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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 54516/2018

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

16 October 2025

DATE

SIGNATURE

K[...] S[...] S[...]

APPLICANT

and

C[...] P[...] S[...]

RESPONDENT

JUDGMENT

This judgment is handed down electronically by uploading it onto the electronic file of this matter on caselines. As a courtesy, it will also be sent to the parties' legal representatives by email. The date of the judgment will be presumed to be 16 October 2025`.

BASSON AJ

INTRODUCTION:

1. This is an application for compliance with a maintenance order granted by this court in Rule 43 proceedings on 25 March 2019 and the purging thereof failing which Respondent be committed to prison (the "Contempt Application").

BACKGROUND:

2. Applicant, as Plaintiff, instituted divorce proceedings against Respondent, as Defendant on 2 October 2018.
3. The parties were married on 20 August 2012, out of community of property with the exclusion of the accrual system as provided for by

the provisions of Chapter 1 of the Matrimonial Property Act, 88 of 1984.

4. Two children were born from the marital relationship namely a daughter, on 18 May 2008 and a son on 5 March 2014.
5. Applicant, in the divorce proceedings, claimed a decree of divorce and ancillary relief for *inter alia* rehabilitative maintenance, maintenance for the two children (the "children") born from the marriage between the parties and payment of the children's medical costs and school fees.

The Rule 43 application:

6. Applicant, simultaneously with the divorce action instituted Rule 43 proceedings wherein she asked that the Primary residence of the children remain with her, that Respondent be ordered to (a) pay maintenance for the children at R4 500.00 per month per child, (b) pay maintenance for her at R3 000.00 per month, (c) keep her and the minor children on his medical aid and pay the expenses in respect thereof, (d) pay all the minor children's school fees and

ancillary expenses and make a contribution towards her legal costs in the sum of R7 500.00.

7. Respondent defended the divorce action and opposed the Rule 43 application. It is necessary to, in some detail, expound on the background facts and of what evolved after both the action and the Rule 43 became defended.
8. Respondent, in his sworn reply to the Rule 43 Application asked that the primary residence of the minor children be awarded to him, alternatively that the family advocate investigate the primary residence issue of the children. He tendered (pending the process) to continue to pay the children's medical aid, their transport and school fees, clothing (in the sum of R500.00 which included their school uniforms) and R1 000.00 per month towards groceries.
9. I find the tender of Respondent of R1 000.00 per month for groceries, in light of the relief sought by him, peculiar. Respondent nowhere (in his sworn reply) insisted that the Applicant contributes towards the payment of groceries. One can only but marvel at the insufficiency of this tender.
10. Respondent's penuriousness is underscored by the vague manner in which he dealt or failed to deal with certain material facts in, not only his sworn reply, but also other and later affidavits submitted.

11. What Respondent forlornly failed to address in his sworn reply is *inter-alia* whether the payment of the medical aid for the children in- or excluded costs and expenses not covered by his medical aid, whether or not the transport fees included only transport fees to and from school or whether it included other transport fees in respect of extramural and extracurricular activities, whether the payment of school fees included or not, other school related expenses such as after-school tuition, after-school activities, other school related costs or extracurricular expenses, whether the R500.00 per month for clothing and the R1000.00 per month for groceries is in respect of both children, or not.
12. Respondent, not to be outdone, launched a counter application in the Rule 43 proceedings wherein he *inter-alia* sought that the primary care of the minor children be awarded to him. The counter application was not entertained.
13. Council for Applicant, during argument in the contempt Application submitted that it is evident that Respondent only sought that the primary residency of the children be awarded him in order to avoid the payment of monetary maintenance to Applicant in respect of her and the children.

14. Both parties, in their sworn statements made disclosure of their respective financial positions. The application served before the Honourable Mr Justice Hiemstra AJ on 25 March 2019 when the learned judge ordered Respondent to:

10.1 pay maintenance in respect of:

10.1.1 the children of R4 000.00 per month, per child from
1 April 2019;

and

10.1.2 Applicant at R1 000.00 per month from 1 April 2019;

10.2 "5. contribute towards the maintenance requirements of the applicant and the minor children:

5.1 *By retaining the Applicant and the minor children, at his costs, as dependants on his current medical aid scheme, or a scheme with analogous benefits and by paying the monthly premiums (and any escalations) timeously on due date. The Respondent shall also bear the costs of all reasonable expenditure in respect of medical, dental, surgical, hospital, orthodontic and ophthalmological*

treatment needed by the children and not covered by the medical aid scheme, including any sums payable to a physiotherapist, occupational therapist, speech therapist, psychiatrist and chiropractor, the costs of medication and the provision, where necessary of spectacles and/or contact lenses;

5.2 by effecting payment of the children's educational costs, such costs to include, without limiting the generality of the foregoing, all crèche fees, school fees (primary and secondary), additional tuition fees, the costs of extracurricular school and sporting activities, school outings, camps and school tours (including the travel and accommodation expenses related thereto) and the costs of all extramural activities in which the children participate, as well as the costs of books, stationary, school uniforms, equipment and attire relating to the children's education and their sporting and/or extramural activities engaged in by them, as well as transport costs for the children to go to school and back.

6. That the Respondent shall make an initial contribution of R7 500.00 towards the Applicant's legal costs, payable

in equal monthly instalments of R500.00 per month.

*The first payment to be made on or before 1 April 2019
and thereafter on or before the first day of each and
every succeeding month.*

(the "Rule 43 Order")

15. Respondent, by his own admission, did not comply with the Rule 43 order. This prompted Applicant to launch the present contempt application which application Respondent, (at all relevant times duly represented) opposed. After the Rule 43 Application order was made, Respondent embarked on peculiar applications which will briefly be dealt with below.

16. Before I therefore turn to the contempt application, I deem it apposite to briefly refer to the steps taken by Respondent after the granting of the Rule 43 order.

The Maintenance Court application:

14. The first of these was an application embarked upon by the Respondent in terms of the Maintenance Act, 99 of 1998 (the "Maintenance Act").

15. Respondent, barely a week after the Rule 43 order, on 2 April 2019 approached the Maintenance Court, Pretoria North in terms of Section 6(1)(b) of the Maintenance Act for the substitution or discharge of the Rule 43 order.
16. Respondent therein asserted that good cause existed for the substitution of the Rule 43 order and asked that it be substituted with an order to the effect that he pays no maintenance towards Applicant or the minor children but only contribute (without mentioning any amounts) towards the minor children's school fees, medical aid, school transport and school wear and expenses in respect of sport or cultural activities.
17. It is not clear, from a reading of the papers, what the outcome of this application was save that Respondent in his Answering Affidavit to the contempt application stated that the Maintenance Officer advised him to conclude the High Court matter before approaching the Maintenance Court.
18. In the result the Rule 43 order of Justice Hiemstra AJ stood.

The variation application:

19. Respondent attached to the contempt application, as annexure "COC1", an inchoate application to his Answering Affidavit. Therein he sought a variation of the Rule 43 order (the "Variation Application"). The last pages of the Variation Application did not form part of the papers before me and it would therefore not be deduced from the papers in what sense is sought the variation of the Rule 43 order.
20. The Contempt application was issued on 5 September 2019. From the return of service it seems that it was served on Respondent on 10 October 2019. The Variation Application, is dated and was issued on 9 October 2019 and served on Applicant's attorneys on 11 October 2019. Despite Applicant's statement in her replying affidavit in the contempt application that there was no merit in the Variation Application and that her opposition thereto was fully set out in her response to the Variation Application, the answering affidavit to the Variation Application did not form part of the papers that served before me. Despite also Applicant's indication that she would request the court to adjudicate the Variation Application simultaneously with the contempt application, this did not happen. Nothing however turns on this.
21. It is evident that the Variation Application is not brought in terms of Rule 43(6). Because it contains no allegation of changed

circumstances nor was substantive proof submitted that there was a material change in circumstances. It is also not clear whether this application is premised on the provisions of Rule 42 or the common law.

22. It can therefore be safely stated that, at the time when the contempt application was heard, Respondent has not prosecuted the Variation Application to finality. This seems to be the case because reference was made in the Rule 6(11) application that the Variation Application still needed be finalised.
23. What Respondent however stated in his answering affidavit to the contempt application was that he could, due to financial constraints, not proceed with the Variation Application. This was the same explanation proffered in his Rule 6(11) application.
24. Respondent also, whilst conceding that the Variation Application was late by some five (5) months, attempted to, in unintelligible fashion explain that he had to prioritise the Variation Application because *"commonsense will dictate that the variation must be heard first before this (the contempt) application."*
25. He also in similar vein further asserted that Applicant will not suffer any prejudice because of the late filing of the papers because the contempt application *"will not be heard before the variation and*

again the applicant was also late in filing the answering affidavit on my variation application as she will have ample time to file a replying affidavit if she wishes.”

26. Respondent also asserted that he set out his bona fide defence to the contempt application in his Variation Application. Upon scrutiny, no defence to the relief sought in the contempt application, could be found. Also, and despite again referring to the Variation Application in the Rule 6(11) application, no defence was disclosed. Respondent again failed to give an indication of the status of, or stage of the Variation Application.

27. Ms Schoeman on behalf of Applicant, during argument submitted that the Variation Application was but a further ploy to further frustrate the finalisation of the process and further delay matters. It was also argued that this was the same reason the Rule 6(11) was launched at the eleventh hour. She also convincingly argued that it was clear that the Respondent did not have a genuine appetite to pursue the Variation Application and that it was but a further attempt to delay payment and frustrate the consequences of the 43 Order.

The Rule 6(11) application:

28. Respondent, on Tuesday 9 May 2023 (the contempt application was to be heard on 15 May 2023), had a voluminous 341 page application titled "*Notice in terms of Rule 6(11)*" served on Applicant's attorneys. Therein (but for condonation sought for the late filing thereof), he also sought leave to file the voluminous supplementary affidavit. In the process he asked that Applicant pay the costs of the application if she elected to oppose it.
29. In respect of this application, the following. Whilst there is no prescribed form of notice of motion for interlocutory applications, and whilst Rule 6(11) simply provides that '*notwithstanding the foregoing subrules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at a time assigned by the registrar or as directed by a judge*' as well as that the somewhat cumbersome procedure proscribed Rule 6(5) need not be followed by the parties, it is still trite that a reasonable period need be afforded an opponent to oppose the application. Failing this, an Applicant runs the risk of affording his/her opponent insufficient time to oppose the application with the resultant consequences such as a postponement and/or an adverse order for costs..

30. In this instance no such courtesy was afforded Applicant. The court was simply asked to grant condonation and allow the voluminous supplementary affidavit. Despite not being granted this courtesy Applicant's legal representatives, in the little time afforded them, prepared a comprehensive response thereto. The response was electronically served on the Respondent's attorneys on 11 May 2023 and delivered to them, by hand on 13 May 2023.
31. It is clear from the papers filed of record that Respondent delivered his answering affidavit to the contempt application on 12 May 2020 (almost three (3) years before the contempt application was to be heard) already. In turn, Applicant delivered her Replying Affidavit in the contempt application on 28 September 2020. This was some two (2) years and eight (8) months before the application in terms of Rule 6(11) was delivered.
32. Despite the enormous lapse of time and despite Respondent, in detail, setting out in the Rule 6(11) application certain expenses he incurred on behalf of the minor children during 2020 and 2021, he failed to advance any reason or explanation for not trying to rectify this at an earlier stage or for the late filing thereof.
33. In fact, Respondent blamed the lateness of the application (in an effort to get condonation) "[for] the simple reason that I was not

able to file the same earlier due to financial constraints." This was incidentally the same reason given in the Variation Application.

34. What Respondent endeavoured to do, is to attach to his affidavit the Rule 6(11) application, reconciliations which he referred to as "expense reports" identified by the abbreviation "ER". In these reconciliations numerous references are made to items titled "cash allowances" allegedly made to provide for the children's school activities, food and personal care. In the process a multitude of, what appears to be receipts and proofs of Electronic Funds Transfers ("EFT"), was attached.
35. In his (brief) affidavit Respondent found time to still apportion blame to Applicant for failing to finalise the divorce proceedings. In the process he also accused her of being opportunistic in launching the contempt application whilst stating that if he is to be incarcerated, it will be to the detriment of the children. In the process, the simultaneously vaguely asserted that he still intended to continue with the rescission of or the variation of the Rule 43 order. As already stated, Respondent at no stage gave any indication as to the status of this application. What however did is to make mention of a delictual claim he intended instituting against Applicant because of her extra marital relationship from which a child was born and which she had registered under his name.

36. What is concerning is that it is clear that the Rule 6(11) application was signed on 5 May 2023 already and the affidavit on 7 May 2023. Yet it was only served on Applicant's legal representatives on 9 May 2023. As already stated, this afforded Applicant little, if any time to comprehensively respond to the application. These actions immediately raises the question why Respondent could not, as soon as the notice of motion and affidavit was finalised, provide Applicant's legal representatives with an unsigned copy.
37. Respondent (or at least his legal representative) knew from 24 July 2019) that a contempt application was in the making when he was warned of this in the aforesaid letter. A copy of this letter was attached to the Founding Affidavit as annexure "FA2".
38. Ms Schoeman, correctly so in my view, submitted that the lateness of the Rule 6(11) application was deliberate and that it was done in a further attempt to further derail the contempt application and scupper the continuation of the process.
39. Despite the voluminousness of the Rule 6(11) application and the plethora of receipts and EFT's attached to the affidavit, he failed to indicate whether, if at all, he complied with, or purged or attempted to comply with or purge the Rule 43 order.

40. Froneman J in **Foster v Stewart Scott Inc.**¹ stated that:

"it is well settled that in considering applications for condonation the court has a discretion to be exercised judicially upon a consideration of all the facts. The relevant considerations may include the degree of non-compliance with the rules, the explanation thereof, the prospect of success on appeal, the importance of the case, the Respondent's interest in the finality of the judgment, the convenience of the court and the avoidance of unnecessary delays in the administration of justice, but the list is not exhaustive. These factors are not individually decisive but are interrelated and must be weighted one against the other. A slight delay and a good explanation for the delay may help to compensate for prospect of success which are not strong. Conversely, very good prospect of success on appeal may compensate for an otherwise perhaps adequate nation and long delay."

41. Southwood AJA in **Price Waterhouse Coopers Inc. and Others v National Potato Co-operative Ltd**² held that:

"It has long been recognised in South Africa that a court is entitled to protect itself and others against the abuse of its process, but now all-embracing definition of 'abuse of process' has been formulated. Frivolous or vexatious litigation has

¹ (1997) n18 ILJ 367 (LAC).

² [2004] 3 ALL SA 20 at para 50.

been held be an abuse of process and it has been said that 'an attempt made to use for Alteri purposes machinery devised for the better Administration of Justice' would constitute an abuse of the process. In general, legal process is used properly when it is invoked for the vindication of the rights or the enforcement of just plain's and it is abused when it is diverted from its true course so as to serve extortion or oppression; or to exert pressure so as to achieve an improper end. The mere application of a particular court procedure for a purpose other than that for which it was primarily intended is difficult of mala fides." (References to authorities omitted).

42. Ponnann JA in ***Dentenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others***³ expressed the well-known approach to condonation as follows by concluding that factors are relevant to the exercise of a discretion to grant or refuse condonation include:

"the degree of non-compliance, the explanation therefore, the importance of the case, a Respondent's interest in the finality of the judgment of the court below, the convenience of this court and the avoidance of unnecessary delay in the administration of justice'.

³ [2013] 2 ALL SA 251 (SCA) at para 11,

43. The aforesaid factors are not individually decisive but are interrelated and must be weighed against each other. The reasons (only reason) provided by Respondent for non—compliance was “[for] the simple reason that I was not able to file the same earlier due to financial constraints.”
44. The degree of non-compliance with the Rules by Respondent, the total lack of any explanation therefore, the importance of the case for Applicant, the convenience of the court and the improper use of legal process for, what can only be described as an effort to oppress and inconvenience. This is to be frowned upon.
45. I, during argument expressed serious reservations about the lateness of and the manner in which the Rule 6(11) application was introduced to court. I therefore, after having heard argument ruled that condonation will not be granted and that the supplementary affidavit will not be allowed.
46. I indicated that I would reserve the matter of costs until the end to be dealt with simultaneously with the order made in respect of the contempt application. I will deal with this below.

The contempt application:

47. The three (3) elements for the test for contempt that need exist for an application of this kind is the existence of a valid Court order, knowledge thereof and non-compliance therewith.
48. It is common cause that Respondent was aware of the exact nature and ambit of the Rule 43 order granted on 25 March 2019. His legal representatives were present in court when the matter was argued and pronounced upon. Prove of knowledge of the order is that Respondent's attorneys shortly after the order was granted on 25 March 2019, communicated with Applicant's attorneys and, in a letter informed them that Respondent intended to apply for a variation of the order and/or the reduction of the Maintenance.
49. The Respondent, barely a week after the Rule 43 order was granted, approached the Maintenance Court to have the order amended.
50. It is alleged that Respondent has been in default of the court order since 1 April 2019 and is not contributing towards the maintenance of the minor children. This is not disputed in the Answering Affidavit to the contempt application or the Variation Application. Respondent only in the Rule 6(11) application made vague references to "*cash allowances to provide for school activities, food and personal care*" in respect of the minor children.

51. The only “defence” proffered by Respondent was that he is not in a financial position to comply with the order and that he was, because of this, not in wilful default or mala fide. Respondent advanced no other reason, explanation or excuse.
52. Contempt of court proceedings exist to protect the rule of law and the authority of the judiciary. It is not an issue between the parties but rather an issue between the port other party who has not complied with a mandatory order of Court.
53. Such proceedings are a recognised method of putting pressure on a maintenance defaulter to comply with his or her obligation.⁴
54. The Constitutional Court in **Bannatyne** held that:
- “Although money judgements cannot ordinarily be enforced by contempt proceedings, it is well established that maintenance orders are in a special category in which such relief is competent.”*
55. It is now trite, as expressed by the Cameron JA in **Facie v CCII Systems (Pty) Ltd**,⁵ that the standard of proof to be applied was proof beyond reasonable doubt. The learned Judge of Appeal summed the position up as follows:

⁴ Bannatyne v Bannatyne (Commission of Gender Equality, as Amicus) 2003 (2) SA 363 at para 20.

⁵ 2006(4) SA 326 (SCA).

- "(a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.*
- (b) The respondent in such proceedings is not an "accused person", but is entitled to analogous protections as are appropriate to motion proceedings.*
- (c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.*
- (d) But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.*
- (e) A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities."*

56. In determining whether the Respondent is guilty of contempt of court the following requirements as set out in ***Compensation Solutions (Pty) Ltd v Compensation Commissioner [2016] ZASCA 59*** should be proved:

"The question which then arises is whether the Applicant proved that the Commissioner's failure to comply with the [consent order] amounted to civil contempt of court, beyond a reasonable doubt to secure his committal to prison. An Applicant for this type of relief must prove (a) the existence of a court order; (b) service or notice thereof; (c) non-compliance with the terms of the order, and (d) wilfulness and Mala fides beyond reasonable doubt. But the respondent bears an evidentiary burden in relation to (d) to adduce evidence to rebut the inference that is non-compliance was not wilful and mala fide. Here, requisites (a) to (c) were always common cause. The only question was whether the Commissioner rebutted the evidentiary burden resting on him." (Own emphasis)

57. As in ***Compensation Solutions***, the only question in casu was whether the Respondent rebutted the evidentiary burden resting on him.

58. Mokgoro J in Bannatyne noted:

“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.”

Further on learned Justice of the Constitutional Court also said:⁶

“Compounding these logistical difficulties is the gendered nature of the maintenance system. The material shows that on the breakdown of a marriage or similar relationship it is almost always mothers who become the custodial parent and have to care for the children. This places an additional financial burden on them and inhibits their ability to obtain remunerative employment. Divorced or separated mothers accordingly face the double disadvantage of being overburdened in terms of responsibilities and under-resourced in terms of means. Fathers, on the other hand, remain

⁶ Id in para [29].

actively employed and generally become economically enriched. Maintenance payments are therefore essential to relieve this financial burden.” (Own emphasis)

59. The Constitutional Court has also warned against recalcitrant maintenance defaulters who use legal processes to sidestep their obligations towards their children. The Constitutional Court stated this as follows:

“Courts need to be alive to recalcitrant maintenance defaulters who use legal processes to side-step their obligations towards their children. The Respondent was entitled to apply for a variation of the maintenance order. But whatever excuse he might have had for failing to comply with the existing order, there was no excuse for his failure to pay even the reduced amount that he contended should be substituted for it. The respondent appears to have utilised the system to store these maintenance obligations through the machinery of the Act. It appears from the evidence of the CGE that this happens frequently in the maintenance courts. The hardships experienced by maintenance complaints need to be addressed in the proper implementation of the provisions of the Act is a matter that calls for urgent attention of the Department of Justice.”

60. In this matter, Respondent initially approached the Maintenance Court for a variation of the order. When he failed, he did nothing and waited until the application for his contempt was prepared and served whereafter he prepared a Variation Application and simply attached that application to his Answering Affidavit.
61. In the interim period awaiting the contempt application to be heard, Respondent again rested on his laurels and did nothing to advance the Variation Application. It was only when the contempt application was served on him that he was galvanised into action but took no further steps to advance the Variation Application.
62. Then, literally 3 court days before the contempt application was to be heard, the voluminous application in terms of rule 6(11) was served on Applicant's legal representatives leaving them with little time to prepare a response. Respondent did not have the courtesy to forewarn or to provide Applicant's legal representatives with an unsigned or unattested copy in order for them to timeously prepare thereon. This is, in my view, an opportunistic snatching at an opportunity that amounts to an abuse of process in order to, as Applicant's counsel argued, further delay and frustrate the legal process.

63. A reading of the papers directs to an arrogance of the Respondent that boils down to contempt. On his own version he did not comply with the court order allegedly because of a lack of funds. The Respondent was initially employed (when divorce proceedings ensued) in a senior managerial position by the Auditor General. He, during the course of the litigation, took up employment with a private firm. Yet he did not, after the initial disclosure in his response to the Rule 43 Application, disclose his new occupation and/or income.

Costs:

64. The only aspect that remains is the issue of costs. In light of the totality of all the circumstances and the Applicant's wanton conduct, my view is that the non-compliance with the Rule 43 order is manifestly inappropriate.

65. Given the Respondent's conduct as expounded upon above and the compromising of the Applicant's and the minor children's best interests as well as this Court's integrity, his continued opposition and attempts to avoid the matter being finalised can only be viewed as *"so unreasonable or out of line that it constitutes an abuse of*

process.”⁸ Accordingly, the Applicant should pay the Respondent’s costs.

66. What remains to be determined is the scale of such costs. In **Nel**⁹ the court held, in relation to punitive cost orders:

“A cost order on an Attorney and client scale is an extra ordinary one which should not be easily resorted to, and only when by reason of special considerations, arising either from the circumstances which gave rise to the action or from the conduct of a party, should a court in a particular case deem it just, to ensure that the other party is not out of pocket in respect of the expense caused to it by the litigation.

As such, the order should not be granted lightly, as courts look upon such orders with disfavour and are loathe to penalise a person who has exercised the right to obtain a judicial decision on any complaint such party may have.”

(References omitted)

67. This sentiment was emphasised by the Labour Appeal Court in **PCASA**.¹⁰

⁸ Lawyers for Human Rights v Minister in the Presidency 2017 (1) SA 645 (CC); 2017 (4) BCLR 445 (CC) at paragraph 20.

⁹ Nel v Davis SC [2017] JOL 37849 (GP) at Paras 25-26.

¹⁰ Plastic Converters Association of South Africa (PCASA) obo Members v National Union of Metalworkers Union of South Africa [2016] JOL 36301 (LAC) (PSASA) at paragraph 46.

68. This matter however, is the kind of matter where a punitive order of costs would be justified. Neglecting the Applicants and minor children's best interests and the failure to honour the Rule 43 order that sought to ensure those interests are protected and preserve this Court's core integrity is precisely the kind of "extraordinary" conduct worthy of a court's rebuke with punitive sanctions.
69. Adding to those transgressions, the manner in which the Respondent conducted himself and his failure to apprise this court of any efforts to remedy his conduct whilst seeking to, in a continuous manner, at the last minute bring applications whilst disregarding due court process, is a further basis warranting punitive costs.
70. The Respondent must accordingly pay the costs of the Applicant on an Attorney and client scale. This cost order is applicable to the proceedings in both the Rule 6(11) application and the contempt application.

Conclusion:

71. On the conspectus of all the facts I find that the Applicant has shown, beyond a reasonable doubt that the Respondent has

intentionally avoided complying with the Rule 43 order. Put otherwise, in my view the Respondent has failed to rebut the inference that he was not wilful and mala fide.

72. Under the circumstances, I make the following order:

1. The Respondent is declared to be in contempt of the court order of Hiemstra AJ dated 25 March 2019.
2. The Respondent is committed to imprisonment for contempt of court for a period of ninety (90) days which committal is suspended in its entirety for a period of two (2) years on condition that the Respondent fully complies with the order granted on 25 March 2019 within seven (7) days from the granting of this order.
3. Should the Respondent fail to comply with paragraph two (2) of this order:
 - 3.1 The performance and execution of the writ of Committal for contempt of court is hereby authorised;
 - 3.2 The Respondent should submit himself to the South African Police Services, Brooklyn, failing which the South African Police Services should take all necessary steps to ensure that the Respondent is delivered to the Head, Correctional Services in Pretoria in order to be committed in terms of this order.

4. The Respondent is ordered to pay the costs of this application which includes the costs incurred by the applicant in the Rule 6(11) application on an attorney and client scale which costs should include the costs of Counsel as marked per brief.

J G W Basson

Acting Judge

High Court Division, Pretoria.

Counsel for Applicant: Adv J Schoeman

Attorney for Respondent: Mr Pillay