

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

CASE NO: 2025 - 211382

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE

MOKOSE SNI

In the matter between:

N[...] L[...] C[...]

Applicant

and

M[...] N[...] C[...]

Respondent

JUDGMENT

MOKOSE J

[1] The applicant approaches this court on an urgent basis, seeking an order that the respondent be declared to be in contempt of a divorce order granted in the Regional Court sitting at Pretoria on 10 April 2024. Furthermore, she seeks an order that the respondent's contact rights in respect of their minor daughter be suspended pending the outcome of an investigation by the Office of the Family Court and that any contact between the respondent and the minor child be exercised under supervision of a social worker. The applicant also seeks an order that the minor child commence therapy.

[2] The respondent denies that he is contempt of the court order and seeks an order that the penal relief sought be denied and that the court denies the order sought for interim supervision of contact rights. In the alternative, the respondent seeks an expedited Family Court investigation while maintaining the existing contact regime.

[3] The parties were divorced on 5 April 2024 in the Regional Court sitting at Pretoria. A settlement agreement was concluded by the parties and incorporated into the divorce order. The settlement agreement dealt with the parties' patrimonial arrangements as well as the minor child's care and contact rights and maintenance. In particular, the settlement agreement granted the primary residence to the applicant and rights of contact were granted to the respondent wherein the respondent would spend alternative weeks commencing on Friday at 16h00 to Sunday 17h00 with the minor child. The settlement agreement further granted the respondent the right to spend 7 (seven) days during December with the Respondent and that the December holidays be arranged in such a way that the minor child spends every second December with the other party. The settlement agreement also authorised the parties to deviate from such order pertaining to the contact rights as they saw fit to assist one another.

[4] Initially, the respondent exercised bi-weekly contact rights in respect of the minor child. However, the parties agreed to the minor child spending one evening sleepover with the respondent in a weekend. The applicant contends that this has become the norm due to the insistence of the respondent who has a domineering and aggressive personality despite her reservations.

[5] The applicant contends that despite an arrangement having been made as stated above, she started having concerns over the safety of the minor child in the respondent's care for a whole weekend. These concerns were born from allegations of the respondent having a propensity to frequently abuse alcohol and spending most weekends at friends' houses without proper attention being given to the best interests of the minor child. Furthermore, she contends that the respondent punishes her by treating the minor child poorly.

[6] She contends that she discussed her concerns with the respondent on various occasions and the practicality of weekly over-night visits and suggested that they revert to the bi-weekly arrangement however, this resulted in the respondent arriving at her home without notice to collect the minor child.

[7] The applicant described certain incidents that the respondent had been involved in including road-rage incidents, driving recklessly even in a game reserve with the minor on his lap. She also described an incident where he would give the minor child a hiding from not falling asleep as quickly as he would have wanted. Overall, his behaviour had become more aggressive not only with her but with the minor child. The applicant is of the view that such behaviour is concerning and has influenced the minor child's behaviour. In particular, she has been in altercations of a physical nature at school. Furthermore, the minor child has recently found pleasuring herself in front of the television, which actions must be considered with other incidents such as finding the respondent masturbating in the garage, meters away from the minor child whilst watching pornography.

[8] The applicant further contends that she is constantly threatened with arrest by members of the South African Police Services for being in contempt of a court order, which allegations of contempt are untruthful. The applicant is of the view that the respondent relishes in the idea of her arrest without considering the impact of such an action if it were to occur.

[9] The respondent contends that the application lacks urgency and that in any event, the applicant has failed to make out a case for the relief sought. He contends that her papers are devoid of the necessary primary facts and consist of bald averments which are nothing more than characterisation of the respondent and her own conclusions which allegations do not constitute evidence.

[10] I will determine firstly whether the matter is urgent in the circumstances. The court is obliged in its determination of urgency to interrogate the allegations of the parties in the papers and decide whether the matter should be heard on an urgent basis. In terms of Rule 6(12)(b) of the Uniform Rules of Court a party seeking urgent

relief must set out explicitly in his affidavit, the circumstances which render the matter urgent with full and proper particularity and must also set out the reason why he or she would not be afforded redress at a later date.

[11] The applicant avers that she will not get redress in due course should this court not hear the matter on an urgent basis. The respondent's behaviour is getting more aggressive so too are the untruthful allegations made to the South African Police Services and that he will do anything to have her arrested. She further avers that the minor child is being exposed on a regular basis to similar aggression and the unbecoming behaviour of the respondent as well as the age-inappropriate behaviour around the minor child.

[12] I have considered the allegations and counter-allegations by both parties and am of the view that the matter is sufficiently urgent for it to be given the required attention. Matters pertaining to minor children are inherently urgent and must be treated with the necessary urgency that they deserve.

[13] Secondly, I will deal with the relief that has been sought, and which seems not to be in contention between the parties. That is the order sought that the minor child commence play therapy within 3 days of the granting of the order and that the respondent be ordered to pay for such therapy. It seems that the respondent is not averse to such an order and says in his answering affidavit that he denies that he has refused play therapy for the minor child. Furthermore, an email was sent to the applicant's attorneys of record confirming his support of such therapy however, he requested that he be involved in the decision thereof. Accordingly, the relief sought is granted pertaining to the therapy.

[14] The applicant further seeks an order that the respondent be declared in contempt of the order granted by the Regional Court sitting at Pretoria on 10 April 2024. The applicant contends that in terms of Clause 3 of the settlement agreement, the respondent was ordered to purchase her half share of the immovable property for an amount of R300 000,00. The respondent was further ordered to see to the arrangements of releasing the applicant from the operation of the bond and transfer the property into his name. The applicant further contends that to date, the

respondent has not executed the order pertaining to the transfer of the property and has also not paid the total amount due to her, there being an amount of R90 000,00 outstanding. Furthermore, the applicant contends that the respondent failed to pay maintenance for two months amounting to the sum of R17 000,00 in respect of maintenance for February and March 2025.

[15] The respondent admits that the transfer of the property to his name has not been finalised and avers that what is outstanding in respect thereof is the building plans which the applicant is obliged to pay a share thereof as she was a half-share owner in the property and that these were costs to be borne by all owners of the property. Furthermore, and in respect of the maintenance, he denies that he is in arrears as alleged and explains that the maintenance being pursued by the applicant is in respect of December 2024 and January 2025 when the parties were attempting to reconcile and lived with him in the former matrimonial home. At such time he covered all expenses pertaining to the minor child.

[16] 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.'

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

¹ 2021 (5) SA 327 (CC) at para 1

[18] The parties are *ad idem* that the order was indeed granted by the Magistrate. The respondent admits knowledge of the Court order, and there is clearly a partial compliance of the court order in that he has failed to pay the balance of the amount of R90 000,00 and also that he has not taken transfer of the immovable property. This is not in dispute between the parties.

[19] The settlement agreement signed by the parties states that the respondent (plaintiff in those proceedings) will be responsible for all transfer and bond cancellation cost (*sic*) to transfer the half portion of the applicant (defendant in those proceedings) to the respondent. The respondent contends that the costs of the building plans should also be borne by the applicant and it is for this reason that he has failed to furnish the balance of the amount due to the applicant. He explains that he has been unable to transfer the property for the same reason. There is no suggestion of a contribution on the part of the applicant for the building costs in the settlement agreement. Furthermore, the parties were aware of the issue pertaining to the building plans long before the settlement agreement was signed. If the parties had intended that the applicant contributes to the building plans, surely it would have been inserted as a condition in the settlement agreement. One may not unilaterally re-interpret, vary or suspend a court order. In the case of *Matjhabeng Local Municipality v Eskom Holdings Limited*² it was held that substituting one's own view of an order for the court's order is in itself contemptuous.

[20] I have also considered the answering affidavit pertaining to the issue of maintenance and am of the view that the respondent has failed to pay maintenance as alleged. No proof of payment of the amount was furnished to the court, furthermore, no proof of an agreement of set-off of the amount had been agreed to by the parties. Accordingly, I am of the view that that the respondent's non-compliance and his interpretation of the clause in the settlement agreement is in itself contemptuous.

² 2018 (1) SA 1 (CC) at para 53 to 55

[21] The applicant further seeks an order from the court that the respondent's contact rights be suspended pending the outcome of the Family Advocate's report and a report back to this court. The applicant furthermore seeks an order that the respondent be entitled to contact with the minor child under the supervision of a registered social worker, the cost of which should be borne by the respondent himself.

[22] As state above, the applicant described events which led her to believe that it is not in the best interests of the minor child that the respondent exercises his rights of contact without the supervision of a registered social worker. The respondent denies this and contends that the applicant discloses no proper basis on which to suspend or subject his contact rights to supervision. He contends further that a substantial portion of the founding affidavit consists of historical events some of which are not corroborated. These include allegations such as those of leaving the minor child unattended in a bath. As proof of his relationship with the minor child, evidence was also furnished to the court of a loving relationship between the respondent and the minor child.

[23] The incidents must be looked at in totality. However, these incidents are at the very least disconcerting especially where some allegations were not denied such as the allegation that he watched pornography in a room where the minor child could easily have accessed. But the best interests of the minor child need to be re-visited and re-assessed by this court. I am of the view that it is also not in the minor child's best interests that contact between them should immediately cease however, an assessment needs to be done in view of the allegations before this court. It is also in the applicant's belief that the minor child should have a relationship with her father however, an assessment should be done.

[24] The applicant has suggested to the court that Ms Jana van Jaarsveld, an educational psychologist, be appointed to do the assessment of the best interests of the minor child which could be done on an urgent basis, thus furnishing the court with a report. There was no opposition by the respondent to that suggestion and accordingly, an order to that effect will be made.

[25] In light of the allegations before this court and the order sought pertaining to the contact of the minor child by the respondent in the interim period, I am of the view that the incidents alleged give rise for concern. Accordingly, the contact rights of the respondent every second Saturday and Sunday be exercised under supervision of a social work, the costs of which must be borne by the respondent. However, an order is made further that there must be daily telephonic contact with the minor child between the hours of 19H00 and 20H00.

[26] In terms of Clause 4.4 of the settlement agreement, the parties agreed that the minor child shall spend 7 days during the December holiday with the respondent. In view of the concerns raised by the court, the minor child shall continue to spend the 7 days with the respondent, albeit under the supervision of a social worker and between the hours of 09H00 and 17H00.

[27] The applicant further seeks an order for costs of the application including the costs occasioned by the postponement of the matter on 19 November 2025. The respondent contends that he was ready to proceed on the said date and that, accordingly, should not be mulcted with the costs of that day.

[28] The general rule pertaining to costs is that the successful party should be awarded costs. This rule should not be departed from unless there are good reasons for doing so.

[29] The matter was to be heard on 19 November 2025 however, counsel for the applicant was busy with another matter before another judge in the morning when we were ready to proceed. He appeared in court later that day when counsel for the respondent intimated that the replying affidavit had been filed late resulting in them not having had enough time to consider its contents. Furthermore, Advocate May, on behalf of the respondent sought consent from the court to file a further affidavit which he had prepared in support of the impending hearing. This consent was granted with consent for a further affidavit being filed by the applicant if so sought. The applicant also filed a further affidavit in response to the response to the replying affidavit. This resulted in the matter being postponed to 26 November 2025.

[30] In view of the fact that the parties were not ready to proceed on 19 November and further requested an opportunity to file further papers, I am of the view that each party bears its own costs for the appearance on 19 November 2025.

[31] Accordingly, the order granted is as follows:

1. That this application be heard as an urgent application in accordance with the provisions of Rule 6(12) of the Uniform Rules of Court and that the requirements pertaining to service and time periods be dispensed with.
2. The minor child shall commence with play therapy within 3 days of the granting of this order which costs shall be borne by the respondent.
3. That the respondent is in contempt of the order granted by the Regional Court sitting at Pretoria of 10 August 2024 in respect of paragraphs 3 and 5.
4. The respondent is ordered to comply with the said order within 60 days of the granting of this order failing which he shall be committed to imprisonment for a period of 60 days.
5. The respondent shall pay the sum of R90 000,00 to the applicant being the amount outstanding in terms of the settlement agreement as per paragraph 4 of the order above.
6. Ms Jana van Jaarsveld is appointed to prepare a report in the best interest of the minor child, which report shall be filed by 7 February 2026. The costs of such report to be borne by the respondent.
7. Pending the finalisation of the report, the respondent shall be entitled to the following contact with the minor child:
 - 7.1 Daily telephonic contact with the minor child between the hours of 19H00 and 20H00;
 - 7.2 Contact on alternative Saturdays and Sundays from 09H00 to 17H00 under the supervision of an independent social worker, the costs of which are to be borne by the respondent;
 - 7.3 Holiday contact with the minor child for a week during December 2025 which contact is to be exercised under the supervision of an independent social worker between the hours of 09H00 and 17H00 each day, the costs of which are to be borne by the respondent.
8. Each party to bear its own costs for 19 November 2025.

9. The respondent is to bear the costs of the application on a party and party scale.

SNI MOKOSE J
Judge of the High
Court of South Africa
Gauteng Division,
PRETORIA

For the Applicant: Adv S Stadler
On instructions of: Adams & Adams Attorneys

For the Respondent: Adv A May
On instructions of: Naude Attorneys Inc

Date of hearing: 19 and 26 November 2025
Date of judgment: 5 December 2025