



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED.

SIGNATURE

DATE: 21 November 2025

Case No. 2025-203538

In the matter between:

VM

Applicant

and

JM

Respondent

JUDGMENT

WILSON J:

- 1 On 13 November 2025, I gave orders in my urgent Family Court interdicting the respondent, JM, from executing a warrant of arrest he had obtained in the Springs Domestic Violence Court against the applicant, VM, pending VM's appeal against that order. I also struck from the roll JM's counter-application for relief compelling VM to give effect to a prior agreement to sell the parties'

matrimonial home, and I dismissed an application for leave to intervene brought by VM's former attorneys.

2 I gave my reasons for making these orders *ex tempore*. Shortly after the hearing, however, I was told that the recording machine in the courtroom I sat in to hear the case had failed while I was giving judgment, and that my full judgment *ex tempore* could not be retrieved. Accordingly, I informed the parties that my written reasons would be given as soon as this judgment could be produced. These are my reasons.

3 The parties were married in community of property on 30 August 2004. Their marriage ended on 18 April 2024, when the Regional Court at Springs issued a decree of divorce. The Regional Court's decree divided the marital estate and determined that the primary residence of the parties' three minor children would remain with VM at the erstwhile marital home. VM retained an option to purchase JM's share of that property, within three months, failing which the property would be placed on the open market. VM did not exercise her option to purchase JM's property within that time, but still hopes to do so, and is actively seeking finance to that end. She has not co-operated with JM to place the property on the open market.

4 VM's refusal to co-operate with the sale of the property led JM to obtain an order in the Regional Court authorising him to sell the property without JM's co-operation. VM sought to rescind that order. VM approached this court to stay the sale of the property pending the rescission application, but Fisher J struck her urgent application from the roll on 3 July 2025. Nevertheless, on 28

August 2025, VM's rescission application was successful, and the order authorising JM to sell the property without VM's co-operation was set aside.

5 Undeterred, JM then approached the Springs Domestic Violence Court for a final protection order, alleging, amongst other things, that VM's refusal to co-operate with the sale of the property constituted "economic abuse" within the meaning of the Domestic Violence Act 116 of 1998. Notwithstanding VM's opposition, on 16 October 2025, the Magistrate granted the order sought, and restrained VM from committing acts of "economic abuse" against JM. As is apparently usual in these cases, the Magistrate issued a warrant of arrest which could be executed if VM acted in breach of the order. The Magistrate did not give his reasons for making such a far-reaching order at the time he handed it down, but I was told during argument that those reasons were eventually provided at VM's request on 13 November 2025.

6 On 17 October 2025, JM's attorneys threatened to execute the warrant of arrest if VM "further delay[ed] the transfer" of the property to a purchaser JM had apparently identified. It was this threat that animated the application which came before me on 13 November 2025.

7 That application sought to suspend the protection order pending appeal, but there at least two reasons why that relief could not be granted. The first was that there was no notice of appeal filed against the order, since VM had elected not to file such a notice until the Magistrate had given his reasons. The second problem was that the notice, even if filed, would not have entitled me to suspend the final protection order, since section 6 (7) (b) of the Domestic Violence Act provides that an appeal does not on its own suspend the

operation of a final protection order. Since a final protection order is to be treated as an order of the Magistrates' Court that issued it, the proper course would have been to approach the Magistrate to suspend the order under section 78 of the Magistrates' Court Act 32 of 1944.

- 8 Nevertheless, on the material presented to me at the time I made my order, I was driven to the conclusion that final protection order probably did not authorise JM to have VM arrested merely because she would not co-operate with the sale of the property. It is not clear on the face of the order whether VM's conduct amounted to "economic abuse" within the scope of the Domestic Violence Act. If the Magistrate thought so, there was no material before me explaining why he had reached that conclusion.
- 9 On the face of things, one party's failure to abide by a settlement agreement reached in divorce proceedings governing the sale of the matrimonial home does not amount to economic abuse under the Act. Economic abuse is the deprivation of financial resources to which a complainant is entitled under law or requires out of necessity; the disposal of household property or other property in which the complainant has an interest without the complainant's permission; the use of the complainant's financial resources without permission; or coercing a complainant to relinquish control over their assets or income.
- 10 None of this language grafts easily onto the facts of this case. Perhaps, purely at a textual level, VM's failure to co-operate with the sale of the matrimonial home might be cast as the deprivation of financial resources to which JM is entitled, but I think that this risks stretching the Act significantly beyond its

purposes. Read as a whole, the Act is meant to provide a complaint with immediate relief from coercive or abusive behaviour. It is not meant to provide process-in-aid of execution of a decree of divorce, especially since it is open to JM to execute the decree of divorce in the usual way, by means of civil contempt proceedings if need be.

11 I was also concerned that no consideration appears to have been given to the effect of executing the warrant of arrest on the minor children living with VM at the former marital home. In *S v M* 2008 (3) SA 232 (CC), the Constitutional Court required that careful and sensitive regard be given to the impact the imprisonment of a primary caregiver would have on her minor children. I do not think that the considerations can be much different when deciding whether or not to authorise the arrest of a primary caregiver for domestic violence.

12 It was chiefly for these reasons that I decided to restrain the execution of the warrant of arrest – at least for the purposes of compelling VM to co-operate with the sale of the house – pending the prosecution of any appeal against the final protection order. My order provides for that restraint to lapse if an appeal is not prosecuted within one month. In the appeal, if it proceeds, the proper scope of the order, the statute that underlies it, and the appropriate weight to be attached to the fact that VM cares for three of the parties' minor children, can be considered at length. For now, the difficulties I have expressed with the Magistrate's order seems to me to provide VM with at least a *prima facie* right not be to arrested as a domestic abuser for failing to co-operate with the sale of the matrimonial home, at least until the appeal is determined.

- 13 JM brought a counter-application to compel VM to co-operate with the sale. There was no urgency in that application, which I struck from the roll. In any event, JM has his ordinary civil remedies. He can execute the decree of divorce in the usual way at any time. In my view, at least *prima facie*, it is in civil contempt proceedings that the meaning of the decree can be ascertained, and any disobedience of it can be addressed. Domestic violence proceedings are, in my view, unfit for that purpose.
- 14 It remains finally to deal with an application for leave to intervene brought by VM's erstwhile attorneys. The basis of that application appears to be that, in his answering affidavit, JM made allegations to the effect that VM's attorney had forged, or co-operated with an effort to forge, a Regional Court order restraining the sale of the property. Neither the details of the allegation nor their accuracy really matter, since it is trite that mere mention of a person in legal proceedings does not give that person standing to intervene in them. Only a direct and substantial interest in the relief sought could do that. VM's former attorneys plainly have no such interest.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 21 November 2025.

HEARD ON: 13 November 2025

DECIDED ON: 21 November 2025

For the Applicant:

MPT Maluleke
Instructed by Sibuyi Attorneys

For the Respondent:

Y Omar
Instructed by Omar Attorneys

For the applicant for
leave to intervene:

K Gobinca
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