

SOUTH AFRICA / JUDGMENT

M.C.H.S v D.B.S (21987/2020)

[2020] ZAGPPHC 197 (3 June 2020)

[2020] ZAGPPHC 197**COURT**

North Gauteng High Court, Pretoria

BEFORE

E van der Schyff

CASE / FILE NUMBER

21987/2020

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and SAFLII Policy

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 21987/2020

3/6/2020

In the matter between

M[....] C[....] H[....] S[....]

Applicant

and

D[....] B[....] S[....]

Respondent

This application is considered during the National State of Disaster declared by the State President in terms of the Disaster Management Act, No 57 of 2002 and the ensuing extended Covid-19 national lockdown. It was dealt with in accordance with the Urgent Court Directive dated 28 May 2020 issued by the senior Judge of the Urgent Court, Judge D S Fourie.

JUDGMENT

Coram Van der Schyff J

Introduction

[1] The applicant in this application approached the urgent court during May 2020 for an order in two parts. In terms of Part A the court was requested to order, that the respondent is in contempt of a court order dated 4 September 2013, that the respondent be ordered to comply with the payment in full of his maintenance obligations as set out in the stated order which payment includes amounts to the total amount of R238 765.76, that the respondent be ordered to continue to comply with his monthly maintenance obligation despite the national state of disaster being declared, and that the respondent be committed to prison for 30 days alternatively that a fine be imposed the imprisonment or fine to be suspended on the condition that the respondent comply with the order within 14 days thereof. In the event that the respondent failed to comply with Part A, an order was sought that the respondent be committed to prison for a period of 30 days, alternatively that a fine be imposed as the court deems fit.

[2] On 20 May 2020, an order was obtained in the urgent court in terms whereof the respondent was ordered to pay the applicant an immediate

amount of R20 000,00 on the granting of the order, and thereafter monthly maintenance payments in the amount of R20 000.00. The order also provided for the repayment of the arrear amount in monthly instalments.

[3] The applicant now approaches the court, once again on an urgent basis, for an order in accordance with the prayers contained in Part B of the notice of motion, in that the respondent failed to comply with the terms of the orders granted on 4 September 2013 and the order granted on 20 May 2020.

[4] In his answering affidavit to Part B of the application, the respondent states that:

i. He is assisted on a pro bono basis by his attorneys of record since he does not have the funds to pay them;

ii. He understands the applicant's plight, but he is not in a position to contribute to her maintenance as he does not have any income;

iii. The applicant will not be in a better position if he is imprisoned;

iv. The respondent approached the Evander Magistrate's Court to apply for the variation of the maintenance order and was informed that the court is not currently sitting due to the national lockdown.

- [5] The first issue that needs to be determined is whether this application was rightfully enrolled as an urgent application. Urgency is an aspect that should be determined on a case by case, context specific manner. The facts of the underlying dispute, as well as the relief sought, contributes to a finding as to whether the matter should be considered on the urgent court roll or be removed to be heard in the ordinary course of the rules in the opposed motion court.
- [6] I am well aware of the fact that where a court order exists, a nexus is created between the respondent and the court, and non-compliance with a court order extends much further than non-compliance with a contractual term.
- [7] Seen in this context, and in light of (i) the relief sought in this application; (ii) the fact that the respondent approached the Evander Magistrate's Court for a variation of the maintenance order; (iii) the fact that the applicant avers that '[t]he Respondent has failed to adhere to the settlement agreement over the years [since 2013]' and she never attempted to address non-compliance with the order granted in September 2013; and (iv) the fact that the respondent informed the applicant in a letter dated 4 May 2020 that he will not be able to meet his maintenance obligations as a result of him being severely affected by the Covid-19 pandemic to the extent that he has to suspend business operations, I am not of the view that this application meets the required threshold to be classified as an urgent application.
- [8] The incarceration of the respondent will not benefit the applicant in any matter, and the fact that this application had to be launched shortly after the application that was heard in May 2020, indicates that the respondent will not be able to pay a fine. Neither of these consequences will alleviate the applicant's position.
- [9] The contempt application can be dealt with in the ordinary course of events.

ORDER

In the result the following order is made:

1. The application is struck from the roll with costs.

E van der Schyff

Judge of the High Court, Gauteng, Pretoria

Counsel for the applicants: Adv S M Stadler

Instructed by:

Adams and Adams

Counsel for the respondent: Adv D J Coetzee

Instructed by:

JNS Attorneys

On the roll:

2 June 2020

Delivered:

3 June 2020

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2020/197.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/mchs-v-dbs-unknown-topic-agpphc-2020>

Prepared on 9 October 2026 · Esheria