

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

CASE NR: 075348/2025

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED:

DATE: 11/06/2025

SIGNATURE

In the matter between:

T[...] A[...] M[...]

PLAINTIFF

and

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

DEFENDANT

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 11 June 2025.

JUDGMENT

MARUMOAGAE AJ

A INTRODUCTION

1. This is an urgent application relating to the care, residency, and contact of the minor child born out of the relationship that has ended between the parties before the court. Both parties are legally unrepresented.
2. Before the application was heard, the parties were advised of their rights to legal representation. They were also informed that if they could not afford private legal representation, they could approach several institutions in Gauteng that offer free legal services to litigants who cannot afford private legal representation. They both informed the court that they will argue their respective cases.
3. As could be expected, the papers are not a model of clarity, but it is not difficult to ascertain what the application is about. It is essential to note that courts are duty-bound to serve litigants who are not legally represented, and to create an environment in which they can be effectively heard, and their disputes to be adequately resolved. After explaining how motion proceedings work, both parties were allowed to argue their respective cases.
4. While it is not entirely clear from the notice of motion and the oral arguments presented, apart from the issue of urgency, this is essentially a contempt of court application, in which the Applicant also requested the court to award care and residency of the minor child to him. The issues that the court is called upon to determine are:
 - 4.1. Is the matter urgent?
 - 4.2. If yes, is the Respondent in contempt of any court order?
 - 4.3. Should the care and residency of the minor child be awarded to the Applicant?

B URGENCY AND THE FACTS

5. According to the Applicant, on 19 October 2020, the parties entered into an agreement, under which, among other things, it was agreed that the Applicant

would have full access to the parties' minor child. They further agreed that the minor child will visit the Applicant on alternate weekends and also spend some time sleeping over at the Applicant's residence.

6. The Applicant alleges that this court order has been violated because the Respondent does not allow him to have contact with the minor child. He further submitted that the minor child has been removed from the Respondent's mother's residency, which was the minor child's primary residence, to a new residence where the Respondent is residing with her boyfriend.
7. The Applicant takes issue with the fact that the minor child is living with the Respondent and her boyfriend. He claims that the minor child is not safe with the Respondent's boyfriend. With this application, the Applicant requests that his parental responsibilities and rights be urgently restored, and in the process, be given the care and residency of the minor child, and that the Respondent be sentenced to a term of imprisonment.
8. The Applicant argues that as the minor child's biological father, he is more capable of providing the necessary care to the minor child. He contends that he has a place to stay, a job, stable income, and a good family support structure.
9. The Respondent did not make any submissions on the urgency of the matter and proceeded to dispute the allegations made by the Applicant. She stated that she does not reside with her mother, but with her fiancé, with whom she is due to get married.
10. The Respondent confirmed that the minor child resides with her and her fiancé. She submitted that she is self-employed, which allows her enough time to care for the minor child. Furthermore, she has established a home for the minor child and a set routine that the child is responding well to. This routine enables the minor child to excel in school.
11. She noted that she does not have a good relationship with the Applicant, but she is not preventing him from contacting the minor child. She indicated that she does

not mind having the Applicant collect and return the minor child from and to her mother's house. The Respondent also indicated that she has no idea where the Applicant resides.

C THE LAW AND ANALYSIS

i) Urgency

12. Uniform Rule 6(12) provides a test for cases to be brought to court on an urgent basis. To be heard urgently by the court, the Applicant must demonstrate why he will not be afforded substantial redress if the matter was to be heard in due course. In other words, the Applicant must explain why he should be allowed to jump the queue.¹

13. In *H v H*, it was held that:

'[t]here is plethora of authorities, which state that in matters involving the best interests of a child, such matters are inherently urgent and in the nature of Rule 6(12) of the Uniform Rules of Court, and it permit [the court] to disregard notice, forms and service [as the court deems fit]'.²

14. In *M.D.N v S.D.N*, it was held that:

'[c]ontempt of proceedings are by their nature urgent, because the vindication of the court's authority is at stake'.

15. While it is debatable that the matter is urgent because the Applicant did not adequately address the issue of urgency, the fact that the Applicant was unrepresented and could not be expected to comprehensively deal with the

¹ See *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) paras 6, where it was held that '... the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

² (2024/103863) [2024] ZAGPJHC 971 (26 September 2024) para 20.

requirements of Uniform Rule 6(12), justifies assuming that this matter is urgent because it is a contempt of court matter dealing with the care and contact of a minor child. It is in the interest of justice to hear this matter and resolve it so that the parties can move on with their lives.

ii) A court that should hear a contempt case

16. In *M v M*,³ Senyatsi J agreed to hear a contempt of court application of an order granted by the Thembisa Magistrates Court. He reasoned that:

'[i]t is trite that there is no statute that grants the High Court jurisdiction to grant an order for civil contempt of court. To grant an order for the civil contempt of court, the High Court invokes its inherent jurisdiction'.⁴

17. While I am of the view that it is ideal for a contempt of court application to be brought to the court that made an order because it has the judicial capacity to ensure compliance with its orders,⁵ this court has assumed jurisdiction to entertain contempt applications of orders granted by the Magistrates' Courts before.

18. There is no need to close the door on the parties before this court, given the fact that they are legally unrepresented, and it could not reasonably be expected of the Respondent to raise a special plea of jurisdiction competently or even raise it as a *point in limine*.

iii) Contempt of Court

19. In *P L v R L*, it was correctly stated that:

³ (A3076/2016) [2017] ZAGPJHC 279 (28 March 2017)

⁴ Ibid para 9

⁵ See for instance *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* 2021 (5) SA 327 (CC), where a contempt application relating to the order granted by the Constitutional Court was brought directly to the Constitutional Court and not the High Court.

'[o]ur law on (civil) contempt of court is well established. Contempt of court is defined as "the deliberate, intentional (i.e., wilful), disobedience of an order granted by a court of competent jurisdiction'.⁶

20. In *A D v R D*, it was held that:

'[i]t is trite that the object of contempt proceedings is to obtain imposition of a penalty in order to vindicate the Court's honour consequent upon a disregard of its order as well as to compel performance in accordance with the Order'.⁷

21. During oral argument, the parties made several allegations against each other that clearly demonstrate that they have not dealt effectively with their separation. It also appears to me that the Applicant has not really accepted that the Respondent has moved on with her life.

22. From their oral arguments, it became clear that the issue is not really about the Applicant being denied access to the minor child. It is more about the Respondent residing with the minor child with her fiancé. The Applicant can access the child through the Respondent's mother.

23. The Applicant failed to prove that the Respondent intentionally violated the order that granted him access to the minor child. That order is also vague because it states, among others, that the Applicant can go to the Respondent's place to see the minor child during the week and has full access to the child. Surely, this order has the effect of allowing the Applicant to interfere with the Respondent's privacy and unduly inconvenience her life.

24. Both parties have a right to move on with their lives and date or marry other people if they so desire. None of them has the right to interfere with the life of another. All that needs to happen is for them to foster a relationship with their minor child in such a manner that is not intrusive in their respective lives. Contact

⁶ (2022/016375) [2023] ZAGPJHC 1331 (10 November 2023).

⁷ (193/2018) [2024] ZAECPEHC 39 (20 February 2024) para 8.

rights must be well articulated and respected. But they ought not to be intrusive and allow one party to interfere with the life of another, using the child.

25. The Applicant has the right to exercise reasonable contact with the minor child, and the Respondent does not have a right to prevent him from doing so. During oral argument, the Respondent suggested that the Applicant should visit her mother's house every other weekend, on Friday after school, to collect the minor child and return her on Sunday.

26. The Applicant informed the court that every time he goes to the Respondent's mother's house, he needs to go with the witness because he does not want to be accused of anything. This appears to be the better option that should be explored to ensure the Applicant maintains a relationship with the minor child. If there is any conduct that has criminal elements from either party, that conduct must be reported to the police. The allegations made by the parties against each other may also necessitate an inquiry by the Office of the Family Advocate. Contempt has not been proven in this case.

27. Even if contempt was proven, the Constitutional Court in *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others*, held that

'[n]ot every court order warrants committal for contempt of court in civil proceedings. The relief in civil contempt proceedings can take a variety of forms other than criminal sanctions, such as declaratory orders, mandamus, and structural interdicts. All of these remedies play an important part in the enforcement of court orders in civil contempt proceedings. Their objective is to compel parties to comply with a court order. In some instances, the disregard of a court order may justify committal, as a sanction for past non-compliance. This is necessary because breaching a court order, wilfully and with mala fides, undermines the authority of the courts and thereby adversely affects the broader public interest'.⁸

⁸ 2018 (1) SA 1 (CC) para 54

28. The Respondent has the time to care for the minor child because she is self-employed. The Applicant is employed, and if the minor child would be placed under his care she will be left in the care of other family members when the Applicant is at work and the minor child is not in school.

29. It will be irresponsible for this court to remove the minor child from the Respondent's care simply because the Applicant has formulated a view that the minor child's life is in danger because of the Respondent's fiancé. It would be unreasonable to expect the Respondent not to reside with her fiancé. It is not unheard of for any child to live with their step-parent. The Applicant did not articulate the kind of danger the minor child will suffer in the hands of the Respondent's fiancé. Perhaps this is also an issue that the Family Advocate can investigate and report to this court.

D CONCLUSION

30. It is trite that this court is the upper guardian of all minor children. When considering disputes related to children, the starting point is section 28 of the Constitution of the Republic of South Africa, read in conjunction with Section 7 of the Children's Act. These provisions make it clear that the best interests of children in South Africa are of paramount importance. This, however, does not mean that the rights of children are elevated above those of their parents or other family members.⁹

31. It is not in the best interest of the minor child to grant any of the orders that the Applicant seeks. However, this does not mean that the Applicant does not have a right to exercise his contact rights with the minor child.

ORDER

32. In the premises, I make the following order:

⁹ See generally *B v M* [2006] 3 ALL SA 109 (W).

30.1 Non-compliance with the rules relating to time periods, form, and service for bringing this application is hereby condoned, and that this matter is hereby heard on an urgent basis in terms of Uniform Rule 6(12).

30.2 The Application is struck off the roll.

30.3 The Family Advocate, Pretoria, is ordered to carry out an assessment and investigate this matter and make recommendations regarding the best interest of the parties' minor child in respect to the parental responsibilities and rights relating to care and contact, and report to the court by 30 September 2025.

30.4 The Applicant is ordered to deliver a copy of this judgment to the Pretoria Office of the Family Advocate, within a week of the delivery of this judgment.

30.5 Pending the Family Advocate's assessment and investigation:

30.5.1 The Respondent must take the minor child to her mother's house

every alternative weekend to allow the Applicant to come at 17:00 to collect the minor child to exercise his contact rights starting from 20 June 2025;

30.5.2 The Applicant must return the minor child on or before 18:00 on Sunday on the alternate weekend that he would have collected the minor child from the Applicant's mother's house;

30.5.2 The Applicant is not allowed to go to the Respondent's house where she lives with her fiancé.

33. Each party to pay their own legal costs.

C MARUMOAGAE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

FOR THE PLAINTIFF : In person (T[...] A[...] M[...])

FOR THE DEFENDANT : In person (K[...] M[...])

DATE OF CONSIDERATION : 03 June 2025

DATE OF JUDGMENT : 11 June 2025