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**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

- |     |  |
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| (1) | REPORTABLE: <b>NO</b>                  |
| (2) | OF INTEREST TO OTHER JUDGES: <b>NO</b> |
| (3) | REVISED:                               |

Date: **19<sup>th</sup> July 2019** Signature\_\_\_\_\_

**CASE NO:** 2019/22499

**DATE:** 19<sup>TH</sup> JULY 2019

In the matter between:

**G, J**

Applicant

and

**G, R**

Respondent

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**JUDGMENT**

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**Adams J:**

[1]. This is an opposed urgent application by the applicant for an order *inter alia* declaring the respondent to be in contempt of a Rule 43 order of this court. The applicant also asks that the respondent be ordered to pay R217 778.20 in respect of arrear maintenance, as well as for other ancillary relief.

[2]. In her founding papers the applicant alleges that the respondent is in arrears with the Rule 43 order of this Court (Sardiwalla J) dated the 5<sup>th</sup> of December 2016 to the tune of R217 778.20. This amount is constituted, according to the applicant, by short payments on a monthly basis of the cash portion of the maintenance payable in terms of the said order. The short payments commenced during March 2018 and since then the respondent has short paid every single month. For example, in April 2018 the respondent paid an amount of R57 000, when the court order required him to pay R63 000 per month, which means that he short paid by an amount of R6000. A more recent example is the payment of R36 555.45 paid by the respondent on the 1<sup>st</sup> of June 2019, whereas the amount payable, according to the court order, is still R63 000. This means that he short – paid by R26 444.55.

[3]. The urgent application was issued by the Registrar of this Court on the 26<sup>th</sup> of June 2019, and service was seemingly effected on the respondent by email on or about the 27<sup>th</sup> of June 2019. The respondent delivered his answering affidavit on or about the 9<sup>th</sup> of July 2019.

[4]. At the commencement of the hearing of the urgent application, I requested the parties to address me on the issue of urgency, which they did. I had deemed this course necessary in the circumstances of the matter.

[5]. As I indicated above, the applicant alleges that the respondent is in contempt of the Court Order of the 5<sup>th</sup> of December 2016. It is also the case of the applicant that the contemptuous conduct on the part of the respondent commenced as far back as April 2018, which is the month during which the respondent short – paid the maintenance for the first time. Since then, with regular monotony, the respondent has on a monthly basis made himself guilty of contempt, so the applicant alleges. It is the case of the applicant that from time to time during the period from the April 2018 to June 2019 she raised with the respondent her unhappiness with the fact that he was short – paying on a monthly basis.

[6]. On 26 June 2019 the applicant issued this urgent application. She alleges that the matter is urgent because, as she puts it in her founding affidavit: 'I am advised that the ongoing contempt of an order of court, by its very nature, is urgent. Same is axiomatically urgent'.

[7]. It is the respondent's contention that the alleged urgency of the matter is self – created and that there was non – compliance with the provisions of rule 6(12). It was submitted on behalf of the respondent that despite the fact that the applicant was aware as far back as April 2018 that the respondent intended paying less maintenance than what was provided for in the Rule 43 Order, the applicant failed to file her application soon thereafter. Further, the respondent submitted in her founding affidavit the applicant has not made out a case that, should the application not be heard on an urgent basis, she would not be afforded substantial redress at a hearing in due course. In any event, so the respondent contends, there is an application presently pending before this court in which the respondent seeks an adjudication of the very dispute which is the subject of this urgent application. In a nutshell the respondent contends that the issues raised by the applicant in this application arising from the Rule 43 order have been settled and novated by a settlement of the divorce action in its entirety. He therefore denies that he is in contempt of the Rule 43 order.

[8]. Rule 6 (12) (b) of the uniform rules of court reads as follows that:

‘(b) In every affidavit or petition filed in support of the application under para. (a) of this sub-rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he would not be afforded substantial redress at a hearing in due course.’

[9]. On behalf of the applicant it was submitted that applications for contempt of court are by their very nature urgent, especially if the contempt complained of relates to contempt of a Rule 43 Order, which inevitably relates to vulnerable women and children. Counsel for the applicant also urged the court to uphold the issue of urgency in the interest of the minor children. I cannot agree with these submissions. Whether or not a matter is urgent surely depends on the facts in each matter.

[10]. I am of the view that the urgency of this application is self – created. In my view, the applicant should have launched this application as soon as the respondent made himself guilty of contempt of court. If she did so, urgency would not have been an issue now. It was incumbent on the applicant as soon as possible after April 2018 to launch proceedings for an order declaring the respondent to be in contempt of court. There is no explanation as to why the applicant waited for about sixteen months before launching the urgent application.

[11]. I am not convinced that the applicants have passed the threshold prescribed in Rule 6(12)(b) and am of the view that the application ought to be struck of the roll for reasons given above.

## **Costs**

[12]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

[13]. In this matter we are however dealing with the rights of minor children. I therefore think that it would be fair that I order each party to bear her / his own costs of this urgent application.

[14]. In the exercise of my discretion, I therefore intend awarding no order as to costs.

## **Order**

Accordingly, I make the following order:-

1. The applicant's urgent application be and is hereby struck from the roll.
2. Each party shall bear her / his own cost of this urgent application.

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**L R ADAMS**

*Judge of the High Court*

*Gauteng Local Division, Johannesburg*

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HEARD ON:	16 <sup>th</sup> July 2019
JUDGMENT DATE:	19 <sup>th</sup> July 2019
FOR THE APPLICANT	Adv Karabo Mvubu
INSTRUCTED BY:	Joselowitz & Andrews Attorneys
FOR THE RESPONDENT:	Adv K L Foulkes – Jones SC
INSTRUCTED BY:	Debra Wooley Attorneys