



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

Reportable/Not Reportable

Case No: **2025-106683**

In the matter between:

M[...] **S[...]** **E[...]**

Applicant

and

C[...] **P[...]** **C[...]** **E[...]**

Respondent

Coram: Adams AJ

Heard: 21 August 2026

Delivered electronically: 15 September 2026

Summary: Civil contempt - divorce order – alleged non-compliance –vehicle maintenance and servicing – towing and repair costs – provision of basic furniture

– willfulness and mala fides – proof beyond reasonable doubt – ambiguity and bona fide disputes – contempt not established – application dismissed

ORDER

The following order is made:

1. The application is dismissed.
 2. Each party shall pay his or her own costs.
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JUDGMENT

ADAMS AJ:

A. Introduction

[1] The applicant seeks an order declaring the respondent to be in contempt of a decree of divorce granted by the Regional Court, Kroonstad, on 26 February 2024. The settlement agreement (“the agreement”) between the parties was incorporated into and made part of the decree.

[2] The application originally concerned three provisions of the agreement. The applicant alleged that the respondent failed to maintain and service a Volkswagen T6 Kombi, thereby causing her to incur towing and repair costs of R29 826,40; failed to obtain and maintain life cover of R3,5 million for her benefit; and failed to provide basic furniture for her rented home. At the commencement of

proceedings, however, the Court was informed that the dispute concerning the life-insurance policy had been resolved. That issue accordingly requires no determination.

[3] The respondent accepts that he knew of the order. He disputes that he disobeyed its remaining provisions. In summary, he says that the vehicle clause does not make him liable for towing and repairs caused or aggravated by the applicant's delay in servicing the vehicle; and that he made furniture available, while the further obligation is expressly limited by his means. He also disputes wilfulness and bad faith.

[4] The issue is not whether every dispute arising from the settlement agreement has been finally resolved. It is whether the stringent requirements for contempt have been proved. For the reasons that follow, they have not.

B. The relevant terms of the agreement

[5] Clause 6.4 requires the respondent to provide basic furniture for the applicant's accommodation 'within his means'. It also records that the furniture in the former matrimonial home is to remain with the respondent.

[6] Clause 7.5 allocates the Volkswagen T6 Kombi to the applicant and requires the respondent to 'maintain and service' it and to pay the applicant's daily travelling costs. The clause does not expressly employ the word 'repair', identify who must arrange a service, regulate notice or authorisation for repairs, or allocate responsibility for damage caused by neglect, misuse or a delayed service.

C. Contempt: the relevant legal principles

[7] Compliance with court orders lies at the heart of the rule of law. An order is not a suggestion or an invitation to perform only when a party considers it convenient. It is a binding judicial directive, and its effectiveness depends upon the assurance that it will be obeyed. Disobedience prejudices the successful litigant, diminishes the authority of the courts and, if tolerated, threatens the integrity of the legal order itself.

[8] *Section 165(5)* of the Constitution provides that an order or decision issued by a court binds all persons and organs of state to whom it applies. Whether a party regards an order as correct, incorrect, valid or invalid, the party may not unilaterally treat it as inoperative. *Department of Transport and Others v Tasima (Pty) Ltd*¹ confirms that a court order must be obeyed unless and until it is set aside by a competent court.

[9] In *Fakie NO v CCII Systems (Pty) Ltd*², the Supreme Court of Appeal held that an applicant seeking punitive contempt relief must prove the existence of the order, service or knowledge, and non-compliance. Once those elements are established, wilfulness and mala fides are presumed. The respondent then bears only an evidential burden to adduce evidence raising a reasonable doubt. The applicant retains the ultimate burden of proving contempt beyond reasonable doubt.

¹ 2017 (2) SA 622 (CC)

² 2006 (4) SA 326 (SCA)

[10] That principle does not, however, make every failure to perform an obligation contained in an order contemptuous. Civil contempt is concerned with deliberate and bad-faith defiance. It must distinguish genuine disobedience from an accidental or unavoidable failure, an inability to comply, a bona fide dispute about performance, or uncertainty concerning the content of the command.³

[11] The Constitutional Court endorsed that approach in *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)*⁴ and *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others*⁵. Those decisions hold together two important propositions: court orders must be effective, but punitive contempt is justified only when wilful and mala fide non-compliance has been established to the required standard. The respondent's explanation must therefore be considered fairly and in context.

[12] In *S v S.H*⁶, the Supreme Court of Appeal again emphasised the criminal standard where committal or another punitive order is sought. More recently, *T.A.M-W v C.M.M*⁷ reaffirmed the four elements of contempt: the existence of the order; service or notice; non-compliance; and wilfulness and mala fides. The first three elements trigger the evidential burden concerning the fourth; they do not eliminate the applicant's duty to establish the case to the applicable standard.

[13] The order must also identify the required conduct with sufficient certainty. Where its terms are ambiguous, the amount of a debt is genuinely disputed, or the

³ Fakie NO v CCH Systems (Pty) Ltd (653/04) [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (31 March 2006) para 9-10

⁴ 2015 (5) SA 600 (CC)

⁵ 2018 (1) SA 1 (CC)

⁶ (771/21) [2023] ZASCA 49

⁷ (2025/030666) [2025] ZAWCHC 217

evidence conflicts as to whether and how performance occurred, the inference of bad faith may not be justified. Demonstrable efforts to comply or ameliorate the consequences of an alleged breach - including partial performance, a practical proposal or an attempt to secure performance through another available mechanism - do not necessarily establish full compliance. They are nevertheless relevant when deciding whether the respondent acted in deliberate defiance. In such circumstances, the proper remedy may lie in declaratory, enforcement, variation or trial proceedings rather than punitive contempt.

D. Procedural fairness and the punitive character of contempt

[14] Civil contempt is *sui generis*. Although instituted by motion to secure compliance with a court order, the proceedings assume a criminal character where committal or another punitive sanction is sought. Fakie accordingly recognises that a respondent is not an accused person in the ordinary sense but is entitled to such protections analogous to those afforded to an accused as are appropriate to motion proceedings. Those protections include the presumption of innocence, proof beyond reasonable doubt of wilfulness and *mala fides*, and a fair opportunity to answer the case advanced.

[15] The *audi alteram partem* principle is therefore an important component of the enquiry. As *De Lange v Smuts NO and Others*⁸ makes clear, proceedings capable of resulting in a deprivation of liberty must be procedurally fair. In motion proceedings that opportunity is ordinarily afforded through notice of the relief sought, the exchange of affidavits, legal representation where engaged, and oral argument. The question is whether the respondent had a fair and meaningful opportunity to place all relevant explanations and circumstances before the Court.

⁸ 1998 (3) SA 785 (CC)

[16] Here the respondent was notified of the contempt relief sought, delivered an answering affidavit, and placed before the Court his explanations concerning the vehicle and the furniture. There is no procedural impediment to determining the application on the papers. Conversely, the serious consequences of the relief sought reinforce the need to apply the criminal standard with care. As *S v Jaipal*⁹ confirms in the broader context of procedural fairness, the decisive question is whether the proceedings as a whole were fair and whether any irregularity caused prejudice. Since contempt has not been proved, no question of sentence or mitigation ultimately arises.

E. The life-insurance policy

[17] At the commencement of proceedings, the Court was informed that the issue concerning compliance with the life-insurance provisions had been resolved. No relief in relation to those provisions remained for determination, and it is unnecessary to make any finding concerning the existence, ownership, beneficiary designation or premium status of the policy.

F. The vehicle

[18] The applicant relies on invoices totalling R29 826,40 for towing and repairs. The production of invoices proves neither that every item falls within the respondent's obligation to 'maintain and service' the vehicle nor that his refusal to reimburse the amount was contemptuous.

[19] In context, 'maintain' is wider than a scheduled service and may include repairs reasonably required to address ordinary wear and tear and keep the vehicle

⁹ 2005 (4) SA 581 (CC)

safe and serviceable. It does not follow that the respondent assumed liability for every repair, irrespective of its cause, the applicant's conduct, notice, necessity or reasonableness of cost.

[20] The respondent's case is that the applicant delayed presenting the vehicle for service and that this caused or materially aggravated the mechanical failure and resulting costs. The papers do not contain sufficiently cogent expert or mechanical evidence permitting the Court to determine which expenses represented an ordinary service, which arose from normal wear and tear, and which were additional expenses caused by delay or neglect. Nor is there a reliable allocation of the towing and repair costs among those categories.

[21] There is also a dispute about whether the respondent received adequate notice and a reasonable opportunity to arrange or authorise the work. Those disputes bear directly upon non-compliance and, at the least, upon wilfulness and mala fides.

[22] There is a further consideration. The application initially included allegations that the respondent had failed to comply with the provisions of the divorce order relating to spousal maintenance in the form of cash payments and remuneration. The respondent opposed those claims on the basis that the applicant no longer required maintenance and that she had entered into a relationship with another person with whom she was living. The applicant thereafter abandoned those components of the application.

[23] Significantly, in paragraphs 13 and 17 of her founding affidavit, the applicant herself characterises the respondent's obligations relating to the vehicle

as forming part of his spousal-maintenance obligations under the divorce order. The contention that the vehicle obligation formed part of the broader maintenance arrangement is therefore not merely an interpretation subsequently advanced by the respondent in opposition to the application. It is consistent with the manner in which the applicant formulated her own case.

[24] The abandonment of the claims for cash maintenance and remuneration does not amount to a judicial determination that the respondent's maintenance obligations had terminated, nor did it entitle him unilaterally to disregard an extant court order. It is nevertheless relevant that the applicant abandoned those claims when confronted with the respondent's defence, while continuing to pursue the claim relating to the vehicle, which she had herself described as part of his spousal maintenance.

[25] Whether the vehicle obligation was intended to continue independently after the cessation of the other forms of spousal maintenance is not expressed with sufficient clarity in the settlement agreement. The abandonment of the other maintenance claims does not determine that interpretative question. It does, however, demonstrate that the respondent's understanding, that the obligations were interconnected and subject to the same duration and terminating conditions, is neither contrived nor so untenable that it may be rejected on the papers. At the least, it creates reasonable doubt as to whether his refusal to reimburse the vehicle expenses amounted to wilful and mala fide defiance of the order.

[26] There is also a difficulty concerning the alleged loss. Although the applicant seeks reimbursement of R29 826,40, her own papers demonstrate that her partner paid the towing and repair charges. There is no evidence that the applicant

reimbursed him, remains legally obliged to do so, or otherwise personally incurred the expenditure claimed. Payment by a third party does not necessarily extinguish any obligation the respondent may have had to maintain and service the vehicle. It does, however, undermine the factual premise upon which reimbursement is sought and confirms that the dispute is not one of straightforward non-compliance with a clear command.

[27] The fact that the applicant's partner paid the expenses is also relevant to the context in which the respondent's defence arose. That defence does not establish in these proceedings that the maintenance obligations legally terminated. The respondent remained obliged to seek the variation or discharge of the order rather than decide the matter for himself. The narrower question, however, is whether his conduct constituted deliberate and bad-faith defiance. The applicant's own characterisation of the vehicle obligation as spousal maintenance, her abandonment of the other maintenance claims, the uncertainty concerning the duration of that obligation, and the third-party payment of the expenses cumulatively create reasonable doubt on that question.

[28] It may ultimately be established in appropriate enforcement, declaratory or variation proceedings that the vehicle obligation continued and that the respondent remains liable for some amount. The present papers do not permit those questions to be determined through the punitive mechanism of contempt. The applicant has not proved beyond reasonable doubt that the respondent's conduct constituted wilful and mala fide non-compliance.

[29] The respondent also submitted a claim to the vehicle insurer on the footing that the incident involved a breakdown and towing. The submission of the claim

did not, by itself, discharge any obligation imposed by clause 7.5, particularly if the policy did not respond to the loss. It was nevertheless a practical attempt to meet or ameliorate the consequences of the incident. Viewed with the disputes concerning causation, notice and the scope of the clause, that conduct is inconsistent with a conclusion, beyond reasonable doubt, that the respondent simply resolved to defy the order.

[30] The respondent's reliance upon the alleged termination of rehabilitative maintenance did not entitle him to disregard the order. It nevertheless provides relevant context when wilfulness and mala fides are considered. The applicant abandoned the claims for cash maintenance and remuneration when that defence was raised, while her own papers establish that her partner paid the towing and repair expenses. Considered together with the uncertainty concerning the scope and duration of the vehicle obligation, these circumstances create reasonable doubt as to whether the respondent acted in deliberate and bad-faith defiance of the order. The requirements for contempt have accordingly not been established.

G. Furniture

[31] Clause 6.4 is framed in materially different terms. It requires the respondent to provide basic furniture 'within his means'. It does not identify the items, their number, quality or value; fix a date for delivery; or prescribe a process for selecting them.

[32] The applicant contends that essential items were not supplied. The respondent says that she was permitted to take furniture, that some furniture was made available, and that his ability to provide anything further was limited. The qualification 'within his means' is integral to the obligation. The applicant has not

placed evidence before the Court that excludes the respondent's explanation or establishes, beyond reasonable doubt, both the content of the outstanding obligation and his present ability deliberately to withhold performance.

[33] The respondent's version is also that he offered furniture from the former matrimonial home to the applicant. The applicant did not act upon that offer, although her brother removed certain items on her instructions. The offer does not necessarily establish complete performance of clause 6.4, and the removal of inherited items may not have discharged the respondent's separate obligation. It does, however, demonstrate an attempt to alleviate the applicant's circumstances and creates room for reasonable doubt as to whether any shortfall resulted from a wilful and mala fide refusal to comply.

[34] The clause may be enforceable once its practical content has been determined. But contempt is not the appropriate mechanism by which the Court should, for the first time, compile a furniture list, decide what the respondent can afford, and then punish him for not having anticipated that determination. The requisite non-compliance with a sufficiently clear command, coupled with wilfulness and mala fides, has not been established.

H. Rectification and the proper limits of this decision

[35] The respondent also contends that the vehicle obligation formed part of rehabilitative maintenance intended to endure for 18 months, or to terminate earlier upon the applicant's remarriage or qualifying cohabitation, and that the written agreement should be rectified accordingly.

[36] It is neither necessary nor appropriate to determine rectification in the present application. To the extent that rectification is sought, it requires properly formulated relief and proof of a common continuing intention not accurately recorded in the written instrument. The contempt application fails on narrower grounds: the applicant has not proved contempt of the order as it stands.

[37] Nothing in this judgment finally determines any contractual claim for reimbursement, a claim for specific performance, rectification, or variation of the maintenance regime. Those questions are not before the Court in a form permitting final adjudication.

I. Conclusion and costs

[38] The existence of the decree and the respondent's knowledge of it are common cause. The difficulty lies in proof of non-compliance and, decisively, proof of wilfulness and mala fides. Each remaining complaint is attended by a genuine issue concerning the scope of the obligation, causation, performance or ability to comply. The respondent's attempt to submit the vehicle claim to the insurer and his offer of furniture are not conclusive of compliance, but they form part of explanations which create reasonable doubt and cannot properly be rejected on affidavit. The application must accordingly be dismissed.

J. Costs

[39] Although costs ordinarily follow the result, this litigation arises from continuing post-divorce obligations and genuine uncertainty in the wording and implementation of the settlement agreement. Both parties had a legitimate interest in obtaining clarity. In the circumstances, fairness is served by directing each party to pay his or her own costs.

K. Order

[40] The following order is made:

1. The application is dismissed.
2. Each party shall pay his or her own costs.

M F ADAMS

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For the applicant : J Lourens

Instructed by : F Raymond, Raymond McCreath Inc.

For the respondents : A Newton

Instructed by : J P Joubert, J P Joubert Attorneys