



JLAW IC 2 of 2026: Maintenance matters

Introduction

This document covers three judgements delivered in March 2026, and one judgement delivered in February 2026, regarding the payment of interim maintenance.

1. P.A.L v R.J.T (17492/2023) [2026] ZAWCHC 99 (4 March 2026): life partner

The facts

- The parties were involved in a **permanent life partnership of approximately 29 years**, during which they cohabited, raised two children, and presented publicly as spouses.
- The respondent was the primary breadwinner. The applicant devoted herself largely to domestic responsibilities and child-rearing. She was financially dependent on the respondent.
- The life partnership terminated in October 2020.
- The applicant alleged that, at termination, the respondent **expressly undertook in writing** to continue maintaining her and that he in fact did so for approximately three years thereafter, before reducing and ceasing payments.
- The applicant instituted proceedings claiming maintenance and patrimonial relief arising from:
 - an express maintenance undertaking, alternatively
 - **reciprocal duties of support** flowing from a permanent life partnership.
- Pending finalisation of that action, the applicant sought **interim maintenance pendente lite**¹.
- The respondent did **not** file an answering affidavit. Instead, he raised jurisdictional and legal objections under **Rule 6(5)(d)(iii)**, including that no legally cognisable maintenance claim could arise from a terminated life partnership.
- The respondent also contended that the court lacked jurisdiction as he was a **peregrinus**² as he lives in Tanzania.

¹ Pending the litigation.

² He did not live within the jurisdiction of the court.

The judgement

- The Court **dismissed the respondent's objections** and granted interim maintenance pending the finalisation of the action.
- It held that:
 - The Court had **ancillary jurisdiction**, as the interim application was incidental to the main action over which the respondent had submitted to jurisdiction.
 - Rule 6(5)(d)(iii) cannot be used to avoid engaging with **material factual disputes** central to the claim. In the absence of an answering affidavit, the applicant's averments stood for interim purposes.
- On the requirements for interim relief:
 - The Court held that it was **not necessary at the interim stage** to determine finally whether an enforceable life partnership with reciprocal duties of support existed.
 - The applicant had established a **prima facie right**, based on:
 - the long duration of the relationship;
 - shared children and household;
 - financial interdependence;
 - public presentation as spouses, and
 - historical maintenance, including post-termination support.
 - The applicant demonstrated apprehension of **irreparable harm** through financial dependence and cessation of support.
 - The **balance of convenience** favoured preserving the status quo pending trial.
 - There was no satisfactory alternative remedy.
- Interim maintenance was accordingly ordered, pending determination of the applicant's claims in the main action.

Why it's important

- **Extends interim maintenance beyond marriage-based claims**
The case recognises that interim maintenance may be granted **outside formal marriage**, including following the termination of a long-term life partnership.
- **Confirms the low threshold at interim stage**
It affirms that applicants need only establish a **prima facie right**, not prove the existence of a legally enforceable duty of support conclusively; that determination is reserved for trial.
- **Affirms constitutional development of the common law**
The judgment aligns with Constitutional Court jurisprudence (including *Bwanya*³) recognising

³ *Bwanya v Master of the High Court, Cape Town and Others* (CCT 241/20) [2021] ZACC 51; 2022 (4) BCLR 410 (CC); 2022 (3) SA 250 (CC) (31 December 2021).

that permanent life partnerships may attract **reciprocal duties of support**, warranting interim protection.

- **Prevents financial vulnerability pending trial**

The case underscores the protective function of interim maintenance: preserving the status quo and preventing hardship where long-standing dependency and historical support are evident.

- **Limits tactical procedural objections**

It makes clear that respondents cannot defeat interim maintenance claims through jurisdictional or purely legal objections while declining to engage factually, particularly where maintenance has historically been paid.

2. E.S v H.Z.A (A2023/062743) [2026] ZAGPJHC 262 (12 March 2026): Muslim marriage

The facts

- The parties were married in terms of **Sharia law** in November 2020. The marriage was automatically out of community of property.
- The respondent husband issued a series of **talaqs**⁴ between 2021 and 2022. Despite this, the parties continued cohabiting as husband and wife for some time, and a child was born during the subsistence of the relationship.
- Following the Constitutional Court's decision in **Women's Legal Centre Trust v President**⁵ and the **Divorce Amendment Act 1 of 2024**, the wife instituted civil divorce proceedings in 2023.
- She simultaneously brought a **Rule 43 application** seeking interim maintenance and other relief *pendente lite*.
- The High Court (court a quo) dismissed the Rule 43 application on a **jurisdictional basis**, holding that the parties were not "spouses" for purposes of Rule 43 because the Muslim marriage had already been terminated by talaq.
- The wife appealed the jurisdictional ruling.

The judgement

- The appeal was **upheld**, and the jurisdictional ruling was **set aside**.
- The Court held that:
 - A ruling dismissing a Rule 43 application on jurisdictional grounds is **appealable**, as it is final in effect, definitive of rights, and disposes of the interim relief sought.

⁴ The formal ending of the marriage by the husband.

⁵ *Women's Legal Centre Trust v President of the Republic of South Africa and Others* (CCT 24/21) [2022] ZACC 23; 2022 (5) SA 323 (CC); 2023 (1) BCLR 80 (CC) (28 June 2022).

- Section 16(3) of the Superior Courts Act does **not bar appeals** where the merits of interim relief were never reached and the issue is jurisdiction.
- On the merits of jurisdiction, the Court found that:
 - The **Divorce Act 70 of 1979**, as amended by the **Divorce Amendment Act 1 of 2024**, applies to **all Muslim marriages** subsisting after 15 December 2014.
 - The issuing of a **talaq does not preclude** a spouse from instituting civil divorce proceedings or from invoking **Rule 43**.
 - The term “**spouse**” in **Rule 43 must be interpreted purposively** to include a party to a Muslim marriage, notwithstanding a prior talaq.
 - Parties cannot, by agreement, acquiescence, or submission to religious processes, **contract out of or waive** the statutory protections of the Divorce Act, including interim maintenance.
- The wife was granted leave to **re-enrol the Rule 43 application**, and the respondent was ordered to pay costs.

Why it's important

- **Confirms access to Rule 43 relief for Muslim women post-talaq**
The case makes it clear that a talaq does not deprive a woman of the right to seek interim maintenance *pendente lite* under Rule 43.
- **Harmonises Rule 43 with constitutional and legislative developments**
It firmly integrates Rule 43 into the post-**Women's Legal Centre Trust** legal framework, ensuring that interim maintenance protections extend equally to spouses in Muslim marriages.
- **Affirms a purposive interpretation of “spouse”**
The judgment strengthens a constitutional, rights-based approach to Rule 43 by prioritising substance over formalistic definitions of marital status.
- **Prevents circumvention of interim maintenance through religious or private processes**
The Court decisively rejects attempts to avoid interim maintenance obligations by relying on prior religious divorce, private agreements, or alleged waiver by the wife.
- **Clarifies appealability in interim maintenance matters**
Importantly, it distinguishes between non-appealable interim maintenance orders and **appealable jurisdictional dismissals**, ensuring erroneous denials of access to Rule 43 relief can be corrected on appeal.

3. B[...] E[...] v N[...] T[...] and Others (505/2025) [2026] ZASCA 25 (11 March 2026): stepchildren

The facts

- The parties were married out of community of property subject to the accrual system.

- The wife (NT) had two minor children from a previous marriage; they were not adopted by the husband (BE).
- During the marriage, the parties functioned as a single-family unit, and BE provided substantial financial support to NT and her children, creating a high standard of living.
- Following separation, NT instituted divorce proceedings and brought a **Rule 43 application** seeking interim maintenance for herself and her two children, as well as a contribution to legal costs.
- BE opposed the application, contending that he had **no legal duty to maintain stepchildren**, particularly where both biological parents were able to do so.
- The High Court ordered BE to pay interim maintenance for the children, retain them on his medical aid, contribute to housing costs, and pay a substantial contribution toward legal costs⁶.
- BE sought to appeal the interim order, limited to the issue of liability to contribute towards the maintenance of his stepchildren *pendente lite*.

The judgement

- The Supreme Court of Appeal **did not entertain the merits** of whether a stepparent can be ordered to pay interim maintenance for stepchildren.
- Instead, the Court held that it **lacked jurisdiction** to hear the appeal.
- The Court confirmed that:
 - Orders granted under **Rule 43** are **interim, provisional, and revisable**.
 - Section **16(3) of the Superior Courts Act 10 of 2013** expressly bars appeals against orders concerning maintenance *pendente lite*.
 - Even where leave to appeal has been granted, an appellate court must still determine whether the order constitutes an appealable “decision” under section 16(1)(a).
- Applying the “**interests of justice**” test, the Court found that:
 - The Rule 43 order lacked finality.
 - The parties’ rights had not been definitively determined.
 - The High Court could reconsider the order under Rule 43(6) or finally determine the issue in the divorce trial.
- The appeal was therefore **struck from the roll with costs**.

⁶ Par 5: *The High Court accordingly ordered the applicant to pay cash maintenance of R40 000 per month, retain the children on his medical aid and pay medical expenses, make additional monthly payments, including a monthly amount up to R35 000 for the ex-wife’s rent, and contribute towards legal costs in the amount of R1m.*

Why it's important

- **Reinforces the non-appealability of Rule 43 maintenance orders**
The case strongly affirms that orders for interim maintenance *pendente lite* are generally not appealable, even where novel legal questions are raised.
- **Confirms the primacy of statutory bars over perceived injustice**
The decision underscores that section 16(3) of the Superior Courts Act reflects a **deliberate legislative policy** to prevent delays, expense, and piecemeal litigation in interim matrimonial matters.
- **Protects the purpose of Rule 43 proceedings**
The judgment highlights that Rule 43 exists to provide **speedy, inexpensive, and provisional relief**, particularly to protect economically vulnerable spouses and children during divorce proceedings.
- **Clarifies that interim findings do not develop the common law**
The Court made it clear that findings made in Rule 43 proceedings, including on contentious issues such as a stepparent's duty of support, are **not final determinations** and do not bind the trial court.
- **Emphasises alternative remedies over appeals**
The case confirms that dissatisfaction with interim maintenance orders should ordinarily be addressed through:
 - Rule 43(6) variation applications, or
 - Reconsideration and adjustment in the final divorce proceedings.

4. T.P.C (Born J[...]) v L.I.C (2024-127910) [2026] ZAGPJHC 173 (10 February 2026): major child

The facts

- The parties were married in 2001 and instituted divorce proceedings in 2024.
- They have **three adult children**, all university students:
 - **S** (±22) and **R** (±20), who had remained financially dependent.
 - **J** (late 20s), who had previously lived independently abroad for several years before returning to South Africa and re-enrolling at university.
- During the marriage, the respondent husband bore most household and educational expenses and maintained a high-end standard of living, albeit described by the applicant as **parsimonious**.
- After separation, the applicant brought a **Rule 43 application** seeking:
 - Interim maintenance for herself, and
 - Interim maintenance for all three adult children, including **J**, whose dependency was disputed.

- The respondent accepted a duty of support toward **S and R**, but refused to pay maintenance for **J**, contending that J had previously become self-supporting and had failed to show a basis for renewed dependency.

The judgement

- The Court reaffirmed the **purpose of Rule 43** as providing *temporary, rough-and-ready relief* aimed at preserving the marital standard of living pending divorce, not correcting historic frugality or upgrading lifestyles.
- In respect of the children:
 - The Court confirmed that the **duty of support does not automatically terminate at majority**, and that parents may be ordered to contribute to maintenance of adult dependent children.
 - Maintenance was granted for **S and R**, who were *bona fide* dependent major children engaged in tertiary studies.
- However, the Court **refused interim maintenance for J**, holding that:
 - J had previously become **independent and self-supporting** while living abroad.
 - He failed to demonstrate that his renewed dependency arose from **involuntary circumstances** such as ill-health, disability, or circumstances beyond his control.
 - There was insufficient evidence of diligent effort, credible commitment to studies, or inability to resume self-support.
- The Court emphasised that although a duty of support for a major child **may revive** in appropriate cases, this generally requires proof of an **involuntary loss of self-support** or a genuine, time-bound transitional need.
- Comparative foreign authority was used to underscore that parental maintenance for adult children is not indefinite and is constrained by principles of **self-responsibility**.
- The Court granted tailored interim maintenance for the applicant, **S**, and **R**, together with a measured contribution to costs, but excluded **J** from maintenance *pendente lite*.

Why it's important

- **Clarifies interim maintenance for adult children**
The case provides a nuanced and authoritative framework for when adult children may qualify for interim maintenance *pendente lite*.
- **Distinguishes dependency from choice**
It draws a clear line between genuine dependency arising from involuntary circumstances and renewed financial reliance following prior independence based on personal choice.
- **Confirms that revival of maintenance is exceptional**
The judgment confirms that while revival of a duty of support is legally possible, it is not automatic and requires cogent evidence of incapacity or transitional necessity.

- **Reinforces the proper scope of Rule 43**

The Court reiterates that Rule 43 aims to preserve—not elevate—the marital standard of living and cannot be used to rewrite family dynamics or insure against life decisions.

- **Provides guidance for future Rule 43 disputes involving major children**

The structured analysis and reliance on both local and comparative authority make this a key reference point for interim maintenance claims involving adult offspring.

Conclusion

Taken together, these cases signal a decisive judicial stance: maintenance in South African family law is no longer rigidly tethered to formal labels or technical endings. Whether arising from a long-term life partnership, a Muslim marriage terminated by talaq, or the assumption of a parental role towards stepchildren, the courts have shown a clear willingness to look beyond form to substance. The unifying thread is dependency — where one party has relied on another for support, the law will not permit an abrupt withdrawal that exposes vulnerability or undermines dignity, particularly in the interim period before final determination.

At the same time, the jurisprudence confirms that the duty of support has principled limits. It will not be extended to adult children whose renewed dependence flows from choice rather than need, nor will interim findings be allowed to ossify into final rights through piecemeal appeals. The emerging message is balanced but firm: interim maintenance exists to stabilise lives, preserve the status quo, and protect the vulnerable, not to reward opportunism or delay final accountability.

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