

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 641/2025

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED: YES/NO

Makoti AJ

SIGNATURE

DATE

In the matter between:

MASHEBANE DANIEL MALESA NO

First Applicant

JOSEPH KAMELA MODIBA NO

Second Applicant

MOTHOKA TERRENCE MOSIBIHLA NO

Third Applicant

THETELE JOSEPH MALATJI NO

Fourth Applicant

MANKUROANE SAMUEL MODIBA NO

Fifth Applicant

MOTLATSO IVY MAGOELE NO

Sixth Applicant

MAATISHI SIMON MAKGOBA NO

Seventh Applicant

MOGOWE WINDSOR MADIA NO

Eighth Applicant

MOKGADI ONICA MAKGOBOLA NO

Ninth Applicant

MMAMOKGOTLA MONICA MATLEBJANE NO

Tenth Applicant

REFILWE IRENE LETSOALO NO

Eleventh Applicant

MOTLOKWA SUZAN MOJAPELO NO

Twelfth Applicant

MATOME DAVID MODIBA NO

Thirteenth Applicant

MOHALE ELIAS NYAKALA NO

Fourteenth Applicant

MATLOU JACQUELINE MAKGOBA NO

Fifteenth Applicant

(In their capacities as duly authorised trustees of the
MAMPHOKU MAKGOBA COMMUNITY TRUST)

And

TSHEPO MALEBATI

First Respondent

BETTIE MAKGOBA

Second Respondent

ENNIE MAKGOBA

Third Respondent

MAROTHI MAKGOBA

Fourth Respondent

JIMMY KUBYANA

Fifth Respondent

REBECCA MAFA

Sixth Respondent

BOTHA RAPATSA

Seventh Respondent

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **14 February 2025**.

JUDGMENT

Makoti AJ

Introduction

[1] I am called upon to uplift the suspended jail sentence of 18 months, and condemn the respondents to imprisonment. The cause, a meeting which they attended at the community hall situated on the Remaining Extent of the Farm Middlekop 552 LT, Limpopo (the property). Attendance of the meeting is common cause and I need not spend much time of the issue. The terms of imprisonment was decided by Tshidada J on 11 June 2024, consequent to finding that the respondent had made themselves guilty of contempt of an order by Dean J dated 26 March 2024.

[2] Through the order of 26 March 2024 the court interdicted the respondents from entering onto an number of properties, including Middlekop, and over any other property that is under the applicants' control, or which may subsequently become under their control. In the case of the property, the respondents are only entitled to be on the area on which their residences are located.

[3] Stepping onto any other part of Middlekop becomes a contravention of the court order which renders the respondents liable for imprisonment upon being found guilty of contempt. The community hall in which the respondents and other community members attended a community meeting is on the property, meaning that, by merely leaving the area allocated for their residences, they commit contempt of the court order of 26 March 2024.

[4] The application to hold the respondents in contempt of the order of Dean AJ stands opposed by the respondents. In opposing the application they have proffered an explanation of their reasons for attending the meeting at the community hall.

Urgency considerations

[5] As I shall explain briefly below, I readily accept and treat this matter as urgent.

[6] Contempt of a court order is repugnant to the rule of law, which undermines the authority which has been constitutionally bestowed on the country's judicial system. With this case, in particular, the allegation is that of repeated contempt of court order granted by Dean AJ, *supra*, which calls for this court to promptly interrogate the conduct of the respondent which the applicants complain about. It is alleged amongst others that:

[6.1] The respondents attended a meeting at the community hall on 09 January 2025;

[6.2] In attending the meeting they contravened the court order by stepping onto the part of the property which is not part of their allocated residences; and

[6.3] While at the meeting, the respondents indicated their resolve to wage a fight against the applicants, the trustees.

[7] It is common cause that the respondents attended the said meeting. On face value these allegations suggest willful disregard of the court order and, therefore, it is warranted for the case to be adjudicated urgently. Urgency principles are well-known, and they are canvassed in a number of authorities which interpreted the provisions of Rule 6(12)(b) of the Uniform Rules. Where contempt is continuous, as the applicants allege in this matter, courts have generously accepted and dealt with the cases on urgent basis so as to maintain the integrity of the judicial system and to stamp the authority of our courts and the orders that have been issued by them.¹ Each case stands on its facts and, based on the allegations in this matter, I accept and deal with this application on urgent basis.

Test for contempt of court

[8] Civil contempt happens where a person commits an act of disobedience of a court of law's judgement or rule. Unlike other forms of contempt, civil contempt does not violate the law. Instead, it provides an option for the individual in contempt to follow the court order, if that party had decided not to do so. In its peculiar way, civil contempt is a special case of contempt that is used as a mechanism to force the individual to comply with the court's order, and imprisonment or fines might result from a party that refuses to comply with the order.

¹ Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Other [2021] ZACC 18; 2021 (9) BCLR 992 (CC); 2021 (5) SA 327 (CC).

[9] One cannot gainsay the trite principle that all persons have a legal obligation to obey court orders. Blatant disregard of court orders is an affront to the rule of law. The test for contempt is established as follows:²

[9.1] the contemnor must have knowledge of the court order;

[9.2] there must be non-compliance with the court order; and

[9.3] the non-compliance must have been wilful or *male fides*.

[10] To find that the respondents have committed further acts of contempt, necessitating the uplifting of Tshidada J's suspended order for imprisonment, I must find the existence of all these three factors. Our jurisprudence, which has been established through *inter alia* authorities such as Matjhabeng Local Municipality, recognised that where a committal is to be ordered, the standard of proof in civil contempt matters has to be the criminal standard.³ It is in those circumstances that wilful and *male fide* disobedience of a court order has to be shown beyond reasonable doubt.⁴ Where there exists reasonable doubt as to the contemnor's wilfulness and malice, committal should not be imposed.

[11] It is established in our law that the contemnor bears the evidential burden to create a reasonable doubt in the mind of the court with regard to the question whether his conduct non-compliance or breach of a court order was wilful and *male fide*. This then takes me to the explanation proffered by the

² Fakie NO v CCII Systems (Pty) Ltd [2006] ZASCA 52; 2006 (4) SA 326 (SCA); Phoko and Others v Ekurhuleni Metropolitan Municipality [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC); Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Other [2021] ZACC 18; 2021 (9) BCLR 992 (CC); 2021 (5) SA 327 (CC).

³ Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC) para 61.

⁴ *Ibid*, at par 62.

respondents for attending the meeting of 09 January 2025 at the community hall.

Explanation for the respondents' breach

- [12] I have already mentioned that attendance of the meeting is not disputed. So, too, I have no doubt that the respondents were aware of the court orders that have been issued, first by Dean AJ and, thereafter, by Tshidada J. The question remaining is whether there was willful disobedience of the orders, especially the first one of Dean AJ.
- [13] The respondents face an eviction application which was instituted by the applicants. For that to happen, the Greater Tzaneen Local Municipality (the Municipality) under whose area of jurisdiction they reside is required to provide an investigation report to the court, indicating the number and categories of people who will be affected by the eviction, if it is eventually granted.
- [14] Their explanation was therefore that they attended the meeting on the invitation by the Municipality. The meeting arrangement was confirmed by one Mr Marothi Valley Raphesu (Mr Raphesu), a legal practitioner at Modjadji Raphesu Incorporated. It is common cause that Mr Raphesu was in attendance of the meeting and, while there, distributed questionnaires as part of the Municipality's investigation of the circumstances of the residents facing eviction.
- [15] Having confirmed the arrangement of the meeting, Mr Raphesu later purported to retract his stance as to who arranged it and the circumstances under which he attended. In his retraction he says that the meeting was not at the Municipality's instance and that he too was invited to attend it by the respondents. He goes further to state that he was abused by the people who were at the meeting, a serious statement which is intended to portray the respondents as having

maliciously disobeyed the court order. The statement attributed to him reads out of the replying affidavit *inter alia* as follows:

“20.4.10 He signed the confirmatory affidavit when pressed to do so by Ms. Mototola and did so without having had sight of the answering affidavit or the confirmatory affidavit deposed to by Ms. Mototola. He accordingly wants to withdraw the confirmatory affidavit deposed to by him on 03 February 2025.”

- [16] The retraction was consequent to a discussion with the legal representative of the applicants. I could say a lot about the conduct of Mr Raphesu for signing a confirmatory affidavit without reading it and what it intended to confirm, but I elect to focus on the case at hand. Importantly, I do not accept the retraction of the confirmation, in reply, which is impugns the conduct of Ms. Matotola as a legal representative. Worse, the respondents are faced with critical facts which hold the key to whether they should be sent to imprisonment or not.
- [17] Malice talks to the state of mind, called in other language as *mens rea*. On this occasion I am not satisfied that the respondents had the necessary animus to disobey the court order. Emotional outbursts or suchlike when they come from persons who are facing bleak future are understandable. They may be criticised for what some of them have said at the meeting. However, I do not believe that they attended the meeting with the *animus* of disobeying the order of Dean AJ, the effect of which counsel for the respondents wielded much criticism. Being not an appeal court, I do not concern myself with the proprieties of the court order. I, instead, and on the established facts, accept that the meeting which they attended was at the instance of the Municipality.
- [18] Just on the basis of the contradicting nature of Raphesu’s statements, both under oath after having attested to it that he knew and understood the contents of what he was deposing for, serious doubt has been cast as to the

respondent's state of malice for attending the meeting. Where a contemnor has shown that his non-compliance with a court order was not wilful nor malicious, he will escape guilt.⁵ That, for me is significant enough to yield an outcome for the dismissal of the application. I have no reason for costs to not follow the result.

Order

[19] I make the following order:

[a] The application is dismissed with costs.

**MOKGERWA MAKOTI
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE**

APPEARANCES:

HEARD ON: 11 FEBRUARY 2025

JUDGMENT DELIVERED ON: 14 FEBRUARY 2025

**FOR THE APPLICANT: ADV R GRUNDLINGH
JOUBERT & MAY ATTORNEYS
TZANEEN
C/O RANDY MAKGOBA INC
POLOKWANE**

⁵ Putco Ltd v TV & Radio Guarantee Co (Pty) Ltd 1985 (4) SA 809 (A) at 863 D-E.

FOR THE RESPONDENT:

ADV M MONENE

MATOTOLA TSELENG ATTORNEYS INC

POLOKWANE

POLOKWANE HIGH COURT