

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2025 - 011390

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

26/11/2025

DATE

MOKOSE SNI

In the matter between:

ITHABELENG VERONICA MOFULA

Applicant

and

ITUMELENG VICTOR TLALI

Respondent

JUDGMENT

MOKOSE J

[1] Before this court is an application for contempt of court wherein the applicant seeks an order, *inter alia*, that the respondent is declared in contempt of the order of court order granted by this court by Millar J on 4 August 2025. The respondent opposes the application.

[2] The facts are briefly as follows: On 4 August 2025, pursuant to an application in terms of Rule 43, the court ordered, *inter alia*, that the applicant shall have reasonable contact with her minor children, Bohlale Tlali and Bohlokoa Tlali including the right to have daily telephonic contact with them at all reasonable times. Furthermore, the court ordered the respondent to contribute an amount of R60 000,00 paid in instalments for a period of five months in respect of legal costs.

[3] The applicant avers that the respondent has failed to comply with the order in its totality. In particular, he has paid only the sum of R12 000,00 in respect of the legal costs and has failed to pay any other amount. Furthermore, he has denied the applicant the right to communicate with her minor children insisting that all communication be effected through his legal representative and the nanny. Accordingly, he is in contempt of the order granted by Millar J on 4 August 2025.

[4] The respondent denies that he is in contempt of the court order. He avers that the court order allows him to pay the R60 000,00 in respect of legal fees within 5 months. Furthermore, he has taken steps to cure the alleged contempt by purchasing a phone to which the applicant can call to communicate with the minor children.

[5] All citizens and residents of the Republic of South Africa have a duty to respect and abide by the laws of the country. In the matter of *Secretary of the Judicial Service Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others*¹ it was held that 'courts unlike other arms of State.....rely solely on the trust and confidence of the people to carry out their constitutionally mandated function which is to uphold, protect and apply the law without fear or favour. Disregard of court orders is an attack on the very fabric of the rule of law.'

[6] The requirements for contempt of court are trite. They are the existence of a court order; the contemnor must have knowledge of the court order; there must be non-compliance with the court order; and the non-compliance must have been wilful and *mala fides*. Once the first three elements have been shown, wilfulness and *mala fides* will be presumed, and the evidentiary burden shifts to the

¹ 2021 (5) SA 327 (CC) at para 1

contemnor. Should the contemnor (the respondent) fail to discharge this burden, contempt would have been established.

[7] There is no dispute on the existence of the order granted by Millar J on 4 August 2025. The respondent admits knowledge of the Court order which was by agreement. The respondent denies non-compliance with the said order.

[8] The respondent denies non-compliance with paragraph 5 of the order. In argument, the respondent contends that he is obliged to pay the full amount of R60 000,00 within 5 months and not that it must be paid monthly. He has to date paid the sum of R12 000,00.

[9] One may not unilaterally re-interpret, vary or suspend a court order. In the case of *Matjhabeng Local Municipality v Eskom Holdings Limited*² held that substituting one's own view of an order for the court's order is in itself contemptuous.

[10] Paragraph 5 of the order reads as follows:

"That the Respondent is to contribute an amount totalling R60 000,00 (Sixty Eight Thousand)(sic) paid in instalments for a period of 5 (five) months, as Legal Costs for the matrimonial matter."

[11] A proper reading of the clause suggests that the sum of R60 000,00 must be paid in instalments for a period of 5 months. This cannot suggest that for a 5-month period the respondent need not make any payment towards the amount and make a final payment of R60 000,00 on the expiry of the 5-month period. For that reason, I am of the view that the respondent's non-compliance and his interpretation of the clause is in itself contemptuous.

[12] The applicant further contends that the respondent is in contempt of para 1.4 of the order. It reads as follows:

² 2018 (1) SA 1 (CC) at para 53 to 55

"1. The Applicant shall have reasonable contact with the minor children (Bohlale Tlali and Bohlokoa Tlali) pendente lite which shall include the following terms:

1.1

1.2

1.3

1.4 The right to have daily telephonic contact with the children at all reasonable times."

[13] The applicant avers that the respondent has intermittently blocked the communication platforms such as WhatsApp thereby obstructing her from exercising her rights of contact of the minor children. He has furthermore directed the applicant to communicate with the children through the nanny's cellular phone. This is denied by the respondent.

[14] As stated above, once the three elements have been proved, the burden shifts to the respondent who needs to give evidence to the effect that there was no wilfulness and *mala fides* on his part. The respondent merely denies his failure to pay the legal fees in five monthly instalments. He also denies that he has obstructed the applicant in communicating with the minor children as ordered by the court. By refusing meaningful communication between the applicant and the minor children, the respondent has unilaterally modified the terms of the court order which amounts to contempt.

[15] The applicant further seeks punitive costs against the respondent. The applicant contends that the respondent's conduct and persistent disregard for the court order as well as the calculated obstruction in the communication between her and the minor children warrant that such order be granted.

[16] The normal rule pertaining to an award of costs is that costs should follow the result. The court may, in certain circumstances award punitive costs to show its displeasure for the way the litigation was conducted. Punitive costs are appropriate where a litigant acts in bad faith, abuses the

litigation process or causes delays, conduct which is inconsistent with the standards expected in litigation.³

[17] In the matter on hand, there is no reason why an order for costs on a punitive scale should not be granted. The respondent has blatantly failed to comply with a court order. There is no plausible reason why such court order, which had been granted by agreement between the parties, should not have been complied with. In view of the conduct of the respondent in the proceedings as well as his failure to show that there had been no wilfulness and *mala fides* on his part, an order for punitive costs is appropriate in the circumstances.

[18] In view of the evidence before this court, I have no option but to grant the order as prayed. Accordingly, the following order is granted:

1. The respondent is declared to be in contempt of the Court Order granted by Millar J on 4 August 2025.
2. The respondent is ordered to comply with the said order immediately upon the granting of this order.
3. In the event that the respondent fails to comply with paragraph 3 of the said order, he shall be committed to prison for a period of six months.
4. The respondent shall pay the costs of this application on a scale as between attorney and client as per scale C of the amended Uniform Rule 69.7 of the Uniform Rules of Court.




SNI MOKOSE J

Judge of the High Court of
South Africa Gauteng
Division, PRETORIA

For the Applicant: Adv BJ Maboea

On instructions of: Ipeleng Motshegoa Attorneys

³ Public Protector v South African Reserve Bank 2019 (6) SA 253 (CC) at paras 219 to 221

For the Respondent: Mr TE Ramalekana

On instructions of: Ramalekana Inc

Date of hearing: 25 November 2025

Date of judgment: 26 November 2025