

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 12583/17
20739/18
5954/18

| | |
|-----|---|
| (1) | <u>REPORTABLE: YES</u> |
| (2) | <u>OF INTEREST TO OTHER JUDGES: YES</u> |

In the matter between:

E v E 12583/2017

R v R 20739/2018

M v M 5954/2018

JUDGMENT

MAKUME J:

Background

[1] The above matters were referred to the full court by the Judge President of this Division pursuant to an order by Van Vuuren AJ dated the 20th September 2018. The order reads as follows:

“The hearing of the applications in the following cases are discontinued before me and are referred to a full court of this division under S.14 (1) (b) of the Superior Court Act 10 of 2013:

E v E Case No.: 12583/2017

R v R Case No.: 20739/2018

M v M Case No.: 5954/2018”

[2] All three applications were brought in terms of Rule 43 (1) of the Uniform Rules of Court. The applicants sought relief *pendent lite* for interim maintenance, custody and contribution to costs pending the finalisation of their divorce actions.

[3] In his reasoning for referring these matters to be heard by the full court as a court of first instance, Van Vuuren AJ says that the conflicting judgements in this division being that by Tsoka J in **Van Beest Van Andel vs Van Beest Van Andel EP case number 27869/2007** (7th October 2009) and that of Spilg J in **TS, R vs TS, T case number 28917/2016** (7th August 2017) have brought subrule 43(2) and (3) into focus.

[4] Subsequently, the Judge President issued a directive inviting interested parties to apply to the full court to be admitted as *amicus curiae*. He also outlined further questions for consideration by the full court.

The Amicus Curiae

[5] Legal Aid South Africa and the Gauteng Family Law Forum applied to be admitted as *amicus curiae*.

[6] Legal Aid South Africa is a statutory public entity established in terms of Section 2(1) of the Legal Aid South Africa Act 39 of 2014. The preamble to the Legal Aid Act describes its mandate in the following terms: “To ensure access to justice and the realisation of the right of a person to have legal representation as envisaged in the constitution and to render or make legal aid and legal advice available.”

[7] Amongst the laws that require the State to provide legal assistance to indigent persons through the services of legal aid is the Divorce Act 70 of 1979, the Children’s Act 38 of 2005, the Matrimonial Property Act 88 of 1984 and The Civil Union Act 17 of 2006. Rule 43 applications fall within the ambit of matters in which the Legal Aid Board provides legal assistance to indigent litigants.

[8] Gauteng Family Law Forum (“The Forum”) is a voluntary association of legal practitioners, attorneys, counsel and academics who specialise in family law matters which include, all matters pertaining to children including maintenance, divorce matters including the maintenances of spouses, as well as domestic violence matters.

[9] A reading of the Forum’s Constitution and its code of conduct endorses the fact that the subject matter raised in the directive falls squarely within the Forum’s knowledge and expertise.

[10] It is common cause that the applications raise important questions related to Rule 43 applications in matrimonial matters. The outcome of this application will directly impact the Forum mentioned and the public.

[11] The *amici* are admitted into these proceedings without opposition. I am indebted to the *amici* for their invaluable oral and written submissions.

The Parties

E v E Case Number: 12583/2017

[12] The Applicant sought an order *pendente lite*, that the Respondent pays her interim spousal maintenance and a contribution towards legal costs.

[13] The Applicant’s founding papers comprise 86 pages, 34 of which constitute the sworn statements. The Respondent’s answering affidavit

stretches over 109 pages, plus a further 48 pages of annexures, which makes a total of 157 pages.

R v R Case Number: 20739/2018

[14] The Applicant's sworn statement comprises of 19 pages, to which is attached 32 pages as annexures. The Respondent's answering affidavit, together with annexures, comprises a total of 31 pages. There he raises a point in *limine* that the Applicant's papers are prolix and not in compliance with the requirements of Rule 43(2).

M v M Case Number: 5954/2018

[15] The Applicant sought an order in respect of maintenance *pendente lite* for their minor child as well as contribution to legal costs.

[16] The Applicant's sworn statement is concise, however, she attached to it a copy of the particulars of claim in the divorce action, besides other annexures. The Respondent filed a succinct response comprising of 10 pages and 70 pages of annexures.

Judgement in two Parts

[17] After hearing argument, this court reserved judgment. In doing so, it expressed an intention to deliver judgment in two parts. Firstly the court would summarily deal with the relief the parties seek, by way of a court order, so it does not frustrate the speedy and expeditious nature of these applications.

Then the court would hand down a reasoned ruling addressing the questions raised in the referral judgment. The court granted the orders in respect of the relief sought by each party on 7 December 2018, being satisfied that the respective applicants made out a case for the relief set out in the respective applications. In this judgment, the court addresses the issues raised in the referral judgment.

Issues for Determination

[18] In coming to a decision to refer these applications to the full court, Van Vuuren AJ said that the parties have generally departed from respectively delivering a statement in the nature of a declaration and a reply in the nature of a plea, having regard to sub-rules 43(2) and (3). It is that observation that prompted the Judge President to direct that this full court hear submissions to dispose of the three applications, as well as to determine the following issues:

- i) While Rule 43 applications generally require the submission of a succinct set of papers, does the court have the discretion to permit the filling of applications that have departed from the strict provisions of Rule 43(2) and (3)?

- ii) If the Court does not have such a discretion, should the Practice Manual direct that all Rule 43 application conform to a specific form, particularly

in terms of length? Would the imposition of a restriction on the length of Rule 43 applications withstand constitutional muster?

- iii) If the court does have such a discretion, what are the factors to consider in order to reasonably exercise this discretion? Are these factors exhaustive?

[19] Rule 43 as it presently reads provides an interim remedy to assist an applicant to obtain relief speedily and expeditiously in respect of the following:

- a) interim care, residency and contact with the children;
- b) maintenance for a spouse and or children;
- c) the enforcement of specified necessary payments such as bond repayments on a residential property, municipal rates and taxes, electricity consumption, school fees, medical and clothing as well as relocation costs;
- d) contribution towards legal costs of the divorce action.

[20] The Children's Act, directs that the best interests of the child is of paramount importance in every matter concerning children. Similarly Section 28 of the Constitution requires that a fair hearing is observed and that the child's best interests are protected in all proceedings concerning the child.

[21] This court is called upon to deal with sub-rule 43(2) and (3) which read as follows:

“(2) The applicant shall deliver a sworn statement in the nature of a declaration, setting out the relief claimed and the grounds thereof together with a notice to the respondent as near as may be in accordance with Form 17 of the First Schedule. The statement and notice shall be signed by the applicant or his attorneys and shall give an address for service within eight kilometres of the office of the registrar and shall be served by the sheriff.

(3) The Respondent shall within ten days after receiving the Statement, deliver a sworn reply in the nature of a plea, signed and giving an address as aforesaid, in default of which he shall be *ipso facto* barred.”

[22] In answering the questions posed, it will be necessary also to consider the effect of Rule 43(5). This rule provides:

“(5) The court may hear such evidence as it considers necessary and may dismiss the application or make such order as it thinks fit to ensure a just and expeditious decision.

[23] Rule 43 applications as presently structured, are a deviation from normal motion proceedings in that the Rule does not make provision for a third set of affidavits. The applicant is confined to what is set out in the founding affidavit, which must be in the nature of a declaration, setting out the relief claimed and on what grounds. On receipt, the Respondent is required to file an answering affidavit in the nature of a plea. It is precisely this prohibition that causes the Applicant to say more than what is required, knowing very well that there is no second opportunity to say more, which may in true prompt the respondent to file a lengthily answer.

[24] The question that arises is how then, should parties deal with a dispute of fact that arises from the Respondent's answering affidavit. In my view the answer lies in the provisions of Rule 43(5) which gives the court a discretion to hear such evidence as it considers necessary. The applicant may seek leave to file a further affidavit in terms of Rule 43(5), to dispute the Respondent's version as set out in his or her answering affidavit.

[25] The procedure envisaged in Rule 43 is not that of a normal application commenced by way of notice of motion. It is a succinct application, aimed at providing the applicant interim relief, speedily and expeditiously (See: **Maree v Maree 1972 (1) 261 CPD at 264 A**).

The Approach of the Courts to Date

[26] In all the current applications, one or two respondents apply for the dismissal of the application or for a punitive costs order on the basis of prolixity and failure to comply with the strict provisions of Rule 43(2) and (3). The desirability of keeping the costs of Rule 43 applications as low as possible has been emphasised in many decided cases. In **Willies vs Willies 1973 (3) SA at 259 C-D** Fannin J said:

In considering the question before us it must not be ignored, I think, that the Rule 43 procedure was a novel procedure, a sort of hybrid procedure, largely of the nature of a motion or application (being commenced with a notice supported by an affidavit) but partly of the nature of an action, in which a document “in the nature of a declaration” has to be filed and in which evidence can be led.”

[27] In **Varkel vs Varkel 1967 (4) SA 129 © at 131 G-H**, Van Winten J said: “rule 43 was devised and promulgated with the object of providing an expeditious and inexpensive procedure for obtaining interim relief in matters relating to matrimonial disputes pending or about to be instituted.”

[28] The nub of the question to be answered is what interpretation of rule 43 will ensure a speedy and efficient resolution of the application while at the same time protecting the rights of women and children who are prevalently vulnerable

in Rule 43 applications? Is the interpretation in **TS, R vs TS,T** to be preferred over that in **Van Beest Van Andel vs Van Beest Van Andel**, by Tsoka J or *vice versa*?

[29] In Van Andel, the Respondent opposed the application on the basis of non-compliance with Rule 43 (2) in that the founding affidavit was not in the form of a declaration, it was unnecessarily long and contained irrelevant facts and annexures. Surprisingly, the Respondent also filed a voluminous answering affidavit as well as a counter-application. Both these documents did not comply strictly with Rule 43(2) and (3). Tsoka J held that the provisions of Rule 43 had to be strictly followed and thus dismissed both the application and the counter application.

[30] In **TS v TS**, a judgment delivered on the 7th August 2017, some eight years after Van Andel, Spilg J held that it was necessary for a proper determination of a Rule 43 application for a party to make full and frank disclosure of their financial affairs, thus permitting longer affidavits. He held that without proper financial disclosure the court had little to work on than the product of competing type writers.

[31] I now consider the extent to which the current applications comply with Rule 43 (2) and (3) as interpreted in Van Andel.

R v R Case Number: 201739/2018

[32] In **R v R Van Vuuren** AJ indicated that although the papers were not as voluminous as in the other two matters, the Respondent in his answer raised a point in *limine* that the papers were prolix and did not comply with Rule 43 (2).

[33] The Respondent amongst others relies on the dicta in **Colman vs Colman 1967 (1) SA 291 (1)** in advancing his point in *limine*. It must be taken into consideration that Colman was decided in 1967. Times have changed and the financial burden of spouses are not the same as it was in 1967. As Spilg J has warned, a one size fits all approach cannot suffice and will never be in the best interest of the children. The length of an Applicant's affidavit should not disentitle her to relief. What is important is whether the contents of the affidavit and the annexures are relevant.

[34] In his referral judgment, Van Vuuren AJ observed that the founding affidavit is not voluminous. I agree. Both the affidavit and the annexures total 33 pages. The annexures are 22 pages. In my view, such annexures are indispensable for purposes of making out a case for the relief the Applicant seeks.

[35] In TS, Spilg J correctly found at paragraphs 62 and 63 as follows:

“[62] While many Rule 43 applications may not require more than a succinct set of affidavits to enable a court to make a proper determination that will serve the best interest of the child, in my respectful view, a one-size-fits-all approach to the sufficiency of evidence that should be placed

before a court may in a given case have difficulty either in passing constitutional scrutiny or being capable of meeting the requirements that the outcome will serve the child's best interests.

[63] The adjudication of maintenance for children *pendente lite* involves establishing the actual expenditure requirements that have been incurred historically, establishing whether there is any change and if so, why.”

[36] In **Du Preez 2009 v Du Preez (6) SA 28 TPD** it was stated as follows regarding relevancy of information:

“A misstatement of one aspect of relevant information invariably will color other aspects with the possible (or likely) result that fairness will not be done. Consequently I would assume there is a duty on applicants in Rule 43 applications seeking equitable redress to act with the utmost good faith (uberrimae fides) and to disclose fully and all material information regarding their financial affairs. Any false disclosure or material non-disclosure would mean that he or she is not before the court with “clean hands” and on that ground alone the court will be justified in refusing relief.”

[37] In the final analysis, it is interesting that ultimately the Respondent concedes in his submission regarding the answer to the issue raised that:

“There are tremendous amounts of applications wherein for instance contact

and residence of minor children is in dispute. As a result of same many applications consist of social workers reports and psychological reports. This must be incorporated in the Rule 43 application which would no doubt make the application voluminous.”

[38] In conclusion the Respondent at paragraph 43 says that *“It is my humble submission that each matter turns on its specific fact however in matters in general in Rule 43 I am of the view that there should be no limitation to the papers filed and that should there be irrelevant material inserted in such application a Respondent and the honourable court is able to consider application to strike out irrelevant material.”*

[39] As regards the answer to the question whether a court should have a discretion to allow papers to deviate from the strict provision of Rule 43(2) and (3), the Respondent proposes that this should not be left to the discretion of the trial court but should be allowed in the Rule itself in order to avoid inconsistencies.

[40] The Applicant is self-employed. The only way to prove her income and of making a full and frank disclosure of her financial position.is by attaching her bank statements.

[41] Therefore, the Respondent’s point in *limine* based on prolixity is misplaced and stands to be dismissed.

M v M 5954/2018

[42] In **M v M**, the referral court noted that the Applicant's sworn statement is concise, despite her attaching 33 pages of documentary evidence in addition to a copy of the particulars of claim in the divorce action. The Respondent made this worse by filing 70 pages of annexures to the 10 pages of his answering affidavit.

[43] As in **R v R** the issue is not so much the number of pages or annexures, it is whether same are relevant. The answer is to be found in **William v William 1971 (2) SA 620 (O)** where the issue of annexures was addressed. There the court said:

"The language of Rule 43 (3) does not show that an annexure to an answering affidavit is an offending document. The Rule states that the Respondent shall deliver a sworn reply "in the nature of a plea". Neither does Rule 22 dealing with a plea forbid the possibility of a document being attached to a plea. An annexure forms part of the plea and I can visualise the position where such an annexure may not only

"clearly" and concisely state certain facts upon which the Respondent relies in regard to some aspect of his defence, but it may also because of its official nature, put the whole matter beyond any doubt, e.g. a Respondent's paysheet to prove his income where he is employed by the South African Railways."

[44] Neither of the parties raised the issue of prolixity. What is of importance is that the Respondent agrees that it is inconceivable that a party in a Rule 43 application is able to set out all the facts regarding his finances and issues pertaining to contact and residence of the minor children in a concise statement. The Respondent makes the point that restricting the length of the application and the annexures may in certain circumstances, prejudice children and the parties themselves. The Respondent concedes that a Rule 43 application and the subsequent order carries tremendous weight in divorce litigation. Accordingly, it is in the interest of justice and in the best interest of minor children to allow the parties to file substantive but relevant affidavits setting out the basis upon which their relief is sought.

[45] It is for that reason that in **M v M**, the court considered the application on the basis of the papers filed and granted the 7 December 2018 order.

E v E Case Number: 12583/2017

[46] The Applicant filed a notice to abide and has not filed heads of argument. This is the one matter out of all three that seem to have caused the referral judge to seek the intervention of the full court as to the correct applicability of Rule 43(2) and 43(3). The applicant's founding papers comprises 86 pages 34 of which is the Rule 43(2) sworn statement. The balance being 53 pages, is made up of annexures. In reply, the Respondent would not be outdone and

went a step further by filing a lengthy answering affidavit comprising of 109 pages and 48 pages of annexures, making his response a total of 157 pages.

[47] The Applicant claims maintenance for herself as well as contribution to legal costs. The Respondent contends that the Applicant is employed and should be able to maintain herself as well as to pay for her legal fees.

[48] In addressing the issue whether the application as well as the reply thereto meets the requirements of Rule 43(2) and (3), the Respondent is at one with the argument raised in **R v R** and **M v M**. The respondent makes the point that the only limitation to annexures and their content is that they must be admissible and relevant in terms of the rules of evidence.

[49] Having found that the content of the applicant's affidavit and annexures were relevant and that she made out a case for the relief sought, the court granted the order of 7th December 2018.

[50] I now consider the legal questions raised by the referral court.

Questions Referred for Consideration

[51] In ***Eke v Parsons* 2016 (3) SA 37 (CC)** it was stated that "the object of court rules is twofold. The first is to ensure a fair trial or hearing. The second is to secure the inexpensive and expeditious completion of litigation and to

further the administration of justice.” It is against this backdrop that the issues before this court are considered.

Question 6(a): “Does the court have the discretion to permit the filing of applications that have departed from the strict provisions of Rule 43 (2) and (3)”

[52] This question should not be confused with the discretion that a court has in terms of Rule 43 (5). The question relates to the founding and answering affidavits. All the parties including the *amici*, agree that the court does not have such a discretion unless it decides to call for further evidence in terms of Rule 43 (5). As already stated, the common view expressed by all the parties is that there should be no limitation to the number of pages filed for as long as what is contained in the affidavit and the annexures thereto is relevant and admissible as evidence.

[53] The Gauteng Family Law Foundation submitted that this question ought to be determined bearing in mind constitutional considerations in respect of the right to a fair hearing as entrenched in Section 34 of the Constitution.

[54] Relying on TS, Legal Aid South Africa supports the view that there should be no limitation to the length or content of the founding and answering affidavit. Concerning this, Spilg J said:

“While many rule 43 applications may not require more than a succinct set of affidavits to enable a court to make a proper determination that will serve the best interest of the child, a one-size-fits-all approach to the sufficiency of evidence that should be placed before a court may in a given case have difficulty passing either constitutional scrutiny or be capable of meeting the requirements that the outcome will serve the child’s best interest.”

[55] All the parties and the amici are *ad idem* that a practice directive be issued requiring the parties in all opposed divorce matters to complete and submit a detailed financial disclosure form (“the disclosure form”) attached hereto. The disclosure form must be completed under oath. They propose that the disclosure form must either be filed within 20 days of service of the notice of intention to defend, alternatively, that it be filed as an annexure to the parties’ respective rule 43 affidavits.

[56] The benefit of making it mandatory to file a financial disclosure form is that firstly, the parties will not need to file lengthy affidavits to make or defend their case. Secondly, parties will be forced to be transparent with each other and with the court at the inception of the divorce action. This makes early settlement possible.

[57] Financial disclosure will place the court hearing the application in a better position to decide the matter in a manner that does justice to the parties and takes care of the best interests of the minor children.

Question 6(b): “If the court does have such a discretion what are factors to consider in order to reasonably exercise this discretion are these factors exhaustive”

[58] In terms of Rule 43(5), the court does have a discretion to call for further evidence despite the limitations imposed by Rule 43(2) and (3). The problem with the present Rule 43(2) and (3) is that invariably, in most instances, the Respondent will raise issues that the Applicant is unable to respond to due to the restriction, unless the court allows the Applicant to utilise Rule 43(5). This process will result in conflicting practices as it has already happened in a number of cases and as highlighted by Spilg J in TS.

[59] Applicant should have an automatic right to file a replying affidavit, otherwise she has no way of responding to allegations that are set out in the Respondent’s answering affidavit.

[60] Lastly, the fact that there is no appeal against a Rule 43 order imposes further restrictions on a party unless that party specifically utilises Rule 43 (6), which is not there for the simple taking. Rule 43 (6) may only be used where there has been a change in circumstances.

Question 6 (c): “If the court does not have such a discretion, should the practice manual request that all Rule 43 applications prescribe to a specific form, particularly in terms of length? Would the imposition of a restriction on the length of a Rule 43 application withstands constitutional scrutiny”?

[61] The answer to this question is simple and has already been alluded to in developing the answer to question 6(a) above. It is imperative, constitutional and practically necessary to amend the practice manual so as to permit Rule 43 applications being filed without restrictions. This will allow optimization of the best interest of minor children, but will also be fair and promote transparency by all parties.

[62] It is not uncommon for the parties to seek to ventilate the issues in the trial action in the Rule 43 application, causing the affidavits to become replete with allegations and counter allegations that rarely bear relevance to the issues the Rule 43 application. This practice often results in long and irrelevant affidavits. Where this happens the court may, penalise one or both of the parties with an adverse order as to costs. The lifting that this judgment proposes should not become a license to parties to express and advance views and opinions that bear no relevance to the issues before the court.

[63] The proposed financial disclosure form may present confidentiality issues. To avoid this, the form should be filed separate from the affidavits, remain confidential, and only used by the parties and the court for the purpose of the Rule 43 application and the divorce. In TS, Spilg J recommends that the

formulation of a standardised financial disclosure form which must be completed at an early stage in the proceedings appears to be more properly a matter to be addressed in the rules in order to secure uniformity. He proposes that whilst awaiting amendments to the rules that Rule 43 (5) be invoked. While I agree to this proposal, until the Rules are amended, amending the practice directive as proposed in this judgment is the most expedient way of implementing this procedure in this division.

[64] Accordingly, I propose the following order:

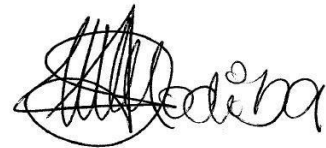
ORDER

1. On receipt of the Rule 43(2) and 43(3) affidavits, the Judge allocated to hear the matter shall, if he or she deems it appropriate, issue a directive to the parties in terms of Rule 43(5) calling on the Applicant and/ or the Respondent to file (a) supplementary affidavit(s) making a full and frank disclosure of their financial and other relevant circumstances to the court and to the other party.
2. The affidavits referred to above must be accompanied by a financial disclosure form, annexed hereto, which must be filed seven days before the date of hearing.

3. Affidavits filed in terms of Rule 43(2) and (3) shall only contain material or averments relevant to the issues for consideration. It shall not be competent for a court to dismiss an application in terms of Rule 43, only on the basis of prolixity. If the court finds that the papers filed by a party contain irrelevant material, the court only has the power to strike off the irrelevant and inadmissible material from the affidavit in question, and make an appropriate cost order.

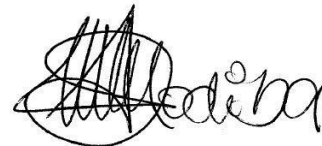
4. It is proposed that the Judge President amends the Practice Directive to give effect to this judgment and order.

It is so ordered.



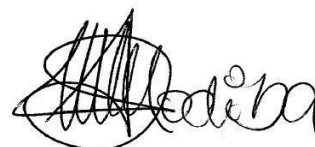
For Makume J

I agree.



For Kollapen J

I agree.



Modiba J

APPEARANCES

Adv L Segal SC with Adv E Webber and S Kangyangara
 Instructed by: Christelis Artemides Attorneys
 For Gauteng Family Law Forum (Amicus)

Adv N Skibi with Adv M Steenkamp and Attorney S Kekana
 Instructed by: Legal Aid of South Africa (Amicus)

Adv R Williams
 Instructed by: Jennifer Scholtz
 For the Applicant in EvE

Adv P Bosman
 Instructed by: Brand Potgieter Inc
 For the Respondent in EvE

Adv K Pillay SC with N Lombard
 Instructed by: Kim Meikle Attorneys
 For the Applicant in RvR

Adv A E Willcox
 Instructed by: Yousha Tayob Attorneys
 For the Respondent in RvR

Adv G Kinghorn
 Instructed by: L Freysen Attorneys For
 the Applicant in M v M

Adv A E Willcox
 Instructed by: MacGillivray Poll
 For the Respondent in MvM

Date of hearing: 03 DECEMBER 2018

Date of judgment: 12 JUNE 2019

FINANCIAL DISCLOSURE FORM

Case no:

The Parties

The applicant

and

The respondent

Party making financial disclosure: _____

- Please fill in this form fully and accurately. Where any box is not applicable, write "N/A".
- You have a duty to the court to give a full, frank and clear disclosure of all your financial and other relevant circumstances.
- A failure to give full and accurate disclosure may result in an adverse court order.

If you are found to have been deliberately untruthful, criminal proceedings may be brought against you for perjury and/ or fraud.

- The information given in this form must be confirmed under oath or affirmation. Proceedings for contempt of court may be brought against a person who makes or causes to be made, a false statement in a document verified under oath or affirmation.
- You must attach documents to the form where they are specifically sought and you may attach other documents where it is necessary to explain or clarify any of the information you give.
- Essential documents that must accompany this statement are detailed in the form.
- If there is not enough room on the form for any particular piece of information, you may continue on an attached sheet of paper.

If you are in doubt about how to complete any part of this form you should seek legal advice.

This statement is
filed by

Name and address of attorney
(if represented)

1 GENERAL INFORMATION

1.1 Full name _____

1.2 Date of birth (DD/MM/YYYY): _____

1.3 Residential Address: _____

1.4 Identity and/or passport number: _____

1.5 Date of marriage (DD/MM/YYYY): _____

1.6 Type of Marriage (Civil/Civil Union/Customary/Muslim): _____

1.7 Matrimonial Property Regime (tick appropriate):

| | | | |
|--------------------------|---|---|------------------|
| In community of property | Out of community of property (excluding accrual system) | Out of community of property (including accrual system) | Other (Specify): |
|--------------------------|---|---|------------------|

1.8 Occupation _____

1.9 Date of separation _____

1.10 Date of issue of summons: _____

1.11 Details of any children of the family

| | FULL NAMES | DATE OF BIRTH DD/MM/YYYY | | | WITH WHOM DOES THE CHILD LIVE? |
|---|------------|-----------------------------|--|--|-----------------------------------|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |

1.12 Details of any other pending or finalised court cases between you and your spouse, whether in relation to money, property, children or anything else.

| | CASE NO | COURT | TYPE OF PROCEEDINGS |
|---|---------|-------|---------------------|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |

2 FINANCIAL DETAILS

PART 1: IMMOVABLE PROPERTY AND PERSONAL ASSETS

- 2.1 **Complete this section in respect of the family home (the last family) home occupied by you and your spouse). If it remains unsold.**

Documentation required for attachment to this section:

- a) A copy of any valuation of the property obtained within the last six months (eg. Estate agent, municipal or online Lightstone valuation)
- b) A recent home loan statement confirming the sum outstanding on each mortgage registered over the property

Property address (including Erf no:)

Mortgage company/Bank name(s) and account number(s)

Details of who owns the property and the extent of your legal and beneficial interest in it _____

Current market value of the property _____

Balance(s) outstanding on any mortgage(s) _____

Who pays the mortgage bond instalments, and in what proportions? _____

Total equity in the property _____

TOTAL value of your interest in this property:

TOTAL A: R _____

- 2.2 **Details of your interest in any other property, land or buildings. Complete one page for each property you have an interest in**

Documentation required for attachment to this section:

- a) A copy of any valuation of the property obtained within the last six months (eg. Estate agent, municipal or online Lightstone valuation)
- b) A recent home loan/bond statement confirming the sum outstanding on each mortgage

Property address (including Erf no)

Mortgage company/Bank name(s) and account number(s) _____

Details of who owns the property and the extent of your legal and beneficial interest in it _____

Current market value of the property _____

Balance(s) outstanding on any mortgage(s) _____

Who pays the mortgage bond instalments, and in what proportions? _____

Estimate the costs associated with sale (Eg. Estate agent commission, compliance certificates, transfer costs) _____

Total equity in the property _____

TOTAL value of your interest in the family home:

TOTAL B: R _____

- 2.3 Details of all personal bank accounts that you hold or have held at any time in the last twelve months and which are or were either in your own name or in which you have had any interest. This applies whether any such account is in credit or in debit. If the account is overdrawn, show a minus figure.**

Documentation required for attachment to this section:
For each account listed, all statements covering the last 6 months

| | NAME OF BANK | TYPE OF ACCOUNT (E.G. CURRENT) | ACCOUNT NUMBER | BALANCE AT THE DATE OF THIS STATEMENT |
|---|--------------|--------------------------------|----------------|---------------------------------------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |

TOTAL value of your interest in ALL accounts (C1): R _____

- 2.4 Details of all investments, including shares, investments (other than already shown above) bonds, unit trusts, other investments, and other quoted securities that you hold or have an interest in. (Do not include dividend income as this will be dealt with separately later on.)**

Documentation required for attachment to this section:
Latest statement relating to each investment.

| | NAME | TYPE OF INVESTMENT | SIZE OF HOLDING | INVESTMENT NUMBER | CURRENT VALUE |
|---|------|--------------------|-----------------|-------------------|---------------|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |

| | | | | | |
|---|--|--|--|--|--|
| 5 | | | | | |
| 6 | | | | | |
| 7 | | | | | |
| 8 | | | | | |

TOTAL value of your interest in ALL investments (C2): R_____

2.5 Details of all life insurance and endowment policies that you hold or have an interest in. Include those that do not have a surrender value.

Documentation required for attachment to this section:
A surrender valuation of each policy that has a surrender value and/or a full policy schedule from your broker.

| | NAME | TYPE OF POLICY | POLICY NUMBER | CURRENT SURRENDER VALUE | CURRENT BENEFICIARIES |
|---|------|----------------|---------------|-------------------------|-----------------------|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |

TOTAL value of your interest in ALL policies (C3): R_____

2.6 Details of all monies that are OWED TO YOU in excess of R2 000,00. Do not include sums owed by way of loan account in your business, but do include loan accounts in Trusts.

| | BRIEF DESCRIPTION OF MONEY OWED AND BY WHOM | BALANCE OUTSTANDING |
|---|---|---------------------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |

TOTAL value of your interest in ALL Debts owed TO you (C4): R_____

2.7 Details of all cash sums held in excess of R2 000,00. You must state where it is held and the currency it is held in (eg. US\$ 500 in safe at home).

| | WHERE HELD | TOTAL AMOUNT | CURRENCY | TOTAL CURRENT VALUE OF YOUR INTEREST |
|---|------------|--------------|----------|--------------------------------------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |

TOTAL value of your interest in ALL cash sums (C5): R_____

2.8 Details of personal belongings individually worth more than R5 000,00.

INCLUDE:

- Vehicles (trade value)
- Collections, pictures and jewellery
- Furniture and house contents (present market value, not replacement costs)

| | BRIEF DESCRIPTION OF ITEM | TOTAL CURRENT VALUE OF YOUR INTEREST |
|---|--|--------------------------------------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| | TOTAL value of your interest in ALL personal belongings (C6) | R |
| | Add together all the figures in boxes C1 to C6 to give the TOTAL current value of your interest in personal assets: TOTAL C | R |

2 FINANCIAL DETAILS

PART 2: CAPITAL - LIABILITIES

2.9 Details of any liabilities you have.

EXCLUDE liabilities already shown such as:

- Mortgage/home loans
- Any overdrawn bank accounts

INCLUDE:

- Money owed on credit cards and store cards
- Bank loans
- Hire purchase/finance agreements eg. On vehicles

List all credit and store cards held including those with a nil or positive balance.

| | Liability (eg. Edgars, Nedbank etc) | Type of credit (eg. Store card, credit card) | Total current value of your interest in the liability |
|---|-------------------------------------|--|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |

TOTAL D: R _____

2 FINANCIAL DETAILS

PART 3: CAPITAL - BUSINESS ASSETS AND DIRECTORSHIPS

2.10 Details of all your business interests. Complete one page for each business you have an interest in.

Documentation required for attachment to this section:

- a) Copies of the business accounts (annual financial statements) for the last two financial years
- b) Any documentation, if available at this stage, upon which you have based your estimate of the current value of your interest in this business, for example a letter from an accountant nor a formal valuation. It is not essential to obtain a formal valuation at this stage.

| | |
|--|---|
| Name and brief description of the business | |
| Are you (please tick appropriate box) | <input type="checkbox"/> Sole trader/partner <input type="checkbox"/> Member in a close corporation <input type="checkbox"/> Shareholder in a limited company |
| If you are a partner or a shareholder, state the extent of your interest in the business (i.e. partnership or the extent of your shareholding compared to the overall shares issued) | |
| Total amount of any sums owed to you by the business by way of a director's loan account, partnership capital or current accounts or the like. Identify where these appear in the business accounts. | |
| Your estimate of the current value of <u>your</u> interest in the business. Explain briefly the basis upon which you have reached that figure | |
| TOTAL value of all YOUR interests in business assets: | TOTAL E R |

2 FINANCIAL DETAILS

PART: 4 CAPITAL - PENSION INTERESTS

2.11 Give details of all your interests, including retirement annuities, pension funds, preservation funds. Complete a section for each pension interest, and add additional pages if necessary.

Documentation required for attachment to this section:

- a) A recent statement showing the cash equivalent provided by the trustees or managers of each pension arrangement, alternatively, the value as prescribed in terms of the Divorce Act.
- b) If a valuation is not available, give the estimated date when it will be available and attach a copy of your letter to the pension fund or administrators from whom the information was sought.

PENSION INTEREST 1

Name of pension interest _____

Policy number of pension interest _____

Type of scheme _____

Date the pension was calculated _____

PENSION INTEREST 2

Name of pension interest _____

Policy number of pension interest _____

Type of income _____

Date the pension was calculated _____

PENSION INTEREST 3

Name of pension interest _____

Policy number of pension interest _____

Type of scheme _____

Date the pension was calculated _____

PENSION INTEREST 4

Name of pension interest _____

Policy number of pension interest _____

Type of scheme _____

Date the pension was calculated _____

TOTAL value of all YOUR pension interests: **TOTAL F** **R**_____

2 FINANCIAL DETAILS

PART 5: CAPITAL - OTHER ASSETS

2.12 Give details of any other assets not listed above.

INCLUDE (the following list is not exhaustive):

- Any personal or business assets not yet disclosed
- Share option or incentive schemes (whether or not your shares have vested)
- Business expansion schemes
- Futures
- Commodities
- Any asset not disclosed elsewhere on this form even if held outside of South Africa

You are reminded of your obligations to disclose ALL your financial assets and interests of ANY nature.

| | TYPE OF ASSET | VALUE | TOTAL NET VALUE OF YOUR INTEREST |
|----|----------------------|--------------|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |

TOTAL value of ALL your other assets: **TOTAL G R**_____

2.13 Are you a founder, trustee or beneficiary of any Trust? If so, please give the name, and IT number, and capacity in which you act.

| | NAME | IT NUMBER | CAPACITY |
|---|-------------|------------------|-----------------|
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |

2 FINANCIAL DETAILS

PART 6: INCOME - EARNED INCOME FROM EMPLOYMENT

2.14 Details of earned income from employment. Complete one page for each employment.

Documentation required for attachment to this section:

- c) IRP5 for the last financial year
- d) Your last three payslips

Name of Employer _____

Address of Employer _____

Job Title _____

Gross income for last financial year as shown on your IRP5 _____

Net income for last financial year i.e. gross income less income tax and UIF (do not deduct pension contributions) _____

Details and value of any bonuses or other occasional payments that you have received from your employer over the past 24 months, if not reflected in your gross and net income above _____

Details and values of any benefits in kind, perks or other remuneration received from The employer (eg. Provision of a car, travel payments, accommodation, meal expenses) _____

Your estimate of your net income from this employer for the next 12 months _____

Estimated total of ALL net earned income from all employment TOTAL (H) R _____

2 FINANCIAL DETAILS

PART 7: INCOME FROM INVESTMENTS E.G. DIVIDENDS, INTEREST OR RENTAL INCOME

2.15 You will have already given details of your business and provided the last two years accounts above. Complete this section giving details of your income from your business. Complete one page for each business.

Documentation required for attachment to this section:

- a) A copy of your last tax assessment or, if that is not available, a letter from your accountant confirming your tax liability
- b) If net income from the last financial year and estimated net income for the next 12 months is significantly different, a copy of management accounts for the period since your last account
- c)

Name of the business _____

Date to which your last account were completed _____

Your share of gross business profit from the last completed accounts _____

Tax payable on your share of gross business profit above _____

Net income for that year (using the two figures directly above, gross business profits less tax payable) _____

Details and value of any dividends, benefits in kind, perks or other remuneration received from this business in the last year
e.g. provision of a car, payment of travel, accommodation, meal expenses, etc. _____

Amount of any regular monthly or other drawings that you take from this business _____

If the estimated figure directly below is different from the net income as at the end date of the last completed accounts, briefly explain the reason(s) _____

Your estimate of your net annual income for the next 12 months _____

Estimated TOTAL of ALL net income from self-Employment or partnership for the next 12 months: TOTAL I R _____

2 FINANCIAL DETAILS

PART 8: INCOME FROM SELF-EMPLOYMENT, PARTNERSHIP OR OTHER ASSETS/INVESTMENTS

2.16 Details of income received in the last financial year, and your estimate of your income for the current financial year. Indicate whether the income was paid gross or net of income tax. You are not required to calculate any tax payable that may arise.

| | NATURE OF INCOME AND THE ASSET FROM WHICH IT DERIVED | PAID GROSS OR NET | INCOME RECEIVED IN THE LAST FINANCIAL YEAR | ESTIMATED INCOME FOR THE NEXT 12 MONTHS |
|----|--|-------------------|--|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |

Estimated TOTAL investment income for the next 12 months: TOTAL J R _____

2 FINANCIAL DETAILS

PART 9: INCOME FROM STATE BENEFITS (INCLUDING STATE PENSION, CHILD OR DISABILITY BENEFIT)

2.17 Details of all state benefits that you are currently receiving.

| | NAME OF BENEFIT | AMOUNT PAID | FREQUENCY OF PAYMENT | ESTIMATED INCOME FOR THE NEXT 12 MONTHS |
|---|-----------------|-------------|----------------------|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |

Estimated TOTAL benefit income for the next 12 months:
TOTAL K R _____

2 FINANCIAL DETAILS

PART 10: ANY OTHER INCOME (INCLUDING LIVING ANNUITIES)

2.18 Details of any other income not disclosed above.

INCLUDE:

- Any source including a Pension OR Living Annuity
- From which income has been received during the last 12 months (even if has not ceased)
- From which income is likely to be received during the next 12 months

| | NATURE OF INCOME | PAID GROSS OR NET | INCOME RECEIVED IN THE LAST FINANCIAL YEAR | ESTIMATED INCOME FOR THE NEXT 12 MONTHS |
|---|------------------|-------------------|--|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |

Estimated TOTAL other income for the next 12 months: TOTAL L R _____

2 FINANCIAL DETAILS SUMMARIES

2.19 Summary of your capital

| Description | Reference of the section on this statement | Value |
|--|--|-------|
| Current value of your interest in the family home | A | |
| Current value of interest in all other property | B | |
| Current value of your interest in personal assets | C | |
| Current value of your interests in business assets | E | |
| Current value of your pension interests | F | |
| Current value of all your other assets | G | |
| Total value of your assets (Totals A+B+C+E+F+G) | | R |
| Current value of your liabilities | D | |

| | |
|--|---|
| Value of your assets LESS the value of your liabilities (Totals A+B+C+E+F+G-D) | R |
|--|---|

2.20 Summary of your income

| Description | Reference of the section on this statement | Value |
|---|--|-------|
| Estimated net total of income from employment | H | |
| Estimated net total of income from self-employment or partnership | I | |
| Estimated net total of investment income | J | |
| Estimated state benefits | K | |
| Estimated net total of all other income | L | |

Estimated TOTAL income (TOTALS H to L) R_____

3 MAINTENANCE REQUIREMENTS

- 3.1 Maintenance needs for yourself and for any children living with you or provide for by you. All figures should monthly (not annual, termly or weekly) You *must* not use a combination of these periods. General household expenses should appear on in the “total” column whereas expenses specific to you or your children (example school fees) should appear in the appropriate column as well as in the total column)

| EXPENDITURE | Self | Child/ren | Total |
|---|------|-----------|-------|
| Lodging (bond repayment, levy, rental, board) | | | |
| Food, Groceries & Cleaning Materials) | | | |
| Toiletries | | | |
| Baby Food | | | |
| House Expenditure: Rates | | | |
| Water | | | |
| Electricity / Gas / Paraffin | | | |
| Insurance (Householders) | | | |
| Insurance (House Owners) | | | |
| Laundry / Dry Cleaning | | | |
| Lunches | | | |
| Telephone and ADSL | | | |
| Cell Phone | | | |
| Domestic Worker | | | |
| Gardener | | | |
| Plants | | | |
| Fresh Flowers | | | |
| Swimming Pool and Chemicals & Maintenance | | | |
| Clothing: Clothing and Shoes | | | |
| School Uniforms | | | |

| | | | |
|--|--|--|--|
| Sporting Clothing | | | |
| Personal Care: Hair Care (cuts, colours and treatment) | | | |
| Cosmetics and Make-up | | | |
| Transport: Car: Instalments | | | |
| Maintenance (services, tyres, Brake pads, etc) | | | |
| Fuel | | | |
| Licenses | | | |
| Insurance | | | |
| Taxi | | | |
| Parking (incl. parking attendants) | | | |
| Other | | | |
| Educational Expenses: School Fees | | | |
| After School Fees | | | |
| Au Pair / Tutor | | | |
| Creche / Day Care | | | |
| Books | | | |
| Stationery | | | |
| Outings | | | |
| Sports | | | |
| Extramurals | | | |
| Other Educational Expenditure | | | |
| Medical Expenditure: Medial Aid | | | |
| Doctor / Dentist / etc. (excess) | | | |
| Medication (excess) | | | |
| Hospital | | | |

| | | | | |
|------------|---|--|--|--|
| | Other Medical Expenditure | | | |
| | | | | |
| Insurance: | Life | | | |
| | | | | |
| | Retirement Annuity | | | |
| | | | | |
| | Other Policies | | | |
| | | | | |
| | Pocket Money / Allowances | | | |
| | | | | |
| | Holidays | | | |
| | | | | |
| | House Maintenance (plumber, handyman, electrician, painter) | | | |
| | | | | |
| | Repair & Replacement of items: Household Appliances | | | |
| | | | | |
| | Kitchenware | | | |
| | | | | |
| | Linen, Towels, etc | | | |
| | | | | |
| | Other items | | | |
| | | | | |
| | M-Net / DSTV | | | |
| | | | | |
| | Entertainment & Recreation | | | |
| | | | | |
| | Personal Loans | | | |
| | | | | |
| | Security Alarm System | | | |
| | | | | |
| | Membership Fees | | | |
| | | | | |
| | Religious Contributions | | | |
| | | | | |
| | Charities | | | |
| | | | | |
| | Gifts | | | |
| | | | | |
| | TV Licence | | | |
| | | | | |
| | Reading Material: Books | | | |
| | | | | |
| | Newspapers | | | |
| | | | | |
| | Periodicals / Magazines | | | |
| | | | | |
| | Instalments for Credit / HP Agreements (Furniture and Appliances) | | | |
| | | | | |

| | | | | |
|-------|--------------------------|--|--|--|
| Pets: | Food | | | |
| | | | | |
| | Vet | | | |
| | | | | |
| | Other (not specified) | | | |
| | | | | |
| | TOTAL EXPENDITURE | | | |
| | | | | |

4 OTHER INFORMATION

3.2 Details of any significant changes in your assets or income.

At both section 4.1.1 and 4.1.2, INCLUDE:

- ALL assets held both within and outside South Africa
- The disposal of any asset

4.1.1 Significant changes in assets or income during the LAST 12 months.

4.1.2 Significant changes in assets or income likely to occur during the NEXT 12 months.

4.2 Brief details of the standard of living enjoyed by you and your spouse during the marriage. Include details of the types of vehicles you both drive, if any, the destinations of your last three family holidays, how often you eat out at restaurants, which shops you buy your groceries at, etc.

3.3 Are there any particular contributions to the family property and assets or outgoings, or to family life, or the welfare of the family that have been made by you, your partner or anyone else that you think should be taken into account? If there are any such items, briefly describe the contribution and state the amount, when it was made and by whom.

INCLUDE:

- Contributions already made
- Contributions that will be made in the foreseeable future

3.4 Bad behaviour or conduct by the other party will only be taken into account in the most exceptional circumstances. If you feel it should be taken into account in your case, identify the nature of the behaviour or conduct below.

3.5 Give details of any other circumstances that you consider could significantly affect this matter.

INCLUDE (the following list is not exhaustive):

- Earning capacity, or limits thereon
- Disability
- Inheritance prospects
- Retrenchment
- Retirement
- Any agreement made between you and your spouse before or after your marriage, stating whether or not you rely upon the agreement giving your reasons
- Any plans to marry, form a civil union or live with a new life partner
- Any contingent liabilities

Proceedings for contempt of court may be brought against a person who makes or causes to be made, a false statement in a document under oath or affirmation

OATH/AFFIRMATION:

I, _____ hereby declare under oath/hereby truly affirm* that to the best of my knowledge and belief the foregoing statements are true, complete and correct.

SIGNED

I, certify that before administering the oath/affirmation*, I asked the deponent the following questions and wrote down her answers in his presence:

1. Do you know and understand the contents of the above declaration?
Answer: _____

2. Do you have any objection to taking the prescribed oath?
Answer: _____

3. Do you consider the prescribed oath to be binding on your conscience?
Answer: _____

I, certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn to/affirmed* before me, and the deponent's signature was placed thereon in my presence.

COMMISSIONER OF OATHS

FULL NAME

DESIGNATION (RANK) AND AREA FOR WHICH APPOINTED

ADDRESS: _____

DATE: _____

| | |
|--|--|
| Name and address of Attorney for Plaintiff, if applicable: | |
| Name and address of attorney for Defendant, if Applicable: | |
| Received a copy hereof on the following date: | |