



THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION,  
JOHANNESBURG

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| (1)                                                                                                        | REPORTABLE: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/>                  |
| (2)                                                                                                        | OF INTEREST TO OTHER JUDGES: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/> |
| (3)                                                                                                        | REVISED: Yes <input type="checkbox"/> / No <input checked="" type="checkbox"/>                     |
| <div style="background-color: black; width: 100px; height: 1.2em; margin: 0 auto;"></div><br>WJ du Plessis |                                                                                                    |
| Date: 06 September 2024                                                                                    |                                                                                                    |

Case 077931/2024

In the matter between:

K, F, M

First Applicant

K, S

Second Applicant

and

N, C, P

Respondent

Coram: Du Plessis AJ

Heard on: 5 September 2024

Decided on: 6 September 2024

This judgment has been delivered by uploading it to the CaseLines digital database of the Gauteng Division of the High Court of South Africa, Johannesburg, and by email to the attorneys of record of the parties. The deemed date of the delivery is 6 September 2024.

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## JUDGMENT

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DU PLESSIS AJ

- [1] This is the return of a rule nisi granted on 14 August 2024 by Dlamini J that declared the respondent in contempt of court, requiring that the respondent must show why an order should not be made for his committal for 30 days in prison (or any other time period determined by the Court). This was because the respondent did not comply with the order of Twala J of 24 July 2024, ordering him to remove a Facebook post within 24 hours of granting the order.
  
- [2] The post published certain sensitive information regarding the paternity of a minor child. The respondent also published the applicants' full names and details of their minor child, including her birth certificate with her full name and identity number. The post implies that the applicants have run away with the minor child whom he claims is his biological child.
  
- [3] The applicants state that this jeopardised their safety and that the respondent is trying to get the public involved in the dispute between the parties to the detriment of their, but also, importantly, the minor's safety. But all those issues were before Twala J, who decided on the matter and decided in the favour of the applicants.
  
- [4] The respondent denies that he is in contempt—he denies that he posted the Facebook post. This is despite Twala J having found that he posted it and his attorney admitting that he posted it but that he did so in good faith as a father fighting for his child. For this reason, the respondent appealed the order of Twala J on 5 August 2024. He now has 60 days from filing the notice of appeal to apply for a hearing date; otherwise, the appeal lapses.
  
- [5] In short, his grounds of appeal are that Twala J erred, that his legal representative did not put his version to the court when he conceded that he made the posts and

that the court erred in ordering him to remove the post, which he cannot do because he did not place it.

- [6] It is not for me to decide the issues on appeal, whether to grant leave or whether the leave to appeal will be granted. I am mentioning the leave to appeal because his application for leave to appeal places this court in somewhat of a predicament with regard to the relief sought. This is because of the effect of the subsequent Dlamini J order.
- [7] When the respondent did not act on the Twala J order, the applicants approached the court for an order to, despite the application for leave to appeal, execute on the order of Twala J.<sup>1</sup> They also asked for an order to declare the respondent in contempt of Twala J's order. Dlamini J thus found the respondent in contempt of Twala J's order and permitted the applicant to execute Twala J's order pending the application for leave to appeal.
- [8] The effect of the Twala J and Dlamini J orders on this application is the following: I am bound by the finding that he posted the post on Facebook. I am also bound by the finding that he is in contempt of court. This is not an appeal on any of those two issues. All that is left for me to decide is what sanction to impose on the finding of contempt.
- [9] What makes this somewhat complex is that he still denies posting the Facebook post. He is appealing Twala J's finding that he did. Dlamini J's order allows execution pending the determination of that leave to appeal. He did not appeal the granting of the s 18(3) court order.<sup>2</sup>

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<sup>1</sup> In terms of s 18(3) of the Superior Courts Act 10 of 2013.

<sup>2</sup> S 18(4) of the Superior Courts Act 10 of 2013.

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- [10] I am thus called to decide on whether to imprison someone for refusing to remove a post that he denies posting while he is appealing a decision that found that he did post it. Should his appeal be successful, the contempt order can no longer be enforced, as one cannot order somebody to do something he cannot do. This should be evaluated in light of the fact that committal to prison infringes on a person's right to freedom and security, which includes the right not to be deprived of freedom arbitrarily or without cause and not to be detained without trial. The pending appeal makes this case not so straightforward.
- [11] When the matter was set down on my urgent roll for hearing on Tuesday, and the parties requested some time to see if they could settle it, I hoped it would solve the matter and relieve me of this predicament. The parties could not agree, and I heard about the matter on Thursday.
- [12] Arguably, the issue by this time was no longer urgent, as the respondent was already found to be in contempt, and the only matter to decide was the issue of whether committal or a fine was appropriate. Nevertheless, this is a return date for a rule nisi that emanated from other urgent proceedings. *Native Child Africa (Pty) Ltd v Akinwale*<sup>3</sup> also stated that contempt proceedings would be regarded as urgent if the contempt is ongoing. I therefore enrol the matter.
- [13] While the order sought in this proceeding would not grant the applicants the ultimate relief they seek, namely the removal of the post, contempt proceedings are not only to protect the applicant's interests but also to protect the court's dignity and uphold the rule of law by ensuring adherence to court orders.<sup>4</sup> The respondent

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<sup>3</sup> [2023] ZAGPPHC 2007.

<sup>4</sup> *Pheko v Ekurhuleni City* [2015] ZACC 10 para 28.

cannot elect not to abide by court orders without consequences. However, he should not be sanctioned for not abiding by a court order that he cannot abide by—which is his argument on appeal.

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[14] Thus, in this instance, should the leave to appeal succeed, the respondent can no longer be in contempt of court, as performing in terms of the court order would be impossible. Should he not succeed, he would be in contempt of court.

[15] Once that finding is made, I think it prudent to give the respondent 24 hours from that order to remove the post, failing which he can be imprisoned. A period of 30 days seems to strike a balance between the respondent's right to freedom of security of person and his egregious behaviour.

[16] The order thus seeks to safeguard the respondent's right to a fair trial while ensuring that the applicant gets an order that would not necessitate them returning to court again on this particular issue. It also protects the court's dignity and upholds the rule of law if the respondent is unsuccessful with his appeal.

[17] The applicants asked for a punitive cost order. In light of the fact that this matter is not straightforward and regarding the fact that the respondent represented himself, I do not think that is an appropriate cost order. I can, however, see no reason why costs should not follow the result.

#### Order

[18] The following order is made:

1. The matter is heard by way of urgency, and any non-compliance with the Rules of Court, particularly the rules pertaining to form, notice, service and time periods, are hereby condoned in accordance with Rule 6(12) of the Uniform Rules of Court;

2. The rule nisi issued on 13 August 2024 is hereby confirmed:- 2.1.  
The Respondent is committed to 30 days imprisonment;
- 2.2. A Warrant of Arrest is to be immediately issued committing and/or sentencing the Respondent to imprisonment for the time period referred to in paragraph 2.1 above, which Warrant is to be suspended pending:
- 2.2.1. the finalisation of the Respondent's leave to appeal dated 5 August 2024, and appeal after that if leave to appeal is granted;
- 2.2.2. alternatively, the leave to appeal lapses;
- 2.2.3. alternatively, the leave to appeal is withdrawn by the Respondent.
- 2.3. Once any of the conditions in 2.2.1. – 2.2.3 are fulfilled, the Respondent should be given twenty-four hours to remove the Facebook post, failing which the warrant may be executed on.
- 2.4 If the Respondent is successful in his appeal, this order lapses.
- 2.5 The Respondent is to pay the costs of the application on Scale B.



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WJ du Plessis  
Acting Judge of the High Court

For the Applicants:

R Adams instructed by Hirschowitz  
Flionis Attorneys

For the Respondents:

Self-represented