

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

CASE NO: 2025-192667

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED.

DATE 04 NOVEMBER 2025

SIGNATURE

In the matter between:

P[...] M[...]

Applicant

and

L[...] M[...]

Respondent

JUDGMENT

BRAND AJ

[1] This matter, that came before me in Family Court on an urgent basis, is an application for an order that a) the respondent is in contempt of a Rule 58 Magistrate's Court order pending finalisation of divorce proceedings between the parties and b) should for that reason be committed to prison for three months, which committal is suspended for one year from the date of the order on condition that the respondent makes good on all arrears and future maintenance payments.

[2] The parties, who are married in community of property and have two minor

children born from their marriage, are involved in an ongoing divorce dispute in the Magistrate's Court since the respondent sued for divorce there on 3 April 2024. On 30 August 2024 the applicant obtained an order unopposed from the Magistrate's Court in terms of Rule 58 of that court. In broad terms this order, pending finalisation of the divorce action:

[2.1] awards primary residence of the two minor children to the applicant, with certain reasonable contact rights for the respondent;

[2.2] requires the respondent to pay R50,000.00 per month toward the applicant's and minor children's maintenance; and R150,000.00 toward the applicant's legal costs in ten monthly instalments of R15,000.00 each (the maintenance and costs payments are required to be made on or before the first day of each month, starting on the first day of the month following the month in which the order was handed down);

[2.3] requires the respondent to pay the school fees and aftercare costs for the minor children directly to the school; and

[2.4] requires the respondent to retain the two minor children on his medical aid.

[3] It is common cause that the respondent has in several respects not complied with this order. On a number of occasions, he has had contact with the minor children in ways and at times contrary to the order. His medical aid membership has lapsed, so that the minor children have not been retained on his medical aid. He failed to pay the R150,000.00 toward legal costs as required, necessitating the applicant to enforce payment of the full sum through an attachment order. Finally, over an extended period he has failed properly to pay the maintenance for the applicant and children as required so that by 1 October 2025 he had paid only a total of R48,000.00 in maintenance and was R652,000.00 in arrears.

[4] In response the applicant made the following attempts to enforce payment and compliance prior to bringing this application:

[4.1] The applicant moved to attach the respondent's property but was able to attach property only to the value of R7,200.00.

[4.2] The applicant secured the R150,000.00 toward legal costs through attachment.

[4.2] On 22 May 2025 the applicant launched an application for contempt in the Regional Court on the ordinary roll. This application was subsequently withdrawn.

[4.3] On 22 September 2025 the applicant again launched an application for contempt in the Regional Court but his time on an urgent basis. This application was likewise subsequently withdrawn.

[5] This application was launched on Friday 17 October. It required the respondent to note opposition by 16:00 on the same day (the respondent did so); and to file an opposing affidavit if any and give notice of any legal points that he wished to raise by 16:00 on Tuesday 21 October 2025 (the former of which the respondent did in the event only on 23 October 2025).

[6] In his opposing papers the respondent as could be expected disputed that the matter is urgent; and although admitting that he was not in compliance with the court order, denied that this non-compliance was wilful or *mala fide*, so that he denied that he was in contempt. In addition, the respondent raised the point that, given that two previous applications to have him declared in contempt had been withdrawn, but without a tender of costs, I am precluded from hearing this matter due to the application of the doctrine of *lis alibi pendens*.

[7] Accordingly, the main issues to decide are the following:

[7.1] Whether the matter is urgent.

[7.2] Whether the matter was pending before another court, precluding me from hearing and deciding it.

[7.3] Whether the respondent was in contempt of court.

[8] I proceed to address these three issues in turn below. I emphasise that the starting point in addressing all three issues, given that there are two minor children involved in this matter of which this court is the upper guardian, is that their best interest remains paramount and determinative, above all other concerns.¹

¹ *Bannatyne v Bannatyne and Another* (CCT18/02) [2002] ZACC 31; 2003 (2) BCLR 111 ; 2003 (2) SA 363 (CC) (20 December 2002) ('*Bannatyne*') at para [24].

Urgency

[9] Mr Stadler for the respondent disputed the urgency of this matter on several grounds. First, in broad terms he submitted that the applicant's own conduct indicates that the matter has never been urgent for her. He points here to the fact that this application was brought more than 13 months after the initial Rule 58 interim maintenance order was granted in the Regional Court. He also reminds that the applicant first sought a contempt order in the Regional Court in the ordinary course, then withdrew that application and brought a second application, this time on the urgent roll, which was also then withdrawn before these proceedings were launched. This to him is not the conduct of a person in such dire straits that she is entitled to bring this application on an urgent basis – any urgency that there may be is in his view self-created.

[10] Second, Mr Stadler submits that the applicant has failed to advance any real grounds for urgency. The applicant in support of urgency cited several warnings that she had received from her landlord of eviction due to her rental arrears; her inability to pay properly for medical costs related to the one child who suffers from a medical condition; her inability to buy proper food for the household at times; and her inability to buy new school uniforms and supplies for the two children. She says that she initially managed to cope with her financial responsibilities by utilising her overdraft facility, but that this was no longer possible. She is currently in her first year after pupillage as a practicing advocate and her income is intermittent and not sufficient to cover even all the costs related to her practice. She corroborates this by attaching bank statements showing the in and outflow of money.

[11] These facts that the applicant relies on to show urgency, Mr Stadler submitted in fact show the opposite: that despite the respondent's non-compliance with the maintenance order the applicant although with some difficulty, copes and manages to keep the ship afloat. If she has been able to do that up to now, then there is no reason why she cannot keep on doing it until her application comes before this court in the ordinary course.

[12] Neither of these submissions convince. The first – that if the applicant's

situation was really urgent she would have acted decisively much earlier but instead waited and in this way created any urgency there may be herself – loses sight of the fact that the applicant attempted to utilise several other less drastic avenues in her quest to get the respondent to pay his maintenance before she eventually turned to an application for contempt as the most drastic last resort. It also loses sight of the fact that the respondent's admitted failure to pay maintenance as he should was ongoing and that its impact on the applicant's and their children's financial position became progressively worse as it compounded over time. The applicant faced a situation of constantly building financial pressure and distress caused by the respondent's continuing non-compliance. Her ability to cope with this and to shield the children from its effects was progressively weakened over time, with the urgency to address the problem also increasing over time. The situation only this year, by August/September became so dire that more urgent intervention was required than had been relied on until then.

[13] The second – more or less that the applicant should just 'keep on keeping on' – misconceives the purpose of the Regional Court's interim maintenance order. That order's purpose was precisely to ensure that the applicant and, more importantly, the two minor children, would be able to maintain as close to their pre-divorce proceedings a standard of living as possible, given that the joint estate now has to maintain two households at the same time. That order was given precisely so that the applicant and the minor children needn't just manage to stay afloat and that particularly the children needn't be exposed to the distress and pressures of a drastic change in financial security, financial instability and constant want and worry. The respondent's non-compliance engineers exactly the situation that the interim maintenance order was intended to prevent. In this light the fact that the applicant has despite his non-compliance still somehow managed to keep head above water (if only just) is really in this light irrelevant to the question of urgency; while the fact that the respondent's conduct has forced her to 'cope' and 'manage' in this way, with the concomitant pressure and distress filtering through to the children is determinative of it.

[14] To this must be added Mr Arnoldi SC's submission on behalf of the applicant that applications for contempt orders, especially in the context of pending divorce

and interim maintenance issues, are inherently urgent. He referred me to the judgment in *Victoria Ratepayers' Association v Greyvenouw CC and Others*.² In this matter it was held that 'ongoing contempt of a court order, by its very nature, is urgent'.³ Plaskett AJ (as he then was) continued to say that

'it is not only the object of punishing a respondent to compel him or her to obey an order that renders contempt proceedings urgent: the public interest in the administration of justice and the vindication of the Constitution also render the ongoing failure or refusal to obey an order a matter of urgency. This, in my view, is the starting point: all matters in which an ongoing contempt of an order is brought to the attention of a court must be dealt with as expeditiously as the circumstances, and the dictates fairness, allow.'

[15] In this light, it cannot be said that the applicant would obtain substantial redress in the ordinary course,⁴ should this matter be dealt with other than as urgent. The respondent's non-compliance is ongoing and its impact on the applicant and the minor children continuously compounds. If indeed it amounts to contempt, every day it continues is a further affront to the 'public interest in the administration of justice and the vindication of the Constitution'.⁵ It should be stopped now. I conclude that the matter is urgent.

Lis alibi pedens

[16] As relayed above, twice before, the applicant brought applications for orders that the respondent is in contempt in the Regional Court (once in the ordinary course and once urgently) In both cases, the applications were withdrawn, but without the applicant tendering costs. This means that costs must still be determined by the Regional Court. Mr Stadler seized on this fact to submit that neither these two prior applications were as yet finally concluded, despite them being withdrawn. As such, they were still pending before the Regional Court until the costs were determined by

² *Victoria Ratepayers' Association v Greyvenouw CC and Others* (511/03) [2003] ZAECHC 19; [2004] 3 All SA 623 (SE) (11 April 2003) ('*Victoria Ratepayers*').

³ *Victoria Ratepayers* (above) at para [26] – [27]. See also *Protea Holdings Ltd v Wriwt and Another* at 868H.

⁴ See eg *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others* (35248/14) [2014] ZAGPPHC 400; [2014] 4 All SA 67 (GP) (19 June 2014): '[W]hen urgency is in issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course'.

⁵ *Victoria Ratepayers* (above) at para [27].

that court. As a result, so he concluded on this point, the previous contempt applications were still pending before the Regional Court so that this court is precluded from hearing and deciding the current application by virtue of the doctrine of *lis alibi pendens*. Mr Stadler referred me to no precedent for this application of *lis pendens*.

[17] I am not persuaded. The doctrine of *lis alibi pendens* is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions.⁶

[18] Although the two previous applications have neither as yet been fully concluded as the issue of costs must still be decided, it is clear that, with their withdrawal, the substantive 'dispute (lis) between the parties' (whether the respondent is in contempt and should be committed to prison) is no longer pending elsewhere. The applications having been withdrawn, the Regional Court can no longer pronounce on the contempt dispute, but only on costs. There is no danger that in deciding this application, this court will pronounce on an issue that the Regional Court may also still decide. This court is therefore free anew to consider and decide that dispute and is not precluded by *lis alibi pendens* from doing so.

[19] I am supported in this conclusion by the judgment in *RSA Faktors Bpk v Bloemfontein Township Developers (Edms) Bpk & Andere*⁷ that Mr Arnoldi referred me to during the hearing. It is so that this matter, decided in the Free State Division of this court, is not completely on all fours with the matter before me: in it, the previous application between the parties had similarly been withdrawn, but there with

⁶ Wallis JA in *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC 2013* ZASCA 129; 2013 (6) SA 499 (SCA).

⁷ *RSA Faktors Bpk v Bloemfontein Township Developers (Edms) Bpk & Andere* 1981 (2) SA 141 (O).

a tender of cost, although the costs had not yet been paid. The plea of *lis pendens* was raised there on the (somewhat startling) proposition that a matter remained live and pending even after it had been withdrawn with a tender of costs, until such time as the costs have in fact been paid.

[20] Nonetheless, Edeling AJ's (as he then was) explanation of why under those circumstances *lis alibi pendens* does not apply remains instructive: ' 'n Verweer van *lis pendens* berus op die bestaan van 'n hangende vorige geding en is inderdaad afhanklik van die werklike bestaan van sodanige ander geding. Opskorting weens wanbetaling van koste suggereer dat die vorige geding afgehandel is en dat slegs die koste nog betaal moet word.' ('A plea of *lis pendens* rests on the existence of a pending previous dispute and indeed depends on the actual existence of such other dispute. Suspension due to non-payment of costs suggests that the previous dispute has been concluded and that only costs still need to be paid').⁸ Likewise in the current circumstances, the two previous applications, having been withdrawn, no longer 'actually exist' despite that costs must still be determined. The contempt dispute before me can no longer be decided in the Regional Court. Accordingly, the respondent's plea of *lis alibi pendens* is dismissed.

Contempt

[21] To obtain the relief she seeks, the applicant must persuade me a) that the order that she claims the respondent is in contempt of indeed exists and is in force; b) that this order was served on the respondent so that he can be assumed to be aware of it; and c) that the respondent is not complying with the order. Should she establish that, it is then for the respondent to persuade me that his proven non-compliance with the order is neither wilful nor in bad faith.⁹

[22] As the respondent admits that the order currently still exists (in addition to other indications to this effect, he recently launched an application for its rescission, which is currently pending, and that act in itself amounts to an admission that the order exists and is in force); that he is aware of the order; and that he has not and is

⁸ *RSA Faktors* (above) at 145A.

⁹ *Phoko and Others v Ekurhuleni Metropolitan Municipality (No 2)* (CCT19/11) [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) (7 May 2015) at para [32].

not complying with it, the applicant discharges her onus without difficulty. It bears mentioning only that the extent of the respondent's admitted non-compliance is egregious – he has several times had contact with the minor children outside the scope of the order; he failed to pay any of the R150,000.00 toward the applicant's legal costs until the full amount was eventually attached; and he has failed substantially in paying maintenance for the applicant and two minor children as required (to the extent that 13 months after the Rule 58 order he is in arrears with R652,000.00).

[23] To persuade me that his non-compliance was neither wilful nor *mala fide*, the respondent had essentially one string to his bow: he alleged that his failure to pay maintenance and the amounts concerning legal costs was due to an inability to pay. In support of this allegation, Mr Stadler made several related submissions.

[24] First, he pointed to the respondent's allegations that the order should not have been granted in the first place, as he had on the day of the hearing appeared at court under the impression that the matter had become settled, only for the applicant to repudiate the purported verbal settlement arrived at the previous evening, shortly prior to the hearing and as his counsel and attorney failed to turn up for the hearing so that he was not represented before the Regional Court.

[25] Second, he reminded me of the respondent's allegations in opposing papers both before the Regional Court and before me that his income and access to his funds were such that he simply was unable to pay the amounts that the order required of him.

[26] Both these submissions face insurmountable hurdles on their own terms. The applicant disputes the respondent's version about the circumstances under which the Rule 58 order was granted. Her version is that there never was any settlement reached; that the respondent was aware of this; and that, although the respondent's counsel and attorney indeed failed to appear to represent him, the respondent's opposing sworn statement was before the magistrate and was considered by her.

[27] Concerning the respondent's alleged inability to pay, Mr Arnoldi pointed to the fact that the respondent, both in his sworn statement before the Regional Court and in his opposing affidavit in this court provided no corroboration in documentary or other form of this allegation, to persuade this court of his inability to pay. It would have been a simple matter of attaching at least bank statements (which are easy to obtain, also concerning the respondent's frozen account), as indeed the applicant did to show the impact of the respondent's non-compliance on the children and her.

[28] Mr Arnoldi further countered that the respondent had also in his opposing sworn statement before the Regional Court pleaded that he was unable to pay the amounts the applicant wished and was eventually afforded. At that stage he said that he was able to pay R24,000.00 per month toward maintenance, but subsequently he has paid far less than even that. This raises the question, to which the respondent had no answer, what the reason was for his failure to comply even to the limited extent relatively speaking that on his own version before the Regional Court he was financially capable of.¹⁰

[29] But the real hurdle the respondent faces is that the cogency or otherwise of these submissions on their own terms is neither here nor there in these proceedings. A court order properly issued remains in force and must be complied with until it is varied or set aside through the legal processes available to do so, irrespective of the prima facie cogency of disputes about its validity.¹¹ The respondent had and still has several avenues at his disposal through which to have the order of the Regional Court varied or set aside. Most clearly applicable in my view is a Rule 58(6) application to vary the terms of the maintenance order – this is an inexpensive and expeditious remedy that the respondent could have turned to months ago, were he able to show any changed circumstances in his financial position since the order was granted.

[30] The respondent could also much earlier than he eventually did have sought rescission of the Rule 58 order on grounds that it was handed down under

¹⁰ See concerning this *Bannatyne* (above) at para [32].

¹¹ *Municipal Manager OR Tambo District Municipality and Another v Ndabeni* (CCT 45/21) [2022] ZACC 3; [2022] 5 BLLR 393 (CC); (2022) 43 ILJ 1019 (CC); 2022 (10) BCLR 1254 (CC); 2023 (4) SA 421 (CC) (14 February 2022) at para [24].

circumstances in which a good faith defence at his disposal could not properly be advanced before the Regional Court as he was not represented. Instead of doing so at the first opportunity, the respondent waited until the urgent application before the Regional Court was launched in September 2025, simply failing to comply until then. He also provides no real explanation for the roughly 12 months that he simply failed to comply with the court order (while this was regularly brought to his attention by the applicant and her attorneys), not seeking to vary it or have it set aside.

[31] What the respondent can clearly not do is what he has in fact done: because he is dissatisfied with the Regional Court's order (for whatever of the reasons he advanced) simply not comply with that order. This was as true before he launched the rescission application as it is now after he has proceeded with it: while the Regional Court order is in force, however unhappy he may be with it, he must comply – or have it varied or rescinded.

[32] The respondent does not persuade me that his non-compliance was not wilful; in fact, it seems clear to me that it was. In this light I cannot but conclude that the respondent is indeed in contempt of the order of the Regional Court and should be declared such.

[33] In its notice of motion the applicant prayed for costs to be awarded against the respondent on an attorney client scale. Nothing was offered me during the hearing to motivate this heightened scale of costs. In this light I conclude that the respondent should pay the costs of the application, including the costs of counsel, but on the ordinary scale.

[34] Accordingly, I order as follows:

1. The non-compliance with the rules relating to times, and the manner of service referred to in terms of Rule 6(12) is condoned and the matter is dealt with as an urgent application.
2. The respondent is declared to be in contempt of the court order issued by the Tshwane Central Regional Court on 30 August 2024 by Magistrate L Pillay under case number GP/PTA/RC/0838/2024 (hereinafter the "Order").

3. The respondent is committed to prison for a period of ninety (90) days, which committal is suspended for a period of 1 year, on condition that he complies with the Order within three (3) ordinary days from the date of this order.
4. In the event that the respondent fails to comply with paragraph 3 of this order, the following shall apply:
 - 4.1. The Registrar of this Honourable Court is authorised to issue a warrant for the respondent's imprisonment.
 - 4.2. The respondent should submit himself to the South African Police Service at Boschkop Police Station or Pretoria Central Police Station within three (3) calendar days of the expiry of the period stipulated in paragraph 3, for the Station Commander or other officer(s) in charge of that Police Station to ensure that the respondent is immediately delivered to a correctional services centre to commence serving the sentence imposed in paragraph 3.
 - 4.3. In the event that the respondent does not submit himself to the South African Police Service as required by paragraph 4.2 above, members of the South African Police Service must, within three calendar days of the expiry of the period stipulated in paragraph 4.2, take all steps that are necessary and permissible in law to ensure that the respondent is delivered to a correctional services centre in order to commence serving the sentence imposed in paragraph 3.
5. The costs of application, including costs of counsel, must be paid by the respondent.

JFD BRAND
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 04 November 2025.

Appearances

Counsel for the Plaintiff:	F Arnoldi SC T Motha
Instructed by:	Maakamedi MR Attorneys
Counsel for the Defendant:	S Stadler
Instructed by:	Adams & Adams Attorneys
Date of the Hearing:	30 October 2025
Date of Judgment:	4 November 2025