

SOUTH AFRICA / JUDGMENT

D.S v G.S (2250/2023) [2024]

ZAMPMHC 54 (19 September 2024)

[2024] ZAMPMHC 54

COURT

Middelburg High Court, Mpumalanga

BEFORE

BAM

CASE / FILE NUMBER

2250/2023

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THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION,

MIDDELBURG (LOCAL SEAT)

CASE NO. 2250/2023

(1)

REPORTABLE: NO/YES

(2)

OF INTEREST TO OTHER JUDGES: NO/YES

(3)

REVISED

DATE:19/09/2024

SIGNATURE.

In

the matter between: D[...]
S[...]
APPLICANT
And
G[...]
S[...]
RESPONDENT
IN

RE: AND
G[...]
S[...]
FIRST RESPONDENT
G[...]
S[...]
N.O.
SECOND RESPONDENT
G[...]
S[...]
N.O.
THIRD RESPONDENT
G[...]
S[...]
N.O.
FOURTH RESPONDENT
D[...]
S[...]
N.O.
FIFTH RESPONDENT
THE
MASTER OF THE HIGH COURT, PRETORIA
SIXTH RESPONDENT
The hearing of this
application was conducted virtually using Microsoft Teams

JUDGMENT

BAM, AJ

1. This is an application in terms of a Rule 43 of the Uniform Rules of Court wherein the applicant is claiming, pendente lite:
2. That the respondent be ordered to make payment of cash maintenance to the applicant in the sum of R149 950.50 (One hundred and forty-nine thousand, nine hundred and fifty rand and 50 cents) per month, into the applicant's nominated bank account, the first payment to be made within 3 days of the date of this order and thereafter on or before the first day of each successive month;

3. Furthermore, the applicant asks the court to order that she should be permitted to continue using the vehicle which she presently drives, a Toyota Land Cruiser GXR with registration numbers K[...] 2[...] M[...] (“the Land Cruiser”) and for the respondent to make payments towards the following expenses:
 - 3.1 The motor vehicle insurance, maintenance costs, servicing costs, tyre replacement costs and licensing fees in respect of the Land Cruiser.
 - 3.2 The applicant’s cellular telephone contract,
4. Having now decided to move out of the matrimonial home, the applicant has abandoned prayer 2 of her Notice of Motion and opted for prayer 5 in which she seeks a further order for the respondent to pay:
 - 4.1 The deposit and monthly rental payments in respect of a three-bedroomed furnished cluster home of the applicant's choice up to a maximum monthly rental of R35,000.00 per month (“the Rental Property”)
 - 4.2 The water and electricity costs which the applicant incurs at the rental property,
 - 4.3 The rates, taxes, and levies in respect of the rental property to the extent that the applicant is liable therefor in terms of the lease,
 - 4.4 The cost of the installation of internet access/fibre at the rental property together with the payment of the monthly amounts due in respect of these services,
 - 4.5 The salary of a domestic worker for the applicant at the rental property
 - 4.6 The salary of a gardener for the applicant at the rental property;
 - 4.7 Reasonable maintenance and repairs of the rental property to the extent that same is not covered by the landlord in terms of the lease agreement;
 - 4.8 The costs of the installation of Netflix and DSTV at the rental property, together with payment of the monthly subscriptions in respect thereof;
 - 4.9 The household contents insurance for any of the applicant’s movable assets to be kept at the rental property.
5. The applicant asks for a further order that the respondent makes payment of a contribution towards her legal costs in the sum of R5,003,440.70 (Five million, three thousand four hundred and forty rand and 70 cents).
6. Condonation for the length of the applicant’s founding affidavit and annexures filed in support of this application to the extent necessary.
7. The respondent should also be ordered to pay of the costs of this application on a scale as between attorney and client.

THE APPLICATION

8. It is common cause that the parties were married out of community of property in June 1980 and are currently in the process of divorcing. It is also common cause that the marriage was concluded before the enactment of the Matrimonial Property Act of 1984 which introduced the Accrual System and as such the applicant has claimed redistribution in terms of Section 7(3) of the Divorce Act in the ongoing divorce proceedings.
9. The applicant's Rule 43 claim is premised on the following background information:
 - 9.1 The applicant is 63 years old. She dropped out of school at a young age of 19 to get married to the respondent. Throughout the subsistence of this marriage, she worked as an administrator of the respondent's various businesses. She has never been employed elsewhere or in any other capacity and as such, at her present age, it is inconceivable that she will find employment in a similar position or any position at all.
 - 9.2 She has been financially dependent on the respondent throughout the marriage, and she still is. The latter has been able and capable of maintaining her directly and through the various corporate entities that he owns.
 - 9.3 She assisted the respondent in building his business empire while at the same time bringing up their three children who are now all adults. She attended to the administration, bookkeeping, accounts, and other day-to-day operations associated with the running of his business entities and exercised complete control over both the business and his personal finances as well as running their joint household and attending to the children's physical, emotional, scholastic, social, and extracurricular needs.
10. At the start of the hearing of this matter I raised the issue of the prolixity of the papers filed by the applicant and requested that the parties to address me regarding same. I raised this because it is trite that Rule 43 applications are supposed to be disposed of speedily and with very little complication and secondly because the respondent had also raised the issue of prolixity in his Opposing Affidavit.
11. Briefly, the applicant's argument is that as the party who is burdened with the onus to prove her claim, had felt constrained due to the fact that the respondent refuses to make a full and proper disclosure of all his assets but pleads poverty when it comes to her financial requests. Counsel for the applicant, Ms Liza Segal SC stated that it was necessary, under these circumstances, for the applicant to engage consultants to provide an estimate of the respondent's worth for purposes of the Rule 43 application, which exercise is going to continue to the fullest extent for purposes of the redistribution claim. Counsel argued that in order for the reports of the experts/consultants to be considered as evidence by the court, they needed to be accompanied by affidavits

which is why they had to file extra affidavits, other than those that are allowed in terms of the Rule, without the leave of court.

These affidavits pertain to the reports of the forensic auditor, Ms Brenda Anderson, as well as a costs consultant, Mr Jordan Beagle the latter for purposes of estimating the legal costs for the whole process of divorce that the parties are currently engaged in. In order to achieve a realistic estimate, some of the properties owned by the respondent had to be valued, hence the DDP Property

Valuation Experts' report that is also confirmed by way of affidavit.

12. Counsel referred the court to the judgment of the Full Bench of the Gauteng Local Division, Johannesburg,[1] that was especially convened by the Judge President of that Division in the face of conflicting decisions on the issue of prolixity of Rule 43 court papers. Three cases were combined for purposes of this hearing. In the case of E v E (12583/2017) the court file had a total 157 pages. In R v R (20739/2018) there was a total of 82 pages and in M v M (5954/2018) the parties had filed 80 pages. These cases all concerned claims for maintenance pendente lite, custody, as well as contribution towards legal costs. In its judgment, the Court firstly noted a departure from the prescribed

nature of the declaration and of the plea prescribed by Rule 43. The parties had instead filed affidavits executed by commissioners of oaths. Upon a proper consideration of what Rule 43 caters for in terms of relief and the fact that parties are restricted in the number of affidavits they can file, that is, one each, it was noted that they tend to go overboard in an attempt to give a full disclosure of their financial affairs. What has emerged from this judgment is that there is no one-size-fits-all approach when it comes to Rule 43 requirements as the sufficiency of evidence will depend on the particular circumstances of the case before court. Counsel further referred to Du Preez v Du Preez,[2] where the court addressed the importance of proper disclosure of information as follows:

".....A misstatement of one aspect of relevant information invariably will color the other aspects, with the possible or likely result that fairness will not be done. Consequently, I would assume there is a duty on the applicants in Rule 43 applications seeking equitable redress to act with the utmost good faith and to disclose fully and all material information regarding their financial affairs. Any false disclosure on material or material nondisclosure would mean that he or she is not before court with clean hands and on that ground alone the court will be justified in refusing relief."[3]

13. In this case the applicant was, until recently, a full-time employee and administrator in the respondent's businesses. In order to support her version that she lived a life of luxury, it would not have been sufficient for her to just state the fact. That is why the court had to see proof of actual deposits and purchases, as well as buying patterns; hence her bank statements were relevant and necessary attachments. Counsel further contrasted the different practices in the divisions such as in Gauteng where in all divorce matters the parties must complete a detailed Financial Disclosure Form (FDF) on oath, thereby eliminating the need for lengthy statements or affidavits and excessive annexes. This is not the case in the Mpumalanga Division hence parties might feel compelled to file lengthy affidavits in order to ventilate their claims properly before court. Often this results in their

applications either being dismissed or struck from the roll due to noncompliance with the Rules or the Directives. That is why the applicant has also applied for condonation.

14. Mr Coetzee on behalf of the Respondent argued that the applicant was missing the point by insinuating that E v E has changed the law. There is no carte blanche to file prolix papers. Due to the interim nature of the Rule 43 process, the court is bound to uphold its provisions. The applicant

did not seek leave of the court to file prolix papers and additional affidavits. She could have invoked Rule 43(5) at the start of the hearing. He suggested that to avoid prolixity, the applicant could have completed a Financial Disclosure Form herself. He further referred the court to the case of *Leppan v Leppan*, 1988 (4) SA 455 (WLD). In the absence of consent from the court to file additional documents, the court should strike out the extra 3 “expert” affidavits filed by the applicant. Alternatively, if these documents are accepted, the court should allow the Respondent to advance viva voce evidence through the auditor of the S[...] Group regarding its financial affairs. The respondent’s main concern is that the financial reports and valuations done on behalf of the applicant are based on outdated information and do not reflect the true worth of the respondent’s businesses.

15. Mr Coetzee also referred to parts of the founding affidavit which he argued were unnecessary and contained irrelevant narratives and thus ought to be struck off.[4]
16. At the end of this argument, I made a ruling in favour of the applicant based on the following:

16.1 The application was launched in June 2023, and between that date and the date of hearing, there is correspondence between the parties’ attorneys which demonstrates a deliberate attempt on the part of the respondent to delay this matter as much as possible while in the meantime subjecting the respondent to untold hardship. His conduct could best be described as trying to deprive her into submission.

16.2 Mr Coetzee is correct about the restrictions imposed by the Rule as well as practice directives regarding the acceptable number of pages and pleadings under these proceedings. The court in *Du Preez supra*, reiterated that Rule 43 is specifically designed to govern certain applications and to facilitate specific relief.

16.3 The Mpumalanga Court directive 8.12 says that if the papers exceed 200 pages, then the Rule 43 application must be removed from the Unopposed to the Opposed roll and case-managed. Placement on the Unopposed roll ties in with the expectation that such applications must be dealt with expeditiously and with very little complications. On the other hand, the fact that they can be placed on the Opposed roll due to prolixity is indicative of the recognition by this court that it might be necessary in some cases to file more than the prescribed number of pages. This is one such case.

16.4 Referring to E v E and other matters regarding the allegations of abuse of process, Rogers J stated the following in R M v A M:

“....I have already touched on this aspect in which, I must say, the husband's fault is at least as great as the wife's. Suffice to say that I do not think the wife's departure from the requirements of Rule 43 to be so egregious as to warrant dismissal as an abuse of process. It is necessary to consider to what extent, if any, the strict requirements of Rule 43 may, in the present era, justify relaxation, a matter recently considered by a full court in Gauteng.”[5]

17. I dismissed the alternative submission to allow the S[...] Group's auditor to give oral evidence at the hearing. I agree with Ms Segal that the respondent had ample opportunity to make his case on the papers and has failed to use it. He wants to act as if the applicant's version was unknown to him all this time. Besides, he had already stated his financial affairs in his Opposing Affidavit – one would like to think that this was done with the assistance or involvement of his accountant or auditor.
18. I agree with Mr Coetzee that Rules cannot be superseded by directives, however, they each play a role in shaping the way courts operate. It is my considered view that “succinct” has different connotations for different applicants, which is why the court in some cases has to exercise its discretion to elevate substance over form based on the case it is seized with. Having regard to the history of this matter as well as the prejudice that will continue to be visited upon the applicant if it is struck from the roll solely on the ground of prolixity, I decided to exercise my discretion in favour of finality and of the interests of justice and condone the filing of additional documents without the leave of court.

MAINTENANCE

19. In order to justify the amount R149 950.00 per month that she is claiming, the applicant says that she, the children, and the respondent lived a luxurious life which included local and continental holidays, overseas holidays to a considerable number of countries, holiday homes inside and outside of South Africa, as well as access to what one would consider extra lavish activities and personal services. She mentions that one of the respondent's companies Erf 5[...] Middelburg Properties CC (MPC) was the main entity through which the family expenses were paid. In her Founding Affidavit, she says:

“I had unfettered access to the account and used it to pay for the following expenses on behalf of the family (including me), the bond in respect of FMH, the water and electricity, rates and taxes, the home maintenance and repairs, food, groceries and cleaning materials, the family's insurance in respect of inter alia our vehicles, the Internet and fibre, the DSTV subscription, the TV licence, the domestic assistant's wages, the gardener's wages, the cost of replacing appliances, linen and furniture, the medical aid premium for the family, the medical excess expenses not covered by the medical aid, the licensing, servicing, maintenance, and associated costs in respect of our motor vehicles, motorcycles, quad bikes, and bicycles, our fuel and/or diesel, our cellular telephones, our banking fees, birthday and Christmas gifts for our family, the costs of our holidays and weekends away, the costs of my toiletries, cosmetics, and facial products, my personal care and beauty treatments, shoes and clothing,

entertainment, gym subscription and training, pool chemicals and the like.

The respondent was always extremely generous and wanted our family to enjoy the fruits of our labour. He spared no expense on our

lifestyle, our children or our grandchildren.” [6]

20. She continues to say that during January to December 2019 she had access to, and spent, the sum of R1,990,399.37. For the period January to December 2020, she had access to, and spent, the sum of R1,779,158.3, while for the period January to December 2021 she had access to, and spent, the sum of R1,495,481.53.[7] This equates to an average monthly expenditure of R146,251.00 she had at her disposal and spent during the period January 2019 to December

2021. The respondent never questioned her spending and in fact encouraged her to spend on the family and on entertaining friends. She has also annexed financial spreadsheets to support her version. She added a document that was prepared for purposes of obtaining a loan facility from Investec bank in July 2021 in which the respondent

states his estimated income from his various entities, including a loan to Kego Mining, as the amount of R58 360,000.00.[8]

21. Ms Segal argued that contrary to the respondent’s assertion that the businesses are operating at a monthly shortfall of R528 625.93, he was still able to purchase a Toyota RAV 4 worth R820 000.00 in October 2022, a new Toyota Land Cruiser worth R2 000 000.00, four off-road bikes worth R512 400.00 and motor cycling equipment worth R87 483.87 in December 2022. During June and July 2022, he had transferred a total of R1 349 000.00 into his personal Standard Bank cheque and credit accounts respectively. It is also noteworthy that during the height of Covid-19, the business entities were still able to make profit as demonstrated in the audited financial statements of MPC for the 2021 financial year. It was only during January 2022 that the respondent, without notice,

summarily and unilaterally cut the applicant off from accessing all the business and personal banking accounts, leaving her all but destitute. This coincided with the applicant’s decision to stand her ground regarding the alleged relationship between the respondent and Ms Gous. He had then reduced her maintenance from R35 000.00 to R15 000.00.

22. The respondent, in his Answering Affidavit and heads of argument has spent a considerable amount of time arguing prolixity, on account of which he prays for a special costs order against the applicant. In relation to the merits of the application, he starts off by saying that he does not wish to get divorced from the applicant, in fact he does not consent to the divorce. He states that “the applicant still resides in luxury with me at our joint residence with all expenses paid royally including the provision of a luxurious Toyota Land Cruiser.”[9] (own emphasis). He says he reduced the R35,000.00 monthly allowance to R15,000.00 because the applicant had removed R2,000,000.00 worth of his assets from the matrimonial home without his consent and he decided to withhold part of the allowance pending the

return of these assets. He says he cannot at this stage afford expenses associated with alternative housing and some of the items on the applicant's expenses list which he regards as excessive, extreme and unnecessary, especially since he still has to replace the R2 million worth of assets that she removed from the house.

23. He states that his business entities fall under the S[...] Group and the property trading companies are his only source of income. At 63 years of age, he has the responsibility to secure his future livelihood by managing the businesses responsibly contrary to the applicant's reckless and fraudulent financial administration that has resulted in depreciation of the solvency and liquidity of the Group. He has drawn up a summary of the income and expenses attached to various entities.[10] The total monthly income amounts to R1 434 397.00 and the monthly expenses are R1 963 022.82, leaving a shortfall of R528 625.82. The Group is currently having debts amounting to R25 787 474.98
24. The respondent attributes the applicant's statements about having unfettered access to funds to her being ignorant and living under the misconception that she is still entitled to live in extreme luxury despite the altered performance of the Group finances, particularly the effect that COVID-19 has had on the businesses. Nevertheless, out of respect of their 41 years of marriage he is prepared to provide for the applicant's need to the extent allowed by the finances, and if the divorce is granted against his will, to reach a settlement on the issue of redistribution. In order for the S[...] Group to accommodate the interests of other parties such as employees and creditors, the applicant will have to adapt her lifestyle according to the means available or, as Mr Coetzee puts it, to cut her coat according to her cloth. The Group does not have assets that can be liquidated to meet the applicant's financial requirements. Mr Coetzee asked the court to reject the contents of the forensic auditor's report due to it being based on old statements because the calculations therein amount to what he termed "napkin math".
25. The respondent says further that he could not provide his and the Group's proper financial records because the applicant's attorneys refused to grant him an indulgence of 60 days to put these together. He was told to file the opposing affidavit by 21 July 2023. "I submit that I require at least six months to obtain proper financial records and valuations from the group's auditors prior to the final adjudication of all issues in the High Court." [11]
26. Incidentally, at the hearing of this matter, Mr Coetzee communicated his client's instruction who, upon learning of the decision by the applicant to move out of the shared residence, made a repeat offer of R65 000.00 per month in respect of maintenance, all inclusive. This offer was previously rejected by the applicant. Surprisingly, it was made despite Mr Coetzee having just told the court that the respondent is not a salaried employee and receives only R50 000.00 per month. He could afford to pay only R25 000.00 per month and all other household expenses if the applicant remained at the matrimonial home. He added that to access any more funds, the respondent will have to get authorization from the company, which withdrawal will in any event be subject to dividend tax. He may also be held criminally liable to the creditors of the Group if he withdraws money under the present

unfavourable trading circumstances.

CONTRIBUTION TOWARDS LEGAL COSTS

27. The applicant estimates that the amount of R5 003 440.70 will be needed for the conduct of the divorce proceedings. To this end, she engaged a costs consultant Mr. Jordan Beagle to work out the various amounts in respect of fees and necessary attendances, including counsel's fees based on an hourly rate of R3 800.00. Due to the complexity of the issues involved in the redistribution application, there would be a necessity to issue about 500 subpoenas (and not 500 witnesses as understood by Mr Coetzee).
28. The forensic auditor comes with an estimated fee of just over R500,000.00, DDP has quoted the amount of R823,975.00 to perform property valuations. In addition, and since the respondent contends that the applicant must go find employment in response to her request for financial assistance, she would also need to engage the services of an industrial psychologist to determine her employability. Miss Liza Hoffman has indicated that her charges for compiling the requisite report will be between R40,000.00 and R45,000.00.
29. The respondent states that he does not have the money to make a contribution in the amount requested for legal costs. The applicant should not have removed the divorce matter from the Regional Divorce Court to the High Court. The costs at the time of removal were around R143,800.00 compared to the current R326,309.54 that she has already incurred in the High Court. In addition, he would have also liked to be given an opportunity to appoint his own experts in order to properly address the applicant's claims especially due to the final nature of Rule 43 proceedings. He will thus suffer prejudice for want of such expertise. He concludes by stating the following:

"I do not concede to payment of the contribution for costs, applicant acted extremely reckless by appointing expensive attorneys, a senior advocate, forensic auditor, valuers, and a psychiatrist (sic) without having the funds."[12]

30. Mr Coetzee reiterated the respondent's contention that the money to which the applicant allegedly had "unfettered access" belonged to the company (MPC) and not the respondent. He said the court cannot rely on the proforma Bill of Costs drawn up by Mr Beagle because he is not a legal practitioner and therefore cannot advise the court. The concept of equality of arms requires the court to look at the manner in which the other party conducts its litigation. His client instituted divorce proceedings in the Magistrate's court while the applicant chose the High court when the proceedings were already at *litis contestatio*. The respondent will be forced to sell everything to afford the applicant's legal costs. In the premises, the prayers in the notice of motion ought to be dismissed and replaced with the proposed order that is contained in the respondent's Practice Note. This order is premised on the proviso that the applicant remains in the matrimonial home, and as such is no longer up for consideration as the proverbial horse has bolted as it were.

CONCLUSION

31. The parties are in the middle of divorce proceedings in the midst of which there is an application for redistribution which, if this Rule 43 application is anything to go by, will involve a lot of work on either side. In these proceedings, the respondent has not tabled sufficient information to enable me to accept his version that he cannot afford to pay the amounts claimed by the applicant for maintenance and towards her legal costs. I support the argument by Ms Segal that he has abused his financial strength and the applicant's total dependence on him as a bargaining chip to try and get his way in the divorce proceedings. It is inconceivable that he wants the applicant to continue to remain in a home wherein his own conduct makes such existence painful and humiliating, to say the least. Instead of addressing the version of

the applicant, he ridicules her and accuses her of criminal conduct without presenting any evidence to that effect.

32. On the other hand, the applicant has demonstrated to the court that she is entirely dependent on the respondent for her maintenance. As matters stand, the applicant has had to utilise the funds received from the medical aid savings (after downgrading to a cheaper option) to cover part of her legal costs thus far, pay back money borrowed from friends, and fund some of her living expenses. Furthermore, she will need the assistance of experts to determine the net worth of the respondent and his businesses the sheer extent and complexity of which boggles the mind. The argument that the proforma Bill of Costs must be rejected on account of the cost consultant not being an admitted legal practitioner has got no basis. The case[13] that Mr Coetzee cited in support of this contention in fact concerned a cost consultant that wanted to attend taxation when the bill she had drawn up was being presented to the Taxing Master for settlement. Costs consultants ordinarily assist legal practitioners with the compilation of bills of costs relating to litigation before same are submitted to the Taxing Master or even presented to an opponent for settlement. The Bill before me was being presented by the applicant's attorneys, not Mr Beagle. The respondent on the other hand has not made any counter-offer for contribution, he flatly refuses to pay. As observed by Ms Segal, he does not even disclose how much he is paying his own legal representatives.

33. When it comes to contribution towards legal costs, I do not intend to reinvent the wheel as it were, in light of the apt statements by Van der Linde J found in the case of Anastassopoulos[14] which I find substantially descriptive of my views in the present matter:

".....but for the rest what the respondent did not do, and explicitly and deliberately said he would not do, was set out his own legal

expenses, both past and anticipated future expenses. That is to my mind fatal to the respondent's opposition to the application.

In this matter the applicant is entirely dependent upon the respondent for her income and a Rule 43 order has been made in that

regard. She has some assets but clearly not anywhere near being sufficient even to make a contribution towards her own legal costs.

And yet equality of arms dictates that the applicant must be able to prepare her case in this litigation at the same level at which the respondent is able to.

This is not a standard divorce action. The respondent is by any description a very wealthy man. His net assets on his own showing are upward of R400 million Rand. There is a fundamental dispute in the divorce action as to whether the applicant is at all entitled to any capital contribution resulting from her claim for one-half of the net accrual in the respective estates of the parties.

Moreover, the respondent's assets are on his own admission reposed in various legal entities in many of which there are other interested parties. The applicant envisages that she will require the assistance of a forensic accountant to unravel precisely what the extent is of the respondent's net

assets given that in some instances it is unclear as to whether the respondent holds the asset concerned in his own right or whether he holds it as a nominee for another person.

In these circumstances it seems to me that this Court is quite unable to find that the assessment which the applicant has put up of her future legal expenses, as presently advised, is fundamentally unsound or unreasonable.

.....In my view where, as here, the applicant is wholly dependent upon the respondent, not only for her income but also for the legal costs that she has to incur in order to contest what she claims is her rightful share of assets, it would be artificial to suggest that there lurks, within the word "contribution" in Rule 43 an obligation on the part of the court to deduct from the applicant's assessment some artificial scientific amount just so that the word "contribution" may be satisfied. In other words, if the circumstances permit it, there seems to me to be no reason whatsoever why the respondent cannot be directed to pay the entire amount which the applicant claims as being her reasonable assessment of her future legal costs at least at this stage."

34. Rule 43 gives the courts the powers to make a decision that is just and equitable. In this application, the applicant has demonstrated her full financial dependency on the respondent; her opulent lifestyle during the course of the marriage (which still exists), her maintenance needs as well as the need for alternative accommodation, all to the satisfaction of the court. Significantly, though with some difficulty, she has been able to prove that the respondent can afford her stated expenses. Her version that she was in control of most of the financial aspects of the businesses remains uncontroverted. No concerns were raised by the respondent about her spending during what Ms Segal refers to as "the happy times" which included the height of Covid-19, until January 2022.

35. The respondent on the other hand, has conducted this litigation by hatching a bet that he might still be able to persuade the plaintiff to accede to his offer. He has failed to make a full and frank disclosure of his personal expenses and thus I am in no position to accept his version that he cannot afford the amounts claimed by the applicant. If he is aggrieved about assets removed by the applicant, that can be addressed during the redistribution arguments. In his own words he admitted that the family lives a luxurious life, and better still, he promised his own children, without being prompted by any of them, that their mother will continue to live the luxurious life she is used to even after the divorce. It is telling that once the applicant pleaded redistribution, the financial stranglehold ensued. My considered view is that the contribution towards the total estimated legal costs is justified under the circumstances.
36. There is no reason why costs cannot follow the result. The applicant has got no funds of her own to speak of, and it is only just that the costs of this application, as prayed for in the Notice of Motion, be borne entirely by the respondent. The applicant's attorneys have submitted a Draft Order which I will accordingly make an order of court.
37. I therefore make the following order:
1. The Draft Order attached hereto and marked "ANNEXURE X" is made an order of court.

L J BAM

ACTING JUDGE OF THE HIGH COURT

MPUMALANGA (MIDDELBURG LOCAL SEAT)

APPEARNCES:

FOR THE APPLICANT: ADV. LIZA SEGAL SC INSTRUCTED BY: FAIRBRIDGES WERTHEIM BECKER C/O VICKY JANSE VAN NOORDWYK INC MIDDELBURG CONTACT DETAILS: 013 – 001 3022 / vicky@vjvattorneys.co.za FOR THE RESPONDENT: MR CHRIS COETZEE INSTRUCTED BY: CHRIS COETZEE INC. ATTORNEYS 51 WALTER SISULU STREET MIDDELBURG CONTACT DETAILS: 013 – 282 6845 / chris@chriscoetzeeinc.co.za Date of hearing: 5 September 2024 Date of judgment: 19 September 2024

This judgment shall be delivered by way of distribution to the parties or their legal representatives via electronic mail.

[1] E v E and other matters, 2019 (5) SA 566 (GJ)

[2] 2009

(6) SA 28 (TPD)

[3] Paragraph 16

- [4] Information on dependency (paginated page 9), abuse (paginated page 28-34), previous litigation (paginated page 34-41), submission (pp. 44-48).
 - [5] R M v A M (8698/2019) [2019] ZAWCHC 86 (10 July 2019) at para. 18
 - [6] paragraph 36 - 37
 - [7] Paragraph 38
 - [8] Annexure FA1, paginated page 69
 - [9] Paragraph 8 of the Opposing Affidavit
 - [10] Paginated page 232
 - [11] Paragraph 39 of the Opposing Affidavit
 - [12] Paragraph 156 of the Opposing Affidavit
 - [13] J J V R v Taxing Master of the High Court of South Africa Western Cape Division and others, 2023 JDR 4161 (WCC)
 - [14] Anastassopoulos v Anastassopoulos (unreported case No. 17454/2016, Gauteng Division, Johannesburg (16 November 2018) paragraphs 7-
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