

SOUTH AFRICA / JUDGMENT

M.H.-T v T.M.H.-T (2023/076092) [2024] ZAGPJHC 1176 (4 November 2024)

[2024] ZAGPJHC 1176

COURT

South Gauteng High Court, Johannesburg

BEFORE

Nieuwoudt

CASE / FILE NUMBER

2023/076092

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

Number: 2023-076092

(1)

REPORTABLE: YES

/ NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

04

November 2024

In

the matter between: H[...] - T[...]
 M[...]
 Applicant
 and
 H[...] - T[...]
 T[...] M[...]
 Respondent

JUDGMENT

Nieuwoudt, AJ

- [1] The Applicant launched an application for contempt of a court order dated 5 March 2021 against the Respondent. The court order of March 2021 was the divorce order that was granted between the Applicant and the Respondent in terms of which inter alia the Respondent had to
- a. Pay maintenance for the Applicant in the amount of R25 000.00 per month.
 - b. Keep the Applicant on a medical aid scheme.
 - c. Pay for the monthly DSTV subscription of the Applicant.
 - d. Pay the Applicant's reasonable cellular costs.
- [2] Ms. Grobler appeared for the Applicant on 29 October 2024 when the matter was heard. The Respondent Mr. H T[...] represented himself. The Court confirmed at the time of the hearing that Mr. T[...] will be representing himself and that he does not want to appoint an attorney to represent him. Mr T[...] indicated that he would like to have a legal representative but that he cannot afford one and will therefore proceed in person.
- [3] In the matter of Fakie NO V CCII Systems (Pty) Ltd [2006] ZASCA 52; 2006 (4) SA 326 SCA par. 42 the Supreme Court of Appeal summarised the position of contempt proceedings as follows:

“... (a) 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.

- (b) The respondent in such proceedings is not an 'accused person' but is entitled to analogous protections as are appropriate to motion proceedings.
- (c) 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.

(d) 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 noncompliance was wilful and mala fide, contempt will have been established beyond reasonable doubt...”

[4] It was common cause between the parties that the first three elements of contempt proceedings are not in dispute, i.e. –

4.1 A court order – the divorce order and settlement agreement

4.2 Knowledge of the order – both parties were aware of the contents of the settlement agreement

4.3 Noncompliance – the Respondent admits that he is not paying maintenance at the moment and that he has taken the Applicant off from his medical aid scheme.

[5] The wilfulness and mala fides of the Respondent is however in dispute. The Applicant is alleging that the Respondent is wilfully and maliciously not complying with the court order dated 5 March 2021 while the Respondent is submitting that he is unable to pay.

[6] From the papers filed and Mr. T[...]’s submission to the Court, I find the following to be Mr. T[...]’s case –

6.1 He states under oath that he has no assets. However, in court he confirmed after having been confronted with his SARS return, that he does own a BMW which he is currently using and paying for. He offered this motor vehicle to the Applicant as payment for the arrear maintenance. In the same breath he says that he doubts if the Applicant will get any money for the motor vehicle as it has

no net value. He also offered to transfer an annuity to the Applicant if the Applicant can find it because according to him, he does not have one.

6.2 He agrees that he was offered a credit increase on his credit card by his bank. He says however that he did not ask for it and it was given to him during the time that he was not in arrears for the maintenance, and he does not understand why that is relevant to the current question.

6.3 He confirms that he withdrew the maintenance case in the Somerset Wes Maintenance Court because he did not have the funds to pay the attorneys to pursue the matter. When asked by the Court why he did not do it himself he pleaded ignorance to the fact that he can do it himself.

6.4 Nowhere in his papers did the Respondent take the court into confidence and explain to the Court how he pays his expenses every month and what his expenses are. The only document the Court has is the maintenance form for the Maintenance Court in Somerset Wes, completed by him showing his expenses to be R77 870.82 per month. This was August 2023 after he had already lost his job. Even now in this application he fails to explain even those expenses which he disclosed to the Maintenance Court.

6.5 He makes vague references to people and family helping him but nothing specific. For example according to him the house he stays in belongs to his girlfriend's company. He, however, does not attach an affidavit from her confirming his allegations. When questioned on why he failed to do so, he claims that he gave documents to the sheriff when the sheriff was at the house, and he assumes that the Sheriff gave it to the Applicant's attorney.

6.6 He confirms that he is still paying the cellphone of the Applicant and, the DSTV and from that the Court should draw a conclusion that he is not mala fide.

Legal analysis

[7] Wilful can be defined[1] as follows: Conduct, which is intentional, deliberate having or showing a stubborn and determined intention to do as one wants, regardless of the consequences.'

[8] Mala fides can be defined[2] as follows: Conduct which is carried out in bad faith or with intent to deceive.'

[9] Although the Respondent submits that he is not wilful nor mala fides, his conduct points to someone that is 'intentionally and deliberately' not complying with a court order 'regardless of the consequences.' with the 'intention to deceive'. And more particularly the following conduct –

9.1 Stating under oath that he has no assets while having a BMW motor vehicle which he then offers to the Applicant;

9.2 Starting a maintenance case in the correct forum then withdrawing it well knowing that it is the remedy available to him to solve this current problem and offering unbelievable excuses why he did not proceed with matter;

9.3 He was seemingly unwilling to divulge all the information around his financial situation knowing that it is an integral part to prove his case.

9.4 On his own version, he lost his employment in August 2022. Well knowing that he has a maintenance obligation towards the Applicant, he only launches his application in the Maintenance Court in August 2023 after the Applicant launched her first urgent contempt application.

[10] Going back to the judgement of Fakie supra I would like to summarise the position around contempt proceedings as follows: The Applicant must proof beyond a reasonable doubt that the Respondent is in contempt and if the Respondent does not create a doubt with his explanation of his default, the Applicant has proven her/his case beyond a reasonable doubt.

[11] In casu the question is therefore did the Respondent with his evidence around not being wilful and mala fide created a reasonable doubt? Did the Respondent convince the Court that he was not wilful and not mala fide. The answer I find is no.

- [12] It is trite law that the test is not beyond all reasonable doubt but is there a possibility that the Respondent version can be true? If the Respondent took the Court into confidence and put ALL, the evidence needed to substantiate his defence the Court would have been inclined to say that there is a possibility that his version might be true. However, he has chosen not to place all the evidence needed before this Court and the Court can only work with what is before it. What is before Court is vague references and denials which is then contradicted when the matter is argued, i.e. that he owns no assets but yet he has a motor vehicle.
- [13] I am therefore satisfied that the Applicant has made out a case for contempt and I hereby make the following order:
1. The Respondent is declared to be in contempt of the Court Order issued out of the High Court of South Africa, Gauteng Division, Johannesburg on 5 March 2021 with case number 2020/2299..
 2. The Respondent is committed to prison for a period of 30 days, which committal is suspended for a period of one year on condition that the Respondent complies with the order granted on 5 March 2021, in that he is directed to pay the spousal maintenance arrears in the amount of R275 000.00 (Two hundred and seventy five thousand Rands) within 14 days From the date of granting of this order.
 3. The Respondent must institute, within 30 days from the date of granting of this order, a maintenance case in the applicable Maintenance Court for a full maintenance enquiry.
 4. The Respondent shall continue to comply with the court order of 5 March 2021 until such time as it is changed by a competent court.
 5. The Respondent is to pay the costs of this application on the attorney and client scale.

NIEUWOUDT, E

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Date of hearing:

29 October 2024

Date of Judgment:

04 November 2024

Appearances:

For the Applicant: Instructed by: Ms. L. Grobler Alice Swanepoel Attorneys For the Respondent:

Instructed by: Mr. T.M. H[...]-T[...] In Person

[1] Oxford Dictionary

[2] Oxford Dictionary

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