

**IN THE HIGH COURT OF SOUTH AFRICA  
(TRANSVAAL PROVINCIAL DIVISION)**

**CASE NO: 40875/2006**  
21 SEPTEMBER 2007  
NOT REPORTABLE

3. 1  
In the matter between:

**H B**

Applicant

-and-

**H B**

Respondent

**JUDGMENT  
PHATUDIAJ**

1. **H B**, the Applicant, instituted this application seeking an order as set out in the Notice of Motion.

2

2. The Applicant and the Respondent, (the Parties) were married to each other out of community of property on the 14 December 1996, which marriage still subsist. Two minor children were born of their marriage relationship.

4. On the 1 April 2006, the Respondent caused issue of summons against the Applicant for, *inter alia*, a decree of divorce.

4. The Applicant applied in terms of Rule 43 of the Uniform Rules of Court for, *inter alia*, maintenance of the Applicant and minor children. A copy of the said order dated 4 July 2006 is annexed and marked "A" at page 11 of the record.

5. Of importance to this application are the provisions of clauses 2;3 and 5 of the said Rule 43 order which reads as follows:

"2. *THAT the applicant (the Respondent in casu will  
continue to pay the bond of the erstwhile communal  
home."*

"3 *THAT the applicant will continue to pay the water and*

*electricity account"*

"5 *THAT the applicant will pay maintenance to the respondent for and pertaining to the minor children in the amount of R1 000. 00 per child per month. "*

3

6. The Applicant alleged that the Respondent failed to comply with the Order of Court as aforesaid in that:

6.1 The Respondent is in arrear with regard to water and electricity account in the amount of **R2 962.00**

7. The Applicant has indicated in her founding affidavit that:

*"4.3.4 Met die tydsverloop tussen die respondent se huisverlating en die loods van die Reel 43 aansoek, het die rekening agtertallig geraak. "*

8. She further indicated that

*"4.4 Sedert die reel 43 bevel verleen is, betaal die respondent slegs R900.00 op gemelde rekening at, terwyl die agterstalliges glad nie gediens word en steeds styg. "*

9. The Applicant further alleged to have telephonically been informed by Bond Department of First National Bank, that the bond repayment are in arrear in the amount of **R1 970.00**

10. In response to the said allegations, the Respondent stated that he, without fear of contradiction, complied fully with all his obligations

4

arising from the aforesaid order. He indicated that he is not in default of any obligations imposed upon him.

11. The Respondent alleged that it is the Applicant herself who is in contempt of the order issued on the 4 July 2006, by restricting his (Respondent's) right to reasonable access to minor children at all

reasonable times.

12. The Respondent indicated that clause 1.5 of the order provides that:

*"1.5 The right to reasonable telephone access at all  
reasonable times. "*

13. He alleged that the Applicant does not afford him reasonable telephonic access to the children.

14. The Respondent emphatically denied being in arrears of water and electricity account in the amount stated by the Applicant. *He* referred the Court to the correspondence dated 5 September 2006 marked **HRB8** at page 71 of the record that indicated that he was in arrear of **R761.62**, contrary to the amount of **R2 962.00**.

5

15. It is common cause that at a time of institution of this application, the Tshwane's City Council's water and electricity account was in arrear.

16. In fact, the applicant stated that the said arrears were already in existence at the time of the application for an order in terms of Rule 43.

17. In my evaluation, it is not clear from the documents before court, of the actual non-compliance with the Order of Court in terms of Rule 43 dated 4 July 2006.

18. Clause 2 of the said order provides that the Respondent (my word) will continue to pay the bond.

19. The Applicant failed to prove that the Respondent failed to continue to pay the bond as ordered. The Applicant only state that she has been telephonically informed that the bond account is in arrears.

20. It is not clear as to when and how did the said arrears come about.

It is further not clear as to the amount payable monthly towards bond repayment. All that the Respondent said is that she has been telephonically informed of the arrears in the amount of R1 970.00.

6

21. Turning to clause 3 of the order, that provides that the Respondent will continue to pay water and electricity account.

22. Counsel for the Applicant submitted that the Applicant's understanding of water and electricity account meant the account the City Council issues monthly as per document annexed marked B at page 14.

23. On the other hand, Counsel for the Respondent content that the order specifically refer to the amount payable for water and electricity consumed but excludes the amount specified for rates and taxes.

24. The order states that the Respondent will continue to pay (*my emphasis*). The word "continue" is defined in SOUTH AFRICAN CONCISE OXFORD DICTIONARY'S, as *inter alia*,  
"To remain in existence ... carry on with ... //

25. It is common practice and commonly accepted by most people in South Africa, if not all, that the accounts from City Councils or Municipality for rates, taxes, water, electricity and refuse removal is often referred to "water and electricity account."

7

26. The Respondent was thus ordered to continue ("carry on with") to pay the water and electricity account.

27. The question that needs consideration is whether the Respondent

failed to continue to pay the said water and electricity account.

28. The Applicant, in her founding affidavit, stated that:

*"4.4 Sedert die reel 43 bevel verleen is betaal die respondent*

*sleQs R900.00 op gemelde rekening af"*

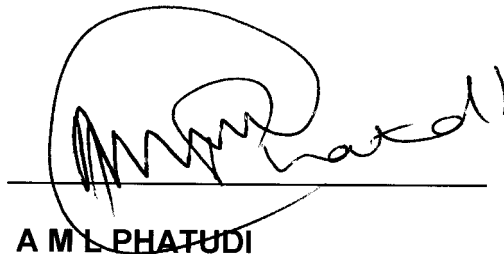
29. It is clear from the quoted statement that the Respondent has always been paying an amount of R900.00 for the said water and electricity account. The Respondent never failed to pay the account. This implies that the Respondent is not in contempt of clause 3 of the Order in terms of Rule 43 dated 4 July 2006.

30. Based on the above, I find that the Applicant failed to prove that the Respondent has been contemptuous of the Order of Court in terms of Rule 43 dated 04 July 2006.

31. I, as a result, am bound to make the following order.

ORDER

THE APPLICANT'S APPLICATION IS DISMISSED WITH COSTS.

A handwritten signature in black ink, appearing to read 'A M L PHATUDI', is written over a horizontal line. The signature is stylized and cursive.

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)