

SOUTH AFRICA / JUDGMENT

# R.K v I.K (Sanction) (17760/2019) [2024] ZAWCHC 307 (25 September 2024)

[2024] ZAWCHC 307

## COURT

Western Cape High Court, Cape Town

## BEFORE

Andrews

## CASE / FILE NUMBER

17760/2019

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## Policy

## IN

## THE HIGH COURT OF SOUTH AFRICA

## WESTERN

## CAPE DIVISION,

## CAPE

## TOWN

## Case

No.: 17760/2019

## In

the matter between:

R[...]

K[...]

Applicant

and

I[...]

K[...]

Respondent

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**JUDGMENT**

(Sanction)

ANDREWS, AJ

- [1] The Respondent was declared in contempt of court on 3 September 2020, pursuant to a Rule 43 order granted on 12 April 2017. He was sentenced to a period of 30 (thirty) days' imprisonment which was wholly suspended subject to certain conditions, which were not complied with. The Applicant launched an application to direct the Registrar to issue a writ of commitment for contempt of court, committing the Respondent to imprisonment for a period of thirty (30) days, which application was opposed.
- [2] The matter was fully argued. Judgment in this matter was handed down on 20 June 2024. The matter was adjourned for a Trustee's Report and Correctional Supervision Report after finding that direct imprisonment would not be an appropriate sanction, given the changed circumstances and dire health conditions of the Respondent.
- [3] The Trustees Report dated 4 July 2024 together with the Trustees Second Meeting Report to Creditors dated 5 July 2023, elucidated the following salient information, namely that:
1. the Applicant lodged a claim against the Insolvent Estate for an amount of R1 631 343.85 ("the claim");
  2. the Applicant's claim was not submitted to "proof and proved" (sic) at a Meeting of Creditors due to a danger of a contribution on proved concurrent creditors;
  3. the Applicant was advised of the position and failed to respond to the trustees when she was requested to confirm whether she still required them to prove her claim notwithstanding the danger of a contribution;
  4. unless further assets are recovered, there is no prospect of a concurrent dividend being paid to creditors of the estate including the Applicant.
- [4] At the commencement of the proceedings, the court was alerted to the fact that the curator bonis of the insolvent (the Respondent) raised various objections to the first liquidation and distribution account. Nothing turns on this additional information as the gravamen of the Trustees Report is that the estate will not be in a position to pay the Applicant's claim, or any part thereof.

- [5] In considering an appropriate sanction, this Court is mindful of the dual purpose of contempt proceedings. In this regard, the sentence to be imposed should ideally contain both a punitive and coercive element. It is therefore clear that to commit the Respondent to a term of imprisonment in these circumstances can be likened to attempting to squeeze water from a stone.
- [6] Notwithstanding, the Respondent cannot be absolved from the consequence of punishment. The Respondent was found to be a suitable candidate to be placed under Correctional Supervision. The Constitutional Court has described this form of sentence as “an innovative form of sentence” which is flexible to meet the specific circumstances of each offender’s case.
- [7] The matter of costs stood over for later determination. It is trite that the issue of costs falls within the discretion of the court which must be exercised judicially. The Respondent was placed under curatorship by an Order of Court granted on 30 October 2023 under case number 17174/2023. Therefore, in the exercise of my discretion, in the circumstances of this matter, I am of the view that there should be no order as to costs.

Order:

- [8] After having heard Counsel for the Applicant and Counsel for the Respondent, and having considered the document filed on record, the court directs that:
1. In terms of Section 276(1)(h) the Respondent is sentenced to 30 (thirty) days Correctional Supervision. The court further orders that the Respondent subjects himself to:
    - (a) House arrest for the duration of 30 (thirty) days with a maximum of 24 hours per day, except for the purposes of medical care (if needed), collecting his social grant, church attendance, and other purposes to fulfil the aims of correctional supervision.
    - (b) The Respondent is ordered to report to the Correctional Office, Cape Town Community Corrections within 5 (five) days from date of receipt of this order and thereafter on the days, time(s) and place(s) as determined by the Commissioner or his delegate.
    - (c) The Respondent is to comply with any reasonable orders regarding the compliance and administration of this sentence when issued by the Commissioner or his delegate.
    - (d) The Respondent is to inform the Commissioner or his delegate immediately in writing of any change of his residential address.
  2. This programme of Correctional Supervision may be ameliorated or relaxed in order to fulfil the aims of correctional service provided that the period of house arrest is not shortened by more than a third.
  3. No order as to costs.

P ANDREWS, AJ

Acting Judge of the High Court

Western Cape Division

APPEARANCES:

Counsel for the Applicant:

Attorney C Beirowski

Instructed by:

Beirowski Attorneys

Counsel for the Respondent:

Advocate P Tredoux

Instructed by:

Neville Cohen & Associates

Hearing date:

19 September 2024

## Judgment

Delivered: 25 September 2024

NB: The judgment is delivered by electronic submission to the parties and their legal representatives.

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Prepared on 9 October 2026 · Esheria