

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

2023-052942

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the application by

M, T

First Applicant

and

W K M

Respondent

JUDGMENT

MOORCROFT AJ:

Order

[1] In this matter I made the following order on 14 June 2023:

1. *The application is removed from the roll and no order is made as to costs.*

[2] The reasons for the order follow below.

Introduction

[3] This matter came before me in the Urgent Court in Johannesburg on 14 June

2023. The applicant sought an order that the respondent be declared in contempt of court of an order in the regional court in Roodepoort granted on 4 May 2023.

[4] The proper forum would be the court that made the order.¹ A High Court would hesitate to assume jurisdiction.

[5] The application is based on the non-payment of maintenance and an alleged failure to add the applicant and the minor children as beneficiaries on the respondent's medical scheme.

[6] The evidence in the affidavits is sketchy but it is common cause² that numerous payments have been made. The papers do not reflect a clear and accurate accounting of debits and credits, and the respondent says in his affidavits that he makes payments as and when he receives money from the tenders he is involved in.

[7] In respect of the medical scheme there appears to have been a lack of communication between the parties and their legal representatives as the Bonitas Medical Scheme had already on 24 May 2023 indicated that the applicant had been added as a beneficiary. The present status of the children on the Scheme is unclear but the respondent will in any event be liable for medical costs as the father of the children.

[8] These facts relate not only to urgency but also to the question whether the respondent was mala fide.

[9] I therefore decline to find that a proper case is made out for urgent relief under Rule 6(12) even if it were assumed that High Court should entertain the matter, a finding I do not make.

¹ Section 106 of the Magistrates' Court Act, 32 of 1944. See: *The Master v Van Wijk* 1916 OPD 80; *James v Lunden* 1918 WLD 88; *Komsane v Komsane* 1962 (3) SA 103 (C) 104E–F; *Dreyer v Wiebols* 2013 (4) SA 498 (GSJ), *DS v RM* 2015 (3) SA 424 (WCC) 430C, and *Van Loggerenberg Jones and Buckle: Civil Practice of the Magistrates' Courts in South Africa* 10th Ed. (Vol I) 658.

² See the bank account at CaseLines 013-1.

Conclusion

[10] For the reasons set out above I make the order in paragraph 1.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **15 June 2023**.

COUNSEL FOR THE APPLICANTS:	M P ZWANE
INSTRUCTED BY:	-
COUNSEL FOR THE RESPONDENT:	P M SUPING
INSTRUCTED BY:	P M SUPING ATTORNEYS
DATE OF ARGUMENT:	14 JUNE 2023
DATE OF ORDER:	14 JUNE 2023
DATE OF JUDGMENT:	15 JUNE 2023