



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION: PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
(3) REVISED	
13 November 2025	
DATE	
	SIGNATURE

Date: 13 November 2025

Case number: 193887/2025

In the matter between:

F F M

APPLICANT

And

L N M

RESPONDENT

JUDGMENT

MINNAAR AJ.

[1] The parties were married to each other. From their marriage, two children were born: OTM, born on 20 March 2009, and KNM, born on 20 April 2011. Relevant to this is KNM's enrollment and attendance as a pupil at Curro The Blyde, an independent school ('the school').

[2] On 6 May 2016, the Regional Court of Pretoria dissolved the marriage ('the divorce order'). Incorporated in the divorce order was a settlement agreement ('the settlement agreement').

[3] In terms of the settlement agreement, the primary residence of the children will vest in the applicant, who will have the discretion to decide on a suitable childcare centre and/or school for the children.

[4] Clause 3 of the settlement agreement deals with the maintenance of the children and provides:

"3.1 The parties acknowledge that they are equally responsible for the maintenance, medical care, education, sporting activities and upbringing of their minor child but specifically agree that the Defendant (the respondent herein) will:

3.1.1 Pay to the Plaintiff (the applicant herein) R1000.00 (One Thousand Rand) per month for each child, and such amount shall be subjected to adjustment depending on the needs of each child on any given time;

3.1.2 Contribute R3000.00 (Three Thousand Rand) towards winter in respect of each child which same shall be used to buy winter clothes;

3.1.3 Also contribute R3000.00 (Three Thousand Rand) towards summer in respect of each child which same shall be used to buy summer clothes;

3.1.4 ... “

[5] The applicant approached the urgent court, seeking the following relief:

- a. That it be declared that the respondent is in contempt of Court by failing to comply with the provisions of the settlement agreement fully.
- b. That the respondent immediately settle the outstanding school fees in the total amount of R79 615.39 by virtue of the failed payment by the respondent.
- c. Should the respondent fail to comply with the payment of the R79 615.39, the respondent shall be sentenced to 60 days imprisonment or be sentenced in such manner as the Court may deem just as a consequence of the respondent's conduct.
- d. Costs in the event of opposition.
- e. Further and/or alternative relief.

[6] The urgency is premised on the allegation that, because of outstanding school fees, the school has turned KNM away and refused him access to attend school. In this regard, the applicant states in her founding affidavit:

“6.4 On 13 October 2025, when the schools re-opened, the child was turned away from school due to outstanding school fees.

6.5 On 14 October 2025, I contacted the school and tried to plead with them to allow the child to return to school, however, I was informed that the child would only be allowed to return to school

once the outstanding school fees has been settled.

6.6 *On 15 October 2025, I received a letter from Curro the Blyde requesting settlement of the outstanding school fees. The said letter is attached and marked as Annexure “FFM3” (‘the school letter’).”*

[7] I pause to note that the applicant failed to provide details regarding the name and position of the person at the school who allegedly turned KNM away and with whom she liaised to allow KNM to return to school.

[8] The school letter refers to the contractual agreement between the school and the applicant. The relevant portions of the school letter read:

*“4. Curro cannot **indefinitely** provide a service to learners without regular and timeous payments.*

5. Please settle the outstanding arrears by 31 October 2025 to avoid any further actions regarding the Learner Admission Contract.

*6. **Our actions in case of continued contract breach may include –***

6.1 Termination of the enrolment of your child in the school on 31 December 2025;

6.2 Being listed with an adverse default for non-payment on various Credit Bureaus;

6.3 Further debt recovery processes including legal action.

We trust that we can resolve this matter amicably and continue to provide a world class education to your child. Please do not hesitate to contact the executive head or the school bursar should you have

any questions in this regard.” (my emphasis)

[9] The applicant’s understanding that, in terms of the school letter, KNM has been turned away or that KNM is barred from attending school is misplaced. The school letter does not indicate in any manner that KNM is not allowed to complete the 2025 academic year. Upon a proper reading of the school letter, the intention is clear: pay the arrears of school fees to ensure that KNM is eligible for enrollment in the 2026 academic year.

[10] The approach adopted by the school is clearly in line with the best interests of KNM, as envisaged in Section 28(2) of the Constitution. The school letter further does not infringe on KNM’s right to education as provided for in section 29(1) of the Constitution.

[11] If, in fact, the school did turn KNM away as alleged, this court finds it curious that the applicant did not join the school to these proceedings or bring an application to assert KNM’s rights in terms of section 28(2) and 29(1) of the Constitution.

[12] The applicant’s counsel submitted that the court has wide-ranging powers to include any appropriate relief under the ‘further and/or alternative’ prayer. Without the school being joined to these proceedings, this approach is flawed, as the court cannot make an order against a party that is not a party to the proceedings. At best,

the court expects the applicant to approach the school as a matter of urgency to ensure that KNM is attending the remainder of the 2025 academic year.

[13] The applicant's main complaint is that the respondent is not contributing towards the educational costs of KNM. In this regard, the applicant states in paragraph 6.3 of her founding affidavit:

" ... the Respondent has failed/and or neglected to contribute towards the child's school fees including school related expenses from the time the child started grade one (1) in the year 2018 to date."

[14] It appears that the applicant is using the alleged refusal to grant KNM access to the school as a means to compel the respondent to pay educational maintenance, which the applicant claims is due.

[15] The respondent's stance is that he has been making payments, and he provided proof of such payments. According to the respondent, his understanding of clause 3.1 of the settlement agreement is that he is only obliged to pay R1 000.00 per month towards the maintenance of KNM, and this amount would include education expenses.

[16] It is further the case of the respondent that the applicant has elected to place KNM in an independent school and, as such, that the respondent cannot be held liable for the costs occasioned by the attendance at such a school.

[17] There appears to be a dispute between the parties regarding the interpretation of Clause 3.1 of the settlement agreement. According to the applicant's own account, this dispute has been ongoing since 2018, as the respondent has never made any contribution towards the educational expenses.

[18] On the respondent's alleged contempt of the court order: It is for the applicant to shed the onus on the requisites of contempt (the existence of the order, knowledge of the order by the alleged contemnor, non-compliance with the order, and that the non-compliance is, beyond a reasonable doubt, wilful and *mala fide*). Once the applicant has proved the requisites, the respondent bears an evidential burden concerning wilfulness and *mala fides*.¹

[19] Based on the payments the respondent is making and the differing views on the interpretation of clause 3.1 of the settlement agreement, this court is not convinced that the respondent is in contempt of the order.

[20] Any urgency that might have been there regarding any alleged contempt disappears if regard is had to the alleged non-payment since 2018. No explanation is provided for why the applicant did not enforce her rights at an earlier stage. This court is mindful of its inherent

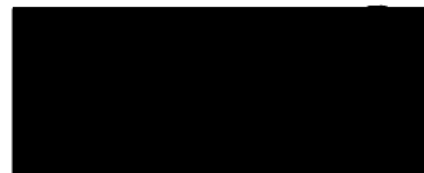
¹ *Fakie NO v CCH Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at par 42

jurisdiction. The proper manner would have been to approach the Regional Court in accordance with Section 106 of the Magistrates' Court Act 32 of 1944.²

[21] Regarding costs, the application concerns the minor child of the parties, and therefore, no order will be made regarding costs.

Consequently, I make the following order:

1. The application is dismissed.



Minnaar AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Heard on	: 5 November 2025
For the applicant	: Adv N Sibeko
Instructed by	: Lekhu Pilson Attorneys
For the respondent	: Mr N V Masemola
Instructed by	: N V Masemola Attorneys Inc.
Date of judgment	: 13 November 2025

² *DS v RM* 2015 (3) SA 424 (WCC) at 430C