

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

CASE NO: 28972/2023

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

Date: 16 July 2024

JA Kok

In the matter between:

T[...], R[...] M[...]

APPLICANT

And

T[...], P[...] D[...]

RESPONDENT

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JUDGMENT

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Kok AJ

- [1] On 13 October 2023, Judge Holland-Muter handed down a judgment that the respondent is declared to be in contempt of court by having failed to comply with the orders granted by the Children's Court on 9 and 15 December 2022. The respondent was sentenced to community service for 250 hours for her contempt which community service will be exercised every second weekend with the understanding that the community service will be exercised on weekends on which the applicant is exercising contact with the minor children. The sentence was suspended for a year

on the condition that the respondent give effect to the following order:

- [2] "That the orders dated 9 and 15 December 2022 granted in the Children's Court for the district of Tshwane Central, under case number 14/1/4-500/2021 as well as the divorce order granted on 31 July 2021 under case number GP/PTA/RC 1524/2020 in the Regional Division of Gauteng, held at Pretoria in so far as it relates to the applicant's contact with the minor children be amended as follows:

5.1 That the applicant:

5.1.1 will have the right of removal of the minor children every second weekend on both the Saturday and the Sunday between 9h00 and 17h00, the first weekend to commence on Saturday 21 October 2023 and Sunday 22 October 2023 and thereafter every second weekend;

5.1.2 Telephone contact anytime between the hours of 18h00 and 19h00 on Tuesdays and Thursdays as well as telephone contact on Saturdays between 11h00 and 12h00 when the children are not with him".

- [3] The court also ordered that the Family Advocate be requested to urgently appoint a clinical psychologist, in conjunction with the parties, through the Department of Health to conduct an investigation as to the best interest of the minor children and urgently report back to judge Holland-Muter; the costs of the clinical psychologist to be paid by the Department of Health.
- [4] The applicant brought an application that it be declared that the respondent is guilty of contempt of court for having failed to comply with the court order referred to above and that the respondent be sentenced to community service alternatively a prison sentence.
- [5] The applicant and the respondent filed affidavits. The applicant averred that the respondent was aware of the court order and frustrated contact between him and the minor children. He averred that the last time he had contact with his minor children was 3 December 2023. As to the report by a clinical psychologist, the

applicant averred that the Family Advocate advised that the office does not perform such mandate and a clinical psychologist report had not been prepared.

- [6] The respondent was unrepresented. She made various wide-ranging, irrelevant statements in her affidavit. The respondent admitted that she was aware of the court order. She did not deny that the last time the applicant had contact with his minor children was 3 December 2023. If the affidavit is read a whole, the main reason she provides for not granting the applicant contact with the minor children is that the applicant had sexually violated the children.
- [7] When the application was heard, I allowed the respondent to address the court at length. She persisted that there is an ongoing criminal investigation into the applicant related to sexual violation of the children. She also asked for time to supplement her papers.
- [8] In terms of *Fakie NO V CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) paras 22 and 23 and *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and others* 2021 (5) SA 327 (CC) para 37, the applicant must establish that a court order was granted against the respondent; that the respondent was served with the order or had knowledge of it; and that the respondent failed to comply with the order. If these three requirements were met, wilfulness and *mala fides* on the part of the respondent are presumed and the respondent must then present evidence to raise reasonable doubt as to whether she acted wilfully and with *mala fides*.
- [9] The applicant established all three requirements it was asked to meet. It is for the respondent to present evidence to create reasonable doubt if she acted wilfully and with *mala fides* in disregarding the court order of 13 October 2023.
- [10] As the respondent was unrepresented, she may not have been aware of the burden she had to dispose of. The allegations she made against the applicant are extremely serious. In fairness to the applicant, the respondent should substantiate these allegations. If she is committed to community service or a prison sentence, it will likely lead to further aggravation of an already fraught family relationship.

[11] The applicant averred that the allegations of sexual violations have been exhaustively dealt with in complete and comprehensive investigations in the Children's Court enquiry and the hearing in respect of the divorce. The respondent did not expressly deal with this averment.

[12] The court order will allow the respondent to substantiate her allegations of sexual abuse of the minor children against the respondent. If the respondent does not depose to an affidavit, or in her affidavit does not expressly deal with the matters set out in the court order, she by necessary implication must be taken to admit that there are no defensible reasons why she is withholding contact of the minor children from the applicant on the terms as set out in the court order of Holland-Muter J dated 13 October 2023.

## **ORDER**

### **In the result, the following order is granted:**

It is ordered that

1. The respondent within ten court days of the date of this court order to depose to an affidavit, to explain in clear and unequivocal terms:

1.1 Did the Children's Court and the divorce court deal with and enquire into the allegations of sexual abuse by the applicant of the minor children;

1.2 Did the respondent lay criminal charges against the applicant for the sexual abuse of their minor children;

1.3 Were these charges investigated; and

1.4 Did the state decide not to prosecute the applicant.

2. The applicant to reply to the respondent's affidavit, if required.

3. The applicant to enroll the application on the urgent court roll.

4. Costs in the cause.

JA Kok  
Acting Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be emailed to the parties/their legal representatives.

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|---------------------------|-----------------------|
| For the applicant:        | N Erasmus             |
| Instructed by:            | Shapiro & Ledwaba Inc |
| For the first respondent: | Personal appearance   |
| Date of the hearing:      | 13 March 2024         |
| Date of judgment:         | 16 July 2024          |