

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE In the

CASE NO. 665/04

matter between : NIGEL

ALFRED TAFT VS

APPLICANT

JACQUELINE TAFT (BORN GREY) CORAM

FOR APPLICANT FOR
RESPONDENT

RESPONDENT

SHABANGU AJ

MRS. CURRIE

MR. JOHN E. HENWOOD

JUDGEMENT

16th July, 2004

The applicant seeks an order in the following terms:

- (1) That the Applicant be allowed reasonable access to the minor child Gary Taft presently in the custody of the Respondent, such access to be exercised every alternative weekend commencing at 5.00 p.m. on the Friday and terminating at 5.00 p.m. on the Sunday.
- (2) In so far as it is necessary, an order directing the Applicant to pay all the school and medical expenses relating to the minor child.
- (3) That the Applicant be ordered to pay maintenance to the Respondent in the sum of E1,050-00 (One thousand and fifty emalangeni).
- (4) That the Respondent be ordered to pay the costs of this application.

(e) Further and or alternative relief."

The application is described in the heading as a "notice of application in terms of rule 43." A similar application (that is, a rule 43 application) was brought under case number 370 of 2003 between the same parties. In the former application the present respondent was the applicant. The result of the earlier application under case number 370/03 was a ruling delivered on 22nd August, 2003, wherein an order was made in the following terms :

"(a) The interim custody of the minor child is awarded to the applicant subject to the respondent's rights of reasonable access, to be exercised as follows: between the hours of 0900 hours to 18.00 hours on the Saturday and Sunday of every second weekend.

(5) *The respondent is directed to contribute to the maintenance of the applicant and the minor child in the amount of E6, 350-00 per month payable monthly in advance not later than the 7th day of each month.*

(6) *The respondent is directed to pay all school expenses relating to the minor child.*

(d) The respondent is directed to ensure that the Landrover and petrol expenses in respect of the Landrover currently being used by the applicant is not disturbed, but that in the event it becomes necessary for any reason that the applicant should be deprived of the Landrover and the provision of the petrol in respect thereof, the respondent shall approach this court before the implementation of any such new arrangement or otherwise, for variation of this aspect of the order.

(7) *The respondent is directed to contribute to the applicants' legal costs in the amount of E20, 000 (Twenty thousand emalangeni).*

(8) *The costs of this application shall be costs in the cause."*

The present applicant seeks in effect to vary the terms of the earlier order. First, regarding the present applicant's rights of access to the minor child in terms of prayer (a) the applicant wishes to have access every alternate weekend commencing at 5.00 p.m. on Friday and terminating at 5.00 p.m on the Sunday. The difference between the earlier order and the present prayer (a) is that the applicant would not be required to return the minor to the respondent on Saturday at 18.00 hours, (b) In so far as prayer (b) of the present application the applicant would be responsible not only for the school fees but also for the medical expenses relating to the minor child, (c) Prayer (c) of the present

application would reduce the applicants monthly contribution to the respondent from E6,350 per month to E1050-00.

The respondent has taken a preliminary objection to the application, to the effect that the applicant is in contempt regarding a number of certain specific 'aspects of the order of 22nd August, 2003. The respondent avers that because of the alleged contempt of court the applicant is seeking to approach the court with unclean hands with the result that the present application ought to be dismissed. Relying on the case of SOLLER V. SOLLER 2001(1) SA 570 (C) Ms. Van der Walt has made the submission that the applicant is barred from re-entering the halls of justice to seek relief because of the various instances amounting to contempt of court in relation to the order of 22nd August, 2003.

At paragraph 5.3 of the respondents answering affidavit the alleged contempt is set out as follows,

"5.3 The applicant is in contempt of paragraph 1 (d) of the order in that he has failed to provide petrol for the Landrover as ordered, but instead, unilaterally, decided on a petrol allowance, as appears from paragraph 12 (c) of the founding affidavit itself.

(9) *Not only do I not receive any 'allowance' for petrol up front, but have to pay for it myself and only then 'claim' it back from the applicant. This is not provision for petrol, as was ordered by the above Honourable court.*

(10) *In addition, since the applicant introduced this new unilateral arrangement, he refused to refund me in full for the petrol purchases I had to make out of my pocket.*

(11) *Paragraph 1(d) of the order reads specifically that the Applicant shall approach the above Honourable court before the implementation of any new agreement. This the Applicant simple ignored. "*

Then in paragraph 5.5 of the respondents answering affidavit the respondents avers that

"5.5 The applicant is in contempt of Paragraph 1(a) of the order in that he has taken our minor child away overnight and intimidated me from stopping him to do so.

6. The Applicant has been warned as early as December 2003 that he was in contempt of court as regards the issue of maintenance and I respectfully refer to 9.1 of my

attorney's letter to the Applicant's attorney dated 12th December, 2003 headed "with prejudice" a copy of which is attached hereto as annexure "JT2"

(12) *Despite the latter pointing out the unlawfulness of his conduct, the Applicant continued, with impunity, to perpetuate his contempt of court as regards the sum of maintenance.*

(13) *In another flagrant disregard of the authority of the above Honourable Court, the Applicant defied the Order in the further respects set but above, "*

Regarding the maintenance aspect of the order dated 22nd August, 2003 the applicant is alleged to have reduced the amount he was ordered to pay to the Respondent as monthly maintenance from E6350 to E3450-00. He has persisted in this conduct in spite of the letter which is annexure "JT2" dated 12th December, 2003, wherein he was advised that he has no right to unilaterally vary the terms of the court order. The applicant has not responded to the allegations of contempt referred to above. There can be no doubt that the applicant has by his aforesaid conduct disobeyed the orders which this court made on 22nd August, 2003. The aforementioned conduct is a clear violation of at least the authority of this court in that its orders are being disregarded or varied at whim by the applicant. The court's dignity and reputation is also being violated in that it gives an impression to the general public and especially to the respondent that a high court order does not deserve to be respected and it is up to the litigant against whom it is awarded to simply ignore the order and do what his personal whims dictate to him. If this were to be allowed there would come a time when orders of the court will be considered not to be worth even the paper they are written on.

In *SOLLER V. SOLLER* 2001 (1) SA 570 @ 573 the learned judge Thring J, observed;

"Notwithstanding his contemptuous attitude, the applicant has the temerity to continue to seek relief in this court. Indeed, in the present matter he seeks relief as a matter of urgency, and he asks 'that the normal rules relating to notice and set down be dispensed with...' It is not lightly that this court will close its doors to a litigant. However, a litigant who has contemptuously turned his back on those doors and has repeatedly treated with contumely the judges who sit within them, as the applicant has done, must not be surprised if, when he attempts to re-enter the halls of justice to seek relief, he finds the way barred to him until he has purged his contempt for the very tribunal from which he now seeks justice. This I will give the applicant an opportunity to do. "

In the present case I am also going to give the applicant an opportunity to purge his contempt.

In the circumstances the order I make is that the proceedings are stayed pending the purging of the contempt by the applicant who is required in doing so to

(14) provide petrol to the respondent for the Landrover which the respondent uses without giving her just a mere allowance. ^ '••

(15) To refund the applicant in full for the petrol purchases the respondent has had to make out of her pocket since the order of 22nd August, 2003 was issued.

(c) Comply with all the requirements of the order of the court made on 22 August, 2003.

ALEX S.  JUDGE