

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

CASE Number: 70078/2023

(1) REPORTABLE: ~~YES~~/NO  
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO  
(3) REVISED: YES/NO  
26/06/2024

In the matters between: -

O[...] N[...] M[...]

APPLICANT

And

A[...] N[...] M[...]

RESPONDENT

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**JUDGMENT**

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**BAQWA,**

**Introduction**

[1] The parties herein are involved in divorce proceedings and there are two minor children born of the marriage namely L[...] S[...] M[...] (11 years old) and G[...] L[...] M[...] (7-year-old).

[2] The applicant brought an application in terms of the Uniform Rules of Court for primary care and residency of the two minor children of the marriage pending finalisation of the family advocate's investigation and recommendations to this court.

- [3] After the applicant issued the Rule 43 application the respondent issued a counterclaim about twelve months after she departed from the matrimonial home. She claims maintenance for the minor children, spousal maintenance and a contribution towards costs.
- [4] After the respondent set the matter down for hearing on 15 April 2024, the court found that the matter was not ripe for hearing with the respondent having filed her financial disclosure on 13 April 2024.
- [5] It was agreed between the parties that the matter pertaining to spousal maintenance, maintenance for the children and contribution to costs be postponed until the parties had exchanged their financial disclosure documents with an interim order.
- [6] The matter was referred to the family advocate for an investigation and the parties agreed that in the interim the primary residency would be with the respondent subject to applicant's right to contact.
- [7] In the interim it was agreed that the applicant would continue to pay school fees and the expenses of the minor children directly to the suppliers for school clothes, airtime and data, clothes and school outings and that the applicant should contribute R1000.00 per month, per child.
- [8] The applicant returned the BMW vehicle with registration number J[...] 3[...] V[...] G[...] to the respondent.
- [9] According to respondent's income and expenditure account she had a short fall of R9110.82 and she claimed spousal maintenance of R15 000.00.
- [10] It was however conceded by her counsel that she had not made out a case for spousal maintenance in her papers supporting the counterclaim.
- [11] Whilst it is true that the minor children reside with the respondent together with the respondent's parents where they are cared for and that the applicant pays

for some of their needs as indicated above, it is not denied that the respondent remains the main person to look after the minor children 24/7 whilst the applicant is relieved of that responsibility in the interim. The applicant has to therefore take care of the children's basic needs on a daily basis and the applicant ought not to shift his duty to maintain his children to the respondent's parents.

[12] In *VS v AS*<sup>1</sup> the court held that although the criteria set in section 7(2) of the Divorce Court applies specifically to divorce, as opposed to Rule 43 applications, it considered that there is no harm in adapting the criteria to proceedings in terms of Rule 43. The factors include, inter alia, "the existing or prospective means of the parties, their respective earning capacities, financial needs and obligations, the age of each of the parties, the duration of the marriage, the standard of living of the parties prior to the divorce, and any other factor which in the opinion of the court should be taken into account."

[13] Considering all of the above factors and the fact that the respondent currently has the primary residency of the minor children and despite the fact that the applicant provides for some of the needs of the children, I consider the cash contribution of R1000.00 per month child to be wholly inadequate, hence the award of the amount of R5000.00 cash contribution per month per child.

[14] Considering that an order was made 15 April 2024, I make an order varying that order as follows:

#### Order

[15.1] The order granted on 15 April 2024 is varied as follows:

[15.2] That the applicant continues to pay school fees and the following the following expenses of the minor children directly to the different suppliers:

##### 15.1.1 School clothes

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<sup>1</sup> (12496/2019) 2020 ZAGPJHC 27 (11 February 2020)

15.1.2 Airtime and data

15.1.3 Clothes

15.1.4 School outing

[15.3] The applicant to pay an amount of R5000.00 per month, per child to the respondent, into the respondent nominated account on the 15<sup>th</sup> of every month as from 15 July 2024.

[15.4] Each party pays their own costs.

**SELBY BAQWA**

JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

Date of hearing: 12 June 2024

Date of judgment: 26 June 2024

**Appearance**

On behalf of the Applicants  
Instructed by

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