SOUTH AFRICA / JUDGMENT

N.P.M v W.R (094519/2024) [2025] ZAGPPHC 185 (20 February 2025)

[2025] ZAGPPHC 185

COURT
North Gauteng High Court, Pretoria

BEFORE
P A Van Niekerk

CASE / FILE NUMBER
094519/2024

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII
Note: Certain
personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII
Policy
REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG
DIVISION PRETORIA
CASE
NO: 094519/2024
(1)
REPORTABLE: YES / NO
(2)
OF INTEREST TO OTHER JUDGES: YES/NO
(3)
REVISED.
SIGNATURE
DATE
20/02/2025
In

the matter between:	N[...] P[...] M[...] APPLICANT and W[...] R[...] RESPONDENT This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines. The date for the hand down is deemed to be on 20 February 2025.

JUDGMENT

VAN NIEKERK PA, AJ

INTRODUCTION:

[1] On 19 February 2025 I made an order in terms whereof an application for postponement brought by the Respondent was refused, and an order was made in terms whereof the Respondent was ordered to pay maintenance pendente lite to the Applicant and the minor children in the amount of R103 000.00 per month. I further ordered that a motor vehicle as described in a draft order handed up by Applicant's counsel be made available for the Applicant and the minor children and ordered the Respondent to pay a contribution towards the Applicant's costs in the amount of R50 000.00. I ordered costs to be costs in the cause.

[2] The maintenance order pendente lite referred to supra was made following an application instituted on 11 November 2024 in terms of the provisions of Rule 43, inter alia seeking an order for a contribution towards costs in the amount of R100 000.00 and maintenance for Applicant and the minor children in the combined amount of R130 000.00. The Respondent filed an Opposing Affidavit on the 2nd of December 2024 and the matter was enrolled in the Family Court of this division on 27 January 2025. On that date Swanepoel J. removed the matter from the roll as the parties did not file financial disclosures as required in terms of the present authority and the Practice Directives of this court. The matter was thereafter enrolled for hearing in this Court on 17 February 2025 and disposed of by way of a virtual hearing at 14h00pm on Wednesday, 19 February 2025.

[3] The Applicant's Founding Affidavit in terms of the provisions of Rule 43 can conveniently be summarised as follows:

[3.1] The Applicant and the Respondent are married in terms of customary law in community of property, from which marriage two children were born who are still minors. The Applicant further has a minor child from a previous relationship which child at all relevant times were living with the Applicant and the Respondent in the previous common home, and maintained by the Respondent as part of the family;

[3.2] The Applicant and the minor children presently reside in the previous common home situate in an affluent private estate between Pretoria and Johannesburg, and the Respondent resides in a similar affluent private estate in the same area;

[3.3] The Respondent failed to comply with his common law maintenance obligations in relation to the Applicant and the minor children resulting inter alia that the expensive private school which the minor children attend on various occasions gave notice of termination of services to the parties, and an inability of the Applicant and the children to maintain a relatively decent standard of living as they were accustomed to;

[3.4] The Applicant tabled a list of expenses which she has to incur in relation to herself and the minor children which includes food, accommodation expenses in relation to the property which the Applicant and the children reside in, transport expenses of the children, their school and extra-mural activities, and necessities such as clothing. The total sum of these expenses, according to the Applicant, amounts to R103 800.00 per month.

[3.5] The Applicant further averred that she disposed of a number of motor vehicles since inception of the action in order to fund the shortfall which she experiences in relation to the living expenses of herself and the children;

[3.6] According to the Applicant, the parties enjoyed a luxurious standard of living as is evidenced from the fact that the common home, which is fully paid for, is a large and expensive property situated in a luxurious private estate. The Applicant further averred that the Respondent spends exorbitant amounts on leisure activities such as attending exclusive clubs where the Respondent would spend up to R50 000.00 per night, and alluded to the fact that there are presently a number of extremely luxurious and expensive vehicles in the possession of the Respondent, including an exotic German sports car to the value of R5 000 000.

[4] The Answering Affidavit filed by the Respondent commences with the Respondent averring that any legal submissions made by the Respondent in the Answering Affidavit was done on the advice of his legal representatives. Respondent then embarks on various legal submissions relating to Rule 43 applications, the approach a court should adopt in a Rule 43 application and generally refers to principles relating to Rule 43 applications which are established and trite. However, in relation to the minor child born of a previous relationship of the Applicant, the Respondent avers that, in terms of “common law” he has no duty to maintain that child. This advice, given the particular factual circumstances of the parties, is patently incorrect.

[5] Save for the legal arguments advanced by the Respondent in the Opposing Affidavit, the Respondent's Answering Affidavit can be summarised as follows:

[5.1] The Respondent denies being married to the Applicant in terms of customary law and makes the startling allegation, in my view vexatious, that the Applicant is "nothing" to him save for being the mother of his children. This kind of allegation finds no place in litigation, and is indicative of a mala fide attitude;

[5.2] The Respondent does not deny the expenses set out in the Applicant's Founding Affidavit, save to take note of same, and further adopts the same approach in relation to the averments made by the Applicant regarding the parties' luxurious style of living, the expensive motor vehicles which vest in the joint estate. In respect to all the allegations relating to the Applicant's expenses, the wealth of the parties and the evidence provided by the Applicant in relation to the Respondent's ability to afford the maintenance claimed by the Applicant, the Respondent simply states that he "notes" the contents thereof;

[5.3] The Respondent further avers that he pays R10 000.00 per month as maintenance for the two minor children in terms of a maintenance court order.

[6] Absent from the Respondent's Answering Affidavit are allegations which would enable the Court to gauge and compare the Respondent's living expenses with those of the Applicant and the minor children. The Respondent further provides no evidence relating to his financial position, his ability to maintain the Applicant and the minor children or to comply with the order which the Applicant seeks, nor does the Respondent provide any information in relation to costs already paid by the Respondent to his legal advisors for purposes of comparison to enable this court to gauge a fair and just contribution to be paid by the Respondent to the Applicant.

[7] Considering the fact that it clearly appears that the Respondent was represented by legal representatives who are experienced with the provisions of Rule 43 when the Answering Affidavit was deposed to, the only reasonable inference that this Court can draw from the fact that the Respondent failed to deal with the material averments as set out by the Applicant in relation to the quantum of maintenance which she requires for herself and the children, the wealth of the parties and the Respondent's ability to comply with such maintenance order, is namely that the Respondent cannot dispute same and does not wish to disclose his true financial position to this Court.

[8] When the matter was called for hearing on Wednesday, 19 February 2025 at 14h00, Respondent's counsel moved for an order that the Rule 43 application be postponed, tendered costs of such postponement, and referred to a substantive application filed on behalf of the Respondent for such postponement on the same day. In summary, the Respondent's grounds for postponement are namely the fact that the Respondent avers that he is not financially able to comply with the maintenance as sought by the Applicant, wishes to supplement his Answering Affidavit to refer to this issue, and to file an amended financial disclosure as, according to the Respondent, the financial disclosure which the Respondent

filed belatedly on the day when this application was set down for hearing, is incomplete.

[9] The Respondent's application for postponement can concisely be summarised as follows:

[9.1] The Respondent appointed a new attorney of record approximately five days before the hearing of the application;

[9.2] The Respondent was advised that his Answering Affidavit is incomplete, and he intends to file a new financial disclosure;

[9.3] The Respondent will be prejudiced should the Respondent not be granted an opportunity to file such documents.

[10] The application for postponement was opposed by the Applicant. The Applicant's counsel inter alia referred to the scant bank statements provided by the Respondent in his financial disclosure where there are clear indications of other bank accounts operated by the Respondent, which were not disclosed. The Applicant's counsel submitted that the application for postponement is mala fide and constitutes dilatory tactics.

[11] During the argument of the application for postponement the Respondent's counsel submitted that serious prejudice would befall the Respondent should the matter not be postponed, and that the matter should be postponed "in the interest of justice". These submissions are also made in the Respondent's affidavit in support of the application for postponement.

[12] It is trite law that an application for postponement is at the discretion of the Court and that the interest of all parties should be considered. A postponement is not a right, but an indulgence. The party who seeks a postponement should convince the Court that the postponement is bona fide, and that the other party will not be unduly prejudiced thereby.

[13] In my view the application for postponement is not bona fide, and that the Court should not exercise its discretion to grant such application for the following reasons:

[13.1] There is no proper explanation in the Founding Affidavit why the previous attorneys of the Respondent (who are clearly experienced in Rule 43 applications) effectively admitted the averments relating to the parties' standard of living, the wealth of the joint estate and the Respondent's financial means which enabled the Respondent to finance an extremely valuable joint estate, consisting inter alia of expensive sports cars;

[13.2] In the Respondent's affidavit in support of the postponement the Respondent simply refers to the prejudice that will befall the Respondent. No offer is made for interim maintenance for the Applicant and the minor children pending finalisation of the application in the event of the Respondent being successful in his application for postponement, and when the Respondent's counsel was questioned on this issue by this Court, his response was namely that there is a maintenance order in place in the Maintenance Court for R10 000.00 for the children. Considering the objective facts of this matter, the Respondent's conduct of insisting that the Applicant maintain the minor children on an amount of R10 000.00 per month is deplorable and

constitutes an infringement on their constitutional rights as referred to infra.

[13.3] The fact that the Respondent inter alia seeks a postponement for the purposes of amending his financial disclosure, gives rise to concern. A financial disclosure requires the Respondent to provide full and frank disclosure of the full extent of his financial means, under oath, against an explicit warning that the failure to provide correct and full disclosure, may be criminally sanctioned. The fact that this Court is informed that the Respondent now intends to file a further improved financial disclosure clearly implies that the first financial disclosure which the Respondent filed prima facie constitutes perjury.

[14] In the premises, I am of the view that the application for postponement is mala fide, and constitutes dilatory tactics, as the Applicant's counsel argued.

[15] I am further duty-bound to consider the constitutionally entrenched right of the Applicant and the children to accommodation, to dignity, and to act in the best interest of the minor children. In terms of section 28(1) of the Constitution the children are entitled to family care, accommodation and nutrition. Considering the application for postponement I am duty-bound to consider these enshrined rights of the children involved in this matter. This Court cannot simply ignore the plight of the Applicant and the children involved in order to indulge the Respondent in a postponement which clearly will serve no purpose as the material considerations for purposes of the relief claimed by the Applicant in her Founding Affidavit constitutes undisputed evidence when regard is had to the respective affidavits of the parties and the objective facts relating to the Respondent's means as a whole.

[16] In the result, I made an order in terms of the draft order as amended, and the application for postponement was refused.

P A VAN NIEKERK

ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

Counsel for the Applicant: Adv. T. Sebata. Mobile sebatatt@loftusadv.co.za Counsel for the Respondent: Adv. N. Makhani Makhani@maisels.co.za

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://www.saflii.org/za/cases/ZAGPPHC/2025/185.html

CASE PAGE https://chat.esheria.ai/case-law/south-africa/npm-v-wr-unknown-topic-agpphc-2025

Prepared on 9 October 2026 · Esheria