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

CASE NO: 2024 -127136

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES:NO

(3) REVISED: NO

DATE

SIGNATURE

In the matter between:

S[...] Z[...] M[...] (Born N[...])
(ID NO. 9[...])

APPLICANT/PLAINTIFF

And

M[...] N[...] M[...]
(ID NO. 8[...])

RESPONDENT/DEFENDANT

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. This order is further uploaded to the electronic file of this matter on CaseLines by the Judge or his Secretary. The date of this Order is deemed to be **16 APRIL 2025**

JUDGEMENT

NDLOKOVANE AJ

[1] This is an opposed urgent application brought by the applicant on 27 March 2025 seeking, *inter alia*, an order declaring the respondent in contempt of a Rule 43

court order issued on 18 February 2025. Ancillary relief included a suspended sentence of imprisonment and a costs order against the respondent.

[2] At the commencement of proceedings, the court was informed by both parties' legal representatives that the respondent has since fully complied with the Rule 43 order, after being served with the contempt application.

The sole issue for determination is whether, in light of the respondent's eventual compliance, the applicant is entitled to her costs of the application.

[3] The salient facts are as follows:

3.1 On 18 February 2025, a Rule 43 order was granted by Madame Justice Potterill J, directing the respondent to make interim maintenance payments to the applicant in respect of the minor child with first payment to be paid on or before 25 February 2025. The signed and dated stamped court order is uploaded on Caselines bundle 00-1.

3.2 On 19 March 2025, the respondent informed the applicant via email that he was unable to comply with the order due to his bank account being frozen by the Financial Intelligence Centre (FICA).

3.3 On 25 March 2025, the respondent deposed to an affidavit at the South African Police Service confirming the freezing of his account and the requirement to submit further documentation to his bank.

3.4 On 27 March 2025, the applicant launched the current application on an urgent basis, alleging wilful non-compliance and contempt.

3.5 The respondent complied with the Rule 43 order shortly after being served with the urgent application on the 27 March 2025.

[4] In view of the respondent's subsequent compliance, the only issue before this court is whether the applicant is entitled to the costs of this application, notwithstanding the fact that the application became moot before the hearing.

[5] The general rule is that costs follow the result, subject to the discretion of the court. In the case of ***Ferreira v Levin NO and Others 1996 (2) SA 621 (CC)***, which held that such discretion must be exercised judicially with due regard to the facts of the case.

[6] Where a respondent complies only after proceedings have been instituted, courts have held that such compliance does not necessarily shield them from a costs order. In ***Bezuidenhout v Dippenaar* 2005 (2) SA 185 (C)**, the court awarded costs to the applicant despite post-service compliance, finding that the litigation had prompted the respondent's action.

[7] Similarly, in ***Graham v Graham* 1952 (3) SA 486 (W)**, the court noted that if litigation is the catalyst for compliance, the applicant is regarded as having succeeded and should be awarded costs.

[8] However, where the litigation was unnecessary or avoidable, particularly if the respondent has provided a reasonable explanation for the delay and the applicant failed to engage meaningfully, costs may be refused.¹

[9] The test is whether the applicant acted reasonably in launching proceedings and whether the litigation was necessary to secure compliance².

[10] In the present matter, the respondent failed to comply with a clear and unambiguous court order dated 18 February 2025, which required payment by 25 February 2025. Despite this, the respondent made no attempt to communicate his difficulties, seek a variation of the order, or request indulgence from the applicant for over a month.

[11.] The explanation — that his account was frozen by FICA — was only disclosed on 27 March 2025, contemporaneously with or after service of the urgent application. While the explanation itself may be plausible, the delay in disclosure and lack of proactive engagement are indefensible.

[12] Courts have emphasized that **compliance prompted only by litigation** does not absolve a party from liability for costs. The fact that the respondent

¹ See *Biowatch Trust v Registrar, Genetic Resources* 2009 (6) SA 232 (CC).

² See also *Kruger Bros & Wasserman v Ruskin* 1966 (2) SA 431 (A).

complied **after being served** with a contempt application underscores that it was **the application itself** that precipitated the payment.

[13] In *Bezuidenhout v Dippenaar*, supra, the court made it clear that compliance post-service is no bar to a costs order where the respondent was silent or dilatory. Similarly, in *Graham v Graham*, the court held that successful enforcement through litigation, even if short-lived, entitles the applicant to costs.

[14] Unlike in *Biowatch* or *East Rock Trading*, the applicant here did not act precipitously or unreasonably. The delay in launching proceedings was measured, and the respondent was granted more than a month to comply. In the absence of any communication, the applicant cannot be faulted for turning to the court.

[15] The urgency of the application, though belated, was justified in the context of unpaid maintenance for a minor child — a matter deserving of prompt redress. The respondent's failure to communicate, explain, or engage with the applicant earlier left her with no practical alternative.

[16] Having regard to the applicable legal principles, the conduct of the parties, and the timing of compliance, I am satisfied that the applicant acted reasonably in launching these proceedings, and that the litigation was necessary to achieve compliance. Accordingly, the applicant is entitled to her costs.

Order

[17] In the result, I make the following order:

1. The application is removed from the roll as it has become moot due to compliance by the respondent.
2. The respondent is ordered to pay the costs of the application on a party and party scale.

N NDLOKOVANE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Delivered: this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of his matter on Case lines. The date for handing down is deemed to be **16 APRIL 2025**.

APPEARANCES

For the applicant: ADV MP Nzwane

For the respondent: ADV T Ngoepe

Heard on: 01 APRIL,2025

Date of Judgment: 16 APRIL,2025