



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

**Case NO: 39035/2018**

|            |                                       |
|------------|---------------------------------------|
| (1)        | REPORTABLE: YES / NO                  |
| (2)        | OF INTEREST TO OTHER JUDGES: YES / NO |
| (3)        | REVISED: YES / NO                     |
| 08.08.2024 | [REDACTED SIGNATURE]                  |
| DATE       | SIGNATURE                             |

In the matter between:

**LIBERTY GROUP LIMITED**

Applicant

and

**BOB SIHLE MANO**

Respondent

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**ORDER**

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1. The forms and service provided for in the Uniform Rules of Court are dispensed with and the matter is dealt with as one of urgency.
2. The respondent is declared to be in contempt of the order of this Court granted by Maier-Frawley AJ on 30 October 2018 ("the 2018 Order").
3. The respondent is sentenced to 12 months imprisonment for contempt of the 2018 Order, wholly suspended for a period of 5 years on condition that

the respondent does not breach the 2018 Order during the period of suspension.

4. The respondent is declared to be in contempt of the order of this Court granted by Maier-Frawley J on 22 August 2023 ("the 2023 Order").
5. The suspended sentence of 10 months imprisonment imposed by Maier-Frawley J on 22 August 2023, is further suspended for a period of 5 years on condition that that the respondent does not breach the 2018 Order during the period of suspension.
6. The respondent is ordered to pay the applicant's costs on a party and party scale.
7. Service of this order on the respondent can be effected by email on the same email addresses the respondent used in his communication with the applicant.

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## JUDGMENT

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**WINDELL J**

### INTRODUCTION

[2] This is the third urgent application brought by the applicant (Liberty) to find the respondent (Mr Mano) in contempt of court. The applicant seeks an order that the respondent be declared to be in further and continued contempt of the order granted by Judge Maier-Frawley on 30 October 2018 ("the 2018 Order").

[3] The 2018 Order was granted after the applicant launched an urgent application against the respondent, in which it sought an interdict against the respondent to interdict and restrain the respondent from:

1. Sending vulgar, obscene, abusive, threatening or derogatory correspondence to the applicant and its employees including but not limited to its Chief Executive Officer, Chief Marketing Officer and other members of its executive management team (“the applicant’s employees”).
2. Making verbal and physical threats against the applicant, the applicant’s employees or their families.
3. Causing physical harm, either directly or indirectly to the applicant, the applicant’s employees or their families.
4. Defaming or making untrue statements about the applicant or the applicant’s employees.

[4] The respondent did not oppose the application and the order was granted in terms of the relief prayed for in his absence. On 31 October 2018, the Sheriff of this Court served the 2018 Order on the respondent personally at his residential address.

[5] The respondent was subsequently found to be in contempt of the 2018 Order on two occasions. On 7 February 2019, Mahalelo J found the respondent to be in contempt of the 2018 Order and ordered the respondent to be imprisoned for a period of 6 months, suspended for a period of 1 year, provided that the respondent complied with the 2018 Order (“the 2019 Order”). The respondent was present in court when the 2019 Order was made. On 22 August 2023 Maier-Frawley J found the respondent to be in contempt of the 2018 Order and ordered that the respondent be imprisoned



for a period of 12 months, 10 months of which were suspended for a period of 5 years provided that the respondent did not breach the 2018 Order during that period ("the 2023 Order"). The respondent filed no answering papers and was not present in Court when the order was granted.

[6] It is alleged by the applicant that notwithstanding these orders, the respondent has persisted in his ongoing contempt of the 2018 Order. As a result, the applicant seeks an order that the remaining, suspended period of 10 months of the 2023 Order be imposed on the respondent and that he be committed to jail for this period. In addition, and given the persistent, ongoing and continued breach by the respondent of the terms of the 2023 Order and his ongoing unlawful conduct, the applicant seeks an order that a further period of 12 months of imprisonment, or such period as this Court deems appropriate, be imposed on the respondent. The applicant further seeks an order that the respondent pay the costs of this application on the scale as between attorney and client.

[7] The applicant submits that the circumstances of this application, namely the ongoing contempt by the respondent of the terms of the 2018, 2019 and 2023 Orders, and his ongoing '*threatening, vile and lewd emails*', justifies the bringing and determination of this application as one of urgency. I am satisfied that the matter is sufficiently urgent, justifying a hearing in the urgent court.<sup>1</sup>

[8] At the time of the hearing of the application the respondent was serving the two-month jail sentence imposed by the 2023 Order at the Department of Correctional Services, Boksburg. He was brought to urgent court under requisition made to the

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<sup>1</sup> Ongoing contempt of a court order has been held to introduce an element of urgency to the proceedings. See *Victoria Park Ratepayers' Association v Greyvenouw CC; Protea Holdings v Wriwt and another* [2004] 3 All SA 623 (SE).

Department of Correctional Services and conducted his own defence during the urgent court proceedings.

[9] The respondent filed answering papers and addressed the court orally. It is clear from his answer and oral submissions that he is aware of all three court orders granted against him. More specifically he does not dispute the service of the 2018 Order or the 2023 Order on him as well their contents.<sup>2</sup> The respondent acknowledges that he sent the emails, but he denies that he violated the 2018 Order. This is because the emails were sent to other recipients rather than the applicant. He acknowledges the contents of the emails and contends that all the remarks he made was accurate, and as a result, it was not defamatory, harassing, or objectionable. He therefore places in dispute that he willfully disobeyed the order.

[10] After the hearing of the matter, Mr Mano requested permission to file a further answering affidavit. His request was granted, and his supplementary answering affidavit was received by this court on 8 July 2024. On 12 July 2024, the applicant informed the court that it will not be filing any further affidavits in response to the supplementary affidavit.

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<sup>2</sup> The second contempt application was served on the respondent via email. After the granting of the Maier-Frawley J Order, this Order was similarly served on the respondent by email on 23 August 2023 to his various email addresses in accordance with the Order of Maier-Frawley.

## THE BREACH

### The applicant's case

[11] Ms Chantal Meyer, the Legal Specialist – Group Legal Services employed by the applicant deposed of the founding affidavit in support of the application.

[12] Ms Meyer avers that despite having been found to be in contempt of court twice and having been sentenced to a period of direct imprisonment, the respondent has:

1. Persisted with his '*derogatory and abusive emails*' directed at the applicant and its representatives and continues to act in breach of the 2023 Order.
2. Escalated his '*abusive and threatening conduct*' with his latest emails containing threats of harm and death to representatives of the applicant.
3. Continues to target the applicant's attorneys of record, Moodie & Robertson and Mr German of that firm by sending numerous emails. This is in direct contravention of the terms of the 2023 Order in that the emails defame or make untrue statements about the applicant.
4. On several occasions the respondent has expressly instructed Moodie & Robertson to forward his emails to its client, the applicant, which is a clear intention on his part for his emails to come to the attention of the applicant.
5. The respondent has also made attempts to contact the applicant's employees directly and to send emails directly to them. These emails similarly contain '*defamatory and obscene statements*' and utterances in breach of the terms of the 2023 Order. In an attempt to protect its employees, the applicant has placed a block on emails coming from email addresses which are recognisably connected to the respondent.



6. Upon realising that he has been blocked from sending emails to employees of the applicant, the respondent has created multiple different email addresses in an attempt to ensure that his obscene and offensive comments and threats would come to the attention of the applicant. This is a clear and deliberate campaign by the respondent to breach the terms of the 2023 Order, notwithstanding the subsequent findings of contempt by Mahalelo J and Maier-Frawley J.
7. The respondent's current list of email recipients, who are copied on '*his vile and defamatory content*' totals some 500 people.

[13] It is alleged that the respondent has sent hundreds of emails in contravention of the 2018 and 2023 Orders between the service of the 2023 order on 23 August 2023 and his date of incarceration on 20 May 2024 (to serve the two months' imprisonment imposed on him in the 2023 Order). These emails continued on a daily basis. Some of the emails sent by the respondent was attached to the applicant's founding affidavit in support of the application. They are referred to below.

[14] In an email dated 21 September 2023 the respondent addressed an email to over 60 (sixty) recipients, including employees of Standard Bank, Capitec Bank, Sanlam, Discovery and others stating *inter alia* that: "*Ms Yvonne Perumal and her legal team are nothing but frauds*". Ms Perumal is the applicant's Head of Legal.

[15] The following day, 22 September 2023, an email was addressed to Moodie & Robertson and to Ms Meyer. This email is again addressed to over 60 (sixty) respondents and contains the following: "*This is not the first time Liberty and its lawyers have assaulted the dignity of my phallus.....I do remember asking Mr. Maharaj*

*for his blessing, courting his daughter...I do remember mentioning that motherhood becomes her nicely."*

[16] The applicant alleges that this email is a clear reference to earlier emails which formed the subject matter of the second contempt application referring to Mr Maharaj, the applicant's CEO and the respondent's sexual threats directed at Mr Maharaj's daughter ("K) which resulted in the granting of the 2023 Order. The email contains further content, *inter alia*: "*The girls like variety, sometimes, a bit of aggression gets them to enjoy the sex act more....Other times, the girls like the gentle strokes....If Mano's sex partner dumps him because he cannot perform he will be on you case.*"

[17] A further email is addressed on 23 September 2023, again containing over 60 (sixty) recipients, including the CEOs of various prominent companies wherein the respondent states *inter alia* that: "*I wanna clap the p\*ss out of that Yuresh chap.*" The applicant alleges that this is a reference to the applicant's CEO and is a threat of physical violence against him. In another email addressed to some 90 (ninety) recipients on 25 October 2023, the respondent states *inter alia* that: "*Yes, that's right, Liberty has pictures of Mr. Mano that the Legal Head Ms. Prumal looks at while pleasuring herself. Sies.*"

[18] The applicant claims that the Forensics department of the applicant made numerous attempts to locate the respondent during this period in order to enable the SAPS to apprehend him in order to enforce the 2023 Order and take the respondent into custody. This proved to be a challenging endeavour; however, the applicant's Forensics team was able to locate the respondent at an address in Benoni, where he was visiting his fiancée, on Sunday, 21 January 2024. Subsequently, the SAPS was contacted by the forensics team to facilitate his apprehension.



[19] The SAPS apprehended the respondent and transported him to Modderbee Prison to serve his sentence. Nevertheless, the individual in charge informed the respondent that fingerprint identification would be necessary to process and imprison him upon his arrival at the prison. He was unable to confirm the respondent's identity in the absence of the specific fingerprint identification forms, and as a result the respondent could not be processed and imprisoned without this identification.

[20] The respondent was then taken back to the Benoni police station, but the police refused to render any assistance and to provide the necessary fingerprint identification forms. The respondent was then transported to the Hillbrow police station where charges of *crimen injuria* had previously been instituted against him by the applicant. He was held at the Hillbrow police station overnight and was then taken to the Hillbrow Magistrates Court the next morning.

[21] The Senior Prosecutor at the Hillbrow Magistrates Court declined to prosecute the respondent for the *crimen injuria* charge, asserting that there was insufficient evidence to warrant criminal prosecution. The prosecutor and officials at the Hillbrow Magistrates Court also declined to provide any assistance or take any action to enforce the 2023 Order and the arrest warrant issued in its wake, and the respondent was subsequently released.

[22] It is alleged that the arrest and temporary detention of the respondent did not have any deterrent effect on the respondent. On 25 January 2024 his email campaign resumed until he was finally again apprehended on 17 May 2024 and taken to the Boksburg Department of Correctional Services to serve his sentence in terms of the 2023 Order.

[23] In his email of 25 January 2024, again addressed to over a hundred people, the respondent refers to the SAPS warrant as an abuse of power, refers to his arrest experience in January, and ends off his email by saying: *"These lying Execs will flop, because they can't stop lying. ...Having given them enough rope, they continue in sin. ...I will just continue my journey, ...Continue to win....Til I reach the top, ...Mano on the cover of the Forbes Magazine."*

[24] On 26 January 2024, the respondent sent an additional email to his extensive list of recipients. Subsequently, he has sent over one hundred (100) emails to said recipients.

[25] In an email addressed to several recipients, *inter alia*, the Association for Savings and Investment South Africa ("ASISA") the respondent states: *"I would like for you as ASISA Chair to mediate between myself and your two previous CEOs. If you have communicated with the two, then you know just how serious this Liberty Vs. Mano debacle is....ASISA is implicated in this embarrassing racial incident. ...I have a number of theories. Theories about Liberty's hand in preventing and thwarting my purposes at the ASISA offices"*.

[26] The applicant's CEO is referenced in an email sent by Mr Mano on 1 February 2024, in which he states: *"You know I have made calls for Mr Yuresh Maharaj to be ostracized from his community. "The man is done."* He then continues to engage Mr. Maharaj's children and asserts: *"When I think of sexy Indians, Sashi Naidoo, and Maharaj's daughter [K.] come to mind. When I think of Indians that should be banned from wearing moccasins, that fellow with his side kick Yvonne come to mind."* The reference to "Yvonne" is a reference to the Yvonne Perumal (applicant's Head of Legal), whom it is alleged the respondent has previously targeted.



[27] In an email dated 6 February 2024, the respondent posted links to the LinkedIn profiles of Ms Perumal, the applicant's CEO, Mr Maharaj, the applicant's Market and Communications Executive, Mr Thabang Ramokgasi, his predecessor Mr Sydney Mbhele as well as the applicant's Group Sales Director, Mr Johan Minnie and proceeds to make the following comments about these executives: : *"Perumal must think that resolving conflicts with members of the public involves resorting to having them tailed, and getting their pictures taken while trespassing on private property."* He then goes on to state that Mr Maharaj is *"a man who can't spell INTEGRITY".*

[28] In an email dated 13 February 2024, Mr Mano states the following:

*"When can Mr Mano meet with M & R, the firm that refuses to unfreeze bank accounts when the money to pay legal fees is available? When? How many years has this firm and its hungry client known that I have no access to my FNB? Sickening diseased filthy immoral blood sucking parasitic beings. When will Liberty and its CEO who puts his own daughter in harm's way compromising her safety, taking chances with strangers, stop being p\*ssies?"*

[29] In an email dated 16 February 2024 the respondent refers to Mr Maharaj's daughter, in the following manner:

*"Mr Yuresh Maharaj, I trust you and the Maharaj family are well. You may be wondering how on earth I managed to locate Princess [K] <https://www.applicant.co.za/media-insights/one-to-one-with-applicant-ceo-yuresh-maharaj>*

*... How many Maharaj women play tennis? You know, after yesterday's email messages were sent, I discovered I had been blocked by a few individuals.*

*Ooooh, I must have crossed the line.*

*Ooooh, some sensitive individuals could not take the heat I was bringing.*

*I took it to the streets.*

*I really should have mellowed with age.*

*The phones were ringing only yesterday after the [K] talk.*



*Liberty has not changed after all these years.*

*When I talk about women from other races, I get quite a response.*

*At least this time you are not labelling me a rapist.*

*The outrage.*

*"How dare he talk about his royal phallus."*

*I did not realise I was emailing prudes.*

*Virgins!*

*Mr. Maharaj, I think everyone copied just feels sorry for you.*

*I mean, you left me no other option.*

*That was some brutal stuff you had to read about [K.]*

*Look Yuresh, my intentions are good, your daughter needs a guy like me.*

*And I have always been close to my would be fathers-in-law.*

*What I am getting at is, I would like your blessing before I begin to court the lady.*

*I took it to the streets.*

*I think I owe you an apology.*

*Sorry man.*

*That was some vulgar stuff.*

*I really have to watch my emails.*

*The other Venda man who got in trouble after sending emails was my Uncle Cyril.*

*Liberty just has taken away too much from me.*

*The day I start talking about my personal life, and how your company's misdeeds have affected me, you might just break down in tears.*

*But pity is something I avoid.*

*And Black people in South Africa do not have emotions.*

*We are savages, Kaff\*rs even!"*

[30] In another email on 28 February 2024, the respondent refers to the applicant's alleged imitation of the respondent's banner, which formed the subject of the applicant's initial interdict against the respondent and resulted in the granting of the 2018 Order. He goes on to again address Mr Maharaj and states:

*"Greetings Mr. Maharaj,*

*Last week I spoke about being credulous.*

*Why is Liberty threatening me, a youth, with imprisonment, in the month of June?*

*I just opened an email from Inge van der Mescht.*

*I would like you to instruct your marketing people/the law firm to release the image of the Liberty banner that was imitated.*

*The ARB has been waiting for this image to start their investigation since the beginning of this year.*

*Would Liberty rather I messaged the ARB, saying your organisation is issuing threats of heavier sentences for contempt of court?*

*You would rather threaten me, than send an image of a banner to the authorities for investigation?*

*Unacceptable behaviour Mr. Maharaj.*

*Yuresh, I asked you to go over the contents of the Re: LIBERTY GROUP LIMITED//// CASE NO: 18/39035.*

*After I clearly highlight what I am requesting from your organisation, you thought threatening me would be the solution?*

*Unacceptable behaviour Mr. Maharaj.*

*I will not be intimidated by your lawyers.*

*I will be briefing my Uncle Cyril's Cabinet, and the other CEOs on the 30th of June.*

*I would appreciate it if you received my regular briefings on the PPP. Yuresh, what will Liberty tell SA, when it is asked why it is the only life company that is not part of the #FeesForAll industry wide initiative?*

*Now your lawyers might have studied modules related to criminal psychology. This area covers human aggression which can be both passive and active. The behaviour is characterised by the intense and disorganised emotion of anger. Liberty has B\*b in an aroused state elicited by frustration.*

*After being thwarted, aggression is a natural, almost automatic response. Are you familiar with the frustration-aggression hypothesis?*

*Stop agitating me and have your lawyers either set up a meeting to discuss the unfreezing of my assets, the omitted emails in the batch presented to the High court, the trespassing of a Liberty employee on my property taking my picture....*

*The offences are too many, I should be the one threatening you with imprisonment. Why are you denying me the opportunity to share my side of the story? Doesn't every story have two sides?*

*You will contact Inge and ask her to email the Liberty banner to yasmin@arb.org.za <mailto:yasmin@arb.org.za> .*

*You will also start to ask around for a new firm to take up the Liberty business.*

*Enjoy the rest of your day*

*M\*NO".*

[31] On 12 March 2024, the respondent addressed a further email to a list that now comprises over four hundred (400) recipients, where he ostensibly addresses the senior leadership of Standard Bank alleging, *inter alia*, that the affidavit which the applicant produced in proceedings before this Court is "*replete with lies*". He accused the applicant and its attorneys of having committed perjury and makes an allegation



that “Minnie and Munro signed a document alleging that I made a rape threat and all manner of b\*ll.”

[32] The applicant alleges that neither Mr Minnie nor Mr Munro – the former CEO of applicant – signed any documents in the proceedings which were instituted against the respondent or made any such allegations. The respondent goes on to state that “The lawyers have not learnt from what I have described, just recently it was alleged I made remarks of a violent nature directed at family members.”

[33] On 22 March 2024, Mr Mano addressed a further email to his list of recipients, stating *inter alia*: “Even now, my anal sphincter muscles are sore. Speaking of ass\*les, we have to talk about Liberty, the Standard bank subsidiary.” The respondent then goes on to accuse the applicant of hacking his Facebook account and continues to make certain sexual statements.

[34] In the past few weeks, the respondent has allegedly begun to escalate his rhetoric, reaching disturbing levels. On 24 April 2024, the respondent addressed an email to Mr Sim Tshabalala (CEO of Standard Bank) and Mrs Nonkululeko Nyembezi (Chairperson-designate at Standard Bank Group and Standard Bank) in which he states, *inter alia*: “To think I once considered you to be people worth emulating.... Take it from me, you and every Black on Liberty and SBK’s EXCO an absolute disgrace....6 months? The Liberty c\*cksucking unevolved retarded diseased hungry parasitic demonic f\*cks are doing this and you as Chairperson and CEO have done nothing.”

[35] This was followed-up by an email on 4 May 2024 which was addressed to Moodie & Robertson. In this email the respondent directs certain statements to Mr German of Moodie & Robertson, stating *inter alia*:

*"Masero to Peru*

*Johannesburg to London.*

*Mano is a Big Boy CEO*

*Ary, who the f\*ck is you?*

*The fact that even after things have come this far, and you remain unrepentant shows me you are a little b\*tch!*

*Ary, who the f\*ck is you?*

*I have b\*tches in Buccleuchk, and they are all beautiful.*

*Maseru to Peru.*

*Looking at M & R, the sight is pitiful.*

*M & R can forget about receiving a cent in legal fees.*

*Keep trying Mano and he will have your woman's scent on his golf tees.*

*M & R? I do not owe them*

*Your retard client can suck my penis.*

*That's what I said in my last poem.*

*And when they do, they must swallow.*

*It's Mano!*

*I am a Big Boy and you know it's true*

*Who the f\*ck is you?*

*Nobody even noticed you.*

*Doing the devil's work,*

*You little b\*tch.*

*You little fool.*

*Looking at M & R, the sight is pitiful.*

*It's like the Titanic.*

*Their works were satanic.*

*Mano is not laughing at these clowns.*

*Ary, you are not Leon Schuster, and this is not Panic Mechanic."*

[36] On 10 May 2024, the respondent addressed a further email to his recipient list, now nearing 500 (five hundred) recipients. In this email he states *inter alia* that:

*' Yuresh Maharaj is no father.*

*And Lizelle Van Der Merwe is not a b\*tch.*

*That label is for Mr. Maharaj.*

*Mr. Maharaj, is the b\*tch.*

*And my tongue will walk on his daughter's vagina. 😊*

*Because he refuses to walk away from Mano accepting defeat.*

*Mano's Cunnilingus will make the girl the happiest in her group.*

*If he sees his girl smile, he must also remember who put that smile there."*

[37] Several days later, on 13 May 2024, the respondent addressed a further email to his recipient list. In this email he accused the applicant of having done something to his Facebook password. The respondent proceeds to state the following: *"You have up until 14:00 to have the female white Forensics employee send me the new Password. Mr Maree, this is your first step in sorting out this terrific mess. How familiar can one be? The FB was accessed at 1:28 PM, less than an hour after I sent an email talking about my FB at 12:04 The employee is needs to hand over the Password before 14:00 PM today. Jaco, I do not want to be messaging you at 14:00 calling you a Fat Fuck. Ignore this, and you will meet Chris Hani. I actually was feeling like Chris Hani*



*as I jogged from the Boksburg Police station right up to the court .I am in the best shape. Chris Hani is said to have jogged on these very same streets. Jaco, I do not want to be seated in front of this computer typing about how badly you too need to take up jogging."*

[38] Jaco is a reference to Mr Jaco Maree, the former CEO of Standard Bank. The applicant alleges that the email constitutes a death threat to Mr Maree.

### **Mr Mano's response**

[39] It is evident from the contents of his answering affidavit that Mr. Mano has maintained an ongoing and contentious relationship with the applicant since 2017. The source of his grievance is the slogan on banners used by the applicant in an advertising campaign. He accuses the applicant of using his words on the banners and in the advertising campaign without his consent. As a result, he demanded that he be given credit for the campaign idea which seemingly included compensation from the applicant, but the applicant declined to "cooperate" or to submit to the Advertising Regulatory Board and instead advised him to "speak to their lawyers". He therefore decided to correspond with the applicant via email in order to resolve the matter. The applicant, however, instead of engaging with him, ignored his emails and responded by approaching the court in 2018 and obtaining an interdict against him (the 2018 Order).

[40] The majority of Mr. Mano's answering affidavit, however, pertains to the events surrounding his initial arrest on 17 January 2024 and his subsequent arrest on 17 May 2024, which he characterises as "an awkward sequence of events." He claims that he was sceptical of the applicant's email (in which he was informed of the warrant for his arrest), which purportedly contained a warrant. He has observed the applicant's

dishonesty before and concluded that the “search” for him were simply another fabrication.

[41] He asserts that his emails serve as a form of therapy and that he manages his trauma by articulating his experiences in writing. He states that the applicant's motivation is evident, and the court is being exploited as a pawn by issuing orders in an effort to stifle or silence him. He describes the orders as "crafty legal devises" designed to prevent him from exposing the applicant. He claims that the 2018 Order was obtained through deception because the applicant made wilful and intentional fraudulent statements under oath in order to persuade the court to grant the 2018 Order. He avers that the 2018 order is therefore deemed invalid and demands an explanation from the applicant about the acquisition of the arrest warrant and order in the absence of any evidence. According to him, the email with the threat of imprisonment was intended to intimidate him. He alleges that the applicant has also infiltrated his Facebook and Messenger accounts.

[42] The respondent says he is a poet and a writer of erotic literature. As a result, it is imperative to interpret his emails in this context and refrain from quoting them out of context. He employs sarcasm, which the applicant is unable to fully understand. The respondent claims that the applicant is only complaining about the contents of his emails because it is offended by his romantic interest in a woman of Indian descent (referring to Mr Maharaj 's daughter). He states that it is not unlawful to experience sexual desire (“get horny”) and sexual intercourse is certainly not “vile”, as the applicant expressed.

[43] He therefore objects to the fact that his sexual comments in the emails are referred to as “vile sexual threats or remarks of a violent and sexual nature”. He asserts



that the applicant intentionally quotes him out of context. In this regard he makes the following comment: *"Where do you get off disrespecting Blackmales by insinuating that we are rapists? In what world does a rapist request parental blessing to court the victim?"*.

[44] The respondent states that the applicant could have resolved the dispute between them with a single phone call. He was however ignored. He therefore sought the assistance of other parties to put pressure on the applicant to engage with him. He contends that the order does not forbid him from seeking the assistance of other parties, as the applicant is incapable of ethically resolving the conflict. He however denies that he sent emails every day, and remarks that he "sometimes took weekends off".

[45] The respondent denies that he made any threat of violence. He states that he did not intend to threaten Mr. Maree when he mentioned Chris Hani; rather, he cited Chris Hani's statement in an interview regarding *'making things painful for the oppressor.'* In this instance, the applicant is his oppressor. To say, *'ignore this and you will meet Chris Hani'* is therefore not about *"sending the overweight deputy Chair Mr Maree to the next life"*. It was rather a reference to the guerrilla tactics employed by MK (uMkhonto weSizwe).

[46] He states that it is a disgrace that the CEO of the applicant ignored his communications. For instance, on 23 August 2023, he sent an email to Moodie & Robertson enquiring whether they had proceeded with the contempt application that was scheduled for 22 August 2023. He did not receive a response. He maintains that he is not disparaging the applicant, but rather exposing them.



[47] He accuses the applicant from employing sensational language in the affidavit and asserts that the deponent's account of his emails is solely her personal opinion and the applicant's interpretation of his intentions is predicated on pure speculation. The applicant is accused of "cherry picking" from the correspondence, which the respondent describes as "crafty work.". He complains that the applicant should have provided all the emails to the court. He then specifically refers to a chain of emails titled "*Re: Mano again crushes Liberty*" and complains that not all the mails in this chain were presented at court. In those emails he speaks about his arrest on 21 January 2024 after purchasing cannabis. He then refers to one of the emails in the chain dated 25 January 2024, addressed to numerous recipients in including Mr and Ms Appelbaum (the daughter of the founder of the applicant, Mr Donald Gordon), in which he said, amongst other things, the following: "*I want you to explain what is going on. Why was I released. There was no case huh? Explain the case and ruling*".

[48] The respondent maintains that none of the orders were violated. It is his contention that the applicant is attempting to neutralise him by obtaining costs orders against him. He then poses the following question: "*When it is discovered that Liberty wilfully and intentionally made false statements under oath to persuade the court to grant the 2018 Order, does the said order retain its "powers"? Do the warrants effected by the order remain legitimate?*" The respondent then refers to an email he sent to Moodie & Robertson on 30 November 2023, in which he copied several Ministers in which he stated the following:

*"Greetings M& R. Can you lawyers respond? I will never be fazed by your faux warrant. Minister Cele and Lamola (copied). There will be no Apartheid arrests in my Uncle Cyril's land. You lot do not get tired of losing. And I want to know what you lot did with the erotic piece I sent your firm in which I describe a graphic Interracial love scene. It was not presented in the batch submitted to the High Court. The sex story in which I play the protagonist. Why did you*

*lawyers omit it from the emails submitted to the court'? Can I answer that question for you? But before I do. M & R, it has been years of not having access to my bank account, which you froze. Why did you lawyers refuse to assist me when I asked for you to engage to make payment arrangements for legal fees owed. The African Legal Awards (Copied). Has Ms. Yvonne Perumal returned the award she received? The individual is capable of perjury. Being exposed is not punishment enough. She ought to return the award. I wrote an erotic piece to make a point. And that point was, the consensual sex act may occur between two people of different races, and just because a male is Black does not mean that the intercourse would be forced, or with the element of rape But M & R never learnt from this incident, you again imagine some violent act when I speak about a female from another racial group. Clumsy Racists! This is my Uncle Cyril's land! BM"*

[49] Finally, the respondent repeats that Ms Perumal and her legal team are nothing but frauds but contends that such statement is not in breach of the order because it is the truth. He states that he is a religious/devout person and wants to perform an exorcism on the applicant's employees. He also mentions receiving medication for his bipolar disorder.

## THE LAW

[50] In order to succeed with an application for contempt *ex facie curiae*, the appellant needs to prove the order; service or notice of the order; non-compliance; and because the contempt relief it seeks is punitive, wilfulness and *mala fides* beyond reasonable doubt.<sup>3</sup> Once the applicant has proven the essential requisites, the

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<sup>3</sup> In *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* 2018 (1) SA 1 (CC) the Constitutional Court summarized the position as follows: "[67] Summing up, on a reading of *Fakie*, *Phoko*, and *Burchell*, I am of the view that the standard of proof must be applied in accordance with the purpose sought to be achieved, or differently put, the consequences of the various remedies. As I understand it, the maintenance of a distinction does have a practical significance: the civil contempt remedies of committal or a fine have material consequences on an individual's freedom and security of the person. However, it is necessary in some instances because disregard of a court order not only deprives the other party of the benefit of the order but also impairs the effective administration of justice. There, the criminal standard of proof — beyond reasonable doubt — applies always. A fitting example of this is *Fakie*. On the other hand, there are civil contempt remedies — for example, declaratory relief, *mandamus* or a structural interdict — that do not have the consequence of depriving an individual of



respondent bear an evidential burden in relation to wilfulness and *mala fides*. Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and *mala fide*, contempt will have been established beyond reasonable doubt. See *Fakie NO v CCII Systems (Pty) Ltd*.<sup>4</sup>

[51] It is not in dispute that the first two requisites, namely the existence of the 2018 and 2023 orders, and service or notice of the orders have been established by the applicant. As far as the non-compliance with the order is concerned, the emails speak for themselves.

[52] Paragraph 1 of the 2018 order prohibits the respondent from sending vulgar, obscene, abusive, threatening or derogatory correspondence to the applicant and its employees including but not limited to its Chief Executive Officer, Chief Marketing Officer and other members of its executive management team.

[53] Firstly, the emails were sent after the 2023 Order was granted and served on the respondent, which is a clear violation of the 2018 Order as well as the suspended sentence imposed in the 2023 Order. Secondly, the contents of several of the emails are clearly abusive, vulgar, offensive and of defamatory nature towards the applicant and its employees. Additionally, some of the email also contains offensive and lewd remarks directed at Mr Maharaj's daughter, whom the respondent has been targeting consistently in his correspondence and whom he appeared to be stalking on social media. The respondent's justification for making these remarks, which is that they are

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*their right to freedom and security of the person. A fitting example of this is Burchell. Here, and I stress, the civil standard of proof — a balance of probabilities — applies.*

<sup>4</sup> 2006 (4) SA 326 (SCA) at [42].



the truth and that he has a romantic interest in “K”, does not hold water as he is explicitly prohibited from making any such remarks by paragraph 1 of the 2018 Order.

[54] During the hearing I explained to the respondent that he has alternative routes to pursue Liberty if he is dissatisfied with their actions. He indicated that he would refrain from continuing the email campaign and consider other avenues to resolve his dispute with the applicant. He also admitted during the hearing that his comments regarding Mr Maharaj’s daughter and women in general were objectively vulgar and inappropriate and he apologised for his actions.

[55] Thirdly, the respondent is aware that the order prohibits him from sending abusive, vulgar, offensive and defamatory communications to Liberty. He therefore acknowledges that he, instead, sent the emails to a variety of recipients, sometimes exceeding 500, in order to exert pressure on the applicant. He also sent several of the defamatory emails to the applicant’s attorneys Moodie & Robertson and to Ms Perumal. Consequently, it is clear that he desired the applicant to be aware of the correspondence. This is the reason why certain emails addresses Mr. Mahara directly, despite not being explicitly sent to him.

[56] The respondent was directly violating the order by sending the emails to the applicant's attorneys (who serve as the applicant's agent) and to Ms Perumal, the applicant's Head of Legal. Additionally, by sending the emails to numerous recipients, the respondent was indirectly communicating with the applicant, in contravention of the 2018 Order.

[57] Fourthly, the respondent indicated that he believes he is entitled to ignore the 2018 Order and subsequent orders, claiming they were obtained through perjury. After engaging with the respondent, I am satisfied that he understands a court order must

be obeyed until it is set aside, irrespective of whether he feels that the order is wrong. It also became clear that the respondent's decision to pursue the applicant via email, rather than instituting legal action for damages, stems from his belief that attorneys cannot be trusted, and that legal action would be a waste of time and money. I emphasised to the respondent that his actions have yielded only an interdict against him, two verdicts of contempt, and imprisonment. This has been the case for nearly seven years. In my view, he now understands that sending emails to the applicant is unproductive and does not bring him any closer to a satisfactory outcome.

[58] Fifthly, in two of the emails attached to the founding affidavit, the respondent threatened Mr Maharaj and Ms Perumal with physical harm. This is a contravention of paragraph 2 of the 2018 Order, which states that he is interdicted from making verbal and physical threats against the applicant, the applicant's employees or their families.

[59] I will, however, grant the respondent the benefit of the doubt in relation to the "death threat" to Mr. Maree. If the email containing the phrase *"ignore this, and you will meet Chris Hani"* is interpreted in context, it may connote a different connotation. The respondent elucidates in this email and in his response affidavit that he perceives himself as Chris Hani, who is engaged in a struggle against the oppressor. As a result, I am unable to determine whether or not he violated the order in this instance.

[60] In conclusion, after considering the defences raised by the applicant. I am satisfied that he wilfully and deliberately breached the 2018 Order and the 2023 Order. Until his rearrest on 17 May 2024, the respondent was sending emails to this extended list of some 500 people on a daily basis, sometimes sending two or three emails in one day. These emails clearly demonstrate further and ongoing contempt of Court by the respondent. They also indicate that the respondent had no intention of abiding by



the terms of the 2018, 2019 or 2023 Orders, that he was not taking it seriously, and that he was willing to continue to breach these orders notwithstanding the fact that the 2023 Order imposed a custodial sentence on him.

[61] The respondent's ongoing defamatory and derogatory assaults against the applicant are extremely detrimental to its business and reputation. The applicant's reputation, as well as the physical and mental well-being of its senior staff members, associates, and their families, are adversely affected by the transmission of these emails to representatives of other prominent business institutions, regulatory bodies, and government departments.

[62] If a person fails to comply with a court order, such person can only be found guilty of contempt, if it is shown the he or she acted "deliberately and *mala fide*".<sup>5</sup> Given that the non-complier may have believed, in good faith, that they were entitled to act in the manner that is alleged to constitute contempt, deliberate disregard of a court order must be associated with an element of *mala fides*. Moreover, an objectively unreasonable refusal to comply with an order may not constitute contempt in the absence of *mala fides*.

[63] It has however also been held that while mere non-compliance with the terms of a court order may not constitute contempt of court *per se*, sustained disregard and flouting of the order could constitute contempt as it could be calculated to injure and diminish the authority and status of the court.<sup>6</sup> In *Fakie supra*, Cameron JA remarked that "*once the three requisites mentioned have been proved, in the absence of*

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<sup>5</sup> *Fakie N.O. v CCII Systems (Pty) Ltd (supra)* at 333B-D; *Frankel Max Pollak Vinderine Inc v Menell Jack Hayman Rosenberg & Co Ltd* 1996 (3) SA 355 (A); *Jayiya v Member of the Executive Council for Welfare, Eastern Cape* 2004 (2) SA 611 (SCA); *Noel Lancaster Sands (Edms) Bpk v Theron en Andere* 1974 (3) SA 688 (T) at 691A-692G.

<sup>6</sup> *Fakie N.O. v CCII Systems (Pty) Ltd (supra)* at 334B; *S v Beyers* 1968 (3) SA 70 (A).



*evidence raising a reasonable doubt as to whether the accused acted wilfully and mala fide, all the requisites of the offence will have been established. What is changed is that the accused no longer bears a legal burden to disprove wilfulness and mala fides on a balance of probabilities, but to avoid conviction need only lead evidence that establishes a reasonable doubt."*

[64] None of the defences raised by the respondent have established a reasonable doubt that his actions were not mala fide and wilful. I am thus satisfied that the applicant has discharged its onus in proving the contempt. The respondent's explicit intention to disregard the orders of this Court and to treat them with the utmost contempt is evident in the overwhelming volume of emails he has sent to numerous recipients. He is beyond reasonable doubt guilty of contempt of the court orders.

[65] The next issue is the sanction that must be imposed. The main objective of contempt proceedings is to vindicate the authority of the court and coerce litigants into complying with court orders.<sup>7</sup> In *Victoria Park Ratepayers' Association v Greyvenouw CC and Others*,<sup>8</sup> Plasket AJ, (as he then was) said the following with regards to compliance with court orders by the state.

"When viewed in the constitutional context that I have sketched above, it is clear that contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. In this sense, contempt of court must be viewed in a particularly serious light in a constitutional State such as ours that is based on the democratic values listed in section 1 of the

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<sup>7</sup> *Meadows Home Owners Association and Others v City of Tshwane Metropolitan Municipality and Another* 2015 (2) SA 413 (SCA) at [16].

<sup>8</sup> [2004] 3 All SA 623 (SE) at [23].

Constitution, particularly those of constitutional supremacy and the rule of law. Contempt of court is not merely a means by which a frustrated successful litigant is able to force his or her opponent to obey a court order. Whenever a litigant fails or refuses to obey a court order, he or she thereby undermines the Constitution. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest.”

[66] The purpose of the imposition of the penalty of committal (whether suspended or not) or, alternatively, a fine, is therefore clearly aimed at ensuring compliance with the order and deterring further contempt by the respondent. In *Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Jacob Gedleyihlekisa Zuma*,<sup>9</sup> Khampepe J remarked that there is, however, a distinction between coercive and punitive orders: She stated as follows:

“there is a distinction between coercive and punitive orders...A coercive order gives the respondent the opportunity to avoid imprisonment by complying with the original order and desisting from the offensive conduct. Such an order is made primarily to ensure the effectiveness of the original order by bringing about compliance. A final characteristic is that it only incidentally vindicates the authority of the court that has been disobeyed. Conversely, the following are the characteristics of a punitive order: a sentence of imprisonment cannot be avoided by any action on the part of the respondent to comply with the original order; the sentence is unsuspended; it is related both to the seriousness of the default and the contumacy of the respondent; and the order is influenced by the need to assert the authority and dignity of the court, to set an example for others.”<sup>10</sup>

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<sup>9</sup> *Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Jacob Gedleyihlekisa Zuma* 2021 (5) SA 327 (CC).

<sup>10</sup> At [47].



[67] The applicant seeks direct imprisonment of the respondent. I, however, have a different view of the matter. Although contempt of court is a common law crime, one of the objects of contempt proceedings is to get him to adhere to the court order. In the present matter I am of the view that it is the principal object. A court should be loath to restrict the personal liberty of the individual in matter of this kind.<sup>11</sup> The respondent has now had the experience of being sent to prison for his actions. In his answering affidavit he expressed his shock and disbelief that it had come to that. I do not believe that a purely punitive order would be appropriate under the circumstances, or that it would be just and fair to impose direct imprisonment and put the suspended sentence in operation at this stage. I believe so, in the hope that his experience in prison had a salutary and sobering effect on the respondent and that he will be able to turn over a new leaf.

[68] The sentence that I impose will hopefully deter the respondent from further breaching the 2018 order and ensure that he desist from and do not repeat his conduct.

[69] I have been informed that the respondent was released from prison on 20 July 2024. It has been exceptionally difficult for the applicant to locate the respondent to effect personal service of applications on him. The respondent is exceptionally active on email, which he uses as his main tool to communicate. I am satisfied that service can be effected on him by way of email.

[70] In the result the following order is made:

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<sup>11</sup> *Protea Holdings v Wriwt* 1978 (3) SA 865 (W) at 872B.

1. The forms and service provided for in the Uniform Rules of Court are dispensed with and the matter is dealt with as one of urgency.
2. The respondent is declared to be in contempt of the order of this Court granted by Maier-Frawley AJ on 30 October 2018 ("2018 Order").
3. The respondent is sentenced to 12 months imprisonment for contempt of the 2018 Order, wholly suspended for a period of 5 years on condition that the respondent does not breach the 2018 Order during the period of suspension.
4. The respondent is declared to be in contempt of the order of this Court granted by Maier-Frawley J on 22 August 2023 ("2023 Order").
5. The suspended sentence of 10 months imprisonment imposed by Maier-Frawley J on 22 August 2023, is further suspended for a period of 5 years on condition that that the respondent does not breach the 2018 Order during the period of suspension.
6. The respondent is ordered to pay the applicant's costs on a party and party scale.
7. Service of this order on the respondent can be effected by email on the same email addresses the respondent used in his communication with the applicant.



**L. WINDELL**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, JOHANNESBURG**



Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 8 August 2024.

### **APPEARANCES**

|                              |                                                                                                                   |
|------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Counsel for the applicant:   | Advocate P. Bosman                                                                                                |
| Attorneys for the applicant: | Moodie & Robertson Attorneys                                                                                      |
| Counsel for the respondent:  | Respondent appeared in person                                                                                     |
| Date of hearing:             | 25 June 2024, 26 June 2024 and 27 June 2024 (respondent filed a supplementary answering affidavit on 8 July 2024) |
| Date of judgment:            | 8 August 2024                                                                                                     |