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## REPUBLIC OF SOUTH AFRICA



## IN THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG

**CASE NO: 37538/2018**

### DELETE WHICHEVER IS NOT APPLICABLE

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

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DATE

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SIGNATURE

In the matter between:

**M R**

Applicant

And

**M K**

Respondent

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## REASONS

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**SENYATSI J:**

- [1] On 17 April 2020 I gave an order in favour of the applicant and deferred reasons thereof. The reasons are as set out below.
- [2] The applicant and respondent are involved in divorce proceedings. Following the divorce proceedings, a Rule 43 for interim maintenance order was granted by the Court for maintenance of the applicant and her children.
- [3] When the matter came before me on 16 April 2020, Mr Mabe, on behalf of the respondent submitted that there was compliance with the interim maintenance order. I ordered that I be provided with proof thereof by the respondent and adjourned the hearing to 17 April 2020.
- [4] On the 17 April 2020, Mr Mabe provided this Court with an unsigned answering affidavit, to that affidavit was attached a statement of bank account for the month of October 2019. Of relevance is a bond account payment of R36 895.27 which was effected on 15 October 2019. This is what the respondent alleges to be compliance with the interim maintenance order. I do not agree that the bond payment equates to the interim maintenance order as ordered in the previous judicial pronouncement against the respondent.
- [5] Mr Mabe was challenged to produce any other proof of payment and could not do so. Counsel for the respondent was also invited to show whether any partial payment of the interim maintenance had been affected by the respondent in 2020 and no proof was available.

- [6] The orders of the Court on interim maintenance in terms of Rule 43 are designed to ensure that the children and the spouse seeking maintenance are taken care of pending the finalisation of the divorce proceedings. The Rule 43 does not make a final determination of any right of the parties and remains a temporary relief until the divorce is finalised.
- [7] Failure to comply with an interim maintenance order without reason amounts to contempt of Court. In this instant case, the applicant obtained the Rule 43 interim maintenance order on 20 September 2019.
- [8] On 18 October 2019, Windell J ordered the respondent to comply with the Rule 43 order. The order was not complied with. As a consequence on 6 November 2019 Cele AJ, found the respondent to be in contempt of the court order granted by Haskins AJ read with the Windell J order dated 18 October 2019. The respondent was fined R3000 or 30 days imprisonment.
- [9] It is evident from the history of this matter that the respondent does not intend to comply with the Rule 43 order. During the hearing of this matter, Counsel for the respondent tried to persuade me that there was a pending application which renders Rule 43 order premature. This submission has no legal basis and must fail.
- [10] The respondent has failed to comply with the Rule 43 order despite various court orders for him to comply. The imposition of a fine and after holding him in

contempt does not seem to work as a measure to ensure compliance. I am of the view that the respondent does not respect the judicial process.

[11] Having regard to the history of this matter and the evidence before me, I am satisfied that the respondent is in contempt of the Rule 43 order.

[12] **ORDER:**

Therefore the following order is made:

12.1. Mr K M, with identity number: [...] is ordered to within five (5) days of the granting of this order

12.1.1. pay an amount of R454 262.48 (four hundred and fifty four thousand two hundred and sixty two thousand and forty eight cent)

Emanating from the Rule 43 order granted by Haskins AJ on 20 September 2019 into the applicant's attorney's Trust account with the following account details:

Bank Name: Standard Bank

Account holder: PJ Mathebula Attorneys Trust Account

Account number: [...]

Branch Code: 004906

Shift address: SBZA ZA JJ

12.1.2. Forthwith comply with the Rule 43 court order on successive monthly basis;

12.2. Mr K M is to be incarcerated to prison for a period of 30 days in terms of paragraph 2 of the Cele AJ court order dated 6 November 2019 if payment of the amount set out in 1.1 above is not made within seven (7) days from the date of this order.

12.3. Mr K M is ordered to pay the costs of this application on an attorney client scale including the costs of appearance on 16 April 2020.

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**SENYATSI ML**

*Judge of the High Court*

*Gauteng Local Division, Johannesburg*

Date urgent application heard: 16 & 17 April 2020

Date of Judgment: 06 May 2020

For the Applicant's: Adv. E. Sithole

Instructed by: PJ Mathebula Attorneys

For the Respondent: Mr. V. Mabe

Instructed by: Victor Mabe Attorneys

