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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 072224/2025

DATE: 16-09-2025

(1) REPORTABLE: YES / NO.

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

(3) REVISED.

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In the matter between

P[...] R[...]

Applicant

and

K[...] A[...]

Respondent

J U D G M E N T

20

VON LUDWIG, AJ: This application arises out of a divorce which finally came to fruition one year three months and three days ago in terms of an order granted by my learned brother Malindi J.

It is evident that the order came pursuant to a lengthy trial. At this stage I pause to point out that as are we all as judges of the high court my learned brother Malindi acted in his capacity inter alia as upper guardian of the minor child who is the subject of this application. And the order which he gave was given in that capacity.

I go back in history to note the fact that, and I do not have the exact date but many years ago the parties already concluded a parenting plan dealing with their
10 respective parental responsibilities and rights in respect of N[...] who is now 14.

This tells us in light of the constraint that I must look at this matter holistically and its totality that there were already issues between the parties with regards to the parenting of their daughter.

The parties were married and as of normality one would expect to find both parents reflected on the child's birth certificate so much so that I had cause to go back over the papers in light of one of the submissions made to me in
20 the course of the arguing of this matter to find out whether this was perhaps initially a matter in terms of which the father acquired his rights pursuant to section 21 of the Children's Act and was the father of a child born out of wedlock. I was surprised to remind myself that the parties were in fact married to each other and as such

automatically in law are co holders of full parental responsibilities and rights in respect of their daughter. I pause to emphasise that the parties are in court and I pause for their benefit to emphasise that fact in law.

I am somewhat shocked to see the judgment granted a number of years ago in respect of N[...]’s birth certificate. As was correctly submitted to me by counsel for the applicant it is a judgment. It is not something which a party can decide or not decide to comply with. It is a
10 judgment and some, because of the slowness of my computer I do not have that judgment in front of me but a number of years in excess of 10 years has expired with noncompliance.

My attention has been brought to an e-mail addressed by the respondent to the applicant in which in essence she says,

“I have taken steps and it is not that I am not willing to take steps to put you on the birth certificate.”

20 And she contends that that exculpates her from a wilful and *mala fide* breach, lack of intention to comply with that court order. There is no explanation most particularly because that affidavit is a recent affidavit and because there is no string of documents placed before me showing any real reason why this has not been done or could not be

done or why this serves as any form of excuse or reason to have basically ignored the judgment of my brother Willis J as he then was.

Surprisingly the applicant has not sought an order that the respondent is declared in contempt of court for the non-adherence to the Willis order. As was submitted to me by the applicant I do have the power *mero motu* to find the applicant in contempt of court and I do so. It is not necessary for me to direct adherence to an order which
10 already exists. The Willis order exists and I remind the respondent to adhere to it.

In that regard I find that the respondent is in contempt of court for failure to adhere to that order and I make the following order cognisant that a monetary order in the circumstances of this matter is probably going to do nothing other than prejudice the minor child who is at the heart of the matter.

I accordingly impose on the respondent two weekends imprisonment commencing on a Friday at 5PM
20 until a Sunday at 5PM in terms of which the station commissioner of the police station within which the respondent resides is duly authorised to do all things necessary to detain the respondent and take her into custody and the officer commanding of the either holding or detention or prison facility to which that station commander

deems it best to take the respondent is hereby authorised to detain the respondent and hold her in custody accordingly.

I suspend this sentence for a period of three months to enable the respondent to comply with the order of Willis J to procure that the details of the applicants are recorded on N[...]’s birth certificate.

Insofar as the applicant is required to sign any document or attend at any place by the relevant government department who has to attend to this registration it is
10 incumbent on the respondent to give him timeous and proper notice of what he must do, on receipt of which he is ordered to comply therewith. Failing which it still and nonetheless remains the obligation of the respondent to procure compliance with the Willis J order.

I move now to what has been commonly referred to as the Malindi order and I move to the draft order presented to me by applicant. My finding in that regard is as follows: I declare that the respondent is in breach of the order granted by the Honourable Malindi J on 20 August 2024
20 which is hereinafter referred to as the Malindi order.

I pause to point out that this order is more than a year old. This order included provisions for tranches of graduated contact over three monthly periods and as a result of that breach the applicant is stuck, to his and the child’s prejudice, in Period 1 more than a year later, with

some minor nominal concessions.

I declare as I am required in paragraph 2 that the respondent has not complied with the Malindi order and I forthwith direct the respondent to comply with the Malindi order immediately upon this order being granted. There is no requirement for this order to be served on the respondent or the respondent's legal representatives since the respondent is represented in Court.

The time periods in the Malindi order have
10 unfortunately been superseded by the effluxion of time and we will have to re-examine them in order that there can be no confusion and we will have to find new time periods.

The first period of three months is deemed to have expired. The contact as provided for in the second period of three months will commence from 1 October and run for the months of October, November and December 2025 with the addition that because there is a school holiday over the period December and January the applicant will have the child with him for two periods over that school holiday of
20 five days and five nights each. Those periods will be determined by the parenting coordinator.

The second period will then run through January, February and March by which time the parenting coordinator is expected to have final recommendations for the parties. If the parenting coordinator does not have such final

recommendations for the parties by the end of March the parties may return to this Court if need be.

I hereby appoint Doctor Martin Strous or any person nominated by him to act as the parenting coordinator to facilitate contact between the applicant and the minor child in accordance what I will call the updated provisions of the Malindi order as I have just expounded them.

The parenting coordinator shall be vested with the powers contained in paragraphs 5.1 to 5.8 of the draft order
10 which is filed by the applicant on CaseLines in pocket 074 at pages 2 to 5 which will be extrapolated and incorporated in this judgment.

Following the Malindi order the parties will be responsible for the costs of the parenting coordinator in the proportions 70 percent applicant/father and 30 percent respondent/mother.

I further direct that the parties will both make contact with Dr Strous and advise him of the terms of this order whether or not a hard copy of this order is available
20 at that stage on CaseLines withing 10 ordinary days from date hereof and secure from him his advice as to whether he is able to take up this position on these terms. If he is able to take up this position and if he is able to arrange an appointment to meet with the parties by no later than the end of October he shall continue as the parenting

coordinator.

If he is not he shall be asked to appoint an alternative parenting coordinator to whom exactly what I have said herein thus far shall apply. The parties shall then both meet with that alternative parenting coordinator on a date and at a time suitable to that parenting coordinator by no later than the end of October 2025. The parties shall thereafter cooperate with the process of that parenting coordinator.

10 The first task of that parenting coordinator shall be to appoint a therapist for the bonding process between the applicant/father and the minor child. The costs of that therapist insofar as they may not be covered by the respondent's medical aid shall likewise be borne by the parties in the shares 70 percent applicant, 30 percent respondent.

I have made this a judgment and not just an order and the order will be crisply cut from the judgment and given separately on the terms that I have set out herein just
20 for simplicity for the parties, but I have made this a judgment because there are a number of points I wish to observe.

It is trite to anybody practising in the field of family law how difficult it is to balance the need to consider the views and wishes of a minor child as the Children's Act

constrains us to do with the obvious rights of a child to be a child, to remain a child and to be parented by that child's parents. Part of a parental responsibility is to promote the child's relationship with the other parent. The observation comes to mind here that the best interests of a child are not necessarily always the best interest of a parent.

We often hear the phrase "a bad spouse does not make a bad parent". I do not like the words "bad spouse" and "bad" must be used colloquially. It is a lay phrase. No
10 one is ever a bad spouse. It is assumed that people try their best. A spouse who has let down another spouse in interspousal issues is extremely unlikely to be a spouse who lets down a child and it is very difficult in a divorce situation not to transplant one's feelings for the disappointment in one's spouse onto that person as a parent. That is where parental responsibilities come into play.

Parents have responsibilities to recognise that a child has two parents. A child is entitled to both those
20 parents and it is the obligation of both parents to facilitate a coparenting relationship. Hence, my emphasis earlier on the fact that both parents hold full parental responsibilities and rights in respect of this lovely 14 years young child.

It is also very difficult in today's world where teenagers are 40 as soon as they are 14 to find the correct

level of imposing parental authority on a child versus allowing a child to find the child's feet, the child's personality and express the child's views and wishes. That unfortunately is the inescapable consequence of being a parent. The sooner parents in this matter and every matter understand and accept that the sooner the burdens will be taken off the shoulders of their children.

I heard during the course of the submissions made to me submissions that concern me that N[...] may be in
10 certain respects a parentified child. She feels responsible to keep the spirit in her home happy and busy and to look after her mother and her granny who miss her when she is gone. That is not N[...]’s responsibility.

On the assumption that both parents are doing everything in their power to do what they believe is best for their children, the parents must remember that this is not a fully subjective “me, me, me” exercise to an extent this is an objective “what is generally best for children albeit that this is my child” exercise. We do not want a parentified
20 child. We do not want a child who feels weighed down by the burden of having to make adult decisions. Those are hard enough when you are an adult.

Ideally we do not want a child living in a home which is predisposed against an ex-spouse whether the alienation is deliberate or alienation is inadvertent, whether

the gatekeeping is deliberately restrictive or it is well intentioned, whether the coaching comes about subtly or deliberately, it is unfortunately abundantly clear to this Court that N[...] is being subtly, and I choose to hope unintentionally, influenced to not want to spent time with her father. For this reason alone she has to go into therapy to be allowed to address her issues.

If arrangements have not been made for N[...] to have commenced therapy by mid-November 2025 the
10 applicant may return to this Court on supplemented papers seeking an order for contempt against the respondent. It takes both parties to give their consent and to cooperate in the appointment of a therapist for a child. Both parties are ordered to do so.

I am not asked at this stage to find the respondent in contempt of the Malindi order. I do not believe it necessary for me to give the applicant the power to return to Court on supplemented papers. The applicant has that right. An application for contempt of court will be a
20 composite of what has gone before, a composite of this judgment and all that is said and anything else with which applicant believes he can make out his case. Likewise an opposition to any such application will be the respondent's version of how she has indeed tried and how she has indeed done what she believes is best for N[...].

Because the Children's Court has been involved, I find it necessary to adjudicate on that as well. There is no reason why the attorney appointed for the child and the social worker appointed by the Children's Court cannot liaise with the parenting coordinator as was submitted on behalf of the applicant.

I accordingly order that a copy of this judgment and the order that will arise out of it shall be served by either of the parties within 30 days from date hereof on the
10 Children's Court simply by inserting it into the Children's Court file and securing a stamp, and on the Legal Aid attorney appointed for the child, and on the social worker extracts of whose report was read into the record today.

That brings me to the final issue of costs. In my view, and certainly it has been my intention to show, that it is the applicant who has been significantly successful in the relief that he has sought today. There is no reason in my view to diverge from the norm that costs shall follow the result. The only question is what sort of costs.

20 Given that I am advised that the respondent already has a costs order against her, that it is her submission (although I do not find merit in that submission) that experts had not been appointed because of the costs, and given that the applicant has not pushed for contempt.

Given also that I on the reading of the papers had a

leaning to *mero motu* find the respondent in contempt and I am resisting that leaning. And given that I am not persuaded by the respondent's reasons for not adhering to the Malindi order I say simply that the respondent is getting a very lucky break when I do not make an attorney and client cost order against her.

It is not for me to tell a future court what to do and I would not have the temerity to try and do so, but I would imagine that a court dealing with a future contempt
10 application and reading this judgment would then make an attorney client cost order against the respondent.

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Accordingly my order as regards costs is that the respondent is ordered to pay the costs of this application inclusive of the cost of counsel on Scale B and that is obviously on a party and party scale.

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In closing of my judgment, (apologies I see counsel ready to jump to their feet and say "as the Court pleases")

20 I express the hope, and I really do, I believe I have a duty as the upper guardian of minor children and because I have the opportunity with the parents in court - your daughter is 14. She is not yet an adult but what happens to her in her childhood years will influence the type of adult she is going to be. I express the earnest and profound

hope that with or without the help of your legal representatives you can find some common ground in sharing the parenting. I like that word in "sharenting". I just found a new word. Can we use it? In sharenting, shared parenting of your beautiful daughter in her best interests.

I conclude this judgment now. We will extract the order as a separate document just to make it clear but I conclude this judgment with the words that "it is in the best
10 interest of the child that we all do the job we do. I urge the parties to remember that". Thank you.

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ORDER

1. I find the respondent in contempt of court for failure to adhere to the Willis J Order;
2. I impose on the respondent two weekends imprisonment commencing on a Friday at 5PM until a Sunday at 5PM in terms of which the station
20 commissioner of the police station within which the respondent resides is duly authorised to do all things necessary to detain the respondent and take her into custody and the officer commanding of the either holding or detention or prison facility to which that station commander deems it best to take the

respondent is hereby authorised to detain the respondent and hold her in custody accordingly.

3. I suspend this sentence for a period of three months to enable the respondent to comply with the order of Willis J to procure that the details of the applicants are recorded on N[...]’s birth certificate.

10 4. Insofar as the applicant is required to sign any document or attend at any place by the relevant government department who has to attend to this registration it is incumbent on the respondent to give him timeous and proper notice of what he must do, on receipt of which he is ordered to comply therewith. Failing which it still and nonetheless remains the obligation of the respondent to procure compliance with the Willis J order.

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5. I declare that the respondent has not complied with the Malindi order and I forthwith direct the respondent to comply with the Malindi order immediately upon this order being granted. There is no requirement for this order to be served on the respondent or the respondent’s legal representatives.

6. The first contact period of three months is deemed to have expired. The contact as provided for in the second period of three months will commence from 1 October 2025 and run for the months of October, November and December 2025 with the addition that because there is a school holiday over the period December and January the applicant will have the child with him for two periods over that school holiday of five days and five nights each. Those periods will be determined by the parenting coordinator.

7. The next period will then run through January, February and March by which time the parenting coordinator is expected to have final recommendations for the parties. If the parenting coordinator does not have such final recommendations for the parties by the end of March the parties may return to this Court if need be.

8. I appoint Doctor Martin Strous or any person nominated by him to act as the parenting coordinator to facilitate contact between the applicant and the minor child in accordance herewith.

9. The parenting coordinator shall be vested with the powers contained in paragraphs 5.1 to 5.8 of the draft order which is filed by the applicant on CaseLines in pocket 074 at pages 2 to 5 which are incorporated in this judgment and a copy of which powers shall be downloaded by and shall physically be provided to the parenting coordinator by the applicant.

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10. The parties will be responsible for the costs of the parenting coordinator in the proportions 70 percent applicant/father and 30 percent respondent/mother.

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11. I direct that the parties will both make contact with Dr Strous and advise him of the terms of this order whether or not a hard copy of this order is available at that stage on CaseLines within 10 ordinary days from date hereof and secure from him his advice as to whether he is able to take up this position on these terms. If he is able to take up this position and if he is able to arrange an appointment to meet with the parties by no later than the end of October he shall continue as the parenting coordinator. If he is not he shall be asked to appoint

an alternative parenting coordinator to whom this Order shall apply. The parties shall then both meet with that alternative parenting coordinator on a date and at a time suitable to that parenting coordinator by no later than the end of October 2025. The parties shall thereafter cooperate with the process of that parenting coordinator.

12. The first task of the parenting coordinator shall
10 be to appoint a therapist for the bonding process between the applicant/father and the minor child. The costs of that therapist insofar as they may not be covered by the respondent's medical aid shall likewise be borne by the parties in the shares 70 percent applicant, 30 percent respondent.

13. The respondent is ordered to pay the costs of this
application inclusive of the cost of counsel on Scale B
20 on a party and party scale

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VON LUDWIG AJ

ACTING JUDGE OF THE HIGH COURT

16 September 2025 ex tempore

Received and signed 02 October 2025

