

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2023-B6773

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

24/12/2024

DATE

MOKOSE SNI

In the matter between:

MITROPAPAS: DIMITRIOS

Applicant

and

PEENZ: CLAUDIA HENDRINA

Respondent

JUDGMENT

MOKOSE J

[1] The applicant approaches this court for an order to find the respondent in contempt of the court order granted by this court on 26 December 2023. The application is premised on the respondent's alleged non-compliance of the order. In terms of the notice of motion, he seeks an order for the imprisonment of the respondent for a period of 90 days, alternatively 60 days and further

alternatively, 30 days which sentence should be wholly suspended on the condition that she complies with the order. The respondent opposes this application.

[2] The minor child "CZM" was born on 20 April 2018. The minor child was born of a romantic relationship between the parties. A co-parenting agreement was concluded between the parties in which it was agreed, *inter alia*, that 'both parties are expected to consider each other's voices and opinions in the decision making involving major event of the child's life'. A mediator was appointed by the parties and an agreement reached in which both parties would have extensive contact with the minor child.

[3] The respondent was the primary caregiver of the minor child. The applicant contends that prior to the unilateral change of the *status quo* he had maintained extended contact with "CZM" as agreed between the parties since January 2023 and as provided for in Section 18(2)(b) of the Children's Act 38 of 2005 as amended. However, the respondent had removed "CZM" from the court's jurisdiction which interfered with his parental rights and responsibilities. He then approached this Court and was ordered to return the minor child to the Court's area of jurisdiction to ensure compliance with the express agreement of January 2023.

[4] The applicant further contends that De Vos AJ granted an order on 26 December 2023 in terms of which, *inter alia*, full parental rights and responsibilities in respect of the minor child "CZM" were to be retained by both parties. Furthermore, the court ordered the Family Advocate to investigate the best interests of the minor child with specific reference to her primary care and place of residence. The court further ordered that pending the Family Advocate's investigation, the *status quo* in respect of the applicant's parental rights and responsibilities be restored.

[5] The applicant contends that the respondent has breached the order granted by De Vos AJ in that she has removed the minor child from this Court's area of jurisdiction to the farm Alyth, district of Musina, Limpopo without his consent and knowledge.

[6] It is noted that the respondent petitioned the Supreme Court of Appeal in respect of the order of De Vos AJ which petition was dismissed.

[7] The respondent opposes the application, and she denies that she is *mala fides* as she had at the time of receipt of this application, petitioned the Supreme Court of Appeal. In Counsel's heads of argument, it is contended that the defence to the contempt application is that it is impossible to comply with the order as she resides more than 500 kilometres away and also that the minor child is displaying behaviour that makes it difficult for her to comply with the order.

[8] After the applicant had filed a replying affidavit, the respondent filed a supplementary affidavit and sought the leave of the court to do so.

[9] Ordinarily, and in motion proceedings, three sets of affidavits are filed, being the founding affidavit, the answering affidavit and the replying affidavit. The court may, in certain circumstances, exercise its discretion and permit the filing of further affidavits by the parties. It must be in exceptional circumstances that such affidavits are permitted and where the court considers it advisable to do so.¹ There must, however, be a proper and satisfactory explanation as to why the facts or information contained in the additional affidavit was not placed before the court earlier and the court must also be satisfied that the opposing party would not be prejudiced which prejudice cannot be remedied by a costs order, by the introduction of a further affidavit.

[10] I have considered the contents of the supplementary affidavit filed by the respondent. However, the contents of this affidavit dealt with other litigation between the parties in other courts. Therefore, I am of the view that the contents of the affidavit filed are irrelevant to the application before the court. Accordingly, I conclude that the introduction of a further affidavit by the respondent is refused, and the affidavit is disregarded.

[11] As stated above, the applicant seeks an order that the respondent is guilty of contempt and further that the court order her imprisonment for a period of 90 days, alternatively 60 days and further alternatively, 30 days which sentence should be wholly suspended on the condition that she complies with the order.

¹ *Riesenberg v Riesenberg* 1926 WLD 59

[12] All citizens and residents of the Republic of South Africa have a duty to respect and abide by the laws of the country. In the matter of *Secretary of the Judicial Service Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others*² it was held that 'courts unlike other arms of State.....rely solely on the trust and confidence of the people to carry out their constitutionally mandated function which is to uphold, protect and apply the law without fear or favour. Disregard of court orders is an attack on the very fabric of the rule of law.'

[13] The requirements for contempt of court are trite. They are the existence of a court order; the contemnor must have knowledge of the court order; there must be non-compliance with the court order; and the non-compliance must have been wilful and *mala fides*. Once the first three elements have been shown, wilfulness and *mala fides* will be presumed, and the evidentiary burden shifts to the contemnor. Should the contemnor (the respondent) fail to discharge this burden, contempt would have been established.

[14] The parties are *ad idem* that the order was indeed granted by this court. The respondent admits knowledge of the Court order of De Vos AJ, and there is clearly non-compliance with the court order. In her defence, the respondent merely denies that she is in contempt of the court order. As stated above, Counsel for the respondent in her heads contends that it is impossible to comply with the order as she resides more than 500 kilometres away and also that the minor child is displaying behaviour that makes it difficult for her to comply with the order.

[15] I am of the view that the respondent has failed to take this court into her confidence and deal with the matter before this court. She has instead opted to deal with the petition to the Supreme Court of Appeal and did not further deal with the allegations brought against her in the papers. Counsel for the respondent further made submissions from the bar that it was impossible to comply with the terms of the order. Should that have been the case, she should have dealt with these contentions in her answering affidavit or even requested the court to allow a further affidavit to be filed to deal specifically with those issues.

² 2021 (5) SA 327 (CC) at para 1

[16] In view of the evidence before this court, I have no option but to grant the order as prayed. Accordingly, the following order is granted:

1. The respondent is declared to be in contempt of the Court Order granted by De Vos AJ on 26 December 2023;
2. The respondent is sentenced to imprisonment for a period of 60 days, which sentence is wholly suspended on the express condition that she complies the court order within 10 days of this order;
3. In the event that the respondent fails to comply with the Court order referred to in paragraph 1 hereof, the Applicant's attorney will be entitled to approach the Registrar of this Court for a writ in terms of which the respondent is arrested and put into custody for 60 days;
4. The respondent shall pay the costs of this application on a scale as between attorney and client including the costs consequent upon the employment of senior counsel.



MOKOSE J
Judge of the High Court of
South Africa Gauteng
Division, PRETORIA

For the Applicant: Adv A van Der Merwe

Instructed by: Schoemans Attorneys

For the Respondent: Adv L Van Der Westhuizen

Instructed by: Strydom Bredenkamp Inc

Date of hearing: 7 October 2024

Date of judgment: 24 December 2024