

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



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

CASE NO: 43383/2013

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

27/03/2024

Date

ML TWALA

B[...]: K[...] obo M[...] S[...] B[...]

APPLICANT

And

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR HEALTH
OF THE GAUTENG PROVINCIAL GOVERNMENT
RESPONDENT**

JUDGMENT

TWALA J

Introduction

[1] In this application, the applicant seeks an enforcement of an agreed order granted by this Court on the 3rd of October 2022 against the respondent for payment of a sum of money for medical and therapeutical services and equipment or devices in the following terms:

1.1 That the respondent be ordered to make payment to the applicant in her representative capacity in the amount of R2 349 548.00

1.2 That the respondent be ordered to make payment to the M[...] S[...] B[...] Trust, in respect of the additional costs pertaining to the administration of the Trust, in the amount of R140 973.00

1.3 That the respondent be ordered to make payment of the amounts in paragraphs one (1) and two (2) above in the total sum of R2 490 521.00:

3.1 within thirty days from the date of this order in accordance with the provisions of section 3(a)(i) of the State Liability Act, 20 of a957, as amended; and

3.2 directly into the trust account of the applicant's attorneys of record with the following details:

WIM KRYNAUW ATTORNEYS TRUST ACCOUNT

ABSA BANK – TRUST ACCOUNT

ACC. NR: 405 735 0513

REF: K WILLIAMSON/MEC 0039

1.4 That the applicant's attorneys be ordered to pay the amounts referred to in paragraphs one (1) and two (2) to the M[...] S[...] B[...] Trust within ten (10) days of receipt of payment thereof.

- 1.5 That the respondent be ordered to pay interest on the total amount in paragraph 3 above at the prescribed rate of legal interest as from a date thirty-one (31) days from the date of this order to the date of final payment.
- 1.6 That the respondent be ordered to pay the costs of this application on the attorney and client scale.

- [2] The applicant is Ms K[...] B[...], the biological mother of M[...] S[...] B[...] (“M[...]”) who sues herein in her personal capacity and in her capacity as the mother and natural guardian of her minor child M[...].
- [3] The respondent is The Member of the Executive Council for Health of the Gauteng Provincial Government who is sued herein in her representative capacity as the nominal defendant for all claims arising against, inter alia, the Chris Hani Baragwanath Hospital (“*the hospital*”), an institution established, funded and managed by the Department of Health of the Gauteng Provincial Government.

Factual Background

- [4] The genesis of this case arises in that on the 18th of November 2008 the applicant was admitted at the hospital with her unborn son M[...]. She endured several hours of labour until she gave normal birth by vaginal delivery to M[...] on the 19th of November 2008. As a result of prolonged labour and failure of the staff members at the hospital to timeously perform caesarean section to deliver M[...], he was diagnosed as suffering from cerebral palsy due to asphyxia during the applicant’s labour and or during M[...]’s birth.
- [5] It is undisputed that on the 19th of November 2013 the applicant instituted an action for damages against the respondent arising out of the negligence of the staff members at Chris Hani Baragwanath in their handling of the birth of M[...]. The issue pertaining to liability was settled on the 11th of September 2017 when the respondent was ordered to pay 100% of the agreed or proven damages of the

applicant. Thereafter the respondent caused and amendment to its plea as a result whereof the whole action culminated in an agreed settlement order which was granted on the 3rd of October 2022 (“*the order*”).

[6] In terms of the order, the respondent was ordered amongst others, to render services and provide such goods to the minor child, M[...], as set out in annexure “A” which was attached to the order. It is further not in dispute that certain services for medical and therapeutical and goods and or equipment were immediately required for the benefit of the minor child, M[...], and was to be provided by the respondent within three (3) months from the date of the order. However, to date the respondent has failed to provide these services and or supply the equipment.

[7] In compliance with the order, on the 11th of October 2022 the applicant caused the order to be served on the Head of the Department of Health and the State attorney. On the 24th of October 2022, the order was served on the CEO of Chris Hani Baragwanath Hospital. On the 4th of November 2022 the applicant sent a letter to the parties inviting them to comply with the order and specifically drawing their attention to the complete list of the services and items that were ordered to be provided within three months from the date of the order. This letter was served on the respective parties on the 8th and 22nd of November 2022. A reminder was again sent to the parties by the applicant on the 12th of December 2022 and service of this letter was effected on the State Attorney on the 14th of December 2022, the Head of Department of Health on the 15th December 2022 and the CEO of Chris Hani Baragwanath Hospital on the 13th of January 2023.

[8] After the respondent had failed to reply to all the correspondence addressed to it regarding the order and failed to comply with the order to provide M[...] within three months with the services and equipment as stipulated in the order, on the 17th of January 2023 the applicant called on the parties, on two weeks’ notice to

comply with the order. This notice was served on the Head of the Department of Health on the 18th of January 2023, on the State Attorney on the 19th of January 2023 and on the CEO of Chris Hani Baragwanath Hospital on the 28th of February 2023. The respondent failed to reply and respond to the notice – hence the applicant launched these proceedings.

The Parties Submissions

- [9] The applicant says that she has complied with all her obligations in terms of the order and is entitled to the relief she seeks. The respondent has failed and neglected to not only deliver on its undertaking that it gave when the order was made but also to comply with the order. It is no justification for the respondent, so the argument went, to not comply with the order since it received correspondence about the order during the festive period, i.e. on the 15th of December 2022 when other staff members had already gone on leave. These proceedings were launched in April 2023 and even then, the respondent had not delivered and or performed in terms of the order.
- [10] Further, so it was contended, the order is clear that, in the event of the respondent failing to comply with the terms of the order to provide the services and the equipment within the prescribed timeframes, the applicant is entitled to approach this for an order for payment of the agreed capitalised value of the service and the items not provided in accordance with the terms of the order. It is of no moment, so it was argued, that M[...] has been attending a private clinic where he has been seen by a paediatric neurologist who prescribed Convulex instead of Epilim to control his seizures since he suffers from epilepsy. When he was seen by a neurologist at Chris Hani Baragwanath Hospital he, without even doing blood tests to check his levels, changed M[...]’s prescription back to Epilim. This was done because the hospital did not have Convulex in stock but only Epilim.

[11] It was submitted further that, the neurologist prescribed Lactulose for M[...] to alleviate stomach pain for M[...] suffers from severe constipation. However, when the applicant went to obtain the medication, the pharmacist at the hospital advised that they do not have constipation medication in stock and that she had to buy it privately. The amount claimed by the applicant covers the services and equipment which has not been delivered within the period of three months as provided for in the order, but for the failure of the respondent to comply with the order.

[12] Although the Court has a discretion whether or not to grant the order as prayed for, however, for the Court to exercise its discretion in favour of the respondent, the respondent has a duty to provide a defence and sufficient reason why it could not comply with the order. The applicant is not claiming past medical expenses, so it was contended, and therefore does not need to prove any amount that it has expended due to the failure of the respondent to comply with the order.

[13] The respondent says that it does not dispute that it did not comply with the order of the 3rd of October 2022 but request the court to grant it an opportunity to perform in terms of the order. Further, so it was submitted, the amount claimed by the applicant extend to the period for which the services and the equipment is not yet due to be delivered. It does not cover the timeframes as provided for in the order. The plain interpretation of the order is that the applicant is entitled to approach the court in the event that the respondent fails to provide the services and equipment. However, the court has a discretion to grant the money order or to grant the respondent an opportunity to provide the services and the equipment and the applicant has failed to establish the facts which entitles her to be granted the monetary order.

[14] The respondent submitted further that it successfully raised a public healthcare defence in this case – hence it falls in line with decisions that the respondent be afforded and opportunity to continue to fulfil the State’s obligation to provide health care services to everyone under section 27 of the Constitution, by providing

the services it is capable of without making monetary payments to claimants from limited funds to procure such services from the private sector. It was contended further that the CEO has taken the court into confidence and explained why the service and items were not provided timeously. The delay in complying with the order was partly caused by administrative problems and the relevant personnel who were already on holiday on the 15th of December 2022 when the CEO received a letter from the applicant.

Discussion

[15] The central issue in this case is the interpretation of the order upon which the applicant relies for the relief she seeks. It has been held in a number of decisions that court orders must be framed in unambiguous terms and must be practical and enforceable. It must leave no doubt as to what the order requires to be done.

[16] In *Eke v Parsons*¹ the Constitutional Court dealing with the issue of court orders, explained as follows:

“[64] The rule of law requires not only that a court order be couched in clear terms but also that its purpose be readily ascertainable from the language of the order. This is because disobedience of a court order constitutes a violation of the Constitution. Furthermore, in appropriate circumstances non-compliance may amount to a criminal offence with serious consequences like incarceration...

[74] If an order is ambiguous, ineffective, inappropriate, or lacks the element of bringing finality to a matter or at least part of the case, it cannot be said that the court that granted it exercised its discretion properly. It is a fundamental principle of our law that a court order must be effective and enforceable, and it must be formulated in language that leaves no doubt as to what the order requires to be done. The order may not be framed in a manner that affords the person on whom it applies, the discretion to comply or disregard it. In Lujabe Molahlehi AJ said:

‘The issue that arises in a case where the settlement agreement has been made an order of court and in the context of contempt proceedings is whether such an order is executable or enforceable. The basic principle is that for an order to be executable or enforceable its

¹ (CCT214/14) [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) (29 September 2015).

wording must be clear and unambiguous. An order that lacks clarity in its wording or is vague is incapable of enforcement. The other basic principle is that the order should as soon as it is made, be readily enforceable. In other words, the order must give finality to the dispute between the parties and not leave compliance therewith to the discretion of the party who is expected to comply with such an order”.

[17] It is perhaps appropriate at this stage to restate the provisions of the Court order of the 3rd of October 2022 which are relevant in this case and are as follows:

“Having considered the matter and having heard counsel for the parties, it is hereby ordered that:

1. The defendant shall pay the following delictual damages to the plaintiff in her representative capacity and on behalf of the minor child, M[...] S[...] B[...], flowing from the neurological injury sustained by him on the 19th of November 2008 in consequence of substandard obstetric care and management at the Chris Hani Baragwanath Hospital and the resultant cerebral palsy (and its sequelae) which he suffers from:
 - 1.1 ...
2. ...
6. The defendant shall render the services and provide such goods to the minor child, as set out in annexure “A” attached hereto read with the joint minutes, as compiled by the overlapping experts. Provided that:
 - 6.1 therapeutical services (speech therapy, dietetics, physiotherapy and occupational therapy) shall be provided at the Chris Hani Baragwanath Academic Hospital;
 - 6.2 the standard of services and the quality of goods comply with the agreed specifications of the relevant experts as contained in the joint minutes and is of a reasonable standard, equivalent to or better than the standards within a private health care facility;
 - 6.3 the services and goods are provided within the timeframes and at the frequency stipulated in the joint minutes and as encapsulated in annexure “A” hereto;
 - 6.3.1 it is specifically recorded that the following services (medical and therapeutical) and goods / equipment are immediately required for the benefit of the minor child (as agreed upon in the joint minutes) and is to be provided by the defendant within three (3) months from the date of this order, failing which the provisions of paragraphs 6.4 and 6.5 becomes applicable:

6.3.1.1 items 1.1; 1.2; 1.13; 1.16; 1.25; 1.30; 1.32; 1.33; 1.34; 1.36; 1.37; 1.38; 1.39; 1.41; 1.47; 1.48; 1.49; 1.49a; 1.50; 1.52; 1.53; 1.54; 1.55; 1.56; 1.57; 1.58; 1.59; 1.60; 1.61; 1.62; 1.63; 1.64 and 1.71;

6.3.1.2 items 2.1; 2.2 and 2.17;

6.3.1.3 items 3.2; 3.5; 3.6; 3.8; 3.12; 3.15; 3.16a; 3.17; 3.23; 3.25 and 3.29;

6.3.1.4 items 7.4 and 7.6

6.3.1.5 items 9.3.1 and 9.3.2; 9.4; 9.6.1; 9.7; 9.8 and 9.9;

6.3.1.6 items 11.1; 11.4 11.7 and 11.8; 11.11; 11.12; 11.15; 11.22; 11.28 and 11.29; and

6.3.1.7 items 15.3; 15.4; 15.5 and 15.8 and 15.9.

6.4 in the event of the defendant failing to provide the services or goods as set out in paragraphs 6.1, 6.2 and 6.3 above, the plaintiff will be entitled to approach the above Honourable Court, on application, for an order directing the defendant to make payment of the total capitalised value of the services and or goods which were not provided, in the amount specified in annexure “A” hereto in respect of that particular service or goods, minus the value of any services or goods already provided, if applicable. Provided that, in the event of the defendant failing to provide the services or goods as set out in paragraphs 6.1, 6.2 and ‘6.3 above, the plaintiff shall first notify the defendant and the plaintiff’s case manager, in writing, through her attorneys, of her default and provide her with two (2) weeks’ notice to cure her default, failing which the plaintiff shall be entitled to proceed with the application referred to above without further notice to the defendant;

6.5 the defendant shall, in the event that paragraph 6.4 becomes applicable, be liable to pay an additional 6.0% in respect of any amount that she is ordered to pay as for the costs of the Trust, which amount shall be paid directly to the Trust.

7. ...”

[18] It is now settled that, when interpreting any document, contract or a court order, the starting point is to ascribe the ordinary grammatical meaning of the words used, the context and the purpose of the court order. Put differently, in interpreting a court order, the court must give the ordinary grammatical meaning to the words used in the order, have regard to the context and surrounding circumstances of the case by considering the whole judgment, if any, and the purpose for which the order was made.

[19] In *University of Johannesburg v Auckland Park Theological Seminary and Another*² the Constitutional Court had the opportunity to deal with the principles of interpretation of documents and court order and stated the following:

“[65]: This approach to interpretation requires that ‘from the outset one considers the context and the language together, with neither predominating over the other.’ In *Chisuse*, although speaking in the context of statutory interpretation, this Court held that this ‘now settled’ approach to interpretation, is a ‘unitary’ exercise. This means that interpretation is to be approached holistically: simultaneously considering the text, context and purpose.

[66]: The approach in *Endumeni* ‘updated’ the position, which was that context could be resorted to if there was ambiguity or lack of clarity in the text. The Supreme Court of Appeal has explicitly pointed out in cases subsequent to *Endumeni* that context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous. A court interpreting a contract has to, from the onset, consider the contract’s factual matrix, its purpose, the circumstances leading up to its conclusion, and knowledge at the time of those who negotiated and produced the contract”.

[20] The provisions of the order are clear, plain and unambiguous. The respondent was ordered to provide the services and supply the goods and or equipment as listed in the annexure to the order. The order further provided the applicant, with a mechanism and or remedy and the consequences that should follow in the event that the respondent failed to deliver these services and or the equipment as provided for in the order. The consequences that will follow, if there is non-compliance with the order, is that the applicant shall be entitled to approach the court for an order directing the respondent to pay the total capitalised value of the services and or goods which were not provided, in the amount specified in annexure to the order in respect of that particular service or goods, minus the value of any services or goods already provided, if any.

² (CCT 70/20) [2021] ZACC 13; 2021 (8) BCLR 807 (CC); 2021 (6) SA 1 (11 June 2021).

[21] Although the order does not say so, it is not in dispute that it was made by agreement between the parties. The purpose of paragraph 6.4 of the order was to protect M[...] should the respondent fail to perform in terms of the order. It is undisputed that the respondent failed to perform and or comply with the terms of the order. It is the failure of the respondent which triggers the provisions of paragraph 6.4 of the order. Furthermore, it is not disputed that the applicant has complied with the order in that it provided the respondent with the notice of its default and demanded that it remedy the default within two weeks, but the respondent did not pay attention to the notice.

[22] I agree with the respondent that, although the applicant is entitled to approach this Court for a monetary order in the event of the respondent not complying with the order, this Court still retains its discretion whether or not to grant the order. However, I am of the view that, it is for the respondent to demonstrate that good cause exists for its failure to not comply with the order before the Court can come to its assistance and afford it another opportunity to comply with the order. The respondent seeks an indulgence from the Court and therefore it rest upon it to satisfy the Court that its failure and or delay in providing the services and or to supply the goods in compliance with the order, was not unreasonable and or was caused by circumstances beyond its control. Unless good cause is shown to the satisfaction of the court by the respondent for its failure to comply with the order, the court will be unable to come to its rescue and deny the applicant the order it seeks.

[23] In *Madinda v Minister of Safety and Security, Republic of south Africa*³ the Supreme Court of Appeal, when it was dealing with the phrase ‘good cause’ stated that the first requirement thereof is that the court must be satisfied with the explanation, and proceeded to state the following:

“[10] The second requirement is a variant of one well known in cases of procedural non-compliance. See *Torwood Properties (Pty) Ltd v South African Reserve Bank 1996 (1) SA 215 (W) at 227-228F* and the cases there cited. ‘Good cause’ looks at all those factors

³ (153/07) [2008] ZASCA 34; [2008] 3 All SA 143 (SCA); 2008 (4) SA 312 (SCA) (28 March 2008).

which bear on the fairness of granting the relief as between the parties and as affecting the proper administration of justice. In any given factual complex, it may be that only some of many such possible factors become relevant. These may include prospects of success in the proposed action, the reasons for the delay, the sufficiency of the explanation offered, the bona fides of the applicant, and any contribution by other persons or parties to the delay and the applicant's responsibility therefor.

[12] 'Good Cause' usually comprehends the prospects of success on the merits of a case, for obvious reasons: *Chetty v Law Society, Transvaal 1985 (2) SA 756 (A) at 765D-E*. But, as counsel for the respondent stressed, whether that is the case must depend on the terms of the statute in which it is found. In s3(4)(b)(ii), there is a specific link created between the delay and the 'good cause'. According to counsel's submission, no matter how strong an applicant's case on the merits that consideration cannot be causally tied to the reasons for the delay; the effect is that the merits can be taken into account only if and when the court has been satisfied and comes to exercising the discretion to condone. I do not agree. 'Good cause for the delay' is not simply a mechanical matter of cause and effect. The court must decide whether the applicant has produced acceptable reasons for nullifying, in whole, or at least substantially, any culpability on his or her part which attaches to the delay in serving the notice timeously. Strong merits may mitigate fault; no merits may render mitigation pointless. There are two main elements at play in s4(b), viz the subject's right to have the merits of his case tried by a court of law and the right of an organ of state not to be unduly prejudiced by the delay beyond the statutorily prescribed limit for the giving of notice. Subparagraph (iii) calls for the court to be satisfied as to the latter. Logically, subparagraph (ii) is directed, at least in part, to whether the subject should be denied a trial on the merits. If it were not so, consideration of prospects of success could be entirely excluded from the equation on the ground that failure to satisfy the court of the existence of good cause precluded the court from exercising its discretion to condone. That would require an unbalanced approach to the two elements and could hardly favour the interests of justice. Moreover, what can be achieved by putting the court to the task of exercising a discretion to condone if there is no prospect of success? In addition, that the merits are shown to be strong or weak may colour an applicant's explanation for conduct which bears on the delay; an applicant with an overwhelming case is hardly likely to be careless in pursuing his or her interest, while one with little hopes of success can easily be understood to drag his or her heels. As I interpret the requirement of good cause for the delay, the prospects of success are a relevant consideration, the learned judge a quo misdirected himself in ignoring them".

- [24] I am unable to disagree with the applicant that it is not a reasonable justification for the respondent to not comply with the order because it only received the letter from the applicant during the festive period and people had already gone on leave. This is the order which was agreed upon by the parties. It is not that the respondent was seeing it for the first time when it was served with it. The respondent knew of the order as it was made on the 3rd of October 2022 and the items for which payment is claimed and goods to be supplied were to be made within three months from the date of the order and not from the date of service of the order on the respondent. The order provides specifically at paragraph 6.3.1 that the services and goods or equipment listed therein are immediately required and are to be provided or supplied within three months failing which the provisions of paragraph 6.4 will be applicable.
- [25] The respondent might not have had the direct intention to not comply with the order, but it was culpable or grossly negligent bordering on recklessness since it was dealing with the life of a human being. There is no burden on the applicant to prove that the respondent had malicious intention when it failed to comply with the order for in this case, the issue is not about the contemptuous conduct of respondent. The issue is about enforcing the applicant's right to obtain an order for payment of money due to the respondent's failure to comply with the order. The intention of the respondent in not complying with the order is irrelevant in this regard.
- [26] It is of no moment that the applicant took M[...] to a private healthcare facility with her medical aid where M[...] consulted a paediatric neurologist who prescribed Convulex for him since Epilim did not seem to be helping in controlling M[...]’s epileptic seizures. The applicant is not claiming past medical expenses in this case. However, it is on record and disconcerting that when M[...] attended to Chris Hani Baragwanath Hospital, the neurologist who saw him changed his prescription back to Epilim without even doing blood tests to check on his levels. Equally disconcerting is the fact that the neurologist prescribed Lactulose for constipation

but the pharmacist at the hospital advised that they do not have constipation medication in stock and this the applicant had to buy privately using her private funds or medical aid. This cannot be said to be a reasonable standard as envisaged in the order which provides that the standard of services and the quality of goods must comply with the agreed specifications of experts of a reasonable standard.

[27] Counsel for the respondent referred this Court to the case of *MEC, Health and Social Development, Gauteng v DZ*⁴ wherein the Constitutional Court stated that the fundamental right of everyone to have access to healthcare services and the state's obligation to realise this right by undertaking reasonable measures introduce factors which are to be considered whether to grant a monetary order or order payment in kind. Furthermore, that if the court were to grant the money order as prayed for, it would open the floodgates of similar cases against the respondent which will affect the resources of the respondent to carry out its constitutional mandate of providing healthcare services to everyone.

[28] There is no merit in the contention that the granting of the monetary order as prayed for by the applicant would offend the principle laid down in a number of judgments and in particular, the *DZ* decision referred to above. This case is distinguishable from the *DZ* case in that the issue of whether compensation for damages suffered be paid in money or in kind obtained in and had already been determined by the trial court – hence the Court order in question. The respondent failed to comply with the order which made it plain that it should provide the listed services and supply the goods within a specified timeframe. Its failure triggered the provisions of the order which entitles the applicant to approach this Court for a payment order as provided for in paragraph 6.4 of the order instead of seeking to enforce compliance with it.

[29] I do not agree that the amount claimed by the applicant covers not only for services that have not been rendered by the respondent but services that would

⁴ [2017] ZACC 37.

have to be rendered throughout the lifetime of the minor child. The amount claimed is made out of the items listed in the annexure to the order which were said to be required immediately and should be rendered within three months from the date of the order. The list provided by the applicant in paragraph 26 of her founding affidavit is exactly in relation to the items as listed under paragraph 6 of the order. It is also noted that some of the items were to be supplied only once and others were to be supplied periodically as was agreed by the experts in their joint minutes.

[30] It should be recalled that this case involves a minor child who suffered cerebral palsy at hands of the employees of the respondent. The Court ordered the respondent to not pay in monetary terms for medical expenses where it can supply those services and provide the goods and or equipment. These services and equipment were to provide for a better life of the minor child and to make him as comfortable as can be and for the convenience of the people looking after him including the applicant. It is discomfoting to learn that, even when M[...] presented at the hospital, he was not given the services which were of the expected and reasonable standard as provided for in the order, from the hospital. His prescription for epilepsy was changed without any acceptable medical investigative process. The prescription for medication to alleviate constipation could not be supplied by the hospital and the applicant had to source it herself privately at her expense.

[31] Given that the respondent has failed to satisfy the Court in showing good cause for its failure to comply with the order, its delay in supplying the services and or supplying service not of the reasonable standard expected from the respondent when it was given the opportunity to do so by the applicant, the ineluctable conclusion is that the respondent is incapable of complying with the order. Undoubtedly the respondent has failed to demonstrate that it deserves an indulgence by the Court to afford it an opportunity to comply with the order. I

hold the view therefore that it is in the interest of justice that the applicant succeeds in its claim against the respondent as prayed for in the notice of motion.

Costs

[32] The applicant first served the order on the Head of Department, and State Attorney on the 11th and 24th of October 2023. From the 4th of November 2022 to the 17th of January 2023, the applicant had been sending letters of reminder to the respondent regarding the order, but no response was forthcoming from the respondent. The respondent only addressed correspondence to the applicant on the 1st of March 2023 when it raised the public health defence. The respondent did not engage with the applicant about its failure to comply with the order and how it intended to remedy such failure. The conduct of the respondent should be viewed in a very serious light and should not be tolerated by this Court. The respondent only reacted to the letter of demand and two months after the expiry of the timeframes set by the order.

[33] In *Nyathi v Member of the Executive Council for the Department of Health, Gauteng, and Others*⁵ the Constitutional Court dealing with the issue of the State organs' failure to comply with court orders, stated the following:

“[43] Deliberate non - compliance with or disobedience of a court order by the state detracts from the ‘dignity, accessibility and effectiveness of the courts’. Yet section 165(4) of the Constitution expressly imposes an obligation on organs of state ‘through legislative and other measures to assist and protect the courts to ensure the dignity, accessibility and effectiveness of the courts’. Indeed, in *Mjeni*, Jafta J had the following to say:

‘A deliberate non-compliance or disobedience of a court order by the state through its officials amounts to a breach of [a] constitutional duty [impressed by section 165 of the Constitution]. Such conduct impacts negatively upon the dignity and effectiveness of the courts ... The constitutional right of access to courts would remain an illusion unless orders made by the courts are capable of

⁵ 2008 (9) BCLR 865 (CC).

being enforced by those in whose favour such orders were made. The process of adjudication and the resolution of disputes in courts of law is not an end in itself but only a means thereto; the end being the enforcement of rights or obligations defined in the order. To a great extent s 3 of Act 20 of 1957 encroaches upon that enforcement of rights against the state by judgment creditors’.

In *East London Local Transitional Council v Mec for Health EC an Others*, Ebrahim J agreed with Jafta J that –

‘public officials and even Ministers of State may be held in contempt of court in matters such as the instant one. But, in my view, there is a further reason for concluding that contempt proceedings are justified against them even though the judgment is for payment of a debt’.

[34] The Court continued and said the following:

“[63] In my view, there can be no greater carelessness, dilatoriness, or negligence than to ignore a court order sounding in money, even more so when the matter emanates from a destitute person who has no means of pursuing his or her claim in a court of law. But we now have some officials who have become a law unto themselves and openly violate people’s rights in a manner that shows disdain for the law, in the belief that as state officials they cannot be held responsible for their actions or inaction. Courts have had to spend too much time in trying to ensure that court orders are enforceable against the State precisely because a straightforward procedure is not available”.

[35] The right to dignity entails that right to have one’s dignity respected and protected. M[...] was made to wait for an extremely long time to be provided with the services and goods or equipment as part of his treatment by the respondent. These services and goods were part of the rehabilitative process for M[...] and the respondent was fully aware of this but failed to comply with the order. There is no doubt in my mind that the respondent treated M[...] in a manner that showed no respect to him as a human being. It is my respectful view that the respondent has no regard for the Court order. I am therefore persuaded by the applicant that the respondent should be mulct with a punitive costs order.

[36] In the result, the following order is made:

1. The respondent is to make payment to the applicant in her representative capacity in the amount of R2 349 548.00
2. The respondent is to make payment to the M[...] S[...] B[...] Trust, in respect of the additional costs pertaining to the administration of the Trust, in the amount of R140 973.00
3. The respondent is to make payment of the amounts in paragraphs one (1) and two (2) above in the total sum of R2 490 521.00:
 - 3.1 within thirty days from the date of this order in accordance with the provisions of section 3(a)(i) of the State Liability Act, 20 of 1957, as amended; and
 - 3.2 directly into the trust account of the applicant's attorneys of record with the following details:

WIM KRYNAUW ATTORNEYS TRUST ACCOUNT
ABSA BANK – TRUST ACCOUNT
ACC. NR: 405 735 0513
REF: K WILLIAMSON/MEC 0039
4. The applicant's attorneys are to pay the amounts referred to in paragraphs one (1) and two (2) to the M[...] S[...] B[...] Trust within ten (10) days of receipt of payment thereof.
5. The respondent is to pay interest on the total amount in paragraph 3 above at the prescribed rate of legal interest as from a date thirty-one (31) days from the date of this order to the date of final payment.
6. The respondent is to pay the costs of this application on the attorney and client scale.

TWALA M L
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION

For the Applicant: Advocate M Coetzer

Instructed by: Wim Krynauw Attorneys Inc
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For the Respondent: Advocate V Soni SC
Advocate N Makopo

Instructed by: State Attorney - Johannesburg
Tel: 011 330 767
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Date of Hearing: 18th of March 2024

Date of Judgment: 27th of March 2024

Delivered: This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 27th of March 2024.