

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

CASE NO: 2021/37746

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

DATE: 1 December 2021

In the matter between:

**T[....] P[....] T[....]2
(IDENTITY NO: [....])**

Applicant

-and-

**M[....] P[....]2 T[....]2
(IDENTITY NO: [....])**

Respondent

JUDGMENT

GREENSTEIN AJ

[1] On the 4th day of August 2021, the Applicant launched a Rule 43 Application in terms of which she inter alia sought maintenance for herself in an amount of R11 910 per month, maintenance for two minor children born of the marriage in an amount of R20 300 per month and other relief.

[2] The application was served personally on the Respondent on the 2nd day of September 2021. The Respondent's legal representatives delivered a Notice of Intention to Oppose. The Respondent never delivered an answering affidavit as

provided for in Rule 43 (3) of the Uniform Rules of Court. A notice of set down was served in terms of the Uniform Rules of court on the 15th day of October 2021 on the Respondent's legal representatives. The Respondent's legal representatives were invited onto CaseLines on the 29th of September 2021.

[3] There was no appearance on the 29th of October 2021 for the Respondent. The Respondent had further failed to deliver a practice note. The Applicant's attorney uploaded onto CaseLines correspondence which had flowed between what appears to be new attorneys of record for the Respondent (who had not formally placed themselves on record as per the documentation which was uploaded onto CaseLines) dated 27 October 2021 in terms of which inter alia a request was made to the Applicant's legal representatives for the postponement of the Rule 43 Application. The Applicant did not agree to the postponement for a variety of reasons.

[4] I was satisfied that the matter proceeds before me as an unopposed Rule 43 application. The Respondent had more than 2 and a half months to deliver an answering affidavit which he failed to do.

[5] The Applicant delivered a supplementary affidavit on 27 October 2021 to the Respondent's legal representatives which highlighted inter alia that the Respondent removed certain keys of the matrimonial home where the Applicant is residing and her motor vehicle keys. This rendered the Applicant and the children unsafe in the home as certain doors could not be locked and the Applicant did not have the use of her motor vehicle.

[6] I considered postponing the application in order to afford the Respondent an opportunity to deal with the contents of the Supplementary Affidavit. Essentially I had to balance the fact that the Respondent was not maintaining the Applicant and the minor children as against the Respondent's right of reply which right of reply he never exercised previously by failing to deliver an answering affidavit. I also did not want a situation whereby I refused to hear the application in order to give the Respondent an opportunity to answer the supplementary affidavit and he never availed himself of such an opportunity. If the matter were postponed this would have

brought about a further delay in the hearing of the application which delay would have caused hardship for the Applicant and the minor children and there was no guarantee that an affidavit would be delivered.

[7] I accordingly exercised my judicial discretion by taking into account the fact that the Applicant was without keys of the matrimonial home and was without keys of her motor vehicle. As will appear more fully below I am of the view that these respective keys are movables and as such I am enjoined in terms of the provisions of Rule 43 to grant relief relating to the keys'. I deemed it in the children's best interests that the Applicant who is their custodian be able to provide them with transport and to provide them with safe accommodation. I disregarded the balance of the supplementary affidavit as it had no real relevance to the relief sought.

[8] The Applicant showed the monthly expenses of the children as follows:

EXPENSE	AMOUNT
Groceries/cleaning materials/lunch packs	R 2500
After care	R 1600
School fees	R 2200
School transportation/ fuel and maintenance on vehicle	R 3000
Uniform	R 2000
Hospitalisation bills	R 1000
Clothing	R 8000
TOTAL	R 20 300

[9] I found that all the aforementioned costs were reasonable save for uniforms and clothing. Uniforms in an amount of R 2000 was an annual expense and when apportioned to a monthly expense would amount to R166.66 per month. Clothing of R 8000 per month was not reasonable and I allowed R700 per month for both children. During argument it became apparent that the Applicant was able to take the children to school given that she was now in possession of her BMW and she would replace the transporters who would take and fetch the children to and from school. I determined however that R3000 per month was reasonable in relation to petrol expense, maintenance and replacement of tyres. In the prayers there was a duplication in that separate relief was sought for school fees and ancillary costs and medical costs, yet these amounts were included in the monthly expenses. For the cash component which I order I have not included school fees, uniforms, after care, extra murals and medical costs as separate provision is made for these expenses in the order.

[10] The Applicant further sought an amount of R 4460 per month for accommodation costs and R 1200 per month for utilities. Given the latest turn of events that the Applicant is residing in a jointly owned asset the accommodation and utility costs are no longer sought save that the Respondent continues to pay all the costs associated with this home.

[11] In relation to the Applicant's claim for personal maintenance and taking into account her portion for groceries, toiletries and clothing pendente lite, I determine an amount of R 5000 per month as being reasonable.

[12] The evidence of the Applicant was uncontested that the Respondent could afford the maintenance sought by the Applicant. I also had regard to the financial disclosure form uploaded onto CaseLines by the Applicant in satisfying myself that the Respondent could afford the amount of maintenance as ordered.

[13] The Respondent has purportedly removed from the possession of the Applicant the keys of the BMW motor vehicle and the keys of the matrimonial home. On the face of it this is a spoliation which does not fall within the ambit of a Rule 43. However, there is case law that a Rule 43 court has the power to issue an order for

the delivery of furniture which falls into the category of movables (See Van Der Spuy v Van Der Spuy 1981 3 SA 638 (C)). Keys are most certainly movables. I have accordingly provided in the order that the Respondent within 24 hours of this judgement deliver to the Applicant all the keys to the matrimonial home and the keys to the BMW failing which the Respondent is ordered to pay immediately upon presentation of an invoice all the costs of a locksmith in order to replace locks and obtain new house keys and for the Applicant to procure a new vehicle key.

[14] As the upper guardian of minor children it is in the best interests of the children that they be provided with transport and that they be provided with safe and secure accommodation. The furnishing of the keys', alternatively the provision of funds to acquire the keys', is in the children's best interests, is essential for the Applicant to properly maintain the minor children *pendente lite* and accordingly falls within the ambit of a Rule 43.

ORDER

I accordingly make the following order *pendente lite*:

1.

1.1 The Applicant is awarded care (which includes residency) of the minor children subject to the Respondent's right of reasonable access which shall include but not limited to the right to have the minor children visit him as follows:

1.1.1. In weeks two and four of every four-week cycle, Saturday's from 09h00am to 17h00pm and Sunday's from 09h00am to 17h00pm.

1.1.2. For a period of time on the children's birthdays to be agreed between the parties.

1.1.3. One week of every school holiday save where a holiday is less than two weeks in duration and in such event, half of such

holiday. The collection time of the children shall be 09h00 and the return time shall be 17h00pm on the last day of the allotted period.

1.1.4. Every Father's day from 09h00am to 17h00pm.

1.1.5. For a period of time on Christmas and Easter, as agreed between the parties.

1.1.6. On the Respondent's birthday from 09h00am to 17h00pm save when the Respondent's birthday falls during a week day during term time and in such event from after school/extra mural activities until 17h00pm.

1.1.7. Any other time mutually agreed upon between the parties.

1.2. The Respondent is directed to give the Applicant, save in the event of an emergency, at least forty-eight (48) hours prior notice by way of SMS or WhatsApp to confirm whether the Respondent intends to exercise the contact aforementioned. Should the Respondent fail to notify the Applicant, the Applicant shall be entitled to make alternate arrangements for the minor children during the Respondent's contact time.

1.3. The collection and return of the minor children by the Respondent shall take place at the matrimonial home (more fully described in prayer 2 below) at the times stipulated.

2. The Applicant and the minor children shall continue to reside at No. [...] D[...] Avenue, J[...] Park, Nigel, Gauteng Province (*"the matrimonial home"*) exclusively. The Respondent shall pay on due date all imposts over the matrimonial home including but not limited to rates, taxes, water, electricity, sewerage and refuse removal and any mortgage bond instalments, if applicable.

3. The Respondent is to place the minor children and the Applicant on his medical aid forthwith after the grant of this order. Irrespective thereof the

Respondent is liable for all the Applicant's and the children's medical costs including but not limited to medical, dental, ophthalmic, orthodontic, pharmaceutical and psychological costs and if applicable any medical excess not paid by the medical aid.

4. The Applicant is granted the exclusive right to use the motor vehicle described as BMW 120D bearing registration number: [...] (*"the vehicle"*) and if applicable the Respondent is to pay the credit grantor the monthly installment directly to the credit grantor regularly and timeously.

5. The Respondent shall pay maintenance to the Applicant in respect of the minor children in an amount of R 6200 per month, the first payment commencing on the 1st of December 2021 and thereafter on the 1st day of each subsequent month.

6. The Respondent shall pay maintenance to the Applicant an amount of R 5000 per month, the first payment commencing on the 1st of December 2021 and thereafter on the 1st day of each subsequent month.

7. The Respondent shall pay the costs of the minor children's school fees, after-care fees, school books, school uniforms and extra mural activities, regularly and timeously by no later than the 1st day of each month and where applicable on presentation of an invoice.

8. The Respondent shall pay a contribution towards the Applicant's legal costs in the amount of R 60 000 in five equal instalments (R 12 000 per instalment), the first payment due on 15 December 2021 and thereafter on the 15th day of each successive month until the amount is liquidated.

9. The Respondent is ordered to deliver the keys of the matrimonial home within 24 hours of the grant of this order to the Applicant. In the absence of the Respondent delivering the keys that he removed from the matrimonial home for the matrimonial home, the Respondent is ordered to pay immediately upon presentation of an invoice all the costs of a locksmith in order to replace locks and obtain new keys.

10. The Respondent is ordered to deliver the keys of the vehicle within 24 hours of the grant of this order to the Applicant. In the absence of the Respondent

delivering the vehicle keys, the Respondent is ordered to pay immediately upon presentation of an invoice all the costs in order to procure alternate/new keys.

11. The Respondent shall reimburse the Applicant all amounts which she expends in terms of this order for which the Respondent is liable within five days of proof of payment and/or invoice.

12. Costs of the application to be in the cause.

GREENSTEIN AJ

ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 1 December 2021.

Date of hearing: 29 October 2021

Date of judgment: 01 December 2021

Appearances:

Counsel for the Applicant: ADV. SEBOPA M

Attorney for the Applicant: T FAKU ATTORNEYS INC

Respondent: No Appearance.