



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO.: D2272/2024

In the matter between:

L[...] C[...] B[...]

APPLICANT

and

A[...] R[...] B[...]

RESPONDENT

ORDER

The following order shall issue:

1. The application to declare the respondent in contempt of the order of 25 February 2025 is dismissed.
2. The counter-application to declare the applicant in contempt of the order of 25 February 2025 is dismissed.
3. The respondent is directed to pay to the applicant within 14 days of the date of this order:
 - (a) R45 000 in relation to the April 2025 rental; and
 - (b) R120 000 in relation to furniture costs.
4. The respondent undertakes to grant the applicant access to the storage facility to remove the items contemplated in paragraph 16 of the February 2025 order

on not less than seven (7) days' notice, such right to be exercised by the applicant within one (1) month of the date of this order.

5. The applicant is directed to return to the matrimonial home the following items within one (1) month of the date of this order:
 - (a) Black lounge suite;
 - (b) Coffee table;
 - (c) Carpet;
 - (d) Rocking chair;
 - (e) Wicker chair;
 - (f) Big Green Egg;
 - (g) Wooden Carved chair;
 - (h) Stone side table;
 - (i) Gold side table; and
 - (j) Wood side table.
6. There is no order as to costs.

JUDGMENT

PUDIFIN-JONES AJ

Introduction

[1] The applicant and respondent are the defendant and plaintiff respectively in pending divorce proceedings. On 23 February 2025, a consent order was made an order of this court in a rule 43 application ("February 2025 order"). The February 2025 order regulated care and contact of the parties' minor child and made provision for interim obligations relating to the payment of maintenance for the minor child and the applicant, as well as various ancillary matters.

[2] On 17 June 2025, the applicant instituted the present proceedings on an urgent basis ("main application"). The applicant seeks to declare the respondent in contempt of the February 2025 order on the basis that the respondent has failed to make payment of certain amounts due in terms of that order. Although the initial

allegations regarding non-compliance were broader, by the time that the matter was argued on 27 February 2026, the amounts claimed as outstanding were limited to (i) the April 2025 rental amount of R45 000 and (ii) an amount of R120 000 which was directed to be paid by the respondent to the applicant in relation to the purchase of furniture.

[3] The applicant further seeks additional orders:

- (a) condoning her failure to remove certain items from a storage facility within the time period provided in the February 2025 order;
- (b) ordering “*that despite the terms of the Rule 43 Order, Applicant be granted the right to relocate to any safe Estate in Ballito*”; and
- (c) directing that a forensic psychologist be appointed at the cost of the respondent in relation to the minor child.

[4] The respondent opposes the main application and has launched a counter-application, in which he seeks to declare the applicant in contempt of the February 2025 order and to direct the applicant to purge her contempt by returning a list of items specified in Annexures “A” and “B” to the Notice of Motion in the counter-application, which it is alleged that the applicant has removed from the matrimonial home contrary to the February 2025 order. The respondent further initially sought an order directing the applicant to select a psychologist from the list provided by him pursuant to the February 2025 order, but I was advised that this issue had fallen away as at the date of argument. The relief in the counter-application was originally sought in two parts (Part A in which interim relief was sought and Part B for final relief); however, it was argued before me as an application for final relief.

The February 2025 order

[5] The matter has a complex history, involving multiple interlocutory and contempt applications, with voluminous papers and a plethora of correspondence between the respective legal representatives of the parties. I intend to address only those aspects of the papers which I consider relevant to the issues before me.

[6] At the heart of these proceedings is the February 2025 order. This order directed the respondent to make several monthly and *ad hoc* payments to the

applicant, including a cash contribution of R65 000 per month (paragraph 3); to pay 100% of the applicant's and minor child's medical aid costs and necessary medical expenses (paragraphs 4-6); and to pay 100% of the minor child's educational expenses including tours and extra-murals (paragraphs 7-8). The order further provided (and I quote these paragraphs in full as they are the subject of the contempt proceedings):

- '10. The Applicant is to vacate the matrimonial home, situated at 1[...] L[...], S[...] Estate, Ballito, KwaZulu-Natal, by no later than 31st May 2025.
- 11. Pendente lite the Respondent shall pay rent up to R45 000 (Forty-Five Thousand Rand) per month on a property of the Applicant's choice in the S[...] Estate, for the Applicant and the minor child to reside in.
- 12. The Applicant shall enter into the lease agreement with the Landlord directly, and the Respondent shall stand as guarantor for the rental payment up to R45000 per month.
- ...
- 14. The Applicant undertakes not to remove any of the bespoke/custom furniture, soft furnishings, art pieces and appliances from the matrimonial home, situated at 1[...] L[...], S[...] Estate, Ballito, KwaZulu-Natal.
- 15. The Applicant will be entitled to remove furniture from the matrimonial home situated at 1[...] L[...], S[...] Estate, Ballito, KwaZulu-Natal as set out in the list attached hereto marked annexure "A". The removal of kitchen contents shall be divided between the parties as agreed. Towels and linen from Bedroom 1 and [the minor child's] bedroom shall be removed by the Applicant.
- 16. The Applicant is entitled to remove furniture from the storage unit, save for the personal items of the Respondent, by no later than 28 March 2025.
- 17. The Respondent shall provide the Applicant with an amount of R120 000.00 (One Hundred Twenty Thousand Rand) for the purchase of furniture, within 7 (seven) days of signing the lease agreement.
- ...'

The law on contempt

[7] Both parties seek to hold the other in contempt of the February 2025 order. It is accordingly necessary to set out briefly the legal principles pertaining to contempt.

[8] An order declaring a party to be in contempt of court *ex facie curiae* (outside

of a court) encompasses the unlawful and intentional disobedience of a court order, which undermines the dignity, authority and effectiveness of the courts and thus the rule of law.¹ In order to constitute contempt, the breach must be wilful and *mala fide* – a deliberate disregard of a court order alone is insufficient, since a respondent who genuinely and in good faith believes themselves entitled to act as they did does not act with the requisite intention.² The object of contempt proceedings is both to impose a penalty that will vindicate the court's honour and to compel performance in accordance with the previous order.³

[9] The requirements for establishing contempt are the existence of an order that must have been duly served on, or brought to the notice of, the alleged contemnor; non-compliance with the order; and wilfulness and *mala fides*.⁴ The applicant must prove the requisites of contempt beyond reasonable doubt. However, “once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and *mala fides*. Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and *mala fide*, contempt will have been established beyond reasonable doubt.”⁵

[10] In the present case, there are no disputes around the existence and knowledge of the February 2025 order. Notwithstanding that this order was issued by consent, it remains a binding and enforceable order, to which effect must be given.⁶

[11] The core issue is accordingly whether there was disobedience of such order by either the applicant or the respondent, and, if so, whether that disobedience was wilful and *mala fide*. I address the allegations of the applicant in the main application,

¹ *Fakie NO v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (*Fakie*) para 6.

² *Fakie* para 9.

³ *Pheko and Others v Ekurhuleni City* [2015] ZACC 10; 2015 (5) SA 600 (CC) para 28.

⁴ *Fakie* para 42.

⁵ *Ibid* para 42(d).

⁶ See *Eke v Parsons* [2015] ZACC 30; 2016 (3) SA 37 (CC) para 41 where the Constitutional Court held: ‘Where the parties themselves, through a settlement agreement reached with legal representatives present on each side, prefer to dispense with the strictures of a rule and request that the court recognise this preference by means of a consent order, for one party suddenly to perform a volte-face and demand strict adherence with that self-same rule borders on the ludicrous. Justice between the two litigants demands that their settlement agreement, which was made an order of court, must be given effect. After all, a court's duty is to do justice between litigants. In this instance justice demands that Mr Eke be held to his bargain.’ (Footnote omitted.)

and the respondent in the counter-application in turn.

The issues in the main application

The April 2025 rental amount

[12] It is common cause on the papers that the respondent has not made payment of the April 2025 rental amount under paragraph 11 of the February 2025 order.

[13] The respondent denies that he was obligated to do so. He avers that he was not provided with the signed lease agreement until 8 May 2025 (despite the fact that it had been signed on 25 February 2025) and that he was entitled to have sight of the agreement before acting on his obligations. The respondent further claims that, since the applicant was only obliged to vacate the matrimonial home on 31 May 2025, he was not obliged to pay for rental unreasonably in advance of that date. The respondent has paid the rental amounts from May 2025 onwards.

[14] I am satisfied that the respondent was obliged, under the February 2025 order, to pay the April 2025 rental. Had the respondent wished to make it clear that he would only pay for rental from May 2025 onwards, this ought to have been provided for in the consent order. It was not. Moreover, the respondent has now been provided with the signed lease agreement and has made payment from May 2025 onwards. His refusal to do so for April 2025 is not justified.

[15] However, I do not consider that the applicant has met the threshold of establishing that the respondent's default in relation to the April 2025 rental was wilful or *mala fide*. There is sufficient doubt raised by the respondent regarding his conduct that I cannot find that the respondent was in contempt.

[16] I accordingly intend to order that the respondent pay the R45 000 outstanding in relation to April 2025 rental.

The furniture payment

[17] The respondent admits that he has not paid R120 000 to the applicant as required by paragraph 17 of the February 2025 order in relation to the purchase of furniture. He again denies that he is liable to do so. In his Answering Affidavit he asserts, first, that he had set-off these amounts against certain expenditure that he

alleges the applicant had incurred on his credit card; and second, that he was not obliged to make payment because the applicant had failed to comply with her reciprocal obligations under the order inasmuch as she had taken additional furniture out of the matrimonial home, contrary to paragraphs 14 and 15 of the order, and had failed to remove the furniture from the storage facility as contemplated in paragraph 16 of the order.

[18] I do not agree that the respondent's obligations under paragraph 11 of the February 2025 order are conditional. On the contrary, the fact that the R120 000 payment was due within seven days of the lease agreement being signed indicates that the respondent was obliged to make payment prior to the applicant moving out of the matrimonial home.

[19] As regards set-off, the orders in the February 2025 order are maintenance orders which are not liable to be set off against other debts.⁷ Notably, in the Answering Affidavit, the respondent tendered to pay the R120 000 to the applicant should the advice he had received in relation to set-off not be correct. I intend to order this payment.

Access to the storage unit

[20] The applicant's need for condonation in relation to access to the storage unit has fallen away. Mr *Potgieter* SC for the respondent confirmed in his oral address that the tender that the applicant may remove the items from storage on seven days' notice remains in place, and I intend to make an order to that effect.

The relocation relief and the forensic psychologist

[21] The applicant seeks the following further orders in the Notice of Motion in the main application:

- '5. That, despite the terms of the Rule 43 Order, Applicant be granted the right to relocate to any safe Estate in Ballito.
6. That the Respondent be liable for the costs of a Forensic Psychologist, to be appointed within 7 days of the court order granted.'

⁷ See *M.D.N v S.D.N* [2020] ZAWCHC 157 paras 23-25 and the authorities cited therein.

[22] In argument before me, Mr *Stadler* for the applicant asserted that the relocation relief was not, strictly speaking, a variation of the February 2025 order, but rather that it was relief that I should grant in my broad discretion, taking into account the best interests of the minor child.

[23] I do not agree. Properly construed, the relief in prayer 5 is a variation of the February 2025 order, and accordingly the applicant was required to make out a case for materially changed circumstances under Uniform rule 43(6). The applicant has failed to do so. Nor am I able to conclude from the papers before me that it is in the minor child's best interest to move out of the S[...] Estate.

[24] In any event, there is a further insuperable difficulty for the applicant in relation to this relief. In November 2025, a further interlocutory application was launched in which the applicant sought a formal variation of the February 2025 order. Amongst others, the applicant sought orders permitting her to move with the minor child to Kloof and directing the appointment of a forensic psychologist in relation to the child. During the November 2025 proceedings, the issue of *lis pendens* was raised by the respondent (in relation to the relief sought in these proceedings). The applicant stated the following on oath in her Founding Affidavit in the November 2025 proceedings:

'In as far as the Respondent will raise lis pendens in respect of my right to freedom of movement and the appointment of a forensic auditor, I abandon prayers 5 and 6 of the notice of motion attached hereto as annexure "C".'

That Notice of Motion relates to the present proceedings.

[25] The applicant has accordingly unequivocally abandoned her right to seek the prayers sought in prayers 5 and 6 of the Notice of Motion.

The issues in the counter-application

[26] In the counter-application, the respondent seeks to hold the applicant in contempt of the February 2025 order and seeks an order directing the applicant to return the movables listed in Annexures "A" and "B" to the Notice of Motion in the counter-application. Annexure "A" lists various items described as having "significant sentimental value" to the respondent; and Annexure "B" pertains to items which are

alleged to have been removed by the applicant from the matrimonial home without the respondent's consent and contrary to the February 2025 order.

[27] The respondent has drawn up the Annexure "B" list based on a comparison of the current items in the matrimonial home with photographs taken after the renovation of the matrimonial home in 2020. He alleges a value in excess of R630 000 in relation to the furniture that was removed from the matrimonial home by the applicant.

[28] The applicant, in her Answering Affidavit in the counter-application states this to be a gross over-exaggeration and claims that, given the age of the items in question (between 6 ½ and 16 years old), the value of the Annexure "B" items is around R43 570. She denies further that she has unlawfully removed items from the matrimonial home; explaining that she only removed items which are either personal, inherited or items which had been given or gifted to her during the course of the parties' 20-year personal relationship. In addition, the applicant explains that she removed certain items of furniture that she required in order to establish a home for herself and the minor child. She asserts, too, that the bulk of the items in question remain in her possession, and that there has been no intentional dispossession, stating that at all times she has acted in the best interest of the minor child.

[29] There is a clear dispute of fact in relation to certain of the items and whether or not they were removed from the marital home. There are also disputes as to whether the items form part of the marital estate, or belong solely to the respondent, or indeed to the applicant. This is not something that I can resolve on the papers before me. These questions will form part of the issues to be resolved in the divorce trial in due course.

[30] During the hearing, the applicant undertook that she would return ten items to the matrimonial home that she admitted that she had taken in order to establish a home for herself and the minor child. I intend to hold the applicant to this undertaking and order the return of these items.

Costs

[31] Both parties sought costs from each other. In my view, both parties have achieved some success and will undoubtedly feel some disappointment at the outcome of this application. It is appropriate that there is no order as to costs.

Order

[32] I grant the following order:

1. The application to declare the respondent in contempt of the order of 25 February 2025 is dismissed.
2. The counter-application to declare the applicant in contempt of the order of 25 February 2025 is dismissed.
3. The respondent is directed to pay to the applicant within 14 days of the date of this order:
 - (a) R45 000 in relation to the April 2025 rental; and
 - (b) R120 000 in relation to furniture costs.
4. The respondent undertakes to grant the applicant access to the storage facility to remove the items contemplated in paragraph 16 of the February 2025 order on not less than seven (7) days' notice, such right to be exercised by the applicant within one (1) month of the date of this order.
5. The applicant is directed to return to the matrimonial home the following items within one (1) month of the date of this order:
 - (a) Black lounge suite;
 - (b) Coffee table;
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 - (f) Big Green Egg;
 - (g) Wooden Carved chair;
 - (h) Stone side table;
 - (i) Gold side table; and
 - (j) Wood side table.
6. There is no order as to costs.

PUDIFIN-JONES AJ

Case Information

Date of Hearing : 27 February 2026

Date of Judgment : 05 March 2026

Appearances

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