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

CASE NO: 00059/2023

NOT REPORTABLE
NOT OF INTEREST TO OTHER JUDGES
REVISED
31.05.23

In the matter between:

BABY DIKELEDI MOILA

Applicant

And

PHAMELA ALEXANDRA
Respondent

1ST

THE MINISTER OF POLICE

2ND Respondent

STATION COMMANDER SAPS OF COSMO

3RD Respondent

Neutral citation: *Baby Dikeledi Moila v Pamela Alexandra & Others* (Case No. 00059/2023)
[2023] ZAGPJHC 606 (31 May 2023)

JUDGMENT

MAKUME, J:

INTRODUCTION

[1] In this urgent application brought before me in accordance with the provisions of Rule 6(12) the Applicant seeks an order in the following terms:

- 1.1 Declaring that the first Respondent is in contempt of the court order granted by Molahlehi J on the 13th April 2023;
- 1.2 Alternatively, that the third Respondent has not complied with the Court order and that it be ordered that the third Respondent do so immediately;
- 1.3 Declaring the failure of the member of the South African Police to assist the Applicant in regaining possession of the motor vehicle on the 13th April 2023 to be unlawful and unconstitutional.

[2] The order granted by Molahlehi J on the 13th April 2023 authorised the sheriff of this Court to enforce the order by removing the said motor vehicle being BMW 320i from the possession of the first Respondent and hand it over to the Applicant.

[3] The order said nothing about the police.

BACKGROUND

[4] On the date of hearing of this application none of the Respondents had filed answering papers. The first Respondent who appeared in person told the court that she had only received the Notice of Motion on the 4th May 2023.

[5] I pointed out to Counsel for the Applicant about certain difficulties I noticed on the application and despite that Counsel insisted that he wants to proceed with the application. Because of the preliminary view that I had on the papers I allowed Counsel to address me on his papers and informed him that I will not be hearing the first Respondent even though she was sitting in Court. It is an application which is being moved as a default matter. The history leading up to this matter is set out below.

[6] The Notice of Motion was issued on the 18th February 2023 setting it down for hearing on the 19th February 2023 at 18h00. In the Notice of Motion, the Applicant sought the following relief on an urgent basis:

- i) That the third Respondent being the station commander of Cosmo Police Station be ordered and directed to restore to the Applicant possession of a Silver BMW 320i with registration numbers [...];
- ii) That the third Respondent be ordered to take all reasonable steps to ensure that the first Respondent does surrender the vehicle back to the possession of the Applicant on the 19th February 2023 before 17h00;
- iii) That the first, second and third Respondents are hereby granted leave to file papers before this Court to show cause why the interim order should not be made final on the 28th February 2023;
- iv) The first and third Respondents are hereby interdicted and restrained from further forcefully removing the vehicle from the possession of the Applicant pending the hearing of the main application in terms of *Rule Nisi* of returnable on 28th February 2023.

[7] The strange and anomalous issue about the Notice of Motion referred to above is that whilst it says the application will be heard in the urgent court on the 19th February 2023 at 18h00 it further directs that the Respondent had until 20th February 2023 to file their Notice to Oppose and to file their Answering Affidavit by the 23rd February 2023.

[8] It is not clear what happened on the 19th February 2023 nor on the 28th February 2023. There is however, correspondence dated the 6th March 2023 from one Zuko Madikane to the Legal Service department of the South African Police for attention of Brigadier Hlungwane and one Hendricks it is titled "Heads of Argument of Baby Moila."

- [9] In the letter the writer says that the matter was heard on Sunday the 19th February 2023 at 20h45 by Honourable Thompson AJ and that the Station Commander was served on Monday the 20th February 2023. The email further indicates that the first Respondent refused to sign and accept documents.
- [10] On the 31st March 2023 the State Attorney entered appearance to oppose what it says was an “application for unlawful arrest and detention.” In the Notice to Oppose is a fourth Respondent by the name of PE Nemaophonon Sergeant Mo. The case number is still the same.
- [11] On the 18th March 2023 the Applicant’s attorneys filed heads of argument in the matter where only the first, second and third Respondents are parties.
- [12] The Applicant then followed this with a practice note as well as a notice re-enrolling the application on the urgent court roll for the 28th March 2023. This was followed by numerous notices seeking to amend the notice of motion as well as affidavits by Zuko Madikane which at this stage have no relevance to what the Applicant now seeks with the present application.
- [13] On the 13th April 2023 Molahlehi J ordered as follows:
- 13.1 The application is heard as one of urgency in terms of Rule 6(12) condoning the non-compliance with the time limits for service of court documents.
- 13.2 The Respondent, Ms Pamela Alexandra is ordered to restore the physical possession of the motor vehicle to wit the Silver BMW 320i with registration numbers [...]to the Applicant Ms Dikeledi Moila with immediate effect.
- 13.3 In the event the Respondent fails to comply with the order in 2 above the
sheriff of this court is authorised and directed to enforce the aforesaid order by removing the aforesaid motor vehicle being the Silver BMW

320i bearing registration number [...]from the unlawful possession of the said Respondent.

13.4 The Respondent Pamela Alexandra is to pay the Applicant's costs on party and party scale.

[14] On the 2nd May 2023 the Applicant issued a Notice of Motion on an urgent basis seeking the following relief:

14.1 That the first Respondent be declared to be in contempt of the Court order granted by Molahlehi J on the 13th April 2023.

14.2 Declaring that the third Respondent has not complied with the Court order and that third Respondent be ordered to do so immediately.

14.3 That failure by the South African Police to assist the Applicant in regaining possession of the vehicle on 13th April 2023 and thereafter is declared unlawful and unconstitutional as they acted as accomplices to the crime upon realising that the first Respondent failed to comply with the Court order in their presence and they are hereby ordered to directly ensure that there is immediate compliance at the grant of this order.

14.4 Directing that first and third Respondents to pay costs of this application jointly and severally on a scale of attorney and client, the one paying the other to be absolved.

[15] The deponent to the Founding Affidavit being the Applicant herself says the following at paragraph 15 and 16:

[15] "upon being presented with the Court order the first Respondent informed the Police that she would not sign for any order and or release the vehicle for anyone else except her family members. In other words, she refused to comply with the Court order in the

presents of the SAPS and they failed and or refused to apprehend her on the spot.

[16] It is important that I place categorically clear to the Court that the South African Police Station members were not from Cosmo City Police Station but from Honeydew and I would not want to be perceived as if I am conflating issues.”

[16] In paragraph 24 of her Founding Affidavit the Applicant incorrectly says that the Court order by Molahlehi J “ordered that in the event that the Respondent fails to comply the Sheriff and or the South African Police was authorised and directed to enforce the aforesaid order.” This is not correct the Court order mentioned nothing about the South African Police. The Applicant is being disingenuous and is misleading the Court.

[17] The order by Molahlehi J is specific it granted authority to the Sheriff to take possession of the motor vehicle in the event the first Respondent does not do so. It is therefore difficult to understand why in the first place the Applicant now seeks contempt and a declaratory order against the third Respondent when she knows well that no order was granted against the police. What is even worse it is not the Police from Cosmo City who accompanied the Applicant. This boggles one’s mind how the Applicant thinks she is entitled to ask this Court for the orders she has prayed for in her Notice of Motion. In the result the application against the second and third Respondents ought to be dismissed.

[18] Contempt of Court by definition means to be disobedient or disrespectful either towards the Court itself, its orders or the officers of a Court of law.

[19] In this matter there is attached to the papers at caselines 014.32 an Affidavit by Constable Netshikune Emmanuel who is attached to the Honeydew Police Station. The Affidavit dated the 31st March 2023 which is a date prior to the order by Molahlehi J it reads as follows:

“On Friday 31 March 2023 at about 10h30 I went to Mountain view Unit 13 Wergenuwe to serve the Court order to Pamela Alexandra brought by Miss Baby Dikeledi Moila and upon arrival Pamela was found and contends of Court order were read to her and she refused to sign and she will not take the documents but she indicated to me that she will attend court on 4 April 2023 as per court order.”

- [20] In her Founding Affidavit the Applicant referred to Annexure BM1 which is an Affidavit deposed to by her on the 13th April 2023 at 19h33 in which all that she says is that “Respondent refused to sign Court order.” To make matters more confusing the Applicant’s attorneys addressed a letter to the Office of the State Attorney on the 17th April 2023 in which they say the following at paragraph 2:

“Despite the various efforts to give effect to the order of Honourable Judge Molahlehi granted on the 13 April 2023 we note that your clients have failed to act accordingly in repossessing the vehicle from Ms Pamela.”

- [21] Once more this accusation aimed at the Police is unwarranted as nowhere in the order did Molahlehi J direct that the Police should go and reposes the vehicle. The order is clear, specific and unambiguous. I do not understand why Applicant’s attorneys are now blaming the Police on this issue. It is simply being disingenuous.

- [22] Cameroon J as he then was stated in **Fakie N.O. v CCII Systems (Pty) Ltd 2006 (4) SA 326 SCA** that the Civil Contempt Procedure is a valuable and important mechanism for securing compliance with court orders and survives constitutional scrutiny. He continued to say that the Respondent in such proceedings is not an “Accused person” but is entitled to analogous protections as are appropriate to motion proceedings in particular the Applicant must prove the requisites of contempt being the order, service or notice, non-compliance and wilfulness and *mala fides* beyond reasonable doubt.

[23] In **SM and Another v TM and Others [2022] ZAGPPHC 403** at paragraph **19** the Court stated that it is trite law that the Applicant to have a successful contempt of Court must prove beyond reasonable doubt the following:

23.1 That there is an underlying order.

23.2 That the Respondent knew about the Court order.

23.3 with the knowledge of the order, the Respondent acted in a manner that

conflicts with the terms of the at order.

[24] Uniform Rules 4(10) reads as follows:

“Whenever the Court is not satisfied as to the effectiveness of the service it may order such further steps to be taken as to it seems meet.”

[25] Having heard Counsel for the Applicant and perused the papers I am not satisfied that there was effective service of the Court order on the Respondent as a result I cannot find that she has made herself guilty of Contempt of Court (See: **Lindup vs Lowe 1935 NDP 189**).

[26] In the result I make the following order:

ORDER:

1. The application is dismissed.

2. The Sheriff of the Court is directed to in accordance with the Rules of Court serve the Court order by Molahlehi J dated the 13th April 2023 on the Respondent.

3. There is no order as to costs.

Dated at Johannesburg on this 31st day of May 2023

**M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

APPEARANCES

DATE OF HEARING : 09th MAY 2023
DATE OF JUDGMENT : 31st MAY 2023

FOR APPLICANT : Adv L Moela
INSTRUCTED BY : Messrs Makhubele Attorneys

FOR RESPONDENT : In Person
2nd & 3rd RESPONDENTS : No appearances