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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2022-25133

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
17/06/2026	_____
DATE	SIGNATURE

In the matter between:

P[...] A[...] T[...]

APPLICANT

and

N[...] L[...] T[...] (née P[...])

FIRST RESPONDENT

F[...] J[...] H[...] T[...]

SECOND RESPONDENT

D[...] M[...] T[...]

THIRD RESPONDENT

JUDGMENT

Mahosi, J

Introduction

[1] The applicant, the husband and father in a pending divorce action, seeks the joinder of the two major children, F[...] J[...] H[...] T[...] (“F[...]”) and D[...] M[...] T[...] (“D[...]”) as the second and third respondents respectively; an interdictory relief compelling the first respondent to comply with clause 1.3.3 of an order granted by Gundelfinger AJ on 08 August 2023, and to suspend his maintenance liability towards the third respondent pending such compliance; and a variation of the said order on the ground of material changed circumstances, effectively terminating maintenance for the two major children and reducing maintenance for the first respondent.

[2] The joinder of the second and third respondents is unopposed. The first respondent opposes the interdictory and variation relief on both factual and legal grounds. The second respondent has filed a confirmatory affidavit supporting the first respondent’s stance.

[3] Coupled with this application is the first respondent’s condonation application for the late filing of the answering affidavit. The delay, although substantial, is adequately explained. There is no significant prejudice to the applicant that a costs order cannot compensate. Moreover, the answering affidavit raises factual disputes that are material to the just determination of the matter. It is, therefore, in the interest of justice that the answering affidavit be admitted. Accordingly, condonation ought to be granted.

Background

[4] The applicant and the first respondent married on 15 January 2000, out of community of property with the exclusion of the accrual system. Their marriage still subsists. On 14 July 2022, the applicant issued a summons for divorce against the first respondent. On 14 September 2022, the first respondent filed a plea and counterclaim. The divorce action is still pending.

[5] Following the first respondent’s application for interim maintenance, Gundelfinger AJ, by agreement between the parties, ordered on 08 August 2023, *inter alia*, that:

- “1. That the Respondent is ordered to pay maintenance towards the Applicant and the major children, *pendente lite*, as follows:
 - 1.1 An amount of R 25 000.00 per month for the Applicant on or before the 1st of the month following this order and thereafter on or before the 1st of each consecutive month directly into a bank account so indicated by the Applicant.
 - 1.2 An amount of R 7 500,00 per month for the major child F[...] on or before the 1st of the month following this order and thereafter on or before the 1st of each consecutive month directly into a bank account so indicated by the Applicant.
 - 1.3 An amount of R 7 500,00 per month for the major child D[...] on or before the 1st of the month following this order and thereafter on or before the 1st of each consecutive month directly into a bank account so indicated by the Applicant.
 - 1.3.1 The maintenance in 1.3 supra for D[...] is subject thereto that a claim for maintenance for D[...] be submitted to the trustees for the time being of the D[...] M[...] T[...] Trust ("Trust") and the claim being rejected.
 - 1.3.2 In the event that the claim is met in full alternatively only partially met, D[...] will only be entitled to the payment of maintenance as stated in paragraph 1.3 from the Respondent to the extent of what is not met by the Trust.
 - 1.3.3 The Applicant, insofar as the Applicant takes care of D[...], is directed to seek repayment from the trust for the expenses paid on behalf of D[...] as provided for in clause 10 of the D[...] M[...] T[...] Trust deed.
 - 1.3.4 That the Respondent be ordered to pay such maintenance as stated in paragraph 1.3 pending the finalisation of such claim by the Trustees of the D[...] M[...] T[...] Trust.”
2. That the Respondent is ordered to pay the following expenses directly to the service provider:
 - 2.1 Mortgage bond of the matrimonial home to FNB
 - 2.2 MNET/DSTV

- 2.3 Short-term Insurance for the matrimonial property and vehicles of the Applicant and the major children, excluding the insurance pertaining to the Kwid motor vehicle .
- 2.4 Cell-phone contracts of the Applicant and the major children
- 2.5 Maintenance of the vehicles of the Applicant and the major children
- 2.6 Car-track for the vehicles of the Applicant and the major children
- 2.7 Life Insurance Policy held at Discovery Health
- 2.8 Gym Fees
- 2.9 Levies for the matrimonial home
- 2.10 Vodacom Fibre
- 2.11 Salary of the domestic worker working at the matrimonial home directly to the domestic worker
- 2.12 Vehicle instalments for the vehicle of the major child, D[...], directly to the service provider where the debit order on the Applicant's bank account is to be terminated and replaced with that of the Respondent, within 7 days from the date of this order by the Respondent
 - 2.12.1 The Respondents' obligation to make payment of the instalment referred to in 2.12 is subject thereto that a claim for maintenance for D[...] for the payment of the vehicle instalments is submitted to the trustees for the time being of the D[...] M[...] T[...] Trust by D[...] and the claim being rejected.
 - 12.1.2 In the event that the claim is met, the Respondent will no longer be liable for the instalment payment.
 - 12.1.3 The Applicant, insofar as the Applicant takes care of D[...], is directed to seek repayment from the trust for the expenses paid on behalf of D[...] as provided for in clause 10 of the D[...] M[...] T[...] Trust deed.
 - 12.1.4 That the Respondent be ordered to pay the motor vehicle instalments of D[...] as stated in paragraph 2.12. pending the finalisation of such claim by the Trustees of the D[...] M[...] T[...] Trust,

- 2.13 All reasonable costs of the maintenance and repairs at the matrimonial home, including but not limited to pool care at the matrimonial home.
 - 2.14 Rates and taxes and municipal service accounts for the matrimonial home including but not limited to electricity, water, sewerage and refuse removal.
 - 12.15 Fuel for the generator to be used at the matrimonial home
 - 12.16 Policies at MCC and OUTA.
3. The Respondent is to retain the Applicant and major children on the existing medical aid and pay the monthly subscriptions directly to the service provider and all excess medical expenses of the Applicant and the major children not covered by the Applicant's medical aid directly to the service provider.
- 3.1 If and in the event that the Applicant pays the costs of such medical expenses that the Respondent be ordered to repay the Applicant within 7 days from date of being provided with a statement or receipt from the service provider to be paid directly into a bank account so indicated by the Applicant.
 - 3.2 The Respondents' obligation to make payment of the costs of the medical aid for D[...] is subject thereto that a claim for maintenance for D[...] for the payment of the costs of the medical aid is submitted to the trustees for the time being of the D[...] M[...] T[...] Trust by D[...] and the claim being rejected.
 - 3.3 In the event that the claim is met, the Respondent will no longer be liable for the medical aid for D[...].
 - 3.4 The Applicant, insofar as the Applicant takes care of D[...], is directed to seek repayment from the trust for the expenses paid on behalf of D[...] as provided for in clause 10 of the D[...] M[...] T[...] Trust deed.
 - 3.5 That the Respondent be ordered to pay the costs of the medical aid as stated in paragraph 3 pending the finalisation of such claim by the Trustees of the D[...] M[...] T[...] Trust.
4. That the Respondent is ordered to pay a contribution towards the Applicant's legal costs in the divorce proceedings to the amount of R 20 000.00 within 10 days of granting of this Order directly into a bank account so directed by the Applicant.

5. Costs of this application to be costs in the cause.”

[6] The above order is the subject of this application. Prior to considering whether the applicant has made a case for an order compelling the first respondent to comply with paragraph 1.3.3 of the above order and to vary it, the joinder application is dealt with.

Joinder

[7] The applicant seeks the joinder of F[...] J[...] H[...] T[...] and D[...] M[...] T[...] as the second and third respondents, respectively. Considering that they have a direct and substantial interest in the relief sought, particularly the proposed termination of maintenance payable to them, they must be joined to these proceedings.

The interdictory relief

[8] In prayers 2 and 3 of the notice of motion, the applicant seeks an order compelling the first respondent to comply with clause 1.3.3 of the Gundelfinger AJ order and to suspend his maintenance liability towards the third respondent until the first respondent provides evidence that she has made the necessary enquiries with the D[...] M[...] T[...] Trust (“the Trust”) and that the Trust has rejected (or partially rejected) her claims.

[9] The applicant contends that the first respondent ignored the terms of the order because she has never “sought repayment” of the expenses paid on D[...]’s behalf from the Trust, and the Trust never rejected any claims from them. Instead, she merely instructed an attorney, Mr. Krause, to write a letter requesting a roundtable meeting. To support his contention, the applicant submitted that he attempted to communicate with the Trust, which was represented by Ms. Yolanda Alberts, an employee of Standard Bank Trust. The highlights of his allegations in the founding affidavits that:

“26. The First Respondent is for all intents and purposes in contempt of the Court Order and accordingly I am entitled to the relief which is sought

vis-à-vis interdicting the First Respondent to comply with her obligations flow from the Court order.

27. What the First Respondent has done, through her blatant disregard for the Court Order, is to extend the term of my obligation, whilst knowing that I will have to continue to pay because she simply did not comply with her Court Order obligations and never intended to comply.”

[10] The nature of the relief sought in prayers 2 and 3 of the notice of motion needs analysis. Although the applicant labels it “interdictory relief”, it is in substance final relief. A finding that the first respondent has failed to comply with a court order and a direction that she must comply under threat of suspension of the applicant’s own obligations is a final determination of her rights and duties under the order. The first respondent correctly contended that where the relief sought will have the practical effect of a final order, the test applicable to final interdicts must be applied.¹

[11] The requirements for a final interdict are trite. The applicant must show a clear right, an injury actually committed or reasonably apprehended, and the absence of another suitable remedy.² It is also established that under the *Plascon-Evans* rule, in motion proceedings, a final order can only be granted if the facts averred by the applicant, which have been admitted by the respondent, together with the facts averred by the latter, justify the order.³

[12] In a contempt application, the applicant must establish the existence of the order, service, or notice thereof on the respondent, and the respondent’s non-compliance therewith. 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, on balance of probabilities, that non-compliance was wilful and *mala*

¹ See *Reddy v Siemens Telecommunications (Pty) Ltd* 2007 (2) SA 486 (SCA), at para 4; *BHT Water Treatment (Pty) Ltd v Leslie & Another* 1993 (1) SA 47 (W), at 54 J – 55E.

² See *ABSA Bank Ltd v Dlamini* 2008 (2) SA 262 (T), at para 10.

³ *National Director of Public Works v Zuma* 2009 (2) SA 277 (SCA) at para 26.

fide, contempt will have been established.⁴ The standard of proof is summed up in *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* as follows:

“Summing up, on a reading of *Fakie*, *Pheko*, and *Burchell*, I am of the view that the standard of proof must be applied in accordance with the purpose sought to be achieved, or differently put, the consequences of the various remedies. As I understand it, the maintenance of a distinction does have a practical significance: the civil contempt remedies of committal or a fine have material consequences on an individual's freedom and security of the person. However, it is necessary in some instances because disregard of a court order not only deprives the other party of the benefit of the order but also impairs the effective administration of justice. There, the criminal standard of proof — beyond reasonable doubt — applies always. A fitting example of this is *Fakie*. On the other hand, there are civil contempt remedies — for example, declaratory relief, mandamus or a structural interdict — that do not have the consequence of depriving an individual of their right to freedom and security of the person. A fitting example of this is *Burchell*. Here, and I stress, the civil standard of proof — a balance of probabilities — applies.”⁵

[13] In the current matter, the existence of the order and service thereof on the alleged contemnor, the first respondent, is not disputed. There is a factual dispute as to whether the first respondent's actions amount to compliance with clause 1.3.3 of the order. To the extent that the relief sought is not committal, the civil standard of proof, a balance of probabilities, applies.

[14] The first respondent alleges that immediately after the order was granted, she instructed attorney Mr. Krause to act on her behalf in relation to the D[...] M[...] T[...] Trust. On 14 November 2023, Mr. Krause directed a letter to the Trust, which reads:

“Dear Mrs. Alberts

D[...] M[...] T[...] TRUST/ STANDARD TRUST LTD

⁴ See *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA), at para 42.

⁵ 2018 (1) SA 1 (CC), at para 67.

1. We refer to the above matter and record that we are acting herein on behalf of the D[...] M[...] T[...] Trust (hereinafter "our client").
2. We record firstly that our offices have been representing the parents of the beneficiary of the Trust, said D[...] M[...] T[...] (ID 0[...]) and that the parents are well known to writer.
3. We secondly confirm that there is a developing dispute between the parents not only with regards to the interpretation of their Divorce Settlement Agreement but also with regards to the impact that the aforementioned Settlement Agreement has on the *inter vivos* Trust.
4. In light of the aforementioned, writer is of the opinion that there is value to be had in a round table meeting as soon as possible wherein which we invite both parents as well as your good self in your capacity as representative of the Standard Trust Ltd. for purposes of discussing the impact of the Divorce Settlement Agreement as well as the content of the Trust Deed and explaining to the parents their rights and obligations as contained in both the said documents.
5. Writer is more than prepared to arrange the meeting on an "online" platform and advise that our offices are currently making use of MS Teams in that regard.
6. We would therefore appreciate it if you could revert to our offices with your availability accordingly and advise times and dates for such envisaged meeting.
7. In closing, and with regards to the general administration of our file, we would appreciate it if you could provide us with a copy of the letter of Authority of the Trust Deed insofar as we are only in possession of the Trust Deed itself.
8. We also confirm that you may contact the writer telephonically at any stage should you wish to discuss the matter with the writer.
9. We thank you in anticipation."

[15] The applicant argues that, to the extent that the above letter does not request a specific sum or include any expenses, it falls far short of compliance. However, the

order does not prescribe a particular form of “seeking repayment”. A reasonable interpretation could include a request through an attorney to facilitate a meeting to determine how the Trust will meet its obligations under clause 10 of the Trust Deed. The first respondent submitted that by instructing Mr. Krause to send this letter, she believed she had complied with the order.

[16] Notably, even before the order was granted, the first respondent had made attempts to engage the Trust. On 05 April 2023, she wrote a letter requesting a payment of R450 000, and she sent a follow-up letter on 30 May 2023. After the order, when the Trust’s representative, Yolanda Alberts, requested D[...]’s contact details to engage with her directly, the first respondent promptly provided them. On 07 November 2023, the trustees requested that D[...] provide a breakdown of her monthly expenses so they could load a monthly income into her bank account. However, D[...] responded, stating that she was seeking legal advice. Mr. Krause sent a further follow-up letter on 06 December 2023, but received no response from the trustees, who effectively declined to continue discussions with the first respondent.

[17] In these circumstances, the first respondent did not ignore the order. She engaged her attorney, corresponded with the Trust, provided the requested information, and made repeated attempts to initiate the process of seeking repayment, but was met with the Trust’s unresponsiveness and its decision to deal directly with D[...]. It could, therefore, not be said that she deliberately defied the court order. In light of the above, the applicant failed to establish willfulness and *mala fides* on the part of the first respondent. Accordingly, the relief sought under prayers 2 and 3 of the notice of motion must be dismissed.

Variation

[18] The applicant seeks to vary the 08 August 2023 maintenance order, essentially terminating all maintenance for the second and third respondents and substantially reducing maintenance for the first respondent. He relies on the grounds of a material change in his financial position, the respondents' improved financial positions, and cessation of dependency.

[19] Rule 43(6) enables this court, having made an interim order in a matrimonial matter, to vary its decision in the event of a material change occurring in the circumstances of either party or a child, or the contribution towards costs proving inadequate. A variation due to changes in financial situation under this subrule requires proof of a material change in circumstances since the original order. The applicant bears the onus of establishing, on a balance of probabilities, that a material change has occurred. To succeed, the applicant must provide a clear, detailed account of those changes.⁶

[20] Regarding his financial position, the applicant contends that his sole income-generating business, D[...] E[...] CC t/a P[...] I[...] (P[...] I[...]s), has suffered a severe downturn, as demonstrated by a profit and loss statement for the period November 2024 to February 2025 showing a net loss of over R405 000.00 largely due to the loss of a substantial client in Mozambique amid the current political climate.

[21] However, the first respondent has produced evidence that this period is historically the worst for Pat Industries due to the December/January shutdown. More tellingly, she has produced figures showing that annual sales increased from R12,827,892.89 in the 2023 financial year to R13,884,198.92 in 2025. The applicant's own replying affidavit does not seriously dispute these figures. Instead, he merely argues that increased sales do not automatically translate into increased profits. He does not, however, provide full-year profit figures for the years following the 2023 order.

[22] Furthermore, evidence shows that the applicant has not behaved as a person in financial distress. He purchased a new Suzuki Jimny vehicle in February 2025 at a monthly cost of R13 444.55 and spent R180 889.59 on its accessories. He also owns an Audi QRS3 and went on holiday trips, including a 10-day cruise for New Year's Eve. These expenditures seriously undermine his claim that he cannot afford the maintenance ordered in 2023.

⁶ *C.L.J v C.L.E* (34367/19) [2023] ZAGPJHC 386 (26 April 2023), at para 22.

[23] Therefore, the applicant has failed to prove a material change in his financial circumstances. The selective reliance on four poor months, contrasted with his personal spending and the overall increase in his company's turnover, leads to the conclusion that his financial position has not deteriorated materially and may, in fact, have improved.

[24] Turning to the respondents, the applicant argues that F[...] R7 500.00 monthly maintenance should be terminated, as he is no longer a dependent major child, having become gainfully employed at Sign Facets and engaged to be married. The undisputed facts are that F[...] is 24 years old, has been employed since December 2023, and earns a net salary of R8 000.00 per month. He is also engaged to be married. However, the first respondent has provided a detailed breakdown of his monthly expenses amounting to R19 621.00.

[25] Even if the Court were to accept that some of these items may be generous, the shortfall between his income and his reasonable living expenses is approximately R11 621 per month. The applicant has not provided any alternative calculation or demonstrated that F[...] can support himself without assistance. Employment alone does not automatically terminate a parent's duty of support where the child's earnings are insufficient to meet his reasonable needs. On the evidence, F[...] remains a dependent major child. The applicant's contention that he is no longer entitled to maintenance is therefore rejected.

[26] As for D [...], it is undisputed that D [...] is 21 years old and has a trust fund with assets exceeding R3.5 million. Clause 10 of the Trust Deed directs the trustees to make available so much of the net income and capital as is necessary for her maintenance and general well-being. The applicant argues that the Trust effectively accepted a maintenance claim on 07 November 2023 when Ms Alberts wrote to her requesting a breakdown of her monthly expenses to load a monthly income to her bank account. The applicant claims that from that date onwards, his liability towards her fell away, resulting in an overpayment of approximately R580 000.00.

[27] However, D [...] responded to Ms. Alberts' email, stating that she was seeking legal advice. She has not provided the breakdown, and the Trust has not paid a single cent. The order of 08 August 2023 was premised on a mechanism that

requires the first respondent to submit a claim to the Trust. If the Trust rejects the claim, the applicant remains liable. If the Trust meets the claim only partially, D[...] will be entitled only to the maintenance payment stated in paragraph 1.3 from the respondent to the extent not met by the Trust. That mechanism has not been completed. The Trust's request for a breakdown is neither a rejection nor an acceptance. It is an invitation to provide the necessary information. D[...]s failure to provide that information is not attributable to the first respondent, who is not a trustee. Moreover, it does not trigger the termination of the applicant's liability.

[28] The applicant also alleges that D[...] is gainfully employed through her sole proprietorship, OSISS. The evidence of OSISS's profitability is thin, as a profit and loss statement for April to June 2025 shows a net profit of only R7 563.41 over three months. That does not demonstrate self-sufficiency. Nor is there any evidence that D[...] draws a salary sufficient to meet her monthly expenses, which, according to the first respondent, are largely covered by the applicant's payments under the order. The existence of a small business does not, without more, prove that a major child is no longer dependent.

[29] With respect to the first respondent, the applicant contends that she is also gainfully employed through her involvement in managing OSISS and, accordingly, her need for spousal maintenance is reduced. Furthermore, because D[...]s maintenance claim has been acceded to by the Trust, the applicant's liability to pay the first respondent the amounts she expends on D[...]s care should concomitantly be reduced or terminated.

[30] The first respondent denies receiving any salary or income from OSISS. The only evidence is an email in which she says, "I manage the business," and a WhatsApp signature that suggests involvement in sales. The applicant has not provided any payslips, employment contracts, or bank statements showing regular deposits from OSISS to the first respondent. On this record, the applicant has failed to prove that the first respondent has any undisclosed income. An adverse inference cannot be drawn where the evidence is as equivocal as it is here.

[31] The applicant points to a family holiday to Mauritius in February 2025 as evidence of hidden wealth. The first respondent has explained that the holiday was

for D[...]’s 21st birthday. She submitted that it was funded by a discounted package, savings, and contributions from family members, and it cost approximately R57 085 for five people. The applicant himself has a history of international travel with his partners. The holiday, in context, does not establish a material change of circumstances.

Conclusion on variation

[32] The applicant has not proved a material change in his own financial position. He has not proven that D[...] and F[...] have become self-supporting, and that the first respondent has undisclosed income. The Trust mechanism remains incomplete, but that is the very condition the parties agreed to. The applicant cannot use the Trust’s non-payment as a ground to vary the order when the necessary claim has not been properly pursued. For these reasons, the application for variation falls to be dismissed.

Costs

[33] Both parties seek costs of this application, including costs of counsel, on scale B. There is no reason to depart from the ordinary principle that costs follow the result.

[34] Accordingly, the following order is made:

Order

1. The condonation application for the late filing of the respondents’ answering affidavit is granted.
2. F[...] J[...] H[...] T[...] and D[...] M[...] T[...] are hereby joined as the second and third respondents in these proceedings.
3. The applicant’s claims for relief in prayers 2, 3, and 4 of the notice of motion are dismissed.
4. The applicant shall pay the respondents’ costs of the application, such costs to include the costs of counsel on scale B.

D. Mahosi
Judge of the High Court
Gauteng Division, Johannesburg

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The hand-down date is deemed to be 17 June 2026.

Appearances

For the applicant: Advocate S McTurk
Instructed by: Fick-Haupt Incorporated Attorneys

For the first respondents: Advocate JW Kloek
Instructed by: Tim Fourie Attorneys

