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**THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case no: 18688/2022

In the matter between:

C[...] **V[...]** **S[...]**

Applicant

and

S[...] **V[...]** **S[...]**

Respondent

Delivered electronically this 11th day of June 2026 by email to the parties

REASONS FOR ORDER

NDITA, J

[1] On 19 March 2026, the Applicant brought an application on an urgent basis seeking an order holding the Respondent in contempt for court for failure to comply with a maintenance Order of this court. After hearing the parties, I issued the following order:

“(a) The forms and service provided for in the Rules are dispensed with and this application is heard as an urgent application in terms of Rule 6(12) of the Uniform Rules of Court.

(b) The Respondent is declared to be in contempt of the Order of Court (“the Order”) granted by this court on 15 June 2023 in Case No: 18688/2022

(c) The Respondent is committed to prison for a period of 90 (ninety) days, which committal shall be wholly suspended for the period until a decree of divorce is granted in the pending divorce action between the parties on the following conditions:

(i) That the Respondent shall pay the current outstanding amount of R136 000.00 (One hundred and Thirty-Six Thousand) due under the Order to the Applicant within 20 days from the date hereof:

(ii) That the Respondent shall in future strictly comply with the terms of the Order;

(d) The applicant is granted leave to approach the Court on the same papers, duly supplemented, for an order committing the Respondent to prison in terms of paragraph (c) above, if the Respondent fails to comply with the Order.

(e) The Respondent shall pay the Applicant’s costs of this application on the scale as between attorney and client.

[3] These are the reasons for the Order.

Factual background

[4] The Applicant instituted divorce proceedings against the Respondent, and the trial has been enrolled for hearing on 22 February 2027. The parties have two minor children. On 26 January 2023, Erasmus J, issued an interim maintenance order for

a monthly payment in respect of the Applicant and the two minor children as well as a contribution to the Applicant's legal costs.

[5] During April 2023, the Respondent applied in terms of Rule 46(3) of the Uniform Rules of court for a variation of the order of Erasmus J. The matter served before Pangarker AJ (as she then was) and the learned judge on 15 June 2023 issued an order in terms of which the Respondent was to pay a monthly maintenance contribution of R42 000.

[6] During August 2023, the Respondent sought a variation of the maintenance orders issued by Erasmus J and Pangarker J on the basis that due to his financial circumstances, he could no longer afford to pay the monthly maintenance of R42 000.00. The Respondent's application was dismissed by Lekhuleni J, on 25 October 2024.

[7] The Respondent applied again for a variation of the maintenance order and Holderness J, dismissed the application with costs on attorney and client scale on 16 February 2026.

The breach

[8] It is undisputed that the Respondent stopped making the monthly maintenance contribution of R42 000.00 as ordered by Pangarker J. On 15 December 2025, the Respondent's attorneys made payment of a sum of R200 000.00 to the Applicant's

attorneys in respect of the arrear maintenance. The payment of R200 000.00 was less than the outstanding amount at that stage of R210 000.00 (R42 000.00 x 5 months).

[9] The Respondent does not deny that he is in breach of the court Order. His defence is that due to his dire financial circumstances, it was not possible to comply with the terms of the Order to render monthly payments in the amount of R42 000.00.

The legal principles

[10] The objective of contempt of court proceedings is explained in *Pheko and Others v Ekurhuleni Metropolitan Municipality* (CCT19/11) [2015] ZACC 10; 2015 (5) SA 600 (CC) thus:

“[1] The rule of Law, a foundational value of the Constitution, requires that the dignity and authority of the courts are upheld. This is crucial, as the capacity of the courts to carry out their functions depends on it. As the Constitution commands, orders and decisions by a court bind all persons to whom the organs of state to which they apply, and no person or organ of state may interfere in any manner with the functioning of the courts. It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judiciary authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.”

[11] The requirements and onus in contempt of court proceedings are restated in *Secretary, Judicial Services Commission of Inquiry into Allegations of State Capture v Zuma* 2021(5) SA 327 CC) para 37:

“As set out by the Supreme Court of Appeal in *Fakie*, and approved by this court in *Pheko 11*, it is trite that an applicant who alleges contempt of court must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had knowledge of it; (c) the alleged contemnor failed to comply with the order. Once these elements are established, the wilfulness and mala fides are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established.”

[12] In *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 325 (SCA) at 344G-345A, the relevant principles were summarised in more detail as follows:

(a) The civil contempt of court procedure is a valuable and important mechanism for securing compliance with court orders and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

(b) The respondent in such proceedings is not “an accused person” but is entitled to analogous protections as are appropriate in motion proceedings.

(c) In particular, the applicant must prove the requisites of contempt of court (the order, service or notice, non-compliance, and willfulness and *mala fides*) beyond reasonable doubt.

(d) But once the applicant has proved the order, service or notice and non-compliance, the respondent bears an evidential burden in relation to the willfulness and *mala fide*. Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was willful and *mala fide*, contempt will have been established beyond reasonable doubt.

(e) A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.

[13] Although money judgments and orders (orders as *pecunium solvendam*, as opposed to orders to do something *ad factum praestandum*) cannot ordinarily be enforced by contempt proceedings, it is well established that maintenance orders are in a special category in which such relief is competent). (See

Bannatyne v Bannatyne (CGE as amicus curiae) 2003 (2) SA 63 (CC) at para 18).

Analysis

[14] The existence of the Court Order in terms of which the Respondent must maintain the Applicant and the minor children is not in dispute. In addition, and as earlier alluded to, the Respondent has not denied his knowledge of the Order and that he has failed to comply with it, willfulness is therefore presumed. In the premises, the evidential burden in relation to willfulness and *mala fide*, in line with *Fakie NO, supra*, shifts to the Respondent. Put differently, should the Respondent fail to advance evidence establishing a reasonable doubt as to whether his non-compliance was willful and *mala fide*, contempt of court would have been established beyond reasonable doubt.

[15] The Applicant in the founding affidavit avers that when the Respondent was in default of the Court Order, he had access to substantial available balances on his credit card which could have been utilised for the payment of his maintenance obligations in that:

15.1 On 5 August 2025, i.e. on the day when his latest Rule 46(3) application was launched, and four days after he had

failed to pay maintenance in terms of the Court Order of 1 August 2025, the Respondent had an available balance on the credit card of R405 803.23 which could have been used to meet his maintenance responsibilities.

15.3 From the statement of the balances of the Respondent's bank accounts, it is clear that the Respondent still had a balance of R396 229.26 available on his credit card on 9 October 2025, and one month later on 28 November 2025, an available balance of R119 046.15.

[16] It was contended on behalf of the Applicant that in light of the fact that the foregoing has not been denied by the Respondent, the inevitable conclusion is that the Respondent has failed to show that his failure to comply with his maintenance obligations was not *mala fide*, and accordingly his contempt has been established beyond reasonable doubt.

[17] Of course the above must be considered and weighed against the facts established in the Respondent's answering affidavit.

[18] The Respondent has disclosed during November and December 2025, he loaned Vikla Properties ("Vikla") an amount of R375 000.00 which he accessed from his credit card. Vikla properties is a company of which the Respondent is a director and

of which the C[...] V[...] S[...] Trust (“Trust”) owns 33% of the shares. The Respondent is a founder and trustee of the Trust.

[19] By 1 November 2025, the Respondent was in arrears in respect of the monthly maintenance Order in the sum of R42 000,00 in a total amount of R168 000,00 (4 X R42 000,00), and by 1 December in a total amount of R210 000,00. It is difficult to discern the Respondent’s conduct of loaning Vikla the amount of R375 000,00 from his credit card when he knew or ought to have known that his maintenance obligations to the Applicant were already in arrears. Neither has he advanced a cogent explanation, for wantonly disregarding the obligations imposed on him by the Order of court whilst loaning a substantial amount to Vikla. On this basis alone, I find that his non-compliance was willful and *mala fide*.

[20] The following remarks by Rogers J, (as he then was) in *KPT and Others v APT* (1215/2019) [2020] ZAWCHC 110 (2 October 2020) at paragraph 95 are apposite:

“Compliance with court orders is always important. There is a particular scourge in this country of spouses, particularly husbands, failing to pay judicially ordered maintenance. While a spouse facing a criminal sanction is entitled to the benefit of reasonable doubt, a court should not too readily find such doubt to exist where the spouse has failed to

put up evidence which should have been available to him to support a claim of unaffordability.”

In the circumstances of the present matter, a finding of willfulness and/or *mala fides* is inescapable. Thus, contempt has been established beyond reasonable doubt.

[21] There is yet a further basis for reaching a conclusion that the Respondent’s non-compliance was willful and *mala fide*. It must be pointed out that there are a number of applications that the parties have brought against each other. In paragraph 23 of the founding affidavit, the Applicant refers to an application brought by the Respondent and asserts that:

“23. In paragraph 19 of his founding affidavit in that application the Respondent stated that after he got the position with En Route during December 2024, he became aware that the staff were stealing stock and that vital kitchen equipment was not maintained and was left derelict and unusable. He then decided to do certain renovation work and replace some kitchen equipment in order to make a success out of the restaurant. According to him, he therefore had no alternative but to withdraw the R2 million of his money that was being held in the bond of Vikla Properties and loan En Route the amount of R1million. Furthermore, he utilised R800 000,00 from his Trust (the C[...] V[...] S[...] Family Trust) to purchase further Equipment for En Route.”

[22] The Respondent has not dealt with these allegations. The upshot of these allegations is that the Respondent is owed an

amount close to R2 million by the owners of En Route and Whole Meals. This is so because it is undisputed that he lent En Route a sum of R1million and used R800 000,00 in kitchen renovations. Inasmuch as this information is according to the Respondent “historic”, it is baffling that the Respondent failed to honour his maintenance obligations while he could have complied with the Court Order by calling up the loans to En Route and Whole Meals. After all, the maintenance of his minor children should, all things being fair, even without a court order, be his priority. Nowhere in his affidavit does he set out that when it became impossible to comply with the court order, he sought repayment of the loans he had made to the En Route and Whole Meals. Neither does he explain what the actual terms of repayment of the aforesaid loans were.

[23] As already pointed out, the Trust, of which the Respondent is the founder and trustee, received an amount of R1,9 million for the sale of its shares in Bergzicht which was then paid to Whole Meals. The Respondent is also the director of En Route owned by Whole Meals. In his answering affidavit, the Respondent has not made a full and proper disclosure of the financial affairs of the Trust and Whole Meals. In *D v D* (55507/2012) [2016] ZAGPPHC 368 (16 May 2016) Kollapen J held thus:

“The obligation to pay maintenance is a serious and indeed onerous one and in my view the very generalized nature of the respondent’s assertions of being in constant financial crisis falls considerably short of what is expected of him discharging the evidentiary burden that rests upon him.”

[24] In the instant matter too, the Respondent’s assertions of being in financial difficulties are unconvincing and appear to me to be contrived given that he readily loaned substantial amounts of money to entities whilst neglecting his maintenance obligations. Furthermore, his failure to give a proper disclosure of the financial affairs of entities he is in control of in my view casts aspersions to his claim of unaffordability. It is my judgment that a finding of non-compliance being based on willfulness and *mala fides* is justified.

[25] It remains to be said that the Respondent paid an amount R200 000,00 on 15 December 2026. This amount fell short as the full outstanding amount at the time of the launching of the application was a sum of R210 000,00. The question that then arises is whether the partial compliance which occurred at a later stage exonerates the Respondent from a sanction for contempt of court. Put another way, does the payment excuse his failure to comply with a court order from 1 August 2025 to 1 December 2025. The answer to this question has already been answered *in*

LAN v OR Tambo Airport Department of Home Affairs 2011(3) SA
461 (GNP) as follows:

[71] However, the question arises whether a court can simply ignore the fact that a person, for a specific period of time, acted in court of a court order, and then, thereafter, through much force and persuasion, changed his mind to then comply with the court order. Should such a person be regarded as not having committed an offence, should a court order be sought against him in that regard? I do not think so. Once the requirements of the offence have been established to have existed at a certain period in time, and once it is found that no valid defence has been raised in that regard, a positive finding should follow.

[72] It must be kept in mind that contempt of court proceedings are not only directed towards the perpetrator, but are directed towards the protection of the courts, respect towards the courts and court orders, and the protection of the integrity of the court system. Non-compliance at a specific period in time cannot therefore simply be ignored because compliance did in fact occur at a later stage.”

[26] I align myself fully with the above remarks. It follows that the subsequent payment tendered by the Respondent on 1 December 2025, albeit still short of the amount due, does not excuse his willful and *mala fide* failure to comply with a court order.

Conclusion

[27] I have in this judgment found that the explanation of unaffordability of the Respondent’s maintenance obligations false

short of the standard required of him in discharging the evidentiary burden of proving lack of willfulness and mala fide.

[28] For all these reasons, I issued the order referred to in paragraph 1 of this judgment.

NDITA J

Appearances

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