

**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 5479/2021

In the matter between

S[...] M[...] V[...] D[...] M[...]

APPLICANT

And

S[...] W[...] V[...] D[...] M[...]

RESPONDENT

Neutral citation: V[...] d[...] M[...] v V[...] d[...] M[...] (5479/2021) [2026] ZAFSHC 427 (10 September 2026)

Coram: MPAMA AJ

Heard: 11 June 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 10h30 on 10 September 2026

Summary: Contempt of court – committed to imprisonment – failure to comply with maintenance orders – failure to comply was deliberate and accentuated by *mala fides* – direct affront to the authority of court – best interests of the child.

ORDER

1 The respondent is found in contempt of the court order issued out of this Court on 2 December 2021 and the divorce order made under case no: FS/WEL/RD447/14 in Welkom Regional Court.

2 The respondent is to be committed to imprisonment for contempt of court for a

period of 60 (sixty) days, which sentence is suspended for a period of two (2) years, on condition that the respondent complies with the order granted on 8 August 2018 in respect of the maintenance of the children within 14 (fourteen) days of the granting of this order.

3 Should the respondent fail to comply with paragraph two of this order,

3.1 The execution of the writ of committal for contempt of court is hereby authorised.

3.2 The respondent should submit himself to the South African Police Services who should take all necessary steps to ensure that the respondent is delivered to the head of prison to be committed in terms of this order.

4 The respondent is ordered to pay the costs of this application (excluding costs stipulated on paragraph 25) on scale C as contemplated in rule 67A of the Uniform Rules of the Court.

JUDGMENT

Mpama AJ

[1] The application concerns contempt of court proceedings. The respondent appeared in person. This resulted in certain procedural difficulties as his papers were not in proper order. The applicant elected not to make an issue in relation to these deficiencies. In the interest of justice and mindful that a postponement of the matter would not serve the best interests of the children, I was of the view that the respondent's non-compliance ought to be condoned.

[2] The applicant and the respondent were formerly married, their marriage having been dissolved on 8 August 2018 pursuant to a divorce order granted by the Welkom Regional Court.

[3] Three minor children were born of the marriage between the applicant and respondent. The relevant terms of the divorce order are as follows:

(a) In terms of the divorce order, the applicant was awarded primary care and residence of the minor children, while the respondent was granted access.

(b) The respondent was further directed to pay maintenance in respect of the minor

children in the amount of R9000.

[4] Prior to the granting of the divorce order, the applicant, on 13 August 2015, approached the magistrate's court and obtained relief under the provisions of the Domestic Violence Act 116 of 1998 in the form of emergency financial assistance. This order was subsequently discharged.

[5] On 8 November 2017, the applicant was granted an order in terms of rule 58 of the Magistrates' Court Rules directing the respondent to make interim maintenance payments to the applicant.

[6] Pursuant to these orders, the respondent effected payment in the amount of R4500 only. At the time of divorce proceedings, the respondent was in arrears with the maintenance obligations in the sum of R58 000. In the course of a negotiated settlement, which was later incorporated into the divorce order, it was agreed that the arrear maintenance would be discharged by the respondent through payment of the children's school fees. In addition to the arrangements regarding arrear maintenance, the settlement agreement made provision for the payment of maintenance in the amount of R9000 per month.

[7] Since the dissolution of the marriage, the applicant and respondent have engaged in protracted litigation, appearing before various courts in respect of disputes arising from the maintenance obligations pertaining to minor children. The frequency of such proceedings has been so extensive that any attempt to quantify the number of occasions on which the applicant has litigated against the respondent would be impracticable within the confines of this judgment. I will refer only to those proceedings that are relevant to the present application.

[8] What is common amongst these proceedings brought by the applicant in different courts is that they were in pursuit of having the respondent comply in terms of the divorce order granted by the Welkom Regional Court and discharge his responsibilities as the father of the minor children born between her and the respondent.

[9] The relationship between the applicant and respondent is demonstrably hostile.

This has manifested in the publication of numerous derogatory and insulting messages directed at one another on the social platform, Facebook, an exchange of emails and WhatsApp messages of a similar nature. These communications have been incorporated into the record, resulting in documentation exceeding one thousand pages, constituting more than two-thirds of the entire record. In my view, the inclusion of such voluminous attachments was unnecessary, as they bear little or no relevance to the issues requiring determination in the present matter.

[10] The hostility did not abate but extended further to the parties' respective legal representatives. Consequently, the applicant's legal representatives filed an application for a protection order against the respondent on grounds of harassment and an interdict against the respondent. Documents in relation to these proceedings have been annexed to the record despite having no relevance to the determination of the matter.

[11] On 24 November 2021, the applicant brought an application for contempt of court on an urgent basis against the respondent. On 2 December 2021, the court granted the following order:

- '1. The matter is removed from the roll for lack of urgency with no order as to costs.
2. Parties must attend mediation sessions and parenting skills;
3. The family advocate shall assist the parties and file a report in this regard;
4. The parties are granted leave to supplement their papers on receipt of the family advocate's report regarding mediation and parenting skills sessions;
5. The matter be placed on the opposed roll as soon as all papers have been supplemented;
6. *Pendete lite*, the respondent is ordered to pay R6000.00 maintenance for three minor children.'

[12] Pursuant to the order granted by this court, the respondent effected payments in the amount of R6000 during the months of December 2021, February 2022 and April 2022. Save for the aforesaid payments, the respondent failed to make any further payments to the applicant for the maintenance of his children.

[13] When the said application was instituted in this court, there were pending criminal charges before the Pretoria Magistrates Court arising from the respondent's failure to pay maintenance. After the granting of the order by this Court, the applicant elected not to persist with the contempt of court application and the matter was removed

from the roll. The criminal charges in the Pretoria Magistrates Court were later referred to the maintenance court for an enquiry in terms of s 6 of the Maintenance Act 99 of 1998 (Maintenance Act). This enquiry continued for a period of about three years; nothing came out of it as the maintenance order was still not complied with.

[14] In December 2023, the applicant returned to this court and re-enrolled the application that was removed from the roll. The applicant filed an amended notice of motion to cater for the arrears that occurred after the order was granted. There was an exchange of further documents up until the matter was ripe for hearing.

[15] On 20 November 2024, the applicant filed a new application for contempt of court under case no 6819/2024. On 13 March 2025, the two contempt of court applications were consolidated under case no: 5479/2021 by an order of this Court.

[16] The applicant's case is that the respondent is in arrears in the amount of R612 000 in respect of arrear maintenance for minor children. This amount emanates from the court orders granted by the divorce court as well as this court. The respondent does not dispute his failure to comply with the maintenance order. It is, however, difficult to discern from the respondent's answering affidavit what defence, if any, is advanced in justification of such non-compliance with the court orders. As previously stated, the relationship between the parties is acrimonious. The respondent has devoted the greater part of his affidavit to lamenting the applicant's conduct in instituting various proceedings against him, characterising her as miserable and alleging that she fails to appreciate that he has moved on with his life and is now remarried. The respondent's stance appears to be that, since no court before which he has been brought has convicted him of any offence, the applicant's case is without merit.

[17] Contempt of court refers to the deliberate, wilful disobedience of an order granted by a court of competent jurisdiction. The requirements for contempt were summarised in *Fakie NO v CCII Systems (Pty) Ltd*¹ as follows:

'1. The civil contempt 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.

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

2. The respondent in such proceedings is not an accused person but is entitled to analogous protections as are appropriate to motion proceedings.
3. In particular, the applicant must prove the requisites of contempt (the order, service or notice: non-compliance and wilfulness and mala fides) beyond reasonable doubt
4. But once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.’²

[18] The Constitutional Court in *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others*³ expressed as follows:

‘It cannot be gainsaid that orders of court bind all to whom they apply. In fact, all court orders, whether correctly or incorrectly granted, have to be obeyed unless they are properly set aside.’⁴

[19] What is not in dispute is that court orders were granted by various courts for maintenance of the children against the respondent. The respondent was aware of the maintenance orders and obligations imposed on him. The respondent never complied with the orders except for making the few payments listed above. He does not deny non-payment. The respondent did not raise affordability as the reason for not paying maintenance. This shows he can afford to pay but elects not to.

[20] The facts established on papers together with concessions made during argument clearly demonstrate that the respondent’s disregard of the court orders and that his failure to comply with the maintenance orders was not inadvertent but deliberate and at most instances accentuated by *mala fides*. No reasonable doubt has been raised at all by the respondent.

[21] The respondent has failed to discharge his maintenance obligations, and the arrears presently exceed the amount of R600 000. Unlike these motion proceedings, the maintenance court is vested with the requisite statutory powers under the Maintenance Act to properly inquire into and adjudicate upon arrear maintenance

² Ibid para 42.

³ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* [2021] ZACC 18; 2021 (5) SA 327 (CC).

⁴ Ibid para 59.

claims. In light of the foregoing, it is my view that the arrears should be dealt with before the maintenance court, which is duly empowered to grant effective relief in respect thereof.

[22] For the sake of clarity, the order of this court directing the respondent to pay maintenance in the amount of R6000 per month was granted as an interim measure pending final determination of this application. There is no basis upon which the maintenance order incorporated into the divorce order ought to be varied. This conclusion is reinforced by the fact that the maintenance amount has not been increased since the dissolution of the marriage in 2018, notwithstanding the passage of time and the evolving needs of the minor children. Therefore, the interim order granted by this court is set aside. It will not be in the best interest of the children if the maintenance amount is reduced to R6000.

[23] Lastly, for a period exceeding a decade, the applicant in pursuit of justice approached various courts with the objective of compelling the respondent to discharge his duties as the father of the minor children. The respondent's conduct shows a total disregard of children's rights. The best interests of the children have been totally undermined by the respondent.

[24] The courts have a constitutional duty to always give effect to what would be in the best interest of the children. The respondent violated the rights of his minor children by failing to discharge his obligation. It is of gravity that he formerly served as a prosecutor and, by operation of the Maintenance Act, was deemed a maintenance officer. His failure to uphold the very duties he was once entrusted to enforce constitutes a direct affront to the authority of this court. Such conduct, which undermines both the welfare of his children and the integrity of the courts, cannot be condoned.

[25] The general principle applicable to costs is that costs follow suit. I find no reason to depart from this principle. However, having regard to the unnecessary documentation filed with the application, it is my view that the applicant ought not to be awarded costs in respect of the filing of these superfluous annexures, namely, the extracts from the Facebook page and applications instituted by the applicant's attorneys

against the respondent.

[26] Accordingly, I make the following order:

1 The respondent is found in contempt of the court order issued out of this court on 2 December 2021 and the divorce order made under case no: FS/WEL/RD447/14 in Welkom Regional Court.

2 The respondent is to be committed to imprisonment for contempt of court for a period of 60 (sixty) days, which sentence is suspended for a period of two (2) years, on condition that the respondent complies with the order granted on 8 August 2018 in respect of the maintenance of the children within 14 (fourteen) days of the granting of this order.

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4 The respondent is ordered to pay the costs of this application (excluding costs stipulated on paragraph 25) on scale C as contemplated in rule 67A of the Uniform Rules of the Court.

L MPAMA

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant:

CJ Hendriks

Instructed by:

AL Maree Attorneys

Centurion

c/o Graham Attorneys

Bloemfontein

For the Respondent:

In person