



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

Reportable

Case No.: 2026-047264

In the matter between:

S[...] L[...]

Applicant

and

A[...] C[...]

First Respondent

CA CELLULAR HOLDINGS CC

Second Respondent

Coram: Francis J

Heard: 4 August 2026

Delivered: 17 September 2026

ORDER

1. The rule nisi granted on 6 March 2026 is confirmed to the extent set out below.
2. The first respondent is declared to be in contempt of paragraph 1.4 of the order granted by Allie J on 31 May 2021 under case number 5440/2021.
3. The first respondent is committed to imprisonment for a period of 30 (thirty) days, which committal is suspended in its entirety for a period of two years from the date of this order, on condition that during the period of suspension the first respondent:
 - 3.1 makes the Mercedes-Benz motor vehicle with registration number C[...] available for the use of the applicant and the minor children, as paragraph 1.4 of the said order of Allie J requires, for so long as that paragraph subsists; and
 - 3.2 does not breach any provision of paragraph 4 below.
4. The first and second respondents are interdicted and restrained from:
 - 4.1 taking any step to dispossess the applicant of the Mercedes-Benz motor vehicle with registration number C[...] presently in her possession, except as authorised by this Court;

4.2 contacting the applicant, save through her attorneys of record and save, in the case of the first respondent, for communications reasonably necessary concerning the minor children;

4.3 harassing, threatening or intimidating the applicant; and

4.4 enlisting or instructing any third party to engage in any of the conduct set out in paragraphs 4.1 to 4.3 above.

5. Paragraph 4.1 above, and paragraph 4.4 above in so far as it relates to the conduct described in paragraph 4.1, shall operate for so long as paragraph 1.4 of the said order of Allie J subsists, and shall lapse upon that paragraph being discharged, varied to relieve the first respondent of the obligation it imposes, or otherwise ceasing to have effect. Paragraphs 4.2 and 4.3 above, and paragraph 4.4 above in so far as it relates to the conduct described in paragraphs 4.2 and 4.3, are not so limited.

6. The committal suspended in paragraph 3 above shall not be put into effect otherwise than upon application to this Court, on notice to the first respondent, and upon proof beyond reasonable doubt of a breach of a condition of suspension.

7. The first and second respondents are to pay the costs of the application, including the costs reserved on 6 March 2026 but excluding the costs of the further notes delivered after the hearing, on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved.

JUDGMENT

FRANCIS, J:

Introduction

[1] This case returns to the Court on the date set for the rule *nisi* granted on 6 March 2026 by Adhikari AJ. The rule required the respondents to explain why the first respondent should not be found in contempt of this Court's order and sentenced accordingly. It also required the respondents to explain why they should not be interdicted from trying to dispossess the applicant of a motor vehicle, from contacting or harassing her, or from getting others to do so. The applicant now seeks confirmation of the rule.

[2] The first respondent submitted an affidavit that addressed only urgency and did not respond to the merits, despite being ordered twice to do so. He did not attend the hearing. Mr Parkar, the respondents' attorney, represented both respondents, while Mr van Aswegen appeared for the applicant.

[3] The applicant and the first respondent are married and are currently engaged in protracted divorce proceedings before this Division. The second respondent is a close corporation, and the first respondent is its sole member. The vehicle central to this application is registered in the name of the second respondent.

Background

[4] On 31 May 2021, in the divorce action under case number 5440/2021, Allie J made an order pursuant to Uniform Rule 43. Paragraph 1.4 required the first respondent, as part of his maintenance obligations, to support the applicant and the two minor children while the action was pending by "continuing to make available for their use, the Mercedes-Benz Coupe' motor vehicle currently driven by the applicant..."

[5] The Mercedes-Benz vehicle with registration number C[...] ('the Mercedes-Benz') is registered in the name of the second respondent, which is owned and controlled by the first respondent as its sole member.

[6] On 1 February 2026, the first respondent crashed the car he uses in Cape Town while exercising contact with the children. The next day, his lawyers wrote to the applicant's lawyers, stating that since the applicant had bought her own car, the reason for letting her use the Mercedes-Benz no longer applied, and he wanted it back. They said a towing company would collect the car and keys at 16h30. The applicant's lawyers acknowledged receipt of the letter the next day but said nothing else. The car was never collected.

[7] The founding affidavit did not include that letter. It reached the Court through the respondents' affidavit on urgency.

[8] On 20 February 2026, a man named Yusuf Williams stopped the applicant as she was leaving to fetch her children from school. He told her he had been sent to collect the vehicle. He telephoned her attorney, described himself as an independent tracer, said he was acting on instructions from the first respondent's attorney, and said the vehicle had been repossessed. Later that day, at the Kensington police station, he said the applicant was entitled to use the vehicle only to transport the children but that it was being used by the applicant's alleged boyfriend.

[9] On 24 February, Williams returned with two other men. They parked across the applicant's driveway, preventing her from leaving to fetch her children. They demanded the Mercedes-Benz, refused to go, and swore at her and threatened her. They said they would fetch a locksmith, take the vehicle, and wait until she gave in. The applicant's attorneys sent Ms Wiehman, a candidate attorney, to collect the children from school and take them to the applicant's sister who lived next door to the applicant. Ms Wiehman confronted Williams. He showed her the vehicle's registration papers, and she advised them of the Rule 43 order. The men left. They returned the next morning and repeated the demand.

[10] The first respondent has not denied being involved. When his son asked him on WhatsApp why he was trying to take the car, he answered that the car was his. In a letter dated 1 March 2026, his attorneys said he had authorised someone to collect the vehicle for the second respondent, and that "this is where the instruction started and ended". Mr Parkar confirmed in court that his client gave the instruction to collect the vehicle.

[11] This is not the first time the first respondent has disobeyed the rule 43 order. Nuku J found him in contempt on 25 October 2024, and van Zyl AJ did so again on 17 January 2025. Both findings are on appeal. Nuku J refused leave to appeal, and so did the Supreme Court of Appeal. On 31 October 2025, the President of that Court referred the application for leave to appeal for reconsideration and oral argument. The appeal against van Zyl AJ's order is still pending. Both orders are therefore suspended for the time being.¹ None of this affects the rule 43 order itself, which remains in force.

[12] In the divorce action, Davis AJ struck out the first respondent's defence on 4 December 2025, finding that he had deliberately delayed matters and abused the court process. That decision has not been appealed. The court has made numerous cost orders against the first respondent in the applicant's favour, some of them punitive. No decree of divorce had been granted when this application was argued, so paragraph 1.4 of the rule 43 order is still in force.

The course of the application

[13] The applicant approached the Court on an urgent basis. The respondents opposed the application. They submitted an affidavit deposed to by the first respondent's attorney of record, which stated at the outset that it addressed only urgency and reserved the first respondent's right to respond to the merits at a later stage. The approach adopted is unusual, if not procedurally irregular. Firstly, an attorney of record should not depose to an affidavit on contested facts in their own

¹Section 18(1) of the Superior Courts Act 10 of 2013. On whether a referral for reconsideration under the proviso to s 17(2)(f) falls within s 18(1), see *Hi-Q Automotive (Pty) Ltd v Erga Investments (Pty) Ltd and Another* (935/2024) [2026] ZASCA 31; 2026 (3) SA 377 (SCA) para 98.

client's matter, as this deprives the Court of the litigant's direct account and may create a conflict of interest. Secondly, the affidavit exceeded its stated scope by attaching a letter dated 2 February 2026. The said letter provided an undertaking that the vehicle would not be removed pending the outcome of this application, asserted that the applicant had purchased her own vehicle, and denied that the first respondent was in contempt.

[14] Adhikari AJ heard argument, held the matter to be urgent, and granted the rule nisi. The interdictory relief was to operate as an interim interdict pending the return day, and costs stood over. In granting the rule, the learned judge gave the respondents a chance to answer on the merits.

[15] They did not take it. The order required their answering affidavits by 20 March 2026 and a further order by Barendse AJ on 14 May 2026 required delivery within five days. The respondents did not comply, and the applicant filed no replying affidavit.

[16] At the end of argument, I asked the parties for brief further notes on a question that arose during the hearing. It was this. Can contempt be established where a litigant sets out to dispossess another of a thing held under a court order, but no dispossession in fact takes place? Both parties obliged, and I am grateful for their notes.

[17] The evidence on the merits consists of the applicant's account and parts of the attorney's affidavit. The affidavit requires comment: the attorney did not witness the events of 20 and 24 February and says his knowledge comes from files, meetings, and correspondence. He also made it clear he would not address the

main issues and reserved his client's response. If a party chooses not to answer, the Court cannot treat the attorney's second-hand statements as direct evidence. Nonetheless, the attached correspondence is documentary in nature, and its authenticity is not disputed. I must accept it as evidence of what it says. The attorney's statements only carry the limited weight allowed by their source.

[18] The position changed at the hearing in one respect. Mr Parkar confirmed from the bar the facts recorded as common cause in the respondents' further heads. They are these. The first respondent's own vehicle was damaged in a collision while he was in Cape Town exercising contact with the children, so he needed a vehicle there. By then, the applicant had bought her own car. His attorneys wrote the letter of 2 February 2026 and received no substantive reply. He then instructed a towing company to collect the Mercedes-Benz. The applicant asks me to hold the first respondent to these admissions. Normally, statements made in court during argument do not automatically bind a party. Whether they do depends on the context and whether the statement clearly goes against the party's interest and is meant to settle the fact.² Here, those conditions are met. Mr Parkar was confirming facts his clients had already accepted, and each fact is against the first respondent. I have listed these admissions because a court must be careful when relying on statements made in court.³

² *Saayman v Road Accident Fund* [2010] ZASCA 123; 2011 (1) SA 106 (SCA) paras 28 and 29, per Heher JA (Leach JA and Majiedt AJA concurring) in a concurring judgment giving additional reasons. Compare para 12, where Bosielo JA, for the Court, held that a concession made by counsel in the course of his address was not an unequivocal admission and could be withdrawn without a formal application. See also *Kevin and Lasia Property Investment CC v Roos NO* 2004 (4) SA 103 (SCA) para 12.

³ *Standard Bank of SA Ltd v Minister of Bantu Education* 1966 (1) SA 229 (N) at 242H-243G, per Caney J, adopted by Heher JA in *Saayman* above fn 2 (see fn 4 of that judgment): counsel's remarks in opening or closing should not be accorded decisive effect on proof of facts, and if they are to be used in coming to a conclusion in a judgment they must be set out in it and used with considerable circumspection.

[19] What Mr Parkar could not do was put his client's account of the disputed events before me. The further heads say that the first respondent was not present when the vehicle was to be collected, that he has no first-hand knowledge of what happened, and that he denies any involvement. A concession and a denial are not the same thing. An admission made on instructions binds the litigant.⁴ It relieves the other side of the need to prove the admitted fact, because a party in civil proceedings need not prove, nor is he competent to disprove, a fact admitted on the record. A denial does neither. It is not a statement against the interest of the party who makes it, and so it is not an admission at all. Nor is it evidence. In motion proceedings, a party must make out his case in his affidavits and, on the merits, the first respondent has filed none.⁵ I therefore act on Mr Parkar's concessions and disregard his denials.

The issues

[20] Four questions arise. Is the first respondent in contempt of the rule 43 order? Is it an answer to the contempt that the applicant was never in fact dispossessed? If he is in contempt, what sanction should follow? And should the interim interdict be confirmed? Costs also remain to be determined. Adhikari AJ determined the issue of urgency when the rule was granted, and it does not fall to be revisited on the return day.

⁴ Section 15 of the Civil Proceedings Evidence Act 25 of 1965, headed 'Admissions on record': 'It shall not be necessary for any party in any civil proceedings to prove nor shall it be competent for any such party to disprove any fact admitted on the record of such proceedings.'

⁵ *Minister of Land Affairs and Agriculture v D & F Wevell Trust* [2007] ZASCA 153; 2008 (2) SA 184 (SCA) para 43. The passage is directed at arguing from annexures, but the principle it rests on is general.

The first respondent's absence

[21] The first respondent was not present in person. Mr Parkar represented him throughout, argued the merits for both respondents, and addressed the Court on sanction. Mr Parkar informed the Court that his client was aware of the hearing but could not attend. I do not regard this absence as further defiance of the Court, notwithstanding the applicant's argument that he habitually disregards its orders. The first respondent was entitled to representation, and he exercised that right.

[22] Because the applicant seeks the first respondent's committal, I ensured that he had proper notice of the hearing and of the relief sought. Attorneys and counsel represented him throughout. His interests were protected by a representative instructed to contest every aspect of the relief, and, as far as I can determine, to advance every available argument. The rule *nisi* told him what conduct was complained of and called on him to show cause why he should not be declared in contempt and sentenced, and he had ample time to take advice, prepare an answer and decide whether to go on oath. Those are the safeguards our law requires before a court deals with a contempt committed outside its presence.⁶ Still, I have approached the matter with the caution required where a litigant's liberty is at stake, and he is not personally before the Court.

Contempt: what must be proved, and to what standard

[23] The requirements of civil contempt are settled. In *Fakie NO v CCII Systems (Pty) Ltd*, the Supreme Court of Appeal held that an applicant must prove the

⁶ *R v Keyser* 1951 (1) SA 512 (A) at 518E-H.

order, its service or notice thereof, and non-compliance. Once those are proved, the respondent bears an evidential burden on wilfulness and mala fides. If he does not put up evidence raising a reasonable doubt on those elements, contempt is established beyond reasonable doubt.⁷

[24] The standard of proof depends on the remedy sought. Where committal or a fine is sought, the requirements must be proved beyond reasonable doubt. Where the relief is a declarator, a mandamus, a structural interdict or another civil remedy that does not affect the liberty of a person, proof on a balance of probabilities is enough.⁸ I am asked to commit the first respondent to prison. The criminal standard therefore governs the contempt enquiry, and I apply it. It does not govern the interdict, which is a civil remedy that I deal with separately and on the ordinary civil standard.

[25] Two features of the offence bear on what must be proved. Disobedience of an order is one form of a wider crime, the essence of which is the violation of the dignity, repute or authority of the court.⁹ And the offence lies not in the bare fact of disregarding an order, but in the contempt for the court's authority that the disregard shows. It is that contempt which the law punishes. Disobedience is how it manifests¹⁰ itself.

The order, and knowledge of it

⁷ *Fakie NO v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) paras 42.3 and 42.4.

⁸ *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others; Mkhonto and Others v Compensation Solutions (Pty) Ltd* [2017] ZACC 35; 2018 (1) SA 1 (CC) para 67. See also *Fakie* para 42.5.

⁹ *Fakie* para 6.

¹⁰ *Fakie* para 10.

[26] Neither the order nor knowledge of it is in issue. The rule 43 order was granted in the divorce action to which the first respondent is a party. He has twice been called to account for defying it. His own attorneys' letter of 2 February 2026 argues about the meaning and purpose of paragraph 1.4. He knew exactly what it required.

Non-compliance

[27] The remaining issue is non-compliance. Paragraph 1.4 not only prohibits the first respondent from taking the vehicle but also obliges him to make it available for the use of the applicant and the children. This duty is positive and ongoing and must be observed for as long as the order remains in force.

[28] Before I come to the breach, I must deal with attribution. The men who came to the applicant's home were not the first respondent, and it was said on his behalf that he had nothing to do with what they did. He cannot be held in contempt on this record unless the enterprise was his, and unless that is proved beyond reasonable doubt.

[29] In my view it has been proved. The material before me establishes the following. On 2 February 2026, the first respondent's attorneys demanded the vehicle and announced that a towing company had been engaged to collect it that afternoon. Mr Parkar confirmed from the bar that his client gave that instruction. On 20 February, Williams stopped the applicant. He told her he had been instructed to collect the vehicle, and he told her attorney that his instructions came from the first respondent's attorney. On 24 February, when Ms Wiehman

confronted him at the applicant's home, Williams produced the vehicle's registration papers. Those papers belong to the second respondent. They were in the second respondent's keeping, and the second respondent acts only through the first respondent. Williams could not have got them anywhere else. On 1 March, the first respondent's attorneys recorded in writing that he had authorised someone to collect the vehicle on the second respondent's behalf. And when his son asked him by WhatsApp why he was trying to take the car, he did not deny it. He said the car was his.

[30] Save for the letter of 2 February 2026, which reached me through the respondents' own affidavit, and Mr Parkar's concession from the bar, each of those facts is set out in the founding affidavit. Not one of them is denied on affidavit. That is decisive, because the respondents chose to answer nothing on the merits even though they were twice ordered to do so. Nor was it suggested in argument that Williams acted otherwise than on the first respondent's instructions. What was said on the first respondent's behalf was narrower and deserves attention. It was that he was not present when the vehicle was to be collected, that he has no first-hand knowledge of what happened, and that he denies any involvement. His absence is not in issue. He was not there. The question is whether the men were there because he sent them. The registration papers put that beyond argument. A man does not hand the registration documents of his corporation's vehicle to a stranger who then goes out to fetch it. No explanation of how Williams came by them has ever been offered. Nothing in this turns on Mr Parkar's concession. Leave it out of account, and the registration papers, the letter of 1 March 2026 and the first respondent's answer to his son establish the point on their own. I find beyond reasonable doubt that Williams and the men with him were at the applicant's home

on the first respondent's instructions, and that they were there to carry out the demand made on his behalf on 2 February.

[31] I should record what I do not find. The first respondent instructed them to collect the vehicle. There is no evidence that he told anyone to block the applicant's driveway, to swear at her, or to threaten to break into her home, and I make no such finding. He answers for the enterprise he set in motion and for what could reasonably be expected in carrying it out. On this record, he does not answer for every word his agents used, and I do not sanction him for their language.

[32] The enterprise itself suffices. The blockade was not an independent act by the men involved; it was the method they selected to accomplish the task for which they had been sent, namely, to take a vehicle from an individual unwilling to surrender it.

[33] The breach is obvious. Paragraph 1.4 says the first respondent must let the applicant and the children use the car. Sending people to retrieve it without following the legal process breaks this rule. The first respondent did not just ignore his duty but tried to undo the court's order when the men showed up at the applicant's home on 2 February to carry out his demand.

[34] What that meant in practice is shown by what happened on 24 February. The applicant could not leave her home. She could not use the Mercedes-Benz to fetch her children from school, and her attorneys had to send Ms Wiehman to do it for her. During that period, the vehicle was unavailable to her for the very use that paragraph 1.4 secures. Nor did the conduct end that afternoon. It went on after the order had been produced to the men and its terms shown to them. They withdrew

and came back the next morning to renew the demand. None of this is an attempt at a breach. It is the breach.

[35] An explanation has been offered. It is that the first respondent's own vehicle had been damaged in a collision, that the applicant had by then bought a car of her own, that paragraph 1.4 was aimed at the transport of the applicant and the children and had stopped serving that purpose, and that he gave written notice of what he intended before he did it. On the admissions made from the bar, each of those facts is established.

[36] If the explanation is to help the first respondent, it must do so by raising questions about his good faith, not about the fact of the breach. Deliberate disregard of an order is not by itself contempt. The non-complier may honestly, though wrongly, believe he is entitled to act as he did, and in such a case good faith avoids the offence. Even a refusal to comply that is objectively unreasonable may be bona fide, though unreasonableness may be evidence of a want of good faith. An honest belief that non-compliance is justified is inconsistent with the intent the offence requires.¹¹ The question, in *Fakie's* terms, is whether the first respondent has put up evidence raising a reasonable doubt about whether his non-compliance was wilful and mala fide. In my view, he has not.

[37] First, his was not a belief about what paragraph 1.4 means. It was a view about whether paragraph 1.4 ought still to apply. He understood its terms perfectly well. The letter of 2 February argues about the paragraph's purpose, and its

¹¹ *Fakie* paras 9 and 10. See also fn 58 of that judgment, citing *Botha v Dreyer* (1880) 1 EDC 74 for the proposition that a misunderstanding of the true meaning of an order negatives an inference of wilfulness.

continuing effect, and only a man who knows what the paragraph says can make that argument. That is not a misunderstanding of an order. It is a disagreement with it.

[38] Second, a party who thinks events have overtaken a rule 43 order has a remedy. Uniform Rule 43(6) allows the court, on the same procedure, to vary its decision where there is a material change in the circumstances of either party or a child.¹² The first respondent made no such application. He formed his own view of what paragraph 1.4 was for, decided that it no longer served that purpose, and gave effect to that view by engaging Williams. A court order binds until it is varied or set aside, regardless of what a litigant may later think of its usefulness.

[39] Third, he has twice before been declared in contempt of the rule 43 order. Whatever becomes of those findings on appeal, and I come to them below, they show that the meaning and binding force of this order have been litigated between these parties twice already. He was not a man feeling his way.

[40] Fourth, the way in which the vehicle was pursued does not fit the good faith now claimed. A litigant who honestly believes an order has ceased to bind him applies to be released from it. He does not send men to take the thing by self-help. And having sent them, he does not let them persist once they were advised of the order on 24 February. They left and were back the next morning, and nothing passed between the attorneys in the meantime to suggest that the first respondent had changed his mind.

¹² Uniform rule 43(6): "The court may, on the same procedure, 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."

[41] I must address the material submitted by the first respondent, as the evidential burden rests upon him. He has provided no affidavit. His explanation was conveyed through his attorney's affidavit on urgency, which expressly disavowed the merits, and through admissions made from the bar. I have considered this material at its highest and have treated the attached correspondence as evidence of its contents, as previously indicated at [17]. Even taken at its highest, it establishes only the facts set out at [35] and does not address the four issues discussed above. It does not raise a reasonable doubt. The opportunity to respond on oath was offered twice and declined. While a respondent is entitled to remain silent, that choice carries consequences.¹³ I am satisfied beyond reasonable doubt that his non-compliance with paragraph 1.4 was deliberate and in bad faith, and that he is in contempt of the rule 43 order.

Whether an intention to dispossess, without dispossession, can found contempt

[42] I come to the question on which I asked for further argument. It was submitted on behalf of the respondents that an attempted breach, without actual non-compliance, is not contempt of court and cannot be punished as such. On the other hand, Mr van Aswegen submitted that our law recognises an offence of attempted contempt, and that s 256 of the Criminal Procedure Act 51 of 1977 allows me to convict the first respondent of it under the prayer for alternative relief.

¹³ *Fakie* para 22. The observation is made there of an accused in a public prosecution for contempt. It applies with equal force to the evidential burden borne by a respondent in an application of this kind.

[43] On the findings I have made, the question does not arise. The breach was complete. The first respondent sent men to take from the applicant a vehicle he was obliged to make available to her, and the demand was persisted with at her home over two days. Whether Williams left with the car goes to the consequences of the contempt, not to its existence.

[44] The respondents' argument rests on a premise I should not leave unanswered, because it will come up again. It treats contempt as no more than the frustration of the applicant's private interest, so that if she suffers no loss the Court suffers no affront. This kind of application is a mixture of the two. A litigant seeking enforcement has an obvious private interest in compliance. Still, the court enforces its orders also because of the public interest in obedience, since, as Cameron JA put it, disregard "sullies the authority of the courts and detracts from the rule of law".¹⁴ Contempt of court is not a matter between the parties alone.¹⁵ The position was preserved here, but by the applicant's attorneys, not by the first respondent's compliance.

[45] Because I requested argument, I will say briefly why I would not have taken Mr van Aswegen's route had I needed to. Section 256 is a competent-verdict provision. It operates where the evidence in criminal proceedings does not prove the offence charged. These are not criminal proceedings, and no offence is charged. There is no charge sheet, no plea, and no verdict. A respondent in an application of this kind is not an accused person, though he is entitled to

¹⁴ *Fakie* para 8.

¹⁵ *Fakie* para 38, quoting Kirk-Cohen J in *Federation of Governing Bodies of South African Schools (Gauteng) v MEC for Education, Gauteng* 2002 (1) SA 660 (T) at 673D-E.

protections like those an accused enjoys, adapted to motion proceedings.¹⁶ In *Fakie*, the court was invited to decide whether a finding of civil contempt counts as a previous conviction for the purposes of s 271 of the same Act. It declined, recording that the debate had been inconclusive and that the question was not before it.¹⁷ That is a warning against importing the machinery of the Criminal Procedure Act into motion proceedings by construction. Nor does the authority relied on by Mr van Aswegen take the applicant as far as she needs to go. *S v Benatar* is a decision of the Supreme Court of Zimbabwe and is persuasive only. The illustration Mr van Aswegen relies on was offered in the course of that court's reasoning, and it declined to convict.¹⁸ Mr van Aswegen fairly conceded that he could find no case in which a conviction for attempted contempt has been recorded.

[46] I decide nothing about attempted contempt. Had the first respondent written the letter of 2 February and gone no further, a different question would have arisen. He went a good deal further, though.

The letter of 2 February 2026

[47] I return to the applicant's failure to disclose the letter of 2 February 2026. Her founding affidavit describes attempts made over the preceding week. It says nothing about the notice given three weeks earlier, or about the car she had bought. Mr Parkar complains of this, and the complaint has force. A litigant who asks a

¹⁶ *Fakie* paras 25 and 42.2.

¹⁷ *Fakie* paras 27 and 28.

¹⁸ *S v Benatar* 1984 (3) SA 588 (ZS).

court to hold another in contempt should put before it the correspondence bearing on the conduct complained of, whether it helps her or not.

[48] The criticism must, however, be tempered. This was not an *ex parte* application. It was served, it was opposed, and counsel for the respondents was heard before the rule was granted. The strict duty of utmost good faith that attends *ex parte* relief does not apply. And the letter, now that it is before me, tells against the first respondent rather than for him. The omission does not affect the outcome, but I take it into account on costs.

Sanction

[49] Committal for contempt serves two inseparable objectives; to secure compliance with the order and to vindicate the authority of the Court. In this matter, the immediate need for compliance has diminished. The applicant retains possession of the vehicle, no further attempts have been made to remove it since 25 February 2026, and the respondents' affidavit on urgency included an undertaking that no such attempt would occur pending the outcome of this application. The applicant now seeks, in essence, the vindication of the Court's authority against a litigant who has defied it. This is a legitimate objective, though it must be pursued with restraint when the respondent is not personally before the Court.

[50] Two submissions made on the first respondent's behalf stand in the way of a sanction. Neither was advanced on affidavit. Both were argued from the bar and I discuss each in turn.

[51] The first is that a court may not impose a sanction for contempt without giving the contemnor a chance to be heard in mitigation, and that neither the notice of motion nor the rule *nisi* made provision for one. The submission relies on *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma*, where the Constitutional Court held that being given the chance to say something on an appropriate sentence is a right, not a privilege extended on request.¹⁹ The principle is sound, and I accept it without qualification. It has been observed in this matter. In *Zuma*, the contemnor refused to take part at all, and the Court issued directions inviting an affidavit because there was no other way to hear him.²⁰ When he later applied to have the sentence rescinded on the ground that he had been sentenced without a chance to advance mitigation, the Court dismissed the application.²¹ Here the rule *nisi* called on the first respondent to show cause why he should not be sentenced. He was twice ordered to answer and did not. He has been represented throughout. At the hearing Mr Parkar addressed me on sanction, as did Mr van Aswegen, and I have had full argument from both sides on what should be imposed and why. The first respondent has been heard, having exercised his choice to be heard through his representative rather than on oath.

[52] The second submission is that the relief sought gives no way for the contempt to be purged, and that a contempt order must always provide one. The passage relied on comes from *Fakie*, where Heher JA identified as a mark of a coercive

¹⁹ *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* [2021] ZACC 18; 2021 (5) SA 327 (CC) para 64, per Khampepe ADCJ (majority).

²⁰ *Zuma* above fn 19, paras 63 and 71.

²¹ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State and Others* [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) para 75.

order that the sentence may be avoided after it is imposed by compliance. That avoidance may require purging a default, an apology, or an undertaking to desist.²² However, Heher JA differed from the majority on the central question in that appeal, and on his own analysis what marks a punitive order is precisely that the sentence cannot be avoided by anything the respondent does after it is imposed.²³ The majority went further and held that committals for contempt cannot be sorted into the coercive and the punitive at all, because in each the objective and the means are the same.²⁴ I say nothing about Heher JA's further view that a judicial officer who thinks a punitive sentence is warranted should refer the matter to the Director of Public Prosecutions, because, on the majority's approach, the question does not arise.²⁵

[53] I now address the appropriate sentence. Imprisonment should not be imposed on the papers except in a clear case, and the first respondent has previously complained on appeal that he was sentenced for contempt without being heard on sanction. Conversely, a fine would not address the gravity of this contempt. The contempt is not a mere oversight to be marked by a monetary penalty. It is a deliberate resort to self-help against an order of this Court, pressed at the applicant's home over two days, and renewed the morning after the men who came were advised of the order. A fine would leave the applicant no better protected against a repetition, and it would in any event fall indirectly on her, since it is her claims in the divorce that his conduct seeks to undermine. The appropriate response is a sentence of imprisonment suspended on condition of future compliance. This approach underscores the seriousness of the contempt and

²² *Fakie* para 74.1, per Heher JA.

²³ *Fakie* para 75.1.

²⁴ *Fakie* paras 39 and 40.

²⁵ *Fakie* para 82, per Heher JA.

vindicates the order, while reserving the sanction should further non-compliance occur. It is also the ordinary course. A court is slow to restrict an individual's liberty in matters of this kind, and where imprisonment is imposed for contempt, it is usually or often suspended.²⁶

[54] I have not treated the earlier findings of Nuku J and van Zyl AJ as previous convictions in fixing the sanction. Whether a finding of civil contempt counts as a previous conviction is a question our law has not settled, and those findings are in any event on appeal and may yet be set aside.²⁷ It would not be right to punish the first respondent today on the strength of them. The sentence I impose rests on the events of February 2026 alone. The earlier findings have a narrower relevance. They show that he has been on notice for a long time of what paragraph 1.4 requires of him.

[55] I am aware that a court may commit a contemnor who refuses to participate in proceedings against him, as the Constitutional Court did in *Zuma*.²⁸ That was the apex court vindicating its own authority in circumstances it described as exceptional, against a litigant who had defied it publicly and refused to appear at all. That is not the situation in this matter. The first respondent has opposed the application through his representatives from the start; the applicant still has the vehicle, and no attempt has been made to take it since 25 February 2026. The right course is suspension. Should he breach paragraph 1.4 of the rule 43 order or the

²⁶ *Protea Holdings Ltd v Wriwt* 1978 (3) SA 865 (W) at 872B-C, quoted with approval in *Zuma* above fn 19, para 55, where Khampepe ADCJ recorded that, to that extent, the minority judgment was 'not wrong'.

²⁷ *Fakie* paras 27 and 28.

²⁸ *Zuma* above fn 19, paras 46 and 102. The Court described the circumstances as exceptional at paras 87 and 103.

interdict during the period of suspension, the sentence may be put into effect on application to this Court, on notice to him and on proof of the breach beyond reasonable doubt. I have provided for that in paragraph 6 of the order, so that nothing in it is self-executing.

The interdict

[56] On confirmation, the interim interdict becomes final. The relief is a civil remedy. It does not take away the first respondent's liberty, and the criminal standard does not govern it. Before I come to the requisites, I should explain how the two standards align with each other, because I have just decided the contempt on the criminal standard and much of the same material supports the interdict. Which standard applies turns on the consequence of the remedy sought, not on the facts in issue.²⁹ A fact proved beyond reasonable doubt is necessarily proved on a balance of probabilities, so my findings at [29] to [34] stand as findings for this part of the case as well. The civil standard is not idle on that account. It does work where the criminal standard could not. I declined at [31] to find beyond reasonable doubt that the first respondent directed the abuse and the threats, and I have not sanctioned him for them. That does not prevent me from finding, on a balance of probabilities and for the purpose of restraining a repetition, that he is answerable for the conduct of the men he sent. An interdict looks forward. It guards against what may happen next, and I decide whether it may on the civil standard. The applicant must therefore establish her entitlement on a balance of probabilities and must satisfy the requirements for a final interdict. They are a clear right, an injury

²⁹ *Matjhabeng* above fn 8, para 67.

actually committed or reasonably apprehended, and the absence of any other satisfactory remedy.³⁰

[57] The applicant has a clear right, against the first respondent, to have the vehicle made available for her use and the children's use for as long as the rule 43 order stands. She has a second right, which is good against the world and not only against him. It is the right not to be deprived of her possession of the vehicle except by process of law. No one may take the law into his own hands, and no one may dispossess another wrongfully and without consent of the possession of property, whether movable or immovable.³¹ For this purpose, the fact of possession matters, not its basis.³² She has a third right, not to be harassed, threatened or intimidated, and that right needs no order to establish it. On the facts of this case, it carries with it a further right not to be approached by the first respondent, or by anyone acting for him, other than through her attorneys. The harassment was committed by approaches of exactly that kind. They were made at her home and again the morning after the men who made them were alerted to the order. A restraint that left open the means by which the wrong was done would be no restraint at all. Communications reasonably necessary about the children fall outside this, and I have provided for them in the order.

[58] The apprehension of harm needs closer attention than it otherwise would, because the first respondent's attorneys have tendered an undertaking that the vehicle will not be removed. An interdict targets present or future infringement rather than a past invasion of rights. Where the wrongful act has already occurred,

³⁰ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

³¹ *Nino Bonino v De Lange* 1906 TS 120 at 122.

³² *Yeko v Qana* 1973 (4) SA 735 (A) at 739D-G.

it must be of a continuing nature, or there must be a reasonable apprehension that it will be repeated.³³ In *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* the majority held, as an alternative to its conclusion that the appellant had forfeited interim relief by delay, that a respondent's unequivocal expression of his future intention, though not an express undertaking, was enough to dispel the apprehension of harm.³⁴ That case concerned interim relief. But the proposition for which I cite it is not confined to interim relief, and I accept it.

[59] The features that persuaded the Court in *Openshaw* are absent here. There the contravention was isolated and a year old, and the respondent stated his intention on oath in his answering affidavit, where it was not put in issue.³⁵ Here the first respondent has not stated anything under oath. The undertaking is his attorney's, given on instructions and offered expressly on the footing that it concedes nothing. It was tendered pending the outcome of this application, which is now before me. It covers the vehicle and nothing else. It says nothing about contact with the applicant, harassment, or the enlisting of third parties, and that is the conduct that brought her to Court. It follows two visits to her home within five days, and a third the morning after the second, all preceded by written notice of an intention to act against the order. An undertaking is relevant, but it is not decisive, and each case turns on its own facts.³⁶ An apprehension that the conduct will be repeated is well founded.

³³ *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* [2008] ZASCA 78; 2008 (5) SA 339 (SCA) para 20.

³⁴ *Openshaw* above fn.33, para 26.

³⁵ *Openshaw* para 25.

³⁶ *Easigas (Pty) Ltd v Penguin Gas (Pty) Ltd and Another* (9415/2021) [2022] ZAWCHC 97 paras 48 to 54, and the authorities collected there.

[60] I turn to the alternative remedy. In correspondence, it was suggested that the applicant should have gone to the domestic violence court. As to the vehicle, the suggestion answers itself. That court cannot enforce the rule 43 order, and the enforcement of paragraph 1.4 lies at the centre of this application. So far as the harassment is concerned, the point deserves more attention because the Domestic Violence Act 116 of 1998 provides a remedy precisely for that complaint, and the parties are no strangers to that forum. Two things persuade me that it is not a satisfactory remedy here. The harassment is not free-standing. It was the means by which the first respondent pursued his defiance of an order of this Court, and it was carried out by agents he engaged for that purpose. Second, a remedy does not become an alternative merely because it exists. It must give the applicant substantially the same protection. Relief under that Act would not apply to the second respondent, would not be framed by reference to the order being defied, and would leave the applicant to litigate one course of conduct in two forums. An order of this Court, directed at the first respondent and at the entity through which he acts, and tied to the order he has flouted, is the only relief that meets the case as a whole.

[61] One matter in the papers should not be misunderstood. The respondents' affidavit states that a final protection order was granted in the first respondent's favour at Randburg on 27 February 2026 against the applicant. That order protects him from her. It does not affect her right to be protected from him.

[62] The applicant seeks an interdict against both respondents. The second respondent was not a party to the rule 43 order and is not bound by it. That does not put it beyond the reach of an interdict. The right the applicant asserts against the second respondent is not a right under paragraph 1.4. It is the right not to be

deprived of her possession except by process of law, and that right avails her against the owner of the vehicle as much as against anyone else. On the respondents' own version, the men who came to the applicant's home were there to collect the vehicle on the second respondent's behalf. The second respondent has invaded that right and threatens to invade it again. An interdict lies against it. The restraints in paragraphs 4.2 and 4.3 of my order stand on the same footing. The second respondent has no dealings with the applicant. It acts, and can act, only through the first respondent, and the men came to the applicant's home in its name and with its registration documents. An order binding the first respondent but leaving the close corporation free to send others in its own name would be of little value.

[63] I have framed the restraint on dispossession in the terms of the rule *nisi*, which permits steps taken as this Court may authorise. That preserves any legitimate future variation of the rule 43 regime. One further limit is needed, and the respondents' own draft order identified it. The applicant's right to hold this vehicle as against the first respondent exists because paragraph 1.4 of the rule 43 order says so, and it will end when that paragraph ends, whether on the granting of a final decree of divorce or on a variation under rule 43(6). No decree had been granted when the matter was argued, but one may be granted at any time, and my order must provide for that. A final interdict protecting a right that exists only *pendente lite* cannot outlast the right itself. Paragraph 4.1 of my order is, accordingly, limited to the life of paragraph 1.4.

[64] That limit has consequences for paragraph 4.4, which forbids respondents from engaging third parties to do the things prohibited by paragraphs 4.1 to 4.3. Paragraph 4.4 is not free-standing. It takes its content from the paragraphs it refers

to, and a prohibition on procuring another to do an act cannot survive the prohibition on doing the act oneself. If paragraph 4.4 were left unqualified, the first respondent would be free, once paragraph 1.4 had lapsed, to take steps to recover the vehicle himself but not to instruct anyone else to do so. That is absurd. It is neither what the applicant asks for nor what I intend. Paragraph 4.4 is therefore limited to the life of paragraph 1.4 so far as it relates to the conduct described in paragraph 4.1. It is not so limited so far as it relates to the conduct described in paragraphs 4.2 and 4.3.

[65] The remaining restraints stand on a different footing. The rights they protect, which I identified at [58], owe nothing to the rule 43 order and are not limited by its duration. Nor is the restraint on procuring others to invade them. So confined, the interdict is competent, and I confirm it.

Costs

[66] The applicant seeks costs on the attorney-client scale. Such an order may be made where a litigant's conduct is vexatious or otherwise deserving of the Court's displeasure. Conduct is vexatious in this sense where it has caused the other side unnecessary trouble and expense which it ought not to bear.³⁷ This is such a case. The first respondent compelled the applicant to come to Court by conduct he has never justified on oath. Given the chance to answer, he defied two orders to do so. He has resisted every part of the relief while putting no version of his own before

³⁷ *In re Alluvial Creek Ltd* 1929 CPD 532 at 535, as explained in *Johannesburg City Council v Television and Electrical Distributors (Pty) Ltd and Another* 1997 (1) SA 157 (A) at 177D. See also *Zuma* above fn 19, para 131, where punitive costs are described as reserved for conduct that is clearly vexatious and reprehensible.

me, and he has put the applicant to the expense of meeting a case he was unwilling to make on affidavit.

[67] It was said on his behalf that the undertaking should have ended the matter and that the applicant was unreasonable in pressing on. I accept neither proposition. The undertaking answered prayer 4.1 and nothing else. It left untouched the declaration of contempt, the sanction and the rest of the interdictory relief, and it was tendered on terms the applicant had not sought. The applicant was not obliged to abandon relief to which she is entitled because one part of it had been met on terms of the respondent's choosing.

[68] I have taken into account the applicant's failure to disclose the letter of 2 February 2026. She deserves criticism for it. But it did not lengthen these proceedings, and the document, once produced, tells against the first respondent who complains of its omission. It does not displace the order the first respondent's conduct otherwise attracts. The applicant should not be out of pocket for vindicating an order she was entitled to have obeyed. A punitive costs order is warranted against the first respondent, and it will carry the costs reserved on 6 March 2026. It is warranted against the second respondent too. It opposed every part of the relief alongside him and put up no version of its own. The conduct complained of was carried out in its name, using its vehicle and registration documents, by men who said they had come on its behalf. It is a close corporation of which the first respondent is the sole member, and it has not acted independently in this matter but him. The two are jointly and severally liable.

[69] The further notes were delivered at my request, on a question I have found it unnecessary to decide. It would not be right to burden the respondents with these costs, and I exclude them.

Order

I make the following order:

1. The rule nisi granted on 6 March 2026 is confirmed to the extent set out below.
2. The first respondent is declared to be in contempt of paragraph 1.4 of the order granted by Allie J on 31 May 2021 under case number 5440/2021.
3. The first respondent is committed to imprisonment for a period of 30 (thirty) days, which committal is suspended in its entirety for a period of two years from the date of this order, on condition that during the period of suspension the first respondent:
 - 3.1 makes the Mercedes-Benz motor vehicle with registration number C[...] available for the use of the applicant and the minor children, as paragraph 1.4 of the said order of Allie J requires, for so long as that paragraph subsists; and
 - 3.2 does not breach any provision of paragraph 4 below.
4. The first and second respondents are interdicted and restrained from:

4.1 taking any step to dispossess the applicant of the Mercedes-Benz motor vehicle with registration number C[...] presently in her possession, except as authorised by this Court;

4.2 contacting the applicant, save through her attorneys of record and save, in the case of the first respondent, for communications reasonably necessary concerning the minor children;

4.3 harassing, threatening or intimidating the applicant; and

4.4 enlisting or instructing any third party to engage in any of the conduct set out in paragraphs 4.1 to 4.3 above.

5. Paragraph 4.1 above, and paragraph 4.4 above in so far as it relates to the conduct described in paragraph 4.1, shall operate for so long as paragraph 1.4 of the said order of Allie J subsists, and shall lapse upon that paragraph being discharged, varied to relieve the first respondent of the obligation it imposes, or otherwise ceasing to have effect. Paragraphs 4.2 and 4.3 above, and paragraph 4.4 above in so far as it relates to the conduct described in paragraphs 4.2 and 4.3, are not so limited.

6. The committal suspended in paragraph 3 above shall not be put into effect otherwise than upon application to this Court, on notice to the first respondent, and upon proof beyond reasonable doubt of a breach of a condition of suspension.

7. The first and second respondents are to pay the costs of the application, including the costs reserved on 6 March 2026 but excluding the costs of the further

notes delivered after the hearing, on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved. Counsel's costs shall be taxed on scale 'A'.

M FRANCIS

Judge of the High Court

Appearances:

For Applicant:	Adv A J van Aswegen
Instructed by:	Herold Gie Attorneys

For First Respondent:	Mr Nazeer Parkar
Instructed by:	Parkar Attorneys