

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 57719/2021

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE 10 December 2025

SIGNATURE

In the matter between:

M[...] A C[...]

Applicant

And

C[...] p R[...]

Respondent

JUDGMENT

Mahomed J

BACKGROUND

The applicant in the main application seeks an order for contempt of court, the respondent has allegedly failed to pay over maintenance for the minor children. In July 2009, the Central Divorce Court granted a decree of divorce which incorporated a settlement agreement.¹, was granted by the Central Divorce Court in July 2009.

THE ISSUE

¹ CL 003-1 to 003-9

- [1] The respondent raised a point in limine, regarding this court's jurisdiction to hear the contempt proceedings. The parties agreed to separate the issue, I was to determine the point in limine. The remaining issues are to be postponed sine die for determination later.

Submissions

- [2] Georgiou SC on behalf of the respondent submitted that this court does not have the jurisdiction to hear the application and argued that the applicant should have instituted the application for contempt of court in the Regional Magistrates' Court in terms of s 106 of the Magistrates Court Act 32 of 1944 (:the Act").

- [3] Section 106 provides:

“ any persons wilfully disobeying, or refusing to comply with any judgment or order of a court with a notice lawfully endorsed on summons ... shall be guilty of contempt of court and shall upon conviction be liable to a fine, or to imprisonment for a period not exceeding six months or to such period without the option of a fine.”

- [4] It was argued for the respondent, that the court which granted the order is the court which should determine the issue of the contempt application. Furthermore, the respondent argued that the applicant fails to set out why this court should hear this application and why it should enforce the order of another court.

- [5] Advocate C Bezuidenhout for the applicant, submitted that the High Court enjoys inherent jurisdiction, it is the appropriate forum for her client to have launched her application, she can elect which court to approach. Furthermore, counsel submitted that the applicant seeks declaratory relief and the Magistrates' court does not have jurisdiction to grant such relief. It was contended that the applicant seeks a civil order for contempt, the Magistrates' Court grants only a criminal order for contempt.

[6] Counsel for the respondent relied on the judgment in *Dreyer v Wiebols and Others*, where Crippin J stated that²:

“ the proceedings for committal for contempt of court ought to be brought in the court that made the order which the respondent is alleged to have disobeyed. When a high court entertains an application in civil proceedings for committal for contempt of court, it does so of its inherent jurisdiction to ensure that orders are complied with. Process in aid is a remedy by means whereof a court enforces the judgment of another court which cannot be effectively enforced through that court’s own process and is also a means whereby a court secures compliance with its own procedure. ... it is a discretionary remedy which will not ordinarily be granted for the enforcement of a judgment of another court if there are effective remedies in that other court which can be used.” (own emphasis)

[7] Ms Georgiou referred to the full bench decision in *MC v MJ*³, where the court set aside an order for civil contempt granted by the court a quo, and held that a High Court will make an order in terms of its inherent jurisdiction only in exceptional circumstances. This is a discretionary power which the High Court holds, orders will be granted if good and sufficient reason is given to enforce the order of another court.

[8] The applicant in *casu* contended that she required the committal order, but as in a civil contempt order, and that imprisonment would be a last resort, counsel submitted that s106 of the Magistrates’ Court Act provides only for committal in the criminal sense.

[9] The applicant has not demonstrated as enunciated in *Bannatyne*,⁴ where the SCA clarified, that there must exist “*the good cause and sufficient reason for the high court to enforce the judgment of another court.*”

² 2013 (4) SA 498 (GSJ) para 9

³

⁴ 2003 (2) SA 363 (CC) (2003)(2) BCLR 111 para 20.

[10] Ms Bezuidenhout further argued that the respondent consented to jurisdiction of the High Court when he obtained an order setting aside a writ of execution⁵ granted to her client. However, Ms Georgiou disagreed and submitted that in fact the applicant approached the High Court for a warrant of execution and her client was forced to approach the High court at the time to set it aside. Counsel reiterated that the respondent did not consent to this court's jurisdiction and prayer 2 of that order cannot be read to mean that he consented to the High Court's jurisdiction. Ms Bezuidenhout submitted that her client has an election on which court to approach and she has chosen the High Court as the civil order for committal serves as a deterrent, it will not serve her client to have the respondent imprisoned, she requires him to pay over her children's maintenance.

ANALYSIS AND JUDGMENT

- [11] I find no reason to deviate from the judgments which I was referred to.
- [12] The applicant (in the main application) offered no good and sufficient reasons why the Magistrate's Court is ineffective and the order cannot be enforced. In my view the applicant's holding an election is not the factor to focus on.
- [13] The applicant must present the court with good and sufficient reasons why the High Court is to enforce the order granted by another court. The applicant fails to present any good reasons why the Magistrates Court is not suitable to enforce its own order.
- [14] Furthermore, the application for declaratory relief is not supported, nothing was before me as to the purpose or need for this order. In the Dreyer judgment I noted that Coppin J dismissed an application notwithstanding the declaratory relief sought. I noted the approach adopted by Coppin J has been followed and I am also bound by the approach by the Full Bench on this point of jurisdiction.

⁵ CL 003-10 at para 2

[15] Accordingly, the point in limine is upheld.

I make the following order:

1. The issue regarding the court's jurisdiction is separated.
2. The point in limine is upheld
3. The applicant's application is dismissed with costs on scale C.

**S MAHOMED
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHANNESBURG**

Date of Hearing: 27 August 2025
Date of Judgment: 10 December 2025

Appearances:

For Applicant (in main application)	Adv Bezuidenhout Instructed by: Paterson Attorneys Email: kate@patersonattorneys.co.za
For Respondent (in main application)	Adv S Georgiou Instructed by: Christopher Bean Attorneys Email: beanpole@global.co.za