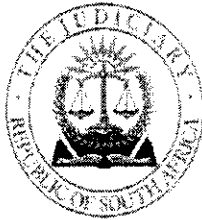


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



Case number: 11438/2016

Date: 31 August 2016

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

31/8/2016

DATE

SIGNATURE

In the matter between:

JOHANNES GERHARDUS FOURIE

APPLICANT

And

PETRONELLA HERMIENA GREEFF

RESPONDENT

JUDGMENT

PRETORIUS J.

(1) The applicant launched an urgent application to set aside a writ of execution issued by this court on 4 August 2016, on the basis that it was erroneously obtained.

(2) On 1 July 2016 a Rule 43 application was heard by Fourie J which dealt with the primary residence of the children, as well as access rights. In a counter application the respondent claimed maintenance *pendente lite* from the applicant. After hearing counsel for both parties an order regarding maintenance *pendente lite* was issued and it was ordered:

"Pendente lite, applicant shall pay the respondent maintenance in respect of herself and the two minor children in the amount of R45 000 (FORTY FIVE THOUSAND RAND ONLY) with effect 30 July 2016 and thereafter on or before the first of each subsequent month."

(3) It was further set out:

"It is specifically ordered that the respondent and the two minor children will remain on the medical aid of the applicant as part of the R45 000.00 maintenance contribution."

(4) On 4 July 2016 a letter was sent by the respondent's attorney to the applicant's attorney setting out that the parties will in future only communicate through their attorneys. In the same letter it was set out:

"Ons bevestig dat Adv Klopper Adv de Swardt meegedeel het dat debietorders vir die betalings wat voorheen deur Mnr Fourie gemaak is, reeds vir die maand Julie 2016 in plek is en dat dit tyd sal neem om alles te kanselleer, vandaar die vertraging in die inwerkingstelling van die bevel. Ons vertrou dus dat Mnr Fourie die status quo sal behou vir die maand van Julie 2016 en al die betalings sal volhou, soos voorheen."

- (5) Subsequently the respondent refused to take over the debit orders for the cellphone, the car, the car insurance and certain policies.
- (6) This resulted in the applicant deducting payment for the car, the lpads, insurance, medical aid and the tracking device for the car in the amount of R17 308.22 and paid R27 691.78 to the respondent in terms of the court order.
- (7) The respondent's attorney informed the applicant's attorney that the respondent disputes these deductions as not in accordance with the court order and threatened to issue a warrant of execution.
- (8) On 4 August 2016 the respondent caused a writ of execution to be issued against the applicant for an amount of R48 750.00, as the amount the applicant had deducted in respect of the debit orders and

not paying R45 000 in cash.

- (9) On 15 August 2016 a letter was sent to the respondent's attorney warning the attorney that should the respondent proceed with the writ in execution, being aware of the dispute regarding the debit orders, an urgent application will be launched. On the following day, 16 August 2016 the Sheriff attached the applicant's movable assets.
- (10) I find this action by the respondent to be vexatious as the respondent's counsel acknowledged that the letter of 4 July 2016 dealt with the debit orders. Counsel for the respondent could not explain to which debit orders the respondent's attorney had referred in the letter.
- (11) I find in the circumstances that the application is urgent. It is quite clear that the parties are involved in an acrimonious divorce and that leads to actions that cannot be defended.
- (12) I find that due to the respondent's refusal to transfer the relevant debit orders the applicant had no alternative but to set-off the amount of the debit orders in the amount of R25 006.06 from the R45 000. I agree that in these circumstances the respondent had no *causa* to have issued a writ of execution. The applicant complied with his obligations in terms of the court order.

(13) Subsequently I grant the following order:

1. The application is urgent;
2. The writ of execution issued under case number 11438/2016 on 4 August 2016 is set aside;
3. The respondent to pay the costs of the application.

A handwritten signature in black ink, appearing to read 'Pretorius', is written over a horizontal line.

Judge C Pretorius

Case number	: 11438/2016
Matter heard on	: 30 August 2016
For the Applicant	: Adv JA Kloppe
Instructed by	: VFV Attorneys
For the Respondent	: Adv de Swardt
Instructed by	: Botha & Human Attorneys
Date of Judgment	: 31 August 2016