

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

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B.C. WANLESS

30 May 2023

CASE NUMBER: 2021/28640

In the matter between:

Y R D

Applicant

and

K L D

Respondent

Neutral Citation: *Y R D v K L D* (Case No: 2021/28640) [2023] ZAGPJHC 600 (30 May 2023).

**JUDGMENT
(LEAVE TO APPEAL)**

WANLESS AJ

Introduction

[1] On the 14th of March 2023 this Court handed down judgment in this matter and made the following order:

1. *The application that the Respondent be declared to be in contempt of subparagraph 2.1.1.1.3 of the court order made by the Regional Court,*

Johannesburg on 25 January 2015 under case number 14/2134 is dismissed.

2. *The Respondent is declared to be in contempt of subparagraph 2.2.2 of the court order made by the Regional Court, Johannesburg on 25 January 2015 under case number 14/2134.*
3. *The Respondent is committed to imprisonment for a period of six (6) months which period is wholly suspended on the condition that the Respondent shall, within sixty (60) days from the date of this order, replace the Applicant's motor vehicle with a second hand or new motor vehicle of a similar price escalated by inflation.*
4. *Each party shall pay their own costs.*

- [2] The Respondent seeks leave to appeal to the full bench of this Court against the judgment of this Court and that the order of this Court, as set out in paragraphs 2, 3 and 4 thereof, be set aside and replaced with an order whereby the Applicant's application that the Respondent be declared to be in contempt of subparagraph 2.2.2 of the court order made by the Regional Court, Johannesburg on 25 January 2015 under case number 14/2134, be dismissed, with costs.
- [3] The Applicant opposes the application for leave to appeal in terms of section 17 of the Superior Courts Act 2013 read with subrule 49(1). There is no cross-appeal by the Applicant.

The Respondent's grounds of appeal

- [4] Whilst the Respondent no longer persists with his argument as presented before this Court on the point of law as raised by the Respondent, as a point *in limine* and accepts, as held by this Court, that contempt proceedings are indeed legally competent to enforce the clauses of the agreement that the Applicant seeks to enforce, the Respondent now seeks to attack the judgment of this Court on the basis that this Court has erred in finding that the Applicant has proven that the Respondent is in breach of the agreement that was made an order of court.
- [5] In particular, Adv Pye SC, on behalf of the Respondent, stressed the fact that this Court had erred by failing to have regard to the fact that the Applicant bore the onus to prove a breach of the court order; erred by rejecting the evidence of the Respondent particularly having regard to the *Plascon-Evans* rule; erred by interpreting the agreement to provide that the Respondent could apply for finance to purchase a replacement motor vehicle for the Applicant; erred by disregarding the failure of the Applicant to tender the return of her motor vehicle as a trade-in and

erred by failing to find that the Respondent had proven (as required in *Fakie*) that he had not acted with wilfulness or *mala fides*.

Conclusion

- [6] This Court has had due consideration to the arguments put forward by both Counsel, particularly in the context of the nature of this application and the test to be applied. Having done so, this Court is of the opinion that it cannot be said that another Court would come to a different finding. All of the concerns as raised by the Respondent were adequately and carefully addressed in the Court's judgment. Inasmuch as it is trite that the Supreme Court of Appeal should not be burdened with hearing an inordinate number of appeals, this Court is of the opinion that in this particular matter the full bench of this Court should not, with respect, be burdened with having to hear an appeal in this matter.
- [7] In the premises, this Court makes the following order:
1. The application for leave to appeal is dismissed;
 2. The Respondent (applicant in the application for leave to appeal) is ordered to pay the costs of the application.

B.C. WANLESS
Acting Judge of the High Court
Gauteng Division, Johannesburg

Heard: 23 May 2023
Judgment: 30 May 2023

Appearances

For Applicant: Adv L de Wet
Instructed by: Petker & Associates Inc.

For Respondent: Adv WB Pye SC
Instructed by: Dyasi M Inc.