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

CASE NR: 2023-131543

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES YES/NO
(3) REVISED:
DATE: 10/09/2025
SIGNATURE:

In the matter between:

S[...] R[...] M[...]

APPLICANT

and

J[...] S[...] M[...]

RESPONDENT

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 10 September 2025.

JUDGMENT

MARUMOAGAE AJ

A INTRODUCTION

1. To say that family disputes are among the most difficult, complicated, expensive, and time-consuming to resolve would be an understatement. Family members who were once on the same team with a shared vision, over time, find themselves at war with each other and view the court as the most efficient venue for resolving their disputes. This is often the case with married persons whose relationship has reached a point of no return, and they desire to go their separate ways.
2. However, while they may agree on the actual divorce, they are unable to immediately part ways because they are tied together not only by their children but also by disagreements on the matrimonial consequences of their marriage. Disagreements, accusations, counteraccusations, inadequate financial disclosures, asset concealment, and unreasonable claims become the norm. Evidence provided to the court is often designed to tell a particular story, but hardly the entire story. It is often difficult to determine the true value of the parties' separate estates or even that of their joint estate.
3. In this matter, the Applicant described herself as an unemployed adult female. She is sixty-two years old. The Respondent described himself as an adult male pensioner. He is seventy-two years old. The parties married each other in community of property in 1995. Given the allegations and counter-allegations between the parties, as demonstrated by the facts presented below, even Solomon's wisdom may not be sufficient to resolve their specific disputes adequately.
4. This case is one in a series of cases that the parties have already instituted and would possibly institute against each other. In December 2023, the Applicant instituted divorce proceedings against the Respondent. In April 2024, the Applicant successfully launched a Rule 43 application where the Respondent was ordered to pay interim maintenance of R 20,000.00 to the Applicant, contribute towards the Applicant's legal costs for R 25,000.00, and continue to pay rates, electricity, and water at the parties' matrimonial home where the

Applicant is residing. In this application, the court is asked to find the Respondent in contempt of this court order, which was granted on 31 July 2024 by Mokose J (hereafter 'Rule 43 order').

5. The Applicant alleges that the Respondent is in contempt of this order and should be committed to prison for a period of thirty days. However, the committal should be suspended for a period of one year to allow the Respondent to purge the contempt. If the contempt is not purged, the Respondent is to approach the court to seek the Respondent's committal to prison. The issue before the court is whether the Respondent is in contempt of this court's order, and if so, whether he should be committed to prison.

B ALLEGATIONS MADE BY THE PARTIES

6. According to the Applicant, the Respondent failed to comply with Mokose J's order fully. This is despite the Respondent being a businessman and having substantial means to comply with this order. The Respondent received a pension payout, has an entertainment business, and owns livestock. The Respondent also receives income from his M4 investment. Despite the Applicant's reasonable efforts, the Respondent failed to negotiate in good faith to resolve the dispute between the parties amicably.
7. The Respondent denies that he is in wilful and *mala fide* default of the Rule 43 order. However, he alleged that he is unable to comply with this order because he is a pensioner and earns only approximately R24,666.69 per month. He also receives an amount of R16,500.00 from M4 Investment. The Respondent alleges further that he receives occasional income from Umtholo Beach Farm and cattle farming.
8. The Respondent alleges that the Applicant is a businesswoman who is desirous to live a luxurious life at his expense. The Respondent alleges that he attends to the reasonable needs of the Applicant as far as he is financially able to. He

contends that he does not have sufficient financial resources to meet the Applicant's financial claims.

9. According to the Respondent, the Umtholo Beach farming is a tourism business that lacks a stable cash flow. This business only attracts customers during the festive season. The Respondent alleges that this business generates approximately R50,000.00 in income during the festive season and around R4,000 during the non-festive season.
10. The Respondent contends further that he has about eighty-two cattle, but the cattle farming is a seasonal, very slow-growing business. The farm does not buy and sell the cattle it breeds. He must grow the cattle and choose wisely a few that can be sold. The Respondent alleged that due to the financial pressures, he was forced to retrench employees at his farm. The Applicant disputes the Respondent's assertion relating to the income generated by Umtholo Beach Farm and the farm where the Respondent's cattle are placed.
11. Due to the Respondent's failure to comply with the court order, the Applicant alleges that she is facing serious financial difficulties, which led to her struggling with payment of some of the services, such as running water, blocked sewage, and uncut long grass at the matrimonial home, due to non-payment of the municipality bills.
12. Since August 2024, the Respondent has paid varying monthly amounts, ranging from R6,900.00 to R15,000.00, rather than the required R20,000.00 per month. The Applicant alleges that the outstanding amount owed by the Respondent is R219,413.87. On behalf of the Respondent, it was argued that he does not have the money to settle this amount.
13. The Applicant alleges that the Respondent failed to pay the municipality rates and taxes. He also failed to make payments towards the Applicant's legal costs. This

is despite the Applicant being aware of the Rule 43 order, which was granted in the presence of the parties' legal representatives in court. The Applicant alleges that the Respondent's actions are wilful and *mala fide*, designed to evade compliance with the court order.

14. The Respondent alleges that he does not have sufficient financial resources to sustain or meet the Applicant's luxurious demands. He further alleges that the Applicant owns a catering business, a clothing business, and an events management business. According to the Respondent, he attempted to resolve the dispute through various meetings amicably. However, every time an agreement was reached between the parties, the Applicant failed to honour it.

15. The Applicant denied being a businesswoman and contends that she relies on the Respondent for her livelihood through maintenance. She further denies living a luxurious life. She maintains that the Respondent can afford to pay the outstanding amount because his bank statement indicates that he received substantial amounts ranging from R1000.00 to R85,631.85 from various sources between September 2024 and December 2024.

16. According to the Respondent, he has forwarded settlement proposals on how he will pay the outstanding amount. In particular, he proposed to the Applicant that they sell Plot 1[...], an immovable property, to settle the joint estate debts and outstanding Rule 43 expenses. An amount of R 1,900,000.00 was offered for this immovable property. However, the Applicant rejected this proposal. It was argued on behalf of the Applicant that selling this property is not a viable option because it generally takes a long time to sell immovable properties in South Africa and the Applicant needs maintenance now.

17. During the oral hearing, it was argued on behalf of the Respondent that sending the Respondent to prison will not lead to the Applicant receiving the outstanding

money. Furthermore, although the Respondent does not readily have the amount owed, there are matrimonial assets that could be sold to satisfy the debt. It was further argued that the better option is to refer the dispute to mediation. It was conceded that the Respondent is in contempt, but the contempt is not wilful.

18. The Applicant alleges that should the Respondent agree to the sale of some of the assets held in the joint estate, he will be in a financial position to comply with her demands. The Applicant alleges that the Respondent had never approached her to sell the immovable property. However, she contends that she will never oppose the sale of any property from which she will financially benefit. It was argued on behalf of the Applicant that the Applicant is not opposed to the sale of the cattle to pay arrear maintenance. However, the Respondent indicated that it is not easy to sell the cattle.

C LEGAL PRINCIPLES

i) Contempt

19. The Supreme Court of Appeal in *Snowy Owl Properties 284 (Pty) Ltd v Celliers and Another*, held that:

'[i]t is trite that an applicant who alleges contempt of court must establish that: (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and mala fides are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established'.¹

20. This court in *K.S v N.Sheld*, held that:

'[o]nce it is shown that the order is granted and served or has come to the notice of the respondent and that the respondent has disobeyed or neglected to comply with the order, wilfulness and mala fides will be inferred and the applicant will be

¹ (1295/2021) [2023] ZASCA 37 (31 March 2023) para 22.

prima facie entitled to a committal order. The evidentiary burden then rests on the respondent to advance evidence that establishes a reasonable doubt as to whether he is in contempt of the order'.²

21. The Constitutional Court in *Pheko and Others v Ekurhuleni Metropolitan Municipality (No) 2*, held that:

'[t]he 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'.³

22. In *Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited*, it was held that:

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

² (D1137/2021) [2023] ZAKZDHC 94 (1 December 2023) para 19. This court also held that '[c]ivil contempt procedure has been a useful mechanism in securing compliance with orders of court and has survived constitutional scrutiny. It is clear that contempt of court proceedings exists to protect the rule of law and preserve the honour of the judiciary. This lies at the heart of any constitutional democracy' (para 17).

³ 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) para 1.

undermines the authority of the courts and thereby adversely affects the broader public interest'.⁴

D EVALUATION

23. It was correctly conceded that the Respondent is in contempt of the Rule 43 order. There is an order granted against the Respondent to pay interim maintenance, municipal bills, and to also contribute towards the Applicant's costs. The Respondent is clearly aware of this order. However, there is a need to assess whether the Respondent failed to comply with the order. It is common cause that the Respondent made monthly interim maintenance payments but did not pay the amount that he was ordered to pay. This means that there was partial compliance with the court order regarding the interim maintenance.

24. The Respondent did not decide to disregard paying the required interim maintenance. He paid several monthly amounts, ranging from R6,900.00 to R15,000.00, rather than the required R20,000.00 per month. He maintained that he could not afford to pay the full amount because his monthly income is insufficient to cover this amount.

25. However, if the Respondent was faced with financial difficulties, it was not for him to unilaterally choose how to 'service' the court order. It is not clear why, when he realised that it was difficult to comply fully with the court order, he did not approach the court to vary it. It cannot be a defence in a contempt application that the Respondent does not have enough money to comply with the court order, when no efforts were made to relax the payment burden.

26. The evidence also demonstrates that the Respondent did not contribute to the Applicant's legal costs as directed to do. It is not entirely clear why this part of the order was not complied with, because the court also ordered that the contribution

⁴ (CCT 217/15; CCT 99/16) [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC) (26 September 2017) para 54. The leading authority in these matters is the Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others 2021 (5) SA 327 (CC), where an order of committal to prison was granted by the Constitutional Court sitting as a court of first instance.

amount should be paid in installments. The municipality and electricity bills also remain unpaid. This effectively makes the Respondent be in default of the Rule 43 order.

27. There is nothing that the Respondent placed before the court that demonstrates that he did not deliberately fail to comply with the Rule 43 order. The Respondent did not provide the court with adequate evidence of his income sources. According to the Respondent, his monthly income is R24,666.69. However, he also has various sources of income, bank or financial statements of which were not provided to the court.

28. The Respondent provided his statements from his personal bank account. These statements covered the period between August 29, 2024, and February 24, 2024. These statements indicate that amounts ranging from R1000.00 to R85,631.85 were paid to the Respondent from various sources. There is no full account of the Respondent's financial responsibilities, which were serviced by these amounts, which made it impossible upon receipt to use part of this money to comply with the Rule 43 order. With respect to any of his businesses, the Respondent made a bold claim that they do not generate enough money without providing any evidence to support that assertion.

29. If the Respondent was acting in good faith, he would have provided the bank or financial information relating to his other sources of income. Failure to provide the court with such evidence raises suspicion of concealment of financial resources, a conduct that is prevalent in matrimonial disputes. Such evidence would have assisted the court in determining whether the Respondent had sufficient income to comply with the Rule 43 order.

30. The Respondent only informed the court, without any proof, that his tourism business makes about R 50,000.00 during the festive season and R 4,000.00 during other times of the year. It is unclear whether these amounts were generated monthly during these periods. In motion proceedings, the court cannot accept the version of a litigant merely because it is placed under oath. These

kinds of allegations can be easily supported with credible evidence through annexures.

31. The Respondent's allegation that the Applicant is a businesswoman with at least three business interests is difficult to take seriously. The Respondent lived with the Applicant for several years. Surely, if there was a business that the Applicant was engaged in, there should be some proof that is placed before the court to support that assertion.
32. If such proof is difficult to obtain or is non-existent, at the very least, there must be a confirmatory affidavit from someone who knows the Applicant's business interests to confirm them to the court. There is no evidence to suggest that the Applicant is not unemployed and is instead engaged in business activities. This allegation stands to be rejected.
33. While the value of mediation cannot be denied when parties enter into that process with utmost good faith and the desire to resolve their disputes amicably, I disagree that the parties should be ordered to attend mediation in this contempt application. In this Division of the High Court, it is already a requirement that, before a divorce trial can start, the parties should subject themselves to mediation. At this stage, the primary concern is that there is an order that must be followed to ensure the integrity of the judiciary is preserved.
34. The extent that the Respondent may, as a matter of fact, be experiencing financial difficulties that make it impossible for him to comply with the Rule 43 order, he is not remediless. He can approach the court to vary the interim maintenance order by placing the necessary proof before the court, where a proper inquiry can be held. I doubt that such an inquiry can be adequately undertaken by a court tasked with issuing a contempt of court order.
35. The Respondent also claimed that he proposed that one of the immovable properties should be sold, and there was already an offer placed on this property. However, there is no evidence of such an offer that has been placed before the court. I agree with counsel for the Applicant that it is not easy to sell an

immovable property in South Africa, and the process can take a considerable amount of time to complete. The Applicant is unemployed and requires immediate interim financial assistance. The sale of properties pending the finalization of divorce can be a subject of mandatory mediation that the parties are expected to undergo.⁵

36. I am of the view that the Applicant has established that the three elements of contempt of court have been satisfied. As such, the Respondent's willfulness and *mala fides* are presumed. The Respondent bears an evidentiary burden to establish a reasonable doubt that his conduct was not wilful and *mala fide*.⁶ In my view, the Respondent failed to discharge this burden.

37. The Respondent failed to take the court into his confidence by not presenting credible evidence honestly and frankly, which would have assisted the court in understanding his true financial position. The Constitutional Court has established that individuals who disobey court orders can be imprisoned for contempt of court, regardless of their age.⁷

38. However, I am convinced that age is an essential factor to consider in these kinds of matters. Furthermore, the South African constitutional structure requires those vested with judicial authority to exercise caution when considering orders that

⁵ *J.P.V.S v M.M.V.S and Others J.P.V.S v M.M.V.S and Others* (3957/2023) [2023] ZALMPPHC 77 (28 August 2023) para 42, where it was held that '[i]t is further trite law that in the event a party cannot afford to pay maintenance a court may order that the assets be sold to satisfy the obligation to pay maintenance'.

⁶ See also *S v S.H* (771/21) [2023] ZASCA 49 (13 April 2023) para 20, where it was held that '[i]t 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.[8] 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'.

⁷ See generally *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* 2021 (5) SA 327 (CC).

may potentially interfere with the liberty of litigants before them. Particularly when alternative remedies are available.

39. The main issue here is not for the Respondent to be committed to prison, but for the Applicant to receive the interim maintenance and support to which she is entitled, as indicated in the Rule 43 order. The Respondent must be given a fair opportunity to purge his contempt. It is only when the Respondent fails to do so that the issue of committal would become a real option.

40. The Respondent also runs businesses that are likely to suffer should he be sent to prison. It is not only the interest of the Applicant that should be considered, but also the interests of all of the Respondent's employees. South Africa already faces a significant unemployment challenge. Courts should not unnecessarily add to this challenge when this can be avoided.

41. The approach followed by the Constitutional Court in *Matjhabeng* is instructive. I think an order that would compel the Respondent to comply with a court order, with the threat of imprisonment, appears to be ideal. In fact, this is an order that was favoured by the minority judgment in the *Zuma* matter, where it was held that a court should order a suspended committal to coerce a person found to be in contempt of a court order to comply with the order.⁸ This appears to be a constitutionally compliant approach.

E CONCLUSION

42. Because the parties are married in community of property, the Applicant should not beg to receive maintenance from what are effectively assets that are held in the joint estate to which both parties are co-owners of undivided shares. The fact that the Respondent effectively controls the keys of the joint estate does not mean that the Applicant is not entitled to equal access and enjoyment of all the assets held in the joint estate and their fruits.

43. It is disturbing that women are continuously forced to litigate to gain equitable access to their joint estate. Any person who decides to marry in community of

⁸ Ibid para 1.

property automatically reconciles themselves with the reality that all his assets that he acquired before and during the subsistence of the marriage will be jointly owned with his spouse.

44. It cannot be that when a marriage irretrievably breaks down, the financially weaker spouse must be taken from pillar to post to obtain maintenance from the joint estate. If indeed the Respondent cannot afford to comply with the Rule 43 order, he must take the necessary steps to be relieved of the burden placed on him by the Rule 43 order.

ORDER

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

45.1. The Respondent is found to be in contempt of the order of Mokose J dated 31 July 2024;

45.2. The matter is referred to the Maintenance Court having jurisdiction to:

45.2.1. quantify the Respondent's arrears with an appropriate payment schedule;

45.2.2. assess the Respondent's ability to contribute to the Applicant's maintenance needs; and

45.2.3. to issue an order with regards to the monthly maintenance payable by the Respondent to the Applicant

45.3. The Respondent must initiate the maintenance proceedings at the maintenance court within thirty days of this order.

45.4. If the Respondent fails to initiate maintenance proceedings within 30 (thirty) days from the date of this order, the Applicant is granted leave to approach the Court, on supplemented papers, for the authorization of a

writ of commitment to prison for contempt of court for a period of ninety (90) days.

45.5. Mokose J dated 31 July 2024 remains in place until it is amended, varied, or set aside.

45.6. The Respondent shall pay the costs of the application, including those of counsel on scale B.

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

Counsel for the Applicant : Adv Nicky Terblanche

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Instructed By : Adams & Adams

Date of Hearing : 4 June 2025

Date of Judgment : 10 September 2025