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

Reportable: NO
Of Interest to other Judges: NO
Circulate to Magistrates: NO
Case No: 4513/2024

In the matter between:

N[...] C[...] K[...]

Applicant

and

M[...] T[...] K[...]

1ST Respondent

GOVERNMENT EMPLOYEE PENSION FUND

2nd Respondent

JUDGMENT BY: MHLAMBI, J

HEARD ON: 5 September 2025

DELIVERED ON: 27 February 2025

[1] On 15 August 2024, I granted the following order:

- "1. The matter is postponed to 05 September 2024 (opposed roll) to enable the applicant to file a replying affidavit.*
- 2. No order as to costs.*
- 3. Heads of argument shall be filed in accordance with the practice directive."*

[2] The applicant had approached the court on that day seeking the following relief:

- “1. That this matter is heard on an urgent basis and that no compliance with the Rules of court in terms of service and form be dispensed with in terms of Rule 6(12) (a) of the Uniform Rules;
2. That the second respondent is prohibited and interdicted from effecting payment to the first respondent of any pension funds and or benefits it holds in favor of the first respondent, pending the final determination of the maintenance and/ or future maintenance claims against the first respondent under case reference 21MAI00084, at the maintenance court of the district of Bloemfontein, held at Bloemfontein Free State Province.
3. Directing that the rule nisi do issue calling upon the respondents to show cause, if any, to this court on Thursday, 26 September 2024, at 09h30 or so soon thereafter as the matter may be heard, while the order (as) in the preceding paragraph should not be made final.
4. The order (as) in paragraph 2 above, operate as interim interdict with immediate effect pending the return day of the rule nisi.
5. Directing the respondents to pay the costs of this application, if opposed.
6. Granting the applicant leave to supplement these papers if necessary in the event of this part of the application being opposed.
7. Given the fact that the residential address particulars of the first respondent are unknown to the applicant, the sheriff of the court is authorized to serve these papers on the first respondent;
 - 7.1 Personally the magistrate's court, Bloemfontein, when he (first respondent) attends criminal court proceedings on Tuesday, 13 August 2024; and or
 - 7.2 By email; and or
 - 7.3 By any other means possible.
8. Further and or alternative relief.”

- [3] The applicant and the first respondent were married in community of property on 21 February 2014. This was the second marriage, and the first marriage was dissolved on 08 June 2012. Two minor children, aged 12 and 15, were born of this marriage. The applicant instituted fresh divorce proceedings on 21 January 2020, and the matter proceeded on a defended basis. On 11 June 2020, the court granted an order for maintenance *pendente lite* in favour of the plaintiff and the minor children. The first respondent fell into arrears with his payments.
- [4] On 22 May 2023, the applicant filed an *ex parte* application against the first and second respondents in the maintenance court under reference number 4012021MAI00084. The court granted a *rule nisi* and ordered that:
- “1. The Second Respondent be interdicted from effecting payments of any monies/benefits of the First Respondent, from the account held by the First Respondent with the Second Respondent.
 2. The Second Respondent is so interdicted until such time as the application for arrear & future maintenance child(ren) has been finalized on **09 June 2023** or any other subsequent date as may be fixed by this court.
 3. That the Respondents as well as any other person affected by this order, shall have the right to appear on **09 June 2023**, Bloemfontein Magistrate Court 23 at 8h30 or as soon thereafter as the matter may be heard by the Court.
 4. The order shall be served on the First and Second Respondents. “
- [5] On 05 October 2023, this court granted a divorce decree and ordered that there should be a division of the joint estate and that 50% of the respondent's pension interest in the first respondent be paid to the applicant. The maintenance of the minor children and that of the applicant was referred to the maintenance court.

- [6] On 17 January 2024, the applicant filed for maintenance in the magistrate's court. On 06 February 2024, the court granted an order in which the second respondent was ordered to pay R 160 000.00 (hundred and sixty thousand rands) into her bank account for the area maintenance. The order reads as follows:

"To pay the amount of R 160 000.00 (one hundred and sixty thousand rands) immediately into the bank account of the Applicant, Capitec Bank Account number: 1252518224, reference number: 4002021mai000084 in respect of arrear maintenance in favour of the minor children. The reference number must accompany payments.

The order dated 22 May 2023 attaching the pension fund of the First Respondent is hereby set aside after the amount of R 160 0000.00 (hundred and sixty thousand rand) is paid over to the Applicant".

- [7] The court issued a directive on 06 February 2024 that the parties should attend the court on 03 April 2024, and as the first respondent's labor issue was not resolved on that day, the parties were advised that a new directive would be issued after June 2024. The first respondent was contesting his dismissal with the National Prosecuting Agency, and the appeal date was scheduled for June 2024.

- [8] The applicant's urgency is based on the following:

1. The first respondent is unemployed and has failed to maintain the minor children despite the court order for maintenance *pendente lite*;
2. He was unemployed, had no source of income, and did not own movable or immovable assets save for the pension payout. The applicant did not know the first respondent's residence or the particulars of his banking account and institution.

3. The first respondent may have already burdened the funds he expected from the second respondent and was likely to squander the funds before any provision was made for the children;
4. She was informed that the imminent pension payout might be made during the week of 12 -16 August 2024.

[9] The first respondent opposed the application, and his answering affidavit stated that the application was not urgent at all. He raised the following preliminary points:

1. There was no existing maintenance order against him;
2. The applicant brought a pending maintenance application in the maintenance court.
3. The applicant's claim was not based on a pensionable interest benefit, which was liable to be attached or subjected to execution under any warrant of execution or any order issued or made to satisfy a maintenance order.
4. The applicant could only approach the High Court if the maintenance court could not provide the remedy sought. The maintenance court had personnel who could stop the second respondent from paying the money until the applicant's application was fully ventilated.

5. The second respondent already possessed the applicant's documents and was ordered not to pay the pension until the applicant's case was finalized. The second respondent had already informed the first respondent accordingly.

[10] Relying on *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*, the first respondent contended that the procedure outlined in Rule 6(12) was not a mere formality. An application must explicitly detail the circumstances that make the matter urgent; more importantly, the applicant must articulate why they cannot obtain substantial redress in a standard hearing. The question of urgency is fundamentally tied to the absence of an alternative substantial redress. The applicant failed to do so. Furthermore, the applicant launched this application despite the final order granted on 06 February 2024 in which the respondent was ordered to pay R 160 000.00 (hundred and sixty thousand rand) for arrear maintenance.

[11] When the final order was granted, the applicant should have been aware that the second respondent would release the first respondent's pension benefit as there was no longer an application for maintenance on the court roll. The applicant remained silent and waited for 6 (six) months before she rushed to the high court claiming urgency. The respondent contended that this was self-created urgency.

[12] The applicant referred to *Magewu v Zozo*¹, and submitted that the court granted the final interdict against the release of the pension fund in order to secure the future maintenance of the minor children even though the respondent in that case did not owe arrear maintenance and that he had no intention to thwart his obligations. The respondent contended that the case was

¹ 2004 (4) SA 578 (C).

distinguishable as the court found that the respondent was a recalcitrant father who was unwilling to abide by his maintenance obligations when he could afford to do so. When he faced the application for future maintenance, he rushed to court to pay all outstanding arrear maintenance. The respondent had to be dragged to court by a constant operation of the law to force him to abide by his maintenance obligations.

[13] Furthermore, the respondent contended that he was not in arrears with his maintenance obligations and was not violating any maintenance order against him. There was no evidence or conduct on his part to suggest that he had intended to dissipate his pension interest to defeat the applicant's maintenance claim. He referred to *M.M.R v J.D.P and Others*,² where it was held that a maintenance order was not in place.

[14] It is clear from the papers that the first respondent had not paid maintenance and had been unemployed for some time. The applicant did not pertinently deny that he has been practising as an advocate since May 2024. There is no current maintenance order. The arrear maintenance for R160 000.00 was secured by a court order that was served on the second respondent to effect payment into the applicant's account. It is not denied that the first respondent did visit the offices of the maintenance officer in June 2024.

[15] In the replying affidavit, the applicant failed to traverse the first respondent's allegations that the joint estate consisted of three motor vehicles, household furniture, and other movables that had not been equally divided between the parties per the divorce decree. Secondly, the applicant knew where the first respondent resided. Thirdly, she had been awarded half his pension funds, excluding the R160 000.00 earmarked for arrear maintenance.

² (6889/2021) [2023] ZALMPPHC 48 (17 July 2023).

[16] The requirements for an interim interdict are: (a) a prima facie right, even if it is open to some doubt; (b) injury actually committed or reasonably apprehended; (c) the balance of convenience; and (d) the absence of similar protection by any other remedy.³ In *Knox D'Arcy Ltd and Others v Jamieson and Others*,⁴ it was stated that an applicant needs to show a particular state of mind on the part of the respondent that he is getting rid of the funds or is likely to do so to defeat the claims of creditors. The effect of the interdict is to prevent the respondent from freely dealing with his property to which the applicant lays no claim. Justice may require this restriction in cases where the respondent is shown to be acting *mala fide* to prevent execution concerning the applicant's claim.

[17] It is clear upon a reading of the Maintenance Act and the relevant provisions of the Pension Funds Act that the two Acts work together to provide relief to an applicant with a maintenance order that has not been abided by the judgment debtor. The Maintenance Act was designed to alleviate the manner and conditions under which the maintenance system was previously run. It opened new legal avenues to deal with recalcitrant fathers.⁵

[18] Unlike *Magewu*, the circumstances of this case do not mean that the first respondent wanted to thwart the maintenance order or that his conduct showed unwillingness to abide by that order. The attachment of pension fund benefits concerning future maintenance claims is, in this case, not a direct and effective means of ensuring the future maintenance claims of the minor child. Having secured employment, it cannot be argued that he is unwilling to subject himself to the jurisdiction of the maintenance court for purposes of a maintenance

³ KSL v AL 2024(6) SA 410 (SCA).

⁴ 1996 (4) SA 348 (A).

⁵ *Magewu*, supra.

order. In line with *Knox v D'Arcy*, the applicant failed to prove the jurisdictional requirements to show her entitlement to interim relief. She failed to present evidence that the second respondent would not give preference to his children upon receiving his pension, to which he is entitled.

[19] In the circumstances, I cannot find that the first respondent is acting *mala fide* to prevent execution concerning the applicant's claim and that the applicant has satisfied the requirements for granting interdictory relief. The application must, therefore, fail.

[20] I make the following order:

Order:

1. The application is dismissed with costs.

MHLAMBI, J

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