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

CASE NO: 2020/44450

Reportable: No

Of interest to other judges: No

Revised: Yes

25 October 2022

In the matter between:

M [....] H [....]

APPLICANT

And

S [....] 1 S [....] 2-H [....]

RESPONDENT

JUDGMENT – WRIGHT J

WRIGHT J

1. The applicant man and the respondent woman are going through lengthy and vitriolic divorce proceedings. Unfortunately, young children are involved.

2. On 17 December 2020, Siwendu J, in Rule 43 proceedings, made an order by agreement. The order provided for the appointment of a psychologist to look into the matter, to consult and to provide a report. The order provided for custody, interim contact with the children and it dealt with domestic violence allegations and other matters.

3. A lengthy Rule 43 application was later argued before Victor J, who handed down her order on 12 September 2022 and gave reasons on 30 September 2022. Victor J essentially ordered that both parties retain their rights and responsibilities as parents, that the primary residence of the children would be with the present respondent, that both parties had to attend joint therapy sessions with a court nominated psychologist and that the present applicant had to pay maintenance in a certain amount and pay a contribution to the present respondent's legal expenses.

4. The present lengthy application seeks the setting aside of the Victor J order on the basis that it is a nullity. Allegations include that Victor J went beyond her powers.

5. The present application is brought as one of urgency. The applicant seeks urgently today the setting aside of the Victor J order.

6. The closest the present applicant gets to a case on urgency are bare allegations that if the Victor J order is not immediately suspended injustice will follow and the applicant will have to pay maintenance and make the contribution towards legal costs. These considerations do not begin to create real urgency.

7. The respondent's attorney suggested that I hear the matter on its merits. He confirmed that an undertaking given by his client not to execute the Victor J order ends today, 25 October 2022. The respondent's attorney's suggestion that I hear the case on its merits does not take the question of urgency any further. The fact that the undertaking ends today does not change the fact that the application lacks urgency as appears from the founding and supplementary affidavits.

8. The present application was launched in September 2022, for hearing on 4 October 2022. The notice of motion is undated. The Registrar's stamp is dated 30 September 2022. On 4 October 2022, the day on which the hearing was sought, Makume J made an order by agreement. The order included the present respondent's

undertaking not to execute until 25 October 2022, which is today. On 4 October 2022, as is reflected in the Makume J order, the present respondent had expressly reserved the right to argue urgency.

9. In my view, it would in the circumstances be unfair to order the present applicant to pay the present respondent's costs associated with today's hearing.

ORDER

1. The application is struck off the roll for lack of urgency.
2. The parties are to carry their own costs relating to the hearing of 25 October 2022.

HEARD : 25 October 2022

DELIVERED : 25 October 2022

APPEARANCES

APPLICANT : Adv PF Louw SC
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RESPONDENT : Attorney S Dollie
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