



IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Case No.: 18688/2022

In the matter between:

C[...] V[...] S[...] Applicant

and

S[...] V[...] S[...] Respondent

Heard: 20 January 2026

Further submissions: 10 February 2026

Delivered: 16 February 2026

JUDGMENT

HOLDERNESS, J

[1] The applicant, Mr. C[...] v[...] S[...], applies in terms of Uniform Rule 43(6) for a variation of the Rule 43 orders granted on 26 January 2023 and 15 June 2023 by Justices Erasmus and Pangarker respectively.

[2] The variation sought is, in the applicant's words, 'indeed drastic.' He seeks an order that he no longer pay any cash maintenance to his estranged wife, the respondent, Mrs. S[...] v[...] S[...] and to his two minor daughters (the children), nor any rental in respect of their accommodation, electricity, water and household insurance.

[3] It is for this court to determine whether a material change in circumstances has occurred in his circumstances, as alleged by the applicant.¹ The applicant does not contend that there has been a material change in circumstances of the respondent.

[4] Our courts have repeatedly emphasised that this subrule must be strictly interpreted.² If an application is unreasonable, but not necessarily an abuse of the court, the court may exercise its discretion against the

¹Rule 43(6) provides that 'The court may, on the same procedure, vary its decision in the event of a material change occurring in the circumstances of either party or a child, or the contribution towards costs proving inadequate.'

²*Grauman v Grauman* [1984 \(3\) SA 477 \(W\)](#) at 480C; *Micklem v Micklem* [1988 \(3\) SA 259 \(C\)](#) at 262E–G; *Maas v Maas* [1993 \(3\) SA 885 \(O\)](#) at 888C; *C.L.J v C.L.E* (unreported, GJ case no 34367/19 dated 26 April 2023) at paragraph [19]; *Z.G v J.G.C.G* (unreported, GP case no 77979/2018 dated 12 January 2024) at paragraphs [43–[44] and the cases there referred to.

applicant and dismiss the application.³

[5] In an application such as this, for a reduction in the interim maintenance payable based on an alleged decline in the financial situation of the applicant, a ‘full and frank disclosure of all of the numerous and varied elements which make up the broad overview of the applicant’s financial situation’ should be made.⁴

[6] The applicant bears the onus of establishing on a balance of probabilities that a material change has occurred. He must demonstrate not only that a change in circumstances has occurred, but ‘must place sufficient facts before the court to enable it to determine the materiality of that change in the context of the applicant’s broader financial circumstances.’⁵

Litigation history

[7] On 26 January 2023 Erasmus J ordered the applicant to pay interim maintenance for the respondent and the children pending the sale of the matrimonial home (the property), and an initial contribution towards the respondent’s legal costs⁶.

[8] In April 2023 the applicant, not one to let the grass grow under his feet, re-enrolled the matter and applied in terms of Rule 43(6) for a variation of the order of Erasmus.

[9] On 15 June 2023 Pangarker AJ⁷ granted an order in terms of Rule 43(6), in line with a tender made by the applicant, directing the applicant to pay interim maintenance in the sum of R42,000 for the respondent and the children, plus payment of the medical and education expenses of the respondent and the children (the Pangarker J order).

³*Greenspan v Greenspan* [2001 \(4\) SA 330 \(C\)](#) at 335E–F; *C.L.J v C.L.E* (unreported, GJ case no 34367/19 dated 26 April 2023) at paragraph [20].

⁴*C.L.J v C.L.E* (unreported, GJ case no 34367/19 dated 26 April 2023) at paragraph [22] and the cases there referred to.

⁵*Id.*

⁶Erasmus granted leave to the parties to re-enrol the matter for hearing on an urgent basis a week prior to registration of transfer of the property.

⁷As she then was.

[10] The applicant's tender was based on his income of R58,000 per month, and the monthly return of his investment of the remaining proceeds of the sale of the property which according to his conservative projection would be R30,000 per month, providing him with a total income of R88,000 per month.⁸

[11] In August 2024, a mere year after the order of Pangarker J was granted, the applicant launched a further R43(6) application, seeking a (further) variation of the first order and a variation of the second order, by the reduction of cash maintenance payable from R42,000 to R24,000 per month until 13 November 2024, and from 1 December 2024, a further reduction from R24,000 to R20,000 per month.

[12] Lekhuleni J dismissed the application, with costs. In his detailed and carefully reasoned judgment, Lekhuleni J made the following important findings and observations:

- (a) The relief sought was drastic and would have far-reaching consequences for the minor children and the centrality of the child's best interest must guide the court in deciding whether to grant such an order.
- (b) The applicant pleaded poverty despite depositing R2 million from the sale proceeds of the property into the bond account of V[...] Properties (Pty) Ltd (V[...]), a property holding company of which he is the director, which he intends to 'start a new business.'
- (c) It is not in the children's best interest that instead of paying for their reasonable maintenance requirements, the applicant should invest the R2 million. The maintenance which the children required cannot be deferred.
- (d) The applicant failed to show that the R2 million and the R1.8 million are the only remaining capital available to him.
- (e) The applicant failed to explain why the medical aid premiums for himself, the respondent and the children are paid from B[...], a business conducted by his brother.
- (f) The applicant averred that he moved in with his brother to save on rental, however he omitted to mention that such property is owned by him and his brother in equal shares. I shall revert to this aspect below.
- (g) The applicant had dishonestly engineered the proceeds of the sale of the property to portray a significant reduction thereof.

[13] Justice Lekhuleni found that the applicant had 'lamentably failed' to fulfil his duty of making a full and proper disclosure of his financial affairs. Regrettably, and for the reasons set out below, the applicant has again failed to do so.

⁸Notably the applicant stated that he was aware when he made the April 2023 tender that his employer, B[...] M[...] (Pty) Ltd, was being sold, and that he would soon be unemployed.

[14] In paragraph [34] of his judgment Lekhuleni J stated as follows:

‘In this case, we know that he has liquidated some of his assets and he deposited some funds in various bank accounts. Evidently, this is a quintessential matter where the applicant should utilise the remaining capital including the sum of R1.8 million and R2 million to comply with his current maintenance obligations. Clearly enough capital is available to maintain the respondent and the children pending the finalisation of the divorce.

[15] This application is the second Rule 43(6) application within a year, and the third such application brought by the applicant.

[16] Notably, the learned judge found that by failing to provide, at the minimum, a schedule of his assets and liabilities, the most fundamental of financial disclosures, the applicant had failed to fully and honestly explain how the proceeds of the sale of the property had been applied and accordingly had failed to discharge the onus resting upon him in terms of rule 43(6).

[17] In the circumstances Lekhuleni J found that the application was an abuse of process and devoid of merit. The court dismissed the application, with costs.

[18] What this highlights is that, in view of the glaring deficiencies in the previous Rule 43(6) application, the adverse findings made by Lekhuleni J regarding the non-disclosures by the applicant and how this impacted on his credibility, the applicant was under no illusion of what was required of him to meet the strict threshold to obtain relief based on an alleged material change in his circumstances under Rule 43(6).

The present Rule 43(6) application

[19] The applicant has, for his entire working life, worked as an entrepreneur in various ventures. The upshot of this is that depending on which venture he is involved in, he pulls the levers which determine the income and benefits which he receives.

[20] The applicant alleges that his *‘circumstances have deteriorated since the hearing of the (last) Rule 43(6) application. As anticipated and what I had alleged in that application is that if the Rule 43 order was not varied, I would have (and now have) depleted all available capital which I had to pay my*

existing maintenance obligations.'

[21] What the applicant fails to state is that in flagrant breach of and with clear disregard for the findings of Lekhuleni J, this 'available capital' was not applied to his maintenance obligations, but rather was ploughed into W[...] M[...] (Pty) Ltd t/a E[...] R[...] (E[...] R [...]), a company which the applicant alleges had been 'badly managed' by his brother and which he had to invest money in to 'to do certain renovation work...replace some kitchen equipment and re-brand'.

[22] The applicant commenced employment as the manager of E[...] R[...] in December 2024 and decided to pay himself a nett monthly income of R38,520, which conveniently leaves him with a paltry surplus of less than R2,000 after he has paid what he lists as his monthly expenses of R36,267.

[23] As director, the applicant (on his version) loaned E[...] R[...] approximately R1million. In this regard he alleges that as he has a 'vested interest' (I pause to mention that he is not a shareholder in W[...] M[...]) he had 'no alternative' but to withdraw the R2 million held in V[...] (which Lekhuleni J found should be used to maintain the respondent and the children *pendente lite*) to loan to E[...] R[...].

[24] Moreover, the applicant avers that he has had to withdraw the funds held in the children's investment accounts, totalling R1,800,000, to meet the shortfall between his income and his maintenance obligations.

[25] The applicant annexed to his founding affidavit a schedule of how the proceeds from the sale of the property were utilised. It appears from this schedule that the applicant has spent the full proceeds from the sale of the property, in the sum of approximately R7.2 million, over a two-year period.

[26] The application of the proceeds includes repayment to his father and brother totalling R2,500,000. He does not say what these repayments relate to, nor does he file loan agreements or similar supporting documentation, nor confirmatory affidavits from these creditors.

[27] Further payments listed in the schedule are R250,000 for capital gains tax and R320,000 for credit card debt. Despite facing deserved criticism by Lekhuleni J regarding the dearth of supporting evidence in respect of such liabilities, these capital expenditure items are not supported by documentary evidence (in casu).

[28] A glance at this schedule reveals that of the R7,2 m received by the applicant on 7 August 2023, **R5,757,462** has been paid towards expenses other than the maintenance of the respondent and the children, which includes his legal costs which at the time of launching this application were an amount of **R1,687,463**.

[29] As emphasised by Lekhuleni J, the applicant has not provided any evidence that he has, since December 2023, when B[...] M[...] (Pty) Ltd was sold, made any attempts to find employment.

[30] The applicant attempts to excuse this is excused by vague alleging that, as a white male with no tertiary education, he is not employable. Again, this is not supported by proof of any attempts to find employment and must be considered in the context of the applicant's extensive experience as a businessman and entrepreneur which he relied on to assume the managerial position in E[...] R[...] to 'turn around; the flailing business.

[31] This was addressed in the judgment of Lekhuleni J, where the court found that the applicant's obligation to maintain his children overrides his plans to start a new business. The views and findings in the previous application were given short shrift by the applicant. This is not at all surprising. His contemptuous attitude towards the orders (and judicial officers) of this court are clear.

[32] The applicant has already been found, by Wille J on 28 August 2023, to be in contempt of the orders of Erasmus J and Pangarker J. Wille J, in his reasons for the final order granted, observed as follows⁹:

'The respondent's conduct generally indicated the respondent's obstructive mindset. The WhatsApp messages sent by the respondent to the applicant were uncalled for and telling. This is in the context of when the applicant sought funds for food and a contribution towards the payment of electricity. These are, after all, basic needs and not luxurious expenses. The respondent unilaterally deducted amounts from the applicant's maintenance without informing the applicant. This indicates the respondent's mindset, which confirms his *mala fides*, given that their maintenance amounts were primarily for the benefit of his minor children.'

[33] In a WhatsApp voice note which the applicant sent to the respondent on 26 October 2024 (after the dismissed application was heard by Lekhuleni J), the contents of which were not disputed by him, he said:

*.'Hy (the judge) sal ons sien volgende jaar en dan gaan ek daar sit...Right...ek will nou so f***en gesig sien as ek vir home se: daar's nou nie geld noe – ons is almal op die straat – wat se hy. Maar anyways dis wat gaan gebeur.'*

⁹At para [21].

[34] Notwithstanding the sheer hubris of the applicant, and in an attempt to end the series of rule 43(6) and contempt applications, I proposed to the parties, after having obtained leave from the Office of the Judge President to do so, that an expedited date for the hearing of the divorce action, in the interest of bringing the matter to finality and having regard to the best interest of the children, could be obtained early next term, approximately two to three months after the hearing of this application. This proposal was not acceptable to the respondent. He indicated that he could not afford to comply with the order for the next three months and that the application therefore should proceed.

[35] The applicant was aware of the obstacles to relief in view of the strict requirements of Rule 43(6) and the obvious and glaring deficiencies in the present application which is based on substantially similar facts as the previous dismissed application. He is the author of his own misfortune.

[36] This alleged change in circumstances has been strategically engineered by the applicant himself.

[37] As pointed out by the respondent, it appears from the list of accounts annexed to his affidavit that the applicant has a credit limit at his disposal of R405 803 and has access to further credit of R250 000. The applicant would have this court believe that he qualifies for these large credit limits on his stated gross monthly income of R50,000.

[38] Moreover, the annexed bank statements do not reflect the payment of the applicant's livings costs, including groceries and clothing. These expenses must be paid for from another undisclosed source.

[39] To date, the applicant has failed to properly and fully disclose the financial affairs of the C[...] v[...] S[...] Family Trust (the Trust) which he does not appear to deny is his *alter ego* and one of the instruments through which he conducts his financial affairs. The Trust owns 49% of the shares in E[...] R[...]. The applicant and his father, Mr P[...] L[...] v[...] S[...] were appointed as directors of W[...] m[...] on 5 August 2020 and were co-directors with the applicant's brothers from the inception of the company.

[40] The applicant accused his brother of having mismanaged the affairs of e[...] r[...] and alleges that as a result the applicant had shown based R1,8 million in the business. The applicants, by his own admission used his funds to further his own business interests and is now relying on his deliberate conduct insert doing as an excuse for not complying with his maintenance obligations, in circumstances where the Trust only owns a minority interest in W[...] M[...].

[41] It appears from the W[...] M[...] bank statements annexed to the respondent's supplementary

affidavit, which was admitted into evidence with the leave of the court and after the opposition thereto by the respondent was withdrawn, that as at 30 April 2025 the Trust, of which the applicant is the founder and trustee, paid the total amount of R2,4 million to W[...] M[...].

[42] These payments have not all been disclosed by the applicant, who in his founding affidavit only referred to the payment by the Trust of R800,000 to W[...] M[...] in 2024/2025. Several further unexplained payments, including a R35,000 from the iStore, also remain unexplained. The applicant's 'catch me if you can' approach, which has been strongly deprecated in similar applications, is entirely unsatisfactory and on this basis alone the application falls to be dismissed with costs.

[43] The applicant's circumstances have not materially changed or, at best for him, any change in his circumstances arises from his manipulation of his financial circumstances to motivate grounds for a further rule 43(6). He has failed to fully and honestly disclose all the elements which make up his true financial position and in so doing has failed to discharge the onus of establishing, on a preponderance of probabilities, that there has been a material change in his circumstances.

Costs

[44] I requested counsel, after the hearing, to prepare a note to the court, should they wish to do so, on whether an attorney and client costs order would be appropriate should the court decide to dismiss the application, as this was not dealt with at the hearing, and when preparing the judgment it became apparent that this is such a case where the court ought properly to mark its displeasure with the manner in which a litigant has conducted himself by ordering him to pay costs on an attorney and client scale.

[45] Ms Bartman, who appeared for the applicant, submitted that in the applicant's view the costs should stand over for determination at the trial, when the court will 'be in a position to verify the applicant's dire financial situation and be in a position to ascertain whether there was merit in approaching the court for a variation.'

[46] I am not persuaded that this is correct. If the applicant had made a full and frank disclosure and had shown that there was a material change which warranted the drastic and far-reaching relief he seeks, which will effectively leave his family without any financial means to pay for their necessary day-to-day expenses, he should have placed facts before the court to support such relief. His contemptuous approach in these and previous proceedings further undermines any basis on which it may be argued that the costs should not properly follow the result.

[47] In his note on costs, Mr. Cloete SC pointed out that the respondent did in fact request that the application should be dismissed with costs on a punitive scale as between attorney and client, and that

whilst such an order was not sought during argument, it was submitted in the respondent's heads of argument that the application is an abuse of process alternatively is unreasonable and devoid of merit, misguided and that there is no reason why the respondent should be out of pocket in respect thereof.

[48] I agree that I am not in the circumstances precluded from granting a punitive costs order in the exercise of my discretion to award such costs as I deem just.

[49] In *Mineworkers Investment Company (Pty) Limited v Modibane*¹⁰ the court confirmed that the fact that there is no prayer for such an order does not mean that such an order cannot be made. The applicant has now been given the opportunity make submissions in this regard, and accordingly the fact that the respondent has not sought such an order during argument can no longer cause any prejudice to the Applicant.

[50] It is trite that in awarding costs, a court has a discretion. In *Public Protector v South African Reserve Bank*¹¹ the majority of the Constitutional Court stated as follows:

‘More than 100 years ago, Innes CJ stated the principle that costs on an attorney and client scale are awarded when a court wishes to mark its disapproval of the conduct of a litigant. Since then, this principle has been endorsed and applied in a long line of cases and remains applicable. Over the years, courts have awarded costs on an attorney and client scale to mark their disapproval of fraudulent, dishonest or mala fides (bad faith) conduct; vexatious conduct; and conduct that amounts to an abuse of the process of court.’

[48] This manifestly is a case where ‘by reason of special considerations arising either from the circumstances which give rise to the action or from the conduct of the losing party, the court in a particular case considers it just, by means of such an order, to ensure more effectually than it can do by means of a judgment for party and party costs that the successful party will not be out of pocket in respect of the expense caused to him by the litigation.’¹²

[49] The applicant has once again failed to make a full and frank disclosure regarding all the numerous and varied elements which make up the broad overview of his financial position and launched an application for leave to file a supplementary affidavit in terms of Rule 43(5), to which the respondent was obliged to respond. The papers of that application (which was essentially an inadmissible replying affidavit) alone exceeded 120 pages. I agree with the respondent that in the premises, and having regard to the history of the matter, an attorney and client costs order against Applicant is warranted. There is no reason why the respondent should be out of pocket in any way in respect of the application.

Order

[50] In all the circumstances the following order is granted:

¹⁰2002 (6) SA 512 (W) at para [32].

¹¹2019 (6) SA 253 (CC).

¹²*Nel v Waterberg Landbouwers Koöperatiewe Vereeniging* 1946 AD 597 at 607, Quoted with approval in *inter alia Swartbooi and Others v Brink and Others* 2006 (1) SA 203 (CC) at para 27

(a) The application in terms of Rule 43(6) is dismissed with costs, such costs to be taxed on the scale as between attorney and client.

M HOLDERNESS

JUDGE OF THE HIGH COURT

Appearances

For the applicant: Adv Bartman

Instructed by: Cluver Markoter Inc

For the respondent: Adv Cloete SC

Instructed by: Nabal Attorneys