

Case: V.L v O.C.V

(11677/2006 ; 18206/2007) [2024] ZAWCHC 338 (29 October 2024)

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INTRODUCTION

The case of V[...] L[...] (PREVIOUSLY V[...] v O[...] C[...] V[...] deals with a contempt of court order for payment of a civil debt and the question of whether the relief sought (incarceration) ought to be granted.

BACKGROUND

The parties were married, and they divorced in 2007. They entered into a settlement that provided for spousal maintenance and maintenance for their children, and which regulated the proprietary consequences of their erstwhile marriage. With regard to division of their respective assets, the parties also agreed that: a) the applicant would get the former matrimonial home, (b) upon registration of transfer of the former matrimonial home into the wife's name, (c) the respondent would settle the bond registered over the property and pending the transfer, the respondent was to pay the bond. This was made an order of court. There were accordingly two different types of payment obligations on the respondent in terms of the court order – the first in relation to maintenance payments, and the second in relation to payment of the mortgage bond.

The respondent failed to comply with the terms of agreement (which were encapsulated in the court order) and the applicant sought leave to have the respondent held in contempt of court.

The respondent alleged that his business failed, and he fell into areas with his mortgage bond obligations. The former matrimonial home was sold 3 years after divorce. When the respondent failed to adhere to the amended court order, the applicant brought another application and the respondent was ordered to pay the outstanding amount owing on the bond. The respondent persisted in non-payment and as a result the applicant instructed the sheriff to attempt to execute a writ against the respondent's movables. However the assets attached were not sufficient to satisfy the respondent's debts (in particular the amount owing for the bond). The applicant thereafter brought the application to court to hold the respondent in contempt.

The relief sought in the contempt proceedings was the incarceration (committal to prison) of the respondent for his failure to comply with the court order concerned. One of the relevant legal issues debated was whether the nature of the payment obligation by the respondent, for which it was sought he be held in contempt, was the payment of money or payment of maintenance. This is because it is trite that the respondent would be liable to committal for contempt if the failure was to pay maintenance, but he would not be liable for contempt if the payment obligation was simply to settle an ordinary (non-maintenance) monetary debt.

JURISDICTIONAL ELEMENTS

The court held that the incarceration of the respondent cannot be ordered because the court does not have jurisdiction. The court stated that it is not in dispute that the respondent has relocated to Saudi Arabia permanently and the fact the respondent actively litigates in South Africa is not enough to create jurisdiction in South Africa.

MAINTENANCE OBLIGATION OR PAYMENT OF ORDINARY CIVIL DEBT?

The court held that the sums of money due to the applicant are ordinary civil debts, and not maintenance obligations (for which it is lawful to arrest and commit a debtor to prison if those obligations are not complied with). It was therefore held that the applicant could not compel payment of a civil debt using imprisonment as her method of execution. It was further held that the incarceration of the respondent would serve no purpose than applicant's need for what she perceives as 'poetic justice'.

ARREST OR COMMITTAL TO PRISON FOR FAILURE TO PAY CIVIL DEBTS

The court reiterated the jurisprudence on the issue and held that it has been clearly established in our law a person cannot be arrested and put in prison for non-payment of civil debts.

The court therefore held that judgements sounding in money may not be enforced by incarceration through court proceedings. The proper enforcement mechanism to utilize for judgments sounding in money would be to execute against the property of the debtor, and once that has been realized (sold in execution) a creditor who might still be owed money by the debtor cannot resort to contempt of court to enforce payment of the balance.

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