

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:53105/2021

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 04/04/2023

SIGNATURE:

In the matter between:

E[...] K[...]

Applicant

(Identity Number: 7[...])

And

P[...] K[...] & OTHERS

Respondents

(Identity Number: 7[...])

JUDGMENT: LEAVE TO APPEAL

MOJAPPELO AJ

1. This is an application for leave to appeal against the judgment that I handed down and which was transmitted through caselines to the parties on 09 February 2023. I will refer the parties as they appear in the main application.

2. Following a finding that the first respondent was in contempt of an order of this Court that was granted by Molefe J on 11 May 2022, the first respondent was

conditionally incarcerated provided he complies with that Court Order of Molefe J within 72 hours. This is an application for leave to appeal that judgment and order.

3. The main grounds upon which the first respondent relied on for its application for leave to appeal was that the finding of contempt and the incarceration of the first respondent based on his failure to pay for, amongst others, maintenance is unconstitutional. In that regard the first respondent's Counsel relied on two Constitutional Court judgments, that is, **Coetzee v Government of the Republic of South Africa 1995 (4) SA 631 CC** and **Riley v Riley [2023] ZACC 5** to support the contention that an incarceration of this nature is unconstitutional.

4. Unfortunately, the abovementioned two judgements did not deal with the obligation to pay maintenance. The Constitutional Court has dealt with contempt application in relation to the obligation to pay maintenance in the matter of **Bannatyne v Bannatyne (Commission of Gender Equality, as Amicus Curiae) 2003 2 (2) SA 363**. In that judgment the Constitutional Court confirmed that; *"Although money judgments cannot ordinarily be enforced by contempt proceedings, it is well established that maintenance orders are in a special category in which such relief is competent"*.

5. It is not the first respondent's case that the Constitutional judgment in **Bannatyne** has been overruled. Under the circumstances I am of the view that there are no reasonable prospects of success in the Court of Appeal. I have considered the other grounds of appeal and I have unfortunately, come to the same conclusion that there are no reasonable prospects of success in the Court of Appeal.

6. I therefore make the following order.

(a) Leave to appeal is refused.

(b) The first respondent (the applicant in this application for leave to appeal) is ordered to pay the costs of this application for leave to appeal.

**MM MOJAPELO AJ
ACTING JUDGE
HIGH COURT GAUTENG DIVISION, PRETORIA**

**Counsel for the Applicant : Adv. Juan Schoeman
Attorneys for the Applicant : Waldick Inc**

**Counsel for the First Respondent : Adv. F Botes SC
Attorneys for the Respondent : Manley Incorporated**