

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION (MAIN SEAT)**

CASE NO: 2495/19

1. REPORTABLE: YES/ NO
2. OF INTEREST TO OTHER JUDGES: YES/NO
3. REVISED.

.....
DATE

.....
SIGNATURE

In the matter between:

GIFT SIBONISO MNISI

First Applicant

LEFA NKOSI

Second Applicant

SIYABONGA MALANDULE

Third Applicant

and

BARBERTON MINES PROPRIETARY LTD

First Respondent

**STATION COMMANDER: SOUTH AFRICAN
POLICE SERVICES**

Second Respondent

JUDGMENT

Roelofse AJ:

[1] The applicants are seeking leave to appeal my judgment and orders dated 12 July 2019 (“*the order*”). The applicants do not specifically set out to which court they seek leave to appeal but contend that the full court of this division is the appropriate court for the hearing of the appeal alternatively the Supreme Court of Appeal.

[2] The brief background to the matter is that the first respondent approached the court in an urgent application on 12 July 2019 for orders declaring that the applicants are in contempt of two orders that was previously granted by judges in this Division (“the previous orders”) and that the applicants be committed to prison for 6 (six) months for their contempt.

[3] I granted an order after hearing argument for the applicants (respondents *a quo*) and the mine (applicant *a quo*). The order: confirmed the applicants’ responsibility to comply with the previous orders and set consequences if they fail to do so. The consequence would be that the applicants would be arrested to be kept at the Nelspruit Prison and dealt with in terms of Section 50 of the Criminal Procedure Act 51 of 1997. I also ordered personal service of all the orders as well as the papers upon the applicants.

[4] The purpose of the order was to coerce the applicants to comply with the orders for if they failed, they would be arrested and detained. A further purpose of the order was to give the first respondent some form of comfort in circumstances where the respondent was suffering continued serious prejudice through violent mass action *prima facie* being orchestrated by the applicants.

[5] The applicants, in their notice of appeal: allege that I made a final judgment when I ordered that the applicants comply with the previous orders and pursuant thereto issued warrants of arrest; the issuing of warrants of arrest against the

applicants constitutes the detention without trial which undermines Section 12 of the Constitution, 1996; I failed to consider whether there was proper service of the orders alleged to have been breached; that the matter was not urgent; and in addition in a further notice of appeal alleges that I erred in directing that the applicants be dealt in terms of Section 50 of the Criminal Procedure in the event they do not comply with paragraphs 1 and 2 of the order in that it converts civil contempt proceedings to criminal contempt proceedings alternatively creates parallel proceedings.

[6] There is no merit in any one of the grounds of appeal when the judgment and order is properly considered. The position is that the previous orders were granted, the previous orders stood until they were set aside and that the applicants are bound to comply with those orders until such time they are set aside. This merely confirmed Section 165 of the Constitution and the Common law.¹ The order is clear. Warrants of arrest were not immediately issued. They would only have been issued upon the applicants' disobedience of the existing orders. The respondents were given an opportunity to challenge the alleged contempt of the existing orders and also would have been given through the order an opportunity to challenge any subsequent allegation of a breach of the existing orders (including my order). The use of the procedures provided for in Section 50 of the Criminal Procedure Act after the applicants' possible arrest does not confuse the type of contempt proceedings for both civil and criminal contempt are crimes which are punishable by law. The inclusion of Section 50 in the order merely contemplated the proceedings for the observance of the applicants' rights subsequent to their possible arrest.

[7] Courts are fully empowered to use coercive orders to ensure compliance with court orders. *"Coercive contempt orders call for compliance with the original order*

¹ *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2) (CCT19/11) [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) (7 May 2015) at para. 28 "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. This case deals with the latter, a failure or refusal to comply with an order of court. 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."*

that has been breached as well as the terms of the subsequent contempt order. A contemnor may avoid the imposition of a sentence by complying with a coercive order. By contrast, punitive orders aim to punish the contemnor by imposing a sentence which is unavoidable. At its origin the crime being denounced is the crime of disrespecting the court, and ultimately the rule of law.” [references omitted] ²

[8] This court may only grant the applicants leave to appeal if they establish that there is a reasonable prospect of success or another compelling reason why the appeal must be heard. If they do not establish any one of those grounds, then the court has no jurisdiction to grant leave to appeal. Let me consider the prospects of success: Was I wrong to reaffirm that the applicants must comply with the existing orders?; Was I wrong to order personal service upon the applicants of the existing orders so as to fully inform them of their obligations?; Was I wrong to order a gauntlet if the applicants disobey?: Was I wrong to protect the applicants’ rights to appear in court after their arrest as provided for in Section 50 of the Criminal Procedure Act?; Was I wrong to give the applicants a chance to challenge their alleged contempt? – I think not. In my view, there is nothing in the order that another would change or set aside.

[9] In the premises I make the following order:

Application is dismissed with costs. Such costs to be paid by the first, second and third applicants jointly and severally, the one paying the other to be absolved.

Roelofse AJ
Acting Judge of the High Court

DATE OF HEARING:

2 AUGUST 2019

² Phoko *supra* at para. 31.

DATE OF JUDGMENT:

APPEARANCES

FOR THE APPLICANTS:

ADV. T NGWENYA

INTSTRUCTED BY:

DUBE ATTORNEYS

FOR THE FIRST RESPONDENT:

ADV. L SISILANA

INSTRUCTED BY:

EDWARD NATHAN SONNENBURG