

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

Case no: **71040/2019**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE: **30 JUNE 2023**

SIGNATURE

In the matter between:

J[...] E[...] G[...]

Applicant

And

G[...] B[...] G[...]

Respondent

J U D G M E N T

MAKHOBHA, J

- [1] The application is for an order to find the respondent in contempt of a court order dated 14 September 2021. The applicant requests the court to sentence the respondent to imprisonment for a period of 60 (sixty) days which is to be suspended, on condition that he makes payment of the amount due in terms of the court order.

- [2] The respondent and the applicant got married on the 7 September 1996. Two children were born from this marriage, they are currently residing with the respondent. The parties are currently involved in divorce proceedings.
- [3] The court order of the 14 September 2021 was granted during the rule 43 application.
- [4] In terms of the court order, the applicant must pay maintenance in respect of the applicant and the children in the sum of R 10,000.00 retain the applicant and the children as dependents on a comprehensive medical aid at the respondent's costs.
- [5] Respondent must reimburse the applicant for the medical expenses not covered by medical aid and which have been paid by the respondent.
- [6] It is common cause that the respondent did not comply with the court order. The respondent says that he complied with the order in the following manner:
- 6.1. His son stays with him and he pays for his fees at Eduvos college. His daughter is also staying with him.
- 6.2 He continues to pay for the expenses where the applicant stays including children's expenses.
- 6.3 He pays directly to the service providers, than pay the amount to the applicant, as she would only utilise the money for her own benefit.
- [7] Counsel for the respondent contended that the basis for the respondents defense is that he was required by the order of court to pay maintenance to the applicant and the order is not specific as to whether this payment is a cash payment or otherwise.

- [8] Respondent made cash payments towards any expenses incurred by the applicant and the children, including groceries and electricity. The respondent denies that he is *mala fide* in not complying with the court order.
- [9] The respondent further contended that he made the cash payment of 50% of his pension payout, to the value of R164 257. 83 to the applicant. The payment of this amount counsel for the respondent argues that it was made without any court order and is indicative of the respondents *bona fides*.
- [10] In addition the respondent contends that the rule 43 court order does not specify which part of the maintenance payment would have to go to the applicant and which part had to go to the children.
- [11] For the applicant to succeed with the application for contempt she must show that there was a court order which was served on the respondent and which the respondent failed to comply with¹. The respondent is expected to show absence of willfulness and *mala fides*²
- [12] In *Fakie*³ the court said “But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to willfulness and *mala fides*: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was lawful and *mala fide*, contempt will have been established beyond reasonable doubt”
- [13] It is commendable for the respondent to share his pension cash payout with the applicant but that does not absolve him from complying with the court order.

¹ *Fakie NO v CCIL Systems (Pty) Ltd* 2006 (4) SA 326 (SCA).

² *Els v Weideman and others* 2022 (2) SA 126 (SCA).

³ Loc Cit in Paragraph 42 (d).

[14] The assertion by the respondent that the court order is not clear as to how he must pay the R10,000.00 maintenance is without merit and in my view it must be rejected.

[15] Paragraph 4 of the court order is clear and it states “the respondent is to pay maintenance to the applicant, for the applicant and their children in the sum of 10,000 per month.....”

[16] it is incumbent on the respondent to approach the maintenance court should he wishes to have the court order varied.

[17] I'm of the view that the respondent willfully and *mala fide* failed to comply with the court order and he has failed to discharge the burden on him.

[18] I make the following order

18.1 It is declared that the Respondent is in contempt of court by virtue of his failure to comply with his obligation arising from the rule 43 order issued by the court on 14 September 2021 under case number 71040/2019;

18.2 The Respondent is sentenced to undergo 60 (sixty) days in imprisonment. Which sentence is suspended on the following conditions.

18.2.1 That the respondent makes payment of the amounts he is liable to pay in terms of the court order dated 14 September 2021;

18.3 the respondent is ordered to pay the costs of this application.

MAKHOB A J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 24 MAY 2023

JUDGMENT HANDED DOWN ON: 30 JUNE 2023

Appearances:

For the Applicant: Adv M Fabricius (instructed by) SHAPIRO & LEDWABA INC

For the Respondent: A C Rudman (from) ANTON RUDMAN ATTORNEYS