



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

CASE NO:17217/2019

(1)	REPORTABLE: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO
(2)	OF INTEREST TO OTHER JUDGES: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO
(3)	REVISED:
SIGNATURE	<div style="font-size: 1.5em; margin: 0;">16/2/2021</div> <div style="font-size: 0.8em; margin: 0;">DATE</div>

In the matter between:

WEBB HEATHER ELIZABETH

Applicant

And

WEBB HEATHER ELIZABETH

Respondent

**JUDGMENT
(LEAVE TO APPEAL APPLICATION)**

Delivered: This judgment was prepared and authored by Judge ML Senyatsi and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date for hand-down is deemed to be 16 February 2021.

SENYATSI J:

- [1] This judgment concerns leave to appeal the judgment handed down on 10 December 2020 in terms of which the applicant was held to be in contempt of the order for maintenance of the respondent and her sons pending the finalisation of the divorce proceedings.
- [2] The applicant was committed to imprisonment if payment of arrear maintenance was not made within a specified period
- [3] The applicant now appeals against the judgment and raises various grounds that he contends the Court misdirected itself on facts and the law to hold him in contempt.
- [4] I had asked, during December 2020 festive season for heads of arguments to be delivered by both Counsels. Unfortunately only Counsel for the respondent was able to provide the heads of argument before Christmas and Counsel for the applicant was only able to do so during January 2021.
- [5] The issue to be determined is whether an appeal lies in respect of the proceedings which are connected with a judgement or order that flows from a Rule 43 order.

[6] Section 16 (3) of the Superior Courts Act 10 of 2013 (“the Act”) provides as follows:

- (3) Notwithstanding any other law, no appeal lies from any judgment or order in proceedings in connection with an application-
 - (a) by one spouse against the other for maintenance *pendete lite*; ...”

[7] Counsel for the applicant contends that leave to appeal is in fact permissible as the appeal is directed against the contempt order.

[8] I do not agree with Counsel. It is worth noting that it is not the first attempt to appeal the contempt order but probably the third.

[9] In *S v S and Another*¹, Nicholls J found that section 16(3) bears a rational connection to a legitimate government purpose and in denying parties the right to appeal, as a consequence section 16(3) was found to have passed Constitutional muster in our Republic.

[10] Even if I am incorrect in finding that the contempt order issued following the non-compliance with Rule 43 order is not appealable, then in that case, the applicant bears the onus as required by section 17 of the Act to show that another Court will come to a different conclusion.

[11] Section 17(1) of the Act provides as follows:

- “17(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –*
- (a)(i) the appeal would have a reasonable prospect of success;*
 - (ii) there is a compelling reason why the appeal should be heard including conflicting judgments on the matter under consideration.”*

¹ 2019 ZACC 22.

- [12] I had already indicated in the judgment appealed against that same was not appealable. The facts of this case clearly point at the applicant's intent to refuse to comply with the Rule 43 order. The applicant has come up with various strategies in an attempt to disobey the orders of this court and has gone to great lengths, including getting a friendly sequestration order that was correctly set aside by the Western Cape High Court. In all previous contempt of court proceedings, he has applied, without success, for leave to appeal each order.
- [13] Armed with the facts before this court, the question is whether any other court would have made a different finding. I am of the view that the prospect that the appeal would be successful is non-existent.
- [14] As a consequence, it is my considered view that the applicant has failed to show that another court would come to a different conclusion.
- [15] It follows therefore that the application for leave to appeal the judgment must fail.
- [16] It is clear to me that the applicant is a man of means and will stop at nothing to continue with the abuse of court process. It is evident from all past contempt orders against the applicant that on each one, he applied for leave to appeal and failed. If this is not an abuse of court process, I fail to understand how else this will be called.
- [17] Consequently, I deem it necessary that I grant a punitive cost order. In the circumstances it more than justified.

ORDER:

- [18] The following order is made:

(18.1) the application for leave to appeal is refused

(18.2) the applicant is ordered to pay the costs on a scale between attorney and client.

A handwritten signature in black ink, appearing to be 'ML Senyatsi', written over a horizontal line.

ML SENYATSI

JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Appearances:

Date of Hearing: 20 January 2021

Date of Judgment: 16 February 2021

Attorneys for the applicant: Couzyn Hertzorg & Horak Inc.

Counsel for the applicant: Adv. C. Woodrow

Attorneys for the respondent: Kim Meikle Attorneys

Counsel for the respondent: Adv. T. Ternent