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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 110440/2025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

In the matter between:

S[...], S

Applicant

and

S[...], M A

Respondent

This judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date for the hand down is deemed to be 25 July 2025.

JUDGMENT

ABRO AJ

Introduction

[1] The opening remarks of the Constitutional Court in *Pheko and Others v Ekurhuleni Metropolitan Municipality* (“*Pheko 2*”)¹ sets the tone for these proceedings:

“The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. 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.”

[2] The applicant, a 59-year-old female, who was divorced from the respondent, a 60-year-old male, on 16 April 2024, approached this court on an urgent basis seeking to have the respondent declared to be in contempt of the maintenance provisions of the settlement agreement made an order of the divorce court.

[3] The settlement agreement largely dealt with, and made provision for, the division of the joint estate by way of the appointment of a receiver and liquidator thereto. The receiver & liquidator’s powers comprise the majority of the settlement agreement. The value of the joint estate has not yet been determined and agreed to between the parties and as such division of the joint estate has not yet occurred.

[4] Paragraph 4.1 of the settlement agreement under the heading ‘Maintenance’ is relevant to the application before me. The paragraph provides for cash maintenance to be paid by the respondent to the applicant from date of divorce until the division of the joint estate has taken place. Paragraph 4.1 reads as follows –

“The Defendant shall pay the Plaintiff maintenance equivalent to maintenance payable under the existing rule 43 maintenance order, at a rate of R38 000.00

¹ 2015 (5) SA 600 (CC) para [1]

per month, from the date of divorce until the date that the joint estate is finally divided, as determined by the Receiver & Liquidator.”²

[5] Notably, paragraph 6.1 of the settlement agreement provides that –

“The provisions of this Agreement are final and shall not be capable of variation, amendment, novation, or cancellation save by order of court or by written agreement between the Parties evidencing original, physical signatures.”

[6] It is common cause between the parties and on the papers that the respondent has not complied with either the rule 43 order granted by Redding AJ during October 2019 or the settlement agreement made an order of the divorce court hereinafter referred to as ‘the court order’.

[7] It is further common cause that the respondent has knowledge of the court order.

[8] As such the first three elements for civil contempt – the order, service or notice thereof and non-compliance therewith - have been met beyond a reasonable doubt as set out in *Fakie NO v CCII Systems (Pty) Ltd*³ and approved by the court in *Pheko (supra)*.

[9] Once an applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and *mala fides*.⁴ Should the respondent advance evidence that establishes a reasonable doubt as to whether his non-compliance was wilful and *mala fide* contempt will not have been established by the applicant beyond a reasonable doubt.⁵

² The applicant brought an application in terms of Rule 43 during 2019. The application was opposed by the respondent. Reddy AJ handed down his judgment and order on 11 October 2019 (CaseLines 076-17) wherein he ordered the respondent to pay maintenance to the applicant *pendente lite* in the sum of R38 000.00 per month together with an initial contribution towards her legal costs in the amount R30 000.00.

³ 2006 (4) SA 326 (SCA) para [42]

⁴ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC) para [37]

⁵ *Fakie supra* para [41]

[10] The question to be decided on the evidence adduced by the respondent, is thus whether the respondent's failure to comply fully with the maintenance provisions of the court order is wilful and *mala fide* beyond a reasonable doubt or whether the respondent has raised reasonable doubt to avoid a finding of contempt.

Relief sought

[11] The applicant seeks an order in the following terms –

- 11.1 condonation for non-compliance with the rules;
- 11.2 an order directing the respondent to make payment of the sum of R176 847.12 into her attorney's trust account within 48 hours of the grant of the order;
- 11.3 an order directing the respondent to continuously comply with paragraph 4.1 of the court order;
- 11.4 in the event of non-compliance by the respondent with the orders sought in 11.2 and 11.3 above:
 - 11.4.1 the respondent be declared to be in contempt of the court order;
 - 11.4.2 that the respondent be sentenced to imprisonment for a period of three months, alternatively, a just sentence in the court's discretion;
 - 11.4.3 a warrant of committal be issued if necessary in order to give effect to the sentence above;
- 11.5 costs of the application on the scale as between attorney and client which costs are to be paid as a first expense from the respondent's share of the joint estate upon distribution, as taxed or agreed.

[12] The respondent contended that the application was not urgent and opposed the application and the relief sought therein. He thus sought the dismissal of the application. He did not seek an order for costs to be awarded against the applicant.

Urgency

[13] I indicated at the outset that my *prima facie* view was that the matter was urgent and that a hearing in terms of the provisions of rule 6(12) was warranted. I

however provided the respondent's counsel, Ms Rourke, with an opportunity to argue urgency. Ms Rourke and the applicant's counsel, Mr Grunder, thus first made submissions on urgency.

[14] The applicant, who is wholly reliant on the maintenance she receives, or ought to receive from the respondent, alleged in her founding affidavit that the application is urgent as she:

14.1 only received the sum of R19 000.00 from the respondent for the month of May 2025 (half of the R38 000.00 she ought to have been paid);

14.2 received nothing from the respondent for the month of June 2025;

14.3 was already experiencing financial difficulties at the time as a consequence of the respondent's failure to consistently comply with the court order to the tune of of R242 8837.12 (the respondent concedes the sum of R176 847.12) and as such the respondent's most recent failure to comply with the court order during May and June 2025 had exacerbated her already precarious situation;

14.4 has no funds available to her to purchase groceries or to make payment of the water and electricity required and utilised by her;

14.5 her electricity and water were disconnected at the beginning of June 2025 and were only reconnected in the middle of the month as a friend came to her assistance and made the required payments on her behalf;

14.5 her water was disconnected again on 26 June 2025, and her electricity was disconnected again on 2 July 2025'

14.6 she is currently without water or power.

[15] Notably the respondent simply denies the applicant's allegation that she is entirely dependent on him financially and has no means of deriving an income in order to sustain her day to day living expenses, whilst providing no evidence to the contrary.

[16] The applicant thus finds herself in a precarious and undignified situation literally in the dark and without basic necessities or the ability to cook and wash. She survives by virtue of the goodwill of family and friends.

[17] The applicant did, prior to launching the application on 9 July 2025, seek to obtain redress from the respondent. She did so by reaching out to the respondent on numerous occasions and by way of correspondence between the parties' attorneys of record.

[18] It must be noted that the applicant stated that she does not have funds to secure legal assistance and as such her erstwhile attorney and counsel had graciously agreed to assist her with this application on a deferred payment basis.

[19] The applicant's attorneys in correspondence dated 12 June 2025 advised of the applicant's predicament and sought payment of the arrears in order for her to restore her lights and water.

[20] On 18 June 2025 the respondent's attorneys, whilst acknowledging the shortfall in the respondent's maintenance payments and admitting arrears in the amount of R176 847.12, advised *inter alia* in correspondence that the respondent was entitled to make deductions to the maintenance he was obliged to pay in terms of the court order as –

20.1 one of the properties forming part of the joint estate no longer had a tenant and as such he was no longer receiving an income therefrom;

20.2 the shortfalls in maintenance payments resulted from the necessity to cover loan repayments on behalf of the joint estate, ensuring that mortgage bond holders were paid and foreclosure avoided;

20.3 the applicant benefits from the aforesaid payment and as such it should be regarded as part payment of her maintenance;

20.4 as such, and taking into account the bond payments, the adjusted shortfall amounted to R108 423.56.

[21] In correspondence dated 20 June 2025, the respondent's attorneys disputed the amount of the arrears claimed by the applicant and advised that '*a letter and accompanying report have been submitted to the Receiver, confirming the shortfall amount as calculated by our client. The shortfall is to be settled by the estate in due course.*' (my emphasis)

[22] In correspondence dated 1 July 2025 wherein the debate about the extent of arrears continued, the applicant's attorneys recorded that *'the matter has now become urgent, to the extent that my client lives in darkness without lights and water. My client lives from hand to mouth and commutes via Uber by virtue of the fact that the vehicle is not in roadworthy condition and even if it was, my client does not even have sufficient funds to pay for petrol.'* It was recorded that the applicant could not afford to wait for payment of the arrears 'in due course' and from the joint estate the liquidation of which was yet to be finalised. The respondent was invited therein to make an immediate payment of the amount of R176 847.12 being the sum conceded by the respondent. It was further recorded that the correspondence was to be taken as a final attempt to resolve the matter without having to approach the court for an order declaring the respondent to be in contempt of the order. Punitive costs of such application were threatened.

[23] On Thursday 3 July 2025 and in response to the above the respondent's attorneys advised that their client *'remains committed to resolving the matter amicably. Accordingly, the undisputed amount of R108 423.56, as referenced in the correspondence of 18 June 2025, may be deducted from our client's portion of the joint estate.'* It was further recorded that an instruction would be given to the receiver to pay the above sum to the applicant from the respondent's portion of the joint estate.

[24] The urgent application was launched on Wednesday 9 July 2025 and was set down for hearing on Tuesday 22 July 2025.

[25] Ms Rourke for the respondent argued that the matter was not urgent as the applicant's claims date to back to 2020. She referred me to a schedule of the respondent's maintenance payments to the applicant dating back to the grant of the rule 43 order and pointed out that the respondent paid nothing at all in March 2020 and began making short payments, paying amounts that he unilaterally elected to pay, as early as April 2020. She further pointed out that the respondent's short payments continued up until 10 March 2025 when he made payment of the full amount (R38 000.00) for the first time since October 2022. Notably, the respondent short paid again in April and May of 2025 and paid nothing in June 2025.

[26] The aforesaid maintenance payment schedule was provided to the court by the respondent.

[27] As such and according to Ms Rourke the applicant ought to have approached a court earlier and already in November 2022 as opposed to approaching an urgent court now on severely truncated times.

[28] Mr Grunder countered with the fact that the applicant's urgency is premised on her current financial circumstances and the fact that she literally finds herself in the dark with no electricity or water and no funds. The respondent's persistent failure to comply with the rule 43 order initially and his persistent failure to comply with the maintenance he agreed to in the settlement agreement has accumulated and aggravated the applicant's situation and effectively pushed her over a precipice.

[29] Mr Grunder also pointed out that the receiver and liquidator does not have the power to make payments out of the joint estate prior to the final determination thereof. In this regard I was referred to a court order dated 11 March 2025 appointing the current receiver and liquidator and setting out his powers. As such the respondent's 'tender' that the arrears could be deducted from his portion of the joint estate provided cold comfort to the applicant.

[30] The applicant had, as above, attempted to settle the matter and obtain some relief from the respondent before approaching court. The applicant also explained that on the first occasions that her water and electricity were disconnected her friends had assisted and paid for the reconnection. The delays thus complained of by the respondent were thus addressed by the applicant.

[31] The court in *Victoria Park Ratepayers' Association v Greyvenouw CC and Others*⁶

"The legal point is that ongoing contempt of a court order, by its very nature, is urgent. In Protea Holdings Ltd v Wriwt and another, Nestadt J held that as

⁶ 2004 JDR 0498 (SE) para [26] and [27]

one of the objects of contempt proceedings is by punishing the guilty party to compel performance of the order, it seems to me that the element of urgency would be satisfied if in fact it was shown that respondents were continuing to disregard the order of 3 August 1977. If this be so, the applicant is entitled, as a matter of urgency, to attempt to get the respondents to desist by the penalty referred to being imposed'.

I agree with the above-quoted statement of the law. I would add that it is not only the object of punishing a respondent to compel him or her to obey an order that renders contempt proceedings urgent: the public interest in the administration of justice and the vindication of the Constitution also render the ongoing failure or refusal to obey an order a matter of urgency. This, in my view, is the starting point: all matters in which an ongoing contempt of an order is brought to the attention of a court must be dealt with as expeditiously as the circumstances, and the dictates of fairness, allow."

[32] In the circumstances and as indicated at the hearing, I was satisfied that the applicant has satisfied the requirements of Rule 6(12) and that the applicant was to be afforded an urgent hearing without which she would not be afforded substantial redress.

The respondent's non-compliance

[33] The respondent's non-compliance and the arrears arise from historic non-payments and the short payment in May 2025 and the complete non-payment in June 2025. Further, and whilst the applicant alleges that the arrear amount is in fact higher, she only seeks payment of the amount that the respondent admits to in the correspondence of 18 June 2025 being the sum of R176 847.12.

[34] Notably, the respondent provided a schedule which demonstrated his non-compliance with the order/s from March 2020 to date. He thus admits to paying substantially less than he was required to in terms of both the rule 43 order and the settlement agreement made an order by the divorce court by making unilateral deductions almost every month.

[35] It was agreed between Mr Grunder and Ms Rourke during the hearing that this amount excludes the short payment in the sum of R19 000.00 for May and the non-payment in June both of which are admitted by the respondent.

[36] In the circumstances the arrears at the time of the hearing on 22 July 2025 amounted to R233 847.12. Mr Grunder and Ms Rourke both agreed with this figure.

The respondent's defence

[37] Whilst making unilateral deductions from the R38 000.00, the respondent denies that that his non-compliance is wilful or *mala fide*.

[38] His defences seem to be two-fold. Firstly, affordability and secondly an entitlement to deduct amounts and adjust the figure as the applicant has been dilatory by not agreeing to the sale of certain immovable properties belonging to the joint estate which has resulted in the bonds still needing to be serviced and the loss of a rental income.

[39] Whilst the second ground seems to me to be punitive, Ms Rourke correctly conceded during argument that the respondent was not entitled to make any deductions or set off any amounts from the applicant's maintenance which was to be paid by the respondent monthly.

[40] It is trite that court orders are to be obeyed and complied with until varied or set aside by a court of competent jurisdiction. There is a plethora of case law that underscores this principle. The Supreme Court of Appeal in *Minister of Home Affairs and Others v Somali Association of South Africa EC and Another*⁷ emphasised that

"... there is an unqualified obligation on every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. It cannot be left to the litigants themselves to judge whether or not an order of court should be obeyed. There is a

⁷ 2015 (3) SA 545 (SCA) para [35]

constitutional requirement for complying with court orders, and judgments of the courts cannot be any clearer on that score.”

[41] In respect of the respondent’s affordability defence, the authorities are clear on the subject – the respondent is required to make a full, and frank, disclosure of his financial circumstances which he alleges renders him unable to comply with a maintenance order.

[42] In *KPT v APT*⁸ the court importantly held that:

“Compliance with court orders is always important. There is a particular scourge in this country of spouses, particularly husbands, failing to pay judicially ordered maintenance. While a spouse facing a criminal sanction is entitled to the benefit of reasonable doubt, a court should not too readily find such doubt to exist where the spouse has failed to put up evidence which should have been available to him to support a claim of unaffordability.”

[43] In support of his failure to comply with the court order the respondent made the following allegations:

- a. He had not received a salary for the months of May, June and July 2025 and has been living on his credit card to sustain himself;
- b. Business has severely declined since approximately March 2025 to the extent that he cannot pay employees’ salaries;
- c. He received a letter of demand on 9 May 2025 from one of his suppliers, Hiref SPA, which letter of demand contained a threat of liquidation as a result of an outstanding balance in an amount of 2 569 210.21 Euro. A threat of a liquidation application followed on 19 May 2025;
- d. On 11 July 2025 Standard Bank issued a breach notice to HiNova (Pty) Limited as a result of a breach of the overdraft agreements entered into between Standard Bank and HiNova;
- e. As a consequence of the aforesaid financial difficulties faced by the business the respondent simply does not have the funds available to meet his maintenance obligations; and

⁸ (1215/2019) [2020] ZAWCHC 110 (2 October 2020) para [95]

f. The shortfalls in maintenance payments resulted from the necessity to cover loan repayments on behalf of the joint estate, ensuring that the mortgage bond holders were paid and foreclosure of the immovable properties was avoided.

[44] The respondent did not however attach any bank statements to his answering affidavit which documents could have possibly substantiated his allegation that he has not received a salary for a period of 3 months and provided evidence as to his personal monthly expenses and how these are paid.

[45] Further no disclosure is made by the respondent as to his present assets, accessible and available funds or any immovable property he possesses.

[46] The respondent thus failed to prove that his financial circumstances served as an impediment to complying with his court ordered maintenance obligation to the applicant.

[47] The applicant in reply stated that whilst the respondent alleges that one of his companies is experiencing financial difficulties, he in fact received a monthly salary from Rowans Mechanical Consultants for the months of April, May and June 2025. The applicant provided the court with copies of the respondent's salary advices for these months together with the company's bank statements evidencing payment to the respondent.

[48] Mr Grunder submitted that the respondent had perjured himself under oath by deliberately concealing the aforesaid income and deliberately misrepresenting his current financial position which conduct *'serves to punctuate the respondent's contemptuous conduct'*.

[49] I am in agreement with this submission.

[50] Further, and whilst the respondent did provide his credit card statement for the period 15 April to 14 July 2025 it is evident therefrom that the respondent does not in fact utilise his credit card to *'live on'* as alleged by him. There are in fact no

purchases in respect of daily expenses such as groceries, fuel and the like to be found in the document. It is thus apparent that the respondent has not been living on his credit card to sustain himself as alleged.

[51] This further *'serves to punctuate the respondent's contemptuous conduct'*.

[52] As above, the respondent elected not to disclose any other bank statements which may have provided evidence as to his alleged inability to afford to comply with the court order. Unfortunately, the inference has to be drawn that the respondent's bank statements would not in fact assist him in proving his allegations of unaffordability.

[53] The respondent's allegations as to the alleged decline in one of his businesses from March 2025, which allegations are in any event unsubstantiated as no bank statements or financials of the company were provided, do not assist him as on his own version he has failed to fully comply with the court order since April 2024 and the rule 43 order from March 2020.

[54] The respondent did not provide any detail about the 'loan repayments' or 'mortgage bonds' or documentation in respect thereof which he alleges he makes payment of in order to avoid foreclosure of the immovable properties which payments he alleges prevent him from complying with the court order.

[55] However, when I had regard to the document provided by the applicant headed 'Account of the Joint Estate between M S[...] and S S[...] in accordance with the order of court dated 11 March 2025' the following is clear in respect of the immovable properties which form part of the joint estate and the alleged mortgage bonds that the respondent services:

- a. S[...] Road, A[...] S[...] has a value of R4 million rand and a liability of only R23 257.00;
- b. 1[...] N[...] Road has a value of R450 000.00 and a liability of only R1 701.00;
- c. 1[...] W[...] Avenue, H[...] O[...] K[...] (the respondent's abode) has a value of R3 250 000.00 and a liability of R5 216.00;

- d. 4[...] P[...] Avenue has a value of R1 450 000.00 and a liability of R1 377 729.00;
- e. 1[...] W[...] Avenue, H[...] O[...] K[...] has a value of R340 000.00 and a liability of R917.00;
- f. [...] W[...] Avenue, H[...] O[...] K[...] has a value of R2 400 000.00 and no liability; and
- g. Section 9[...] M[...] V[...] V[...] has a value of R400 000.00 and no liability.

[56] Whilst no information is provided by the respondent as to the quantum of the monthly bond repayments, they are clearly not substantial.

[57] As such and whilst the respondent alleges that he is ‘*currently suffering financial hardship*’ he did not provide any evidence thereof. No evidence is provided in relation to his personal expenses or what they consist of or how he makes payment of such expenses including the costs relating to the immovable property in which he resides which property has a value of R3 250 000.00 and a liability of only R5 216.00.

[58] In *Sepetla v Hlole*⁹ a judgment of a full bench in this division, Mia J stated the following in respect of whether the appellant had discharged the evidential burden to disprove wilfulness and *mala fides* in the face of his failure to make a full disclosure to the court which the court held is *indicative of defiance of the maintenance order*:

“[17] In view of what is stated above, the respondent bore the evidentiary burden to show, on a balance of probabilities, that he was not in wilful and *mala fide* non-compliance with the order. Counsel for the respondent already conceded that the application for debt review was not attached to the answering affidavit. The respondent would have disclosed his income and expenses to the court dealing with the debt review application. The application for debt review required his salary advice to be attached. The respondent did not disclose this before the court *a quo* when the onus was on him to show he was not in wilful contempt. The maintenance order would also have been

⁹ *Sepetla v Hlole* (A 5001/22) [2022] ZAGPJHC 329 (24 May 2022) para [17] and [20]

attached to the application for debt review. The respondent did not take the court a quo into his confidence by attaching the application for debt review. Neither did the respondent explain why, based on the expenses listed in the application for variation of the maintenance order, he was unable to pay the maintenance in terms of the maintenance order...

[20] The respondent failed to prove before the court a quo that his financial circumstances served as an impediment to paying in terms of the maintenance order. Considering the application for variation and the absence of evidence tendered in relation to the debt review application, there was no evidence, as suggested by the respondent, which served as an impediment to complying with the maintenance order and this is indicative of defiance of the maintenance order. Where the respondent's subsequent commitments and the change in his circumstances reduced his capacity, he was required to adjust his circumstances to bring it according to his means. It was not evident that he did so, especially as there was no full explanation regarding his income and expenses and the adequate reasons why he could not comply with the maintenance order. In view of the above, it cannot be said that the court a quo erred in finding the respondent had not met the burden of proof that he was not in wilful and mala fide contempt of the court order."

[59] In *E.W v V.T.H*¹⁰ the court made a finding of contempt and held the following in respect of a defence of unaffordability:

"As previously stated, the Respondent must demonstrate a significant change in circumstances rendering him unable to comply with the court order which he has failed to do due to insufficient disclosure of his assets and those of associated trusts and entities, beyond the financial statements of Record Project Engineering and the Rossi Trust. This Court cannot assess the alleged impact of the change in income on the Respondent's ability to pay without adequate disclosure regarding the assets of the Respondent and the trusts under his control."

¹⁰ *E.W v V.T.H* (7333/2024) [2024] ZAWCHC 310 (14 October 2024) para [31]

[60] In *E.V.A v J.V.A*¹¹ it was held in the context of contempt proceedings for arrear maintenance that:

“It is trite that the Respondent is required to make a full disclosure and has only seen fit to annex a letter from his Accountant. This court on the limited information is unable to assess the Respondents defence insofar as it pertains to affordability. He has clearly not taken the court into his confidence and as such, failed to discharge the evidentiary burden in this regard. The obligation to pay maintenance is serious as was held in JD v DD¹² where Kollapen J remarked:

‘The obligation to pay maintenance is a serious and indeed onerous one and in my view the very generalised nature of the respondent’s assertions of being in constant financial crisis falls considerably short of what is expected of him in discharging the evidentiary burden that rests upon him.’”

In conclusion

[61] The respondent has failed to take this court into his confidence and as such and in the circumstances, he has failed to discharge the evidentiary burden to establish a reasonable doubt as to whether his non-compliance was wilful and *mala fide* thereby rebutting the presumption of wilfulness and *mala fides*.

[62] Redding AJ in his rule 43 judgement, above referred, made mention of the fact that *‘although the papers were voluminous, the parties relied on sweeping statements of fact about their own and their spouses’ financial circumstances, seldom, if ever, supported by evidence other than their own bald averments in the affidavits.’*

[63] The respondent’s conduct and failure to support his allegations with evidence has persisted in this application.

¹¹ *E.V.A v J.V.A* (17286/2017) [2024] ZAWCHC 299 (18 September 2024) para [33]

¹² *JD v DD* 2016 JDR 0933 (GP)

[64] The lack of detail and disclosure by the respondent is glaring and the paucity of detail is obvious. His failure to establish a reasonable doubt as to whether his non-compliance was wilful and *mala fide* evidences a contemptuous attitude towards the court order.¹³

[65] Factually, the respondent has failed to comply with two court orders, one of which was taken by agreement. The latter is irreconcilable with a plea of lack of affordability.

[66] The court in *Consolidated Fish Distributors (Pty) Ltd v Zive*¹⁴ defined contempt of court as ‘*the deliberate, intentional (ie wilful), disobedience of an order granted by a court of competent jurisdiction.*’

[67] The respondent clearly has a propensity for simply disregarding court orders and has no compunction in doing so. The settlement agreement was entered into by the respondent acting personally and made an order of court on 16 April 2024 whereafter he immediately and on 30 April 2024 (according to his own schedule of maintenance payments) continued unilaterally deducting amounts and making payment of what he saw fit to pay.

[68] On a conspectus of the evidence, it is therefore clear that the respondent was contemptuous of the court order and his disobedience thereof was deliberate and intentional i.e. wilful. His conduct in this regard has been shown beyond a reasonable doubt.

[69] As was held in *JSH v MSH*¹⁵ his ‘*flagrant, repeated and ongoing refusal to comply with the court order cannot, however, be overlooked. His conduct evinces a complete disregard for the dignity of this court and respect for the order made by courts is an integral part of the effectiveness and success of any legal system and public order. The period of incarceration is at the discretion of a court and in*

¹³ *J.S.H v M.S.H* (8470/2021) [2023] ZAWCHC 346 (18 July 2023)

¹⁴ 1968 (2) SA 517 (C) at 522B cited with approval by the Constitutional Court in *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC) para [2]

¹⁵ *JSH v MSH supra* para [50] – [52]

maintenance matters it appears from the case law that the time period imposed can generally be said to vary between 1 week and 3 months in maintenance matters. I also take into consideration the amount that is in arrears and the serial nature of the breaches by the Respondent. In the event that it is not made clear to the Respondent that his contempt and disregard for orders of this court are wholly unacceptable there is a strong likelihood that his conduct will continue unabated. Moreover, if he is not to be punished in manner that brings home the seriousness of his misconduct, and it is not addressed by an appropriately severe punishment the integrity of the judiciary will be undermined.'

[70] I am in agreement with Maher AJ.

[71] Finally, and in respect of the costs of the application, the applicant is seeking costs on the scale as between attorney and client which costs are to be paid as a first expense from the respondent's share of the joint estate upon distribution, as taxed and agreed.

[72] Mr Grunder obviously pursued this order.

[73] In light of the respondent's contempt and persistent non-compliance with the rule 43 and divorce orders coupled with his attitude towards this application, the dignity of the court and the applicant's rights to dignity and her socio-economic rights I am of the view that a punitive order of costs is justified.

[74] In the circumstances, I make the following order:

Order

- a. The matter is urgent.
- b. The respondent is declared to be in contempt of the court order granted on 16 April 2024 by Kuny J under case number 13384/2017.
- c. The respondent is to make payment to the applicant of the sum of R233 847.12 (two hundred and thirty three thousand eight hundred and forty seven rand and twelve cents) on or before 16h00 on Friday 1 August 2025.

- d. The aforesaid payment is to be made into the applicant's attorney's trust account held with Standard Bank with account number 05 041 107 1.
- e. A warrant of arrest is to be issued forthwith committing the respondent to imprisonment for contempt of court for a period of 10 (ten) days.
- f. The warrant of arrest is to be executed on Friday 1 August 2025 in the event of the respondent failing to comply with c. above.
- g. The costs of this application are to be paid by the respondent on the scale as between attorney and client which costs are to be paid as a first expense from the respondent's share of the joint estate upon distribution, as taxed and agreed.

ABRO AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Appearance 22 July 2025

Date Judgment delivered. 25 July 2025

For the Applicant: RW Grunder instructed by Pravda & Knowles Attorneys

For the Respondent: M Rourke instructed by Leach (J.W.) Attorney