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

JUDGMENT

Reportable

Case no: 12604/2015

In the matter between:

D[...] W[...] Applicant

and

J[...] L[...] K[...] Respondent

Neutral citation: *W[...] v K[...]* (Case no 12604/2015) [2026] ZAWCHC___ (17 June 2026)

Coram: **DIANE DAVIS AJ**

Heard: 9 October 2025, 27 November 2025, 19 March 2026

Delivered: 17 June 2026

Summary: *Contempt of court – non-compliance with maintenance order – evidentiary burden resting on maintenance debtor necessitates a full and frank disclosure of the maintenance debtor's assets, liabilities, income and expenditure covering the entire period of the default – maintenance debtor required to provide a full explanation in a spirit of candour – vague, bald and sketchy allegations will not suffice to persuade a court that non-compliance was not wilful and mala fide – inability to comply fully with a maintenance order does not absolve the maintenance debtor of the obligation to pay whatever he can towards satisfaction of the court order, with priority being afforded to the court-ordered obligation over all other claims on his resources save for basic necessities and urgent medical care – expenditure on luxuries and non-essentials while court-ordered maintenance obligations go unpaid is inconsistent with good faith.*

ORDER

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1 In addition to the amount of R 279 860.00 referred to in the order of 18 June 2025, the respondent is ordered to pay the applicant further arrear maintenance in the amount of R 181,495.80, which amount shall be paid in the manner directed by the Paarl maintenance court pursuant to the maintenance enquiry pending in that court.

2 It is declared that the respondent is in contempt of:

2.1 the order of this Court granted under case number 126044/2015 on 5 August 2015;

2.2 the order of this Court granted under case number 126044/2015 on 18 June 2025;

2.3 the order of this Court granted under case number 126044/2015 on 9 October 2025.

3 The application is postponed to a date to be arranged with the presiding Judge for the presentation of evidence and argument with regard to an appropriate sanction for the respondent's contempt of court.

4 The respondent is liable for the applicant's costs incurred in the applications brought in June and September 2025, to be taxed on the attorney and client scale.

5 The provisions of paragraph 2 of this court's order dated 19 March 2026 remain of full force and effect.

JUDGMENT

Davis AJ:

[1] This application deals with non-compliance with a maintenance order embodied in a divorce order.

[2] The applicant is the mother of two minor girls, age 15 and 13, who was previously married to the respondent, the girls' father. The parties were divorced in 2015. In terms of the divorce settlement agreement, which was made an order of court, the respondent undertook to pay cash maintenance of R 10,000.00 per month per child, and to pay the children's medical expenses and maintain an educational policy to cover the cost of their tertiary education. The order also made provision for the respondent to be liable for half of the medical aid premiums in respect of the children. The cash maintenance was to increase annually by 8% on the anniversary date of the divorce.

[3] Until October 2024, the respondent complied with his maintenance obligations in terms of the divorce order. However, in October 2024, the respondent informed the applicant that he was earning significantly less and would no longer be able to pay the children's maintenance. He ceased paying the cash maintenance from November 2024, and he ceased paying his share of the medical aid premiums from December 2024. By that time the amount payable as cash maintenance had increased to an amount of R 39,980.00 per month for both children. Correspondence was exchanged between the parties' respective attorneys, but the respondent did not take steps at the time to apply to the maintenance court for a variation of the divorce order.

[4] On 26 May 2025 the applicant launched an urgent application in this court for an order directing the respondent to pay her the arrear cash maintenance (which amounted to R 279,860.00 at the time), as well as an order holding

the respondent in contempt of court and imposing a sanction of imprisonment on him. The respondent initially opposed the application, but did not deliver an answering affidavit.

[5] In the absence of opposition, this court granted an order on 18 June 2025 in terms whereof the respondent was ordered a) to pay the applicant R 279,860.00 within forty-eight hours and b) to comply with the provisions of the divorce order. The declaratory relief pertaining to contempt of court was postponed for hearing on 19 March 2026 ('**the 18 June order**').

[6] The respondent failed to comply with the 18 June order, and, on 15 September 2025, the applicant launched a second application for an order directing the respondent to pay the arrear maintenance (which had now increased to R 461,355.80 made up of the aforesaid amount of R 279,860.00, further cash maintenance arrears, and the respondent's share of medical aid premiums totalling R 15,179.00 which he had failed to pay.) The applicant further sought a declaration that the respondent was in contempt of the 18 June order, and the imposition on the respondent of a sanction of direct periodical imprisonment. The second contempt application was set down for hearing as a matter of urgency on 9 October 2025.

[7] When the matter came before me on 9 October 2025, no answering affidavit had been filed. The parties had agreed to engage in mediation, and I therefore made an order postponing the matter to 27 November 2025, with a timetable for the filing of answering and replying affidavits, and a direction that the parties attend mediation in accordance with the agreement reached between them ('**the 9 October order'**). In terms of the 9 October order, the

respondent was obliged to deliver his answering affidavit by 13 November 2025.

[8] When the matter came before me on 27 November 2025, the matter had not been resolved in mediation, and the respondent had not filed an answering affidavit as directed in the 9 October order. The respondent's attorneys, Abrahams and Gross, had withdrawn and the respondent appeared in person to oppose the relief sought. The respondent informed me from the bar that he had instructed his attorneys to prepare an answering affidavit, which had been prepared but had not been filed. He could not tell me why this was the case.

[9] I informed the respondent that he would be given one last opportunity to deliver an answering affidavit and warned him that, if he failed to do so, he was liable to be held in contempt and subjected to the sanction of imprisonment. I also admonished the respondent that it was unacceptable for him not to pay any maintenance whatsoever for the minor children, and that he would have to start making payments towards their maintenance. The respondent then tendered to pay the applicant an amount of R 9,000.00 on account of the amount of R 279,860.00 arrear maintenance owing in terms of the 18 June order.

[10] On 27 November 2025 I made an order in terms whereof I issued a *Rule Nisi*, returnable on 19 March 2026, calling upon the respondent to show cause, by filing an affidavit on or before 20 February 2026, as to why an order should not be made declaring him to be in contempt of the divorce order, the 18 June order, and the 9 October order, and imposing a sanction of imprisonment on him ('**the 27 November order'**). As I was mindful that the

respondent was unrepresented at that stage, I took care to explain in the 27 November order exactly what the respondent had to deal with in his answering affidavit. Paragraph 3 of the said order read as follows:

> '3. The respondent, in order to show cause, shall deliver an affidavit on or before Friday 20 February 2026, in which affidavit he shall:
>
> 3.1 explain his failure to comply with the court orders referred to in 2.1 and 2.2 above [the divorce order, the 18 June order and the 9 October order];
>
> 3.2 make a full and frank disclosure, with supporting documents, regarding his financial position (including assets, liabilities, income and expenditure) covering the entire period of his default in respect of his maintenance obligations in terms of the court order.'

[11] The respondent duly delivered an answering affidavit on 20 February 2026. He states that he was assisted in preparing the affidavit by his erstwhile attorneys, who had delivered a notice of withdrawal on 27 November 2025, but then apparently came on record and assisted him once more, before withdrawing again on 5 February 2026.

The relevant legal principles

[12] In the landmark judgment of *Fakie NO v CCII Systems (Pty) Ltd ('Fakie'),* the Supreme Court of Appeal reformulated the law of civil contempt of court to meet the requirements of our new constitutional dispensation, with reference to the onus and procedure.[1] The legal principles laid down in *Fakie*

[1] 2006 (4) SA 326 (SCA).

were affirmed by the Constitutional Court in *Pheko and Others v Ekurheleni City ('Pheko')*[2] and *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others*[3]

[13] In *Pheko* the Constitutional Court explained as follows the nature of contempt of court, and the purpose of contempt proceedings:

> 'Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes acts of contumacy in both senses: wilful disobedience and resistance to lawful court orders. … Wilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence. The object of contempt proceedings is to impose a penalty that will vindicate the court's honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order.'[4]

[14] The requirements for contempt of court are:

a) a court order;

b) service or notice of the order;

c) non-compliance with the order;

d) wilfulness and *mala fides*. [5]

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[2] 2015 (5) SA 600 (CC).

[3] 2018 (1) SA 1 (CC).

[4] *Pheko (supra)* para 28.

[5] *Fakie (supra)* para 42.

[15] An applicant bears the onus of proving these requirements beyond reasonable doubt. But once the applicant has proved the first three requirements, i.e., the order, service or notice of the order and non-compliance therewith, a presumption arises that the non-compliance is wilful and *mala fide*, and the respondent bears an evidential burden to lead evidence sufficient to create reasonable doubt as to their existence. Should the respondent prove unsuccessful in discharging this evidential burden, contempt of court will have been established.[6]

[16] Contempt of court consists of the unlawful, intentional disobedience of a court order.[7] The unlawfulness element may be negated if the respondent proves objective impossibility or necessity as defences.[8] The offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute or authority manifested in the disregard of the court's order.[9]

[17] A wilful, or deliberate, disregard for a court order is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way said to constitute contempt. In such a case, the good faith belief negates contempt.[10] An honest belief that the non-compliance is justified or proper is incompatible with an intention to violate the court's dignity, authority and repute.[11] Even a refusal to comply with a

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[6] *Pheko (supra)* para 36; *Fakie (supra)* paras 41 and 42.

[7] *Fakie (supra)* para 6.

[8] *H v M* 2009 (1) SA 329 (WLD) footnote 5.

[9] *Fakie (supra)* para 10.

[10] *Fakie (supra)* para 9.

[11] *Fakie (supra)* para 10.

court order which is objectively unreasonable may in fact be *bona fide* (although unreasonableness could indicate a lack of good faith.)[12]

[18] Thus, the non-compliance with the court order must be both wilful (deliberate or intentional) and *mala fide* in order to constitute contempt of court. It has been held that the *mala fides* requirement in contempt of court cases should be equated with *dolus* because, since knowledge of unlawfulness has been acknowledged to be an essential ingredient of *dolus*, *mala fides* has lost its role as an element separate from *dolus*.[13] Thus *mala fides* in the context of contempt of court means knowledge of unlawfulness or consciousness of wrong-doing; it is the antithesis of a good faith belief that non-compliance with the court order is justified in the particular circumstances.

[19] *Dolus eventualis* suffices for contempt of court; for this form of intention it is sufficient if the alleged contemnor person subjectively foresaw the possibility of the act being in contempt of court and he was reckless as to the result.[14] The subjective state of mind of the alleged contemnor may be proved by inferences drawn from his or her conduct and the circumstances under which the breach was committed.[15] Where a person deliberately closes his or her eyes to what the law requires, *dolus eventualis* will be found to have existed.[16]

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[12] *Fakie (supra)* para 9.

[13] *H v M (supra)* para 11.

[14] *HEG Consulting Enterprises (Pty) Ltd and Others v Siegwart and Others* 2000 (1) SA 507 (C) 518 H - I

[15] *HEG Consulting Enterprises (Pty) Ltd and Others v Siegwart and Others (supra)* 518 I – J.

[16] *H v M (supra)* para 12.

[20] In *Dezius v Dezius*[17] it was accepted that poverty may be a defence to non-compliance with a maintenance order. Patel J referred with approval to the judgment of the Supreme Court of India in *Jolly George Verghese and Another v Bank of Cochin*,[18] in which the court required proof of the debtor's failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer of other grave illness, and went on to say that:

> 'The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The Provision emphasises the need to establish not a mere omission to pay but an attitude of refusal or demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently.'[19] [Emphasis added]

[21] In *Dezius* the court accepted the respondent's plea of poverty in circumstances where the evidence showed that the respondent and his partner had had to borrow money to buy food and pay their water and electricity bills, and had been bathing in ice cold water and living in the dark because they were unable to pay their electricity bill. In these circumstances the court accepted that the respondent had put up sufficient evidence to show that he did not have the means to comply with the court order. [20]

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[17] 2006 (6) SA 395 (TPD).

[18] [1980] INSC 20 ([1980] 2SCR 913) at 921 – 2 (SCR)

[19] Quoted in *Dezius (supra)* at para 28, 405 D - E

[20] *Dezius (supra)* paras 33 – 35.

[22] In my view it should be borne in mind that there are degrees of impossibility of performance of a court order. A maintenance debtor may lack the means to comply fully with a court-ordered maintenance obligation. However, it must be stressed that the inability to comply 100% with a court order does not absolve the maintenance debtor of the obligation to pay whatever he can towards satisfaction of the court order, with priority being afforded to the court-ordered obligation over all other claims and needs save for basic necessities, such as food and shelter, and urgent medical care. Expenditure on luxuries and non-essentials while court-ordered maintenance obligations go unpaid is inconsistent with good faith. It amounts to a dishonest disowning of the court-ordered obligation through the prioritisation of other claims which cannot be regarded as essential or urgent. In essence, the maintenance debtor decides how he is going to spend his limited resources, and he relegates the court-ordered obligation to the bottom of the list. In so doing, he thumbs his nose at the authority of the court.

[23] It is established practice that civil contempt of court proceedings may be brought on motion. A respondent in such cases is assisted by the so-called *Plascon-Evans* rule to the effect that disputes of fact on motion fall to be decided on the respondent's version, unless the respondent's allegations fail to raise a genuine or bona fide dispute of fact, or are so far-fetched or untenable that they can be rejected merely on the papers, and without a recourse to oral evidence.[21]

[24] Bearing in mind the evidential burden which rests on a respondent in contempt of court proceedings, where the alleged contempt relates to a

[21] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) 634 – 5.

failure to pay in terms of a maintenance order, it is vital that the respondent put up detailed reasons for the default, which should include a full and frank disclosure of his or her financial position, comprising a complete disclosure of all assets and liabilities as well as all income and expenditure during the entire period of default. Vague, bald and sketchy allegations will not suffice to persuade a court that non-compliance with a court order was in fact impossible or was justified by necessity, or that the respondent held a genuine belief that non-compliance was justified or proper in the circumstances.

[25] The relevant facts with regard to wilfulness and *mala fides* will inevitably lie within the unique knowledge of the respondent in contempt proceedings, and will therefore be subject to close scrutiny.[22] For that reason, too, it is imperative that a respondent in contempt of court proceedings should in his or her answering affidavit engage fully with the issues of wilfulness and *mala fides* and deal with the relevant facts in a spirit of candour. If the respondent fails to do so, and contents him or herself with vague allegations and a version and figures which do not add up, the respondent will fail to discharge the evidential burden to which rests on him or her to advance facts which raise a reasonable doubt as to whether the non-compliance with the court order was wilful and *mala fide*.

The respondent's version on oath

[22] *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2007 (2) SA 128 (C) para 13; *Moosa Bros & Sons (Pty) Ltd v Rajah* 1975 (4) SA 87 (D) 93H .

[26] At the time of the divorce, the respondent earned well. He was employed as an air traffic controller in the United Arab Emirates ('UAE'), where he earned approximately R 320,000.00 per month. In 2022, he relocated to Qatar, where he earned approximately R 250,000.00 per month. (The respondent does not explain why he left the UAE to earn less in Qatar. The circumstances referred to below tend to suggest that it may have had to do with the fact that he ran up unpaid debts in the UAE.)

[27] The respondent remarried in April 2019. He went on to have three young children with his new wife.

[28] Between July 2017 and July 2024, the respondent found himself supporting his new wife's family as his father-in-law, who was the sole breadwinner for his family, was diagnosed with Alzheimer's disease and lost his job. He was only relieved of this burden in July 2024, when his brother-in-law obtained employment as an airline pilot and took over the responsibility for caring for his parents.

[29] By August 2024, the respondent had run up debts exceeding R 7 million owed to numerous banks in the UAE and Qatar. While on holiday in South Africa in August 2024, the respondent learned that someone from ENBD Bank in the UAE had arrived at his place of employment in Qatar seeking payment of a loan which the respondent had taken out. The respondent's employer in Qatar became aware that the respondent had failed to repay the loan, and the respondent was advised that he would be dismissed on his return to work. The respondent also feared that he would be arrested at the instance of ENBD Bank for failure to repay the loan.

[30] By virtue of these developments, the respondent decided not to return to Qatar, but to remain in South Africa in order to avoid the risk of his being arrested for failure to pay his debts.

[31] Between August 2024 and October 2024, the respondent used his Absa Bank overdraft facility to live and pay his maintenance obligations in terms of the divorce order. He found employment with effect from 1 November 2024 with the Cape Winelands Airport Company, at a monthly salary of R 73,000.00.

[32] The respondent's new wife is presently unemployed – she is allegedly attempting to start a business in the form of a property management company – and the respondent is currently the sole provider for his new family.

[33] According to the respondent, the current monthly expenses for himself and his new family amount to R 119,220.01 per month, leaving a shortfall of R 66,220.01 per month. The expenses of R 119,220.01 do not include the R 11,000.00 which he currently pays to the applicant, consisting of R 9,000.00 towards the arrear maintenance and R 2,000.00 per month as maintenance for his two teenage daughters. The respondent does not say how he is funding the monthly shortfall of R 66,220.01. The expenses totalling R 119,220.01 are listed on an annexure to the respondent's answering affidavit. I shall return to these expenses.

[34] The respondents mentions that he and his new wife have been selling personal items to raise money, and he annexes images of various luxury

items for sale, such as a Tag Heuer watch. He alleges that his wife's vehicle was sold on 18 April 2025 for R 75,000.00 to cover overdue medical aid and hospital bills. He also alleges that he has borrowed "substantial sums of money" from his brother-in-law, but he does not provide details in this regard.

[35] The respondent alleges that he was placed under debt review in January 2025, and pays a monthly instalment R 28,200.00 per month in respect of the debt review. The respondent did not see fit to include details in his affidavit of all debts involved in the debt review, and how the payment of R 28,200.00 is made up. The debt review statements annexed to the answering affidavit are illegible.

[36] The respondent states that he has the following liabilities:

a) Absa overdraft R 198,421.61;
b) Absa credit card R 273,670.92;
c) Absa personal loan (i) R 113, 046.95;
d) Absa personal loan (ii) R 222,666.96;
e) Banks in UAE and Qatar > R 7 million;
f) Toyota Finance lease on Toyota Fortuner R 674,617.71.

[37] What is notably absent from the respondent's affidavit is any indication of his assets. The respondent is simply silent in this regard. One is not told whether or not he has any policies which could be surrendered to generate funds. The respondent has not disclosed any details regarding the motor vehicles which he and his wife have or had, save that one is told that a motor vehicle belonging to his wife was sold in April 2025 for R 75,000.00 and

that the respondent currently drives a Toyota Fortuner vehicle, which he leases at a cost of R 9,388.19 per month.

[38] On the basis of the state of his finances, the respondent denies that he is in wilful default of the court orders. He states that, '*Simply put, I am unable to comply with the orders at present*.' His defence boils down to what he describes as '*genuine financial incapacity.'*

[39] He alleges that he brought an application in the maintenance court to vary his maintenance obligations in terms of the divorce order. The respondent does not say when he first approached the maintenance court to seek a variation of the maintenance order, but it appears his attorney's letter of 1 July 2025 (a copy whereof is annexed to his answering affidavit as "A2") that the variation application was expected to be launched in the following week. The respondent alleges, however, that he withdrew that particular application – he does not say why - and issued a fresh application in the Paarl maintenance court, which was postponed for financial enquiry on 24 April 2026. The respondent seeks a reduction of the maintenance order to R 1,000.00 per child per month, increasing annually by CPI. He says that this is all he can afford.

Evaluation

[40] In evaluating the respondent's professed inability to comply with his maintenance obligations, the starting point is to bear in mind that the order was based on what the parties agreed in 2015 was a fair and reasonable amount of maintenance. Once a settlement agreement is made an order of

court, it is an order like any other and is enforceable as a court order.[23] Unless and util the maintenance order is varied, it stands and must be obeyed. There is an unqualified obligation on every person against whom an order is made by a court of competent jurisdiction to obey it unless and until the order is discharged (or varied). It is not up to the person to decide whether or not to obey the court order.[24]

[41] Although maintenance orders can be varied due to altered financial circumstances, a maintenance debtor cannot simply take matters into his or her own hands and reduce the amount payable in terms of the order. It is necessary to approach the maintenance court for a variation of the maintenance order, and it is for the court to decide the appropriate amount after an enquiry into the circumstances of the parties.

[42] The respondent's protestations that he was unable to comply with the maintenance order must also be evaluated in the light of the fact that, between October 2024, when he informed the applicant that he would no longer be able to pay the children's maintenance, and 20 February 2026, when he delivered his answering affidavit, he only paid the following amounts in respect of the children of his first marriage:

a) R 2,000.00 on 18 September 2025;
b) R 2,000.00 on 18 November 2025;
c) R 9,000.00 on 30 November 2025;
d) R 9,000.00 on 24 January 2026;

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[23] *Eke v Parsons* 2016 (3) SA 37 (CC) paras 29 and 31.

[24] *Minister of Home Affairs and Others v Somali Association of South Africa EC and Another* 2015 (3) SA 545 (SCA) paras 34 and 35.

e) R 2,000.00 on 7 February 2026.

[43] It bears emphasis that between November 2024 and September 2025, the respondent did not pay one cent in cash maintenance for the children. From December 2024 he ceased paying his share of the medical aid premiums for the minor children of R 1,533,00 per month.

[44] Against that backdrop, one has to consider how the respondent spent his salary of R 73,000.00 per month, as well as other amounts which came into the respondent's bank accounts and the bank accounts of his new wife. For it is clear from the various bank statements disclosed by the respondent that he and his wife did in fact receive other income. The respondent did not see fit to analyse these bank statements and tally up and provide a full explanation of the income which he and his wife received from other sources (save for a list of certain amounts which is bald, lacking in detail and inadequate). One sees from the bank statements that he and his wife received the proceeds of an insurance claim of some R 53,000.00, a policy was cashed in for R 110,000.00, R 22,000.00 odd was received from selling biltong on Christmas markets, consultancy fees of R 35,000.00 were earned, an amount of R 95,000.00 was deposited by one Nicole Rocher, and an amount of R 80,000.00 was received from one Mike Menenzes on 5 September 2025 for an undisclosed reason – to name but a few examples. One also knows that the respondent and his wife were allegedly selling personal items to raise money, but one is not told how much money they received for items sold. The respondent mentioned that his wife's motor vehicle was sold in April 2025 for R 75,000.00, but he failed to disclose a receipt of R 50,000.00 on 10 March 2025 which bears the narration '*ABSA Bank Buy Johan BMW'*,

which suggests that the respondent sold his motor vehicle – or one of them if he has more than one motor vehicle.

[45] The respondent's treatment of his assets and liabilities and income is woefully inadequate. As mentioned above, he has not provided any details regarding his assets. The court should not be left guessing as to what assets the respondent owns. If he in fact has no assets, he should say so on oath.

[46] The respondent has not given a full and frank account as to exactly when all of his various liabilities were incurred, in particular the amounts owing to Absa on overdraft, on credit card and for personal loans. The respondent has not seen fit to disclose his ABSA credit card statements, which would show when the debt of R 273,670.92 was run up and what it was spent on. All he provided was a letter from the bank giving the settlement amount. He also failed to provide details of exactly when the personal loans of R 113,046.98 and R 222,665.96 were taken out, and how the monies were spent. The respondent alleges that he placed himself under debt review in January 2025, and he should not have been able to obtain further credit after that. This suggests that the ABSA credit card and personal loan debts were incurred before January 2025. One the other hand, one sees that on 5 February 2025, the respondent took out a contract with Toyota Financial Services for the lease of the Fortuner vehicle which he currently drives. One therefore cannot rule out that the ABSA credit card and personal loan debts might also have been incurred after January 2025. Indeed, the respondent lists minimum payments on his ABSA personal loan and credit cards on his list of monthly expenses, over and above his debt review payment, which suggests that

these debts were incurred after January 2025 and are not included in the debt review.

[47] The respondent's failure to provide the necessary details regarding when these debts were incurred is a significant omission, because it has direct bearing on the *bona fides* of his defence of inability to pay maintenance in terms of the divorce order. If in fact the personal loans were taken out, and the credit card debt incurred, after November 2024, when the respondent ceased paying maintenance in terms of the divorce order – as appears to be the case - then it indicate that, despite the fact that he was able to borrow funds and access credit, the respondent did not use any of the debt thereby incurred to pay towards the maintenance of the children from his first marriage. And if the credit card statements were to reveal expenditure on luxuries while the respondent was failing to pay a cent towards his maintenance obligations in terms of the divorce order, that would negate his protestations of financial inability. The respondent has failed to take the court into his confidence in these regards.

[48] The respondent's treatment of his monthly expenditure is also inadequate. He attaches a list of his monthly expenditure at the time of deposing to his answering affidavit on 20 February 2026, which reveals monthly expenses amounting to R 119,220.01, excluding any provision for the children of his first marriage.

[49] That list of expenses must be compared with the respondent's list of expenses furnished to the applicant's attorneys under cover of a letter dated 1 July 2025 (annexed as "A4" to the founding affidavit.) In that list, the

respondent's monthly expenses amount to R 111,208.00 per month, excluding any provision for the children of his first marriage.

[50] I shall refer to the older expense list as 'list A' and the more recent expense list as 'list B.'

[51] In the first instance, the respondent does not explain how he is managing to fund the shortfall between his salary and his alleged monthly expenses. It is difficult to reconcile the list of expenses with the expenditure in the respondent's bank statements – an exercise which the respondent himself should have done for the benefit of the court. If indeed the respondent is spending what he claims in his list of expenses, the indications are that he is receiving income other than his salary, and this appears to be the case. But the respondent has not made a full and frank disclosure in this regard.

[52] Secondly, to my mind the very act of failing to make any provision on his lists of expenses for maintenance for the minor children born of his first marriage indicates that this was not a priority for the respondent. It reveals that his mindset was that of someone wishing to avoid having to pay any maintenance, rather than someone who genuinely wished to pay, but could not do so.

[53] One sees from list A that in July 2025, the respondent was allegedly paying an amount of R 9,000.00 per month to a domestic worker. That amount has now decreased in list B to R 4,000.00 per month. The respondent's wife is not employed. To my mind, the employment of a domestic worker is a luxury in the circumstances. This expense cannot justify non-payment of

maintenance for the respondent's older children in terms of the divorce order.

[54] One sees from list A that in July 2025, the respondent's monthly rental amounted to R 26,000.00 per month. In list B, the respondent's monthly rental has decreased to R 23,000.00 per month. This suggests that the respondent has secured cheaper accommodation. One knows that the respondent resides in the Hartenbos estate, which the applicant describes as a luxury estate. The respondent has made no effort to put up evidence of comparative rentals in the Mossel Bay area. Absent such evidence, the respondent has not shown that it is impossible for him to obtain cheaper rented accommodation in the area. The omission is important because, if in fact the respondent were able to secure cheaper rented accommodation, thereby freeing up money to pay towards his maintenance obligations, but failed to do so, that indicates a deliberate prioritisation of his and his new family's lifestyle at the expense of the minor children born of his first marriage.

[55] One sees from list B that the respondent pays the following amounts in respect of the young minor children born of his second marriage:

a) School fees R 8,300.00;
b) Kids little readers classes R 400.00;
c) Kids swimming R 3,000.00;
d) Kids dance R 575.00;
e) Kids tennis R 250.00;
f) Kids playball 250.00;
g) Kids rugby R 300.00;

h) Occupational therapist R 3,200.00.

[56] The respondent was apparently spending over R 16,000.00 per month on the young minor children born of his second marriage, while failing to pay his court-ordered maintenance obligations in respect of the older minor children born of his first marriage. The expenditure of so much money on extra-mural activities for the young children is not a necessity. It is an unjustifiable luxury – in particular the expenditure of R 3,000.00 per month on swimming. If the respondent cannot make ends meet on his current income, it is not up to him to prioritise the lifestyle of his new family at the expense of the minor children born of his first marriage. It is incumbent on him to approach the maintenance court for a re-assessment of his maintenance obligations and a fair allocation of his resources between all the minor children involved. It is difficult to credit that the respondent could genuinely have believed that it was in order to pay for luxuries for the children born of his second marriage, while ignoring his court-ordered obligations to the children born of his first marriage.

[57] One knows from the Toyota Financial Services statement annexed to the answering affidavit that on 5 February 2025 the respondent took out a lease for a Fortuner vehicle at a cost of R 9,388.19 per month. It appears that he thereafter sold his BMW vehicle for R 50,000.00 in March 2025, and that his wife's motor vehicle was sold for R 75,000.00 in April 2025. The respondent did not deal in his answering affidavit with the sale of his BMW, or the reason why he saw the need to sell his vehicle and enter into a contract for a new vehicle at a cost of R 9,388.19 per month at a time when

he said that he could not afford to pay any maintenance in terms of the divorce order, and had ceased making any maintenance payments.

[58] In the absence of any evidence to the contrary, the inescapable inference is that the respondent exercised a deliberate choice to acquire this vehicle rather than to keep driving his previous vehicle, and to spend money on the Fortuner rather than his court-ordered maintenance obligations.

[59] One sees from the bank statements that on 5 November 2025 the respondent paid an amount of R 17,850.00 to 'Atkv Staanplek'. It appears to be payment for a caravan holiday at an Atkv resort. Support for this inference is to be found in the copies of Facebook posts by the respondent's new wife, showing the family enjoying a camping holiday next to the sea at Hartenbos. Holidays are a luxury. It bears emphasis that, at the stage when the respondent paid the R 17,850.00 to Atkv, he had only made one payment of R 2,000.00 towards his maintenance obligations in terms of the divorce order since October 2024 – a paltry R 2,000.00 in almost a year. The facts speak for themselves. The respondent clearly exercised a choice to spend on luxuries for his new family, rather than complying with his court-ordered maintenance obligations.

[60] In my view, the respondent has not come close to discharging the evidential burden which rests on him to show that his non-compliance with the divorce order and the order of 18 June was not wilful and *mala fide*. While I can accept that the respondent may not have been able to pay the full cash maintenance amount of R 39,980.00 per month, and that he may not have been able to pay R 279,860.00 to the applicant within 48 hours, as ordered in

the 18 June order, that is not the end of the enquiry. If he had been acting in good faith, he would have made some attempt to comply with the court order, even if only partially. He would have paid what he could to the best of his ability, prioritising his court-ordered obligations above all other obligations save those dictated by necessity, such as food, shelter and urgent medical treatment for himself and his dependants. But instead, the respondent made no payments whatsoever between November 2024 and 18 September 2025. And during that time, he saw fit to take out a lease for a new motor vehicle at a cost exceeding R 9,000.00 per month, and when he apparently had R 17,850.00 to spare, he did not pay it to the applicant in part settlement of the maintenance arrears of R 279,860.00. Instead, he appears to have spent it on a holiday.

[61] And if one has regard to the applicant's analysis of the income and expenditure of the respondent's wife (since the respondent paid most of his salary into his wife's account) one sees that the respondent's wife, who on his own version is unemployed and dependant on him, was spending on average R 19 588.00 per month on groceries, R 4,499.99 per month on restaurants, takeaways and coffee shops, R 5,445.49 per month on clothing, R 5,886.86 per month on entertainment, gifts and parties, R 12,889.00 per month on general shopping and pets, R 16, 977 per month on life insurance, policies and medical aid. The expenditure funded by the respondent through his wife's bank account reveals a luxurious lifestyle which gives the lie to the respondent's protestations of poverty and inability to comply with the divorce order and the order of 18 June.

[62] Far from the respondent discharging the evidential burden which rests on him, his bald and patchy version, taken together with various bank statements annexed to his answering affidavit, demonstrate to my mind that the respondent's non-compliance with the divorce order and the 18 June order was indeed in wilful and *mala fide*.

[63] In short, having ceased making maintenance payments in October 2024, he waited until July 2025 to approach the maintenance court for a variation of his maintenance obligations, and he accorded no priority whatsoever to making payment towards his obligations in terms of the divorce order, or the order of 18 June. Instead, he chose to spend all his resources on his new family. He arrogated to himself the right to decide whether or not to comply with the divorce order. He only began to start making small payments towards his maintenance obligations on 18 September 2025, after the applicant had launched the second contempt of court application against him. His conduct speaks to a total disregard for the authority of the court and its orders.

[64] One sees the same disregard in the respondent's failure to deliver his answering affidavit by 13 November 2025, as ordered in the order of 9 October 2025. The respondent's explanation is that he did not have the means to engage in contested litigation, and that he had earmarked the funds at his disposal for the mediation scheduled for 20 November 2025. This explanation does not pass muster. The mediation was expressly contemplated in the order of 9 October 2025, and the respondent was also ordered to deliver an answering affidavit by 13 November 2025. The two processes were running parallel. Had the respondent wished to engage in

mediation before delivering an answering affidavit, he should have raised this with the Court at the hearing on 9 October 2025. But he did not do so. And having been ordered to deliver his answering affidavit by 13 November 2025, he arrogated to himself the right to decide to apply his funds to mediation instead, and to ignore the deadline for delivering his answering affidavit. Indeed, all indications are that the respondent had no intention of complying with the filing deadline on 9 October 2025, when the order was made. And one knows that, despite the respondent's protestations of a lack of means, he found the money on 5 November 2025 to pay R 17,850.00 for a "*staanplek*" for a camping holiday. To my mind the circumstances demonstrate that the respondent was guilty of a flagrant, deliberate and *mala fide* disregard of the order of 9 October 2025.

[65] Indeed, the evidence, viewed as a whole, manifests a total lack of appreciation on the part of the respondent for the importance of complying with court orders. He has shown no respect for the authority of the court, and his protestations of inability to comply lack sincerity and substance.

[66] I therefore find that the respondent is in contempt of the divorce order, the order of 18 June 2025 and the order of 9 October 2025.

The declaratory relief sought in respect of the arrear maintenance

[67] In terms of the 18 June order, the respondent was ordered to pay the arrear maintenance then owing in the amount of R 279,860.00 within 48 hours.

[68] The arrear maintenance has since increased to R 461,355.80, and the applicant seeks an order directing the respondent to pay this amount within 48 hours.

[69] The respondent admits that he owes the amount, but he alleges that his non-compliance is not wilful and *mala fide*.

[70] I have found that the respondent has not discharged the evidential burden which rests on him to raise a reasonable doubt in regard to wilfulness and mala fides, because of the fact that he failed for almost a year to make any contribution towards his maintenance obligations, and has since September 2025 failed on contribute meaningfully to those maintenance obligations while spending money on luxuries. I do accept, however, that the respondent is probably not in a position to pay R 461, 355.80 within 48 hours, and I am not inclined to grant such an order.

[71] I also consider it inappropriate to make an order for payment of R 461,355.80 which includes an amount of R 279,860.00 which is already the subject of a court order. To my mind the appropriate order is to direct the respondent to comply with the divorce order by making payment of the additional arrear maintenance totalling R 181,495.80. I do not intend to make an order as to the timing of the payment of the additional arrears, since I am mindful of the fact that the respondent has approached the maintenance court for a variation of his maintenance obligations under the divorce order, and a financial enquiry will be held. To my mind it would be appropriate for the payment of the arrears maintenance to be dealt with by the maintenance court, which can schedule an appropriate arrear repayment plan in addition to the current monthly maintenance payment.

Costs

[72] The applicant requests an order for costs on the attorney and client scale. The respondent submits that he cannot afford to pay her costs.

[73] I have already indicated that, in my view, not much store can be placed in the respondent's protestations of inability to pay. He manages to find the money for what he wants to pay.

[74] It would be most unjust to deprive the applicant of her costs when she has had to come to court repeatedly in an attempt to enforce what is due to her children in terms of the divorce order and the 18 June order. There is no reason why the costs should not follow the result, in the usual way.

[75] As to the request for costs on the attorney and client scale, I consider that such an order is warranted, both to mark the court's displeasure at the respondent's contemptuous treatment of court orders, and to afford the applicant the fullest possible recovery of her costs, as justice demands in this case.

Conclusion

[76] I therefore make the following order:

1 In addition to the amount of R 279 860.00 referred to in the order of 18 June 2025, the respondent is ordered to pay the applicant further arrear maintenance in the amount of R 181,495.80, which amount shall be

paid in the manner directed by the Paarl maintenance court pursuant to the maintenance enquiry pending in that court.

2 It is declared that the respondent is in contempt of:

2.1 the order of this Court granted under case number 126044/2015 on 5 August 2015;

2.2 the order of this Court granted under case number 126044/2015 on 18 June 2025;

2.3 the order of this Court granted under case number 126044/2015 on 9 October 2025.

3 The application is postponed to a date to be arranged with the presiding Judge for presentation of evidence and argument with regard to an appropriate sanction for the respondent's contempt of court.

4 The respondent is liable for the applicant's costs incurred in the applications brought in June and September 2025, to be taxed on the attorney and client scale.

5 The provisions of paragraph 2 of this court's order dated 19 March 2026 remain of full force and effect.

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D M DAVIS

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the applicant: Adv R Steyn
Instructed by Faure & Faure Inc, per M. Meintjes

For the respondent: In person