrimonious and drawn-out. Both parties intend appointing expensive forensic auditors to get to the bottom of the respondent's financial position and assets. On the respondent's quotation this disbursement alone will amount to approximately R75 000 if the expert is required for one court day. It is likely that further substantial legal costs (fees and disbursements) will still be incurred in this matter. I accept the respondent's assertion that he cannot afford to make a contribution to the applicant's legal

costs from his monthly income. He is however able to make a lump sum contribution from his moneys held in trust. I am mindful that the applicant has limited financial means and is dependent on the respondent's payments. Depending on the

respondent's future ability to maintain the applicant post-divorce, she may well in future have to rely on her portion of the proceeds of the sale of the matrimonial home for her financial needs, and the R1.5 million in trust should therefore be preserved. Taking my cue from the Constitutional Court's sketching of the background against which Rule 43(6) should be applied (*S v S* para 3), in my view the applicant should not at this stage be expected to fund her own legal expenses. She should now play her part as well by living well within her means and taking all reasonable steps to bring these divorce proceedings to an amicable and cost-effective close.

[53] Courts have warned that the worthy ideal of gender equality may clash with the cynical exploitation of court rules by practitioners and litigants. *SH v MH* para 99 contains various red flags: If a court shows grace towards an applicant in a Rule 43(6) application, it should not be abused to prolong litigation, nor should it be abused to maliciously empty the respondent's pockets; a successful Rule 43(6) application should not be understood as a nod by the court to conduct litigation risk-free; and where a litigant causes the other to expend unnecessary costs, that litigant should not be entitled to her full costs. *S v S* para 54 points out that it was intended that Rule 43 orders should apply for expedited interim periods only and that the reason for the drawn-out periods of application of Rule 43 orders may often be the fault of litigants and practitioners.

[54] It is not at this stage of proceedings required to award the applicant her full anticipated legal costs. The order below contains an amount which I regard as reasonable given the stage that the proceedings have reached - *AF v MF* para 52. The parties may still come to their senses and settle their divorce proceedings before running up much further costs. Should it become necessary for a further Rule 43(6) application, the applicant may again state her case why a further contribution should be made to her legal costs. Depending on the future

conduct of the parties in this litigation, another Rule 43(6) court in a possible future application may well order that the applicant should fund her further legal costs from her own means.

[55] The grace I have shown towards the applicant in these proceedings should not be exploited in an unreasonable or mala fide manner by her or her legal representatives in their future conduct in the main divorce proceedings. Only reasonable legal costs should be incurred. All reasonable attempts should be made to settle the matter and not run up prolonged trial day costs. The warning in *S v S* para 56 should not be taken lightly: "Past financial injustices can often be righted when the final reckoning is done at the divorce" (emphasis added). No doubt the respondent's legal representatives will carefully record the applicant's future conduct in the divorce proceedings and argue for an appropriate costs order at the resolution of this dispute.

[56] In his replying affidavit, the respondent proposed that he be allowed to withdraw R100 000 from his portion of the proceeds of the sale of the matrimonial home currently held in a trust account, to partially fund his legal expenses. It is a sensible proposal, and I will so order.

## ORDER

In the result, the following order is granted:

1. The respondent is ordered to make a contribution to the applicant's legal costs in the main divorce action of R200 000, to be funded from his portion of the proceeds of the sale of the matrimonial home held in trust by McKenzie, van der Merwe and Willemse attorneys by transfer to the trust account of the applicant's attorneys.
2. The respondent is allowed to withdraw R100 000 to fund his legal costs in the main divorce action from his portion of the proceeds of the sale of the matrimonial home held in trust by McKenzie, van der Merwe and Willemse attorneys by transfer to the trust account of the respondent's attorneys.
3. The costs of this application shall be costs in the cause.

Acting Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

For the applicant: A van der Merwe Instructed by: Mostert Skosana Inc For the respondent: AJ Schoeman Instructed by: Shapiro & Haasbroek Inc Date of the hearing: 14 March 2024 Date of judgment: 5 August 2024

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