



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 11 March 2026

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgment of the Supreme Court of Appeal

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

Today the Supreme Court of Appeal (SCA) struck from the roll an appeal against an order of the Western Cape Division of the High Court, Cape Town (the high court), granted under rule 43 of the Uniform Rules of Court.

The dispute arose during pending divorce proceedings between the appellant (BE) and the first respondent (NT). NT had applied in terms of rule 43 for interim maintenance, including maintenance for her two minor children from a previous marriage. The high court held that BE had assumed a parental role and ordered him, among other things, to pay R40 000 per month in maintenance and to retain the children on his medical aid. BE denied that he bore any legal duty to maintain the children, arguing that they had not been adopted by him and that their biological parents remained responsible for their support. He contended that the high court had wrongly imposed a duty of support on a stepparent and had effectively developed the common law. Leave to appeal was granted on petition to the SCA, limited to the question whether BE was liable to contribute to the children's maintenance *pendente lite* (pending the divorce action).

Before reaching that question, the SCA considered whether it had jurisdiction to hear the appeal. The Court emphasised that its jurisdiction is derived from the Constitution and statute. In civil matters, the granting of leave to appeal is not sufficient on its own: the order sought to be appealed must also constitute a 'decision' within the meaning of section 16(1)(a) of the Superior Courts Act 10 of 2013 (the Act).

The SCA confirmed that rule 43 proceedings provide a summary and inexpensive mechanism for regulating interim financial arrangements between spouses during divorce proceedings. Rule 43 orders are by their nature provisional and do not finally determine the rights of the parties. They remain subject to reconsideration by the high court upon a material change in circumstances and may ultimately be revisited by the trial court when the divorce action is determined.

In assessing whether the interests of justice justified entertaining the appeal, the SCA emphasised several considerations. These included the express statutory exclusion of appeals in section 16(3), the provisional nature of rule 43 orders, the availability of alternative remedies such as reconsideration under rule 43(6), and the need to avoid piecemeal appeals that could delay divorce proceedings and undermine the purpose of interim relief. The Court also noted that financial prejudice caused by compliance with an interim maintenance order is ordinarily temporary and capable of adjustment when the final issues are determined in the divorce proceedings.

The SCA concluded that the order did not constitute an appealable 'decision' as contemplated in section 16(1)(a) of the Act. The interests of justice did not favour appellate intervention. The earlier grant of leave to appeal on petition did not confer jurisdiction on the Court to entertain the appeal.

As a result, the appeal was struck from the roll with costs.

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