

SOUTH AFRICA / JUDGMENT

J.H.M v L.E.M (116734/2023) [2024] ZAGPPHC 1277 (6 December 2024)

[2024] ZAGPPHC 1277**COURT**

North Gauteng High Court, Pretoria

BEFORE

Oosthuizen-Senekal

CASE / FILE NUMBER

116734/2023

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****CASE****NUMBER: 116734/2023****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: NO****(3)****REVISED: NO****DATE:**

6/12/2024

SIGNATURE

In

the matter between: J[...]
H[...]
M[...]
APPLICANT
AND
L[...]
E[...]
M[...]
RESPONDENT

JUDGMENT

OOSTHUIZEN-SENEKAL AJ:

- [1] This is an opposed application in terms of Rule 43(6) of the Uniform Rules of Court (“the Rules”). The Applicant, the defendant in the divorce action, seeks to retrospectively vary the Rule 43 order by Malatsi-Teffo AJ granted on 1 December 2023, where he was ordered to make payment pendente lite to the applicant of:
1. That the Applicant and the Respondent retain full parental rights and responsibilities to the minor children of the parties (K[...] M[...] born on 16 November 2015 and L[...] M[...] born on 21 August 2022) as contemplated in Section 18(2)(a), 18(2)(c) and Section 18(3) of the Children's Act, Act 38 of 2005.
 2. That the primary residency of the minor children is to be with the Applicant.
 3. That specific parental responsibilities and rights with regard to contact with the minor children, as contemplated in Section 18(2)(b) of the Children's Act, Act 38 of 2005, and the respondent shall enjoy the following removal contact rights with the minor children:
 - 3.1 That the Respondent will collect K[...] from the Applicant's residence on school days before school, and to drop her off at school in the mornings, unless otherwise agreed upon between the Respondent and the Applicant in writing, except on Friday that the Respondent exercises his weekend contact with K[...] and L[...].
 - 3.2 That the Respondent will collect K[...] from gymnastics every Wednesday at 18h30 to visit with the Respondent until 20h30, and every alternative Wednesday during the week that the Respondent does not exercise weekend contact, K[...] will be allowed to sleep over at the residence of the Respondent unless otherwise agreed upon between the Respondent and the Applicant in writing.
 - 3.3 That the Applicant will drop L[...] off at the Respondent's residence at 15h30 every Wednesday en route to dropping off K[...] at gymnastics to visit with the Respondent until 20h30, at which time the Applicant will collect K[...] from the Respondent's residence on Wednesdays that she does not sleep over, and L[...] on every Wednesday unless otherwise agreed upon between the Respondent and the Applicant in writing.

3.4 The Respondent will have contact with K[...] every alternative weekend from a Friday after school until a Sunday at 17h00. On such a weekend the Respondent will take K[...] to Sunday school and if he is not able to do so, he will inform the Applicant on or before 17h00 on the preceding Saturday, and then the Applicant will be entitled to collect K[...] from the Respondent's residence on Sunday morning to take her to Church and Sunday school and will deliver K[...] back to the Respondent immediately after Sunday school.

3.5 That Applicant will drop L[...] off at the residence of the Respondent at 08h30 a.m. every second Saturday (on the same weekend as K[...] visiting the Respondent) and will collect L[...] from the Respondent's residence at 18h00 on the same day, and the Respondent will ensure that L[...] is bathed and fed before the Applicant collect her at 18h00.

3.6 That the Respondent and Applicant is entitled to have reasonable telephonic contact with the minor children every day between 17h00 and 17h30.

3.7 If the applicant is in Mossel Bay during the December 2023 holiday, she will inform the respondent and will allow the respondent the opportunity to enjoy contact with K[...] and L[...] which contact will be no less than 5 hours, to be arranged between the parties.

4. The Respondent will pay, pendente lite, maintenance in the amount of R 15,600.00 (fifteen thousand six hundred rand) per month maintenance to the Applicant, with no deductions, payment to be made on or before the 1st of the month and every month thereafter.

5. The Respondent, in addition to the above, pendente lite will continue to pay the following:

5.1 K[...]’s current medical aid contributions with Momentum, and additional medical expenses not covered by the medical aid, school fees, aftercare, gymnastics, and her play therapy sessions.

5.2 L[...]’s current medical aid contributions with Momentum, and additional medical expenses not covered by the medical aid.

5.3. All further costs occasioned with the K[...]’s gymnastics and schooling activities, including school clothing to be paid by the parties and they will share equally in the expense of the school clothing.

5.4 The Applicant’s current medical aid contribution with Momentum and the applicant will pay her own costs not covered by the medical aid.

5.5 The Respondent will continue to pay the bond payment, home insurance, municipal and utility charges. In the event of reasonable maintenance and repairs, the parties will first discuss the expense and agree upon before it is incurred.

5.6 The instalments and insurance in respect of the motor vehicle which the Applicant may continue to use namely a Cherry Omada 203T, with registration number: L[...] 1[...] C[...] G[...].

5.7 The salary of the Applicant’s domestic helper.

5.8 All insurance policies currently in place.

5.9 The internet subscription that was in place at the time when the Respondent vacated the Applicant's current residence.

6. Prayer 7 in the Rule 43 is postponed sine die.
7. The Respondent notes that by agreeing to the above he does not abandon his right to argue the issue of urgency when costs of the application are considered

That the costs are reserved.

[2] In support of his claim in the present application for variation, the Applicant relies on an alleged change in circumstances as outlined in Rule 43(6). He states that his current maintenance contribution towards the Respondent, the plaintiff in the divorce action, and the minor children includes a cash payment of R15,600.00 (fifteen thousand five hundred rand), as well as fixed monthly expenses amounting to R78,237.03 (seventy-eight thousand two hundred and thirty-seven rand and three cents). The Applicant contends that he can no longer afford to continue making these payments. Employed as a software engineer, the Applicant earns a monthly salary of R106,000.00 (one hundred and six thousand rand), which is his sole source of income. The Respondent, a teacher, previously earned just over R2,000.00 (two thousand rand) per month but now earns R16,000.00 (sixteen thousand rand) per month. The Applicant asserts that this constitutes a material change in circumstances. Additionally, he claims that

the Respondent has other sources of income, including online tutoring and a t-shirt printing business. In summary, the Applicant

seeks a reduction of his monthly cash contribution from R15,600.00 (fifteen thousand six hundred rand) to R6,000.00 (six thousand rand), the cessation of payment for the electricity account, and the termination of payment for the domestic worker's salary.

- [3] The Respondent opposes the relief sought by the Applicant, arguing that the Applicant has failed to demonstrate a material change in his own financial or personal circumstances since the initial order was granted by Malatsi-Teffo AJ. The Respondent asserts that the basis of the Applicant's case rests primarily on the alleged improvement in her financial position, which the Respondent argues is not sufficient to warrant a variation of the order.
- [4] The Respondent further contends that this application is premature as her employment is still under a probationary period of six months, during which her job security and income stability cannot be guaranteed. The Respondent highlights that while her current earnings may suggest an improvement in her financial standing, such earnings are not definitive or reliable at this stage due to the provisional nature of her employment contract. Consequently,

the Applicant's reliance on the Respondent's present income is premature and speculative.

- [5] The Respondent emphasizes that the Applicant has a duty to demonstrate a substantial change in his own circumstances or that the original order has become unreasonable or inequitable due to new developments. In the absence of such evidence, the relief sought should be dismissed.
- [6] At the outset of the hearing, Counsel for both parties informed me that they had effectively reached an agreement regarding the contact and access rights concerning the two minor children. They indicated that they had no objection to me considering their proposed terms and issuing an appropriate order on this basis. Counsel provided the me with suggested draft orders. Upon review, I am satisfied that the suggested draft orders adequately address the matter, and I will issue the necessary order based on these submissions. Consequently, the issue of contact and access rights does not require further discussion for the purposes of this judgment.
- [7] The Respondent further requests amendments to the current Rule 43 order, specifically seeking that the Applicant be directed to contribute towards the youngest child's crèche fees and her legal costs in the divorce proceedings.
- [8] Accordingly, I must decide whether the Applicant has successfully established a material change in circumstances, as required under Rule 43(6). Additionally, I must consider whether the Applicant should contribute to the youngest child's crèche fees and the Respondent's legal costs.
- [9] Both parties submitted written heads of argument in addition to their oral submissions.
- [10] Rule 43 (6) of the Rules provides:
- “43
- (6) The court may, on the same procedure, vary its decision in the event of a material change occurring in the circumstances of either party or a child, or the contribution towards costs proving inadequate.”
- [11] Rule 43(6) is interpreted strictly, requiring the applicant to demonstrate a material change in circumstances.[1] It does not permit a re-hearing, review, or appeal of an existing order under the pretence of a Rule 43(6) application.
- [12] While the Constitutional Court in *S v S and Another*[2] emphasized that Rule 43 should be interpreted broadly to ensure fairness and access to justice, it did not dispense with the requirement for an applicant in a Rule 43(6) application to show a material change in his/her circumstances. This remains a fundamental prerequisite.

- [13] The Applicant's application hinges on the Respondent's new employment at Midstream Pre-Primary, which has led to an increase in her income. However, it is crucial to acknowledge that the Respondent's current position is still within a probationary period, during which her employer is assessing her performance and suitability for continued employment. Given the probationary nature of her employment, her position remains provisional and uncertain, with no assurance that it will become permanent.
- [14] Furthermore, the Respondent's employment situation does not yet provide the stability or long-term security necessary to justify a reduction in financial support for her or the children. While her income has increased, the provisional nature of her employment means that the future of her financial situation is not yet assured. The Applicant's request to lower his maintenance contributions assumes a level of certainty in the Respondent's income that is not supported by the current circumstances.
- [15] In light of this, it would be unwise to make any alterations to the maintenance arrangement until her employment is fully secured and stable. Reducing support at this stage could potentially undermine the well-being of the Respondent and the minor children, whose financial security is dependent on a consistent and reliable income. Therefore, I agree with Counsel on behalf of the Respondent, that the request for a variation in maintenance obligations is premature and should only be reconsidered until the Respondent's employment situation is more firmly established.
- [16] Furthermore, when the initial Rule 43 order was made, the Respondent was earning approximately R8,000.00 (eight thousand rand) per month from her teaching position at H[...] C[...] School, which was conveniently located near her home, as well as from conducting online classes. However, with her "new full-time employment", she is no longer able to continue the online teaching that had previously supplemented her income. This change has also impacted her financial situation, as she is no longer able to generate additional income through that avenue.
- [17] In addition, the Respondent's income from selling branded clothing is irregular and infrequent. While it may contribute a small amount to her overall finances, it cannot be considered a stable or reliable source of income for the purpose of this application.

The sporadic nature of this income makes it insufficient to depend upon for meeting ongoing financial needs or justifying a reduction in the Applicant's maintenance obligations. Consequently, the Respondent's financial position has not experienced the level of improvement that the Applicant suggests, and the claim for a decrease in maintenance obligations appears to overlook these important factors.

- [18] Also, the Respondent's "new full-time employment" provides a net salary of R15,767.13 (fifteen thousand seven hundred and sixty-seven rand and thirteen cents). However, the financial benefit of this increase is significantly offset by the additional costs associated with her new job. The longer commute to her place of employment results in monthly fuel expenses of approximately R4,400.00 (four thousand four hundred rand), which effectively

reduces her disposable income to about R11,367.13 (eleven thousand tree hundred and sixty-seven rand and thirteen cents).

- [19] This increase in expenses directly impacts the Respondent's take-home pay, leaving her with less disposable income than one might expect from a salary increase of this magnitude. While her gross income may have risen, the net effect is much smaller due to the additional commuting costs. This reduction in available income underscores that the Respondent's financial situation has not improved as substantially as the Applicant suggests. In fact, the increase in her income is largely absorbed by the necessary expenses of her "new full-time employment", meaning that she is still facing significant financial pressures. Consequently, the Applicant's claim that the Respondent's financial position has drastically improved is misleading, as her effective income is substantially reduced by unavoidable costs.
- [20] The Applicant's request to reduce his financial obligations is both unfounded and disproportionate. The Respondent's increase in income, which amounts to a modest R3,367.13 (three thousand three hundred and sixty-seven rand and thirteen cents), is negligible when compared to the substantial reduction of R9,600.00 (nine thousand six hundred rand) that the Applicant is seeking. In addition to this significant decrease, the Applicant is also seeking the complete elimination of his contributions to both the domestic worker's salary and the monthly electricity bill.
- [21] This request for a drastic reduction in financial support appears to ignore the Respondent's actual financial situation and the needs of the minor children. The relatively small increase in the Respondent's income cannot justify such a large-scale reduction in the Applicant's obligations, particularly when the expenses that the Applicant seeks to eliminate are essential for maintaining the household. The proposed cutbacks would place an undue burden on the Respondent, who is already managing limited resources.
- [22] Maintaining the current level of support is essential to ensuring that the needs of both the Respondent and the children are adequately met. Any reduction in these obligations would place an unfair and undue financial burden on the Respondent, who is already managing limited resources. Such a reduction would not only strain the Respondent's ability to provide for herself and the children but would also jeopardize the children's well-being by failing to meet their necessary expenses. The current financial support plays a crucial role in covering essential costs, such as housing, education, and basic living expenses. Reducing this support would compromise the stability and security that the children require, particularly during a time of transition. Therefore, maintaining the existing level of financial commitment is vital to ensuring that the minor children's welfare remains a priority and that they continue to have the resources they need to thrive.
- [23] Furthermore, a key change in circumstances since the initial Rule 43 order is the Applicant's increase in income. At the time the original order was made, the Applicant earned R104,000.00 (one hundred and four thousand rand) per month. Since then, his income has risen to at least R106,000.00 (one hundred and six thousand rand). This increase of

approximately R2,000.00 (two thousand rand) per month, while modest, represents an improvement in the Applicant's financial position. Given this rise in income, the Respondent's request for a contribution from the Applicant toward essential expenses, such as L[...]s early childhood education and care, is both reasonable and well-founded. This increase in income should be considered when evaluating the fairness and adequacy of the Applicant's ongoing financial obligations and what the Respondent can contribute towards such.

[24] The Applicant's spending on non-essential items, while simultaneously seeking to reduce his maintenance obligations, raises

serious concerns about his financial priorities. His bank statements show significant expenditures on dining out, which his

Counsel explained as a result of the Applicant living with his parents and maintaining a bachelor lifestyle. However, I find

this explanation unconvincing. Given the Applicant's assertion that he is struggling to support himself, one would expect him to make a concerted effort to save wherever possible, particularly by cutting back on discretionary spending.

Instead, his continued spending on luxury items suggests a lack of financial discipline and a troubling disregard for the needs of his children. This behaviour not only appears excessive but also reveals a troubling failure to prioritize the well-being of his children, who rely on his support.

[25] The Rule 43 order explicitly stated that the Applicant was responsible for paying the "municipal and utility charges", including the electricity bill. By failing to comply with this directive, the Applicant not only violated the court's order but also jeopardized the well-being of his children, forcing them to live without a basic necessity. This behaviour demonstrates a troubling lack of responsibility and consideration for his children's needs.

[26] Furthermore, the Applicant has attempted to shift blame to the Respondent, claiming that he stopped payments to the municipality because she did not provide him with the monthly electricity meter readings, which he alleges amongst others, were necessary for him to follow up with the municipality. This explanation, however, reflects a childish and irresponsible attitude. Rather than addressing the situation responsibly, the Applicant has chosen to neglect his obligations, prejudicing his minor children due to his own immature handling of the matter. For months, the Respondent and the children have suffered from a lack of electricity as a direct result of the Applicant's failure to fulfil his responsibilities. This is wholly unacceptable behaviour.

- [27] After considering the above, I am of the view that the Applicant's application in terms of Rule 43(6) should be dismissed. The Applicant has failed to present any material or substantial change in circumstances that would warrant a reconsideration of the order granted by Malatsi-Teffo AJ on 1 December 2023.
- [28] This brings me to the Respondent's request that the Applicant contribute to the youngest child's crèche fees. Upon consideration, I see no reason why both parties should not share this expense equally, on a 50/50 basis. The costs of raising a child are a shared responsibility, and it is fair that both parents contribute to the child's early education and care in equal measure. Therefore, I find it reasonable that the Applicant should be required to contribute to the crèche fees, alongside the Respondent, to ensure that the minor child's needs are met in a balanced and equitable manner.
- [29] In divorce proceedings, the issue of contribution to legal costs can be a significant point of contention between the parties. Legal costs generally include expenses such as lawyer fees, court costs, expert witness fees, and other associated expenses incurred during the divorce process. In most cases, each party is responsible for his/her own legal costs unless the Court decides otherwise. However, in some instances, one party may request the other to contribute to their legal expenses, especially if there is a disparity in the financial circumstances of the parties.
- [30] The Court's primary goal is to ensure that both parties have equal access to legal representation, especially when one party's financial situation would otherwise prevent them from obtaining legal advice and representation. The amount granted should be enough to ensure that the financially disadvantaged party is not prejudiced in the proceedings.
- [31] Factors[3] that the Court may consider when deciding on contributions to legal costs include:
- [31.1] The financial capacity of each party: If one party has significantly more financial resources than the other, the Court may order that the wealthier party contribute to the legal costs of the less financially secure party. This ensures that the party with fewer resources can still access legal representation.
- [31.2] The conduct of the parties: The Court may also consider the conduct of each party during the proceedings. If one party has acted unreasonably, been evasive, or unnecessarily prolonged the proceedings, the court might order that party to bear more of the legal costs.
- [31.3] The complexity of the case: In some cases, if the divorce involves complex financial issues, disputes over child custody, or other complicating factors, the Court may be more inclined to order one party to contribute to the other's legal costs to ensure that both parties can adequately present their case.

- [32] The party seeking a contribution towards his/her legal costs must demonstrate the reasonableness of the request. This includes showing that he/she cannot afford to pay for their legal representation and that the other party has the means to contribute.
- [33] The Court has broad discretion to determine whether one party should contribute to the other party's legal costs. In making this decision, the Court will weigh the financial positions of both parties, the complexity of the case, and the conduct of the parties during the divorce proceedings.
- [34] In conclusion, the Court has a vital role in ensuring that both parties in a divorce have fair access to legal representation and are not prejudiced because of financial constraints. The goal is to ensure that both parties can fully participate in the proceedings and that no party is left disadvantaged due to their inability to afford legal representation. By addressing legal costs in a fair and equitable manner, the court helps to ensure that the divorce process is just for all involved.
- [35] The facts of this case clearly demonstrate that the Respondent lacks the financial means to effectively participate in the fair and equitable finalization of the divorce proceedings. In addition to considering the Respondent's financial situation, it is crucial to recognize the involvement of minor children, whose rights and well-being must also be protected throughout this process.
- [36] The interests of the minor children cannot be separated from the Respondent's ability to engage in the proceedings fully. Therefore, it is not only the Respondent's rights that need to be safeguarded, but also those of the minor children, who will be directly impacted by the outcome of this divorce. Given this, there is an evident need for financial assistance from the Applicant to ensure that the Respondent can participate effectively and fairly. To expect the Respondent to navigate these complex proceedings without adequate financial support would be unjust, particularly when considering the long-term effects on both the Respondent and, more importantly, the minor children's future.
- [37] It is undeniable that in a society like South Africa, where there are significant income disparities and gender discrimination, particularly within marriages, the requirement to demonstrate a material change in circumstances is often influenced by gender dynamics. Courts must recognize and protect financially vulnerable women when necessary. The gendered realities of financial vulnerability in marriage must be addressed through constitutional principles, as seen in cases such as *Cary v Cary*[4] and *AF v MF*[5].

- [38] In many cases, the financially weaker spouse is typically a woman who faces significant financial disadvantage, especially when confronted by a financially stronger spouse, usually a man, who may exploit his financial position to disadvantage her in matrimonial disputes. Historically, women have faced structural barriers to earning their own income, often due to their disproportionate responsibilities for domestic duties and caregiving within the marriage.
- [39] In the present case, however, it is clear that the Respondent is not passively relying on the Applicant to financially support her and the minor children. On the contrary, she is actively working to improve her financial situation. She is employed as a teacher, conducts online courses as and when time allows, and generates additional income through her t-shirt branding business. This demonstrates her proactive efforts to secure a better financial future for herself and the minor children, despite the challenges she faces.
- [40] In determining the amount to be awarded for the contribution towards legal costs, it is essential to consider the Applicant's ability to afford such a contribution. The amount must be both reasonable and affordable given the specific circumstances of the case. South African case law provides clear guidance on this matter, emphasizing that the contribution should be proportionate to the financial means of the parties involved. The Courts take into account the financial positions of both parties, ensuring that one party is not unduly burdened while also ensuring fairness in the proceedings. The aim is to enable both parties to have equal access to justice, without causing undue hardship to either party, particularly in the context of divorce proceedings

where the welfare of any children involved must also be considered. Therefore, the amount awarded should strike a balance between the needs of the Respondent and the financial capacity of the Applicant, ensuring fairness and equity.

- [41] The Respondent presented the Court with an estimate of the legal costs already incurred, along with an anticipated projection of future litigation expenses. However, I approach this request with caution. If the Respondent seeks an order based, at least in part, on previously incurred costs, it would have been straightforward for her to substantiate the claim by providing invoices or supporting documentation for those expenses. Unfortunately, no such evidence was submitted to the Court, which raises concerns about the verifiability of the claim and limits the Court's ability to assess the reasonableness of the requested relief

relating to past costs incurred. Without sufficient proof of the past costs, granting an order for reimbursement or contribution

toward those expenses would be speculative and unwarranted at this stage.

[42] The Respondent has requested an amount of R200,000.00 (two hundred thousand rand) for legal costs, which, in my view, is excessive. It is important to note that the costs from the previous Rule 43 application were reserved, meaning that those costs must be decided separately from the current application. In light of this, I will make an appropriate cost order for the present application.

[43] The general principle is that a contribution to legal costs should cover the expenses for a reasonable portion of the litigation, typically for one day of legal proceedings. Given this, the Respondent has the option to approach the Court in the future for further financial assistance, should the need arise.

[44] After considering the arguments presented by both parties, I am of the opinion that an amount of R80,000.00 (eighty thousand rand) would be fair and reasonable in the circumstances. This amount strikes a balance between the financial capacity of the parties and the need to ensure that the Respondent is not unduly prejudiced in the legal process.

[45] In the premises, I make the following Order:

1. The application is dismissed
2. The Rule 43 order granted by Malatsi-Teffo AJ on 1 December 2023 is varied as follows regarding the specific parental responsibilities and rights with regard to contact with the minor children, as contemplated in Section 18(2)(b) of the Children's Act 38 of 2005, and the Applicant shall enjoy the following removal contact rights with the minor children:

2.1 Every Sunday, the Respondent will notify the Applicant of any days in the following week when she cannot drop the children off at school within 45 minutes of the start of the school day. On those days, the Respondent will drop the children off at the Applicant's residence, and the Applicant will be responsible for taking them school.

2.2 Every alternative weekend from after school on the Friday until the Monday morning, where the Applicant will ensure that the minor children will be dropped off at school.

2.3 Every Wednesday from after school until the Applicant takes the children to school on the Thursday.

2.4 On the weekend of Father's Day from after school on the Friday until the Monday morning, whereafter the Applicant will ensure that the minor children will be dropped off at school and with the understanding that the children shall be with the Respondent on Mother's Day on the same basis.

2.5 On the Applicant's birthday for at least three hours if same falls in a weekday, and if same falls on a weekend from after school on the Friday until the Monday morning, whereafter the Applicant will ensure that the minor children will be dropped off at school. The children shall of course be with the Respondent on her birthday on similar terms.

2.6 Four hours on each of the children's birthdays, provided that where any such birthday coincides with the Applicant's contact on weekends or holidays, as aforesaid, the Respondent shall be entitled to four hours contact with the children.

2.7 Every alternative short school holiday and half of every long school holiday, with Christmas and Easter alternating between the Parties. Contact during long school holidays shall be exercised in increments of two weeks until L[...] attains the age of five. The children shall be with the Applicant for Christmas 2024.

2.8 Every alternative public holiday and long weekend from the day prior to the public holiday or long weekend until 17h00 on the public holiday or last day of the long weekend. A public holiday directly abutting a weekend shall not be singled out as such and shall be regarded as part and parcel of the long weekend.

2.9 Both parties shall have reasonable electronic and telephonic contact with the children when they are in the care of the other party, to be exercised between 17h00 and 18h00 daily, or after the minor children's extramural activities for the day.

2.10 If either party is not available to care for the children at a time assigned to him or her, the other party shall have the first option to provide alternative care.

3. The applicant and Respondent shall contribute to the youngest child's early education, care and crèche fees equally (50/50% each).
4. The Applicant shall pay an amount of R 80 000.00 (eighty thousand rand) to the Respondent's attorneys, into an account nominated by them, as contribution towards the Respondent's legal costs. The set amount should be paid in full on Friday, 31 January 2025.
5. The costs of this application shall stand over for later determination by the trial court hearing the divorce action.

CSP OOSTHUIZEN-SENEKAL

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to

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DATE OF HEARING:

3 December 2024

DATE JUDGMENT DELIVERED: 6 December 2024

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Ref: Q du Toit/ MA /CM0380

[1] Jeanes v Jeanes 1977

(2) SA 703 (W) 706F; Grauman v Grauman 1984

(3) SA 477 (W) 480C; Micklem v Micklem 1988

(3) SA 259 (C) 262E–G; Maas v Maas 1993

(3) SA 885 (O) 888C; Greenspan v Greenspan 2001

(4) SA 330 (C) 335E–F

[2] [2019] 6 SA 1 (CC): “In any event litigants in rule 43 applications are not unequivocally barred from approaching court again. This avenue is provided for in terms of Rule 43(6), albeit with limitations. The applicant complains, with some justification, that the rule is too restrictive as it only allows for variation of an existing rule 43 order when there is a change in “material circumstances”. However, it cannot be denied that litigants are afforded the opportunity to vary their court orders under certain conditions. This rule ameliorates any injustice where changed material circumstances have emerged.”

[2] [2019] 6 SA 1 (CC):

“In any event litigants in rule 43 applications are not unequivocally barred from approaching court again. This avenue is provided for in terms of Rule 43(6), albeit with limitations. The applicant complains, with some justification, that the rule is too restrictive as it only allows for variation of an existing rule 43 order when there is a change in “material circumstances”. However, it cannot be denied that litigants are afforded the opportunity to vary their court orders under certain conditions. This rule ameliorates any injustice where changed material circumstances have emerged.”

[3] Also see Van Rippen v Van Rippen 1949 (4) SA 634 (C); A.L.G v L.L.G Unreported decision (9207/2020) [2020] ZAWCHC 83 (25 August 2020); Micklem v Micklem 1988 (3) SA 259 (C).

[4] 1999

(8) BCLR 877 (C).

[5] [2020] 1 All SA 79 (WCC).

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Prepared on 9 October 2026 · Esheria