

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 LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER: 2023-036122

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

In the matter between:

S[...]: N[...]

APPLICANT

and

S[...]: R[...] P[...] H[...]

FIRST RESPONDENT

(South African Identity Number: [...])

MINISTER OF POLICE

SECOND RESPONDENT

REQUEST FOR REASONS IN TERMS OF RULE 49(1)(c)

1. This matter came before me on 6 February 2024 on the Family Court Role as an urgent application under Rule 6 (12)(b) of the Uniform Rules of Court, and further on the basis that the First Respondent is in contempt of court for failing to comply with the Rule 43 court order granted by Nkutha NkontwanaJ on 14 November 2023 and court order granted by agreement by Honourable Judge Vally on 12 December 2023.
2. When the matter was called, Advocate L van der Westhuizen appeared on behalf of the Applicant and Advocate N Smit appeared on behalf of the First Respondent.
3. It is clear in the request for reasons that the Applicant does not persist as per the main application on willfulness and mala fides by the First Respondent, which I also found not to be proven.
4. The following facts found to be proven:

In this context there are 5 dates that are important.

The date when:
 - 4.1 The Rule 43 first order was granted 14 November 2023.
 - 4.2 The order was explained to First Respondent on 30 November 2023.
 - 4.3 The first full cash portion payment was made in full on 4 December 2023 before the first urgent application was finalized.
 - 4.4 The second full cash portion payment was made in full on 6 December 2023 after the trailer was sold.

- 4.5 The first urgent order was on the roll on 12 December 2023 in front of Honourable Justice Vally, a mere 5 days after payment was made by the First Respondent. Having regard to the papers, the current application is viva voce in the same terms.
- 4.6 Urgency was not dealt with on 12 December 2023 or in any other way.
- 4.7 The trial date of the main Divorce action is set down for final determination on 26 February 2024.

LACK OF URGENCY

The court deals with the reasons for urgency:

5. In Victoria Park Ratepayers' Association v Greyvenouw CC and other (511/03 [2003] Zaechc 10, Plasket AJ agreed with the above mentioned – quoted statement of the law and added the following:

“I would add that it is not only the object of punishing a respondent to compel him or her to obey an order that renders contempt proceedings urgent: the public interest in the administration of justice and the vindication of the Constitution also render the ongoing failure or refusal to obey an order a matter of urgency. This, in my view, is the starting point: all matters in which an ongoing contempt of an order is brought to the attention of a court must be dealt with as expeditiously as circumstances, and the dictates of fairness, allow.” (own emphasis added)

6. In the matter of Laubscher v Laubscher 2004(4) SA 350 (T) it was held that the applicable standard of proof in civil contempt of court proceedings being proof on balance of probabilities.
7. Applicant must show why she cannot be afford substantial redress at a hearing in due course, the final divorce trial date is 26 February 2024, a mere 3 weeks away.
8. Another element of urgency is that urgency would be satisfied if in fact it is shown the respondent was in continuous disregard of a court order.
9. It is important to have regard and consider this application in the light of the dates payments were made. The last order made was a mere 8 weeks ago. On the time lapse alone, I found that this application is not urgent and there are not enough other facts in front of this court to, at this stage, grant an order that would incorporate imprisonment.
9. Urgency in the family court also has a bearing on the safety and imminent risk of harm to the minor children, which is not, at all part of this application.
10. The law on urgent application is clear that it is not trite law that all applications in terms of contempt is urgent.
11. Any application must always be bona fide and not simply used as a tactical maneuver for the purpose of obtaining an advantage to which the Applicant is not legitimately entitled. See Trading CC v Standard Bank of SA Ltd (4) SA 1 (SCA) at 4 – 5

CONTEMPT

12. Contempt on outstanding amounts, and disobeying court orders, in case law, use the following words:
- 12.1 Continue to disregard, at the time of bringing the application not even a month has passed, when the application was launched.
- 12.2 Ongoing failure – reasonable lapse of time, not proven.
- 12.3 Refusal to pay, not proven, Respondent immediately sold assets to comply.
- 12.4 Applicant must show that the contempt was willful and male fides, and intentional which was not satisfactory shown on the papers. The court is of the opinion that the application is premature not urgent and therefore it is dismissed and the cost to be the costs in the cause of the main action.

COSTS

The main divorce action is set down for trial on 26 February 2024, this is within 21 days of this set down. An urgent court application is never about legal costs, which can be dealt with at the trial and the main action, or to be argued in the normal motion court.

C VAN DE VENTER

ACTING JUDGE

GAUTENG HIGH COURT

JOHANNESBURG

Appearances:

Counsel for the Applicant: Adv. L. van der Westhuizen

Counsel for the First Respondent: Adv. N Smit

Date of hearing: 6 February 2024

Date of judgment: 6 February 2024