

SOUTH AFRICA / JUDGMENT

N.L.D v M.L (5785/22) [2025] ZAWCHC 337 (6 August 2025)

[2025] ZAWCHC 337

COURT

Western Cape High Court, Cape Town

BEFORE

Lekhuleni JD

CASE / FILE NUMBER

5785/22

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IN

THE HIGH COURT OF SOUTH AFRICA

WESTERN

CAPE DIVISION, CAPE TOWN

Case No: 5785/22

In

the matter between:

NLD

Applicant

and

M

L

Respondent

Neutral

citation: NLD v ML (Case no
5785/22) [2025] ZAWCHC...(06 August 2025)

Coram:

LEKHULENI JD

Heard:

4 July 2025

Delivered:

Electronically on 6 August 2025

Summary:

Family law – Rule 43 order. Respondent failing to comply with the order – Applicant claiming arrear maintenance – Respondent ordered to pay arrears immediately - Failing which, applicant allowed to bring application for contempt of court – Respondent ordered to pay the costs of the application.

ORDER

1

The respondent is ordered to make immediate payment of the sum of R277 066.48 to the applicant at her nominated bank account.

2

That failing compliance with paragraph 1 above, within 15 court days of this order, the applicant is hereby granted leave to set the matter down again on a 10 court days' notice to the respondent for an order that the respondent be found to be in contempt of the order of the court made on 31 August 2022 by Loots AJ and that the court impose an appropriate sanction on the respondent.

3

The respondent is ordered to pay the costs of this application on a party and party scale, including the costs of counsel on scale B.

JUDGMENT

LEKHULENI J:

Introduction

- [1] This is an application in which the applicant seeks an order that the respondent be ordered to make immediate payment of the sum of R277,066.48 for arrear maintenance owed to the applicant. The applicant also seeks an order that should the respondent fail make payment of the said of amount within ten court days of the order, the applicant should be granted leave to set the matter down on a five court days' notice to the respondent for an order that the respondent be found to be in contempt of court of the Rule 43 order granted by Loots AJ, on 31 August 2022, and that the court imposed the appropriate sanction on the respondent. The applicant also sought an order that the respondent be ordered to pay the costs of this application on an attorney and own client scale.

Background

Facts

[2] The applicant and the respondent were married in Switzerland on 23 June 2000, and their marriage is still subsisting. Two children were born from their marriage, and both children have reached the age of majority. On 11 November 2020, the applicant instituted divorce proceedings against the respondent under case number 16689/2020. The divorce proceedings are pending in this Court, and their matter is at a pre-trial stage. The applicant resides in the Western Cape within

the area of jurisdiction of this court, and the respondent resides in Switzerland with the two children.

[3] It is common cause that in August 2022, the applicant brought an application in terms of Rule 43 of the Uniform Rules of Court against the respondent for interim maintenance and other ancillary orders. The respondent opposed the application. After the matter was heard, Loots AJ, on 31 August 2022 granted an order in terms of which the respondent was ordered to pay the applicant maintenance pendente lite in the sum of R20 000 per month without deduction or set off on or before the first day of each month commencing on 01 September

2022 by way of electronic transfer or debit order into the bank account of the applicant.

[4] The respondent was also ordered to bear the costs of the monthly premiums in respect of the applicant's medical aid and to pay the applicant's monthly expenses inclusive of homeowners insurance in respect of the property; monthly Liberty Life retirement annuity; Old Mutual retirement annuity; Life/dread disease policy; Telkom account to a maximum of R500 per month; Pope Alarms monthly premium and Vitality premium. The combined sum that the respondent was ordered to pay was R31,773.70 per month, effective from 1 September 2022.

[5] The applicant asserted in the present application that the respondent breached the terms of the order, as he has failed to, neglected, or refused to make any payments for the instalment due in respect of the maintenance to her or into her personal bank account or into the trust account of her attorneys. The applicant stated that the respondent wilfully failed to comply with the order and is therefore in contempt of this court's order.

[6] The applicant stated that, as of 1 September 2022, the respondent was required to pay her R31,773.70 per month. As a result, by 1 May 2025, this totals 32 monthly instalments. Therefore, the total amount owed to her by the respondent, in accordance with the Rule 43 order issued by this court, is R1,016,758.40. According to the applicant, this amount excludes the return air tickets, which are liable to be paid by the respondent. The applicant asserted that the respondent paid the monthly instalments of R31 773.70 from September 2022 until January 2023. To this end, the respondent paid a total sum of R158

868. 50.

[7] The applicant averred that she had attached and received from the joint estate of the parties the sum of R865,063.83. The applicant stated that fifty percent of this payment was her own share, and the balance, R428,944.95, was from the respondent's share. The applicant further averred that the amount the respondent owes her as of 1 May 2025 is the sum of R277,066.48. The applicant submitted that the respondent is in violation of the court order in not paying promptly what is due to her. The applicant requested that the court grant the order sought in the Notice of Motion.

[8] The respondent, on the other hand, disputed that he was in wilful default in not complying with the said court order. The respondent asserted that on 4 January 2023; while skiing with his family in Grindelwald, he had an accident as he fell and hit his head. He was hospitalised the same day. He was discharged on 5 January 2023, and he returned to where he stayed with his family. Pursuant to the injury, on 8 January 2023, he felt confused and disoriented and had a headache and pain in his head and shoulder. He subsequently collapsed and was taken to the hospital. At the hospital, he was later informed

that he had suffered a coronary stroke and that such a stroke was likely to have been caused by his fall, which he experienced during the skiing trip.

[9] Following this, he was in a coma for about 3 days. Medical tests and imaging, such as brain scans, were conducted by the doctors who advised him that the damage caused by the stroke, among others, affected his ability to vocalise and write down his thoughts completely. The respondent asserted that he could not return to work or handle more complex issues, such as administrative and financial matters, on his own and required external support regarding business decisions and the signing of contracts. The respondent stated that his sister reported the accident and his condition to the Child and Adult Protection Authorities in Basel-Landschaft on 27 January 2023. Her sister notified the authorities that the respondent needed support, and the authorities were obligated to investigate the report of risk. The Child and Adult Protection Authorities instituted their own process of investigating the accident.

[10] Based on their assessment, the Child and Adult Protection Authorities was of the view that the appointment of a legal guardian to assist the respondent with asset management in accordance with article 394 read with article 395 of the Swiss Civil Law Code ZGB, was urgent and necessary after the accident, as it had become clear that the respondent could not act for himself. A legal guardian was appointed to manage the respondent's affairs, including his income, assets, and legal proceedings. The respondent avers that this appointment was communicated to the applicant's legal representatives on 28 February 2023.

[11] On 31 March 2024, his curatorship in Switzerland was terminated as the respondent had made sufficient progress and was deemed able to manage his own affairs. The respondent asserts that, notwithstanding this termination, he has not been able to work and will likely

never be able to work again. The respondent stated that prior to the accident and stroke, he was employed as a project manager by H[...] & Co. in Switzerland. From May 2021, he earned CHF 6,708.10, which was equivalent to R148,260 per month in 2023. According to the respondent, he is no longer able to work and is not employed by H[...] & Co. The respondent further averred that he had previously received a monthly stipend from his former employer, and they, in turn, had received reimbursement from the Swiss Accident Insurance Organisation. This amounted to roughly 80 percent of his salary, and these payments came to an end on 30 June 2025.

- [12] From July 2025, he receives a monthly disability pension from the Disability Pension and Integrity Compensation in the sum of CHF 7,133.35, which is equivalent to 80 percent of his previous salary. According to the respondent, this is the maximum amount he can receive, given that occupational and medical assessments record a 100 percent incapacity for work. Notwithstanding the fact that he no longer earns a salary, his expenses include rental costs, medical expenses, and maintenance payments for his two children, both of whom reside in Switzerland. His monthly expenses are as follows: rental, CHF 700.00 per month; EGK health insurance, CHF 534.65 per month; administrative costs, CHF 660.06 per month; rental for their children, CHF 1,350 per month; tuition fee for their daughter, CHF 143.33; and maintenance for his son, CHF 533.05.
- [13] The respondent stated that he used the balance of his funds to buy food, hygiene and cleaning products, clothing, haircuts and travel expenses. The respondent further asserted that his circumstances have drastically changed since the Rule 43 order was granted on 31 August
2022. He has instructed his attorney to proceed with a Rule 43(6) application, or alternatively, to attempt to settle the divorce with the applicant.
- [14] The respondent disputed that he was in wilful contempt of the Rule 43 order. He submitted that he suffered a stroke in January 2023 and was subsequently hospitalised, and then moved to a rehabilitation centre, and was placed under curatorship for 13 months. He was unable to work or earn an income and, therefore, could not comply with the Rule 43 order, as his estate was managed by appointed curators. To this end, the respondent asserted that he was unable to comply with the Rule 43 order and therefore his actions were not wilful. The respondent implored the court to dismiss the applicant's application.

Discussion

- [15] As foreshadowed above, the applicant and the respondent are still married to each other. Their divorce is pending in this court. During 2022, Loot AJ directed the respondent to pay the applicant maintenance pendente lite monthly in the sum of R31,773.70 collectively.
- [16] It is perhaps apposite to remind ourselves that one of the legal consequences of marriage, whether in or out of community of property, is that the spouses owe each other a reciprocal duty of maintenance according to their means. The scale on which support must be

contributed depends upon the social position, financial means and style of living chosen by the spouse. (*Jodaiken v Jodaiken* 1978 (1) SA 784 (W) at 788H). The scope of the duty is determined by the couple's standing in the community and standard of living and is by no means confined to bare necessities. (*Cary v Cary* [1999] 2 All SA 71 (C) 77). If income is insufficient to provide support for a spouse, it may be necessary to liquidate assets. (*Dodo v Dodo* 1990 (2) SA 77 (W) 93).

- [17] Furthermore, a duty to maintain a person depends upon the reasonable requirements or needs of the person claiming it and the ability of the party from whom it is claimed to furnish it. (*Oberholzer v Oberholzer*, 1947 (3) SA 294 (O) at p 297). Maintenance is an expenditure of a recurring nature which is usually paid out of income. However, the circumstances may be such that the income is inadequate or non-existent, and the value of the parties' assets may become relevant and material in deciding questions of maintenance. (*Jodaiken v Jodaiken* 1978 (1) SA 784 (W) at 789C).
- [18] In the present matter, it is common cause that the respondent has been receiving an income. The respondent contended that he was involved in an accident and, as such, he was unable to pay his wife maintenance. I accept that the respondent was under curatorship; however, he was still receiving a monthly stipend from his previous employer, and they received a reimbursement from the Swiss accident insurance organisation. According to the respondent, this accounted for 80 percent of his salary. These payments came to an end in June
2025. In other words, despite the accident, the respondent continued to receive an income.
- [19] Notwithstanding, the respondent did not inform his curators to pay maintenance to his wife in compliance with the Rule 43 order of this court. Insofar as the applicant alleges that the appointed curators managed his estate, I would like to believe that he would have clearly instructed them which expenses to pay. In my view, the respondents could and should have instructed his curators to pay the interim maintenance to the applicant. As correctly pointed out by the applicant in her replying affidavit, the respondent's funds are in Swiss francs, one of the strongest currencies in the world. The respondent could have easily made payments to the applicant in rands, which is weaker than the Swiss franc.
- [20] What I also find very concerning in the respondent's answering affidavit is that at no time does the respondent provide any proof that he did not have the funds available to pay the applicant. Furthermore, the respondent pleads poverty; however, in paragraph 50.3 of the answering affidavit, the respondent states that R20,295,128.87 of funds is available, held in trust, for which he is one of the income and capital beneficiaries. The respondent is fully capable of accessing his portion of these funds to pay maintenance to the applicant as per the court order. Evidently, the question whether the respondent was and can furnish maintenance poses no difficulty for this Court. At all relevant times, the respondent had the means to pay maintenance to the applicant but failed to do so.

- [21] As previously stated, I accept that the respondent was involved in an accident and that there was a possible reduction in his income compared to before the accident. However, it is troubling to note that, despite the respondent's assertions of a reduced income, the respondent neglected to meet his maintenance obligations. The respondent made no effort whatsoever to make a payment of at least a reduced amount, nor has he taken the necessary steps to vary the Rule 43 order in terms of Rule 43(6) of the Rules of Court. In my opinion, this failure and nonchalant attitude constitutes contempt of court.
- [22] The respondent asserted that as of 1 July 2025, he receives a monthly disability pension of CHF 7,133.35 from the Disability Pension and Integrity Compensation, which amounts to 80 percent of his previous salary. This amounts to approximately R160 617. 01 in South African Rands. Out of this amount, the respondent spends CHF 3921.09 for his monthly expenses. The respondent is left with a disposable sum of CHF
3212. 26 from his salary after paying all his monthly expenses. According to the respondent, he uses this amount to buy food, clothing and travelling expenses. I am of the view that there is enough balance for the respondent to pay maintenance in terms of the Rule 43 order.
- [23] Moreover, I find it concerning that the respondent allocates a portion of his resources to travel from Switzerland to Schlierbach, Germany, to take his partner to work, while neglecting to provide financial support to his wife. It must be stressed that the respondent is still married to the applicant and owes a duty of support to her. In stark contrast, there exists no similar obligation towards his partner. Furthermore, he was ordered by this Court to pay maintenance pendente lite in terms of Rule 43. The respondent needs to prioritise his responsibilities and adhere to the principle of putting first things first.
- [24] I am mindful of the argument raised by Ms Janssen, the respondent's counsel, that the applicant did not spell out clearly in the founding affidavit how much the respondent owes her. However, in my view, the respondent has not paid his maintenance obligations as ordered by the court. The applicant was forced to liquidate some of the parties' assets by issuing warrants of execution to cover her maintenance. To this end, I agree with Mr Hack, the applicant's counsel, that the amount of R277,066. 48 that the applicant seeks is far less than the total arrears that the respondent owes the applicant.

Order

- [25] Consequently, having considered the arguments raised and having read all the documents filed of record, the following order is granted:

25.1 The respondent is ordered to make immediate payment of the sum of R277 066.48 to the applicant at her nominated bank account.

25.2 That failing compliance with paragraph 25.1 above, within 15 court days of this order, the applicant is hereby granted leave to set the matter down again on a 10 court days' notice to the respondent for an order that the respondent be found to be in contempt of the order of the court made on 31 August 2022 by Loots AJ and that the court impose an appropriate sanction on the respondent.

25.3 The respondent is ordered to pay the costs of this application on a party and party scale, including the costs of counsel on scale B.

LEKHULENI JD

JUDGE OF THE HIGH COURT

APPEARANCES:

For the Applicant: Adv B. Hack

Instructed by: Lucas Dysel Crouse Inc

For the Respondent: Adv J. Janssen

Instructed by: Herold Gie Attorneys

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