IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Not Reportable

Case No: 2026-190344

In the matter between:

V[...] P[...] Applicant

and

D[...] P[...] Respondent

Neutral citation: *P[...] v P[...]* (Case No 2026-190344) [2026] ZAWCHC __ (10/09/2026)

Coram: DAVIS J

Heard: 14 August 2026; 4 September 2026

Delivered: 10 September 2026

Summary: Contempt of court – failure to comply with Rule 43 order for payment of interim maintenance –respondent declining to give oral evidence in order to discharge the evidentiary burden resting on him and electing to stand or fall by his evidence on affidavit – respondent's explanation for default so far-fetched and untenable as to warrant rejection on the papers – respondent failing to discharge evidentiary burden to show that his default was not wilful and *mala fide* – contempt of court established on the papers – respondent held in contempt and sanctioned to periodic imprisonment suspended on condition that he complies with conditions aimed at enforcement of the Rule 43 order – attorney and own client costs awarded against the respondent as a mark of Court's severe condemnation of his conduct and in order to grant the applicant the fullest possible indemnity.

ORDER

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1. It is declared that the respondent is in contempt of the order of this Court granted on 28 May 2026 under case number 2026-059919 by Ms Justice Rararala ('the Rule 43 order').

2. The respondent is hereby committed to periodic imprisonment every weekend from 18h00 on a Friday to 08h00 on a Monday for a period of six months, commencing on the first Friday following the granting of this order, subject to paragraph 3 below.

3. The order for the respondent's committal in paragraph 2 above shall be suspended until such time as a final decree of divorce is granted in the action pending under case number 6941/2024, on condition that the respondent complies with the provisions of paragraphs 3.1 and 3.2 below, failing which the applicant may approach this Court on the same papers, duly amplified, for an order directing the respondent's committal in terms of paragraph 2 above:

3.1. The respondent shall, <u>within fourteen (14) days of the granting of this order</u>, remedy his current default of the Rule 43 order by either:

3.1.1. paying the balance of the arrears and interest owing in respect of the Standard Bank mortgage bond registered over the applicant's and the children's home at [...] B[...] Avenue, Newlands, Cape Town ('the B[...] bond') as at date hereof; or

3.1.2. entering into a written payment arrangement with Standard Bank, to the satisfaction of Standard Bank, to settle the balance of the arrears and/or interest currently owing in respect of the B[...] bond,

and providing proof of such payment or written payment arrangement to the applicant's attorneys within the said 14-day period.

3.2. The respondent shall, for the duration of the Rule 43 order, refrain from breaching any of the terms of the Rule 43 order, including, but not limited to, failing to make full and timeous payment of the monthly cash maintenance for the applicant and the minor children, as well as the monthly mortgage bond instalments in respect of the B[...] bond and any amounts due in terms of any payment arrangement entered into with Standard Bank in respect thereof.

4. The respondent shall be liable for the costs of this application, including the postponement application and hearing on 14 August 2026, which shall be paid on the scale as between attorney and own client, such costs to include the cost of employing senior counsel, and the costs of perusing and analysing documentation referred to in the affidavits and required to collate the annexures to the application.

JUDGMENT

DAVIS, J:

Introduction

[1] These are contempt of court proceedings. The applicant and the respondent are in the throes of a divorce. On 28 May 2026 Justice Rararala granted an order in favour of the applicant for payment of interim maintenance pending the divorce in terms of Rule 43 of the Uniform Rules of Court ('the Rule 43 order').

[2] In terms of the Rule 43 order, the respondent was directed, *inter alia*, to pay a cash maintenance amount of R 31,500.00 for the applicant and the minor

children on the 1st day of each and every month, with effect from 1 January 2026; to reinstate and maintain medical aid cover for the applicant and the children and to pay all their medical expenses not covered by the scheme, to pay the children's educational costs (including school fees and extra-mural activities); to pay certain expenses in respect of the property in which the applicant and the children reside ('the children's home'), including the monthly mortgage bond instalment as well as any arrears and interest owing to Standard Bank in respect of the children's home.

[3] The respondent failed to comply with the Rule 43 order, prompting the applicant to bring an urgent application for an order declaring the respondent in contempt of court and sentencing him to imprisonment every weekend for a period of 6 months, which sentence is to be suspended until the granting of a final decree of divorce, on condition that the respondent complies with all the provisions of the Rule 43 order.

[4] The respondent admits that the Rule 43 order was validly granted, that he was aware of it, and that he failed fully and timeously to comply with a number of its provisions. He disputes, however, that his default was wilful and *mala fide*.

[5] In order to find that the respondent is in contempt of the Rule 43 order, I must be satisfied, beyond a reasonable doubt, that his default was wilful and *mala fide*. Because the respondent has admitted the Rule 43 order, notice thereof and failure fully to comply therewith, the respondent bears an evidentiary burden in relation to wilfulness and *mala fides*. It is incumbent on him to adduce evidence which serves to establish a reasonable doubt as to

whether his non-compliance was wilful and *mala fide*. If he fails to do so, contempt of court will have been established beyond a reasonable doubt. (See *Fakie NO v CCII Systems (Pty) Ltd ('Fakie')* 2006 (4) SA 326 (SCA) para 42 (d)

[6] The nature of the evidence required to discharge the respondent's evidentiary burden in contempt cases was dealt with in *D W v J L K* (12604/2015) [2026] ZAWCHC 322, where it was stated that:

> '[24] Bearing in mind the evidential burden which rests on a respondent in contempt of court proceedings, where the alleged contempt relates to a failure to pay in terms of a maintenance order, it is vital that the respondent put up detailed reasons for the default, which should include a full and frank disclosure of his or her financial position, comprising a complete disclosure of all assets and liabilities as well as all income and expenditure during the entire period of default. Vague, bald and sketchy allegations will not suffice to persuade a court that non-compliance with a court order was in fact impossible or was justified by necessity, or that the respondent held a genuine belief that non-compliance was justified or proper in the circumstances.
>
> [25] The relevant facts with regard to wilfulness and *mala fides* will inevitably lie within the unique knowledge of the respondent in contempt proceedings, and will therefore be subject to close scrutiny. For that reason, too, it is imperative that a respondent in contempt of court proceedings should in his or her answering affidavit engage fully with the issues of wilfulness and *mala fides* and deal with the relevant facts in a spirit of candour. If the respondent fails to do so, and contents him or herself with vague allegations and a version and figures which do not add up, the respondent will fail to discharge the evidential burden to which rests on him or her to advance facts which raise a reasonable doubt as to whether the non-compliance with the court order was wilful and *mala fide*.

[7] In short, a respondent in contempt proceedings who seeks to discharge the evidentiary burden on the affidavits must take care to deal fully and frankly with all relevant aspects, including his state of mind – what he believed at the material time. A respondent who contents himself with bald and vague averments, or who omits to disclose facts which are obviously relevant, runs the risk that he will fail to discharge the evidentiary burden. And a respondent who makes false statements, or puts up a version which is obviously far-fetched and untenable, runs the risk that his version will be rejected outright on the papers in accordance with the well-known qualification to the rule in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634 – 5.

[8] At the commencement of the hearing on 4 September 2026, I asked counsel for the respondent whether his client wished to avail himself of the opportunity to give oral evidence, and submit to cross-examination, with a view to discharging the evidentiary burden resting on him. I likewise asked counsel for the applicant whether the applicant wished to have an opportunity to cross-examine the respondent. The matter stood down while counsel took instruction, both parties being present at court.

[9] The respondent elected not to give oral evidence, and to stand or fall by the contents of the affidavits. The applicant, while she would have welcomed an opportunity to cross-examine the respondent, declined to have the matter postponed for oral evidence on account of the additional costs involved.

[10] The matter therefore turns on whether or not the respondent's explanation for his failure to comply with the Rule 43 order is credible, and whether it suffices to rebut the inference that his default was wilful and *mala fide*. With that in mind, I turn to examine the respondent's explanation for his failure to comply with various provisions in the Rule 43 order.

The respondent allegedly misunderstood his obligations

[11] The respondent denies that his failures fully to comply with the Rule 43 were wilful or *mala fide*. He alleges that, *'[m]y failures arose from my own misguided understanding of my obligations, the advice and assistance which I received at the time, and my failure properly to appreciate the effect of the Order. I accept responsibility for those failures but deny that I consciously elected to defy this Honourable Court.'*

[12] The respondent would have this Court believe that he was under the erroneous impression that the Rule 43 order did not apply if he could not afford to comply with it, in other words, that his inability to afford a particular obligation relieved him of the duty to comply with it.

[13] It is difficult to believe that the respondent could have received such advice from an attorney. It is telling that the respondent has not disclosed the nature of the advice which he allegedly received from his former attorney (who he has seen fit to '*throw under the bus*' in his answering affidavit, repeatedly blaming the attorney, who is not before the court to defend himself, for his own shortcomings.)

[14] Nor has the respondent explained why and how he could have failed properly to appreciate the effect of the Rule 43 order, which is clear and unambiguous in its terms. It must be born in mind that the respondent opposed the Rule 43 application, claiming that he could not afford to pay what the applicant was claiming. He was legally represented by an attorney and counsel. He was made aware of the Rule 43 order, and of Justice Rararala's reasons for granting the order. The learned Judge found that the respondent had deliberately exaggerated his expenses and that he did in fact have financial capacity to afford the relief sought and ultimately ordered.

[15] The respondent could therefore have been under no illusion that Justice Rararala had determined that he could in fact afford to pay the interim maintenance which he was ordered to pay in terms of the Rule 43 order. In the circumstances, he could not have held a genuine and honest belief that he was excused from complying with the obligations in the Rule 43 order if he could not afford to pay them, <u>since the Court had determined that he could in fact afford to pay them</u>.

[16] Furthermore, the respondent could not have held an honest belief that he could not afford to pay the obligations imposed in the Rule 43 order when one considers that, while in default of the Rule 43 order, he saw fit to travel to Greece for three weeks in July with his girlfriend and eldest son from a previous marriage. The applicant estimated the cost of the trip at approximately R 150,000.00. The respondent baldly denied that the trip cost R 150,000.00, but he did not see fit to disclose <u>what he did spend</u>. In her replying affidavit, the applicant demonstrates, with reference to the applicant's bank statements obtained under subpoena, that the respondent

spent at least R 60,000.00 in Greece on pool bars, restaurants and the like, excluding accommodation and flights. The applicant's estimate of R 150,000.00 for the trip is probably not far off the mark. But whatever the cost of the Greece trip, the point is that the respondent could not have genuinely believed that he could not afford to pay in terms of the Rule 43 order at the same time that he was splashing out on an overseas holiday.

[17] In a similar vein, the applicant's analysis of the respondent's bank statements shows that, at time when he was failing to pay the full cash maintenance amount of R 31,500.00 due on the first day of the month, and paying lesser amounts in dribs and drabs as and when he saw fit, the respondent was at the same time spending money on restaurants and deli foods. Such conduct speaks to a deliberate choice to prioritise his own lifestyle over his court ordered maintenance obligations.

[18] It was contended on behalf of the respondent that, in evaluating the *bona fides* of the respondent's stated belief that he lacked the means to comply with the Rule 43 order, I should bear in mind that he did not regard funds emanating from his restaurant business, conducted in a close corporation, as freely disposable income. He regarded them as 'earmarked' for the expenses and obligations of the close corporation.

[19] There are two answers to this argument. The first is that the respondent cannot get away from the fact that he chose to spend money on holiday travel in July, including a three week trip to Greece, while simultaneously failing in material respects to comply with the Rule 43 order. It is inconceivable that he could genuinely have believed that he lacked the

means to comply with the Rule 43 order when he was lavishing himself with luxury travel.

[20] The second answer is that the respondents, as the sole member of the close corporation, had it within his power to determine how and when surplus funds generated by the business were spent. The evidence shows that the respondent, rightly or wrongly, did not separate his personal financial affairs from those of the close corporation. He cannot now resort to a strict separation when it suits him. In order for the respondent to show that he could not afford to comply with the Rule 43 order, he would have had to adduce evidence to show that all the surplus funds allegedly belonging to the close corporation were immediately required to meet obligations or expenses of the close corporation, and that there were in fact no funds available to distribute to the respondent to meet his obligations under the Rule 43 order. The respondent did not come close to putting up such evidence.

The children's school fees

[21] The respondent was ordered in the Rule 43 order to pay all the children's educational costs. On 15 June 2022 the respondent's former attorney conveyed to the applicant's attorney, no doubt on instructions from the respondent, that the children's school fees were up to date. This was not correct, and the respondent could not have believed that this was the case, as he had not made any payments in respect of school fees since January and February 2026. The latest school statements of account annexed to the applicant's founding affidavit showed that the school fees were in arrears to

the tune of R 63,169.00 in respect of H[...] and R 26,920.00 in respect of S[...].

[22] The respondent admits that the school fees were in arrears, owing to a 'misunderstanding'. He alleges that, *'I misunderstood the manner in which the schools rendered their accounts and believed that the balance reflected amounts which would become payable later rather than existing arrears. That understanding was wrong. On 13 August 2026 I settled the outstanding school fee in full.'*

[23] I have had regard to the school accounts annexed to the applicant's founding affidavit. There is nothing remotely confusing about the statements. It is abundantly clear that the balances represent arrears which are immediately due and payable. It is beyond belief that the respondent, a seasoned businessman who runs a successful restaurant, is unable to understand a simple statement of account for school fees.

[24] In my view the respondent's alleged misunderstanding of the school accounts is patently untenable: his version in this regard is risible, and may safely be rejected out of hand.

Failure to reinstate the applicant's medical aid cover

[25] The respondent was ordered in the Rule 43 order to reinstate the applicant's medical aid cover, which he had terminated. He alleges in this regard that, *'[i]n respect of the applicant's medical aid, I acted on my understanding based upon the advice I had received, that because we are married out of*

community of property subject to the accrual system and the applicant earned an independent income, I was not responsible for her medical expenses. I now understand that whatever my view may have been, the Rule 43 order expressly obliged me to maintain cover. I have since arranged through my broker … for a Discovery Health policy for the applicant and, as far as I am aware, the application is being processed.'

[26] The respondent's historic understanding is irrelevant: what is relevant is what he thought when the Rule 43 order was granted, and this he does not disclose. He has also neglected to disclose that he in fact tendered in the Rule 43 application to reinstate the applicant's medical aid cover. He stated as follows in this regard in his answering affidavit in the Rule 43 application:

'81. I was not able to afford to pay the medical aid premium for the applicant and I did advise the broker to change the debit order from my name to the applicant's name.

86. As can be seen from my tender below, it seems that I have no choice but to reinstate the applicant as a dependant on my medical aid.'

[27] One gathers from these passages that the respondent was advised to tender to reinstate the applicant's medical aid cover. I was informed by Ms Buikman that the provision in the Rule 43 order obliging the respondent to reinstate the applicant's medical aid cover was based on the respondent's tender.

[28] In all the circumstances the inference is ineluctable that, at the time the Rule 43 order was granted, the respondent was well aware that he was obliged to

reinstate the applicant's medical aid cover, and that he simply failed to do so. He only bestirred himself once this application was launched, and he was faced with the threat of sanction for contempt of court.

The mortgage bond arrears in respect of the children's home

[29] The respondent was ordered in the Rule 43 order to pay all arrears and interest owing to Standard Bank in respect of the mortgage bond over the children's home.

[30] The bank statements annexed to the applicant's founding affidavit demonstrate that, after the granting of the Rule 43 order, the respondent made no payment whatsoever into the bond over the children's home until he was ordered to pay R 100,00.00 by me on 14 August 2026. During the same period, however, he paid R 71,800.00 into the bond over the Sea Point property in which the respondent resides. Indeed, the respondent admits that he made payments into the Sea Point bond in excess of what was required, while failing to make any payments in respect of the bond over the children's home.

[31] The respondent's explanation in this regard is as follows:

> '27. *I also admit that the B[...] bond is in arrears and that I ceased making payments towards it while continuing to service the bond over the Sea Point property where I reside. The B[...] bond had fallen into arrears in about September 2023. Around that time the applicant withdrew approximately R 880 000.00 from the access bond, with the result that the minimum monthly instalment increased by approximately R 20 000.00 to approximately R 51 000.00.*

> 28. *My understanding at the time was that because I resided at the Sea Point property and the applicant resided at the B[...], and because she had caused the B[...] instalment to increase materially, she was responsible for that property while I was responsible for the property in which I resided. I now appreciate that this understanding did not affect either my liability as co-owner or, more importantly, my obligations under the Rule 43 Order.'*

[32] Again, the respondent's historic understanding of the position prior to the granting of the Rule 43 order is irrelevant. What is important is what his mindset was, and what he did, after the granting of the Rule 43 order, which directed him to pay all arrears and interest owing in respect of the B[...] bond. This was an obligation clearly and unambiguously imposed in the Rule 43 order, and he could have been under no misapprehension in this regard. It is inconceivable that the respondent could still have genuinely believed, after the Rule 43 order was granted, that the applicant was responsible for the B[...] property. The inference is inescapable that he was well aware of his obligation, but that he chose not to comply because he felt aggrieved that the applicant had caused the arrears. And his failure to pay any amount into the B[...] bond while paying excess amounts into the Sea Point bond speaks to wilful defiance of the Rule 43 order.

Conclusion regarding contempt

[33] In my view the respondent has failed to put up credible evidence for his failure to comply with the Rule 43 order which serves to rebut the presumption of wilfulness and mala fides. His version is so far-fetched and untenable that it falls to be rejected out of hand. He has signally failed to

discharge the evidentiary burden resting on him. In the circumstances, contempt of court has been established beyond a reasonable doubt.

An appropriate sanction

[34] In order to curtail these proceedings, it was agreed when the application was postponed on 14 August 2026, that the respondent would deal in his answering affidavits both with the merits and a possible sanction for contempt.

[35] I take into account the fact that the respondent has taken steps to remedy his default since this application was instituted. He has paid arrear cash maintenance, children’s arrear school fees and arrear rates and taxes on the B[...] property; he has taken steps to arrange medical aid cover for the applicant; he has settled the applicant’s tax liability to SARS, and he has paid R 100,000.00 towards the arrears owing on the B[...] bond.

[36] As commendable as it is that the respondent has taken these steps, one can be under no illusion that it is the threat of this application which has prompted the respondent to comply. But for this application, all indications are that he would have continued with what strikes me as a clear pattern of deliberate default and resort to any and every excuse to justify non-payment of his court-ordered obligations.

[37] The respondent urged me not to impose a sentence of imprisonment, even if suspended on condition that he complies with the Rule 43 order. Mr Barlow argued that, if there were to be some or other misunderstanding or if the

respondent were to slip up as it were, he would be liable to be imprisoned. The short answer is that the respondent's obligations under the Rule 43 order are clear and unambiguous, and he must take care not to 'slip up'. He has it within his control to avoid breaching the Rule 43 order. And if there were to be a genuine problem which prevented compliance, that could be raised with the Court before the suspension is revoked and the sanction is put into effect.

[38] It was urged on me that a sentence of imprisonment should not be imposed on the respondent, even if suspended, as, if he were to be sent to prison, it would be detrimental for the minor children and for their relationship with their father. Again, the short answer is that the respondent has it within his power to make sure that the sentence of imprisonment is not put into effect: all he has to do is use his best endeavours in good faith to comply fully with the Rule 43 order.

[39] Finally, it was contended on behalf of the respondent that sending him to prison on weekends would be detrimental for his restaurant business. But the fact of the matter is that the respondent saw fit to take a vacation from his business for a whole month in July, when he went on holiday, first to Umhlanga, then to Greece. The respondent clearly has employees who work in the restaurant. His manifest insouciance regarding his absence from the business in July gives the lie to any suggestion that the business would not be able to function if he were absent for weekends for six months.

[40] All things considered, and having regard to the flagrant nature of the respondent's contempt, which is aggravated by the mendacious version which he has put up in order to try and excuse his conduct, I am inclined to

impose a sanction of periodic imprisonment on weekends for a period of six months, to be suspended pending the granting of a final decree of divorce on condition that the respondent complies with certain provisions aimed at securing compliance with the Rule 43 order.

[41] I consider it fair and just to impose such a sanction, both to vindicate the dignity and authority of this Court which has been trampled on by the respondent, and also to ensure compliance with the Rule 43 order for the sake of the applicant and the minor children. The roof over their heads has been put at risk by the respondent, who stands idly by while the bank is suing to foreclose on the B[...] property. The applicant has had to terminate her daughter's music and horse-riding extra-mural activities, as well as her occupational therapy, because the respondent refused to pay these expenses as he was obliged to do in terms of the Rule 43 order. This while the respondent spends money on overseas travel and a luxurious motor vehicle which, on his own, admission, was more expensive than necessary. If the respondent cannot summon the moral conviction to do the right thing by his minor children, the Court must step in and force him to do the right thing in order to protect and promote the best interest of the minor children.

Costs

[42] Ms Buikman sought a costs order in favour of the applicant on the scale of attorney and <u>own client</u>, which she submitted was warranted in the particular circumstances of this case.

[43] In *Sentrachem Ltd v Prinsloo* 1997 (2) SA 1 (A) the Appellate Division upheld such a costs order by the court *a quo*. Eksteen JA explained that an order for payment of attorney and own client costs must be seen as an attempt by the court to go further than the usual order of attorney and client costs, in order to ensure that the successful party is indemnified against all reasonable costs of the litigation. Taxation will then proceed on a more liberal scale, without sanctioning excessive or unreasonable costs. This is an exceptional costs order, which should not be made without sound reasons. Each case will depend on the particular circumstances, and the court had a discretion in this regard, which must be exercised judicially (*Sentrachem (supra)* at 22 B – D). The court a quo had awarded costs on the attorney and own client scale against the losing party as a mark of disapproval at the manner in which the latter had conducted its case, which included threats and intimidation and a cynical persistence with defences which it knew were without foundation. The appeal court saw no reason to interfere with the costs order on appeal.

[44] In *Vermaak v MEC for Local Government and Traditional Affairs, Northwest Province and Others* [2017] ZALAC 2 (10 January 2017), the Labour Appeal Court observed that:

> '[13] …The scale of attorney and own client is the highest scale possible that a litigant can be ordered to pay. It is an extraordinary one which should be reserved for cases where there is clearly and indubitably vexatious and reprehensible conduct on the part of a litigant. The nature and reach of such an order has been described as "exceptional, very punitive and as indicative of extreme opprobrium." The learned authors of *Erasmus Superior Court Practice* list various circumstances in which the courts have, over the years, awarded costs on an attorney and own

client scale. One of the instances is where a party's conduct has been found to be 'unconscionable, appalling and disgraceful'. See also *Sentrachem v Prinsloo* where it was reiterated that an award of attorney and own client costs had to be seen as an attempt by the Court to go one step further than an ordinary order of costs between attorney and client so as to ensure that the successful party was indemnified with regard to all reasonable costs of litigation, and that it was an extraordinary order which could not be made without good reason.'

[45] In *Van der Walt v Murray NO and Another* (2554/2019) [2019] ZAFSHC 169 (10 September 2019), Naidoo J ordered an attorney to pay costs *de bonis propriis* on the attorney and own client scale in circumstances where the conduct of the attorney had been negligent, unreasonable and lacking in diligence, falling short of the standard expected of an attorney.

[46] In *Lion v Ram NO and Others* (2025/240674) [2026] ZALCJHB 127 (24 April 2026), Kroon AJ granted costs on the attorney and <u>own</u> client scale against the losing party in circumstances where the conduct of the litigation amounted to an abuse of court process which followed an earlier abuse of process which had attracted a costs order on the lesser attorney and client scale.

[47] In my view, a punitive costs order on the attorney and own client scale is indeed warranted in the particular circumstances of this case. I say that for the following reasons.

[48] Firstly, the respondent has flagrantly defied the Rule 43 order. He sought reasons for the order, clearly intending to challenge it, but did not persist

with any challenge to the order. Instead, he simply ignored it because he disagreed with the order.

[49] Secondly, to compound matters, the respondent has lied to this court in an attempt to avoid responsibility for his defiance of the Rule 43 order. His risible version that he 'misunderstood' his obligations is an insult to the intelligence of this court.

[50] Thirdly, not only did the respondent lie to the court in his answering affidavit in this application, but he has demonstrated a pattern of concealment and mendacity in his conduct of the divorce litigation. It was manifest in his failure to discovery properly and in his treatment of his finances in the Rule 43 application. The patently false version which he put up in these contempt proceedings is simply more of the same. It is disturbing that the respondent sought to blame his former attorney for his failure to discover certain bank accounts, alleging that he relied on the attorney to advise him what to disclose. The attempt to hide behind the former attorney is cowardly: it shows that the respondent is not willing and able to take responsibility for his own actions. It also does not avail the respondent, for he signed the discovery affidavits omitting details of certain bank accounts, and he also signed an affidavit confirming the applicant's description of his assets and liabilities, which he knew very well did not include the funds in the bank accounts which he had failed to disclose.

[51] For all these reasons, I consider that the respondent's conduct has been unconscionable, appalling and disgraceful, and that a punitive order on the attorney and own client scale is called for to mark the Court's opprobrium.

[52] Finally, I consider that such an order is necessary and appropriate in order to afford the applicant the fullest indemnity possible in respect of the costs of this application. In *Bannatyne v Bannatyne and Another* 2003 (2) SA 363 (CC) the Constitutional Court stated (at paragraph 27) that, *'[t]he judiciary must endeavour to secure for vulnerable children and disempowered women their small but life-sustaining legal entitlements. If court orders are habitually evaded and defied with relative impunity, the justice system is discredited and the constitutional promise of human dignity and equality is seriously compromised for those most dependent on the law.'*

[53] The respondent's defiance of the Rule 43 order has forced the applicant to incur legal costs in bringing this application, which would have been unnecessary if the respondent had complied with the Rule 43 order as he ought to have done. It is inevitable that, if the applicant is saddled with legal bills, that will take away from financial resources which would otherwise be available to the applicant and the minor children for their quality of life. The very purpose of a maintenance order is undermined if the beneficiary has to incur legal costs in enforcing the order. I therefore consider it important that the financial position of the applicant and the minor children should not be compromised as a result of legal costs which the applicant had been driven to incur by virtue of the respondent's delinquent conduct. In order to secure the life-sustaining legal entitlements of the applicant and the minor children, as courts are enjoined to do in *Bannatyne*, it is necessary to ensure as far as possible that the applicant is not out of pocket in regard to all reasonable legal costs necessarily incurred to enforce the respondent's maintenance

obligations under the Rule 43 order. For that reason, too, costs on the attorney and own client scale are warranted in my view.

[54] For the benefit of the Taxing Master, I record that, in my view, the applicant's employment of Senior Counsel was warranted, and, had I awarded party and party costs, I would have awarded the cost of counsel on Scale C.

Conclusion

[55] For all the reasons set out above, I make an order in the following terms:

1. It is declared that the respondent is in contempt of the order of this Court granted on 28 May 2026 under case number 2026-059919 by Ms Justice Rararala ('the Rule 43 order').

2. The respondent is hereby committed to periodic imprisonment every weekend from 18h00 on a Friday to 08h00 on a Monday for a period of six months, commencing on the first Friday following the granting of this order, subject to paragraph 3 below.

3. The order for the respondent's committal in paragraph 2 above shall be suspended until such time as a final decree of divorce is granted in the action pending under case number 6941/2024, on condition that the respondent complies with the provisions of paragraphs 3.1 and 3.2 below, failing which the applicant may approach this Court on the

same papers, duly amplified, for an order directing the respondent's committal in terms of paragraph 2 above:

3.1. The respondent shall, <u>within fourteen (14) days of the granting of this order</u>, remedy his current default of the Rule 43 order by either:

3.1.1. paying the balance of the arrears and interest owing in respect of the Standard Bank mortgage bond registered over the applicant's and the children's home at [...] B[...] Avenue, Newlands, Cape Town ('the B[...] bond') as at date hereof; or

3.1.2. entering into a written payment arrangement with Standard Bank, to the satisfaction of Standard Bank, to settle the balance of the arrears and/or interest currently owing in respect of the B[...] bond,

and providing proof of such payment or written payment arrangement to the applicant's attorneys within the said 14-day period.

3.2. The respondent shall, for the duration of the Rule 43 order, refrain from breaching any of the terms of the Rule 43 order, including, but not limited to, failing to make full and timeous payment of the monthly cash maintenance for the applicant and the minor children, as well as the monthly mortgage bond instalments in respect of the B[...] bond and any amounts due in terms of any payment arrangement entered into with Standard Bank in respect thereof.

4. The respondent shall be liable for the costs of this application, including the postponement application and hearing on 14 August 2026, which shall be paid on the scale as between attorney and own client, such costs to include the cost of employing senior counsel, and the costs of perusing and analysing documentation referred to in the affidavits and required to collate the annexures to the application.

DIANE DAVIS

JUDGE OF THE HIGH COURT

Appearances:

For the applicant:	Adv L Buikman SC Instructed by Catto Neethling Wiid Attorneys
For the respondent:	Adv J E Barlow Instructed by Kassen & Associates