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

Case Number: 033286-2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE: 16 September 2024

SIGNATURE

In the matter between:

HONEY FASHION ACCESSORIES (PTY) LIMITED Applicant

and

JACOBUS WIESE Respondent

J U D G M E N T

WANLESS J

Introduction

[1] This is an urgent application instituted by *Honey Fashion Accessories, (Pty) Limited* (“*the Applicant*”), against one, Jacques Wiese, adult male, (“*the Respondent*”), that the Respondent be held to be in contempt of certain orders of

this Court and sentenced to a term of direct imprisonment.

[2] On 16 August 2024 the present application was served on the Respondent. This was never disputed by the Respondent and is common cause. Thereafter, this matter came before this Court on Tuesday, 27 August 2024. The Respondent appeared in person and the Applicant was represented by Senior Counsel. This Court was advised by the Respondent that since having been served with the application papers, he had endeavoured to obtain legal representation but without success. Nevertheless, this Court advised the Respondent that the matter would stand down until the following day (Wednesday 28 August 2024) in order that, *inter alia*, the Respondent be given a further opportunity to attempt to obtain legal representation. In addition to the foregoing and despite the fact that the Respondent had been served with the application papers on 16 August 2024 the Respondent had failed to file an answering affidavit. Arising therefrom, this Court ordered the Respondent to do so prior to the application being dealt with, on this Court's urgent roll, the next day.

[3] When the matter was called on Wednesday 28 August 2024 the Respondent once again appeared in person. Furthermore, he had failed to file an answering affidavit as ordered by this Court. The Respondent advised this Court that even if it meant he would be sent to prison, he wanted the matter to proceed so that it could be finalised. He also stated that if the matter was postponed, he would still be unable to procure legal representation, since, *inter alia*, he did not have sufficient funds to do so.

[4] However, when pressed by this Court, it appeared that the Respondent did in fact seek a postponement. In the

premises, despite the fact that the Respondent had failed to place a formal application before this Court, this Court proceeded to hear such an application, by the Respondent, from the Bar. This application by the Respondent was based almost exclusively on the fact that he would “*be up against an experienced Counsel.*” On behalf of the Applicant, it was submitted that apart from the fact that the Respondent was a “*serial offender*” the prejudice that would be suffered by the Applicant could not be compensated for by an order for costs, should the postponement be granted. For these reasons advanced by the Applicant and, *inter alia*, the fact that, on the Respondent's own version, he would never be able to obtain legal representation (apart from a lack of funds, he had also exhausted all avenues to obtain representation, *pro bono*), this Court refused any application for a postponement of the Applicant's contempt application. Under the circumstances the matter proceeded before this Court on Wednesday 28 August 2024.

- [5] Having also held that the application was sufficiently urgent to be heard on this Court's urgent roll, it is incumbent upon this Court to hand down judgment in this matter on an urgent basis. Accordingly, this judgment should be considered on that basis. It was always the intention of this Court to deliver a written judgment in this matter. In light of, *inter alia*, the urgency in the matter, this has simply not been possible without incurring a delay in the handing down thereof. In the premises, this judgment is being delivered *ex tempore*. Once transcribed, it will be “*converted*”, or more correctly “*transformed*”, into a written judgment and provided to the parties. In this manner, neither the quality of the judgment nor the time in which the judgment is delivered, will be compromised. This Court is indebted to the transcription services of this Division who generally provide transcripts of

judgments emanating from this Court within a short period of time following the delivery thereof on an *ex tempore* basis.

History

[6] In setting out the relevant history of the present application, it is imperative to note that the facts set out herein are all common cause.

[7] During or about the period 2018 to October 2021 the Respondent was a director of the Applicant. In October 2021, a disciplinary enquiry was held by the Applicant which gave rise to the dismissal of the Respondent. Not long thereafter (on 31 May 2022), Matsemela AJ granted an order in this Court (*“the Matsemela order”*). Following thereon and on 28 June 2022, Makume J held the Respondent to be in contempt of the Matsemela order. As part of the order made by Makume J on 28 June 2022 (*“the first Makume order”*), the learned Judge committed the Respondent to imprisonment for a period of ninety (90) days but suspended that portion of the first Makume order on the proviso that the Respondent was to comply with the Matsemela order.

[8] On or about the 14th or 16th of October 2022 (*this being unclear from the application papers*), in respect of a further urgent application instituted by several parties, one of whom was the Applicant, Makume J handed down a second order (*“the second Makume order”*). In doing so and despite the learned Judge finding that the Respondent had disregarded the first Makume order the learned Judge once again elected not to sentence the Respondent to a period of direct imprisonment.

[9] Regrettably, this further act of clemency by Makume J

towards the Respondent did not deter the Respondent in his behaviour and the Respondent continued to, *inter alia*, harass and intimidate the Applicant by communicating with the Applicant's employees and directors, as well as publishing defamatory material in respect of the Applicant and/or employees and directors of the Applicant. Arising therefrom, the Applicant instituted yet another urgent application (on or about 21 April 2023) which resulted in Makume J handing down no less than a third order ("*the third Makume order*") on 9 May 2023.

[10] In that urgent application the Applicant sought, *inter alia*, an order that the Respondent be committed to prison for a period of ninety (90) days for contempt, together with costs. The third Makume order, which was agreed between the parties, reads as follows:

"BY AGREEMENT BETWEEN THE PARTIES, the following order is made:

1. The Respondent, and any other person acting on his behalf or on his instruction, is interdicted and restrained from the following conduct:

1.1 Writing and distributing any correspondence, of any nature whatsoever, and to any recipient whatsoever, which relates to or concerns the Applicants or any employee/s direct or indirect or director/s of the Second Applicant directly or indirectly, including but not limited to:

1.1.1 Sending any emails of any nature whatsoever to any of the, Second Applicants (sic) employees, directors, stakeholders, sales

consultants, team leaders, or any party associated with the Second Applicants (sic) or the Applicant's legal representatives.

1.2 Publishing any statements on any platform, including but not limited to, social media, whether in print or virtual of any nature whatsoever, and to any recipient whatsoever, which relates to or concerns the Applicants or any employee/s, direct or indirect, or director/s of the Second Applicant directly or indirectly, including but not limited to:

1.2.1 Any Facebook or Instagram post of any nature whatsoever that make references to or refers to the Second Applicant and / or its employees, direct or indirect, or the Applicants' legal representatives.

2. The Respondent is ordered, within 24 (twenty-four) hours of this order, to extend a written apology to the First Applicant personally, addressed to Jan Nel to include Gail De Wet and the Honey Family, as well as on the Facebook page of Miko & Anna (Pty) Ltd.

3. Respondent is ordered to pay to the Applicants' costs of this application on an attorney and own client scale subject to the following:

3.1 the amount of Fifty Thousand Rand will be paid on or before 16 May 2023, directly to the Applicants' attorney of record trust account which details will be provided.

3.2 the costs of this application will be taxed and should there be a shortfall the Respondent is to pay the remainder, and in the event of a surplus the same to be refunded to the Respondent.

4. The Respondent is committed to prison for a period of 90 (ninety) days and is ordered to submit himself to the South African Police Services at Sebenza Police Station, Edenvale, within 10 (ten) calendar days from date of this order, for the Station Commander or other person in charge of that Police Station to ensure that he is immediately delivered to a Correctional Centre to commence serving the sentence imposed.

5. The order in 4 is suspended wholly, and will not be carried into effect in the event that the Respondent henceforth complies with orders 1, to 3 above.

6. The Respondent is ordered to pay R 39 506.59 to the Applicants' attorneys of record, on or before 16 June 2023, in respect of an outstanding taxed bill of costs under case number 22/25781. Execution of the aforesaid amount will be stayed until 16 June 2023, in the event that the said amount is not paid to the Applicant."

[11] On or about 27 March 2024 the Applicant instituted another urgent application in this Court under case number 2024-033286 in which it sought relief against the Respondent. That application was opposed by the Respondent who filed an answering affidavit. The Applicant filed its Replying Affidavit and the application was heard by Unterhalter J (as he then was) on 17 April 2024.

[12] Prior to the parties agreeing upon the terms of the order, Unterhalter J requested that the Respondent (*who was not in attendance during the hearing*) present himself at court at 14h00 on Wednesday 17 April 2024, Unterhalter J having indicated that he wished to speak to the Respondent directly in open court. During this interaction, Unterhalter J explained to the Respondent the sanctity of court orders and the severity of his conduct in failing to adhere to orders of this Court. The learned Judge advised the Respondent, in express terms, that if he stepped out of line in future and breached the order he intended making, Unterhalter J would have no hesitation in committing the Respondent to prison.

[13] On 18 April 2024, when delivering his judgment, Unterhalter J indicated that the Respondent had not adhered to the previous promises that he had made and, significantly, had acted in defiance and in contempt of previous orders handed down by this Court. The learned Judge further stated that the Respondent was now being afforded one *“final opportunity to show his remorse and regard for the undertakings he gives”*. Should he not do so, he would be visited with the immediate consequences of his failure to adhere to the previous court orders and the order which Unterhalter J was to hand down.

[14] As it appears from the order of Unterhalter J handed down on 18 April 2024 (*“the Unterhalter order”*):

14.1 the Respondent was held to be in contempt of the orders of Justice Mukume handed down on 14 October 2022 and 9 May 2023 (*the second and third Mukume orders*);

14.2 Unterhalter J committed the Respondent to prison

forty (30) days; and

14.3 Unterhalter J suspended the order as set out in subparagraph 14.2 hereof on the *proviso* that the Respondent did not breach any of the terms of the Unterhalter J order in the event of which he would be committed to prison.

14.4 For the purposes of this application the relevant paragraphs of the Unterhalter order are paragraphs 2 to 6 inclusive and which read as follows:

“2. The Respondent is held to be in contempt of:

2.1 the order handed down by His Lordship the Honourable Mr Justice Makume (“Judge Makume”) on 14 October 2022 under case number 024692/2022; and

2.2 the order handed by Judge Makume on 9 May 2023 under case number 2023-037738, (“the 9 May 2023 Judge Makume Order”).

3. The Respondent is committed to prison for a period of 30 (thirty) days.

4. Subject to paragraph 6 below, the order in paragraph 3 is wholly suspended and will not be given effect to on the proviso that the Respondent:

4.1 complies with the interdict and restraint orders in paragraphs 1, 1.1, 1.1.1, 1.2 and 1.2.1 of the 9 May 2023 Judge Makume order, a copy of which is attached marked, “A”; and

4.2 *within 48 (forty-eight) hours of this order, takes down the Facebook post published by the Respondent on 23 December 2023, a copy of which is attached marked “B” to the extent not already taken down;*

4.3 *abstains from alienating, ceding and encumbering the shares held by the Respondent in the Applicant, pending the finalisation, settlement or resolution of the action under case number 2022-16891;*

4.4 *addresses all future correspondence to the Applicant through the Respondent’s legal representatives, care of Van Hulsteyns Attorneys (Mr L Legg).*

5. *His Lordship Mr Justice Unterhalter will during the remainder of his tenure at the Gauteng Local, Division, Johannesburg, case manage and remain seized of the matter.*

6. *In the event that the Respondent breaches any part of the order under paragraph 4 above, the Applicant shall be entitled to approach this Court on 24 hours notice on the same papers filed on record, duly supplemented, identifying the Respondent’s transgression, whereupon the suspension of the order in paragraph 3 above will be immediately uplifted.”*

The relief sought by the Applicant

[15] In the present application the Applicant seeks, *inter alia*, the

following relief, namely:

- 15.1 that the Respondent be declared to be in contempt of the third Makume order and the Unterhalter order;
- 15.2 that the Respondent be declared to have violated the provisions of paragraphs 4 and 6 of the Unterhalter order and has failed to observe the conditions imposed under paragraph 6 of the Unterhalter order suspending the prison sentence of 30 (thirty) days imposed upon the Respondent;
- 15.3 that the Respondent be committed to imprisonment for a period of 30 (thirty) days in accordance with the Unterhalter order; and
- 15.4 the Respondent pay the costs of the application on the scale as between attorney and client on Scale C, including the costs of Senior Counsel, where so employed.

[16] From the foregoing (*and as submitted on behalf of the Applicant*) the present application has a certain “*duality*” in that not only does the Applicant seek orders of contempt but also that those portions of the Unterhalter order previously suspended, having been allegedly contravened by the Respondent, be put into operation. In the event of this Court finding either of the aforesaid (*contempt and/or contravention of a suspended order*) then the Applicant seeks an order that the Respondent be sentenced to 30 (thirty) days imprisonment.

The law

[17] In the well-known and oft cited matter of *Fakie v CC11 Systems* Cameron JA, when describing contempt of court, stated:

“[6] It is a crime unlawfully and intentionally to disobey a court order.¹ This type of contempt of court is part of a broader offence, which can take many forms but the essence of which lies in violating the dignity, repute or authority of the court. The offence has in general terms received a constitutional ‘stamp of approval’². Since the rule of law — a founding value of the constitution — ‘requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained’.”

[18] Further, in the matter of *Pheko and Another v Ekurhuleni City*³ the Constitutional Court held:

“[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.”

¹ S v Beyers 1968 (3) SA 70 (A).

² S v Mamabolo 2001 (3) SA 409 (CC) paragraph [14]

³ 2015 (5) SA 600 (CC)

[19] As noted by Neukircher J, in the matter of *South African Legal Practice Council v Malesela Daniel Teffo*⁴, citing *Fakie*⁵, the element of contempt and the standard of proof required at various stages is:

"[42] To sum up:

- 1. Civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.*
- 2. The Respondent in such proceedings is not an "accused person", but is entitled to analogous protections as are appropriate to motion proceedings.*
- 3. In particular, the Applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.*
- 4. But once the Applicant has proved the order, service or notice and non-compliance the respondent bears 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 fides, contempt will have been established beyond reasonable doubt.*
- 5. A declarator and other appropriate remedies remain*

⁴ Case number 10991/2021; Gauteng Division (Pretoria); 13 October 2023, at paragraph [71]

⁵ At paragraph [42]

available to a civil applicant on proof on a balance of probabilities.”

Thus, once the Applicant has proved the orders, service and non-compliance the Respondent bears an evidential burden in relation to his wilfulness and *mala fides*. Should he fail to advance evidence that establishes a reasonable doubt as to whether his non-compliance was wilful and *mala fides*, contempt will have been established beyond reasonable doubt.⁶

The Applicant's case

[20] As mentioned earlier in this judgment⁷ the relief ultimately sought by the Applicant (*that the Respondent be committed to prison for a period of 30 (thirty) days*) is based upon the fact that the Applicant alleges that not only is the Respondent guilty of contempt of the third Makume order and the Unterhalter order but that he has breached certain conditions upon which the sentence of imprisonment (thirty (30) days) was suspended in terms of the Unterhalter order.

[21] It is common cause that the third Makume order and the Unterhalter order were granted as set out in the Applicant's Founding Affidavit. Further, it is common cause that these orders, once granted, were received by the Respondent and came to his attention. In the premises, the first two requisites of contempt, namely the order and service or notice, have been proved by the Applicant beyond reasonable doubt. It remains to consider the other two requirements, comprising of non-compliance, together with wilfulness and *mala fides*.

⁶ Els v Weideman and Others 2011 (2) SA 126 (SCA) at paragraphs [66] and [67]; Teffo at paragraph [72]

⁷ Paragraph [16] *ibid*.

[22] As to non-compliance, it was submitted, on behalf of the Applicant, that the Respondent had committed no less than 15 transgressions of the third Makume order and the Unterhalter order. In light of the number of alleged transgressions, this Court requested that the legal representatives for the Applicant, during a break in the argument, prepare a document setting out, *inter alia*, the nature of the alleged transgression; where the allegations and details thereof could be found in the Applicant's Supplementary Affidavit or Further Supplementary Affidavit and the paragraph or paragraphs of the relevant order which the Applicant alleged the Respondent had transgressed. The Applicant's legal representatives did so. This list was not only of great assistance to this Court but also to the Respondent, as it enabled him to address this Court with the benefit thereof.

[23] At this stage, it is appropriate to examine the nature of the transgressions by the Respondent of the orders as alleged by the Applicant. However, in light of, *inter alia*, the urgency to deliver this judgment and the compilation of the list setting out those alleged transgressions (*as set out above*) this Court declines to do so. Rather, this Court has elected to attach hereto the said list, bearing the title "*INDEX TO TRANSGRESSIONS OF THE ORDER OF JUDGE UNTERHALTER OF 18 APRIL 2024 AND THE ORDER OF JUDGE MAKUME OF 9 MAY 2023 POST THE ORDER OF JUDGE UNTERHALTER*". In this way the judgment in this matter will not be burdened unnecessarily. Moreover, this Court is satisfied that the prepared list fully sets out the date of the alleged transgressions; the nature thereof; the reference to where the transgressions are dealt with in the application papers and the paragraphs of the orders of this

Court allegedly contravened.

The Respondent's case

[24] In broad summary, the Respondent's opposition to his alleged contraventions of the third Makume order and the Unterhalter order is based upon interpretation of those orders and/or justification to act in contravention thereof.

[25] With regard to the Respondent's reliance on "*interpretation*" the Respondent submits that the orders are largely difficult to understand and/or technical in nature. In respect of "*justification*" the Respondent submits that he had a lawful obligation to report the Applicant's actions to certain statutory bodies and/or was given consent by certain "*representatives*" of the Applicant to communicate with them.

Discussion

[26] With regard to the transgressions as alleged in items one (1) and two (2) of the list, it was not disputed by the Respondent that his erstwhile attorneys had made direct contact with the statutory auditor of the Applicant on 30 July 2024. In this regard, the Respondent submitted to this Court that he was unaware of these actions carried out by his attorneys of record. This is highly improbable. No reasonable attorney would have taken these steps without first taking instructions from the client. Even if this was the case, it is highly improbable that having done so, the Respondent's attorneys would have failed to report back to the Respondent regarding the actions they had taken on his behalf and/or have provided him with a copy of the relevant correspondence. The foregoing is particularly relevant when one has regard to the second alleged transgression as per the list.

[27] Before dealing therewith, it is imperative to note that none of the facts as averred by the Applicant in the Supplementary Affidavit and the Further Supplementary Affidavit filed in the application pursuant to the Unterhalter order in order to set out the alleged transgressions by the Respondent following the granting of the Unterhalter order, were disputed by the Respondent. This includes all annexures attached to those affidavits. As set out earlier, the Respondent failed to place before this Court an answering affidavit dealing with same. In addition thereto, when he addressed this Court on 28 August 2024, he failed to place any of the facts in the aforesaid affidavits in dispute.

[28] The second alleged transgression by the Respondent is that following the withdrawal of the above-mentioned attorneys as the Respondent's attorneys of record and on 30 July 2024, the Respondent personally addressed an email to the Applicant's auditors. Regarding same, the Respondent submitted to this Court that he had received the advice of his erstwhile attorneys that he was entitled to do so. Apart from the fact that there is nothing before this Court to support that submission, it is common cause that on both occasions when the third Makume order and the Unterhalter order were granted, the Respondent was represented by attorneys. Prior to the granting of both orders, negotiations took place between the respective attorneys representing the Applicant and the Respondent. Under those circumstances, it is improbable (*despite the attorneys representing the Respondent at the time committing the same breach*) that those attorneys would have given this advice to the Respondent as submitted by him. In addition, the Respondent had been warned not to contact the Applicant's auditors, but, nevertheless, did so.

[29] Of course, the most damning fact that weighs against this Court finding that the Respondent did not act in contempt of the relevant provisions in the third Mikume order, incorporated into the Unterhalter order, is the unambiguous and straight-forward language used therein, together with the simple meaning conveyed thereby. In terms thereof, the third Makume order clearly provided that the Respondent was interdicted and restrained from writing and distributing any correspondence which related to or concerned the Applicant to “...*any party associated with the Second Applicant (the Applicant) ...*”. In addition thereto, the Unterhalter order specifically provided that the committal of the Respondent to prison was suspended on the proviso that the Respondent address “...*all future correspondence to the Applicant... care of Van Hulsteyn attorneys...*”. Reference to Van Hulsteyn attorneys is a reference to the Applicant's attorneys of record. This portion of the Unterhalter order is also unambiguous and unequivocal.

[30] Items 3, 4, 5 and 7 of the list attached hereto were also dealt with by the Respondent during the course of argument before this Court. The Respondent submitted that in all of the aforesaid instances he addressed correspondence to what he described as “*lawful authorities*”. Following thereon, the Respondent submitted that he believed that, *inter alia*, he was entitled (*even obliged*) to correspond with these entities and that he was therefore not in contempt of the orders. The Applicant relies on the same provisions of the third Makume order and the Unterhalter order as before.

[31] When dealing with item 11 on the list (*WhatsApp message sent by the Respondent to one Mary Jeffery, an employee of the Applicant on 17 August 2024*) this Court understands that

the Respondent not only accepts that the sending of same was a transgression of the provisions of the orders (*once again the same provisions relied upon by the Applicant*) but also that he was allegedly remorseful of sending the communication and the contents thereof. The said WhatsApp message reads as follows:

*“HELLO – I hear it's C[...]’s husband that has beaten her and that her spine is so f*ckup? Then he **pees** on her? Do you still have her MOM’s contact? I am worried he is gonna shoot her as he now mostly lives with P.”*

It is common cause that the contents of the WhatsApp message refer to one C[...] S[...], a director of the Applicant and her husband.

[32] Item 8 on the list is a “*stand alone*” transgression relied upon by the Applicant in that not only is it alleged by the Applicant that the Respondent has breached the same provisions of the orders previously relied upon but that he has also transgressed subparagraph 4.3 of the Unterhalter order. This subparagraph suspends the sentence of thirty (30) days imprisonment on the basis that the Respondent “*...abstains from alienating, ceding and encumbering the shares held by the Respondent in the Applicant, pending the finalisation, settlement or resolution of the action under case number 2022-16891.*”

[33] In the Applicant’s Further Supplementary Affidavit, it is alleged that on the 20th of August 2024 the Respondent indicated he would be offering his shares in the Applicant for sale online and that he has in fact done so. The foregoing is not disputed by the Respondent who also does not dispute

that these actions are a transgression of the orders with particular reference to the Unterhalter order. However, before this Court, he sought to defend his actions on the basis that it had been some time since that order had been granted and that he did not understand it as it was “*complicated*”.

Conclusions

[34] Having regard to the foregoing, it is clear that the Respondent has acted in contempt of the third Makume order and the Unterhalter order. Reasons therefor in relation to both items one and two on the list of transgressions have been dealt with earlier in this judgment.⁸

[35] In respect of those alleged transgressions (*items three, four, five and seven*) where the Respondent submitted that he addressed correspondence to “*lawful authorities*”⁹ this Court finds that the grounds relied upon by the Respondent in support thereof (*that he was entitled and/or obliged to act as he did*) do not assist the Respondent. In the first instance, it is trite that an order of court must be obeyed until it is varied or set aside. In the premises, should the Respondent have honestly believed that he had an obligation to correspond with, *inter alia*, SARS, the CIPC and Judges’ Matter in respect of the Applicant, his remedy clearly lay in having the orders varied or set aside to enable him to do so. Secondly, it is difficult for this Court to give any credence to these submissions made by the Respondent when regard is had to the contents of the correspondence sent by the Respondent to these entities. This correspondence is littered with malicious and

⁸ Paragraphs [26] to [29] *ibid*.

⁹ Paragraph [30] *ibid*

even defamatory material clearly designed to harm the Applicant without any real evidence being provided to support the allegations made by the Respondent therein. In the premises, the submissions made by the Respondent that he always acted in the best interests of the Applicant must fall on deaf ears.

[36] As set out earlier in this judgment the Respondent does not dispute the fact that the sending of the WhatsApp message to an employee of the Applicant in respect of a director of the Applicant (*item 11 of the list*) is in contempt of the orders. Such communication is clearly in breach of both orders.

[37] With regard to the attempt by the Respondent to sell his shares in the Applicant (*item 13 on the list*), it is common cause that this constitutes a transgression of the orders. This is particularly so in respect of the Unterhalter order which specifically deals therewith. As dealt with earlier herein the Unterhalter order was granted on 17 April 2024. The actions of the Respondent took place on 20 August 2024. A period of approximately four months cannot excuse or condone the Respondent's actions. Once again, this is particularly so since the Respondent was involved in the formulation of that order. The further submissions by the Respondent that he did not understand this portion of the order, since it was "*complicated*", is, with respect, ludicrous. It could not be clearer. This is particularly so in respect of the Respondent who, on his own version, is a 40 percent shareholder in the Applicant and played an active role in the business affairs of the Applicant.

[38] Arising from the foregoing, this Court must find that the Respondent has failed to comply with the third Makume order

and the Unterhalter order.

[39] With regard to the element of wilfulness and *mala fides*, it is fairly trite (*as dealt with earlier in this judgment*) that the onus remains on the Applicant to prove, beyond a reasonable doubt, that when the Respondent breached the provisions of the orders, he did so wilfully and *mala fides*. However, when deciding whether the Applicant has discharged the onus incumbent upon it, there is an evidential burden upon the Respondent to prove, beyond reasonable doubt, that when he acted as he did, his actions were not wilful or *mala fides*.

[40] Despite having had the opportunity to do so the Respondent elected not to place before this Court any evidence whatsoever to rebut that as set out by the Applicant in its Supplementary Affidavit and Further Supplementary Affidavit. Following thereon, this Court nevertheless allowed the Respondent to make submissions from the Bar.

[41] Before dealing (*to one extent or another*) with the transgressions of the Respondent and deciding whether same were wilful and *mala fides*, it is the opinion of this Court that it is imperative to view the third Makume order and the Unterhalter order in their proper context. This context is defined by, *inter alia*, the deterioration of the relationship which previously existed between the Applicant and the Respondent. Regrettably, as set out earlier in this judgment, the foregoing can best be described as “*tumultuous*”, comprising of the Respondent’s dismissal by the Applicant; the Applicant instituting an action in this Court for the revocation of the Respondent’s 40 percent shareholding in the Applicant which is still pending and no less than four previous applications instituted by the

Applicant against the Respondent for being in contempt of orders of this Court. It is also important to note that in all four (4) of the previous contempt applications the Respondent was found guilty thereof.

[42] When the present (*and fifth*) application by the Applicant to have the Respondent declared to be in contempt of orders of this Court was instituted by the Applicant it is difficult (*if not impossible*) for this Court to separate the findings made earlier that the Respondent acted wilfully and *mala fides* when he breached previous orders from the facts of the present application. This is simply because of the context in which these applications arose and the fact that the transgressions in all of these five (5) applications are similar in both form and substance.

[43] The foregoing apart, it is obviously still necessary to consider the Respondent's transgressions in the present application to decide whether the actions of the Respondent are wilful and *mala fides*. In doing so, this Court has already made various references thereto, particularly when considering the facts pertaining to the Respondent's non-compliance with the third Makume order and the Unterhalter order.

[44] In this regard, it should be clear from the findings made earlier in this judgment that the so-called defences relied upon by the Respondent (*by way of submissions made by him from the Bar only*) that, *inter alia*, the third Makume order and the Unterhalter order were difficult to understand and/or technical in nature; he had a lawful obligation to report the Applicant's actions to certain statutory bodies and/or was given consent by certain representatives of the Applicant to communicate with them, all fall to be rejected by

this Court. On the other hand, considering the (*undisputed*) evidence of the Applicant, it is abundantly clear to this Court that the non-compliance by the Respondent was both wilful and *mala fides*.

[45] These transgressions were wilful in that, *inter alia*, the Respondent was well aware of the fact that both orders were “*designed*” to, *inter alia*, protect the business interests of the Applicant and to restrain and interdict the Respondent's unlawful actions. As to *mala fides*, the contents of the correspondence referred to by the Applicant and placed before this Court, clearly reflect the Respondent's intention to damage the Applicant's business interests and/or force the Applicant to act to its detriment by increasing its offer to purchase the Respondent's 40 percent shareholding in the Applicant. Instead of seeking lawful means to entrench his rights as a minority shareholder in the Applicant the Respondent has resorted to malicious and unlawful tactics/ methods to attempt to achieve the result that he seeks. This is reflected by his actions over several years and encapsulated in the previous applications instituted by the Applicant resulting in the previous orders of this Court.

[46] In the premises, this Court has no hesitation in finding that the Respondent's non-compliance is both wilful and *mala fides*. Further, the Respondent has failed to discharge the evidential burden and has failed, *inter alia*, to place any acceptable evidence before this Court to show, beyond reasonable doubt, that his actions were *not* wilful and that he did not act *mala fides*.

[47] Under the circumstances, this Court finds that the Applicant has proven, beyond reasonable doubt, that the Respondent is in contempt of the third Makume order and the Unterhalter

order. Following thereon (*and as a corollary thereto*), this Court also finds that the Respondent has violated the provisions of paragraphs 4 and 6 of the Unterhalter order and has failed to observe the conditions imposed under paragraph 6 of the Unterhalter order suspending the prison sentence of thirty (30) days imprisonment imposed upon the Respondent.

The sanction

[48] Neukircher J, in *Teffo*,¹⁰ noted that:

*“In the Zuma contempt judgment the Court took into account the circumstances, the nature of the breach and the extent to which the breach is ongoing in determining the length of sentence to be imposed. In Protea Holdings Limited v Wriwt and Another the court held that the factors a court will take into account when deciding what sentence to impose are, inter alia, the nature of the admitted contempt and the manner in which the Court order was breached.”*¹¹

[49] To describe the Respondent as a “*serial offender*” would be an under-statement. Following the dismissal of the Respondent by the Applicant the Respondent has embarked on a crusade with the sole intent of causing harm and damage to the Applicant's business. This has been ongoing for a period of approximately three years. Arising therefrom the Applicant has been forced to institute at least 5 (five) applications, 4 (four) of which (*prior to the present application*) were as a result of the fact that the Respondent has failed to comply with orders of this Court. On no less than 4 (four) prior occasions the Respondent

¹⁰ At paragraph [98]

¹¹ Citations removed

has been found to be guilty of being in contempt of orders of this Court.

[50] When brought to court to face allegations of contempt the Respondent provides undertakings to desist with his unlawful actions. He is even involved in the process of “*structuring*” various orders which are aimed to control those actions; ensure that the Respondent desist in his unlawful attack against the Applicant and in the hope that the Respondent will follow lawful means available to him to obtain whatever relief he may be entitled. Instead, the Respondent continually and deliberately elects to breach the orders of this Court.

[51] As set out earlier in this judgment, on each of the 4 (four) occasions that the Respondent has been found to have breached an order of this Court the Respondent has been sentenced to a period of imprisonment ranging from 90 (ninety) to (30) days. On each and every occasion the period of imprisonment has been suspended (*despite the Respondent's further non-compliance*) and has not been enforced. In addition thereto, both Makume J and Unterhalter J have explained the seriousness of the Respondent's actions to him and the fact that court orders are to be obeyed.

[52] From the foregoing, it is clearly apparent that the clemency extended to the Respondent by this Court in the past, has had no effect in rehabilitating the Respondent. Despite the intended threat of a suspended sentence of imprisonment to curtail the unlawful behaviour of the Respondent the Respondent has continued to act in blatant disregard of both the third Makume order and the Unterhalter order. Not only has the Respondent exhibited that he has no respect

whatsoever for the orders emanating from this Court but it is clear, from the undisputed facts of the present matter, that the Respondent's actions are motivated by pure malice. In this regard, one only has to have regard to, *inter alia*, the contents of the WhatsApp message sent by the Respondent to Mary Jeffrey on 17 August 2024. Even service of the application papers in the present matter did not deter the Respondent who continued with his unlawful behaviour thereafter. Of course, the number of recent transgressions is also an aggravating factor.

[53] In the premises, this Court is of the opinion that it would serve no purpose to once again suspend a sentence of imprisonment. The Respondent should be sentenced to a period of direct imprisonment. Regarding the period of imprisonment to which the Respondent should be sentenced the Applicant, in its Notice of Motion, has asked that the Respondent be imprisoned for a period of thirty (30) days. This is in accordance with the Unterhalter order.

[54] Taking all of the foregoing into account, this Court is satisfied that a period of thirty (30) days imprisonment is appropriate in the present matter. Indeed, the Respondent advanced no reasons as to why, if he was sentenced to prison the period should be less than that as suspended by Unterhalter J. In this manner the suspended sentence, as per the Unterhalter order, is brought into operation. The Respondent can however count himself very fortunate that the period of imprisonment is not greater.

Costs

[55] The relevant principles pertaining to costs are trite and shall not be repeated herein. It is clear in this matter that not only

should the Respondent be ordered to pay the costs but these costs should be on a punitive scale and include the costs of Senior Counsel.

[56] Further in this regard the Applicant seeks an order that the Respondent pay the costs of the application on an attorney and client scale, on Scale C. This Court understands the recent amendment to rule 67A of the Uniform Rules of Court to be that the issue of a particular scale to be awarded by a court (A, B or C) applies only to party and party costs.¹² Senior Counsel for the Applicant did not address this Court thereon. In addition, no evidence was placed before this Court pertaining to the scale of any costs. In the premises, in the general discretion of this Court, the Respondent will be ordered to pay the costs of this application on the scale of attorney and client only.

Order

[57] This Court makes the following order:

1. The Applicant's failure to comply with the Uniform Rules of Court ("URC") pertaining to the forms, time periods and service, as well as the non-observance of URC 41A is condoned and the matter is heard as one of urgency in accordance with:

- 1.1 URC 6 (12); and

- 1.2 the order of Judge Unterhalter handed down on 18 April 2024 in the main application under the above case number which was heard by Judge

¹² Mashavha v Enaex Africa (Pty) Ltd and Others, case number 2022-18404, Gauteng Division (Johannesburg), 22 April 2024

Unterhalter on 17 April 2024, his judgment and order being annexed to the founding affidavit of the Applicant as Annexure"SA3", Judge Unterhalter's order having afforded the Applicant the entitlement to on 24 hours' notice to the Respondent, deliver supplementary papers in respect of any act of contempt on the part of the Respondent and to immediately approach the above Honourable Court relief under that order.

2. The Respondent is in contempt of the orders of this honourable court and that the Respondent is in contempt of the;

- 2.1 Order of His Lordship the honourable Judge Makume of 9 May 2023 handed down under case number 2023-037738; and

- 2.2 Order of His Lordship the honourable Judge Unterhalter of 18 April 2024.

3. The Respondent has violated the provisions of paragraphs 4 and 6 of the order of Judge Unterhalter dated 18 April 2024 and has failed to observe the conditions imposed under paragraph 6 of the Judge Unterhalter order suspending the prison sentence of 30 days imprisonment imposed upon the Respondent.
4. The Respondent is committed to imprisonment for a period of 30 days in accordance with the order of Judge Unterhalter of 18 April 2024 and is ordered to submit himself to the South African Police Services at Sebenza Police Station, Edenvale, within 10 (ten) calendar days from date of this order, for the Station Commander or

other person in charge of that police station to ensure that the Respondent is immediately delivered to a correctional centre to commence serving a sentence of 30 days imprisonment.

5. The Respondent is to pay the costs of this application on the scale as between attorney and client, including the costs of Senior Counsel, where so employed.

B. C WANLESS
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG

Appearances

For the Applicant:	Adv. N Konstantinides SC
Instructed by:	Van Hulsteyns Attorneys
 For the Respondent:	 In Person
 Date of Hearing:	 27 th and 28 th of August 2024
<i>Ex Tempore</i> Judgment and order:	9 September 2024
Written Judgment:	16 September 2024

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-033286

In the matter between:

HONEY FASHION ACCESSORIES (PTY)
LTD

Applicant

and

JACQUES WIESE

Respondent

**INDEX TO TRANSGRESSIONS OF THE ORDER OF JUDGE
UNTERHALTER OF 18 APRIL 2024 AND THE ORDER OF JUDGE MAKUME
OF 9 MAY 2023 POST THE ORDER OF JUDGE UNTERHALTER**

Transgression	Date	Event	Reference	Order Contravened
1 and 2	30 May 2024 and 30 July 2024	Mr Wiese made direct contact with the statutory auditor of the Applicant, Mr Borrajeiro – this happened through his then attorneys in respect of which he was warned not to do so – the Applicant took no steps arising from this conduct however on 30 July 2024, Mr Wiese personally (and after his attorneys withdrew – Gittins Attorneys) addressed another email to Mr Borrajeiro directly	02-338 – 02-343; para 42 to 57	1.1, 1.1.1 and 1.2, (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
3	During July 2024	The Respondent approaches the Companies and Intellectual Property Commission referencing matter such as irregular expenditure, no tax deductible expenses, dismissal of shareholders and related matter	02-344 – 02-347; para 58 to 65	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]

		having no bearing on an ordinary approach to the CIPC		
4	24 July 2024	Emails by Mr Wiese to the head of SARS making publications about the Applicant not in any way connected to the business of the fiscus including questions as to the deposit of funds of legal fees and attaching the “Scrambled thoughts of Gary”	02-347 – 02-349	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
5	2 August 2024	The Respondent addressed a further uncalled for and malicious e-mail to SARS with the subject line ‘ <i>Tax Fraud</i> ’ and concerning issues of Honey in respect of annual financial accounts	02-349 – 02-351; para 73 to 77.4	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
6	30 July 2024	Addressed emails directly to Mrs De Wet (the First Applicant under the Judge Makume order) and other erstwhile directors of the Applicant	02-351; para 77.5	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
7	31 July 2024 at 7:29 AM	Email to CIPC and to the statutory auditor	02-351 – 02-352; 77.7	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
8	31 July 2024 at 11:03 PM	Email to SARS, CIPC, Mr Plaigis, Mrs De Wet and Mrs Wilmot	02 – 352 – 02-353; 77.8 to 79	1.1, 1.1.1 and 1.2. (02-367) [Judge

		(erstwhile directors of Honey) concerning the Applicant		Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
9	4 August 2024	Whatsapp distributed Honey's statement of comprehensive income for the financial year ended 31 July 2023 (which formed part of Honey's annual financial statements for such period and the directors of Honey signed on 4 July 2024) to the world at large	02-353 – 02-355; para 80 to 88	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
10	5 August 2024	Email to the Registrar of His Lordship Justice Sutherland Deputy Judge President (" DJP ") and SARS in respect of matter in which they have no direct interest	02-357; para 102	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
11	Saturday, 17 August 2024	Mr Wiese sent a WhatsApp communication to an employee of Honey, one Mrs Mary Jeffery, (" Mrs Jeffery "). Mr Wiese made very serious, disparaging, defamatory, criminal and untrue allegations to Mrs Jeffery about Mrs Snijders' husband in regard to herself.	02-509 to 02-510; para 21 to 25 of the further affidavit	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
12	20 August 2024	Mr Wiese addressed an email to Mrs Heila Heydenrych, the	02-510 – 02-511; para 26 -	1.1, 1.1.1 and 1.2. (02-367) [Judge

		personal assistant of Mr Andrew Legg of Van Hulsteyns. Mr Wiese copied in that email to Mrs van Tonder and curiously also copied in Mrs Tulleken.	27 of the further affidavit	Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
13	20 August 2024	Mr Weise indicated that he would be offering his shares in Honey for sale online.	02-511; para 28 to 34 of the further affidavit	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1, 4.3 and 6 (02-373) [Judge Unterhalter Order]
14	20 August 2024	Mr Wiese addressed an email to the email address of A[...], for the attention of Justice Desai.	02-512 – 02-513; para 35 to 37 of the further affidavit	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]
15	21 August 2024	Mr Wiese addressed another email to amongst others, Mr Borrajeiro.	02-513 – 02-513; para 38 - 40 of the further affidavit	1.1, 1.1.1 and 1.2. (02-367) [Judge Makume order] 3, 4.1 and 6 (02-373) [Judge Unterhalter Order]

DATED AT JOHANNESBURG ON THIS THE 28th DAY OF AUGUST 2024.

VAN HULSTEYNS ATTORNEYS

Applicants' Attorneys

3rd Floor, Suite 25

Katherine & West Building

114 West Street, Sandown, Sandton
Gauteng

Ref: Mr A Legg / Ms van Tonder / MAT20592

Tel: 011 523 5300

Fax: 011 523 5326

Email: andrew@vhlaw.co.za

schandre@vhlaw.co.za

TO:

**THE REGISTRAR OF THE ABOVE HONOURABLE COURT
JOHANNESBURG**

AND TO:

JACQUES WIESE

THE RESPONDENT

1 POST OFFICE ROAD

THORNHILL ESTATE

MODDERFONTEIN

JOHANNESBURG

Email: jakwiese1@yahoo.com

