

**HOW TO FILE FOR A RULE 43 APPLICATION**

Riëtte Oosthuizen, a family law practitioner from Pretoria, says the husband, wife or spouse (including gay or lesbian partners) brings the application in terms of Rule 43 of the Supreme Court Act 59 of 1959.

"It's brought by way of an affidavit where you explain under oath to the court why you cannot wait for the divorce to be finalised before you get relief," she says.

The applicant can also set out what type of relief they're seeking, for example mainten-

ance for themselves, maintenance for children, the residence of the children, contact rights with the children, a cost contribution and so on.

Oosthuizen says recently a court ordered in terms of a Rule 43 application that the one party must in the interim contribute towards the legal costs of the other party.

"The husband had to contribute more than R8 million towards the legal costs of the other party and R106 800 maintenance per month."

At the moment, this special form applies only to Rule 43 cases in Gauteng. If you're involved in a case in the maintenance court, or in a Rule 43 in another province, you should suggest to your attorney that they contact the Gauteng Family Law Forum (GFLF) to find out about this judgment, GFLF's Beverley Clark advises. "I expect this is just the start and it's going to become more and more widely used, both in other kinds of cases and in other provinces," she says.

It's so detailed that even meal, travel and accommodation allowances from employers have to be filled out.

And as the document is signed under oath, any lies or omissions can result in a party facing the full force of the law.

**WHO WILL BENEFIT FROM THE RULING**

The judgment relates specifically to Rule 43 applications, which are special procedures brought at the early stages of divorce.

"These orders last until the actual divorce is granted, which can sometimes be a year or two," Clark says.

"The divorce process takes time but in the meantime there are pressing issues that can't wait months or years to be resolved while the divorce is being finalised," Oosthuizen explains.

Therefore, such a party can then approach the court in terms of Rule 43 and ask for relief in the interim.

"This interim relief is usually for spousal maintenance, children's maintenance or with who the children will reside or even contact rights with the children in the meantime."

Oosthuizen says it can also be to ask for a contribution towards legal costs, which is sometimes necessary if one spouse is a homemaker or not working or working for a much smaller salary than the other spouse.

Although the judgment relates only to Rule 43 applications during the early stages of divorce, legal experts believe that these financial declarations could have an impact on the final settlement as well.

"It can and will definitely also assist

with the claims that the parties have against each other later in the main divorce," Oosthuizen says.

As the judgment was made in the high court in Johannesburg, it'll only apply to high courts and magistrate's courts in Gauteng and not maintenance courts or courts in other districts.

But legal experts believe that in time, as it's shown to make divorce proceedings run easier, it may be applied in other courts as well.

**HIDING OF ASSETS**

Clark says it's common practice for spouses to conceal their assets.

"You'd think that people would want to pay as much as they possibly can afford towards their children's well-being," she says. "But many try instead to pay as little as they possibly can get away with."

She says that it's because one parent misguidedly thinks that the other parent is using their money on themselves and not the children.

"They usually hide their assets in trusts, cash or cash income or they give it to relatives to look after for them and so on," she adds.

Oosthuizen says people often resort to stashing their money offshore as it's harder to trace.

"If the parties were married out of community of property with the accrual system, the richer party of the two might want to hide assets in another country so that their payment in terms of the accrual is much smaller than it should actually be."

According to Oosthuizen, some of the most common places rich people tend to hide their assets are in Isle of Man, (between Great Britain and Ireland) and Guernsey and Jersey (Channel Islands in the English Channel). ■

SOURCES: CITY PRESS, GAUTENG FAMILY LAW FORUM



**NOWHERE TO HIDE**

Beware maintenance dodgers – you can no longer lie about your finances, thanks to a game-changing new court ruling

COMPILED BY GABISILE NGCOBO

**A** WIFE spends years loyally supporting her high-flying business exec husband, putting her career on hold to raise their kids and keeping the household ticking over – and then when divorce proceedings start she's instantly out in the cold.

Money, shares, holiday homes, business assets – suddenly it's all gone and her husband is pleading poverty, claiming he can no longer support her or their children.

For years this had been a bitter bone of contention among divorcing couples – a partner may know their spouse has money stashed away but to prove this they'll need to hire expensive detectives, accountants and lawyers and many simply don't have the financial resources to play this frustrating game of cat and mouse.

Which is why legal experts are cheering a landmark ruling that could pave the way for much more transparency in divorce proceedings.

In a breakthrough move the high

court in Johannesburg recently approved a financial declaration form that can be filled in at the start of divorce proceedings to get the ball rolling.

The chairperson of the Gauteng Family Law Forum (GFLF), Beverley Clark, describes it as a potential game-changer.

She says it'll make it much harder for well-off spouses to lie about their assets and continue to live flashy lifestyles while dodging their responsibilities.

**WHAT THE JUDGMENT MEANS IN A NUTSHELL**

In three different applications brought before the high court recently, the GFLF was invited to make recommendations to the court as experts in this field of law.

This resulted in the court accepting a detailed 20-page proposed declaration suggested by the GFLF aimed at ensuring comprehensive financial disclosure in the early stages of divorce.

The form includes questions about assets of all descriptions, liabilities, pensions, income, expenditure, trusts and lifestyle.

"The reason for the lifestyle questions is that you'll often find that someone drives a Range Rover, flies his own plane, and has two holiday homes but somehow on paper is worth nothing, or has no income," Clark explains.

"A lifestyle audit will show that something is fishy and requires further investigation."

Riëtte Oosthuizen, a family law practitioner from Pretoria, says as things stand at the moment it's up to the spouse who's applying for maintenance to prove they're entitled to financial relief.

"The opposite party can stretch the case out and dispose of assets. In the end, you only get what you can prove," she says.

But the new ruling aims to put an end to this. It means that both parties will have to declare every cent of their assets. For instance, the form asks the parties' occupations, who owns marital property, its value and who pays the bond.

It also requires details of all personal accounts, investments, insurances, endowments, business and pension interests.



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