

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(ORANGE FREE STATE PROVINCIAL DIVISION)**

Case No. : 6669/08

In the case between:-

**JOAN WILSON**

Applicant

and

**PIETER STAUBESAND WILSON**

Respondent

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**HEARD ON:** 11 DECEMBER 2008

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**JUDGMENT BY:** RAMPAL, J

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**DELIVERED ON:** 16 JANUARY 2009

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[1] These proceedings are about contempt of court. The parties are a couple. The applicant is the respondent's wife. She is a housewife. He is a farmer. The couple is going through divorce. The application for the conviction of the respondent for contempt of court is opposed.

[2] The parties were married to each other out of community of property in Pretoria on 22 February 1969 and the marriage still

subsists. The four children born of the marriage are now all adults.

[3] On 4 June 2006 cohabitation between the parties came to an end. The applicant left the marital home on a farm called Diepputten Marolong, Nylstroom district in the Limpopo Province. She left the respondent *cum animo non revertendi*. Her intention was to seek a decree of divorce.

[4] On 8 December 2006 the applicant brought a maintenance application in terms of rule 43 under case number 5241/2006. She claimed an amount of R16 100,00 per month *pendente lite* and other ancillary relief. The application was heard on 29 March 2007. C.J. Musi J ordered the respondent to maintain the applicant *pendente lite* at the rate of R12 500,00 per month from 7 April 2007; to pay all reasonable medical expenses of the applicant; to contribute an amount of R7 500,00 towards the applicant's legal costs and to transport the applicant's furniture from Nylstroom to Bloemfontein at his costs. The costs of the

main application were, as is the practice, reserved as costs in the divorce action.

[5] On 29 March 2007, in other words, the same day on which the maintenance order was made, the applicant also filed for divorce under case number 1341/2007. The action is defended. It has already been enrolled for hearing from 26 May 2009.

[6] On 31 October 2008 the applicant brought the current proceedings. This application was launched in order to conduct an investigative inquiry as to whether the respondent is in contempt of court or not *ex facie curiae*. As regards the court order made in terms of rule 43 on 29 March 2007 by C.J. Musi J. At the time these proceedings were initiated the respondent was in arrears with his maintenance to the extent of R102 850,00 in respect of the maintenance component only of the court order. This was common cause.

- [7] The applicant contended that the respondent possessed sufficient means and that he was, therefore, able to comply with the aforesaid court order and that he spitefully disobeyed the court order for no sound financial reason.
- [8] The respondent disagreed. He contended that he did not have adequate resources; that his financial position was very poor; that the financial position of the business trusts were also very weak; that he was, therefore, unable to fully comply with the court order and that his non-compliance was not deliberate or spiteful.
- [9] The question in the case is whether the respondent was in wilful default or not seeing that the respondent does not deny knowledge of the court order and his non-compliance with such order.
- [10] A cursory overview of the law appears to be necessary. An applicant who seeks an order for the committal of a respondent for contempt of order must show the following: that an order

was granted against the respondent; that the respondent was either served with the order or informed of such an order against him and can have no reasonable grounds for disbelieving that information and that the respondent has either disobeyed the order or neglected to comply with it. See Herbstein & Van Winsen: **The Civil Practice of the Supreme Court of South Africa**, 4<sup>th</sup> Edition at p. 818. The standard of proof required to sustain committal for civil contempt is to prove all the elements thereof beyond reasonable doubt. See **UNCEDO TAXI SERVICE ASSOCIATION v MANINJWA AND OTHERS** 1998 (3) SA 417 (ECD) at 429 G – I.

- [11] The correct approach to motion application pertaining to alleged contempt of court order has enjoyed a great deal of attention by the courts. The onus, in particular its nature and scope, in such motion proceedings has been considered and discussed in various cases. In **FAKIE NO v CCII SYSTEMS (PTY) LTD** 2006 (4) SA 326 (SCA) the court by majority of 3:2 fully discussed the issue of onus and comprehensively set out what the current approach is supposed to be in these sort of

applications and the procedural way in which disputes in such applications was to be treated. At par. [23] p. 338 Cameron JA said the following about the proving and disproving the element of wilfulness:

“[23] It should be noted that developing the common law thus does not require the prosecution to lead evidence as to the accused's state of mind or motive: Once the three requisites mentioned have been proved, in the absence of evidence raising a reasonable doubt as to whether the accused acted wilfully and mala fide, all the requisites of the offence will have been established. What is changed is that the accused no longer bears a legal burden to disprove wilfulness and mala fides on a balance of probabilities, but to avoid conviction need only lead evidence that establishes a reasonable doubt.”

[12] At par. [42] p. 344, the same decision, the current legal position in respect of the civil contempt procedure was summarised as follows: Firstly, that the procedure is a valuable mechanism for securing compliance with court orders and that it survives constitutional scrutiny; secondly, that the respondent in such proceedings was not really an accused person but that he was

entitled to analogous protections as are appropriate to a respondent in motion proceedings; thirdly, that the applicant in such proceedings was required to prove the requisites of contempt (the order, service or notice, non-compliance; wilfulness and *mala fides*) beyond reasonable doubt; fourthly, that once the applicant has proved the first three requisites, the respondent bears evidentiary burden in regard to wilfulness and *mala fides* should the respondent fail to advance evidence that established a reasonable doubt as to whether his non-compliance was wilful and *mala fide*, contempt will have been established beyond reasonable doubt; fifthly, that a declarator and other appropriate remedies, remain available to a civil applicant on proof on a balance of probabilities.

[13] At par. [63] p. 350, of the same decision, Cameron JA said the following about the approach in applications of this nature when launched by way of motion proceedings:

“[63] In the light of the proper approach to deciding factual disputes in motion proceedings, I should add that, on the particular form of

process the parties committed themselves to in this case, I do not think that it would make any difference had the onus been only proof on a balance of probabilities. The accepted approach requires that, subject to 'robust' elimination of denials and 'fictitious' disputes, the Court must decide the matter on the facts stated by the respondent, together with those the applicant avers and the respondent does not deny."

[14] In motion proceedings of this nature the respondent's version can only be rejected if, on the papers, the court can find that such version is, to echo the words of Cameron JA:

"fictious or so far-fetched and clearly untenable that it can confidently be said, on the papers alone, that it is demonstrably and clearly unworthy of credence."

*Vide **FAKIE NO**, supra at par. [55] at p. 318.*

[15] In cases of this nature, a respondent who can advance credible evidence which established that he did not deliberately disobey the court order; that his non-compliance was due to genuine lack of means on the grounds of poverty would have shown that

his conduct was *bona fide*. The respondent's version must create some reasonable doubt as regards the alleged wilful default and *mala fides* attributed to the respondent by the applicant. The respondent would not be held in contempt of court in such circumstances - **DEZIUS v DEZIUS** 2006 (6) SA 395 (CPD).

[16] On 31 October 2008 the applicant launched the current application. Besides the costs, she sought an order declaring the respondent to have failed to comply fully with the court order by C.J. Musi J; declaring that he was in contempt of the court order; directing him to fully comply with the court order by liquidating the full accumulated arrears within 30 days period of the court order relative to this civil contempt proceedings and imposing, as a coercive sanction for the contempt, three months imprisonment, wholly suspended for three years on condition he timeously complied by settling the outstanding arrears.

[17] Mr. Van Rhyn urged me to uphold the applicant's contention that, given the immense value of the two farms owned by the two trusts in whose names the respondent was conducting business which business enterprises were simply the respondent's *alter ego*, there were no grounds for the argument that the respondent's financial position was so weak that he found it impossible to comply with the court order. He submitted that the only reasonable conclusion was that the respondent was in wilful default and *mala fide* in his non-compliance.

[18] Mr. Van Niekerk urged me not to grant the relief prayed for in the notice of motion. He argued that the respondent's version as regards his financial position and that of the trusts concerned could not be summarily rejected on the papers, since, the respondent has advanced sufficient evidence on the strength of which a reasonable doubt existed to justify the finding that he was not wilful and *mala fide* in his failure to comply with the court order.

[19] Obviously the parties are in dispute about the actual reasons and the justification for the respondent's admitted failure to comply fully and timeously with the order by C.J. Musi J. The respondent asserted that his default was not deliberate. He was, so he averred, an indigent man. The two trusts were so heavily indebted to so many creditors that he was unable to earn income anymore from them as their trustee. His full compliance with the component of the court order pertaining to his obligation to contribute a specified amount towards the applicant's legal costs together with his voluntary payment of R850,00 per month in respect of the applicant's telephone account were indicative of his *bona fides*. The applicant asserted that there was no justification for the respondent's default and that his non-compliance was wilful and *mala fide*.

[20] The crux of the dispute is whether the respondent's financial resources are so little that he cannot afford to maintain the applicant at the rate as specified in the court order. It is a known principle that conflicting affidavits are not suitable means for resolving disputes of disputed facts in motion proceedings.

The majority of aggrieved individuals in the position of the applicant prefer motion proceedings because motion proceedings are quicker and cheaper than action proceedings. Conversely, the majority of individuals who are sued prefer action proceedings to motion proceedings. To delay compliance with a burdensome court order can frustrate the beneficiary of a court order and render the judgment from which the court order flowed a hollow judgment. Unvirtuous respondents have the tendency of creating a storm in the tea cup in a bid to have the proceedings converted from the quicker process into the slower process.

- [21] Of course, the underlying motive for uncreditworthy denials is always to frustrate the beneficiary of the court order by delaying the matter. Such respondents should not be allowed to shelter behind evasive strategies or patently implausible versions or bald denials set out in their answering affidavits. **FAKIE NO**, *supra* par. [55] on p. 347.

[22] The applicant avers that the respondent is a man of substantial means. The respondent denies the allegation. He avers that he is man of straws who struggles year in and year out to make ends meet. Therefore, the factual dispute is on a material aspect. It remains to be seen whether this dispute is a *bona fide* or genuine dispute of fact. The applicant did not ask for the case to be referred to live contest for oral evidence or for the respondent to take the witness stand to be instantly cross-examined. The applicant did not follow any of the two open avenues. Instead, she elected to have the case argued on the conflicting affidavits. Her argument was that, although the dispute was on a material aspect, it was nonetheless not a genuine dispute of fact. She persisted that the elements for contempt of court had been established on the papers.

[23] The synopsis of the respondent's version is necessary. Since 1996 he has experienced enormous financial problems in his farming operations chiefly as a result of the suretyship agreements he had signed on behalf of certain third parties. He conducted his farming activities through business enterprise

called Wilson Voerdery (Edms) Beperk. Certain financial institutions sued him as a surety and liquidated his company. Three farms namely Diepputen, Groenvallei en Mooigelegen were attached. He lost the entire source of income as well as his equity on account of the attachments of the farms.

[24] Absa Bank arranged with the court sheriff to have the farms auctioned. He formed a business trust called Diepputen Trust, which purchased the farms. The transaction was financed *de novo* by the Land Bank. He and his wife and their son were the trustees thereof. The applicant was well aware of the problem and the transaction. Diepputen farm was later divided. A portion thereof was sold to another business enterprise called the Ghardlean Trust. The transaction was financed by the Standard Bank by way of a mortgage bond. Both parties were trustees. The landed properties were registered in the names of the two trusts.

[25] During or about 2005 the couple was again sued on the basis of another suretyship agreement they had personally signed in

favour of Noordelike Sentrale Kartoën Koöperasie on behalf of PSW Saaiboerdery Trust. As a result of this action the applicant resigned from the two trusts namely: Diepputten Trust and Ghardlean Trust as a trustee. She was suffering from anxiety when she moved from Nylstroom to Bloemfontein. To date hereof, the trusts are still financially struggling. Her ailment was due to the couple's endless and depressive financial plight.

- [26] Since the court order was made he has paid to the applicant what he could afford. His aim was to pay the arrears by way of a loan from one of the trust. He had expected the trust to generate sufficient income from the crop harvest and to lend him money from the surplus funds after the trust had repaid the loan obtained to cover operational costs. The operational costs totalled R200 000,00. However, to his great dismay, the crop failed on account of seed contamination. The proceeds of the crop harvest was a mere R185 000,00 instead of the expected R600 000,00. Therefore the eventual income of the harvest was about R400 000,00 below the projected profit margin. As a

result of the crop failure and the huge deficit he was unable to pay the arrears mid 2008 in accordance with his undertaking.

[27] His auditor was still in the process of finalising the financial statements from which the precise loss suffered would be apparent. He invited the applicant and her attorney to contact his auditor in connection with the necessary documentation and supporting source vouchers in order to verify the pathetic financial position of the trusts for themselves.

[28] His only source of income was R12 200,00 per month of which R10 000,00 per month was derived from Tweekansen Trust as a salary and R2 200,00 as an annuity of a policy contract. These particular trust had an overdraft facility of R454 000,00 at the First National Bank. However, as on 19 November 2008 the debit balance of the account was R451 581,15. Since the facility was almost exhausted he was no longer in a position to even draw his monthly salary. Things were really tough for him.

[29] The sunflower seeds have since been planted on the farm(s). The crop would be ripe for harvesting before 30 April 2009. By 31 August 2009 the harvesting would be complete. It was expected to generate R1,2 million. The trouble was that the exhausted overdraft facility jeopardised the good prospects of such sunflower crop harvest. The trust had no funds to cover the running expenses of the farm in the amount of R50 000,00 for the next five months. To save the sunflower crop, he on behalf of the trust, obtained a loan from a certain Mrs. M.J. Oosthuizen in the amount of R250 000,00.

[30] At par. 15.8 answering affidavit p. 40 the respondent asserts:

“Sonder vrees vir teenspraak beweer ek dat daar eenvoudig nie fondse beskikbaar was om aan die Applikant te betaal nie, en dat die beskikbare fondse aangewend is hoofsaaklik om krediteure te diens ten einde te verhoed dat daar weer aksie geneem word teen die betrokke trusts.”

This then is the respondent's version.

[31] Mr. Van Niekerk submitted that because for 20 months the applicant received and accepted reduced amounts of maintenance from the respondent and that because she had personal knowledge of his inability to maintain her in terms of the court order, this coercive application was not brought in good faith.

[32] The parties have been living apart since the year 2005. It is difficult to see what reliable personal knowledge the applicant has of the respondent's poor financial position almost three years after the separation, conveyed to her telephonically by mere word of mouth. Indeed, for about 19 months preceding the launch of this application, the applicant received from the respondent less than the order stipulated. This is understandable because the respondent had undertaken to settle the arrears in full by the end of July 2008. However, the respondent did not honour his undertaking. Therefore, she cannot seriously and fairly be criticised by the respondent for receiving and accepting from him a lesser amount than stated in the court order.

- [33] He also averred that he informed the applicant over a telephone about the crop failure which made it impossible for him to carry out his undertaking.

Bearing in mind the huge sum of the arrears, the long history of previous and multiple litigation between the parties, the fact that prudent businessmen have to keep meticulous records of their financial affairs especially where, as in this case, they run affairs of two or more business enterprises and the fact that the respondent has an attorney, one would have expected such a man to have communicated with such a litigious spouse differently. His averments pertaining to alleged telephone conversations were riddled with vagueness. He hardly stated alternative arrangements he proposed to the applicant in respect of his abortive first undertaking.

- [34] In an email dated 20 November 2008 attached to the respondent's answering affidavit as annexure "b" the applicant's attorney wrote:

“Skrywer wens te bevestig dat ons sedert Maart 2007 VERSKEIE pogings aangewend het om litigasie tussen die partye te skik, welke pogings keer op keer deur u kliënt gefrustreer was. Telkemale is verrigting deur skrywer oorgehou, op versoek, ten einde u kliënt die geleentheid te bied om formele skikkingsvoorstelle te maak. Sonder uitsondering was hierdie egter lee beloftes.

In sommige gevalle is daar selfs in pleitstukke skikkings aanbiedinge, en ook aanbiedinge om regskoste te vereffen gemaak, as ‘n uitnodiging om litigasie deur ons kliënt van stapel te stuur te sluit. Sonder uitsondering was hierdie ook lee beloftes.

Ons kliënt het ‘n wesenlike vrees dat u skrywe onder beantwoording weereens ‘n poging is om tyd te wen, en dat enige uitstel ons kliënt sal benadeel. Ons kliënt is van mening dat geen alternatief deur u vermeld word, ten einde die hoofgeding ten einde te bring nie, maar dat daar slegs ‘n toegewing van ons kant verlang word.”

- [35] The respondent apparently did not respond to this email to say that the applicant was personally aware of his inability to pay, that she was understandable of his financial crisis and that he had made any alternative arrangements with her concerning the escalating arrears and that she had granted him a further

extension until 31 August 2009 when the sunflower crop would be harvested. The respondent's failure to do so waters down his version and strengthens the argument that he is again playing for time by making empty promises as before.

- [36] The immovable assets of the trusts, in other words the two farms, are estimated to have the combined value of R4,5 million. Earlier this year the respondent placed them on the market for R9 million. Many years ago the respondent was able to rescue the farms from Absa Bank by obtaining financing from the Land Bank on behalf of the trust. He also obtained financing from Standard Bank on behalf of another trust. A portion of the farm Diepputten was recently converted from an agricultural farm into a capital intensive game farm. Financial institutions do not readily finance such huge projects if they are not viable or have been running at a loss for inordinately long periods of time. The purchase of wild animals, the erection of high and secure electric fence, the sinking of boreholes, the building of tourist accommodation and the provision of infrastructure on the Diepputten farm as well as the sustainable

feeding of those animals are all quite expensive things to do. All these indicate that the respondent, through his trusts, is able to secure huge funding for his farming operations as and when he requires it.

- [37] The respondent gave a long account of his alleged poor financial position. The historical narrative began way back in 1996. Over the years the financial position of the business trusts have shown a steady decline in pretty much the same way as the financial position of his personal estate. However, he attached no documentary evidence to this effect. If the financial statements of the trusts and those of his personal estate for the fiscal year which ended on 28 February 2008 were still not compiled at the time he signed the answering affidavit, one would have expected him to have attached at least those of 2005, 2006 and 2007 in support of the alleged prolonged financial downswing of the business trusts and his personal estate.

[38] Such past financial statements, if annexed, would either have bolstered or diminished the probative value of his narrative. Not only did he fail to annex them, but also failed to give any reason for the omission. Could it be that he omitted them on purpose because he knew just too well that they would not have fortified his defence of abject poverty? I am inclined to think that such financial statements, in respect of only three out of the eleven years he chose to traverse, were deliberately left out because they probably militate against the respondent's version in a big way.

[39] In addition to such an omission, there is yet another glaring omission. There is no confirmatory affidavit by the respondent's auditor to verify his averment that the 2008 financial statements were indeed not yet existent. I am in the dark as to why such an important affidavit was not obtained and annexed to the respondent's answering affidavit. Once again the omission justifies the drawing of an unfavourable inference against the respondent's version. The omission casts some reasonable doubt as to the respondent's *bona fides*.

[40] It was incumbent upon the respondent himself to place before me any and every documentary evidence relevant to establishing genuine lack of wilful default and *mala fides* imputed to him by the applicant. The respondent is precluded by law from claiming that he negated the alleged wilfulness and *mala fides* associated with his failure to comply by inviting the aggrieved applicant to visit the office of the respondent's auditor for the purpose of inspecting the alleged massive records of the trusts and the estate. To uphold the respondent's contention, would boil down to imposing an extra duty on the part of the applicant to assist the respondent in reversing the evidentiary burden of raising a reasonable doubt to show lack of wilfulness and *mala fides*. The law imposes no such an assistive obligation on the applicant. I do not need to look any further beyond the respondent's invitation to say that it implicitly underlies his failure to place adequate evidence before this court to create reasonable doubt about the alleged wilfulness of his non-compliance. His failure brings me to the conclusion that he deliberately disobeyed the maintenance court order.

Since he acted with deliberate intent, his non-compliance was actuated by *mala fides*.

[41] It is also significant that the respondent did not proactively apply to any court to have the original maintenance court order varied. He claimed that his previous attorney was to blame for the omission. However, he did not say precisely when he instructed his previous attorney or when he became aware of such attorney's neglect or why he did not immediately appoint another attorney to launch such an application for variation of the maintenance court order. He made cursory and vague remarks about this point. Again there was no evidence to substantiate his claim. There was a disturbing tendency by the respondent to blame others. We have heard that the auditor was somehow responsible for the delay in the compilation of the annual financial statements. We have also heard that a certain business supplier was to blame for the crop failure. Now we are hearing a similar tune again, viz the previous attorney who has failed to carry out his important instructions. I am not persuaded that the previous attorney was to blame.

[42] It seems to me that there is no reasonably acceptable explanation why such an important application was never launched. It is more probable than not that the application was never launched because the respondent knew that he possessed no genuine documentary evidence to backup the merits of such an application.

[43] The respondent also alleged that the R454 000,00 overdraft facility of one of the trusts was almost completely exhausted. According to him the unhealthy debit balance thereof was R451 581,15 as on 19 November 2008. The situation was so critical that he could hardly afford to draw his usual salary of R10 000,00 per month. However, the respondent once again failed to annex the relative bank statement from the First National Bank for the specific month. In my view these numerous acts of omissions had such an adverse impact on the respondent's version concerning his financial inability to comply, that it cannot be found that he has advanced a satisfactory explanation which creates reasonable doubt as to whether his

failure to comply was occasioned by any wilful default and *mala fides*.

[44] The respondent further alleged that the trust was in such a desperate financial position that he had to obtain a loan of R250 000,00 against a cession of the crop harvest in favour of the money lender, Mrs. M.J. Oosthuizen. The harvest was expected to yield R1,2 million, according to him. On behalf of the respondent it was argued that the applicant's fleetingly commented on these allegations by the respondent. It was then contended that the applicant had failed to rebut the respondent's allegation. I am not impressed by the critique and the contention. Like so many other bald but unsubstantiated allegations, here too, there is no confirmatory affidavit by the alleged money lender. This is simply one more instance in a series of acts of omissions. Where an answering affidavit itself is materially inadequate, as in the instant case, the replying affidavit cannot fairly be expected to be substantively elaborate. A myriad of details in the replying affidavit would have served no useful purpose. However cursory, the replying affidavit may

be considered to be on this particular point, it cannot make up for the deficiency in the allegation made by the respondent in his answering affidavit.

- [45] The respondent claimed that his regular albeit partial payments, coupled with his full payment of the contribution towards the applicant's legal costs in compliance with the court order, as well as his regular but voluntary payment of the applicant's monthly telephone expenses – were some of the factors which demonstrated his willingness and *bona fides* to comply with the maintenance component of the court order as well. The respondent has paid, on average, about half the amount he was obliged to pay per month. Such reduced amount was in line with the amount he offered before the order was made. I cannot appreciate the logic of his voluntary payment of the applicant's telephone bill if he honestly cannot afford the obligatory amount of the maintenance. I am not persuaded that one or more or all these factors reasonably established genuine lack of wilfulness and bad faith in the way he acted. It seems to me that the respondent is steadfast to pay what he wants and

that he paid the telephone bill as a ploy to oust the element of wilfulness and *mala fides*.

[46] The trusts generate some income but the available funds are utilised to serve the creditors. However, the respondent made no effort to name such creditors and to indicate accurately the size of each debt and the amount paid in reduction thereof since the court order was made against him. On account of countless gaps and inadequacies in the answering affidavit, the respondent's version does not create some reasonable doubt to exonerate him as a person whose non-compliance lacked wilfulness and *mala fides*. I am persuaded that he is sheltering behind the resourceful trusts, which business enterprises, he uses as his *alter ego*. In my view his version is farfetched, untenable and incredible. There is no genuine dispute of fact in this case.

[47] On the facts I have come to the conclusion that the applicant has established all the elements of contempt of court. It has been shown, beyond reasonable doubt, that the respondent

has failed to comply fully with the court order by C.J. Musi J; that his version has created no reasonable doubt as to the wilfulness and *mala fides* of his failure to comply; that he was, therefore, in contempt of the court order; that he is liable to pay the full sum in arrears and that he has to be punished for the civil contempt he has committed.

[48] The respondent raised certain preliminary points *in limine*. All of them were later abandoned. They were abandoned in the respondent's heads of argument after the applicant had spent time and energy dealing with them. There can be no question that in the circumstances the applicant is entitled to the wasted costs relating to such points *in limine*.

[49] There remains one more thing to decide. The applicant employed two counsels and seeks the costs for both. Besides the current application four other court files relating to litigation between the same parties, were placed before me. These files were referred to in the papers and the applicant's heads of argument. Perusing them and extracting passages from them,

was certainly a laborious task. The question which now arises is whether the matter was so complex as to justify the employment of two counsels. The complexity of the matter was not the only overriding factor to be taken into account. The various files embodied some facts relevant to this application. They indicated the manner in which the respondent conducted his business affairs and those of the trusts. Although he claimed to be a man of straw, the trusts possess assets of immense value namely, the two farms. It has been established that the respondent used the trusts as his *alter ego*. The perusing and analysing of the respondent's financial schemes was necessary to this end. To come to this conclusion was certainly not an easy matter. I am therefore satisfied that the applicant was justified to employ two counsels in this matter.

[50] Accordingly I make the following order:

- 50.1 That the respondent is guilty of contempt of court;
- 50.2 That the respondent is sentenced to a period of 3 (three) months imprisonment, wholly suspended for 3 (three) years on condition that the respondent is not again found

guilty of contempt of court committed during the period of suspension and further that he pays the sum of R102 850,00 in respect of the arrears of maintenance to the applicant;

50.3 That the respondent is directed to pay the aforesaid sum of money to the applicant's attorney, L & V Attorneys, Bermacor Park, 52 Reid Street, Westdene, Bloemfontein at a rate of R9 500,00 per month, in addition to the amount fixed in the original maintenance court order, from 7 February 2009 and thereafter on or before the 7<sup>th</sup> day of each succeeding month until the amount in arrears is fully paid.

50.4 That the respondent is directed to pay the costs of this application and that such costs shall include the costs occasioned by the employment of two counsels.

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**M.H. RAMPAL, J**

On behalf of applicant:

Adv. A.J.R. van Rhyn SC  
with him  
Adv. P. du P. Greyling  
Instructed by:  
L & V Attorneys  
BLOEMFONTEIN

On behalf of respondent:

Adv. P.A. van Niekerk SC  
Instructed by:  
Honey Attorneys  
BLOEMFONTEIN

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