

22/9/2009
NOT REPORTABLE

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.
(3) REVISED.
22/09/09
DATE
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IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 37742/2006

In the matter between:

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Applicant

and

BEUKES GETRUIDA JOHANNA

First Respondent

BEUKES, ADOLF CHARLES

Second Respondent

JUDGMENT

MOTHLE A J

1. City of Tshwane Metropolitan Municipality (*"the Applicant"*) brought an application requesting the Court to hold Mr and Mrs Beukes (*"the Respondents"*) in contempt of Court for non-compliance with a Court order issued by this Court on the 21st June 2006.
2. During or about June 2006, the Applicant brought an application in this Court, in essence seeking relief that the First Respondent

be ordered to immediately cease the use of Erf 186, Faerie Glen, Pretoria, Gauteng for purposes of a commune and/or tenements. The use of the property was alleged to be in conflict with the provisions of the Pretoria Town Planning Scheme 1974 as well as in contravention of the National Building Regulations and Building Standards Act, 103 of 1977.

3. The First Respondent is further alleged to have erected structures on the property without approved building plans and the occupation of such structures without an occupation certificate.
4. The orders sought by the Applicant required the First Respondent to remove, from the property, all persons occupying such property and to submit approvable building plans for all buildings and structures on the property. An alternative prayer was that if the First Respondent fails to cease the use of that property, and to evict the occupants from the building, the Applicant be authorised to proceed to implement the terms of the order at the First Respondents' costs.
5. The matter came before Motimele A J on the 21 June 2006, who granted the following order against the First Respondent:

"Having heard counsel for the parties and having read the documents filed of record, it is ordered:

- 1. That the Respondent immediately cease the use of Erf 1856, Faerie Glen, Pretoria, Gauteng ("the subject property") for purposes of a commune and/or tenements, which use is in conflict of the provisions of the Pretoria Town Planning Scheme, 1974 ("the scheme").*
- 2. That the Respondent immediately cease the use of the subject property in contravention of the National Building Regulations and Buildings Standards Act, Act 103 of 1977 ("the Act"), which contravention stems from the erection of structures on the subject property without approved building plans and the occupation of such structures without an occupation certificate.*
- 3. That the Respondent, within a period of 20 days from the granting of this order, remove from the subject property all persons occupying, or being for any other purpose on the subject property in contravention of the Act and the Scheme.*
- 4. That the Respondent ensures that the building and illegal structures on the subject property be vacated until the buildings on the subject property have been brought in line with*

approved building plans, are safe for human habitation and the necessary occupancy certificates have been issued.

5. *That should the Respondent not comply with the provisions of prayers 1, 2, 3 and 4 as set out above, the Applicant be authorised to proceed to implement the terms of this order, at the Respondent's costs.*
6. *That the Respondent, within a period of 14 days from the granting of this order, submit approvable building plans for all buildings and structures on the subject property with the Applicant for approval thereof.*
7. *That the Respondent ensures that all the buildings and structures on the subject property are in line with approved building plans within 20 days from such plans being approved.*
8. *That should the Respondent fail to comply with prayer 7, the Sheriff, in whose jurisdictional area the subject property is situated, be ordered to demolish, at the cost of the Respondent, all structures not in line with approved plans.*
9. *That the Respondent pays the costs of this application on a scale as between attorney and own client."*

6. The Applicant now alleges in the founding affidavit that the

Respondents failed to execute the Court orders and are therefore in contempt. In particular, the Applicants submit that because the Second Respondent, being the husband to the First Respondent, though not cited in the main proceedings giving rise to the Court order, has been actively assisting the First Respondent and he too must also be held in contempt.

7. Civil contempt is the wilful and *mala fide* refusal or failure to comply with an order of Court. See in this regard **Höltz v Douglas & Associates (OFS) CC & Andere 1991 (2) SA 797 (O)**. **Herbstein and Van Winsen** "*The Civil Practice of the Superior Courts in South Africa*" 4th Edition, Juta and Co. 1997 at page 817 states the principle concerning contempt proceedings as follows:

"The object of proceedings that are concerned with the wilful refusal of failure to comply with an order of Court is the imposition of a penalty in order to vindicate the Court's honour, consequent upon the disregard of its order and to compel performance in accordance with the order."

8. It is trite that before a person can be found guilty of contempt of Court, his or her disobedience of the Court order must be wilful and *mala fide*. In this regard I refer to the matter of **Clement v**

Clement 1961 (3) SA 861 (T). The onus rests on the person who failed to comply with the order to rebut the inference of wilfulness on a balance of probabilities. See in this regard **Putco Limited v TV and Radio Guarantee Co. (Pty) Ltd and other related cases 1985 (4) SA 809 (A).**

9. It is further not disputed that the Court order was one of specific instructions to cease the usage of the property, evict all people resident in the buildings on the property and submit proper plans for approval by the municipality for any structure that needs to be put on the property. It is in fact a Court order that is one of *ad factum praestandum* and is capable of enforcement through contempt proceedings. In this regard I refer to the matter of **Metropolitan Industrial Corporation (Pty) Ltd v Hughes 1959 (1) SA 224 (T).**
10. The Respondents in their answering affidavit claim that they did comply with the Court order. To illustrate this, they attach a letter written in 2008 to the Applicant, wherein they advise that they have issued a one-month notice in July 2008 for all tenants to vacate the property. There is no indication in the answering affidavit:

- 10.1 Whether the tenants did leave their occupation of the buildings on the premises of the property, at that time; and
- 10.2 Why there was failure to comply with the Court order for the period June 2006 when it was handed down up until June 2008, if indeed it was complied with after the latter date.
11. The Respondents however point out that they offered to make payment to the Applicant to defray the costs of the previous hearing leading to the Court order, but their offer was rejected by the Applicant. They further testify that they filed plans for the construction of buildings on the site, which were approved by the Applicant but later that approval was withdrawn. According to them, subsequent to the withdrawal, they filed another set of plans for approval which to date remains unattended and there is no response from the Applicant. All these, was from 2008, two years after the Court made its order.
12. The Applicant concedes that it did receive a set of plans from the Respondents but after initially approving the plans, it withdrew the approval as those plans did not meet with the required regulations. As to the submission of the next set of plans, the Applicant argues that these are not capable of approval as these

plans still fall short of the requirements.

13. It seems to me that there is evidence, of post May 2008 attempt by the Respondents to comply with the Court order. However, these attempts came about two years after the Court order was granted. The Court order specified compliance within 14 days from the date it was delivered. As I indicated above, there is no explanation on the part of the First Respondent as to why she did not comply with the Court order from June 2006 up until June 2008.
14. It is clear that there has been non-compliance with the Court order, at least for the first two years. As to what transpired after June 2008, there appears to be conflicting versions with the Applicant insisting that it had to enter the premises and demolish some of the buildings after realising that the Respondent is not executing the Court order. The Respondents maintain that as at the hearing of this application, they had all left the premises.
15. For the purposes of this enquiry, however, I find it unnecessary to deal with what may in the meantime have transpired, after the contempt proceedings have been instituted. Suffice it to state that if indeed the Respondents are no longer on the property,

there is no need for further evictions in compliance with the Court order.

16. The Court order concerned only the First Respondent. The Second Respondent was neither cited nor ordered by the Court as a Respondent. Counsel for the Applicant, however, referred me to a number of authorities where members of commercial entities and/or organs of State were found guilty of contempt. The authorities cited included the matter of **20th Century Fox Film Corporation v Playboy Films 1978 (3) SA 203 (W)**, where a director of a company who caused the company to disobey a court order, made himself guilty of contempt; **State v Gerber in re: State v Baleka 1986 (4) SA 214 (T)** where the proprietor, publisher and editor of a newspaper which was a subject of a charge of contempt, was held liable; **East London Local Transitional Council v MEC for Health 2001 (3) SA 1133 (CKHC)**, where it was held that officials and Ministers of State may be held in contempt.
17. It is clear that the capacities in which the persons involved in the authorities cited above are official capacities and not spouses in a marriage. However, in **Holtz v Douglas and Associates (OFS) CC en Andere 1991 (2) SA 797 (O)**, the Court held that

just as in other crimes, a person can be found guilty of contempt as an accessory. This may include a spouse.

18. The First Respondent failed to give a proper explanation as to why she did not comply with the Court order 14 days after June 2006. In June 2008, the Second Respondent, acting on her behalf, communicated with the City of Tshwane and made an offer to evict the tenants on the premises as well as to pay the costs due to the Applicant. There is therefore no evidence implicating the Second Respondent as an accessory in regard to the conduct of the First Respondent in not complying with the Court order in the first two years after it was granted.
19. I find no factual or legal basis to hold the Second Respondent responsible for the execution of the Court order of 21 June 2006. In this regard I refer to **Consolidated Fish Distributors (Pty) Ltd v and Others 1969 (2) SA 517 (C)**.
20. In regard to the First Respondent, the Court order was issued, ordering her to execute a number of directives within 14 days after the date of the order. There is no explanation as to why there was failure to comply with the Court order between June 2006 and June 2008. For that reason, I find under the

circumstances that the First Respondent has acted wilfully and in *mala fide* and is therefore guilty of contempt of the Court order of June 2006. By failing to provide an explanation for her conduct during the first two years, she did not succeed to rebut the inference that she did not act wilfully and in *mala fide*. See Putco Limited v TV and Radio Guarantee Co. (pty) Ltd and other related cases *supra*.

In the premises I make the following order:

1. The application succeeds and the First Respondent is found guilty of contempt of the Court order of June 2006 issued by this Court;
2. A sentence of four (4) months imprisonment is imposed on the First Respondent, but wholly suspended for a period of two (2) years on condition:
 - (a) The First Respondent pays the costs of the 2006 application within a period of twelve (12) months from the date of this order; and
 - (b) The First Respondent is not found guilty of contempt of Court within the period of suspension.

3. The Second Respondent is found not guilty of the charge of contempt and is accordingly discharged;
4. The First Respondent is ordered to pay the costs of this application.

MOTHLE A J
22 September 2009