

Rule 43 Orders: Interim Relief, Final Decrees and Enforcement of Matrimonial Litigation

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INTRODUCTION

Rule 43 of the Uniform Rules of Court provides an essential mechanism for interim relief in matrimonial proceedings. It allows parties to secure temporary arrangements for maintenance, care and contact of minor children, and contributions toward litigation costs while divorce proceedings are pending. The purpose of this provision is to ensure fairness and stability during the often-protracted course of matrimonial litigation. However, the question that frequently arises is whether a Rule 43(6) order remains operative once a final divorce decree has been granted, particularly in circumstances where an appeal is pending. This paper examines the nature of Rule 43 relief, its relationship to final divorce orders, and the impact of appeals under the Superior Courts Act 10 of 2013, with reference to recent case law.

THE NATURE OF RULE 43 RELIEF

Rule 43 is designed to provide expeditious interim relief. It is not intended to create permanent rights but rather to regulate the position of the parties *pendente lite*. Rule 43(6) further allows for variation of such orders where circumstances materially change or where contributions toward costs prove inadequate. Importantly, Rule 43 orders are not appealable, as expressly provided in section 16(3) of the Superior Courts Act. This reinforces their interim character and ensures that matrimonial litigation is not bogged down by appeals against temporary measures. The interim nature of Rule 43 orders means that they exist only while litigation is pending. Once a final divorce order is granted, the interim relief is supplanted by the final order and ceases to have effect.

THE EFFECT OF A FINAL DIVORCE DECREE

When a divorce court issues a final decree, the Rule 43 order regulating care and contact or maintenance lapses. The enforceable instrument becomes the divorce decree itself. This principle is rooted in the distinction between interim and final relief. Interim measures are designed to bridge the gap until final adjudication.

Once the court has pronounced upon the substantive issues, the interim order yields to the final determination. Accordingly, contempt proceedings after the divorce decree must be grounded in the final order rather than the lapsed Rule 43 order.

SUSPENSION PENDING APPEAL

The Superior Courts Act provides the statutory framework for appeals and the suspension of decisions. Section 18(1) stipulates that the execution of a judgment subject to an application for leave to appeal or of an appeal is suspended pending the determination of such application or appeal, unless the court orders otherwise in exceptional circumstances. Section 18(2) clarifies that interlocutory orders not having the effect of a final judgment are not suspended pending appeal unless exceptional circumstances justify it. The distinction lies in whether the order is final or interim in effect. If final, suspension operates automatically; if interlocutory, suspension does not apply unless ordered.

In *Incubeta Holdings (Pty) Ltd v Ellis* [2017] JOL 37231 (CJ)¹, Sutherland J explained that the test for suspension requires proof of exceptional circumstances and irreparable harm. This marked a departure from the earlier *South Cape Corporation* test, imposing a stricter threshold. The case of *R v R* (Case No. 44169/2019, unreported) further illustrates that interim orders are not appealable and are not suspended by appeal. These authorities confirm that Rule 43 relief, being interim in nature, does not survive the final decree unless substantive disputes remain unresolved or are themselves the subject of appeal.

The courts have grappled with the question of whether Rule 43 relief can survive a decree of divorce. In *Carstens v Carstens*², the court held that it would be contrary to public policy to allow interim Rule 43 relief to lapse during a protracted appeal, as this would leave the spouse without maintenance. The Rule 43 order was accordingly held to survive the decree of divorce to ensure continuity of relief pending appeal.

By contrast, in *LS v RS*³, the court dismissed an application for continuation of a Rule 43 order pending appeal, noting that once substantive issues have been determined by the divorce court, the Rule 43 order ordinarily lapses.

The court nevertheless acknowledged that where only limited aspects are appealed, the Rule 43 order may not revive. Finally, in *KO v MO*⁴, the court confirmed that, pending appeal, a Rule 43 order can survive a decree of divorce to the extent that the issues regulated by such order remain unresolved. This underscores that interim relief may continue where substantive disputes remain pending.

CONCLUSION

Rule 43 orders are powerful tools for ensuring fairness *pendente lite*, but their lifespan is limited. Once a divorce decree is granted, they yield to final judicial determinations. The Superior Courts Act provides a framework for suspension pending appeal, but this applies only to provisions under appeal. Practitioners must carefully assess whether relief survives post-divorce and tailor enforcement strategies accordingly. The lesson is clear: interim relief serves its purpose only until final adjudication. Thereafter, enforcement must be grounded in the final order. This reinforces the importance of procedural vigilance and strategic foresight in matrimonial litigation.

¹*Incubeta Holdings (Pty) Ltd v Ellis* [2017] JOL 37231 (GJ) para 11.

²*Carstens* paras 3-7.

³*LS v RS* para 11.

⁴*KO v MO* para 61.



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