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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

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

.....
DATE

.....
SIGNATURE

CASE NO: 2015-21739

In the matter between:

M[...] K[...] P[...] OBO O[...] M[...]

Applicant

and

THE MEMBER OF THE EXECUTIVE COUNCIL FOR

HEALTH OF THE GAUTENG PROVINCIAL GOVERNMENT

Respondent

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines/courtonline. The date for hand down is deemed to be on 16 February 2026.

JUDGMENT

MOGOTSI AJ

Introduction

[1] This matter arises from a medical negligence claim instituted against the Member of the Executive Council (MEC) for Health, Gauteng Provincial Government.

Background

[2] The minor child, O[...] M[...], suffers from cerebral palsy and related sequelae sustained at birth due to the negligent conduct of public healthcare practitioners at Mamelodi Hospital. The applicant, K[...] P[...] M[...], in her representative capacity as the mother of the minor child, instituted an action for damages against the respondent.

[3] The litigation culminated in a settlement order granted by this court on 18 April 2024 in terms of which the respondent undertook to provide specific, urgently required medical and therapeutic services and devices to the minor child within three months (the deadline).

[4] The order contained an enforcement clause which stipulated that if the respondent failed to meet the deadline, the applicant would be entitled to apply to court for a monetary order for the capitalised value of the unprovided services and items.

[5] The respondent failed to comply with the settlement agreement. Consequently, the applicant launched the present application to enforce paragraph 8 of the court order, seeking an order for the payment of the agreed capitalised sum of R1,629,230.00.

The issue

[6] The core issue is whether the applicant is entitled to the specific contractual remedy resulting from the respondent's failure to provide the services or items before the deadline.

The Applicant's submissions.

[7] Firstly, the applicant's counsel submitted that this is a straightforward application to enforce a clear remedy within a court order dated 18 April 2024. The application is

premised on a court order which explicitly states that if the respondent fails to comply within three months, the applicant is entitled to apply for a monetary order for the capitalised value of the unprovided services or items.

[8] Secondly, counsel submitted that the respondent has admitted to failing to provide required medical services and devices by the court-ordered deadline of 18 July 2024.

[9] Finally, counsel submitted that the respondent raises no legally valid defence and the respondent's only excuse is an internal miscommunication between departments, which is not a ground of justification.

Respondent's submissions

[10] The pith of the respondent's opposition to the application is that the application is premature, based on a misinterpretation of the court order, and seeks to monetise healthcare unjustly.

[11] Secondly, the respondent submitted that it should be afforded another chance to comply because its failure to comply with the court order is due to an innocent miscommunication, not bad faith, asserting that the respondent is now actively planning treatment through Steve Biko Hospital.

[12] The respondent further contends that the application is incompetent because, paragraph 8 of the order only allows the applicant to claim payment for specific items not provided.

[13] Finally, the respondent argues that the court should allow the state to fulfil its constitutional obligation to provide healthcare in kind through public facilities rather than ordering monetary payments that drain state resources. The respondent asserts that the application falls to be dismissed with punitive costs against the applicant for bringing a frivolous claim.

Analysis

[14] The applicant's case is rooted in the plain text of a court order which was made as per agreement between the parties. The said order is unambiguous about the deadline and the consequent remedy for non-compliance.

[15] The clause's purpose, read in context, is clearly to provide a final, alternative remedy if the state fails to deliver the services or items by the deadline. The clause is triggered by failure, not by wilful contempt. Consequently, the argument that paragraph 8 only applies to piecemeal non-compliance is, in my view, not persuasive.

[16] The excuse of internal miscommunication is offered without a detailed explanation or accountability, and this, in my view, is a last-ditch effort by the respondent to avoid the financial consequences of its systemic failure.

[17] To compound the respondent's difficulties regarding the excuse of miscommunication, it had the order for months, received reminders, and failed to take substantive action.

[18] I am duty-bound to follow the Constitutional Court jurisprudence that the state, as a primary agent of the Constitution, must be held to the highest standard in obeying court orders.¹

[19] Furthermore, I am duty-bound to follow precedent laid in the matter of *Bell K obo M S Bell v The MEC for Health Gauteng*² handed down by my brother Twala J on 27 march 2024 which involved the same defendant, a similar court order, a similar failure to comply, similar excuses, viz, administrative issues, and the same requested remedy.

[20] It follows that the application is bound to succeed.

Costs

[21] It is trite law that costs must follow the results, and I have no reason to deviate because the respondent has failed to adhere to its Constitutional mandate in a delicate

¹ *Nyathi v Member of the Executive Council for the Department of Health Gauteng and Another* [2008] ZACC 8, 2008 (5) SA 94 (CC), 2008 (9) bclr 865 (CC).

² *Bell K obo M S Bell v The MEC for Health, Gauteng* (Case number 2013/43383).

matter, with regard to the position of the minor child. I am, therefore, of the view that the respondent must be mulcted with a punitive cost order.

Order

[22] I therefore make the following order:

1. The draft order marked “X” is made the order of the court.

P J M MOGOTSI
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for applicant: Adv. M. Coetzer (martincoetzer@vodamail.co.za)

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Counsel for respondents: Adv. M. Mhambi (mhambi@vmxenge.co.za)

Attorney for respondents: The State Attorney – Johannesburg (KMaile@justice.gov.za)

Date heard: 09 February 2026

Date of Judgment: 16 February 2026