

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, JOHANNESBURG**

(1)	<b>NOT</b> REPORTABLE
(2)	<b>NOT</b> OF INTEREST TO OTHER JUDGES

**CASE NO:** 2024-003610

**DATE:** 9 June 2025

In the matter between:

**H N C**

Applicant

and

**S J C**

Respondent

**Neutral Citation:** *C v C* (2024-003610) [2025] ZAGPJHC --- (9 June 2025)

**Coram:** Adams J

**Heard:** 28 May 2025

**Delivered:** 9 June 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 9 June 2025.

**Summary:** Marriage – divorce – spousal maintenance *pendente lite* – in Rule 43 applications, the questions to be asked are: (a) What are the applicant's reasonable maintenance requirements pending divorce? (b) Can the respondent reasonably meet those needs? And (c) Is the applicant entitled to

the contribution to costs she seeks, in the amount that she seeks it? – Uniform Rules of Court, rule 43 – question (b) decisive in casu – decided against the applicant and resulting in the application not being granted –

Order granted not in accordance with what was sought by the applicant.

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## ORDER

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In terms of Uniform Rule of Court 43, the following order is made *pendente lite*: -

- (1) The respondent shall pay maintenance to the applicant in the amount of R35 000 per month, the first payment to be made within five days from date of the granting of this Order of Court, and thereafter on or before the first day of each subsequent month.
- (2) The respondent shall continue to pay the following direct expenses of the applicant: -
  - (a) An amount of R6800 per month to the applicant's helper in respect of her monthly salary and travel costs, as well as an end-of-year annual bonus.
  - (b) The Discovery Health Medical Aid premiums, gap cover and all medical excesses which are not covered by the medical aid, to be paid by the respondent to the applicant within ten days of receipt of the account or till slip from the applicant, to be emailed to the respondent.
  - (c) The applicant's motor vehicle premiums, car insurance and annual maintenance, including replacement of car tyres from time to time; and
  - (d) The monthly membership fees in respect of the applicant's *Virgin Active* Gym membership.
- (3) The Respondent shall make payment of a contribution towards the applicant's legal costs in the sum of R100 000 within thirty days from date of the granting of this order.
- (4) Each party shall bear her/his own costs of this opposed Rule 43 application.

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## JUDGMENT

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### Adams J:

[1]. The applicant (wife) and the respondent (husband) were married to each other in community of property at Muldersdrift, Krugersdorp, on 17 November 2012, which marriage presently still subsists. During January 2024 the applicant, as the plaintiff, instituted divorce proceedings out of this Court against the respondent, as the defendant. The respondent is defending the said action, which is presently pending. He delivered his plea during July 2024. The applicant is presently 62 years old (to her nearest birthday) and the respondent will shortly turn 68 years old.

[2]. In this application before me, the applicant applies *pendente lite* in terms of Uniform Rule of Court 43, for an order in the following terms: -

- '(1) The respondent shall pay maintenance to the applicant in the amount of R53 800 per month, the first payment to be made within five days of the granting of this order of court, and thereafter on or before the first day of each subsequent month.
- (2) The monthly maintenance in paragraph 1 shall increase annually from the date of this order by the Consumer Price Index (CPI) as published from time to time;
- (3) The respondent shall continue to pay all of the applicant's direct expenses, namely:
  - (3.1) The domestic helper's monthly salary, travel costs, currently R6800, and Christmas bonus;
  - (3.2) The Discovery Health medical aid premiums, gap cover and all medical excesses which are not covered by the medical aid, within ten days of receipt of the account or till slip from the applicant, and which will be emailed to the respondent;
  - (3.3) The applicant's motor vehicle premiums, car insurance and annual maintenance, including replacement of car tyres from time to time; and
  - (3.4) The applicant's Virgin Active Gym membership.

- (4) The respondent shall sign a lease agreement, on behalf of the applicant, for an apartment or townhouse, selected by the applicant, within 10 days of being requested to do so by the applicant and pay the deposit and monthly rentals in an amount of at least R18 000, together with municipal imposts, as reasonably incurred by her, directly to the lessor of the apartment on a monthly basis.
- (5) The respondent shall pay a one-off contribution towards appliances and related household items for the applicant to furnish her home in the sum of R193 000 within five days of the granting of this court order.
- (6) The respondent shall make payment of a contribution towards the applicant's legal costs in the sum of R951 209,27 (VAT inclusive), such payment to be made to M Speier Attorneys, (who shall furnish the firm's trust account details to attorneys, Alant, Gell and Martin Inc), within seven days of the court order.
- (7) The respondent shall pay the costs of this application on the punitive scale.'

[3] In sum, the applicant applies for interim spousal maintenance, as well as for a capital payment in respect of the costs of household appliances and other items and a contribution towards her legal costs. The respondent contends that he does not have the means to pay the exorbitant amounts claimed from him by the applicant, who, according to the respondent, is living beyond her means. The applicant, so the respondent contends, is insisting on a lifestyle, which was sustained by his company, which in recent times had fallen on hard times, making it necessary for them, as a family, to tighten the proverbial belt.

[4] The issue to be considered in this Rule 43 application is simply whether, all things considered, the applicant is entitled to the spousal maintenance claimed and the other related claims. In that regard, the questions to be answered are these: (a) What are the applicant's reasonable maintenance requirements pending divorce? (b) Can the respondent reasonably meet those needs? And (c) Is the applicant entitled to the contribution to costs she seeks, in the amount that she seeks it? These issues are assessed in light of the standard of living the parties enjoyed during the marriage (see *Taute v Taute*<sup>1</sup>).

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<sup>1</sup> *Taute v Taute* 1974 (2) SA 675 (E) at 676D-H.

[5] These issues are also to be decided against the factual backdrop as set out in the paragraphs which follow.

[6] The respondent tenders a cash payment of R28 700 maintenance per month, to include the applicant's Audi A3 instalment and its maintenance limited to R4000 per month. The applicant contends that he currently pays R35 000 per month to the applicant in addition to the car instalment.

[7] As regards the applicant's claim for direct expenses, the respondent, in respect of the salary, travelling costs and annual bonus of the applicant's domestic helper, Anna Tshoba, the respondent tenders to pay R7600 per month, with no tender in respect of an annual bonus. He furthermore tenders the applicant's portion of the premium for the Discovery Health Medical Aid (in an amount of R4500) and the applicant's 50% share of the gap cover of R165 per month. As for the motor vehicle instalments, car insurance, maintenance and services for the applicant's Audi Q3 (2022 model), the respondent tenders an amount limited to R4000 per month, although he is presently, according to the applicant, paying an amount R8 074.24 per month. A total amount of R1500 per month is tendered by the respondent in respect of the applicant's *Virgin Active* membership fees, which actually, according to the applicant, amounts to R1700 per month, which is presently paid by the respondent.

[8] The respondent declines to pay anything towards the applicant's claim in relation to the conclusion of a lease agreement at about R18 000 per month rental, which, the respondent contends, is excessive, bearing in mind that he pays R9000 per month rental for his own accommodation. The claim by the applicant for a capital payment of R193 000 for household accessories, is also rejected by the respondent. This claim, so the respondent contends, is not competent as a claim under Rule 43.

[9] The claim for a contribution towards the applicant's trial costs is also disputed by the respondent. He does not make any offer in respect of such claim for a contribution towards costs.

[10] The main difficulty, in my view, with the quantification of the applicant's claim for interim maintenance and other contributions, relates to the fact that the applicant's case is based on calculations which relate to a period predating the respondent's sale of the business of his company, Rotating Technologies and Services (Pty) Limited ('RTS'). That business was sold during January 2024 for the purchase price of R20 million, from which the said company had to pay historical debts, which meant that the proceeds from the sale for the benefit of the respondent were not anywhere near the R10 million share, which the applicant alleges the respondent received from the sale of the business. What is more is that there is a contingent tax liability by this company to SARS for approximately R20 million. This means that for purposes of assessing the respondent's means to pay spousal maintenance, the sale of the business could and should be disregarded altogether.

[11] This then takes us back to the allegation by the respondent, which is in the main not disputed by the applicant, that he is at present employed as an Operations Manager by WEG Africa (Pty) Limited ('WEG'), earning a nett monthly salary of approximately R62 000. To this can and should be added further income received by the respondent, such as monthly payments received from his property holding company, RTS Holdings (Pty) Limited, and the proceeds of a retirement annuity, which amount in total to about another R20 000. This means that, on the evidence before me, the respondent earns on a monthly basis approximately R82 000 nett.

[12] As regards the respondent's asset base, the applicant contends that the respondent has assets worth substantially more than he would have the court believe. The applicant submits that RTS Holdings (Pty) Ltd, the respondent's property-owning company, in which he is a 50% shareholder and director, is valued at about R4 million. The monthly rental earned by the company amounts to R128 000, from which bond payments and other operational expenses are required to be paid. The point about this property is that it is not as profitable as the applicant makes it out to be. Secondly, the respondent's interest in the company and the property owned by it is illiquid and cannot at a whim be

converted into cash. That then means that the applicant, on the evidence before me has very little means, if any, to satisfy the applicant's claim for substantial capital payments, including the claim for about R1 million contribution towards legal costs.

[13] Sight should also not be lost of the fact that the respondent is at present 67 years old and he is self-evidently close to retirement. He contends that the applicant is living a lifestyle that he cannot maintain. I find myself in agreement with these contentions on behalf of the respondent. As I have already indicated, the applicant's case is based on historical facts and circumstances and not on the present lived reality of the respondent, who is now a salary earning employee, nearing the end of his work life. I do not accept the applicant's contention that the respondent continues to spend money at whim. There is no evidence to support such assertions.

[14] For all of these reasons, I am of the view that the applicant should not be granted all of the relief sought by her in this rule 43 application. The simple fact of the matter is that the respondent does not have the means – neither the income, nor the capital base – to meet the claims by the respondent. In that regard, the applicant's claim for capital payments should be limited to an amount of R100 000 in respect of a contribution towards her legal costs. Save for this award in favour of the applicant, the application for all of the other capital payments should fail.

[15] As for costs, I think that there should be no order as to costs and each party should bear their own costs relative to this rule 43 application.

### **Order**

[16] In the result, I make the following order in terms of Uniform Rule of Court 43 *pendente lite*: -

- (1) The respondent shall pay maintenance to the applicant in the amount of R35 000 per month, the first payment to be made within five days from



date of the granting of this Order of Court, and thereafter on or before the first day of each subsequent month.

- (2) The respondent shall continue to pay the following direct expenses of the applicant: -
- (a) An amount of R6800 per month to the applicant's helper in respect of her monthly salary and travel costs, as well as an end-of-year annual bonus.
  - (b) The Discovery Health Medical Aid premiums, gap cover and all medical excesses which are not covered by the medical aid, to be paid by the respondent to the applicant within ten days of receipt of the account or till slip from the applicant, to be emailed to the respondent.
  - (c) The applicant's motor vehicle premiums, car insurance and annual maintenance, including replacement of car tyres from time to time; and
  - (d) The monthly membership fees in respect of the applicant's *Virgin Active* Gym membership.
- (3) The Respondent shall make payment of a contribution towards the applicant's legal costs in the sum of R100 000 within thirty days from date of the granting of this order.
- (4) Each party shall bear her/his own costs of this opposed Rule 43 application.



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**L R ADAMS**  
*Judge of the High Court*  
*Gauteng Division, Johannesburg*

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HEARD ON:	28 May 2025
JUDGMENT DATE:	9 June 2025 – Judgment handed down electronically
FOR THE APPLICANT:	P Ternent
INSTRUCTED BY:	Martin Speier Attorneys, Birnam, Johannesburg
FOR THE RESPONDENT:	L D Isparta
INSTRUCTED BY:	Alant, Gel & Martin Incorporated, Faerie Glen, Pretoria