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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 2025-192858

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 27 October 2025

SIGNATURE:

In the matter between:

H[...] C[...] C[...]

APPLICANT

-and-

MAGISTRATE SIKALA

1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS

2ND RESPONDENT

N[...] E[...] M[...]

3RD RESPONDENT

MINISTER OF POLICE

4TH RESPONDENT

Delivered 27 October 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **27 October 2025 at 10:00 am.**

Date heard 22 October 2025

JUDGMENT

BRESLER AJ:

Introduction:

[1] The Applicant applied on an urgent basis for *inter alia* the following relief:

1.1 An order staying the execution of the arrest warrant issued by the Malamulele Magistrates Court on the 17th of October 2025 under case number B316/2025 pending finalisation of the review application and Rule 43(6) application.

1.2 Suspending all proceedings in the Malamulele Magistrate's Court, including the Section 31 Maintenance enquiry pending the finalisation of the review application, Rule 43(6) application, including the application for leave to appeal.

1.3 Suspending the proceedings in the Malamulele Magistrate's Court pending the outcome of the paternity results as ordered by Mushwana AJ.

[2] The case was initially enrolled on Saturday, the 18th of October 2025 and, having provided neither the Court nor the Respondent with sufficient time to consider the matter, the Court was not inclined to hear the matter. An interlocutory order was granted staying the warrant of arrest pending the hearing of the case on the 22nd of October 2025. This interlocutory order was since extended pending delivery of this judgment.

[3] This Court was also not satisfied that specifically the 1st, 2nd and 4th Respondent was duly notified as the documents were only e-mailed to two individuals employed at the state attorney as opposed to actually notifying the relevant state organ.

[4] When the matter came before Court on the 22nd of October 2025, the Court was satisfied with service, and the parties were requested to address the court on the issue of urgency and merits simultaneously.

[5] The Applicant provides very little information in its Founding affidavit as to the context of the current proceedings. It is only alleged that the Applicant lodged a review against the decision of the 1st Respondent on the 14th of October 2025. He also notes that there is an appeal pending. On the 17th of October 2025 the Applicant was unable to appear in the Magistrate's Court and a warrant of arrest was issued.

[6] The Applicant then sets out particulars in respect of an alleged dispute with regards to the paternity of a minor child. Again, no context is provided as to when this dispute arose or how the minor child specifically features into the scenario.

[7] As to irreparable harm the Applicant submits that the execution of the warrant of arrest will result in his detention and might potentially impact his ability to partake in the ongoing high court proceedings. Again, this Court is not privy to the alleged High Court proceedings or the context thereof having regard to the current proceedings.

[8] The proceedings were opposed by the 3rd Respondent. In her answering affidavit, the 3rd Respondent submits that she acts in her capacity as the customary wife and the mother of the 3rd Respondent's minor child. This provided the Court with a bit more context as to exactly what the Applicant's aim with the urgent proceedings is.

[9] The 3rd Respondent also explained that the Applicant is guilty of the offence of failure to pay in terms of a maintenance order as contemplated in Section 31 of the **Maintenance Act**, Act 99 of 1998. He was summoned to appear before the maintenance court to answer to the charge and the warrant of arrest was authorised after he repeatedly failed to appear in person and obtained several postponements. The aim of the warrant is therefore to secure his attendance before court to answer to the contravention of the **Maintenance Act**.

[10] The 3rd Respondent also submits that on the 15th of January 2025, the Applicant was convicted and sentenced to a fine of R50,000.00 or 13 (thirteen months) imprisonment wholly suspended for a period of five (5) years on condition that he is not convicted of a similar offence during the suspension period. It appears that, suspending the current warrant will, in effect, possibly render this conviction moot as finalisation of the pending proceedings might very well exceed the stipulated five (5) year period.

[11] The 3rd Respondent also highlights that the Applicant is in contempt of the court order granted by the Honourable Tshidada J on the 19th of December 2023 in terms whereof the 3rd Respondent was ordered to pay both child, as well as spousal maintenance. The issue of paternity was ventilated during these proceedings. Notwithstanding the alleged dispute, the maintenance order was granted *pendente lite*.

[12] As to the alleged paternity dispute, the 3rd Respondent submits that on or about the 13th of February 2024, the Applicant issued out a Notice of Motion from the Children's Court for the District of Malamulele held at Malamulele. The 3rd Respondent delivered her answering affidavit but to date the Applicant has failed to prosecute the matter to finality.

[13] The Applicant also disclosed that there are similar proceedings to the current application pending in the above court and under case number 2025-132323, which proceedings were also launched on an extremely urgent basis and purportedly since abandoned. On 8 September 2025, another urgent application for similar relief was issued in this court under case number: 2025-159794. This application was struck from the roll by the Honourable Makoti J.

[14] The 3rd Respondent elaborated on her customary marriage to the applicant and the events that transpired before and after the birth of the minor child. In this court's view, these facts are irrelevant to the current proceedings, but nonetheless helpful in explaining the context of the current case. Suffice to state that the Applicant's dispute on the paternity of the minor child is premised on alleged scientific evidence. Again, the court is not called upon to determine the issue of

paternity in these proceedings, and the facts are thus irrelevant for a determination of the issues in this case.

[15] The Replying affidavit of the Applicant is largely a denial and a reference to certain documents that do not form part of the record of the proceedings before this court. The alleged customary marriage is for instance in dispute with regards to documents forming part of the Rule 43(6) proceedings. Likewise, the paternity issue and the Applicant's financial inability is presumably disclosed in these Rule 46(3) proceedings. The Court is not privy to these proceedings nor are the relevant extracts from these proceedings highlighted and annexed to the current application.

Applicable legal principles:

Urgency

[16] It is trite law that for purposes of urgency the court must assume that the Applicant has merits in his case. The urgency must therefore appear from the papers without regard to the merits or the opposition thereof.

[17] Having regard to the vague and incomprehensible Founding affidavit delivered herein, it appears that the Applicant failed to appear in court because of medical reasons, a warrant of arrest was issued which warrant was not suspended pending his re-appearance in court. In this Court's view, urgency is manifest. The warrant can be executed at any time depriving the Applicant of his freedom of movement. If it is accepted that the Applicant might have merits in his case, the matter therefore warrants the hearing on an urgent basis.

Merits

[18] Rule 45A of the **Uniform Rules of Court** provides that the court may on application suspend the operation and execution of any order for such period as it may deem fit, provided that in the case of appeal, such suspension is in compliance with section 18 of the Superior Court Act, Act 10 of 2013.

[19] In the judgment of De Villiers AJ in **BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd and Another; BP Southern Africa (Pty) Ltd v ZA Petroleum and Another**¹ at paragraph 25 it was held:

'A litigant with an enforceable Judgment is entitled to payment, and only in rare cases would be delayed in that process. In my view there may be exceptional cases where a court would still exercise a discretion to prevent an injustice in staying execution.'

[20] Without embarking on an extensive discourse of the law, the legal position today is that a Court will grant a stay of execution where real and substantial justice is required, or an injustice will otherwise be occasioned.² A court faced with an application for the suspension of execution, may be guided by the factors that underlies the granting of interim interdicts, with due regard to the fact that an applicant is not asserting a *prima facie* right but is seeking to avoid an injustice. The Court must therefore be satisfied that:

20.1 The Applicant has a well-grounded apprehension that the execution is taking place at the instance of the Respondent; and

20.2 Irreparable harm will result if execution is not stayed, and the applicant ultimately succeeds in establishing a clear right.

[21] As stated herein before, the Applicant's Founding affidavit is quite bare and inadequate when it comes to the relevant contextual background of this matter. Reference is made to several proceedings that are not currently before Court. It is trite law that a Court cannot be expected to trawl through lengthy annexures to ascertain the actual message that the Applicant wishes to convey. Reference is often made to the case of **Swissborough Diamond Mines (Pty) Ltd and Others v**

¹ 2022 (1) SA 162 (GJ)

² **Gois t/a Shakespeare's Pub v Van Zyl and Others** 2011 (1) SA 148 (LC) at para 37; **Road Accident Fund v Legal Practice Council** 2021 (6) SA 230 (GP) (a decision of the full court) at paragraphs 30 to 33.

Government of the Republic of South Africa and Others³, where the Honourable Joffe J pertinently stated:

'... it is not open to an applicant or respondent to merely annexe to its affidavit documentation and to request the Court to have regard to it. What is required is the identification of portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed. A party would no know what case must be met.'

[22] An applicant must make out its case in its Founding affidavit. Rule 6(5) of the **Uniform Rules of Court** provides:

'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.'

[23] The affidavits must identify issues and contain the factual averments relevant to those issues. Where a party for instance relies on a document, the passages in the document must be identified and the conclusions based on the passages must be set out.

[24] The reasoning is set out in **Minister of Land Affairs and Agriculture v D & F Wevill Trust**⁴ as thus:

³ 1999 (2) SA 279 (T)

⁴ 2008 (2) SA 184 (SCA) at [43]

'[43] ... The second is that the case argued before this court was not properly made out in the answering affidavits deposed to by Andreas. The case that was made out, was conclusively refuted in the replying affidavits as I pointed out in paras [18] to [20] above. It is not proper for a party in motion proceedings to base an argument on passages in documents which have been annexed to the papers when the conclusions sought to be drawn from such passages have not been canvassed in the affidavits. The reason is manifest - the other party may well be prejudiced because evidence may have been available to it to refute the new case on the facts. The position is worse where the arguments are advanced for the first time on appeal. In motion proceedings, the affidavits constitute both the pleadings and the evidence: Transnet Ltd v Rubenstein,⁵ and the issues and averments in support of the parties' cases should appear clearly therefrom. A party cannot be expected to trawl through lengthy annexures to the opponent's affidavit and to speculate on the possible relevance of facts therein contained. Trial by ambush cannot be permitted.

[25] The law is thus clear: In motion proceedings, the affidavits constitute both the pleadings and the evidence.⁶ They need to fully disclose the case of the party to enable the Court to come to an informed conclusion.

[26] The Applicant's founding and replying affidavit falls dismally short of this requirement. Much of the relevant background had to be solicited from counsel during the hearing of the matter which resulted in objections from the 3rd Respondent that evidence is being lead from the bar.

[27] Even if the Applicant's affidavit contained sufficient information to enlighten the court as to how it truly came about, the Court is not convinced that the Applicant is entitled to the relief it applied for.

⁵ 2006 (1) SA 591 (SCA) [also reported at [2005] 3 All SA 425 (SCA) - Eds] para 28.

⁶ **Triomf Kunsmis (Edms) Bpk v AE & CI Bpk en Andere** 1984 (2) SA 261 (W) at 269G - H and **Saunders Valve Co Ltd v Insamcor (Pty) Ltd** 1985 (1) SA 146 (T) at 149G.

[28] Although it does not explicitly appear from the Founding or Replying affidavit, it is most likely that any warrant of arrest issued would be under section 32 of the **Maintenance Act** read with the provisions of section 188 and 170(2) of the **Criminal Procedure Act**, 51 of 1977 (the CPA).

[29] In accordance with these Acts, the court that issued the warrant of arrest is entitled to cancel the warrant of arrest if it is satisfied with the explanation furnished for the defaulter's failure to attend or remain in attendance at court and it is satisfied that this was not due to any fault on his part.⁷

[30] The relief sought by the Applicant regarding the suspension of the warrant of arrest is therefore not competent because he has not attempted to first resolve the cancellation of the warrant of arrest at the court that issued it in accordance with the provisions of s170(2) of the CPA. The Applicant failed to show that there is no alternative remedy available to him or why this remedy is not accessible to him.

[31] The issuing of the warrant of arrest to secure his attendance will also not automatically result in his incarceration as alleged by the Applicant. In accordance with the Police Standing Orders an arrest is one of the ways of securing an accused's attendance in court, but it was the most drastic infringement of the rights of a person and therefore it should be used as a last resort.

[32] As to the stay of the maintenance proceedings, this Court is not convinced that the provisions of Rule 45A of the **Uniform Rules of Court** is the appropriate remedy in these circumstances. The **Maintenance Act** specifically provides for the procedure to be followed if there is a paternity dispute. The act furthermore provides for a remedy for the suspension or setting aside of any maintenance order. Moreover, it appears from the 3rd Respondent's version that the Applicant must answer to the offence of failure to pay maintenance. If the Applicant persists in its defence on paternity, this will be considered in the criminal trial in due course. The balance of convenience therefore do not favour the granting of the relief.

⁷ **S v Baloyi** 2000 (1) SACR 81 CC para 29.

[33] In ***Mokone v Tassos Properties CC & another***⁸ the Constitutional Court held that a court has the discretion to grant a stay of proceedings if it is in 'the interests of justice' to do so and that the idea of 'interests of justice' in this context is quite wide.

[34] At this stage, the Applicant appears to have taken every possible endeavour to frustrate to payment of maintenance to both the 3rd Respondent and towards the minor child. The remedies available to him to question the paternity of the minor child, has either not been pursued or appears to have been abandoned.

[35] Courts are enjoined to intervene when the interests of children are imperilled. In ***Bannatyne v Bannatyne***⁹ in which the Constitutional Court expressed itself as follows:

'[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. The Judiciary must endeavour to secure for vulnerable children and disempowered women their small but life-sustaining legal entitlements. 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.'

'[28] It is a function of the State not only to provide a good legal framework, but to put in place systems that will enable these frameworks to operate effectively. Our maintenance courts and the laws that they implement are important mechanisms to give effect to the rights of children protected by 28 of the Constitution. Failure to ensure their effective operation amounts to a failure to protect children against those who take advantage of the weaknesses of the system.'

⁸ 2017 (5) SA 456 (CC), 2017 (10) BCLR 1261 paras 64-72 at 474B-476B (SA), 1278E-1280D (BCLR).

⁹ 2003 (2) SA 363 (CC) at [27]

[36] Maintenance orders and maintenance enquiries are very important for the reasons stated in ***Bannatyne***. Therefore, they must be enforced and those required to attend maintenance enquiries have an obligation to present themselves at the maintenance courts for those enquiries. That is why failure to respond to a maintenance summons or to attend a maintenance enquiry may lead to possible arrest and could also lead to detention.

[37] Had the Applicant simply attended to maintenance enquiry and presented his version to the Court the matter might have been finalised by now. Justice must run its course. On this basis, it is not in the interest of justice if the warrant of arrest and the maintenance proceedings are suspended at this stage.

[38] The application therefore stands to be dismissed.

Costs:

[39] There is no reason why the cost order should not follow the outcome of the proceedings. Having regard to the extreme urgency with which the proceedings were launched, the inadequacy of the Applicants case and the importance of the proceedings to the parties, costs to counsel on Scale B is warranted.

Order:

[40] In the result the following order is made:

- 40.1 The application is deemed urgent as contemplated in Uniform Rule 6(12);
- 40.2 The application is dismissed.
- 40.3 The Applicant is ordered to pay the costs, including the costs to counsel on Scale B.

M BRESLER AJ

**ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

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