



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

Not Reportable

Case no: 5330/2019

In the matter between:

K-A S

Applicant

and

RA S

Respondent

Neutral Citation: *KA S v RA S* (5330/2019) [2025] ZAFSHC 248 (18 August 2025)

Coram: Opperman J

Heard: 7 August 2025 & 14 August 2025

Delivered: The judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand down is deemed to be 18 August 2025 at 17h00.

Summary: Application for rule *nisi* order – contempt of court – non-compliance with settlement agreements made orders of court *inter alia* maintenance of minor children.

ORDER

The main application

1. A rule *nisi* is granted, calling on the respondent to give reasons, if any, on or before, the return date of 18 September 2025, why a final order in the following terms should not be granted:

1.1 That the respondent should not be found guilty of contempt of this Honourable Court's order dated 27 October 2022 under Case No.: 5330/2019 and/or the order dated 5 September 2024 under Case No.: 5330/2019.

1.2 That the respondent should not be sentenced to direct imprisonment for a period of 6 (six) months, such period to be suspended for a period of 3 (three) years, subject thereto that:

1.2.1 The respondent purges his contempt within a period to be determined by the Court on the return date, by:

1.2.1.1 Paying the outstanding Consumer Price Index-increase on the maintenance to the applicant as well as arrear maintenance accumulated for June 2025 and July 2025 totalling to R31419.44;

1.2.1.2 paying the outstanding medical expenses to the applicant in the amounts of R7945.08 and R1584.57;

1.2.1.3 paying the amount of R12200.00 to the applicant in respect of repairs to the applicant's vehicle;

1.2.1.4 taking out Gap Cover on the medical aid as stipulated in paragraph 2.4 of the Deed of Settlement which was made an order of this Court on 27 October 2022.

- 1.2.2 The respondent is not again convicted of contempt of court committed within the period of suspension.
2. The respondent is granted leave to supplement the papers.
3. Costs to stand over for adjudication on the return date.

The counter application

1. A rule *nisi*, with return date to be 18 September 2025, is issued calling upon the applicant to show cause on why a final order should not be made in the following terms:

1.1. That the applicant should not be found guilty of contempt of this Honourable Court's order dated 27 October 2022 under Case No.: 5330/2019 and/or the order dated 5 September 2024 under Case No.: 5330/2019.

1.2. The applicant should not be sentenced to direct imprisonment for a period of 6 (six) months, the aforementioned period to be suspended for a period of 3 (three years), subject thereto that:

1.2.1. The applicant purges the contempt within a period to be determined by the court on the return date by:

1.2.1.1. Paying the respondent for the Vodacom Account in the amount of R11222.54 as stipulated in paragraph 5 of this Honourable Court's order dated 27 October 2022 under Case No.: 5330/2019; and

1.2.1.2. paying the respondent for the outstanding Eskom Accounts in the amount of R1501.36 as stipulated in paragraph 4.1 of this Honourable Court's order dated 27 October 2022 under Case No.: 5330/2019; and

1.2.1.3. paying the respondent for the outstanding Eskom Accounts in the amount of R13085.09 as stipulated in paragraphs 8 and 11 of the Honourable Court's order dated 5 September 2024 under Case No.: 5330/2019.

- 1.2.2. The applicant is not again convicted of contempt of court committed within the period of suspension.
2. The applicant is granted leave to supplement the papers.
3. Costs to stand over for adjudication on the return date.

JUDGMENT

Opperman J

Introduction

[1] This judgment concerns an extended dispute regarding *inter alia* child maintenance and non-compliance with court orders. The parties divorced in 2022 after commencing litigation in 2019. The ongoing animosity has led to almost six years of rows, failed mediation and more litigation. This is detrimental to the welfare of the minor children¹ and undermines the administration of justice.

[2] The situation has now spilled over into a rule *nisi* application seeking an order against the respondent for contempt of court that is both coercive and punitive and, specifically for failing to comply with an order issued by this Court in the divorce proceedings in 2022. The respondent opposes this application and, by way of counter-application, seeks a similar order declaring the applicant in contempt of court for purported violations of various provisions of both the settlement agreement incorporated in the decree of divorce and a subsequent settlement order confirmed by this Court in 2024.

[3] It is a *sui generis* scenario in law that demands caution to be applied because the best interest of minor children is at stake. Both parents could now be committed to incarceration on the applications and again the children will suffer – bizarrely the parties rely on the best interest of the child-principle decreed in s 28 of the

¹ They are 15 and nine years old.

Constitution. One wonders when sanity will prevail. Alternative remedies are available and redress can be obtained in the Maintenance Act 99 of 1999 that might be less invasive and to the benefit of the minor children. The parties, notwithstanding, opted to seek reparation in the form of a contempt of court ruling.

[4] The reality remains that the applicants have a right to come to this Court in terms of s 34 of the Constitution to remedy the contempt shown to the court orders. The judgment in *Bannatyne v Bannatyne*² (*Bannatyne*) confirms this but also refers to the recourse in the Maintenance Act:

‘[8] When the High Court entertains civil proceedings for committal for contempt it does so in the exercise of its inherent jurisdiction to ensure that its orders are obeyed. A maintenance court does not have those inherent powers, but there are statutory remedies for the enforcement of its orders. Its orders may be enforced by execution upon the property of the person against whom the order has been made, or by the attachment of emoluments or debts due to him (s 26) and the failure to comply with such an order might also constitute a criminal offence (s 31). The respondent submitted, however, that those remedies are not exclusive and that the High Court, in the exercise of its inherent jurisdiction (more particularly when the order affects children), is entitled to commit for contempt of such an order.

[9] I am willing to assume for purposes of this appeal that the High Court is indeed entitled to commit for contempt of the order of a maintenance court. If that is so then clearly it is a matter that falls within its discretion. *In my view, any such discretion is one that ought to be exercised sparingly and only in exceptional circumstances for the Legislature has provided effective remedies that were not intended to be ignored.*’ (Accentuation added.)

[5] The *lis* lies between the parties as well as between the parties and the Court. The conundrum is pertinently construed in *Dezius v Dezius*:³

² *Bannatyne v Bannatyne and Another* (CCT18/02) [2002] ZACC 31; 2003 (2) BCLR 111; 2003 (2) SA 363 (CC) (20 December 2002).

³ *Dezius v Dezius* (37655/05) [2006] ZAGPHC 77; [2007] 1 All SA 483 (T); 2006 (6) SA 395 (T) (21 August 2006).

[3] This application certainly calls for circumspection and careful consideration before a committal order is issued for disobeying an order of court pertaining to interim maintenance and contribution towards legal costs.

[4] An order for committal for contempt of court arising from matrimonial issues *pendente lite* invariably involves the likelihood of depriving the offending spouse of his liberty, suspended or otherwise, *and concomitantly jeopardising the prospects of the recipient spouse in procuring any maintenance and contribution towards legal costs.*

[5] Lord Ormrod in *Ansah v Ansah* aptly alluded that:

“Such a breach or breaches of an injunction in the circumstances of such a case as this do not justify the making of a committal order, suspended or otherwise. Breach of such an order is, perhaps unfortunately, called contempt of court, the conventional remedy for which is a summons for committal. *But the real purpose of bringing the matter back to the court, in most cases, is not so much to punish the disobedience, as to secure compliance with the order in the future. It will often be wiser to bring the matter before the court again for further direction before applying for committal order. Committal orders are remedies of last resort; in family cases they should be the very last resort. They are likely to damage complainant spouses almost as much as offending spouses.*”

[6] An offender should not be deprived of his liberty except in accordance with the precepts of fundamental justice and in compliance of procedural safeguards. The public sanction of imprisonment for disobedience of a court order requires conclusive proof. It is, therefore, imperative that, before a committal order is issued, the court should scrutinise the facts with great care.’⁴ (Accentuation added and footnotes omitted.)

⁴ See also *Fakie v CCH Systems (Pty) Ltd* [2006] SCA 54 (RSA) (*Fakie*) para 30 per Cameron JA:

‘While the applicant may disavow punishment as a motive . . . the means the court is asked to employ remains the same: the public sanction of imprisonment for disobedience of a court order. The invocation of that sanction in my view requires conclusive proof. No less than punitive committal, purely coercive committal uses imprisonment, or its threat; and whenever loss of liberty for disobedience of an order of court is threatened it seems to me necessary and proper that the infraction should be proved conclusively.’

[6] The above said; the judgment will comprise the legal principles associated with a rule *nisi* order, contempt of court with an emphasises on the necessity of complying with judicial decisions to preserve the rule of law, maintenance responsibilities, the evaluation of evidence in motion applications, and the obligation of legal practitioners to advise and direct their clients toward the most effective and lasting solution.

The relief sought⁵

[7] The applicant wants it to be ordered that:

‘1. A rule *nisi* is granted, calling on the Respondent to give reasons, if any, on or before, the return date of 18 SEPTEMBER 2025, why a final order in the following terms should not be granted;

1.1 That the Respondent be found guilty of contempt of Court;

1.2 That the Respondent shall pay a fine, the amount of which is to be determined by the Court in the event of him being found guilty of contempt of Court;

1.3 That the Respondent should not be sentenced to direct imprisonment for a period of 6 months, such period to be suspended for a period of three years, subject thereto that;

1.3.1 The Respondent pays the fine referred to in paragraphs 1.2 above within 30 days of date of this order; and

1.3.2 The Respondent purge his contempt within 30 days of date of this order, by;

1.3.2.1 Paying outstanding CPI increase on the maintenance to the Applicant as well as arrear maintenance accumulated for June 2025 and July 2025 totalling to R31 419.44;

1.3.2.2 Paying outstanding medical expenses to the Applicant in the amounts of R7,945.08 and R1,584.57;

1.3.2.3 Paying the amount of R12,200.00 to the Applicant in respect of repairs to the Applicant’s vehicle;

1.3.2.4 Taking out Gap Cover as stipulated in paragraph 2.4 of the Deed of Settlement which was made order of this Court on 27 October 2022; and

⁵ Draft Orders submitted to the Court after hearing of the arguments on 7 August 2025.

1.3.3 The Respondent is not found guilty of contempt of Court for a period of three (3) years from the date that this order is granted;

2. That the Respondent is ordered to pay the costs of this application, such costs to include the wasted costs occasioned by postponements of 10 April 2025, 15 MAY 2025 and 19 JUNE 2025, including costs of counsel, which stood over for later adjudication on party and party Scale A.'

[8] The respondent claims for an order as follows:

'1. A rule *nisi*, with return date to be 25 SEPTEMBER 2025 be issued calling upon the Applicant to show cause on why a final order should not be made in the following terms:-

1.1. That the Applicant should not be found guilty of contempt of this Honourable Court's Order dated 27 October 2022 under Case No.: 5330/2019;

1.2. That the Applicant should not be found guilty of contempt of this Honourable Court's Order dated 5 September 2024 under Case No.: 5330/2019;

1.3. The Applicant should not be ordered to pay a fine, the amount of which to be determined by the above Honourable Court in the event of them being found guilty of contempt of court;

1.4. The Applicant should not be sentenced to direct imprisonment for a period of 6 months, the aforementioned period to be suspended for a period of three years, subject thereto that:

1.4.1. The Applicant pay a fine, the amount of which is to be determined by the above Honourable Court; and

1.4.2. The Applicant purge the contempt within 30 days of this Order by;

1.4.2.1. Paying the Respondent for the Vodacom Account in the amount of R11 222.54 as stipulated in paragraph 5 of this Honourable Court's Order dated 27 October 2022 under Case No.: 5330/2019; and

1.4.2.2. Paying the Respondent for the outstanding Eskom Accounts in the amount of R1 501.36 as stipulated in paragraph 4.1 of this Honourable Court's Order dated 27 October 2022 under Case No.: 5330/2019; and

1.4.2.3. Paying the Respondent for the outstanding Eskom Accounts in the amount of R13 085.09 as stipulated in paragraphs 8 and 11 Honourable Court's Order dated 5 September 2024 under Case No.: 5330/2019;

1.4.3. The Applicant not be found guilty of Contempt of Court for a period of three (3) years from the date that this order is granted;

1.5. The Applicant is ordered to pay the costs of this counter-application on party and party, Scale A.

2. Costs to stand over for later adjudication'

The rule *nisi*

[9] The applications are for a rule *nisi* order in both instances. Fagan JA in *Ex parte Alexander and Others*,⁶ stated that a *prima facie* case will suffice for a rule *nisi* order. An application for a rule *nisi* must be in the *utmost good faith*. Failure to make *full disclosure* of all known material facts (in other words, facts that might reasonably influence a court to come to a decision) may lead a court to refuse the application or to set aside the rule *nisi* on that ground alone, quite apart from considerations of *wilfulness or mala fides*.⁷ *Mala fide* contempt of court applications are more often than not an attempt to revenge against an ex-spouse. The Court must protect the administration of justice and sanctity of the justice system against conduct of this nature.

[10] It is trite that a rule *nisi* will call upon interested parties to show cause, if any, on a fixed date why the rule should not be made final. The order *does not affect the ultimate onus* in the case but to obtain a rule *nisi* the onus is lighter than when the rule is to be confirmed.⁸

⁶ *Ex parte Alexander and Others* 1956 (2) SA 608 (A) at 611D.

⁷ *National Director of Public Prosecution v Kyriacou* 2003 4 All SA 153 (SCA), *Thint (Pty) Ltd v National Director of Public Prosecutions and Zuma v National Director of Public Prosecutions* 2009 1 SA 1 (CC); 2008 12 BCLR 1197 (CC) para 296. According to *Reclamation Group (Pty) Ltd v Smit* 2004 1 SA 215 (SE), the bad faith or material non-disclosure must be obvious from the papers.

⁸ 4 LAWSA 3 ed para 185.

[11] In *Ex parte St Clair Lynn*⁹ it was ruled that applicant *must be entitled to the ultimate relief sought*. *Ex parte Saiga Properties (Pty) Ltd*¹⁰ declared that a rule *nisi* cannot be issued unless *a cause of action is made out*. A rule *nisi* does not serve as a remedy for a bad case.

The cause of action; contempt of court

[12] The cause of action is contempt of court. Section 165(5) of the South African Constitution provides that “an order or decision issued by a court binds all persons to whom and organs of state to which it applies.” This unequivocal statement ensures that no one, regardless of their status or power, is above the law. Court orders, whether viewed as correct or incorrect, must be obeyed until set aside through proper legal channels.¹¹

[13] It is important to note that simply claiming inability to pay maintenance without evidence will not excuse non-payment. It is common cause that the respondent has not complied with the payment of the maintenance as ordered and has given preference to other financial responsibilities to the detriment of his maintenance obligations. Maintenance obligations are preferential to any other liability. He, for instance also, did not obtain medical GAP-cover and paid the school fees late. His monthly payment of the maintenance was not paid timeously and in full. Again, this is common cause. In the current application he did not make a full and open disclosure of his financial position with added prove to corroborate a general averment of lack of financial ability to honour the maintenance payments.

⁹ *Ex parte St Clair Lynn* 1980 3 All SA 795 (W); 1980 3 SA 163 (W).

¹⁰ *Ex parte Saiga Properties (Pty) Ltd* 1997 2 All SA 474 (E).

¹¹ *Department of Transport and Others v Tasima (Pty) Limited* (CCT5/16) [2016] ZACC 39; 2017 (1) BCLR 1 (CC); 2017 (2) SA 622 (CC) (9 November 2016).

[14] The same goes for the counter application by the respondent against the applicant. As counsel for the respondent correctly pointed out in their heads of arguments dated 7 August 2025:

‘37. In terms of the original Decree of Divorce, the Applicant was solely responsible for her own debts and accounts, including cell phone contracts. The Applicant was to pay the Respondent the monthly amount once the cell phone contract was placed in her name.

38. Vodacom continued to debit the Respondent's account while the Applicant only made four payments totalling R4 400.00 towards her obligation. The Applicant's payments and averments are in themselves an acknowledgement that she has failed to meet her obligation, and with respect, the Applicant's excuses do not cure her contempt in this regard.

39. It is inconceivable that the Applicant is aware and acknowledges her obligation, fails to comply and then uses this Court's time to claim amounts from the Respondent. Moreover, the Respondent has paid for the Applicant's Vodacom Account.

41. The Applicant's evidence in this regard does not prove that she paid the Eskom accounts, it merely shows that a payment was made. Further, the Applicant does not dispute that the Respondent made numerous payments towards the Eskom account and that the Applicant has not complied with her obligations towards the Eskom Account.’

[15] In any legal system, the principle of compliance with court orders lies at the heart of the rule of law. Court orders are not mere suggestions but binding directives designed to resolve disputes, maintain public order, and uphold justice. Disobedience of such orders undermines the judicial system and disrupts the delicate balance of governance.

[16] The consequences of non-compliance go beyond individual cases, threatening the integrity of the legal system as a whole. This *lis* lies with the Court. The act is

criminal; the disobedience also causes civil liability between the parties. *Victoria Park Ratepayers' Association v Greyvenouw CC*¹² states that:

‘It appears to me that the main purpose of the practice of seeking a rule *nisi* in cases such as this is to regulate how the matter is to proceed. Contempt of court has obvious implications for the effectiveness and legitimacy of the legal system and the judicial arm of government. There is thus a public interest element in each and every case in which it is alleged that a party has wilfully and in bad faith ignored or otherwise failed to comply with a court order. This added element provides to every such case an element of urgency.’

[17] The children bear the brunt in cases such as here. Ironically, as said, the parties use s 28 of the Constitution to promote their cases. A parenting plan to be drafted, which formed part of the court orders, has not even seen the light of day. They, in essence, completely defeated the court’s order to ensure the rights of the children to have access to their parents in a structured manner.

[18] *Herbstein and Van Winsen*,¹³ with reference to case law, correctly found that orders of court requiring compliance are, generally speaking, divided into two categories: orders *ad pecuniam solvendam* (i.e. orders to pay a sum of money) and orders *ad factum praestandum* (i.e. orders to do or abstain from doing a particular act). Not every order of court can be enforced by committal for contempt. The order must be one *ad factum praestandum* before the court will enforce it in that manner. When the order is for the payment of money simpliciter (for example an order to pay damages) it cannot be enforced by a committal for contempt even if the person ordered to pay has the means to do so but refuses to pay.

¹² *Victoria Park Ratepayers' Association v Greyvenouw CC* [2004] 3 All SA 623 (SE) at 627.

¹³ A Cilliers, C Loots and H Nel *Herbstein and Van Winsen: The Civil Practice of the High Courts* 5 ed (2) at 1106: In what cases are proceedings for committal for contempt appropriate.

‘Orders for the payment of money for the maintenance of wives and children, while seemingly are orders ad pecuniam solvendam, are treated as orders ad factum praestandum and are therefore enforceable not only by the ordinary methods of execution but also by way of committal for contempt. Indeed, these are the most usual cases in practice in which applications for committal arise.’¹⁴

[19] Contempt procedure is summary in its nature, and the usual method of initiating such proceedings is by way of an application for the issue of a rule *nisi*.¹⁵ For a civil contempt application to succeed, an applicant must demonstrate the following elements: Existence of a valid court order, knowledge of the order, non-compliance and wilful and bad faith disobedience.

[20] In *S v S.H*¹⁶ the Supreme Court of Appeal reiterate the rationale and evidentiary law in contempt proceedings as in *casu*:

‘[17] All South Africans have a duty to respect and abide by the law. As the Constitutional Court stated in *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*, courts ‘unlike other arms of the State . . . rely solely on the trust and confidence of the people to carry out their constitutionally mandated function’ which is to uphold, protect and apply the law without fear or favour. Disregard of court orders is an attack on the very fabric of the rule of law.

[18] The attempt to evade payment of maintenance orders is particularly egregious as it also undermines the best interest of the child principle. If court orders in respect of maintenance are habitually evaded with relative impunity, not only is the justice system discredited but also the interests of the child are not adequately protected. *Courts are enjoined to be alive to recalcitrant*

¹⁴ Ibid at 1107. The learned authors, at fn 74, refer to *Ferreira v Bezuidenhout* 1970 (1) SA 551 (O), *Sparks v Sparks* 1998 (W) SA 714 (W) and *Bannatyne v Bannatyne (Commission for Gender Equality as Amicus Curiae)* 2003 (2) SA 363 (CC). (Contempt proceedings for the enforcement of children's maintenance, being a fundamental right contained in s 28 of the Constitution).

¹⁵ Ibid at 1102: Procedure.

¹⁶ *S v S.H* (771/21) [2023] ZASCA 49 (13 April 2023).

*maintenance defaulters who use legal processes to side-step their obligations towards their children.*¹⁷

[19] The requirements for contempt of are now trite. They are the existence of a court order; the contemnor must have knowledge of the court order; there must be non-compliance with the court order; and the non-compliance must have been wilful or *male fides*. *Once the first three elements have been shown, wilfulness and male fides will be presumed and the evidentiary burden switches to the contemnor.*¹⁸

[20] It has been recognised by our courts that where a committal is ordered, the standard of proof in civil contempt matters has to be the criminal standard. *In those circumstances, wilfulness and male fides have to be shown beyond reasonable doubt. Put differently, the contemnor has an evidential burden to create a reasonable doubt as to whether his conduct was wilful and male fide.* There is a different standard of proof where no criminal sanction is sought; then, the standard of proof is that of a balance of probabilities. While all wilful disobedience of a court order made in civil proceedings is a criminal offence, *civil mechanisms that are designed to induce compliance without resorting to committal, are competent when proved on a balance of probabilities.* The hybrid nature of contempt proceedings which results in committal, combine civil and criminal elements. *But this does not mean that contemnors are not afforded the substantive and procedural protections which apply to any individual facing the loss of his freedom.*¹⁹

[21] During the hearing of the case the Court alerted counsel to the lack of concrete and appropriate evidence of the different defences of lack of funds and knowledge of the amounts due. The agreement by counsel was that a rule *nisi* order will cure this and the parties will be granted the opportunity to adduce the evidence. The solution in the case might lie here if the legal practitioners direct the parties to the

¹⁷ Bannatyne para 32.

¹⁸ *Fakie; Pheko and Others v Ekurhuleni Metropolitan Municipality* [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) and *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 Other* [2021] ZACC 18; 2021 (9) BCLR 992 (CC); 2021 (5) SA 327 (CC).

¹⁹ See also *Matjhabeng Local Municipality v Eskom Holdings Limited and Others and Mkhonto and Others v Compensation Solutions (Pty) Limited* [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC) para 61.

correct remedies in maintenance law and the reality of maintenance law as was alluded to in the case law referred to above. This brings the case to the adjudication of evidence in motion proceedings.

Motion proceedings and Plascon-Evans

[22] The general rule is that motion proceedings are about deciding questions of law on undisputed facts. Unless the court can decide the application on the undisputed or common cause facts, it must dismiss the application or refer any material dispute of fact to trial or oral evidence.

[23] Rule 6(5)(g) of the Uniform Rules finds application and decrees that where an application cannot properly be decided on affidavit, the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise. Generally, if there is a foreseeable dispute of fact, the applicant must initiate action proceedings.

[24] But if a dispute of fact emerges those are not the only two options available to the court. *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*²⁰ determines when or whether a matter can be decided on the papers. Where there is a dispute as

²⁰ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order. Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted. In certain instances, the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact. If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to be called for cross-examination under rule 6(5)(g) of the Uniform Rules of Court and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks. Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers.

[25] A rule *nisi* order is not a final interdict or order, and the parties must only demonstrate their case on a *prima facie* basis. They met the onus here. The order will invite the parties to show cause as to why it should not be made final. The elements of the cause of action must, on the return date, be proven on the appropriate onus. They may apply for the matter to be referred to oral evidence or even trial.

Conclusionary remarks

[26] The parties must be rebuked for their conduct here. It is unacceptable. They had years to bring an end to the debacle, and the law provides alternative and less invasive solutions. They had the luxury and assistance of mediators, legal

representatives and the Office of the Family Advocate that surely endeavoured to make good sense of the matter with the aim of bringing judicious solutions.

[27] Legal practitioners must guide their clients to serve the best interest of their minor children.²¹ It is also of concern that the Maintenance Court did not allow the respondent to make an application for the amendment of the maintenance order as he had a right to do, albeit that the application was too late and after continuous transgression of the court order over years.

[28] Maintenance is mathematics and nothing else. It is an unemotional calculation of the reality of the financial state of the parties and the needs of the children. It is not static and is subject to change as circumstances do. It is a division of the child's total expenses by the total income of both parents to determine each parent's proportional share.

[29] Section 6(4) of the Children's Act 38 of 2005 requires that in any matter concerning a child an approach which is conducive to conciliation and problem-solving should be followed and a confrontational approach should be avoided; and a delay in any action or decision to be taken must be avoided as far as possible.

[30] This Court will not hesitate to call the applicant and the respondent to order even if it means by incarceration. A strong message must bring an end to the

²¹ *B.M.G.S v M.B.S and Others* (26675/2022) [2024] ZAGPPHC 24 (8 January 2024):

‘[34] Legal practitioners are officers of the court and do not owe a duty to their clients only, but they also owe a duty to the courts and the legal system. It is therefore important to always bear in mind that legal practitioners have an ethical duty to advise their clients to obey Court Orders, whether the client agrees with such an Order or not. Failure to do this may sometimes be interpreted as making common cause with a client who continues to be in defiance and violation of the Court Orders, alternatively, having failed to properly advise client accordingly.

[39] The Constitutional Court in *Eke v Parsons* affirmed the essential characteristics of a Court Order and accepted that a Court Order must be enforceable and immediately capable of execution. The rule of law requires not only that a court order be couched in clear terms but also that its purpose be readily ascertainable from the language of the order. This is because disobedience of a court order constitutes a violation of the Constitution. (emphasis added)’.

lawlessness in this case and cases alike. The children of this country suffer at the hands of their parents, and the justice system is ridiculed. I will not impose fines because the two litigants, on their own evidence, cannot afford it and it will prejudice the children. The parents forced the Court into a corner wherein punitive incarceration is the only outcome and final end of the case. The rule *nisi* order will grant them one last chance to mend their ways and show why they must not be found to be in contempt of court. They will be granted a final opportunity to purge the contempt.

[31] The costs of this application, as well as all reserved costs, will have to stand over for later adjudication. It is not as simple as costs to be in the cause because, as the matter currently stands, no party is successful.

[32] Mokgoro J in *Bannatyne* has the final say in this judgment:

‘[27] Systemic failures to enforce maintenance orders have a negative impact on the rule of law. The courts are there to ensure that the rights of all are protected . . . If court orders are habitually evaded and defied with relative impunity, the justice system is discredited and the constitutional promise of human dignity and equality is seriously compromised for those most dependent on the law.’

Order

[33] In the result the following orders are made:

The main application

1. A rule *nisi* is granted, calling on the respondent to give reasons, if any, on or before, the return date of 18 September 2025, why a final order in the following terms should not be granted:

1.1 That the respondent should not be found guilty of contempt of this Honourable Court's order dated 27 October 2022 under Case No.: 5330/2019 and/or the order dated 5 September 2024 under Case No.: 5330/2019.

1.2 That the respondent should not be sentenced to direct imprisonment for a period of 6 (six) months, such period to be suspended for a period of 3 (three) years, subject thereto that:

1.2.1 The respondent purges his contempt within a period to be determined by the Court on the return date, by:

1.2.1.1 Paying the outstanding Consumer Price Index-increase on the maintenance to the applicant as well as arrear maintenance accumulated for June 2025 and July 2025 totalling to R31419.44;

1.2.1.2 paying the outstanding medical expenses to the applicant in the amounts of R7945.08 and R1584.57;

1.2.1.3 paying the amount of R12200.00 to the applicant in respect of repairs to the applicant's vehicle;

1.2.1.4 taking out Gap Cover on the medical aid as stipulated in paragraph 2.4 of the Deed of Settlement which was made an order of this Court on 27 October 2022.

1.2.2 The respondent is not again convicted of contempt of court committed within the period of suspension.

2. The respondent is granted leave to supplement the papers.

3. Costs to stand over for adjudication on the return date.

The counter application

1. A rule *nisi*, with return date to be 18 September 2025, is issued calling upon the applicant to show cause on why a final order should not be made in the following terms:

1.1. That the applicant should not be found guilty of contempt of this Honourable Court's order dated 27 October 2022 under Case No.: 5330/2019 and/or the order dated 5 September 2024 under Case No.: 5330/2019.

1.2. The applicant should not be sentenced to direct imprisonment for a period of 6 (six) months, the aforementioned period to be suspended for a period of 3 (three years), subject thereto that:

1.2.1. The applicant purges the contempt within a period to be determined by the court on the return date by:

1.2.1.1. Paying the respondent for the Vodacom Account in the amount of R11222.54 as stipulated in paragraph 5 of this Honourable Court's order dated 27 October 2022 under Case No.: 5330/2019; and

1.2.1.2. paying the respondent for the outstanding Eskom Accounts in the amount of R1501.36 as stipulated in paragraph 4.1 of this Honourable Court's order dated 27 October 2022 under Case No.: 5330/2019; and

1.2.1.3. paying the respondent for the outstanding Eskom Accounts in the amount of R13085.09 as stipulated in paragraphs 8 and 11 of the Honourable Court's order dated 5 September 2024 under Case No.: 5330/2019.

1.2.2. The applicant is not again convicted of contempt of court committed within the period of suspension.

2. The applicant is granted leave to supplement the papers.

3. Costs to stand over for adjudication on the return date.



OPPERMAN J

Appearances

For applicant:

R van der Merwe

Bloemfontein

Instructed by:

McIntyre Van Der Post Attorneys

Bloemfontein

For respondent:

CMD Rawson

Bloemfontein

Instructed by:

UFS Law Clinic

Bloemfontein