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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 1791/2009

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

30 January 2020

JUDGE L.T. MODIBA J

In the matter between:

A R

Applicant

And

C R

First respondent

**THE SHERIFF OF THE HIGH COURT,
SANDTON SOUTH**

Second respondent

J U D G M E N T

MODIBA J

[1] This is an application to have the writ of execution issued by the first respondent on 18 September 2018 and the attachment effected pursuant thereto, invalid and set aside. The applicant also seeks the costs of the application. The first respondent opposes it. The second respondent did not enter the fray.

[2] The parties were married to each other. Their marriage was dissolved by a decree of divorce, granted on 4 November 2004, incorporating a settlement agreement. Regrettably the litigation between the parties arising therefrom has been raging since then, primarily relating to disputes in respect of the parties rights and obligations in respect of their minor children including the applicant's maintenance obligation in respect of the minor children. In August 2010, the parties concluded an amended settlement agreement. A material term of the original and amended settlement agreement is that the parties' minor children would be raised according to the Jewish faith.

[3] Since 2018, the parties have been embroiled in a dispute relating to the applicant's maintenance obligations under the settlement agreements. This dispute was pending in the maintenance court when the respondent on 3 October 2018, caused the impugned writ to be issued out of this court for the maintenance amounts that are subject to the maintenance claim pending in the maintenance court. The sheriff served it on the respondent on 9 October 2018. It authorizes him to attach and take into execution the applicant's goods

in the amount of R356 522.59 pursuant to a judgment of this court dated 17 August 2010 and an order dated 4 November 2005.

[4] The applicant seeks the writ set aside on the following grounds:

[4.1] it is not accompanied by an affidavit quantifying the amount specified in the writ;

[4.2] it does not specify the provisions in the settlement agreement on which the respondent relies;

[4.3] no supporting documents for the relevant expenses are attached.

[5] The respondent has refused to provide this information despite requests by the applicant. She attempted to quantify them in her answering affidavit in this application.

[6] The applicant disputes that he is indebted to her for some of the relevant amounts for several reasons:

[6.1] the school fees claimed are not in respect of a Jewish School as required in terms of the settlement agreements;

[6.2] their quantification is uncertain in relation to whether one of the minor children has become self- supporting and whether the respondent included the maintenance portion of this child in the quantification of the writ amount

[7] The writ is liable to be set aside for two reasons:

[7.1] it is not apparent from the writ that it was issued in conformity with the settlement agreement;¹

[7.2] the basis for the amount to be executed under the writ is unquantifiable and in dispute between the parties.¹

[8] The basis on which the first respondent contends in these proceedings, that the writ was correctly issued does not assist her, as the writ has to comply with the above requirements when it is issued. It is an instruction to the sheriff to give effect to the orders upon which it is based. Given the grounds upon which the applicant relies in this application, the writ is materially defective. It is rather belated for the first respondent to explain the basis and the quantification of the judgment debt in the answering affidavit. Further, the quantification remains in dispute. Therefore the writ may not be good solely on the first respondent's version.

[9] In the premises, the following order is made:

¹ *De Crespigny v De Crespigny* 1959 (1) SA 149 (N)

ORDER

1. The writ of execution issued by this court on 20 September 2018 is declared to be invalid and set aside;
2. The notice of attachment issued pursuant to the above writ is declared invalid and set aside;
3. The first respondent shall pay both the costs of Part A and Part B of the application.

**MADAM JUSTICE L T MODIBA
JUDGE OF THE HIGH COURT,
GAUTENG LOCAL DIVISION,
JOHANNESBURG**

APPEARANCES

Counsel for plaintiff:	Advocate L Segal
Attorney for plaintiff:	Noa Kinstler Attorneys
Counsel for defendant:	Advocate R Morgan Courtenay
Attorney for defendant:	Heather Sterling Attorneys
Date of hearing:	22 October 2019
Date of judgment:	30 January 2020

¹ *Sachs v Katz* 1955 (1) SA 67 T at 72C-G