
SOUTH AFRICA / JUDGMENT

Vice v Vice and Others (5881/2017) [2017] ZAGPPHC 1071 (2 November 2017)

[2017] ZAGPPHC 1071

COURT

North Gauteng High Court, Pretoria

BEFORE

T Smadima

CASE / FILE NUMBER

5881/2017

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 5881/2017

2/11/2017

In the matter between

ANNA ELIZABETH VICE Applicant

and

WALTER ERNEST VICE

First Respondent

MINISTER OF POLICE

Second Respondent

REGISTRAR OF DEEDS

Third Respondent

JUDGMENT

MADIMA, AJ

- [1] The applicant and first respondent, a pilot, are South Africans. They have been HUSBAND and wife since 24 September 1988. Their in community of property marriage still subsists. The parties have, for the past three years, been resident in Dubai, United Arab Emirates.
- [2] Their marriage hit a rough patch a couple of years ago. The first respondent indicated to the applicant his wish for a divorce. This was in August 2016. During January 2017 he launched an application for edictal citation out of this Court. Shortly before the application was to be heard, he had removed from the roll. Of importance is that the first respondent in his affidavit claimed that he was still domiciled in the country. He claimed further that the Court had jurisdiction n over him, inspite of the fact that he was living outside South Africa.
- [3] On 27 January 2017 the applicant served the first respondent with divorce pa pers. Not to be outdone, the first respondent responded likewise in Dubai. The first respondent also filed a special plea to the applicant's divorce summons claiming lack of jurisdiction of the South African courts. The parties agreed that the applicant would stay her Rule 43 application pending the determination of the Jack of jurisdiction point.
- [4] In the meantime, and despite the agreement to stay proceedings in South Africa, the first respondent set down for 16 March 2017 the divorce in Dubai. On 7 March 2017 the applicant launched an urgent application to interdict the first respondent from proceeding with the divorce in Dubai. This she did also pending the determination of the jurisdiction special plea. This application was heard before the Honorable Mabuse Jon 14 March 2017. On 15 March 2017 the court made an order that the North Gauteng Division of the High Court had jurisdiction to adjudicate upon the divorce action pending in this court. The court further interdicted the first respondent from proceeding with any further divorce action in Dubai. The first respondent was also ordered to pay the costs of the application. This thus settles the jurisdiction is sue.
- [5] On 13 June 2017 a Rule 43 Order was granted in favor of the applicant. The Order read thus
1. The Respondent is ordered to contribute to the Applicant's relocation costs as follows:
One oneway economic class air ticket to enable the Applicant to return to South Africa.
The reasonable required insurance on the personal items of the Applicant whilst in transit, storage and until the Applicant is able to move into a permanent residence in South Africa.
The reasonable storage fees of the personable items of the Applicant in South Africa until the Applicant is able to move into a permanent residence in South Africa.
The reasonable fees of a removal company of the Applicant's personal items from place of arrival of South Africa to the storage faciilty and again from the storage facility to the Applicant's permanent residence in South Africa.

The Applicant's deposit and connections fees for the rental property which the Applicant has identified to rent.

2. All the aforementioned items shall be paid by the Respondent in the following manner:

The Applicant shall obtain a quote and present and present same to the Respondent, who will agree or present another quote within seven days from request thereto.

The Respondent shall pay the said item directly to the facility within two days after presenting the quote to the Applicant.

3. In order for the Applicant to purchase certain household items in South Africa, the

Respondent is ordered to pay to the Applicant the amount of R45000,00, within seven days after date of this order.

4. The Respondent shall pay to the Applicant an amount of R300000.00 for a motor vehicle which motor which vehicle shall include a maintenance plan.

5. The Respondent shall contribute the amount of R30000.00 to the Applicant once annually, upon request, to enable her to visit with the parties' children alternatively to enable the parties' children to visit her and also visa application costs if necessary within seven days of request thereto.

6. The Respondent shall make payment in the amount of RS0000.00 per month to the Applicant as contribution towards her maintenance. The amount shall be paid to an account of the Applicant's choice, on or before the first day of every month. First payment to be made within seven days of date of this order and thereafter on the first day of the month following this order.

7. The Respondent shall contribute to the Applicant's legal costs in the amount of R125000.00, payable in installments of R25000.00 per month. The Respondent shall have the option to consent to this amount being paid from the funds currently being held in the Applicant's attorney's trust ac count.

8. Costs of this application to be costs in the cause.

9. The restrictions in terms of Rule 43(7) and (8) to be uplifted.

[6] The applicant is before me on an urgent basis. She seeks a declaratory

order that the first respondent is in contempt of the order granted by his Lordship Mr Justice Mabuse on 15 March 2017, as well as that of his Lordship Mr Justice Louw granted on 13 June 2017.

[7] In her application the applicant seeks the following relief

1. Dispensing with the forms and service, and where necessary, abridging and curtailing the time periods provided for in the rules of Court and hearing this matter as one of urgency in terms of Rule 6 (12) (a);
2. The First Respondent be declared as being in contempt of the order granted by his Lordship Mr. Justice Mabuse on 15 March 2017 under case number 5881/2017 as well as the order granted by his Lordship Mr. Justice Louw on 13 June 2017;
3. The First Respondent hereby be sentenced to imprisonment for 30 days;
4. The First Respondent hereby sentenced to imprisonment for an additional 30 days, which sentence is suspended for a period of two years provided that the first respondent complies with the abovementioned orders, as well as this order
5. A warrant for the arrest of the First Respondent is hereby authorised and issued, which warrant shall be executable, with the assistance of the officials employed by the second respondent in any country with which the Republic of South Africa has an extradition treaty and the South African Police Service is requested to assist the applicant in executing this order.
6. Interpol, in collaboration with the South African Department of Justice, is furthermore requested to assist in the execution on this order.
7. The First Respondent is hereby declared to be in arrears of both orders as stated in paragraph 2 above in the amount of R472 184.54;
8. The Applicant is hereby authorised to withdraw and utilize the full amount held as security in the interest bearing trust account of the applicant's attorneys held at Investec under account number: 50011953407 being the amount of R304 448.61 at 30 September 2017;
9. The First Respondent is ordered to pay the balance of R167 735.93;
10. Interest on this amount a tempore morae;
11. The joint estate be immediately divided into equal shares between the parties and the parties shall henceforth be declared to be married out of community of property;
12. In the alternative to paragraph 6.2.11.above, that the current in community of property system be replaced by another matrimonial property system that the court may deem fit, from date of this order onwards until such time as a final decree of divorce is granted;
13. Costs of the Application on an attorney and client scale; and
14. Further and/ or alternative relief.

[8] In his papers the first respondent submitted that he has applied for leave to appeal the Order of his Lordship Mr Justice Mabuse. Because of this procedural step, he does not have to comply with the interdict.

[9] The counsel for the first respondent submitted that indeed this was the case. He is wrong. In an email dated 21 July 2017, addressed to one Carli Ziegler of the law firm representing the applicant, Suzette Naude, secretary to the Honorable Mr Justice Mabuse stated that

"I have not received the application for leave to appeal from the respondents at all. I cannot accept any other application when I have not received an application for leave to appeal. I will keep the file with me with your other application until I receive an application for leave to appeal from the respondents. Such an application must make its way to Lisa Dreyer of the 5th floor together with the court file and the judgment of Judge Mabuse. Only when I receive such file and application from Lisa Dreyer will I be able to enroll everything before Judge Mabuse. I will keep the file with your application with me until I receive the application for leave to appeal. Judge Mabuse is, however still overseas and will only be back from the beginning of August".

[10] On the same day Carli Ziegler sent an email to Ehlers Fakude Incorporated, the law firm representing the first respondent stating that

"Ek het vroeer geskakel. Ons vemeem van Suzette by regter Mabuse se kantoor dat sy nie die Aansoek om verlof tot Appel ontvang het nie. Dit wordook nie gevind in die hofleer nie. Kan ons asb n kopie krt van die geliasseerde Aansoek om verlof tot Appel en vemeem ons dan wat die status daarmee is aangesien dit ook nie by die Appe lafdeling is nie"

[11] It is clear from the above correspondence that there is no leave to appeal pending.

Counsel for the applicant submitted that to date, no such leave to appeal has been filed.

[12] The first respondent also submitted that he need not comply with the Order of his Lordship Mr Justice Louw because, according to him, the court had no jurisdiction. In addition to that, the applicant has access to funds to maintain herself. This then means that the first respondent does not have to comply with that order. How very wrong.

[13] What the first respondent is not saying is that the Rule 43 court also held that it had jurisdiction, and had warned the first respondent in that regard. This therefore makes the first respondent guilty of willful contempt. This is despite his protestation to the contrary. An interim maintenance order is not appealable. It is also not suspended by a purported notice of an application for leave to appeal. The first respondent can not seriously rely on a leave to appeal notice that was never filed with the court and served on the applicant. The judge's clerk made this very clear in her email to the first respondent's attorneys.

[14] The first respondent pleads poverty and inability to pay. In the event he needs to vary the Rule 43 Order, first respondent must go back to the Rule 43 court for such variation. Until he does that, he is bound by the order of the Honourable Justice Louw.

[15] The first respondent also submitted that the applicant was complicit in the contravention of the Honorable Mr Justice Mabuse order by subjecting herself to the Dubai proceedings. In her submission the applicant stated that she had no option but to attempt to protect herself and her interests. It was the first respondent who insisted that the divorce proceedings should go ahead in Dubai despite the fact that a South African court had ordered that the proceedings be halted or not proceeded with. It should not avail the first respondent that the applicant participated in the proceedings.

[16] There is little doubt that the first respondent is in willful contempt of the two

Orders

granted by the Gauteng Division of the High Court, Pretoria. There is no excuse for that. What message is being sent to the general public when certain of our population ignore court orders. Lawlessness will reign. The members of the public will lose confidence and respect for the legal system.

The law on contempt of Court

[17] It is a trite principle of our law that all orders of Court, whether correctly or

in correctly granted, must be complied with until they are properly set aside. *Culverwell v Beira* 1992 (4) SA 490 (W) at 4948, *Lan v OR Tambo International Airport Department of Home Affairs Immigration Admissions*, and *Another* 2011 (3) SA 641 (GNP) at

657. Despite the assertions by the first respondent that he had lodged a notice for leave to appeal, this has not been done, or at least done following correct procedure.

[18] Any person who does not obey an order of a court is said to be in contempt of that order. This means that contempt of court is the deliberate, intentional refusal or failure to comply with a Court Order. *Holtz v Douglas & Associates (OFS)* CC 1991

(2) Sa 797 (0) at 802; *Sparks v Sparks* 1998 (4) SA 714 (W), in "Matrimonial and Family Law, High Court Motion Procedure: A Practical Guide, Lexis Nexis, Issue 4, 3 20."

[19] The applicant need to prove no more than that the order, service or notice had been served on the respondent. Once established, the respondent bears the burden in relation to the willfulness and male tides thereto. *H v M* 2009 (1) SA 39 (W), *Els v Weideman and Others* 2011 (2) Sa 120 (SCA) at paras 6667. The applicant must prove the requisites of contempt beyond reasonable doubt. Importantly reliance upon legal advice may not necessarily

prove to be a defense to contempt proceedings. *HEG Consulting Enterprises Pty Ltd v Siegwart* 2000 (1) SA 507 (C).

[20] There is no doubt that the first respondent's contempt is of a serious nature. It is for that reason that I am inclined not to accept his explanation. The first respondent has not apologized. He continues to poke a finger of contempt at the applicant and a South African Court.

[21] On 31 October 2017 I made the following Order:

1. The first respondent be declared as being in contempt of the order granted by his Lordship Mr. Justice Mabuse on 15 March 2017 under case number 5881/2017 as well as the order granted by his Lordship Mr. Justice Louw on 13 June 2017.

2. The first respondent is hereby sentenced to imprisonment for 30 days, which sentence is suspended for a period of two years provided that the first respondent complies with the abovementioned orders, as well as this order.

3. A warrant for the arrest of the first respondent is hereby authorised and issued, which warrant shall be executable, with the assistance of the officials employed by the second respondent in any country with which the

Republic of South Africa has an extradition treaty and the South African Police Service is requested to assist the applicant in

executing this order.

4. Interpol, in collaboration with the South African Department of Justice, is furthermore requested to assist in the execution on this order.

5. The first respondent is hereby declared to be in arrears of both orders as stated in paragraph 2 above in the amount of R472 184.54

6. The applicant is hereby authorised to withdraw and utilize the full amount held as security in the interest bearing trust account of the applicant's attorneys held at Investec under account number: 50011953407 being the amount of R304 448.61 at 30 September 2017.

7. The first respondent is ordered to pay the balance of R167 735.93;

8. Interest on this amount a tempore morae.

9. The joint estate be immediately divided into equal shares between the parties and the parties shall henceforth be declared to be married out of community of property.

10. The first respondent is ordered to pay costs of the application on an attorney and client scale.

[22] I also ordered further that Orders 3 and 4 be postponed sine die.

[23] I stand by my Order.

T.SMADIMA

ACTING JUDGE OF THE HIGH COURT

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Instructed by: Ziegler

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Dates of Hearing: 24

October 2017

Date of Judgment: 2

November 2017

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