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

CASE NO: 8233/2017

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

(4) Date: 25 July 2025

Signature:

In the matter between:

S[...] J[...] H[...] -C[...]

Applicant

And

R[...] M[...] L[...]

Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] This is an opposed application to set aside a warrant of execution with punitive costs. More specifically the applicant seeks an order in the following terms:

- 1.1 That the warrant of execution issued under case number 8233/2017 dated 6 October 2023 and issued on 17 October 2023 is set aside.
- 1.2 That the respondent shall pay the costs of this application on the scale of attorney and client.

[2] The respondent seeks an order dismissing the application with costs.

B. BACKGROUND

- [3] The background to this matter is that the parties were previously married and became divorced during April 2018. They concluded a settlement agreement which was made an order of court.
- [4] Three children, all dependent majors, were born from the marriage. It is the maintenance costs of the children that is central to the dispute between the parties.
- [5] The dispute relates to the non-payment of maintenance from early 2019 until 2023.
- [6] The parties attempted mediation twice, during September 2019 and September 2022.
- [7] The applicant applied to vary the settlement agreement in 2019. He withdrew that application in August 2022.
- [8] The respondent issued a warrant of execution on 17 October 2023 which was served on the applicant on 4 November 2023.
- [9] The applicant launched an application to set aside the warrant of execution on 22 November 2023.

C. ISSUES

[10] The main issue in this application is whether or not the court should set aside the warrant of execution against the applicant under the above case number, as well as a determination as to which party should pay the costs of this application and on which scale.

D. APPLICANT'S CONTENTIONS

[11] The Applicant applies for the warrant of execution to be set aside for the following reasons:

- 11.1 There is no valid *causa* for the issuing thereof.
- 11.2 The amount claimed by the respondent in the warrant of execution is, to the respondent's knowledge, incorrect and in dispute.
- 11.3 The warrant has not been issued in accordance with the terms of the court order upon which it is premised.
- 11.4 Upon a proper accounting in terms of the provisions of the settlement agreement, the respondent is in fact indebted to the applicant.

E. RESPONDENT'S CONTENTIONS

[12] The respondent's contentions on the applicant's breach of the settlement agreement over a long period of time, leading to the applicant's indebtedness on which the writ is premised are detailed in her answering affidavit and summed up by her counsel in the heads of argument. I do not propose to restate those facts which were meticulously dealt with in the hearing, save to adumbrate the fact that they concern expenses related to the University education and accommodation costs for the children and costs of an emergency medical expense in one instance. The respondent has to date not been compensated for these costs as envisaged in the settlement agreement.

F. DISCUSSION

[13] The specifics around the amounts attributed to the applicant's non-payment were detailed in Mrs. Rooney's confirmatory affidavit, which is ironically, based on a spreadsheet designed by the applicant himself.

[14] Having regard to the agreement, and the fact that the applicant did comply with it at the beginning, the applicant's contention that there was no valid causa for the issuing of the writ lacks foundation. The same can be said for the rest of the bases on which the applicant founds his application.

[15] The decision in *Butchart v Butchart*¹ confirmed that a writ of execution may be validly issued based on an 'expenses clause' contained in a maintenance order, provided the amount is easily ascertainable. This decision was followed by her Ladyship Siwendu J in *VDB v VDB*² when she held that this procedure was correct. The latter case has uncanny similarities with the current matter.

[16] The applicant is well aware that if for any reason, he wishes to obtain a reduction of the amount of maintenance specified in the settlement agreement he needs to approach a competent court. He has in fact done so but withdrew the application midstream, just as he was about to face cross-examination. He was seemingly reluctant to face a cross-examiner who would confront him about the proceeds of a luxury house he had recently sold.

[17] The respondent submits that the applicant had given a sob-story pleading poverty at the variation hearing he had initiated, before the withdrawal.

G. CONCLUSION

[18] In all the circumstances, I am disinclined to exercise my discretion in favour of the applicant.

¹1997 (4) SA 108 (W)

² 2022 (5) SA 633 (GJ)

[19] Accordingly, the application to set aside the writ is dismissed with costs taxable at scale C.

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 29/01/2025

Date of Judgment: 25 July 2025

On behalf of the Applicant: Adv L. Franck
Instructed by: SWVG Inc Attorneys, Pretoria

On behalf of the Respondents: Adv. D. Turner SC
Instructed by: Fuchs Roux Attorneys

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 25 July 2025.