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

CASE NO: 2022/2880

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED: NO

DATE: **1/10/2024**

MOKOSE SNI

In the matter between:

LUDWICK PANI MPHELA

Applicant

and

ANNAH THANDI MASANABO

Respondent

JUDGMENT

MOKOSE J

Introduction

[1] Before this court is an application for an order declaring the respondent guilty of contempt of the court order and the committal to prison of the respondent for a period deemed fit by this court. The application is opposed by the respondent.

Brief Facts

[2] The brief facts are that the parties had concluded a customary law marriage in December 2016. It was dissolved by an order of court dated 11 August 2022. A settlement agreement which had been concluded by the parties on 30 June 2022 was incorporated into the order. In terms of the settlement agreement the parties agreed, *inter alia* that the respondent will retain a Toyota Yaris vehicle bearing registration number H[...] G[...] but that she would pay the applicant 50% of the market value of same. It was further agreed that the furniture forming part of the joint estate would be retained by the respondent. Furthermore, it was agreed that both the parties would be jointly liable for the debts and liabilities of the now dissolved joint estate.

[3] The respondent failed to collect the furniture which was subsequently put into storage by the applicant on her behalf at a monthly cost of R900,00 per month from July 2023. The applicant also contends that the respondent has since sold the motor vehicle but has failed to pay over to him half the proceeds of such sale despite requests having been made. As a result, thereof, the applicant instituted the present application for contempt of the settlement agreement which was incorporated into the order of court on 11 August 2022.

Issue

[4] The issue before this court is whether the respondent is in contempt of the order of this court of 11 August 2022.

Condonation

[5] The respondent seeks condonation for the late filing of the answering affidavit. He contends that the reason for the late filing is that she was unable to pay fees to her attorney resulting in him being furnished with instructions to oppose the application at the eleventh hour. The respondent fails to take the court into her confidence to explain when and if she obtained the money to enable her legal representative to appear in court on 29 July 2024. The applicant opposes the application for condonation.

[6] I have read the contents of the respondent's affidavit and am of the view that although the explanation is sketchy and poor and a blatant disregard for the court rules, I consider it appropriate to condone the late filing of the answering affidavit. The application for the condonation of the late filing of the answering affidavit is granted.

Point in limine

[7] The respondent raises two points *in limine* the first being that the applicant chose not to serve her or her attorneys of record with the notice of set down. In response, the applicant pointed out that the respondent had failed to timeously file an answering affidavit despite having filed a notice to oppose the application. The matter was enrolled to be heard in the week beginning 29 July 2024 but because the court informed the parties that the matter would be heard on 1 August 2024, the respondent saw fit to file an affidavit in answer to the application. This point *in limine* has no merit and shows the respondent's flagrant disregard for the court rules. The matter was one which was unopposed until the answering affidavit was filed well out of time. Accordingly, the respondent has no leg to stand on that he was not served with a notice of set down.

[8] Furthermore, the respondent contends that the applicant has failed to exhaust all avenues to secure compliance with the court order. In reply, the applicant contends that the respondent does not raise a point of law in her submission. I agree that there is no point of law raised in this point *in limine*.

Evaluation

[9] The applicant seeks an order that the respondent be committed to prison for a period of 30 days, which committal be suspended for a period of one year on condition that the respondent complies with the order of 30 June 2022 within 14 days of date of this order or such other punishment as the court may deem fit.

[10] All citizens and residents of the Republic of South Africa have a duty to respect and abide by the laws of the country. In the matter of Secretary of the *Judicial Service Commission of Inquiry into Allegations of State Capture, Corruption*

*and Fraud in the Public Sector including Organs of State v Zuma and Others*¹ it was held that 'courts unlike other arms of State.....rely solely on the trust and confidence of the people to carry out their constitutionally mandated function which is to uphold, protect and apply the law without fear or favour. Disregard of court orders is an attack on the very fabric of the rule of law.'

[11] The requirements for contempt of court are trite. They are the existence of a court order; the contemnor must have knowledge of the court order; there must be non-compliance with the court order; and the non-compliance must have been wilful and *mala fides*. Once the first three elements have been shown, wilfulness and *mala fides* will be presumed and the evidentiary burden shifts to the contemnor. Should the contemnor (the respondent) fail to discharge this burden, contempt would have been established.

[12] The parties are *ad idem* that the order was granted by this court. Furthermore, the respondent has knowledge of the court order. The respondent denies that she is in default of the court order granted by this court. She raises all manner of excuse for the non-compliance with the order and suggests that the applicant himself is in contempt of the same order. She refers to correspondences which go back to 2022 thereby conceding that nothing has been done in respect of the order granted.

[13] The respondent's answer does not deal with the matter on hand being the contempt application. She merely denies that she failed to comply with the court order and wishes to make out a case in her heads of argument which is not permitted. She should make out her case in the answering affidavit and stand and fall by such affidavit.

[14] The respondent in answer suggests the appointment of a liquidator to finalise the division of the estate. This matter is not before this court. The matter before the court is that of contempt of the court order.

¹ 2021 (5) SA 327 (CC) at para 1

[15] Accordingly, I am of the view that the respondent has failed to take this court into her confidence and in fact, I am of the view that the respondent's conduct is wilful in that she has attempted to mislead the court with the evidence furnished and not dealt with the matter on hand.

[16] In view of the evidence before this court, I have no option but to grant the order as prayed. Accordingly, the following order is granted:

1. The respondent is declared to be in contempt of the Settlement Agreement incorporated in the Court Order granted on 11 August 2022.
2. The respondent is to be committed to prison for a period of 30 days which committal is suspended for a period of one year on condition that the respondent complies with the order of 11 August 2022 within 14 days of the date of this order.
3. The respondent shall pay the costs of this application.

MOKOSE J
Judge of the High Court of
South Africa Gauteng
Division, PRETORIA

For the Applicant: Adv E Muller

Instructed by: Ingrid Mtsweni Attorneys Inc

For the Respondent: Mr D Phetla

Instructed by: Phetla Attorneys Inc

Date of hearing: 1 August 2024

Date of judgment:

1 October 2024