

In the matter between:

**FREDERIK WILLEM (FW) DE KLERK (SNR)**

Applicant

and

**DELORES GROEPIES N.O**

First Respondent

**NICOLENE NOORDEN DE KLERK**

Second Respondent

**THE MAGISTRATE, RANDBURG**

Third Respondent

---

Summary

---

**KGOMO, J:**

This is an urgent application brought by the Applicant seeking the following order:

1. Dispensing with the forms, service and time periods provided for in the Rules of this Court, including Rule 6(13), and granting leave for this application to be heard as a matter of urgency in terms of Rule 6(12);
2. Directing that the directive issued by the first Respondent to the Applicant on 4 June 2012, purportedly in terms of regulation 3(1) of the Regulations relating to maintenance as published in Government notice R.1361 dated 15 November 1998; read with sections 6 and 44 of the Maintenance Act 99 of 1998; under Case numbers 14/3/2-172/2012, be stayed with immediate effect; and that the first Respondent take no further steps to enforce the directive against the Applicant pending the determination of the application under Part B of this notice of motion;
3. Directing that the costs of the application under Part A be paid by:
  - 1.3.1 The second respondent; and
  - 1.3.2 Such other respondent(s) as may oppose the application; and
  - 1.3.3 granting such further and alternative relief as the court may deem fit.

Part B of the notice of motion prays for an order

1. Reviewing and setting aside the directive referred to in paragraph 1 of part A above;
2. Directing that the cost of the application under Part B be paid by:
  - 2.1 the second Respondent; and
  - 2.2 any such other respondent(s) as may oppose the application; and
  - 2.3 further and/or alternative relief as the court may deem fit.

The Applicant herein is the adoptive father of one Frederick Willem de Klerk (Jnr) ("FW de Klerk Jnr") who is married to the second Respondent herein ("Nicole"). The last mentioned couple have two minor children, aged 9 and 8 years respectively. Since the year 2008 FW de Klerk Jnr and Nicole have been involved in acrimonious and protracted divorce proceedings in the Western Cape High Court. It is still on-going. It is proceeding under Case Number 19988/08.

On 27 February 2009 the above court granted an order that FW de Klerk Jnr pay an interim maintenance for Nicole and the minor children in the amount of R18 000,00 per month pending the finalisation or determination of the divorce action. He was further ordered to pay medical costs, educational cost and accommodation costs for them.

This Rule 43 order is still in force as it was not suspended, set aside or discharged by a competent court.

On or about 18 January 2012 Nicole lodged a complaint against FW de Klerk Jnr in terms of section 31(1) of the Maintenance Act in the Randburg Magistrate Court arising out of FW de Klerk Jnr's alleged or purported failure to comply with the Rule 43 order.

What is of closer relevance to our present matter is that on 9 May 2012 Nicole lodged an "*application for Maintenance order: Complaint in terms of Section 6(1) (a) of the Act*" in which she declared under oath that FW de Klerk (Snr), the applicant herein was legally liable to maintain the minor children because he is the grandfather of her two daughters that and his son claims not be able to support the girls financially.

On 22 June 2012 the directive which is the subject for determination in this application was served on the applicant. The applicant's attorney proceeded to apply for and received a copy of the applicable court file(s) relevant hereto. The applicant was called upon to appear before Magistrate Randburg's Maintenance Section on 30 July 2012.

On 30 July 2012 the third respondent, being the presiding Magistrate on the day, refused to hear argument on the regularity of the directive, being of the view that he did not have the authority to do so. The matter was postponed to 3 September 2012 for hearing the merits of the directive.

On 6 August 2012 the applicant's attorney e-mailed a letter to the first respondent, copy whereof was hand-delivered to her office on the same date, in which the Applicant's attorney set out some of the grounds on which the Applicant contended that the directive was irregular and improper. The first respondent was given until 4 August 2012 to withdraw the directive, alternatively, to confirm by that date the directive would be stayed or postponed without the Applicant having to appear in court until the Maintenance enquiry against De Klerk Jnr had been finalised and/or determined, failing which an application would be brought to this court to review and set aside the directive and/or to stay it in the interim. The request for the withdrawal of the directive was based on the facts that (according to the Applicant) were ill-founded, vexatious as well as constituting an abuse of process.

The response from the first Respondent was that there is no provision in the Regulations that allows her (Maintenance Officer) to withdraw a directive in question.

The court found that at the time that the directive was issued (9 May 2012) the applicant was not the person against whom a Maintenance Order might be made because-

1. there was in force an existing Maintenance order against FW de Klerk Jnr for the Maintenance of the children; and

2. at the time, no competent court had found that the children's natural parents were unable to support them.

The court stated further that, a dependant may thus not claim support from a more remote relative such as grandparents before he/she has gone against the closer relative, in this case, their father, FW de Klerk Jnr. Such a claim against a far removed relative should kick in once a competent court has found that the parent is unable to support his children.

There is evidence in this application by FW de Klerk Jnr that he is indeed contributing towards the minor children's maintenance. He set out a series of figures as representing what he was doing there towards.

The court concluded that a reciprocal duty of support against grandparents is not only to be directed at one part of the grand-parentage, but at both, i.e. the paternal and maternal grandparents. Nothing is being said in this application about anything having been demanded or claimed against Nicole's parents. That also can be dealt with in the review proceedings should it be found to be necessary.

The Application was granted in favour of the applicant as prayed for.