

SOUTH AFRICA / JUDGMENT

E.A.L-B v A.V.M (066657/2023) [2023] ZAGPJHC 1167 (17 October 2023)

[2023] ZAGPJHC 1167

COURT

South Gauteng High Court, Johannesburg

BEFORE

Yacoob

CASE / FILE NUMBER

066657/2023

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IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG LOCAL

DIVISION, JOHANNESBURG

CASE NO:

066657/2023

DATE:

18-07-2023

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

17/10/23

In the matter between

E.A.L-B

Applicant

And

A.V.M

Respondent

JUDGMENT

YACOOB J:

This matter comes before me on an urgent basis in the family court. The applicant seeks an order that the minor children of the parties primary residence be with him, and that the respondent is only entitled to supervised access to them. The respondent, in a counter application, seeks an order that the applicant is in contempt of the Court Order currently governing the children's residence and the parties' access to them, and seeking the return of the children to her.

By the end of the hearing of the matter, parties are ad idem on the merits of what must happen to the children at this moment in time. What remains for me to determine are the urgency of the main application, the merits of the contempt application and the question of costs.

On urgency I am satisfied that the applicant shows that he did not seriously consider the matter urgent. The affidavit itself sets out the issues reaching back to 2016 which would be irrelevant if the matter was truly urgent. If the matter was truly urgent and the real issue was the allegations against Mr Masters the applicant could easily have been in court on 3 July on ex parte basis for an interim order or rule nisi that he be allowed to keep the children with him.

It was also submitted in this court that the applicant only told the children's mother at 14h38 on 4 July that she is not getting the children back because that is when he first realised that the matter was urgent. This is inconsistent with the e-mail between him and his attorney on 5 July which shows that the only time that he actually decided to come to court urgently was on 5 July.

The applicant's own conduct shows that he did not consider the matter urgent, and taking into account that the main complaints are of the manner in which the Masters conduct themselves as parents, I am satisfied that he has not established urgency for his application.

That being said, the Court cannot turn a blind eye to the kind of allegations that are made and that is why it would nevertheless be necessary for the Court to order some kind of relief. The nature of that relief has now been agreed by the parties.

As far as contempt is concerned the applicant's conduct as shown in the manner in which he litigated and in the content of his own papers shows that he is high handed and has little regard for anybody else including the mother of his children. He even accepted his promotion without apparently first considering the effect on the minor children or discussing with their mother what the effect would be. He dictated what steps would be taken on 4 July, without having any discussion with the respondent.

In my view the fact that he did not immediately communicate with the children's mother on finding out these allegations; that he was not open with her immediately regarding whether she would collect them or not, and that the decision to bring the urgent application was only made later, tells me that his actions were not bona fide.

However, the question of whether the disregard of the Court order was wilful is a subjective one.

Mr L.B's conduct is very much on the borderline. There is a small possibility that he acted in disregard of the Court order in good faith. He clearly did disregard it and he clearly did that deliberately, however I give him the benefit of the doubt that it may have been in good faith for the protection of his children.

That being said he must consider himself warned. This judgment will be transcribed and the mother of the children would be able to use it against him if he choses to disregard the Court order again. I am sure that it will count against him.

As far as costs are concerned taking into account Mr L-B's conduct I am satisfied that he should have to pay the costs of both the main application and the urgency application. For these reasons I grant an order in terms of the draft.

YACOOB, J

JUDGE OF THE HIGH COURT

DATE: 17/10/23

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