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

Case number: 2024-117736

Date of hearing: 13 March 2026

Date delivered: 13 April 2026

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO

(3) REVISED

DATE 13/4/2026

SIGNATURE

In the application between:

C[...] M[...] M[...] B[...]

Applicant

and

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

Respondent

JUDGMENT

SWANEPOEL AJ:

[1] The parties are currently in divorce proceedings. The applicant has applied for an order holding the respondent in contempt of court of paragraph 5 of an order pendente lite granted by Van der Schyff J on 11 February 2025, which states:

“The common home is to be sold and the proceeds to be kept in trust by the conveyancing attorney pending the finalization of the divorce. Until the property is sold, the applicant and the minor child may reside in the property and the respondent is ordered to affect the following monthly payments to the respective service provider on due date, and where applicable, take any and all steps to bring such payments which may be in arrears up to date, namely:....”

[2] The applicant alleges that the respondent refuses to take any steps towards the sale of the property. That allegation is not in dispute. The respondent says that she wishes to purchase the applicant’s half-share in the property. She says:

“I deny that I am in contempt of the Court order. I have been attempting to negotiate the purchase of the Applicant’s half share in the immovable property since the granting of the Rule 43 order. The following is relevant:

11.1 The applicant and I are married in community of property and as a result the joint estate needs to be divided for purposes of the finalization of the divorce.

11.2 The applicant knows that I wish to retain the previous common home as part of the division of the joint estate and for that purpose my attorney of record has attempted on numerous occasions to arrange negotiations to discuss the division of the joint estate.”

[3] It is, therefore, not in dispute that the respondent has resisted the applicant's attempts to sell the property. The order of Van der Schyff J cannot be clearer: Pending the resolution of the divorce the property is to be sold, and the proceeds are to be held in trust. There is no room for the respondent to refuse to comply with the order because it happens to suit her.

[4] The applicant has to prove, firstly, that there is an order in place. That is common cause. Secondly, the respondent must be aware of the order. That is, also, not in dispute. Thirdly, the applicant must prove that the respondent has not complied with the order. That is not seriously in dispute. Finally, once the aforesaid elements have been established, then the respondent bears an evidentiary burden to show that she is not willfully in contempt of the order.

[5] It is not sufficient for the respondent to say that she has a reason why she has not complied with the order. It is trite that an order must be complied with until it is set aside. The respondent's approach to the divorce, and the fact that she wants to retain the applicant's half-share in the property is utterly irrelevant to the proceedings. In my view, it has been established that the respondent has willfully failed to give effect to the order.

[6] The respondent has counter-claimed for an order that the applicant is in contempt of court in that he has failed to effect payments as provided for in the order. The respondent says that not only must the

applicant be held in contempt, but his application should also not be entertained due to his ongoing contempt.

[7] Firstly, the respondent says that the applicant has failed to pay 50% towards the arrear water and electricity account owed to the Municipality. She says that the rates and taxes are in arrears to the tune of R 433 000.95. In a supplementary affidavit the respondent says that the minor child's school fees are in arrears, as are the levies owed to the Home Owners' Association, and medical expenses not covered by the medical aid. The respondent says that the mortgage bond is also in arrears.

[8] The applicant denies being in arrears with any of the aforesaid debts. He has provided proof that the latest statement of the school showed that only R 440 was owed. As far as the levies are concerned, they have been settled, leaving only a disputed legal bill to be resolved. The applicant has also provided proof of payment of the medical bills. Having reconciled the medical accounts, the applicant found that he owed R 83.43 which he has paid. The Municipal bill is disputed and a formal dispute has been declared. On the face of it the accounts do not seem to make sense.

[9] As for the mortgage bonds, the applicant is not obliged by order of court to make bond payments, but it is significant that the respondent has also not made payment of the bond.

[10] On the papers as they stand the Court cannot determine that the applicant has breached the order. Consequently, the counter-application must fail.

[11] As far as costs are concerned, they must follow the result. In respect of the main application, having found the respondent to be in contempt of the order, punitive costs are justified.

[12] The following order is made:

a. It is declared that the respondent is in contempt of paragraph 5 of the order of Van der Schyff J dated 11 February 2025.

b. The respondent is directed to comply with the aforesaid order within 14 days hereof, to do everything necessary to effect the sale of the property, and to continue to do so until the sale thereof has been achieved.

c. Should the respondent fail to fully comply with the order of Van der Schyff J and with this order, the applicant may re-enroll the matter on supplemented papers, for the imposition of a suitable sentence.

c. The respondent is ordered to pay the costs of the application on the attorney/client scale.

d. The counter-application is dismissed with costs on Scale B.

SWANEPOEL AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA