

**REPUBLIC OF SOUTH AFRICA**



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

**CASE NUMBER: 2022/016375**

In the matter between:

**P J L**

**Applicant**

**and**

**R L**

**Respondent**

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**JUDGMENT**

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**DOS SANTOS AJ**

**A. INTRODUCTION**

1. The notice of motion in this opposed application consists of three parts (being the relief sought in Part A, Part B and Part C). Only Parts A and B of the application served before me on 18 October 2023.

2. Part A is an application for contempt of court. Part B is an application for the Family Advocate to investigate issues relevant to the minor children; being primary residence, care and contact. I deal with the relief in Part A and Part B in turn.

## **B. PART A – CONTEMPT OF COURT**

### **(a) The relevant context**

3. The applicant and the respondent were previously married. The marriage was dissolved by a court order which incorporated a deed of settlement.<sup>1</sup> The court order, being an order of this Court, was granted on 3 February 2017 under case number 2016/15121.
4. The deed of settlement contains various provisions relating to the minor children's primary residence, care and contact. For purposes of these proceedings, the relevant terms include (i) the minor children's primary residence would be with the respondent; and (ii) the applicant would enjoy reasonable contact with the minor children. This contact includes, inter alia, contact on the applicant's birthday, Father's Day, every alternative weekend (or as agreed to between the parties) and every alternate school holidays.
5. The deed of settlement provides further that the long school holidays and the December holidays will be shared between the parties, or otherwise be agreed between the parties. The deed of settlement also provides that the applicant's right of reasonable contact is subject to the minor children's educational, sporting, social and religious activities.
6. At the time of the divorce, the respondent and the minor children resided in Randburg, Johannesburg. In December 2017, the respondent and the minor children relocated to

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<sup>1</sup> It is not in dispute that the deed of settlement enjoys the status of a court order. See **Eke v Parsons** 2016 (3) SA 37 (CC) and **Compensation Solutions (Pty) Ltd v Compensation Commissioner** (2016) 37 ILJ 1625 (SCA)

Potchefstroom. They have resided there since December 2017; being a period of almost 6 years. The minor children are now aged 15 and 11.

7. In August 2022, the applicant approached the court for relief to hold the respondent in contempt of the provisions of the deed of settlement. The trigger for the approach is a dispute between the parties regarding the applicant's 2022 Father's Day contact and the applicant's holiday contact in the June / July 2022 school holidays.

(b) The legal principles applicable to contempt of court applications

8. Our law on (civil) contempt of court is well established. Contempt of court is defined as "the deliberate, intentional (i.e., wilful), disobedience of an order granted by a court of competent jurisdiction".<sup>2</sup> I do not intend herein to provide a treatise on the law of contempt save to point out, as I do below, certain fundamental principles thereof.
9. Contempt proceedings serve three important purposes; namely, protecting the rights of everyone to fair trials, maintaining public confidence in the judicial arm of government, and upholding the integrity of court orders.<sup>3</sup>
10. For an act to constitute contempt, an intention to defeat the course of justice must be established.<sup>4</sup>
11. On the issue of contempt generally, the Supreme Court of Appeal in **Fakie N.O. v CCII Systems (Pty) Ltd**<sup>5</sup> held:

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<sup>2</sup> **Pheko and Others v Ekurhuleni Metropolitan Municipality** (No 2) 2015 (5) SA 600 (CC) (Pheko II) at 617A–B; **Minister of Home Affairs v Scalabrini Centre** 2013 (6) SA 421 (SCA) at 443H–I; and **NW Civil Contractors CC v Anton Ramaano Inc** 2020 (3) SA 241 (SCA) at para [6]

<sup>3</sup> Milton, **South African Criminal Law and Procedure** (Vol II: Common Law Crimes) (3 ed) Cape Town, Juta and Co: 1996 at 165

<sup>4</sup> **Coconut Express CC v South African Revenue Service (Customs and Excise) and others** [2016] 2 All SA 749 (KZD)

*“The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and mala fide'. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).*

*These requirements - that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt - accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute, or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent.”*

(my underlining)

12. The SCA in **Fakie NO v CCII Systems (Pty) Ltd**<sup>6</sup> additionally summarised the rationale and requirements for civil contempt as being:

*“(a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.*

*(b) The respondent in such proceedings is not an accused person but is entitled to analogous protections as are appropriate to motion proceedings.*

*(c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.*

*(d) But, once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.”*

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<sup>5</sup> 2006 (4) SA 326 (SCA) para 9

<sup>6</sup> 2006 (4) SA 326 (SCA) para 42

13. In summary, an applicant in a contempt application must therefore establish (i) the court order; (ii) service or notice of the order; (iii) non-compliance with the terms of the order; and (iv) wilfulness and mala fides.<sup>7</sup> But, once an applicant has proved (i), (ii) and (iii), the respondent bears an evidentiary burden in relation to (iv).

14. In **Pheko and Others v Ekurhuleni Metropolitan Municipality**,<sup>8</sup> Nkabinde J reiterated that:

*“Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes acts of contumacy in both senses: wilful disobedience and resistance to lawful court orders. . . Wilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence. The object of contempt proceedings is to impose a penalty that will vindicate the court’s honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order.”*

15. The nature of the Part A relief (remedy) sought in these civil contempt proceedings is not coercive but rather punitive. This is evident because the applicant seeks an order that the respondent be committed to imprisonment for a period of 30 days (suspended for 2 years on condition that the respondent fully complies with the court order).

16. Nkabinde ADCJ in **Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited**<sup>9</sup> clarified the principles applicable to the onus of proof in contempt proceedings and stated that:

*‘ . . . I am of the view that the standard of proof must be applied in accordance with the purpose sought to be achieved, differently put, the consequences of the various remedies. As I understand it, the maintenance of a distinction does have a practical significance: the civil contempt remedies of committal or a fine have material consequences on an individual’s freedom and security*

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<sup>7</sup> **Tasima (Pty) Ltd v Department of Transport** 2016 1 All SA 465 (SCA)

<sup>8</sup> **Pheko v Ekurhuleni Metropolitan Municipality** supra at para 28

<sup>9</sup> **Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited** 2018 (1) SA 1 (CC)

*of the person. However, it is necessary in some instances because disregard of a court order not only deprives the other party of the benefit of the order but also impairs the effective administration of justice. There, the criminal standard of proof – beyond reasonable doubt – applies always. A fitting example of this is Fakie. On the other hand, there are civil contempt remedies – for example, declaratory relief, mandamus, or a structural interdict – that do not have the consequence of depriving an individual of their right to freedom and security of the person. A fitting example of this is Burchell. Here, and I stress, the civil standard of proof – a balance of probabilities – applies.*<sup>10</sup>

17. Because the relief sought in this contempt application is punitive, and includes a committal to imprisonment, the criminal standard of proof of beyond a reasonable doubt applies<sup>11</sup> The onus is therefore not the ordinary civil onus, (i.e., on a balance of probabilities), but instead one of beyond reasonable doubt.
18. As such, if, on a conspectus of all the evidence, there is a reasonable possibility that non-compliance with the court order in issue was not wilful and *mala fide*, contempt is not established.<sup>12</sup>
19. The wilfulness (intent) consideration is further informed by the requirement that there must be an intention to defeat the course of justice for an act to constitute civil contempt,<sup>13</sup> or otherwise cast, a court must find the “litigant to be possessed of malice on balance”.<sup>14</sup>
20. Finally, our law is that where most of a court order has been complied with and the non-compliance is in respect of some minor matter only, the Court will take the substantial

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<sup>10</sup> **Matjhabeng Local Municipality** supra at para 63

<sup>11</sup> **Matjhabeng Local Municipality** supra at paras 63 and 73

<sup>12</sup> See **Fakie NO v CCIL Systems (Pty) Ltd** supra at para 14 and **Matjhabeng Local Municipality** supra at paras 67 and 85-88

<sup>13</sup> **Gauteng Gambling Board and Another v MEC for Economic Development, Gauteng** 2013 (5) SA 24 (SCA) para 51

<sup>14</sup> **Pheko and Others v Ekurhuleni Metropolitan Municipality City** supra para 37

compliance into account, and will not commit for a minor non-compliance; i.e. the applicant has to show a material non-compliance with the court order.<sup>15</sup>

21. Obviously, the relevant prevailing circumstances will determine whether a compliance matter is to be regarded as “minor” or otherwise.

(c) The relevant and material background facts

22. In these proceedings, it is common cause that (i) a court order exists; (ii) the respondent has knowledge of the court order; and (iii) there has not been strict compliance with the express terms of the deed of settlement. However, the respondent’s alleged wilfulness and/or *mala fides* are in dispute.

23. Accordingly, the applicant is required to demonstrate the respondent’s non-compliance is wilful and/or *mala fide*, beyond *a reasonable doubt*, in order to succeed with this application.

24. The applicant states that the respondent has not complied with the court order in that she (i) refused to allow the applicant to have contact with the minor children on 19 June 2022, being Father’s Day; and (ii) “outright refused” the applicant to share contact during the June/July 2022 long school holidays.

25. The applicant also referred to a previous incident in 2020 where the respondent did not comply with the provisions of the deed of settlement. The applicant adds that he has endured many further frustrations in exercising his rights of contact since 2020. By way of example, the applicant complains that the respondent did not allow him to collect their daughter directly from certain school sports tournaments and, moreover, that the respondent only allowed him to collect the minor children at 17h00 (and not earlier) on the Friday of his weekend contact.

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<sup>15</sup> **Consolidated Fish Distributors (Pty) Ltd v Zive** 1968 (2) SA 517 (C)

26. The respondent's position is that the parties have – since the inception of the deed of settlement, and from time to time since their divorce – frequently communicated, discussed and consensually (mutually) agreed to amend and/or vary the contact arrangements with the minor children, including in relation to the holiday contact. These consensual variations no doubt took place within the context of clause 3.4 and 3.5 of the deed of settlement; being “*or as otherwise agreed between the parties*”.
27. The correspondence attached to the affidavits in this application evidence that the parties have indeed, from time to time, previously consensually and personally made arrangements regarding the contact with the minor children; in so doing, they consensually, as they were entitled to do in terms of the said clauses 3.4 and 3.5, deviated from the strict terms of the deed of settlement, and particularly the holiday contact.
28. The applicant himself concedes that the parties, at times, mutually agreed to deviate from the provisions of the deed of settlement.
29. I pause to mention that prior to the respondent and the minor children relocating to Potchefstroom, the parties had amongst themselves agreed that the applicant would exercise Wednesday contact with the minor children (after school); notwithstanding that the deed of settlement did not provide for Wednesday contact.
30. The Wednesday contact arrangement is contrary to the express provisions of the deed of settlement, albeit the parties' arrangement favoured the applicant. This consensually agreed upon Wednesday contact fell away once the respondent and the minor children relocated to Potchefstroom.



(d) The facts which precipitate these proceedings

31. In 2022, the parties agreed that the applicant would exercise contact with the minor children during both short school holidays (i.e., the April 2022 and September 2022 holidays). The applicant did in fact exercise the holiday contact with the minor children during both 2022 short school holidays. This arrangement, again, whilst contrary to the express provisions of the deed of settlement (i) took place as per the proviso in clause 3.4 and 3.5; and (ii) favoured the applicant.
32. As I read the papers, in January 2022, the applicant indicated to the respondent that he wanted to take the minor children to the Drakensburg from 8 to 15 July 2022. There was some too-ing and fro-ing thereafter but no final agreement was reached.
33. In March 2022 and again in April 2022, the respondent advised the applicant that she would be taking the minor children on holiday during the June/July school holidays; a period that would overlap with the applicant's 8 to 15 July 2022 request – which overlap serves as the *fons et origo* of these proceedings.
34. The applicant did not respond to the respondent's advices regarding her June/July holiday arrangements. Accordingly, the respondent understood that the applicant's non-response was evidence of his acceptance of the respondent's June/July holiday arrangements.
35. The respondent moreover believed that no final arrangements were made in response to the applicant's January 2022 request. Because (i) the parties' holiday arrangements were not final and frequently changed; and (ii) the applicant's absence of a response, it was open for the respondent to adopt the position she did.
36. These frequent changes are evident from the changes to the April and September 2022 holiday contact as well as the changes to the March/April 2020 holiday contact.

37. It was only on 1 June 2022 (some 2 months later), and on the eve of the June/July school holidays, that the applicant, for the first time, complained about the respondent's June/July holiday arrangements. The applicant's intervening 2-month silence is unexplained.

38. The respondent however proceeded with her holiday arrangements; the arrangements thereof having already been made and finalised.

(e) Discussion: the facts and the law

39. In my view, it was not unreasonable for the respondent to regard the applicant's non-response as evidence of his acquiescence (if not outright acceptance) of the respondent's June/July holiday arrangements, particularly within the context of the parties having previously and frequently agreed to amended and varied contact arrangements.

40. I find that the respondent genuinely, even if mistakenly, believed that she was entitled to proceed as she did. Assuming in favour of the applicant that her conduct constituted a breach of the express terms of the deed of settlement and did not take place in terms of the proviso, I am unable to find that her conduct was *mala fide*. By all accounts, the respondent *bona fide* believed that she was entitled to proceed in the way she did.<sup>16</sup> The respondent's good faith belief accordingly "avoids the infraction".

41. I now turn to deal with the issue of the 19 June 2022 Father's Day contact. The respondent states that the reason she refused such contact was because their daughter was studying for her exams. Moreover, the respondent states that she had already made plans with the minor children for the weekend and that the applicant's request to have contact on Father's Day was not timeously made as it was only made mid-morning the day before.

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<sup>16</sup> See **Fakie N.O.** *supra*

42. The respondent also states that prior to the 2022 Father's Day weekend, the minor children had spent two consecutive weekends with the applicant (again, this is contrary to the express provisions of the deed of settlement, albeit mutually varied by the parties).
43. The respondent furthermore states that she did not spend Mother's Day with the minor children because Mother's Day fell on the applicant's weekend. The respondent recorded that the parties have never in the past made any specific arrangements regarding Mother's Day and Father's Day and that, if a particular Mother's Day or Father's Day fell on a particular parties' weekend, it was simply left as that. This is not disputed by the applicant.
44. This status quo endured for some 5 or 6 years without either party insisting on strict compliance with the express terms of the deed of settlement; a position in respect of which both parties, at the very least, acquiesced.
45. From the affidavits filed of record, and the arguments presented, I find that both the applicant and the respondent were willing and happy - on a seemingly laissez-faire basis and over an extended period of a number of years - to engage and agree on ad hoc and informal variations to the deed of settlement when it came to, inter-alia, issues and questions of contact, and that they did so notwithstanding that expressly agreed upon and provided for in the deed of settlement. The clause 3.4 and 3.5 provisos additionally confirm that the express terms of the deed of settlement are not carved in stone.
46. At worst, the parties adopted and implemented a mutually beneficial approach and attitude to the deed of settlement, in which they engaged, or acquiesced, in contact arrangements different to those expressly provided for in the deed of settlement.
47. Whilst I am obviously mindful that a court order is binding until interdicted or set aside by a competent court, and must be complied with, I also cannot ignore that, when it suited him, the applicant did not appear to have any regard to, let alone insist upon due compliance with, the

relevant provisions of the deed of settlement. There is indubitably something odious, if not unconscionable and contrary to public policy, in the applicant's recent and belated volte face. Sauce for the goose must be sauce for the gander. As such, I cannot find that the alleged non-compliance by the respondent with the express terms of the deed of settlement as being *mala fide* or deserving of sanction.

48. Moreover, even if I am incorrect on the aforesaid score, the deed of settlement provides that the applicant's right of reasonable contact is subject to the minor children's educational, sporting, social and religious activities. I am of the view that the applicant's belated request to have contact on Father's Day was subject to the minor children's educational and social activities. The respondent and the minor children already had plans (educational and social) for the weekend. As such, the applicant's right to contact on Father's Day is not unqualified.

49. The respondent was entitled, acting in good faith, to act in accordance with such plans given the parties historical attitude to Mother's Day and Father's Day. She, again, cannot be found to have acted in bad faith.

50. Accordingly, I find that in respect of the Father's Day contact, the respondent genuinely believed, even if mistakenly, that she was entitled to act in the way claimed to constitute the contempt. The respondent's good faith belief similarly "avoids the infraction".

51. Turning to the last Part A issue, the applicant complains that the respondent frustrated his contact rights by not allowing him to collect their daughter directly from certain school sports tournaments. The respondent's answer is that it is the school policy / rules that when a child is leaving from Potchefstroom, together with the school on the school bus, that the child must return again with the school on the school bus. This is a security measure implemented by the school to ensure that all children are at all times accounted for and returned safely.

52. In relation to the applicant stating that the respondent only allows him to collect the minor children at 17h00 (and not earlier) on the Friday of his weekend contact, the respondent explains that she informed the applicant that the 17h00 pick-up time is due to the minor children's occasional extra-mural activities on Fridays.
53. It is apparent from the papers that it appears to be a general feature of the parties' interactions with each other, that during 2022, there was a breakdown of communication and/or miscommunication between the parties.
54. Notwithstanding the miscommunication, I am unable to find that the respondent has purposefully withheld the applicant's contact with the minor children. This is evidenced by the fact that the respondent agreed to the additional Wednesday contact (prior to her relocation) as well as agreeing to the applicant having contact with the minor children in respect of both short school holidays in 2022 (being the April and September holidays).
55. As I have already stated, it has been emphasised by our courts that "*contempt of court does not consist of mere disobedience of a court order, but of the contumacious disrespect for judicial authority*".<sup>17</sup> Upon a proper analysis of the facts, it cannot be said that the respondent wilfully and *mala fide* failed to comply with the provisions of the deed of settlement; be it in terms of the clause 3.4 and 3.5 provisos or generally.
56. It is apparent that since their divorce, the parties have often consensually agreed to deviate from the provisions of the deed of settlement, and have accommodated each other's contact requests accordingly.
57. In my view, the respondent has furnished a satisfactory and exculpatory explanation regarding the claimed non-compliance of the long June/July 2022 school holidays, as well as the 2022

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<sup>17</sup> **Pheko** supra para 42

Father's Day contact, and the 17h00 Friday pick-up time. The respondent's explanation is sufficient for me to find that she was not in wilful contempt of the provisions of the deed of settlement.

58. I find that the respondent's version before this Court discharges the evidentiary burden resting on her. The respondent has advanced evidence that establishes a reasonable doubt that her non-compliance with the provisions of the deed of settlement was not wilful and *mala fide*. Whilst not presently relevant, I am equally able to find that the respondent's civil evidentiary burden (balance of probabilities) is discharged.

59. The respondent's conduct, objectively assessed, demonstrates in my view, that she did not intend to defeat the course of justice and/or that she did not wilfully and *mala fide* fail to comply with the provisions of the deed of settlement and frustrate the applicant's rights of contact with the minor children. Accordingly, the applicant has not discharged the onus resting upon him on the standard of beyond a reasonable doubt.

(f) My concerns regarding the applicant's conduct

60. Separately to the above, I deem it necessary to address the nature of the relief sought by the applicant, namely a committal to imprisonment for 30 days.

61. It is concerning that the applicant would seek such drastic relief, particularly in light of the fact that (i) the respondent is the primary caregiver of the minor children; and (ii) the parties' historical treatment of the deed of settlement.

62. The applicant has not given any consideration to the impact this drastic sanction will have on the minor children and/or given any consideration as to whether such relief would ultimately be in the minor children's best interest.

63. The drastic nature of the committal relief sought is, in my view, in sum and substance, an abuse of process aimed at an improper, ulterior, illegitimate, vexatious and *mala fide* end; and not in truth actually sought to be acted upon,<sup>18</sup> within the context of contempt proceedings being aimed at compliance with court orders.
64. Our courts have an inherent power and have shown a readiness to intervene in instances where litigation constitutes an abuse of process.<sup>19</sup> This especially so where an attempt is made to use, for ulterior purposes and in respect of our Courts, the machinery devised for the better administration of justice.<sup>20</sup>
65. An abuse occurs where the legal process is diverted from its true course so as to serve extortion or oppression; or to exert pressure so as to achieve an improper end<sup>21</sup> or where the procedures permitted by the Rules of the Court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective.<sup>22</sup>
66. I am of the view that the punitive nature of the relief sought by the applicant serves to extort and/or oppress the respondent. This would, I ordinarily believe, justify a punitive costs order.
67. However, I will give the applicant the benefit of the doubt that he did not intend to use the contempt proceedings for an ulterior purpose and that his true motivations were guided by his need, and the minor childrens', to enjoy contact with each other. In the circumstances, I intend to order costs on the ordinary scale.

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<sup>18</sup> See The Supreme Court of Namibia decision per Ngcobo AJA in **Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation Ltd** (SA 23/ 2010) [2012] NASC 15 (13 August 2012) at paragraphs [18] to [22] <http://www.saflii.org/na/cases/NASC/2012/15.html>.

<sup>19</sup> **Beinash v Wixley** 1997 (3) SA 721 (SCA) at 734C-G and **Western Assurance Co v Caldwell's Trustees** 1918 AD 262 at 272.

<sup>20</sup> **Price Waterhouse Coopers Inc. v National Potato Co-operative Ltd** 2004 (6) SA 66 (SCA) at paragraph [43] and [50]

<sup>21</sup> Supra

<sup>22</sup> **Beinash v Wixley** supra, at 734C-G.

68. Nevertheless, I hope that the aforesaid expression of my sentiments will guide the applicant accordingly in his future conduct.

### C. PART B – FAMILY ADVOCATE’S INVESTIGATION AND REPORT

69. As indicated earlier, the relief sought in Part B of the application seeks an order requesting the offices of the Family Advocate, Johannesburg, to investigate issues relevant to the minor children; being primary residence, care and contact.

70. The respondent raised a point *in limine* of jurisdiction in respect of Part B of the application. I accordingly requested the parties to only address me on the point *in limine*. If the point *in limine* is upheld and this Court does not have jurisdiction, this Court is not in a position to hear and adjudicate the merits of Part B.

71. It is common cause that the respondent and the minor children do not reside within this Court’s area of jurisdiction. They reside in Potchefstroom. They have resided there since December 2017.

72. Since 18 April 2018, Potchefstroom falls under the jurisdiction of the High Court, North-West Division, Mahikeng.<sup>23</sup>

73. It is trite that a High Court has jurisdiction over all minor children within its jurisdiction.<sup>24</sup> It is furthermore trite that a Court which granted a decree of divorce, incorporating the terms of a deed of settlement entered into between the parties, retains the jurisdiction to subsequently amend or vary that order. The jurisdiction of that Court is not affected by the fact that the

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<sup>23</sup> Government Gazette Notice No. 408 29 March 2018 – Superior Court’s Act 10 of 2013: Determination of the area under jurisdiction of the Gauteng and North West Division of the High Court of South Africa

<sup>24</sup> See **Ceronio v Snyman** 1961 (4) SA 294 (W); **Narodien v Andrews** 2002 (3) SA 500 (c); and **N v N; In re N** (2425/16) (2017) ZAECPHC 61 (14 December 2017)



respondent and/or the minor children are no longer ordinarily resident within the area of jurisdiction of the Court.

74. However, if the relief sought falls outside of the ambit of the variation of an order granted upon decree of divorce, then in that event the territorial limitations of jurisdiction must be considered.

75. The parties' divorce was finalised as long ago as February 2017. I am of the view that the relief sought, namely the request for the Johannesburg Family Advocate's investigation and report, constitutes a new investigation and application and accordingly falls outside of the ambit of the variation of the deed of settlement.

76. Moreover, the relief sought does not relate and/or pertain to a previous and/or existing Family's Advocate's investigation instituted in this Court's jurisdiction. Instead, it will be the first occasion that the Family Advocate is requested to attend to an investigation and report on the best interests of the minor children.

77. Having regard to the fact that the minor children ordinarily reside within the jurisdiction of the High Court, North-West Division, Mahikeng, this Court cannot entertain the relief sought in Part B.

## **ORDER**

78. I accordingly make the following order:

### **Part A**

1. The contempt of court application is dismissed.
2. The applicant is ordered to pay the respondent's costs of the application (Part A).

### **Part B**

1. The respondent's point *in limine* is upheld and Part B is dismissed due to a lack of jurisdiction.
2. The applicant is ordered to pay the respondent's costs of the application (Part B).

**SG DOS SANTOS**  
Acting Judge of the High Court  
Gauteng Division, Johannesburg

**Heard:** 18 October 2023  
**Judgment:** 10 November 2023

**Appearances:**

**For Applicant:** Adv. HS Goosen  
**Instructed by:** Arthur Channon Attorneys

**For Respondent:** Adv. S Nel  
**Instructed by:** Matthys Coetzee Attorneys

*This judgment was handed down electronically by e-mail circulation to the parties' legal representatives and uploading to CaseLines. The date for hand-down is deemed to be 10 November 2023.*