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

Case Number: 2019-22224

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
SIGNATURE	24 January 2025

In the matter between:

S[...] A[...] T[…] Applicant
(Born L[…])

and

G[….] J[…] T[…] Respondent

JUDGMENT

NOKO J

Introduction

[1]S[...] A[...] T[…] (“*the applicant*”) brought an application in terms of Rule 43(6) of the Uniform Rules of Court for an order directing G[…] J[…] T[…] (“*the respondent*”) to make payment in the amount of R3 332 803.73 as contribution towards legal costs up to and including the first day of trial. The respondent is opposing the application and has raised points *in limine*.

Background

[2]The parties were married out of community of property subject to the application of the accrual system. The applicant instituted divorce proceedings in this division which are still pending. The applicant subsequently launched an application for joinder of GT Trust which was dismissed. That notwithstanding the parties agreed that the GT Trust should be joined as a party but subject to limited issues being adjudicated upon.

[3]The applicant has previously instituted an application in terms of Rule 43 for maintenance, primary residence and contribution towards legal costs. The application was partly granted on 4 November 2022 by Wilson AJ (as he then was) in respect of maintenance and primary residence for the minor children and relief sought for contribution towards legal costs was refused. She subsequently launched a Rule 43(6) application for contribution towards legal costs in the amount of R4 188 990.00. The application served before Wijnbeek AJ who granted an order on 13 December 2023 for the sum of R800 000.00 which include legal costs for the discovery process and the first day of trial. The said order was subject to the following conditions, first, that it would be payable if the applicant incurs costs in the application to postpone the trial and secondly, that it would also be for any other interlocutory application. Wijnbeek stated that the applicant had access to a further R800 000.00 which can be applied to preparation for trial.

[4]There are several applications which were launched between the parties after the order of Wijnbeek AJ. First, application launched on 18 January 2024 by the applicant to compel discovery of documents which includes financial statements of the Trust. Secondly, an application launched on 8 February 2024 against the respondent for an order committing him to prison for failure to pay the amount of

R800 000.00 as ordered by Wijnbeek AJ. The respondent opposed the application and launched a counter-application on 27 May 2024 seeking an order to stay the execution of the order of Wijnbeek AJ. The application for contempt of court was dismissed and the counter-application was struck off the roll. Thirdly, an application launched on 25 June 2024 for leave to appeal the order dismissing the application for contempt. Fourthly, an application launched on 27 May 2024 by the respondent for the rescission of the order of Wijnbeek AJ as the said order (for the R800 000.00) was allegedly based on fraudulent information presented to Court by the applicant. This application is still pending. Fifthly, a Rule 30 application which was brought in response to the application launched by the applicant against the respondent to compel discovery of copies of certain documents. This application was dismissed a week before the hearing of this application now serving before me.

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[5]Meanwhile the respondent paid the amount of R800 000.00 into his attorneys' Trust account.

[6]Having mosaicked the above background I now turn to the issues which served before me. As stated above, the respondent raised several points *in limine* in response to the Rule 43(6) application.

Points *in limine.*

The clean hands argument.

[7]The respondent contends that the law does not allow adjudicating over a *lis* launched by a party with dirty hands. The respondent stated that the applicant penned a letter to the respondent's attorneys where she that the Second Lammont Family Trust (*"SLF Trust"*) informed her that effective from 30 September 2023, no further contribution towards her legal costs in her divorce matter would be made until she repays the loan, she took from the SLF Trust in the amount of R5million. This is supported by an affidavit deposed to by Jannike Noeth, a Trustee of the SLF Trust confirming that the SLF Trust will not make further contribution she needed. This was incorrect, so the argument went, as the SLF Trust proceeded to pay her the amounts of R58 125.00 on 23 October 2023 and R172 500.00 on 16 November 2023 towards

legal costs. As such the respondent launched application for rescission which is currently pending.

[8]In addition, the respondent continued, the applicant received amount of R50 000.00 allegedly as a loan, though her attorneys indicated that it was a distribution from the Trust. There is further a distribution available in the sub-account of the SLF Trust opened exclusively for her benefit. The respondent has further stated that an amount set aside for the applicant is in the region of R1 300 000.00. Furthermore, a discretionary amount due to the applicant is the amount of R796 853.00 and is held in the sub-account opened for her as per annual statement of Trust ending 28 February 2023. Based on the aforegoing the request for contribution is based on the incorrect statement that the applicant has no funds.

[9]The applicant in retort stated that at the time when the letter was penned to the respondent's attorney stating that the trustees would no longer contribute to her legal costs a resolution was already taken by the trustees to pay the amounts referred to by the respondent which were paid later. In addition, the shortest answers to the assertions by the respondent is that it is a discretionary trust and she has no right to access such funds unless the trustees resolve to make any payment.

[10]The reasons underpinning the point *in limine* is the subject matter of the rescission application and has no bearing on the application serving before. It is therefore unsustainable and bound to dismissed. In the alternative, the version put up by the applicant clearly explain why there were payments made after the letter and I find same plausible and no evidence could be presented to gainsay same. I therefore find that the accusation that the applicant's hands are dirty in respect of the matter serving before is unsustainable and bound to be dismissed.

Res judicata and/or *lis pendens.*

[11]The respondent's second point *in limine* is of *res judicata* or *lis pendens* in that the relief sought by the applicant is the same as was granted by Wijnbeek AJ who ordered that the respondent contribute to legal costs and as such the said dispute has been settled. In the alternative, the order of Wijnbeek AJ's order is the subject of

the application for rescission, which is pending elsewhere, hence the point in limine of *lis pendens* is implicated.

[12]In retort, the applicant contended that the costs which are listed on the bill attached to the application now serving before me are different from those which served before Wijnbeek AJ. In the premises the points *in limine* of *res judicata* and/or *lis pendens* are both incompetent.

[13]To the extent that as I concluded, as demonstrated in the order below, that there are some items on the list which relates to issues which Wijnbeek AJ was seized with, the respondent's point *in limine* under discussion is partly sustainable.

Changed circumstances.

[14]The third point *in limine* is that the applicant has failed to present materially changed circumstances which are a jurisdictional requirement to trigger the invocation of Rule 43(6) of the Uniform Rules. The record shows that Wijnbeek AJ held that the amount of the R796 853.00 should be availed for legal costs and now that the said amount has not been used the applicant's circumstances have not been materially changed and this application should therefore be dismissed.

[15]The applicant replied that, it has been mentioned that the items on the bill of costs which served before Wijnbeek AJ are different from the items currently before me. Further, that the assertion that there are funds elsewhere which could be applied to legal costs cannot be supported by any evidence.

[16]The applicant further contended that the fact that the respondent has not complied with the order of Wijnbeek AJ means the circumstances which prevailed still obtain "… since the funds ordered by him to be paid have not been paid, thus precluding the applicant from paying her legal representatives, since the granting thereof."[1] In addition, there are various interlocutory applications which had to be launched as a result of the respondent's intransigent conduct since the order of Wijnbeek AJ.

[1] See para 70 of the applicant's Heads of Argument on CL 036-476.

[17]As set out above the circumstances which served before Wijnbeek AJ are different, bar what is set out below, from the circumstances now presented by the applicant. This can be gleaned from the items on the bill and further several applications which were launched and not reasonably anticipated at the time the order was made. It is also noteworthy to mention that the circumstances which led to the application which served before Wijnbeek AJ have not changed as the respondent failed to pay the R800 000.00 intended to assuage the applicant's financial woes.

[18] The Court should determine whether the contribution for legal costs is warranted by considering the parties' respective financial positions and the ultimate result should be to ensure that the applicant is "…enabled to present her case adequately before the court."[2]

[19]The applicant submitted that she has no financial means to absorb costs associated with the advancement of her case to finality. Further, that the respondent is in position to provide the said assistance. In addition, that as at the time of this application there was already an amount of R1,4m which was due to the attorneys for the services rendered.

[20]The applicant stated further that records which were discovered by the respondent demonstrate that he has sufficient funds to assist the applicant. In one of the statements, it shows a credit of the amount in excess of 9 million. The amount of R800 000.00 paid into the attorneys' trust account of the respondent was paid from the GT Trust account despite the fact that the said Trust bear no responsibility for his living expenses. The legal position is that the parties should be afforded equal strength during the litigation process.

[21]The applicant further stated that the courts have previously held that in Rule 43 applications most of the parties fails to take the Courts into their confidence and honestly disclose their financial information. Further, that Wilson AJ (as he then was) stated in the application which served before him that the respondent's financial

[2] *Van Rippen v Van Rippen* 1949 (4) SA 634 (C) at 638. See also *Dodo v Dodo* 1990 (2) SA 77 (W).

records were not adding up. Wijnbeek AJ has also concluded that the respondent is a man of good means.

[22]The respondent in retort raised several arguments. First, he persisted with the contention that the applicant is not entitled to the second bite of the cherry. The Court has granted her the same relief and cannot be heard to request a similar relief again. The order of Wijnbeek AJ stated that the costs contribution includes all, including the interlocutory applications, which ensued and cost of the first day of the trial. In reply thereto, the applicant stated again that the bill attached set out distinct costs incurred and also those envisaged to be incurred.

[23]Secondly, that contribution for legal costs does not include costs associated with interlocutory proceedings. In this regard reference was made to the position in this Division that legal costs associated with interlocutory applications are not catered for in terms of Rule 43. This position was considered by Bezuidenhout AJ in *BJM v WRM*,[3] who stated costs for interlocutory applications may be included in a nuanced fashion and the test would be whether such interlocutory application is aimed at advancing the finalisation of the case.

[24]Thirdly, that the applicant's bill of costs appears to be exaggerated and to this end the respondent made reference to *Du Preez v Du Preez*,[4] where the Court cautioned against exaggerated or unreasonable claim for the costs incurred or to be incurred. Further, that on a closer look at the bills attached by the applicant the following items refers to interlocutory applications which cannot competently be claimed as per Wijnbeek AJ's judgment. Those items relate to the application to compel, contempt application and the appeal, Rule 30 application, this application and rescission and the application to stay.

[25]Fourthly, that the respondent cannot afford to make contribution of the amount sought by the applicant as at the end of the month he is left with amount of R37 000.00 being the nett remaining funds from his salary of R157 000.00. The

[3] [2023] ZAGPJHC 401.
[4] 2009 (6) SA 28 T.

payments of R800 000.00 made by GT Trust to the respondent's attorneys are contributions towards legal costs for the Trust's litigation matters and not for the respondent's matters.

[26]The applicant on the other hand contended that the respondent opted to suffer from mutism regarding his gross earning which includes travelling for R22 000.00 per month, incentives (and bonuses) and a staggering contribution of R88 194.00 to the pension fund.

[27]Applicant persists that the respondent is a man of good means and should be ordered to contribute. Further that in any event the question whether the respondent can afford has been determined in the previous applications which served before Wilson AJ (as he then was) and Wijnbeek AJ. The respondent having failed to challenge those findings or to demonstrate that his financial position has deteriorated, then *cadit questio*.

Issues

[28]The issue for the determination is whether the applicant has made out a proper case for the relief sought in terms of Rule 43(6).

Legal principles and analysis.

[29]The test to determine an application brought in terms of Rule 43(6) is whether the applicant's circumstances have materially changed; that the applicant cannot afford and that the respondent can afford to make a contribution for the legal costs.

[30]The rationale underpinning this provision is to ensure that a spouse with low means should be allowed equitable access to legal representation and any restriction to fees would compromise her ability to engages the services of a competent legal representative. It is also based on the principle of equality of arms in the sense the litigant should be afforded the same benefit the other spouse has to exploit the

assets to fund the litigation.[5] In the premises, if a spouse is litigating on a reasonably luxurious scale including using several legal representatives the other partner should be afforded the similar latitude.[6]

[31]It is common that women generally are economically inactive and remain at home raising the children hence are financially vulnerable whereas the husband go out to work to provide for the wife and the children. To this end it is a regular occurrence that Rule 43 applications evinces gender-based inequalities. As such, it follows that women would be the ones at the receiving end and are disadvantaged in divorce litigation matters.[7]

[32]In determining the need and the question of contribution the Court would have regard to various factors including the complexity of the matter, e.g. if an expert is required, the costs to procure same, consultations and preparation for trial.

[33]Notwithstanding the aforegoing, the Court should not be seen to encourage over spending by applicants who may intend to use the applications in terms of Rule 43 as a free ride or just a meal ticket.[8] The Court is therefore enjoined to discourage unwarranted applications which may unnecessarily delay the finalisation of the action. Whilst it is acknowledged that the orders should not be made to punish a litigant, once a litigant is alive to a threat of an order of legal costs he may be encouraged to engage in negotiations in good faith and have the divorce matter being settled sooner.

Material change of circumstances.

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[5] The rights enshrined in the constitution which are implicated includes, right to access to courts (s34), right to dignity (s11), right to equality (s9).
[6] See *Glazer v Glazer* 1959 (3) SA 928 at 928A- C.
[7] See *AF v MF* 2019 (6) SA 422 (WCC) at [14] *et seq*. see also Constitutional Court in *S v S* 2019 ZACC 22; 2019 (6) SA 1 (CC); 2019 (8) BCLR 989 (CC) at [40] where it was stated that "It is the more financially vulnerable spouses, usually the wives, who disproportionately bear the brunt of all this. Generally, they are the ones who launch rule 43 applications. This is so because it is women, who more often than not, are the primary care-givers."
[8] See *Nilsson v Nilsson* 1984 (2) SA 294 (C). See also *Greenspan v Greenspan* 2000 (2) SA 283 (C) at [17].

[34]It was stated in *P.E.O.I v W.A.H*,[9] that an applicant in Rule 43(6) applications must make full and frank disclosure in respect of his/her financial circumstances in order to evaluate material change.

[35]The question whether there is material change in the circumstances should in this case be assessed based on what transpired since the order of Wijnbeek AJ was granted. The order granted by Wijnbeek AJ catered for the postponement of the trial and the application to compel discovery. The changes would in this *lis* be linked to the myriad of applications instituted by the parties since the order by Wijnbeek AJ. It therefore follows that the items on the bill of costs which relates to the postponement of the trial and application to compel should not be allowed.

[36]That notwithstanding it is opined that there is no need to proof change in circumstances where the application is for contribution towards wasted costs. It is stated that:

> "It is important to note that Rule 46(3) distinguishes between material change in circumstances insofar as maintenance, custody or access of minor children are concerned and the proviso that the contribution towards costs must be inadequate. It is therefore not necessary for an Applicant to prove a "material change in circumstances" in order to obtain a further contribution towards costs. What the Applicant must prove in terms of Rule 43(6), is that any previous contribution ordered by the court is "inadequate."[10]

[37]I therefore conclude that there are material changes circumstances since the previous Rule 43(6) application and therefore this requirement has been satisfied. In any event as set out by the authors in the aforegoing paragraph it appears that in applications for contribution towards legal costs the requirement for the material change in circumstances recedes to the background or pales into insignificance.

The applicant's affordability.

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[9] [2021] ZAGPPHC 60.
[10] A Practical Guide to Patrimonial Litigation in Divorce Actions, Issue 17, 6-2.

[38]It is not in dispute between the parties that the applicant is unemployed. The contentions by the respondent that the applicant has access to the funds in the Trust are unsustainable since the said funds can only be paid once the Trustees have exercised their discretion to make any payment and no right can be exerted by the applicant unless it has accrued to the applicant.[11] The evidence presented clearly indicates that the Trustees have exercised their discretion not to pay the applicant's legal costs until the applicant has settled the loan amount. The respondent did not advance any reason to gainsay this position.

[39]It appears that the respondent seeks to impugn the correctness of the decision taken by the SLF's Trustees to refuse to contribute to legal costs alternatively that the applicant and trustees have concocted a story with the object of frustrating the respondent from asserting that the applicant has access to funds which could be applied to her litigation matter. It is understood that the trustees have an obligation to act in the interest of the beneficiaries and if the respondent intends to question or impugn the genuineness and fairness of the decision of the trustees then the Court would have to make that determination.[12] In this case no such argument is advanced and since I am limited to the case before me[13] this issue need not detain me.

[40]In general, a party is not compelled to exhaust all his/her kitty to fund the litigation costs where the opponent can assist.[14] "Although, an applicant may have disposal assets, it has been held that it is not expected of the applicant to denude

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[11] Beneficiaries in a discretionary trust hold what is often called a 'mere expectancy', meaning they do not have a fixed entitlement to trust assets but are potential recipients at the trustee's discretion.
[12] In *Doyle v Board of Executors* (1999 (2) SA 805 (C) the court was dealing with a contingent beneficiary where the trustees had a discretion, not merely regarding the mode of applying the terms of the trust, but whether or not to distribute to a particular beneficiary. The court stated that despite the contractual nature of a trust, it is *". . . unquestionable that the trustee occupies a fiduciary office. By virtue of that alone he owes the interest good faith towards all beneficiaries, whether actual or potential.*" See also *Griessel NO and Others v De Kock and Another* [2019] ZASCA 95; 2019 (5) SA 396 (SCA) where it was held that even contingent beneficiaries are entitled to protection.
[13] See SCA in *Member of the Executive Council, Department of Education, Eastern Cape v Komani School & Office Supplies CC, t/a Komani Stationers* [2022] ZASCA 13, quoted with approval sentiments in *Fischer and Another v Ramahlele and Others* [2014] ZASCA 88; 2014 (4) SA 614 (SCA); [2014] 3 All SA.
[14] *Lyons v Lyons* 1923 TPD 345 at p346.

himself/herself of assets to fund the litigation, and if the other party is in a position to provide a contribution, then a contribution would be ordered."[15]

Respondent's affordability.

[41]The applicant is enjoined to demonstrate that the respondent can afford to make the required contribution. I am not invited to determine whether any of the respondent's Trusts are *alter egos* for the respondent. The arguments advanced by the applicant that R800 000.00 as ordered by the Wijnbeek AJ was paid by the Trust suggest that the respondent has access to funds from which contribution could be made. The contention by the respondent that the said funds were for other litigation matters could not be substantiated and would therefore not be accorded any credence.

[42]Wijnbeek AJ has already made a finding that the respondent is receiving a substantial monthly salary and is a candidate to receive more in the form of dividends and bonuses.[16] The respondent appear to be quite reticent about his financial capacity. Wilson AJ (as he then was) noted that the respondent has not been honest in the declaration about his income and as it is normally the case that parties are usually less candid with their disclosures. The conclusions arrived at by both Wilson AJ (as he then was) and Wijnbeek AJ on this issue appear to have been received by the respondent without demur as he failed present any argument to displace those conclusions alternatively that his financial position has deteriorated since the findings of the above judges. I am therefore inclined to conclude that the respondent can afford to assist his wife financially to litigate against him.

Quantum

[43]The contention with regard to the exaggeration of costs has been explained by the applicant who clearly delineated that the acceptable rate is to double the figures on the prescribed tariff to determine the amount which must be charged for attorney and client scale. And to this end the respondent's contention is not sustainable.

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[15] LexisNexis at 6-4 having referred to See also *De Villiers v De Villiers* 1965 (2) SA 884 (C), *Van Niekerk v Van Niekerk* 1947 (2) SA 8 (T), *Smallberger v Smallberger* 1948 (2) SA 309 (O).
[16] See para 10 of the judgment on CL 016=B-3.

[44]The manner of assessment of quantum of the contribution towards cost was dealt with in the case of *Van Rippin v Van Rippin*[17] as follows:

> "…the quantum which an applicant for a contribution towards costs should be given is something which is to be determined in the discretion of the Court. In the exercise of that discretion the Court should, I think, have the dominant object in view that, having regard to the circumstances of the case, the financial position of the parties, and the particular issues involved in the pending litigation, the wife must be enabled to present her case adequately before the Court. In any such assessment the question of essential disbursements must necessarily be a very material factor."

[45]In instances where it is clear that a party is not earning or receiving income from elsewhere and the respondent can afford, he "…should `be required to pay in advance not only a reasonable sum as a contribution towards the costs of his wife but the whole amount of her estimated costs."[18] It is clear in this case that the respondent is man of good means or considerable wealth.

[46]Whilst the Court may in exercising its discretion generally not award all costs claimed it must be alive to the fact that the litigant should not be compromised and not be able to adequately place her case before the Court.[19] Victor J stated that:

> "Of course, there may be times where, upon exercising judicial discretion in the light of all relevant factors and circumstances, only a partial, rather than full, contribution is deemed reasonable. The judgement of *AG v LG,* handed down subsequent to *A F v MF*, cautioned that whilst a holistic approach should be adopted when considering the appropriate contribution to cost, when a court exercises its discretion an 'equality of arms' must be-
> "balanced with maintaining an equitable exposure of both of the adversaries to the risk of the chilling consequences of ill-considered incurrence of costs.

[17] 1949 (4) SALR 634 (C) at 639.
[18] See *Zaduck v Zaduck* 1966 (1) SA 78 (SR).
[19] See also para 97 of Victor J in *H v H* 2023 (6) SA 279 (GJ).

Both parties are required to be realistic about the litigation and should be incentivised to focus on reaching early and mutually benefit settlements."[20]

[47]I am of the view that the respondent should therefore settle all that is reasonably required as long as it is within his means.

Interlocutory applications

[48]The judicial pronouncements in this Division generally states that interlocutory applications should not be catered for in the Rule 43 applications. The respondent referred in this regard to *S v S*.[21] The position was contrasted with the Western Cape Division's sentiments in *A.V.R v J.V.R and Others*,[22] where it was concluded that there is no basis for the said conclusion instead legal costs should include those in the interlocutory applications. The approach of the Western Cape should be adopted, so the argument continued.

[49]Bezuidenhout AJ in *BJM v WRM* referred to *S v S* which had regard to the previous authorities in this Division which held that costs of the pending divorce action "…excludes the costs of interim or interlocutory applications and other disputes between the parties, see *Winter, Service, Micklem and Maas.* But concluded that the common law should be developed and the said conclusions should be jettisoned. This Division has already endorsed this position in the reported judgment in Victor J who had regard to various authorities and concluded that common law should be interpreted through the prism of the Constitution which, *inter alia*, places a high premium on the right to equality. In the premises the judgment by Victor J has arrested the alleged the uncertainty in this Division and applicants should not be discouraged to exert their rights as it (the right to bring interlocutory application) is not a benefit reserved for the respondents who have *money to burn*.

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[20] Footnotes left out.
[21] [2022] ZAGPJHC 483. Other judgments considered were *Maas v Maas* 1993 (3) SA 885 (O), *Micklem v Micklem* 1988 (3) SA 259 (C), *Service v Service* 1968 (3) SA 526 (D), *Winter v Winter* 1945 WLD 16.
[22] [2020] ZAWCHC 134. Which followed in *A.L.G v L.L.G* [2020] ZAWCHC 83; See also *R.M v A.M* [2022] ZAWCHC 65.

[50]It is clear that the wealthier disputants should not be supported by the Courts that they may expend as much as they deem fit in the legal odyssey whilst leaving the poorer disputants to the perils of being destitutes.

[51]Both parties have briefly delved into the merits and demerits of pending applications but I am loath to venture therein as the said applications will be determined in due course by another Court. That notwithstanding the contention by the respondent that this Court should not consider costs on what was stated before Wijnbeek AJ has merits and the principle of *res judicata* or *lis pendens* is correctly invoked. Counsel for the respondent identified several items on the bills which relates to specific interlocutory applications. The contention is sustainable only in relation to the application to compel which has been catered for in the judgment by Wijnbeek AJ. Items linked to contempt of court application, Rule 30 application, application for rescission and application to stay, appeals are not implicated.

Conclusion
Quantum

[52]The respondent seems to be saying to the applicant catch me if you can. The Court ordered him to pay the R800 000.00 and this he paid to his attorneys. Though Rule 43 applications are in general not appealable he took a decision to appeal. His objective is to make it difficult for to procure services of a competent legal representative or not secure one at all as she has no means which will dissuade or dampen the urge by legal practitioners to provide the applicant with a measure of comfort.

[53]The respondent took umbrage with the argument that pending interlocutory applications should not be catered for under Rule 43(6). But this argument was not advanced with the necessary vigour before Wijnbeek AJ who ordered that application to compel discovery (which is an interlocutory application) be catered for in the sum of R800 000.00. If the respondent is able to institute proceedings at any time for interlocutory application and deploy funds to pay for his legal representatives the applicant should be allowed and be treated equally with the respondent and be allowed to do so without any disquiet.

[54]Noting that costs relating to the application to compel should be excluded, the costs associated therewith as identified in the bill attached to the applicant's papers in this *lis* were in the region of R350 000.00. The other items on the bills relates to the provision for fees for the attorneys and counsel in respect of pending interlocutory applications up to and including the hearing to the tune of R1 500 000.00. The said pending applications are not necessarily complex to require attendance of an attorney, a professional assistant and a candidate attorney at the same time. The said applications would no longer require more attendances as they appear to be ready for hearing. The applicant has submitted that as of date of hearing the amount due for legal costs was already R1 400 000.00 and these included costs linked with the application to compel.

[55]Having to the regard to the above permutations which formed the basis to exercise my discretion, I conclude that the amount to be allowed should be adjusted to R2 200 000.00.

Costs of this application.

[56]There is a perspective that costs for the applications should be costs in the cause. But on the basis of the very same logic that parties should be treated the same, if the respondent can pay for legal service rendered in the interlocutory applications there is no reason for denying the spouse the same latitude. To do would be to expose her to unhappy legal representatives who may have to institute proceedings in terms of Rule 43(6) knowing that their bills would not be settled immediately but possibly at some stage at the end of the litigation. This I am reluctant to countenance.

Order.

[57]I therefore order as follows:

1. The respondent pays the applicant amount of R2 200 000.00 as contribution towards legal costs payable in three equal tranches, the first being payable within 10 days of this order.

2. The respondent is ordered to pay the costs of the application.

M V NOKO
JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, JOHANNESBURG.

Dates:
Hearing: 5 November 2024
Judgment: 24 January 2025

Appearances:
For the Applicant: M Nowitz
Instructed by Nowitz Attorneys

For the Respondent: Amandalee De Wet SC
Instructed by Steve Merchak Attorneys