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**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Case no: 3254/2024

In the matter between

E[...] J[...] L[...]

Applicant

and

H[...] J[...] C[...] L[...]

Respondent

Neutral citation: *E[...] J[...] L[...] v H[...] C[...] L[...] (3254/2024)*

Coram: **MPAMA AJ**

Heard: **14 NOVEMBER 2024**

Delivered: **29 NOVEMBER 2024**

Summary: contempt of court – non compliance with court order – authority of courts

ORDER

- 1 The respondent is found to be in contempt of the court order dated 26 February 2024.
- 2 The respondent is sentenced to imprisonment for a period of 30 (thirty) days, which imprisonment is suspended for a period of one (1) year on condition that the respondent complies with the court order dated 26 February 2024.
- 3 The respondent is ordered to comply with the court order dated 26 February 2024 and more specifically paras 4 and 5 thereof within 10 (ten) days from the date of this order.

- 4 The Applicant is authorized to approach the Honourable Court on the same papers, duly supplemented where necessary, for an order committing the Respondent to imprisonment in the event of the Respondent failing to adhere to the court order dated 26 February 2024.
- 5 The Respondent shall pay costs on this application on Scale A as contemplated in Rule 67A of the Uniform Rules of the Court.

JUDGMENT

Mpama AJ

[1] This is an application for contempt of court. The applicant and the respondent are married to each other out of community of property with the inclusion of the accrual system. They are embroiled in divorce proceedings which commenced when the respondent issued divorce summons on 11 July 2023 against the applicant.

[2] Subsequent to the divorce proceedings, the applicant brought an application in terms of rule 43 of the Uniform Rules of the Court on 11 September 2023 which culminated in an order being made by this court on 26 February 2024 for, *inter alia*, the payment of maintenance by the respondent for the parties' two minor children at an amount of R6000.00 monthly per child; payment of monthly school fees, hostel fees and tutoring fees for the minor children; and payment of the minor children's fair and reasonable medical, dental, hospital and related medical expenses not covered by the medical aid fund.

[3] The applicant alleged that the respondent failed to comply with the order made by the court for the maintenance of his minor children *pendente lite*, brought this application and seeks the following orders against the respondent:

'1. That the Respondent be found to be in contempt of court order dated 26 February 2024.

2. That the Respondent be sentenced to imprisonment for a period of 30 (thirty) days, which imprisonment is suspended for a period of one (1) year on condition that the Respondent complies with the court order dated 26 February 2024.
3. That the Respondent be ordered to comply with the court order dated 26 February 2024 and more specifically paragraphs 4 and 5 thereof within 10 (ten) days from the date of this order.
4. That the Applicant be authorized to approach the Honourable Court on the same papers, duly supplemented where necessary, for an order committing the Respondent to imprisonment in the event of the Respondent failing to adhere to the court order dated 26 February 2024.
5. That the Respondent be ordered to pay the costs of this application on an attorney and client scale.'

[4] The applicant contended that there is a valid court order, the respondent has full knowledge of the order, he is in breach of the order and his non-compliance with the order was wilful and *mala fide*. The applicant referred the court to the case of *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others*¹ where it was said that '[i]t cannot be gainsaid that orders of court bind all to whom they apply. In fact, all orders of court, whether correctly or incorrectly granted, have to be obeyed unless they are properly set aside.'² The applicant submitted that until the order is set aside or substituted by a competent court, the respondent is bound by the order despite his application filed in the maintenance court for the substitution or variation of the order.

[5] The application is opposed by the respondent, who acknowledged his non-compliance with the order. However, he disputed that his non-compliance was wilful or *mala fide*. His defence is that the applicant rendered it impossible for him to comply with the order. The respondent averred that it was expressed to the applicant's attorney that he will be able to pay maintenance if he continues to receive the rental income from the properties owned by Constantia Trust and that the generated income was to be used by him to satisfy the court order. He accused the applicant of underhanded tactics in that, unbeknown to him, she planned for the rental income to be paid to her. This altered his financial position, rendering it impossible for him to afford payments. This prompted him to seek recourse in the Magistrates' Court for substitution of the order in terms of s 16(1)(b) of the Maintenance Act 99 of 1998 as

¹ *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* [2021] ZACC 18; 2021 (9) BCLR 992 (CC).

² *Ibid* para 59.

he no longer had the wherewithal to pay. The respondent argued that since he did not haphazardly abandon the court order but approached the maintenance court for the variation of the order his non-compliance is not wilful or *mala fide*.

[6] In reply, the applicant refuted the respondent's claim that she went behind the respondent's back and secured the collection of the rental money. The applicant asserted that the respondent, knew that the applicant was collecting the rental amount and with such knowledge, consented to the payment of maintenance as per the court order. The applicant reiterated her stance that since the respondent's application for substitution of the court order has not yet been heard, the respondent had a duty to comply with the court order and his actions were contemptuous.

[7] The only issue for adjudication is whether the respondent's conduct is wilful or *mala fide*. The central question is whether the respondent should be committed to prison for his failure to make payments in terms of the order made *pendente lite*.

[8] An applicant in a contempt application must show that (i) there is a court order (ii) served on the respondent (iii) there is non-compliance with the terms of the order and (iv) the respondent's wilfulness or *mala fides*. Once the applicant has established this, the respondent bears an onus to show that he is not in wilful default. The relief sought by the applicant is committal, the standard of proof is beyond reasonable doubt, whereas proof on a balance of probabilities is required where the remedies sought do not result in depriving someone his freedom.

[9] The Constitutional Court in *Pheko and Others v Ekurhuleni City*³ (*Pheko*) reiterated the importance of compliance with court orders as integral to the rule of law in the following terms: 'It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.'⁴

The Court continued and held:

'Courts have the power to ensure that their decisions or orders are complied with by all and sundry,

³ *Pheko and Others v Ekurhuleni City* [2015] ZACC 10; 2015 (5) SA 600 para 1

⁴ *Ibid* para 1.

including organs of state. In doing so, courts are not only giving effect to the rights of the successful litigant but also and more importantly, by acting as guardians of the Constitution, asserting their authority in the public interest. It is thus unsurprising that courts may, as is the position in this case, raise the issue of civil contempt of their own accord.⁵

[10] The court in *Pheko* at para 28 went further and defined contempt of court as follows: 'Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes acts of contumacy in both senses: wilful disobedience and resistance to lawful court orders . . . Wilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence. The object of contempt proceedings is to impose a penalty that will vindicate the court's honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order.'

[11] It is not in dispute that the respondent made a payment of R12000.00 in March 2024, R6000.00 in April and May 2024 and contributed an amount of R5600.00 towards school and hostel fees, notwithstanding the fact that these fees amount to more than R35 000.00 per annum and are in arrears. The respondent admitted his non-compliance with the order.

[12] It is also not in dispute that on 28 March 2024 the respondent approached a maintenance court for the substitution of this order. The application for variation is still pending and postponed to 11 February 2025. The applicant criticized the respondent for his stance, suggesting that the correct forum for hearing an application for variation of the court order was this Court and not the maintenance court. I do not intend to make a finding as to which court is competent to entertain the application for variation. Firstly, my view is that this is a non-issue for the purposes of this application and secondly, the matter is *sub judice*.

[13] I had an opportunity to peruse the R43 application (as both parties agreed that it be placed before me for adjudication of this matter). The result is that I could not find any evidence to support the respondent's claim that he agreed to pay maintenance as he was to collect rental income. What is clear and factual from those proceedings is that when he consented to the maintenance order, he was fully aware that the applicant was collecting the rental income.

[14] For as long as the order has not been set aside nor varied by the court, the respondent

⁵ Ibid para 2.

has no other option but to fully and diligently comply, even if he may feel it is wrong or incorrect in some respects. Court orders are to be obeyed. The respondent's application for variation of the order is pending in the maintenance court. Until the court order is varied or set aside by a competent court, it is binding on the respondent. As things stand, the respondent has not contributed towards maintenance of his children as per the court order, despite having full knowledge of the existence of a valid court. The respondent's reasons for non-compliance are rejected as they lack basis and are not true.

[15] Upon proper analysis of the facts, I am satisfied that the respondent has not discharged an evidentiary burden of showing that his conduct is not wilful and *mala fide* and has shown no good cause as to why he should not be held in contempt of court.

Order

[16] In the premises, I make the following order

- 1 The respondent is found to be in contempt of the court order dated 26 February 2024.
- 2 The respondent is sentenced to imprisonment for a period of 30 (thirty) days, which imprisonment is suspended for a period of one (1) year on condition that the respondent complies with the court order dated 26 February 2024.
- 3 The respondent is ordered to comply with the court order dated 26 February 2024 and more specifically paras 4 and 5 thereof within 10 (ten) days from the date of this order.
- 4 The Applicant is authorized to approach the Honourable Court on the same papers, duly supplemented where necessary, for an order committing the Respondent to imprisonment in the event of the Respondent failing to adhere to the court order dated 26 February 2024.
- 5 The Respondent shall pay costs on this application on Scale A as contemplated in Rule 67A of the Uniform Rules of the Court.

MPAMA, AJ

APPEARANCES

For the Applicant:

Advocate J Els

Instructed by:

Schoeman Steyn Inc c/o Horn &
Van Rensburg Attorneys

For the Respondent:

Advocate C L H Harms

Instructed by:

Christo Faber Inc c/o Stander & Associates
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