

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, PRETORIA

CASE NO: 72391/2017

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

Date: 15 November 2023 E van der Schyff

In the matter between:

M E M[...]

APPLICANT

and

N B M[...]

RESPONDENT

JUDGMENT

Van der Schyff J

[1] This application was launched as an urgent application in the Family Court. The Notice of Motion is dated 31 October 2023. The respondent was afforded until 3

November 2023 to file a notice of intention to oppose and until 8 November 2023 to an answering affidavit.

- [2] An applicant in an urgent application needs to make out a case that it will not be able to obtain sufficient redress in due course if the matter is not heard or that any urgency that might exist is not self-created.
- [3] The question of whether a matter is urgent is decided on a case-by-case basis with regard to the facts of the case and the relief sought. The integrity of urgent court proceedings is dependent on courts removing or striking matters that do not meet the required test for urgency. *In casu*, the issues that gave rise to this application arose already, at least in the first quarter of 2023. If it can be said that there is any urgency relating to any of the issues the applicants want to be adjudicated, it is self-created urgency. The papers were drawn in haste, and in that sense, the urgency with which the court was approached prejudiced not only the respondent who was afforded three days to file a notice of intention to oppose, but also the applicant.
- [4] The documents filed by the applicant indicate that he withdrew an educational investment to the benefit of his children for R 813,405.34. He, however, indicates that he used only R182 000 of that amount for N[...] and M[...]’s studies, and the court is left in the dark as to how the remainder of those funds were utilised. The parties’ eldest son is completing his secondary education at the end of the year, and this might also impact the applicant’s financial contribution toward his education. Due to the papers being drawn up in haste, these issues hang in the air.
- [5] As for the order sought that the parties’ son N[...] be enrolled at Glen High School for the 2024 school year, the issue regarding the applicant’s liability to pay the school fees not only arose early in 2023 but was ostensibly canvassed in court when the respondent approached the court, successfully, I must add, for a contempt of court order.

[6] I find it astounding that the parties' marriage has not yet been dissolved despite divorce proceedings being instituted in 2017. The protracted proceedings undoubtedly contribute to the parties' animosity and inability to communicate. The parties must set aside their obstructive behavior and attempt to make decisions in their child's best interest. The school's position, as set out in the email of November 2023 to which both parties refer, indicates that irrespective of court orders, both parties' consent is needed before N[...] will be enrolled for 2024, regardless of whether the arrear school fees are paid. The respondent did not seek that the applicant be ordered to sign such consent. The issue of N[...]’s secondary education remains an issue that needs to be resolved. The parties and their legal representatives are encouraged to engage in a discussion to deal with the practical realities of their position.

[7] The costs of this application are to be costs in the cause for the sole reason that I am of the view that the parties' inability to finalise the divorce proceedings contributes to their inability to make decisions that affect their children's lives. In the Family Court, a 'successful party' seldom exists even though one party may appreciate the order granted more than another.

ORDER

In the result, the following order is granted:

- 1. The application is struck from the roll.**
- 2. Costs to be costs in the cause.**

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. It will be emailed to the parties/their legal representatives as a courtesy gesture.

For the applicant:	Adv. M. Arroyo
Instructed by:	Kern Armstrong and Associates
For the respondent:	Mr. Z. Olivier
Instructed by:	Olivier Steyn Incorporated
Date of the hearing:	14 November 2023
Date of judgment:	15 November 2023