

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: **2025-220239**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE 07 January 2026
SIGNATURE

In the matter between:

F[...] J[...] L[...]

Applicant

And

T[...] G[...] O[...]

Respondent

REASONS FOR THE ORDER

KHABA AJ

- [1] This is an opposed urgent application brought by the applicant in terms of Rule 6(12)(a) of the Uniform Rules of Court. The application consists of Part A and Part B, Part A being the urgent application. The applicant sought orders primarily to enrol the two minor children *D. F. L* (“*minor child*”), a boy born on 19 December 2012 at present 14 years of age and *O. R. L* (“*minor child*”), a girl born on 3 June 2015 at present 10 years of age at B[...] P[...] M[...] School (“*BPM*”) for the 2026 academic year. The applicant further sought further ancillary relief to compel the respondent to sign any and all documents on written demand, in order to have the minor children enrolled, within 48 hours period from receipt of such demand, failing which the applicant be authorized to sign any and all documentation required for and on behalf of the respondent, in order to effect such enrolment.
- [2] The respondent opposed the main application, simultaneously launched an urgent counter application in terms of Rule 6(12)(a) of the Uniform Rules of Court seeking *inter alia* that the applicant be found in contempt of the court order dated 25 June 2019, under case number: 56267/2016 issued out at the Pretoria High Court. The respondent further sought ancillary relief that the applicant be ordered and directed to make payment of the outstanding Redhill school fees, as well as the school fees for the academic year commencing in January 2026, within 7 days. The amount of R 277, 078.50 to be paid directly to Redhill school in respect of the arrear school fees due in respect of *D.F.L* and *O.R.L* in the amounts of R 155, 099.50 and R 122, 069.00 respectively. The amount of R 379, 500.00 to be paid directly to Redhill school in respect of school fees in advance, for the academic year of 2026 in respect of both *D.F.L* and *O.R.L*, failing which the applicant be committed to imprisonment for contempt of court for period of 30 days.
- [3] On 4 December 2025, I delivered my order without the reasons. On 5 December 2025, the respondent applied in terms of Rule 49(1)(c) of the Uniform Rules of Court for written reasons to be provided in respect of the order that I delivered. These are the reasons for the order.

The Legal Framework for Urgency:

- [4] The parties' approached this court on an urgent basis. The applicant's urgency stemmed from Redhill school's cancellation of the contract of enrolment ("COE") for the 2026 academic year and the imminent closure of the 2026 school registration period. The respondent's urgent counter application was presented as inextricably linked to the same factual matrix concerning the minor children's schooling and the applicant's maintenance obligations.
- [5] I was satisfied that both applications met the threshold for urgency in terms of Rule 6(12)(a) of the Uniform Rules Court. The central issue is the schooling and educational stability of the two minor children for the forthcoming academic year, was inherently urgent, given the imminent commencement of the 2026 academic year and the need for certainty regarding the minor children's school placement. A delay in resolving the matter would have rendered the primary relief sought by neither party nugatory, as schools' placements would have been finalised. Furthermore, the respondent's claim that the applicant's alleged contempt was deliberate strategy to create the crisis amplified the need to consolidate an expeditious adjudication. The question of school fees, the applicant's non-compliance with the divorce order, and the alleged contempt as were all fundamental in determining the real dispute between the parties. It was neither practical nor in the interest of justice to sever these issues. Therefore, I condoned non-compliance with the Rules and enrolled the main and the urgent counter applications.

The Factual and Legal Matrix:

- [6] The 2019 Court order is central. It obliges the applicant to pay the minor children's private school fees. The applicant's case was that his financial circumstances had deteriorated, rendering him unable to afford Redhill school fees. The applicant argued that enrolling the minor children at ("BPM") was the only viable option to secure their education and it was in their best interest. At the hearing, of this application the applicant's counsel handed up from the bar an acknowledgement of debt ("AOD") dated 01 December 2025, which the applicant entered with Redhill school for arrear school fees. The applicant subsequently made a payment, in the amount of R 40 338.63 to Redhill school on 1 December 2025. The proof of payment is attached to the ("AOD"). I

allowed (“AOD”) to be uploaded on CaseLines. The applicant’s counsel contended that the (“AOD”) renders the contempt application moot.

- [7] The respondent’s case presented a fundamentally different picture. The respondent demonstrated a protracted history of the applicant’s unlawful defaulting on his maintenance obligations, including school fees, even during periods of where he evidently enjoyed a lavish lifestyle involving international travel, luxury vehicles and multiple properties. This pattern suggested the current default was not due to an inability to pay, but the deliberate strategy to unilaterally vary the 25 June 2019 Court Order.
- [8] The evidence strongly indicated that the applicant allowed the Redhill school contract to be terminated and withheld information, creating a crisis to force a move to a cheaper school and thereby sidestep his court-ordered obligations. A variation application to reduce maintenance is pending in the Randburg Magistrate’s Court. The urgent application to change schools was, in substance, an attempt to achieve a *de facto* variation of the 25 June 2019 court order through a different forum, undermining the pending process.
- [9] The applicant sought to compel the respondent cooperation or dispense with her consent. The respondent’s refusal to agree to (“BPM”) was not shown to be unreasonable or contrary to the minor children’s best interest. To the contrary the respondent’s stance sought to uphold the *status quo* and the existing court order.

The Factual Findings and Assessment of the Evidence:

- [10] The paramount consideration in this matter, is fundamentally guided by the best interest of the minor children which is the paramount consideration in all matters concerning a child under section 28(2) of the Constitution and section 7 of the Children’s Act 38 of 2005. I found the respondent’s evidence, comprehensively set out in her answering affidavit.

- [11] The applicant bore the onus to demonstrate that uprooting the minor children from their long-standing school was in their best interest. The applicant failed to discharge this onus. The applicant's case focuses predominantly on his alleged financial constraints, not a substantive, child centred evaluation of the minor children's educational needs and emotional merits of BPM vs Redhill.
- [12] The applicant argued that the contract with Redhill school was cancelled, leaving both minor children without a school. The applicant presents ("*BPM*") as the only logical and available alternative. The applicant submitted that the respondent was obstructing the joint decision making and that the court, as the upper guardian, had wide powers to intervene.
- [13] The applicant's conduct and the creation of the crisis. I accepted the respondent's evidence, which was largely uncontroverted, that the applicant orchestrated the present emergency. The applicant unilaterally stopped paying Redhill school fees from March 2025. The applicant knowingly allowed the ("*COE*") to be terminated on 9 October 2025 but withheld the information from respondent. The applicant launched this urgent application, only after these actions had created a scenario where the minor children's placement at Redhill school was in jeopardy. This conduct occurred against the backdrop of a habitual breaches of the maintenance order, as detailed in the respondent's affidavit.
- [14] The best interest of the minor children- Redhill school vs BPM. On a balance assessment of the factors in section 7 of the Children's Act, the evidence strongly favoured the minor children remaining at Redhill school. The stability and continuity of the minor children have been at Redhill school since their early years. Uprooting them, especially *D.F.L* who would be in his final primary year and facing another move to high school shortly, would cause significant and unnecessary disruption.
- [15] The respondent provided cogent evidence of the minor children's strong opposition to moving schools, including their emotional attachment to Redhill school and their friends. The applicant's belated and generic assertions in reply did not adequately address these specific concerns, particularly those of *O.R.L*

[16] The applicant's alternative proposal involving ("*BPM*") and a speculative bursary at St John's College was uncertain, disjoint, and did not demonstrably to be in the best interest of the minor children. The applicant's claim of a dire financial change was not substantiated to the degree required to justify ignoring a court order. As argued by counsel for the respondent, the applicant's disclosures in the pending variation application at the Randburg Magistrates Court showed substantial income and assets. The applicant's lifestyle international business- class travel, luxury holidays and maintaining high value properties and vehicles, as detailed in the respondent's was irreconcilable with a plea of inability to afford school fees. The Court could not, on the papers, find that his failure to pay was due to genuine inability rather than wilful default.

The Findings and Application of the law:

[17] I found the respondent's evidence on the applicant's financial conduct and the history of non- compliance with the divorce court order to be compelling and largely uncontroverted on the papers. This history, as chronicled in the respondent's affidavit, demonstrated a pattern of avoiding maintenance obligations.

[18] The submissions that the applicant had orchestrated a crisis by allowing the Redhill school contracts to lapse to force a move a cheaper public school carried significant weight. This was not the case of a significant of a genuine, unforeseen inability to pay.

[19] The legal principle of *pacta sunt servanda* is fundamental. The 25 June 2019 court order, a court – sanctioned agreement, was clear in its terms regarding private school fees. A party cannot unilaterally create circumstances to evade such an order and then approach a court for relief based on those self-created circumstances.

[20] The best interest of the minor children are not determined in vacuum. The stability and consistency, and the fulfilment of existing agreements that provide for their care are critical factors. The uprooting of both minor children from long-standing private school environment to a public school, primarily due to one parent's unilateral desire to reduce expenses (despite evidence of ability to pay), would not serve their best interests. This

disruption and potential emotional impact of such a move, against their expressed wishes, outweighed the applicant's financial arguments.

The Issue of School Fees and Contempt:

- [21] The applicant's counsel submitted that the applicant entered into an acknowledgment of debt ("AOD") with Redhill school regarding the payment of the arrear school fees rendered respondent's arrears moot and purging any contempt which there may have been. I rejected this submission. The acknowledgment of debt, while a step towards addressing the arrears, did not extinguish the debt nor absolve the applicant from his obligations under the 25 June 2019 court order. It was a private agreement. The core relief in the counter application was not merely about collecting debt, but about upholding the authority of the court order and addressing the applicant's contemptuous conduct. The pattern of arrear, leading to the cancellation of the school, constituted a *prima facie* breach of the 2019 court order.
- [22] The "(AOD)" addressed only historical arrears. The core contempt lay in the ongoing refusal to comply with the obligation to pay private school fees, an obligation that extends to the 2026 fees. The "(AOD)" did not resolve this forward- looking obligation. Furthermore, the manner in which the arrears arose through alleged wilful default remained a live issue relevant to costs and the court's discretion. The applicant's last-minute production of the "(AOD)", signed after the launch of the contempt application, did not purge the contempt application but was a factor in the appropriate remedy.
- [23] The respondent's counter application also sought an order for the Redhill school fees for the 2026 academic year, which the acknowledgment of debt did not cover. The applicant's obligation to pay future fees at a private school (as per the 2019 court order) remained live and contentious.
- [24] The requirements for civil contempt are the existence of a court order; service of the court order and the non-compliance beyond reasonable doubt. The two elements were left undisputed. On the third, the applicant's conduct, his history of breaches, and his

lack of credible evidence proving an inability to pay established willfulness and *mala fides* on the balance of probabilities. The timing and nature of the (“AOD”) did not purge this contempt but was a remedial step. Nevertheless, I affirmed the ongoing validity of the court order dated 25 June 2019. Consequently, the issue of contempt was postponed for final determination alongside Part B of the main application.

[25] The respondent was entitled to approach this Court on an urgent basis to enforce the maintenance order through contempt proceedings as a “*process-in-aid*” given the imminent threat to the minor children placement caused by the applicant’s default.

Order:

[26] Accordingly, I made the following order:

1. The main application and respondent’s counter application are enrolled as urgent and non- compliance with the Uniform Rules of Court and practice directives are condoned and both applications are enrolled as one of urgency in terms of Rule 6(12)(a).
2. The minor children, namely *D.F.L* (“*minor child*”), a boy, born on 19 December 2012 and *O R L* (“*minor child*”), girl born on 3 June 2015, shall remain/ will be enrolled at Redhill school.
3. The applicant must ensure the *D.F.L* and *O.R. L* are enrolled into Redhill school for the 2026 academic year by no later than 10 December 2025 and ensure that the minor children remain enrolled at Redhill school.
4. The parties are directed to co- sign the contract of enrolment with Redhill school for the admission of *D.F. L* and *O. R. L* into Redhill school for the 2026 academic year forthwith, failing which the respondent is authorised to sign the contract of enrolment on behalf of the applicant.

5. The applicant shall continue to make payment of the agreed instalment payments pertaining to the arrear school fees due and owing to Redhill school, in terms of the signed acknowledgement of debt dated and signed 1 December 2025 between the applicant and Redhill school, timeously and in full until such time as all the arrears are extinguished and settled in full.
6. The applicant is ordered to continue to make payment of the Redhill school fees (private school) until such time that the court order as referred to in paragraph 8 below, may be varied and/or set aside by a competent court.
7. The divorce order (and settlement) dated 25 June 2019, shall remain in full force and effect, until it may be varied/ substituted by competent court.
8. PART B of the main application is postponed sine die.
9. The issue of the applicant's contempt of the court order is postponed sine die for determination with PART B of the main application.
10. The applicant is ordered to pay the costs of this application on a party and party scale basis, inclusive of the costs of counsel, on scale C.

KHABA AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

The reason for the order were digitally delivered by circulation to the parties' representatives by email and by uploading into the electronic file of this matter on CaseLines.

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Date of order: 04 December 2025
Date of request for reasons: 05 December 2025
Date of reasons: 07 January 2026

