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**IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]**

CASE NO: 85596/2017

- 1. REPORTABLE: YES / NO**
2. OF INTEREST TO OTHER JUDGES: YES / NO
3. REVISED.
DATE: 31/07/2023

In the matter between:-

P[....] T[....] T[....]1

Applicant

and

S[....] T[....]2

Respondent

JUDGMENT

SKOSANA AJ

[1] This application, which was initially brought on urgent basis, is for declaring the respondent in contempt of court and to commit him to a period of

imprisonment which will be a suspended subject to compliance with the court order in question.

[2] The court order in question was granted under Rule 43 by Judge Holland-Muter on 12 February 2020 (*“the Rule 43 order”*).

[3] The parties were married to each other and divorce proceedings were instituted. On 15 November 2021, by agreement between the parties, an order was made by Van der Westhuizen J converting the marital regime from a marriage in community of property to out of community of property.

[4] The Rule 43 order provided for the following:

[4.1] Payment of maintenance by the respondent to the applicant of an amount of R25 000-00 per month starting from 01 March 2020.

[4.2] Provision by the respondent to the applicant of a Chevrolet Cruise vehicle and payment of the finance costs, maintenance, services, tyres and short-term insurance therefor.

[4.3] A contribution by the respondent to the applicant’s legal costs in the amount of R40 000-00 in 4 equal instalments starting from 01 March 2020.

[5] It is common cause that the respondent only paid the maintenance for the first two months, being March and April 2020 and has never paid anything further in that regard to date. In opposition of the present application, the respondent cited ill-health and poor performance of his business as a reason for not complying with the court order.

[6] It has also been shown that the respondent received a huge pension payout of R1 996 061-41 on 14 April 2020 but still paid nothing towards maintenance or

compliance with the Rule 43 order. The respondent contends that he expended about R1 200-000-00 towards payment of loans which were a liability of the joint estate as at the time. It is clear however that that was done without the involvement or consultation with the applicant. There is also a payout of R60 000 to the applicant on 28 May 2020 and another R35 000-00 on 30 May 2020 as well as other lumpsums that are not accounted for.

[7] Before addressing the merits of the matter, the respondent's counsel, after hearing the argument by applicant's counsel, sought a postponement. In short, the postponement was sought on the basis that the respondent wishes to supplement its papers in relation to the discussion and correspondence recently exchanged between the parties. The correspondence entailed the respondent's offer to pay R10 000-00 per month in a letter dated 14 July 2023.

[8] The respondent's counsel also informed me that the applicant had requested in response that the respondent furnish information to the appointed liquidators which the respondent had complied with and confirmed that on the date of hearing (26 July 2023). The respondent's counsel, though briefed in May 2023 could not do anything as she was notified that the respondent does not have funds.

[9] The postponement application was opposed and the applicant's counsel informed me that the offer had been rejected. He added that the offer would not assist as there was no variation of the Rule 43 order.

[10] Later in argument, the respondent's counsel raised something completely new, namely that the Rule 43 order had ceased to exist when the divorce was finalized in May 2023 and that the settlement agreement which became part of the decree of divorce was not the one to which the respondent had agreed.

[11] I refused the postponement and ordered that the application should proceed. In short, my reasons are that:

[11.1] The respondent's counsel did not indicate at least at the inception of the proceedings that a postponement would be sought. That already makes the postponement application evasive and contrived rather than *bona fide*.

[11.2] The settlement agreement which was made an order of court makes it clear that the Rule 43 order will continue in existence and operation until varied. No such variation has taken place.

[11.3] The settlement agreement also on its own provides for the payment of maintenance by the respondent to the applicant in the sum of R25 000-00 per month until either party's death, remarriage of the applicant or by variation or termination through another court order. The respondent has not applied for the rescission of the divorce court order nor did he deny the authenticity of his signature on the settlement agreement.

[11.4] The postponement is clearly a delaying tactic as clearly demonstrated by the respondent's conduct over time.

[12] After the refusal of postponement, the respondent's counsel made submissions on the merits of the application to the effect that the respondent was not in willful default. She maintained that the respondent did not have funds to bring a variation application of the Rule 43 order and has recently made an offer to pay a reduced amount in view of the bad state of his finances.

[13] The applicant has put up an insurmountable case. The respondent's defence is self-destructive where he, on one hand, states that he had no money and on the other that he had used the money to pay debts of the joint estate. The

validity of such defence is questionable in view of the fact that he did not consult the applicant in spending the huge amounts in a suspiciously swift manner.

[14] His intended defence, which is not yet on record that the settlement agreement was incorrect, is clearly contrived and an afterthought. Moreover, in that settlement agreement, which is part of a valid court order to date, he still agreed to pay R25 000-00 per month as maintenance but still did not comply therewith. This also calls into question his alleged poor financial position.

[15] The deplorable conduct of the respondent as portrayed above and as largely conceded by his counsel leaves little or no doubt that the respondent was in willful default and his non-compliance is *mala fide*. The respondent has shown no deference not only for the Rule 43 order but also the terms of the divorce order. His conduct warrants a display of strong disapproval by this court.

[16] I therefore make the following order:

[16.1] The respondent is declared to be in contempt of court by failing or refusing to comply with the Rule 43 order granted by Holland Muter J on 12 February 2020.

[16.2] An order committing the respondent to imprisonment for a period of 30 (thirty) days is hereby granted and a warrant for his arrest authorized for that purpose.

[16.3] The above order of committal to imprisonment is suspended for a period of 30 (thirty) days for the respondent to settle the overdue maintenance and contribution towards the applicant's legal costs or to make arrangement for such payment as may be accepted by the applicant.

[16.4] The respondent is ordered to continue to make monthly payment of the amount of R25 000-00 to the applicant on or before the first day of every consecutive month starting from 01 August 2023 by virtue of either the Rule 43 court order or the divorce court order.

[16.5] The respondent is ordered to pay the costs of this application on an attorney and client scale.

DT SKOSANA

Acting Judge of the High Court

Date of Hearing: 26 JULY 2023

Date of Judgment: 31 JULY 2023

APPEARANCES:

Counsel for the Applicant: Adv Mohlala

Instructing Attorneys: Mketsu and Associates Inc Attorneys

Counsel for the Respondent: Adv Lindazwe