



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: 17286/17

In the matter between:

E[...] V[...] A[...]

APPLICANT

and

J[...] A[...] V[...] A[...]

RESPONDENT

Coram: BARENDSE AJ

Heard: 9 October 2025

Delivered: 14 October 2025

ORDER

1 The application is dismissed with costs on scale B, including the costs of counsel.

JUDGMENT

BARENDSE AJ

- [1] This is an application in which the Applicant is asking the court to impose sanctions on the Respondent for contempt of two court orders.
- [2] In paragraph 3 of the Notice of Motion ("NOM") the Applicant requests that the Respondent be sentenced to imprisonment for a period of sixty days, alternatively a period of imprisonment that the Court deems appropriate, alternatively that the Court imposes a sentence, penalty or fine that the Court deems appropriate.
- [3] The Applicant further seeks costs on the attorney and own client scale including costs of counsel on the highest scale.

FACTUAL BACKGROUND

[4] The parties were previously married and the marriage was dissolved by an Order of Divorce incorporating a Settlement Agreement, granted on 2 December 2019.

[5] The Divorce Order made provision for payment of maintenance by Respondent to Applicant in an amount of R16 500 per month for a period of three years. After the three-year period the parties would agree on an amount of monthly maintenance. Failing such agreement, the parties would approach the Maintenance Court to make an assessment.

[6] The Respondent initially complied with his maintenance obligations by making payment of the amount of R16 500. After the three-year period had elapsed the parties were unable to agree on an amount for continued maintenance and the Respondent referred the matter to the Maintenance Court during 2023.

[7] The fate of the maintenance proceedings was a prominent feature in previous contempt proceedings. Elaboration thereon is not for present purposes necessary save to state that on 13 July 2023 it was postponed for settlement purposes and that, on the same date, the Applicant received a Short Message Service (SMS) to the effect that the maintenance matter was closed.

[8] As from July 2023 the Respondent reduced the monthly maintenance payment to R5000 and did not increase this for inflation. It appears from the papers that according to the Respondent, this was all that he could afford to pay. Given that Respondent was then no more complying with the Divorce

Order, the Applicant instituted contempt proceedings in the High Court on 6 October 2023. For reasons that will appear later it is not necessary to delve into the averments made by the parties in the above proceedings.

[9] The above proceedings came before The Honourable Andrews AJ on an opposed basis and culminated into an Order dated 18 September 2024 (the September 2024 Order"). This Order provided for the following:

1. That the Respondent is found to be in contempt of the Order of this Court made on 2 December 2019 under case number 17286/2017;
2. The matter is referred to the Maintenance Court having jurisdiction to :
 - (a) Quantify the Respondent's arrears with an appropriate payment schedule;
 - (b) assess the Defendant's ability to contribute to the Plaintiff's maintenance and needs; and
 - (c) to issue an order with regards to the monthly maintenance payable by the Respondent to the Applicant.
3. Should the Respondent fail to initiate maintenance proceedings within a period of thirty days from date of this order, the Applicant is granted leave to approach this court to impose an appropriate sanction. The Applicant is granted leave to supplement the papers with due regard to the computation of the arrear amount as the time (sic) of the launch of these proceedings.
4. The existing order made on 2 December 2019 under case number 17286/2017 remains in place until such time as it is amended, varied or set aside.

[10] The Respondent applied for Leave to Appeal against the September 2024 Order. Leave to Appeal was denied and the Respondent did not take matters beyond that.

[11] The present application was launched on 28 January 2025, the Respondent gave notice of opposition thereto after which it was agreed that the Respondent would file an Answering Affidavit by 20 March 2025 and that the matter would be postponed to 21 August 2025. This will be expanded on later in this judgment.

APPLICANT'S CASE

[12] In her Founding Affidavit ("FA") to this application the Applicant averred that the Respondent was in contempt of the September 2024 Order in that he did not initiate the maintenance proceedings within the 30 day period envisaged in paragraph three of the Order and that he was consequently in contempt thereof.

[13] Applicant further contended that given that the 2 December 2019 Order remained in force, Respondent remained in contempt thereof. The FA outlines that Respondent persisted with payment of R5000 per month and sets out the arrears that accumulated. In a supplementary FA dated 3 July 2025 details of the payments made by Respondent between January 2025 and July 2025 were provided. This illustrates that the payments remained at R5000 per month.

[14] Applicant submitted that the Respondent's continued disregard for the December 2019 Order was deliberate and intentional and that he has deliberately and intentionally disregarded the September 2019 Order by not

initiating proceedings in the Maintenance Court within thirty days as required.

RESPONDENT'S CASE

[15] The Respondent filed the Answering Affidavit (AA) referred to in paragraph 11 (under the heading of "Opposing Affidavit") on 7 August 2025. He seeks condonation for the late filing of this affidavit. In paragraph 5 of the Opposing Affidavit ("OA") he proffered the explanation that this came about because his counsel failed to diarise this step and that she only realised this omission by the end of July. His attorney was, during May and June, engaged in a time-consuming matter described as a '...very publicised and controversial matter...' concerning a Stellenbosch student and this contributed to the oversight.

[16] No confirmatory affidavit by Respondent's attorney was filed and Respondent's counsel admitted from the bar to the failure on her part. She submitted that as the counsel appearing for Respondent it was impermissible for her to file an affidavit to this effect.

[17] While the explanations proffered by Respondent for the almost five-month delay in filing the affidavit may at face value appear flimsy, the court has to take all relevant factors into consideration when exercising its discretion. Importantly, the court must arrive at a conclusion as to what is in the interests of justice.¹

¹ Grootboom v National Prosecuting Authority And Another 2014 (2) SA 68 (CC) at [23]

[18] The relief being sought in these proceedings impact the Respondent's constitutional right of liberty and the court cannot pronounce on this application without proper consideration of his version. This can only be achieved by a proper consideration of his Opposing Affidavit (OA) and to achieve this, the court condones the late filing of the affidavit. It may be added that the late filing of the affidavit did not delay these proceedings. While Applicant did not consent to condonation, counsel for Applicant, wisely so, did not seriously challenge same during argument.

[19] At the heart of the present application is the Respondent's failure to comply with paragraph three of the September 2019 Order by not, within 30 days, initiating an application to the Maintenance Court for the purposes of what was contained in paragraph 2 of the said Order. It is necessary to consider the circumstances around this in more detail.

[20] The judgment in the application for leave to appeal was handed down on 20 November 2024. On 28 January 2025 Appellant's attorneys wrote to Respondent's attorneys informing them that application was made for an order holding the Respondent in further contempt of the September 2024 Order. This letter is found at page 59 of the record. Respondent's attorney replied on 29 January 2025 and *inter alia* recorded that Respondent had no intention of disregarding the court order, that the attorney underwent surgery which contributed to a delay, that the attorney made inquiries to the Maintenance Court and was informed that the matter should be re-enrolled by way of an affidavit containing such a request. Respondent's attorney appealed to Applicant not to proceed with a further contempt application but

to allow for an opportunity to enrol the matter in the Maintenance Court. This email is found at page 61 of the record.

[21] On 29 January 2025 Applicant's attorney sent an email to Respondent's attorney which concluded with a request for payment of R312,744.60 within two days to prevent the application from proceeding. Respondent's attorney filed the affidavit for the request to re-enrol the matter in the Maintenance Court on 6 February 2025.² On 6 February 2025 the Applicant's attorneys wrote to the maintenance officer essentially stating that the High Court application for contempt must first be concluded before Respondent can be provided with a date in the Maintenance Court.

REASONING

[22] The September 2019 Order envisaged a review and quantification of Respondent's maintenance obligations by the Maintenance Court, as the forum best placed to do so. While the Order held the Respondent in contempt of the Divorce Order, no sanction was imposed, other than an order directing the Respondent to initiate the Maintenance Court proceedings. This Order further granted leave to the Applicant to approach the court to impose an appropriate sanction if Respondent fails to initiate the maintenance review proceedings within the stated period.

[23] This court is now seized with whether Respondent is in contempt of the September 2019 Order and if so, what sanction should be imposed. Applicant's case is that there was wilful and *mala fide* disobedience of the

² Record page 65

court orders. It has to be considered whether the Applicant discharged the onus for the relief being sought.

[24] The Applicant needs to prove three requisites namely that a court order was made, that it was served on the Respondent, and non-compliance.³ The Respondent then has to produce evidence that will establish reasonable doubt. Failing this, a finding should follow that the Applicant has satisfied the criminal standard of proof and that contempt was established beyond reasonable doubt.

[25] This court considered the facts and Respondent's conduct in the context of what was recorded in paragraphs [18] and [19] above and concluded that it cannot be found beyond reasonable doubt that the Respondent intentionally and in bad faith disobeyed the September 2024 Order, particularly paragraph three thereof. In the absence of such contempt there is no basis for the imposition of a sanction.

[26] Does the above mean that the September 2024 Order has no further binding effect or consequences? The answer is an emphatic "No". The aforesaid Order expressly provided that the December 2019 Divorce Order remained in place until varied or set aside. Further, the fact that Respondent was not this time around held in contempt for non-compliance with paragraph three of the September 2024 Order does not exempt him from complying therewith. The court has accepted that Respondent initiated the Maintenance Court proceedings, albeit late, and he remains under obligation to continue that process. Failure to do so will expose him to another application for contempt of court and committal.

³ SA Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at [41]

[27] The application is accordingly dismissed with costs, such costs to be payable on Scale B and to include the costs of counsel.

R.D. BARENDSE
ACTING JUDGE OF THE HIGH COURT

Appearances:

For applicant: Adv T Möller

Instructed by: Riaan Badenhorst Attorneys

For respondent: Adv L Theron

Instructed by: DVN Attorneys