IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Not Reportable

Case no: 2025-091265

In the matter between:

M[...] D[...] V[...] **Applicant**

And

F[...] M[...] D[...] V[...] **Respondent**

Coram: **BARTHUS, AJ**

Heard: 13 August 2026

Delivered: 14 August 2026

Summary: *Contempt of court – Rule 43 order – Interim maintenance – Reimbursement obligations – Late payment – Non-payment – Respondent's selective compliance – Belated assertion of ambiguity – Respondent's claimed right to determine "reasonableness" of expenses – Order requiring payment within five days of invoice – No discretion afforded to respondent – Wilfulness and mala fides – Dolus eventualis – Attorney-only communication imposed by respondent – Not a valid excuse for delay – Maintenance orders ad factum*

praestandum – Proactive compliance required – Vague and unsupported explanations insufficient to raise reasonable doubt – Contempt established – Suspended sentence imposed.

ORDER

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1. The Notice of Motion in respect of prayer 4(6) is amended as sought by the Applicant.
2. The Respondent is declared to be in contempt of the Order of this Honourable Court made on 2 September 2025.
3. The Respondent is ordered to pay to the Applicant the amount referred to in paragraph 4(b) below within five (5) days of the date of the granting of this order.
4. The Respondent is sentenced to imprisonment for a period of six (6) months which sentence shall be suspended for a period of three (3) years provided that:
    a. The Respondent is not found to be in contempt of court within the period of suspension;
    b. The Respondent makes payment to the Applicant of the sum of R 23 350.76 (twenty three thousand three hundred and fifty rand and seventy six cents) within five (5) days of the date of this Order.
5. The Respondent is ordered to pay the costs of this application on the scale as between attorney and own client.

JUDGMENT

Barthus, AJ:

Introduction

[1] This is an application to declare the respondent in contempt of a Rule 43 order granted on 2 September 2025 and to impose a suspended term of imprisonment. The applicant alleges sustained non-compliance with the order, including late payments, non-payments, and unjustified refusals to reimburse expenses expressly covered by the order.

[2] The respondent opposes the application, contending that delays were caused by practical constraints, alleged deficiencies in documentation, and the applicant's insistence on attorney-only communication. He further alleges that the application constitutes an abuse of process.

The Facts

[3] On 2 September 2025, this Court granted a Rule 43 order regulating interim maintenance and related financial obligations, pending the finalization of divorce proceedings. The order imposed extensive duties on the respondent, including monthly cash maintenance, payment of medical expenses, vehicle-related costs, property-related expenses, and the monthly Sanlam premium. The order further required the respondent to reimburse the applicant within five days of receipt of invoices or proof of payment.

[4] The order was granted against the backdrop of prior unilateral conduct by the respondent, including the removal of the applicant from his medical aid in November 2024 and the cancellation of her motor vehicle insurance. These actions necessitated the inclusion of specific obligations in the Rule 43 order to ensure the applicant's continued access to medical care, insurance cover, and basic household services.

[5] The matter was initially enrolled for hearing on 27 August 2025. The respondent sought a postponement on the basis that his counsel was unavailable. The postponement was granted on condition that the respondent commence

payment of the cash maintenance from 1 September 2025, or as soon thereafter as the order was granted, to avoid prejudice to the applicant. The respondent was therefore fully aware of the urgency and importance of compliance.

[6] The respondent concedes that there have been delays in payments, attributing the delays to being abroad and therefore being without reception. He also concedes that he has not made all the necessary payments but argues that it is because the applicant's expenses were not "properly vouched for".

[7] The applicant's founding affidavit annexes detailed schedules reflecting all claims submitted to the respondent between September 2025 and February 2026. These schedules include dates of submission, dates of payment (where payment was made), and amounts outstanding. The respondent does not dispute the accuracy of these schedules, nor does he dispute receiving the invoices or proof of payment annexed to the founding and replying affidavits.

[8] The schedules reveal a consistent pattern:

a) The 1 September 2025 cash maintenance was paid only on 17 September 2025, despite the order having been granted on 2 September 2025 and despite the respondent's agreement that payment would commence from 1 September 2025.

b) Reimbursements for September 2025 expenses, submitted on 1 October 2025, were paid only on 27 October 2025, despite attorney demands on 10 and 16 October 2025.

c) Claims submitted during October 2025 were paid only on 26 November 2025.

d) After 26 November 2025, no further reimbursements were made, notwithstanding claims submitted for expenses incurred between October 2025 and February 2026.

[9] The unpaid items include medical expenses marked “SCRIPT”, Pathcare blood tests, prescription spectacles, security invoices, tyre replacement, lawnmower petrol, and the November 2025 Sanlam premium. These items fall squarely within the order. The respondent provides no substantive explanation for refusing payment.

[10] The respondents’ conduct regarding the Sanlam premium is illustrative. The order required him to pay the premium directly to Sanlam. The applicant, in an effort to facilitate compliance, asked whether the respondent preferred to reimburse her instead. The respondent elected reimbursement. Despite this election, he failed to reimburse the November 2025 premium and later claimed that the applicant had not provided a “properly vouched claim”, knowing full well that Sanlam does not issue monthly invoices for fixed-premium policies. His explanation is contradicted by the record and is devoid of merit.

[11] The respondent’s approach to vehicle-related expenses is similarly problematic. The applicant submitted an invoice for tyre replacement on 16 October 2025. The respondent’s attorneys queried the invoice on 1 December 2025, six weeks later, and despite clarification on 9 December 2025, the respondent refused payment. This refusal is inconsistent with clause 1.6.3 of the order, which expressly requires payment for tyre replacement. Certification is only required in respect of wheel balancing and wheel alignment.

[12] The respondent’s conduct regarding medical aid cover is equally concerning. Clause 1.4 of the order required the respondent to retain the applicant as a dependent on his medical aid and to pay all reasonable medical expenses not covered by the plan. The respondent had previously removed the applicant from his medical aid in November 2024. Despite repeated requests, he failed to provide proof of reinstatement or a medical aid card. His bald assertion that she “remained covered” is contradicted by the history and unsupported by evidence.

[13] The applicant explained comprehensively that pool maintenance is necessary to avoid structural damage to the property and that she had presented the cheapest quote to the respondent in the amount of R450. The respondent's submission that the gardener should take care of pool maintenance despite never having done so historically, is unhelpful. This is a reasonable expense which falls within the bounds of maintenance.

[14] The respondent's insistence on attorney-only communication forms a recurring theme. On 8 September 2025, the respondent instructed the applicant that all communication must be channelled through attorneys. On 22 September 2025, when the applicant sent municipal accounts directly to him, he immediately instructed her to send them to his attorneys. The respondent now seeks to rely on this communication channel, imposed by him, as an excuse for delay. This is disingenuous. There is no evidence to support the respondent's assertion that this mode of communication was initiated by the applicant and it is highly improbable.

[15] The respondent's answering affidavit asserts that delays were caused by periods of unavailability, including alleged travel to Namibia and time spent in a game reserve. These assertions are unsupported by any documentary evidence. Even if accepted, they do not explain the sustained pattern of late payment, nor the complete cessation of reimbursement after November 2025. What it does, however demonstrate, is that the respondent was enjoying vacations while the maintenance order went unpaid. This is inconsistent with good faith and evidences the respondent's attitude toward the applicant and the court order.

[16] The respondent made partial payment of R5 599.39 after the institution of these proceedings. This payment constitutes an implicit acknowledgment that the amounts were due. It does not purge contempt, instead it confirms that the respondent chose to pay late and selectively.

[17] The applicant's replying affidavit records that the respondent now owes R23 350.76. This figure includes an additional claim arising after the replying affidavit. The procedural propriety of enlarging the claim in reply is not contentious within the context of these contempt proceedings, since the factual reality is that the respondent has not complied with the order and his non-compliance is ongoing.

[18] The factual background therefore reveals a clear and sustained pattern of disregard for the Rule 43 order. The respondent's conduct is not characterised by isolated lapses or administrative oversight. It reflects a deliberate, persistent, and unjustified refusal to comply with obligations imposed by this Court.

Legal principles

[19] The requirements for contempt are well-established: (a) the existence of an order; (b) service or notice thereof; (c) non-compliance; and (d) wilfulness and mala fides.

[20] Once the first three elements are established, the respondent bears an evidential burden to raise a reasonable doubt as to wilfulness and *mala fides*. The applicant is not required to prove wilfulness and *mala fides* beyond reasonable doubt on the respondent's version; rather, the respondent must produce evidence that creates a reasonable doubt[1].

[21] The Constitutional Court in *Pheko v Ekurhuleni Metropolitan Municipality*[2] emphasised that compliance with court orders is foundational to the rule of law. Disobedience undermines the authority of the courts and cannot be tolerated.

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[1] *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA)
[2] 2015 (5) SA 600 (CC) para 1

[22] The respondent also argued that the applicant was obliged to exhaust alternative enforcement mechanisms such as execution against property or emoluments attachment before launching contempt proceedings. This contention is similarly without merit.

[23] This Division has repeatedly emphasised, most notably in the judgments of Binns-Ward J in *HG v AG*[3] that compelling a maintenance beneficiary, typically a woman in a vulnerable financial position, to resort to writs of execution in order to obtain compliance with a court-ordered maintenance obligation is contrary to judicial policy. Binns-Ward J made it clear that the availability of execution does not derogate from the characterisation of maintenance orders as *ad factum praestandum*, and that beneficiaries "should not, in principle, be required" to enforce such orders through execution. He further held that a maintenance debtor who fails to comply and leaves the beneficiary to enforce the order by execution is *prima facie* in contempt**.** The respondent's argument that the applicant ought to have executed first is therefore not only legally incorrect; it is directly contrary to binding authority in this Division. It is rejected.

[24] The Constitutional Court in *Bannatyne v Bannatyne*[4] did not establish a rigid precondition requiring exhaustion of alternative remedies, rather, it affirmed that contempt remains an appropriate mechanism to vindicate the authority of the court where ordinary enforcement has been rendered ineffective by the respondent's conduct.

[25] The applicant has proved the existence of the order, notice thereof, and non-compliance. The burden therefore shifts to the respondent to raise a reasonable doubt as to wilfulness and *mala fides*.

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[3] (2331/2017; 3487/19) [2019] ZAWCHC 125 (10 February 2020)
[4] 2003 (2) SA 363 (CC)

[26] The respondent has failed to discharge this burden. His explanations are vague, unsupported, and contradicted by objective evidence. He provides no documentary proof of alleged unavailability. He does not identify any specific deficiency in the documentation submitted by the applicant. He does not explain why payments ceased after November 2025. The bald assertion that the refusal to pay was because the items claimed for falls outside the meaning of "maintenance" is unsustainable.

[27] *Dolus eventualis* suffices for contempt[5]. A respondent who foresees the possibility of non-compliance and reconciles himself to it acts with the requisite intention.

[28] Vague, bald, or sketchy allegations will not suffice to raise a reasonable doubt[6]. A respondent must provide full and frank disclosure of all facts relevant to non-compliance.

[29] The respondent's reliance on attorney-only communication is disingenuous. He imposed that communication channel. He cannot now rely on it as an excuse for delay.

[30] The respondent's selective compliance, namely paying some expenses months late, refusing others without justification, and ceasing payment entirely after November 2025 reveals a deliberate disregard for the order.

[31] The respondent's belated assertion that the Rule 43 order is "ambiguous" warrants specific comment. This contention was not raised at any time during the months of correspondence, nor in response to any of the applicant's claims, nor when the respondent made partial payments acknowledging liability.

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[5] *DW v JLK* [2026] ZAWCHC 322

[6] *DW v JLK* (supra).

[32] It emerges for the first time in his answering affidavit, without any attempt to identify which clause is said to be ambiguous, why it is ambiguous, or how such alleged ambiguity prevented compliance. The order is clear, detailed, and comprehensive. Its obligations are expressed in plain language. The respondent's attempt to invoke ambiguity at this late stage is not a genuine interpretive concern but a transparent effort to evade responsibility. A court order must be clear and unambiguous. However, as held in *Firestone South Africa (Pty) Ltd v Genticuro AG*[7] an order is not ambiguous merely because a party chooses to interpret it selectively or self-servingly. Ambiguity must arise from the text itself, not from a litigant's belated attempt to avoid compliance. The respondent's argument is accordingly rejected.

[33] The respondent further contends that he was entitled, indeed obliged to make his own determination of the "reasonableness" of each claim before paying it. This argument is wholly inconsistent with the wording, structure, and purpose of the Rule 43 order. The order does not confer upon the respondent a discretionary evaluative power, nor does it permit him to delay payment pending a subjective assessment of reasonableness. It directs him, in clear and imperative terms, to reimburse the applicant within five days of receipt of the relevant invoice or proof of payment**.**

[34] The obligation is triggered by receipt of the invoice, not by the respondent's personal satisfaction with its contents. To accept the respondent's interpretation would be to rewrite the order entirely, converting a mandatory reimbursement obligation into a discretionary regime under which the respondent may unilaterally suspend payment for weeks or months while he decides whether he approves of the expense.

[7] 1977 (4) SA 298 (A),

[35] That is not what the order says, nor what it means. The respondent's attempt to insert a "reasonableness" requirement into the order is a transparent effort to justify non-compliance after the fact. It is rejected.

[36] The respondents' conduct satisfies the test for *dolus eventualis*. He foresaw the possibility that his failure to reimburse the applicant timeously would place him in breach of the order. He reconciled himself to that possibility. His conduct was therefore wilful.

[37] *Dolus eventualis* suffices for contempt[8]. A respondent who foresees the possibility of non-compliance and reconciles himself to it acts with the requisite intention.

[38] Vague, bald, or sketchy allegations will not suffice to raise a reasonable doubt[9]. A respondent must provide full and frank disclosure of all facts relevant to non-compliance.

Conclusion

[39] The respondent's version is not merely improbable, it is demonstrably false in material respects. It does not raise a reasonable doubt as to wilfulness or *mala fides.*

[40] The Court simply cannot permit a litigant to undermine its authority through selective compliance, unjustified refusals, belated and opportunistic arguments, and evasive explanations. The respondent's conduct warrants a finding of contempt since he has wilfully, and *mala fide* failed to comply with the Rule 43 order. Contempt is established beyond reasonable doubt.

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[8] *DW v JLK* [2026] ZAWCHC 322

[9] *DW v JLK* (supra).

[41] There is no reason why costs on an attorney and client scale should not be ordered against the respondent as it would be unjust to deprive the applicant of her costs given the facts of this matter.

[42] The following order is made:

1. **The Notice of Motion in respect of prayer 4(6) is amended as sought by the Applicant.**
2. **The Respondent is declared to be in contempt of the Order of this Honourable Court made on 2 September 2025.**
3. **The Respondent is ordered to pay to the Applicant the amount referred to in paragraph 4(b) below within five (5) days of the date of the granting of this order.**
4. **The Respondent is sentenced to imprisonment for a period of six (6) months which sentence shall be suspended for a period of three (3) years provided that:**
   a. **The Respondent is not found to be in contempt of court within the period of suspension;**
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5. **The Respondent is ordered to pay the costs of this application on the scale as between attorney and own client.**

V BARTHUS

ACTING JUDGE OF THE HIGH COURT

Appearances

For Applicant:	Adv L Buikman SC
Instructed by:	Swemmer Levin Inc
For Respondent:	Adv P Tredoux
Instructed by:	K J Bredenkamp Attorneys