

**IN THE HIGH COURT OF SOUTH AFRICA
(FREE STATE DIVISION, BLOEMFONTEIN)**

Case no. 135/2019

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

BELINDA BEUKES

Applicant

and

FRANCOIS DANIËL BEUKES

Respondent

CORAM:

POHL, AJ

HEARD ON:

13 OCTOBER 2022

DELIVERED ON:

18 OCTOBER 2022

INTRODUCTION:

[1] This is an application in which the Applicant seeks the following relief against the Respondent:

- (i) That the Respondent be held in contempt of the Court order granted on **20 June 2019** under case number: **135/2019** (*"the Court Order"*);
- (ii) That the Respondent be convicted of contempt of the Court order;
- (iii) That the Respondent be sentenced to six (6) months' imprisonment or payment of a fine of R50 000.00, alternatively such sentence as the Court deems meet, the sentence to be suspended for thirty six (36) months on condition that the Respondent complies without delay with the Court order by paying the arrear amount of maintenance in the amount of R215 830.97 to the Applicant, and is not convicted of contempt of Court committed during the period of suspension;
- (iv) That the Respondent be ordered to comply, without delay, with the Court order;
- (v) That the Respondent be ordered to pay the costs of this application on an attorney and client scale.

BACKGROUND FACTS:

[2] The Court order was granted by agreement between the parties in a Rule 43 application on **20 June 2019**.

[3] In terms of the Court order the Respondent was ordered to pay and contribute the following maintenance:

- 3.1 The amount of R14 000.00 (fourteen thousand rand) per month to the Applicant;

3.2 The amount of R6 000.00 (six thousand rand) per month per child in respect of the minor children, Biance Francois Daniël and Schalk Daniël (*“the minor children”*), with effect from 7 August 2019.

3.3 The school fees and all reasonable educational related expenses, including, but not limited to school clothes, stationery not included in the school fees, books, extra classes and extramural activities of the minor children.

3.4 The Respondent was ordered to retain the Applicant and the minor children on his medical aid and to pay the costs of all reasonable and necessary expenditure in respect of medical, dental, surgical, hospital, orthopedic and ophthalmological treatment and prescription medication needed by them and not covered by the medical aid.

3.5 The Respondent was ordered to pay the maintenance, services and all repairs, including the replacement of tyres in respect of the 2017 model Toyota Fortuner which the Respondent made available to the Applicant.

[4] It needs to be emphasized that it is common cause between the parties that the Court order was granted by agreement between the parties. Not only was the Court order by agreement, but the Respondent initially complied with this Court order.

[5] The Respondent has however since failed to comply with the Court order and is currently in arrears in the amount of R215 830.97 (two hundred and fifteen thousand eight hundred and thirty rand ninety seven cents). In paragraph 38 of the Respondent's answering affidavit, the Respondent includes the arrear maintenance in the amount of R215 830.97 as *“maintenance”* in his list of liabilities.

[6] In the year 2013, Liberty Life Insurance Company paid an amount of R19.2 million to the Respondent. This payment, according to the papers, appears to be a payment which was made to the Respondent as a result of *“disability”* when the Respondent apparently developed asthma.

[7] The Respondent initiated the divorce action against the Applicant during January 2019. At the time, the Respondent was legally represented. When this contempt application was however argued before this Court, the Respondent represented himself, whilst the Applicant was represented by Advocate Groenewald.

[8] It is common cause between the parties that the Respondent's personal financial statements for the year ending 28 February 2021, *inter alia* reflected the following:

8.1 The total value of the Respondent's assets amounted to R14 915 114.00;

8.2 During that year, the Respondent made a profit of R848 523.00;

8.3 The Respondent is a Trustee of the Frans Beukes Familietrust ("*FBF Trust*");

8.4 The financial statements of the FBF Trust for the year ending 28 February 2021, reflected that the total value of the assets of the FBF Trust amounted to R11 732 288.00 and the FBF Trust had a total income for that year in the amount of R1 406 924.00.

[9] It is common cause that the Respondent made cash withdrawals from his Standard Bank private account during the period 9 March 2021 to 9 October 2021 in the aggregate sum of R7 910 000.00.

[10] According to the Respondent he spent the aforesaid money, *inter alia* on the following:

10.1 R650 000.00 on stables for his new lady friend;

10.2 R500 000.00 on a PlayStation 5;

10.3 R450 000.00 in respect of a “*wedding*” between the Respondent and his new lady friend;

10.4 R170 000.00 for a “*honeymoon*” with his new lady friend, although he is still married to the Applicant;

10.5 On holidays he spent the following amounts:

10.5.1 R180 000.00 for a Cape holiday;

10.5.2 R120 000.00 for a Ballito holiday;

10.5.3 R120 000.00 for a holiday on the South Coast;

10.5.4 R65 000.00 for a holiday in the mountains.

10.6 R160 000.00 for building of a porch;

10.8 R180 000.00 for a new lawn;

10.9 R70 000.00 for shade ports;

10.10 R370 000.00 for the building of a guest room;

10.11 An amount of R1 400 000.00 on gambling and life expenses.

[11] In paragraph 19 of the Respondent’s opposing affidavit the Respondent declares as follows:

*“The disability claim paid out by Liberty Life is compensation for the damages by reason of a delict and does not form part of the joint estate. I would refer the Court to the following case law: **Van der Berg v Van der Berg** 2003 (6) SA 229 (T), where Shongwe J (as he then was) found that it was ‘quite clear that the*

provisions of s 18(a) were intended to exclude any damages or compensation by reason of delict from the joint estate’.”

[12] Section 18 (a) of the Matrimonial Property Act, Act 88 of 1984, reads as follows:

“Notwithstanding the fact that a spouse is married in community of property-

(a) any amount recovered by him by way of damages, other than damages for patrimonial loss, by reason of a delict committed against him, does not fall into the joint estate but becomes his separate property;...”

[13] When this matter was argued before this Court, the Court enquired from the Respondent if he had any legal training. To this Respondent replied that he did not. The Court then enquired from him who assisted him in drawing his opposing affidavit and papers. To this the Respondent replied that nobody did, he drew the papers himself.

[14] In argument, the Respondent then argued that the fact that he developed asthma which lead to the disability pension payment, was a direct result of the fact that, according to him, the circumstances and environment under which he was working, caused his asthma and thus triggered the disability payment. According to him, this environment that he had to work in, amounted to a delict that was committed against him and therefore, in line with the Van der Berg-decision, supra, the proceeds of this disability payment does not form part of the communal estate and therefore, he is not in contempt of Court if he doesn't utilize those funds to pay for the maintenance as per the Rule 43 order.

THE LEGAL POSITION:

[15] The object of contempt proceedings is to impose a penalty that will vindicate the Court's honor consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order. See in this regard: Pheko v Ekurhuleni City 2015 (5) SA 600 (CC) at 617 B – C

[16] The Applicant must however prove the requisites of contempt. These requisites are the relevant order, service of this order or notice of this order, non-compliance, willfulness and *mala fides*. The Applicant must of course prove this beyond reasonable doubt. See in this regard: **Fakie N.O. v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA) at 344 I; Meadow Glen Homeowners v Tshwane 2015 (2) SA 413 (SCA) at 421 B–F; Matjhabeng Local Municipality v Eskom Holdings Ltd 2018 (1) SA (1) CC at p. 24 – 25, paras [61] to [64]**

[17] Once an Applicant has proved the order, service or notice and non-compliance, the Respondent bears an evidential burden in relation to willfulness and *mala fides*. Should the Respondent fail to advance evidence that establishes reasonable doubt as to whether the non-compliance was willful and *mala fide*, the contempt will have been established beyond reasonable doubt. See in this regard: **Fakie N.O. v CCII Systems (Pty) Ltd *supra* at 344 I–J and 345 A**

[18] It must furthermore be borne in mind that contempt is not an issue between the parties, but rather an issue between the Court and the party who has not complied with the Court order. See in this regard: **Secretary, Judicial Commission v Zuma 2021 (5) SA 327 (CC) at 353 F**

[19] Although judgments for the enforcement of the payment of money (*ad pecuniam solvendam*) cannot ordinarily be enforced by way of contempt proceedings, maintenance orders are a special category in which such relief is indeed competent. See in this regard: **Bannantyne v Bannantyne 2003 (2) SA 363 (CC) at p. 372 H**

CONCLUSION:

[20] It is therefore abundantly clear that the Applicant duly proved the order. It must be remembered that the order was an order which was made an order of Court by agreement between the parties. The Applicant furthermore proved service or notice of this order. It was after all made an order of Court by agreement between the parties as

indicated and it is common cause that the Respondent initially duly complied with the order. It is furthermore abundantly clear that the Respondent did not continue to comply with the order and is presently, as indicated above, *inter alia* in arrears in the amount of R215 830.97. There is no doubt in my mind that the Respondent at all relevant times hereto had the means and still has the means to comply with the Court order. As is *inter alia* evident from paragraph 10, *supra*, he willfully chose not to do so.

[21] The Respondent's contextual argument that the disability payment amounts to damages that was paid to him in lieu of a delict committed against him under the circumstances alluded to above, does not hold any substance to my mind legally or otherwise. In any event, no evidence was produced to the Court to substantiate this allegation by the Respondent. The disability payment under these circumstances simply does not equate to a delict. The Van Der Berg- decision, *supra*, is therefore distinguishable on the facts and does not assist the Respondent. In the Van Der Berg- decision, the monies paid out by the insurance company was triggered by the fact that the policyholder was injured in a shooting incident, which amounted to a delict. The payment was therefore not triggered by an illness such as asthma, as is the case *in casu*.

[22] I therefore find that the Respondent failed to discharge the evidential burden imposed on him to displace the inference of willfulness and *mala fides*. I therefore find that he willfully and *mala fide* opted not to comply with the Court order and that therefore, his willfulness and *mala fides* have been established beyond reasonable doubt.

[23] Although the Applicant moved for a punitive cost order on a scale as between attorney and client, it is not, to my mind, appropriate in the circumstances of this case to make such an order, especially in view of the fact that the Respondent was not legally represented when this matter came before Court.

ORDER:

[24] I therefore make the following order:

1. The Respondent is held to be in contempt of the Court order granted on 20 June 2019 under case number 135/2019 (*“the Court order”*).
2. The Respondent is convicted of contempt of the Court order.
3. The Respondent is sentenced to three (3) months’ imprisonment or payment or a fine of R25 000.00. The sentence is suspended for twenty four (24) months on condition that (i) the Respondent complies without delay with the Court order by paying the arrear amount of maintenance in the amount of R215 830.97 to the Applicant, and (ii) on condition that he is not convicted of contempt of Court committed during the period of suspension.
4. The Respondent is ordered to pay the costs of this application on a party and party scale.
5. The Applicant is directed to serve this judgment and order on the Respondent by the Sheriff of the Court.

L. LE R. POHL AJ

On behalf of the Applicant:

Adv. W. J. Groenewald

Instructed by:

Phatshoane Henney Inc.

On behalf of the Respondent:

Respondent in person