

REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG****Case No: 28694/2020**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
17/09/2024	
DATE	SIGNATURE

In the matter between:

SPECITRIM (PTY) LIMITED

First Applicant

EDMANET (PTY) LTD

Second Applicant

NOSKOP 1 (PTY) LTD

Third Applicant

UNLOCKED PROPERTIES 23 (PTY) LTD

Fourth Applicant

UNLOCKED PROPERTIES 5 (PTY) LTD

Fifth Applicant

LIMOWARE (PTY) LTD

Sixth Applicant

LISACRAFT (PTY) LTD

Seventh Applicant

and

THE CITY OF JOHANNESBURG METROPOLITAN

MUNICIPALITY

First Respondent

THE MUNICIPAL MANAGER (ACTING) OF THE CITY

OF JOHANNESBURG: FLOYD BRINK

Second Respondent

Judgement

McCAFFERTY AJ

INTRODUCTION

1. Pursuant to proceedings instituted by the First to Seventh Applicants (“the Applicants”) against the First Respondent, under case number 28694/2020, Dlamini J, made an order, on 18 January 2022 in favour of the Applicants (“the Order”)¹.
2. By virtue of the alleged failure and/or refusal of the First Respondent and the Second Respondent to comply with the Order, the Applicants instituted contempt of court proceedings against them, also under case number 28694/2020² (“the Contempt Proceedings” or “the Contempt Application”, as the context requires).

¹ Caselines 011-47-53

² CaseLines 010-1-114

3. The Respondents have brought an application in terms of Rule 30A(2) (“the Rule 30A(2) Application”) of the Uniform Rules of Court (“the Rules”) in which they seek an order setting aside the Contempt Proceedings.
4. Whilst the Respondents are the Applicants in these interlocutory proceedings, I will nonetheless continue to refer to them as the First and Second Respondent and collectively as the Respondents. Similarly, whilst the First to Seventh Applicants are the Respondents in these interlocutory proceedings, I will continue to refer to them as the Applicants.

Background

5. On 2 May 2023, the Respondents served their notice in terms of Rule 30A(2) of the Rules³. For convenience, the complaints of the Respondents are set out below:
 - 5.1 the Applicants issued the Contempt Application without having issued the required notice offering the First Respondent a period of 10 days to comply with the Order, thus, the Applicants failed to comply with Rule 30A(1);
 - 5.2 the Applicants’ failure causes the Contempt Application to be premature;
 - 5.3 the Applicants’ Contempt Application is issued under case number 2020/28694, a matter which was between the Applicants and the First Respondent, and not with the Second Respondent;
 - 5.4 the Applicants failed to comply with Rules when they issued their present application under the same case number and cited the Second Respondent who was not a party to other proceedings in the Order or proceedings which served before this court;
 - 5.5 the Applicants’ notice fails to comply with Rule 10 of the Rules relating to a joinder of a party and in this regard, the Second Respondent;
 - 5.6 the Applicants’ citation of the Second Respondent amounts to a failure to comply with the Rules, wherein no order can be granted against a party who is not properly before the Court.

³ CaseLines 011-1-4

6. On 2 June 2023, and by virtue of the Applicants' alleged failure to comply with the said Rule 30A(2) Notice, the Respondents served the Rule 30A(2) application. The relief sought by the Respondents in the notice of motion is as follows⁴:
 - 6.1 that the Contempt Proceedings be set aside for its failure to comply with the Rules; and
 - 6.2 that if the Applicants intend or wish to issue Contempt Proceedings against the Respondents then, in that event, the Applicants are ordered and directed to comply with the Rules.
7. On 10 July 2023, the Applicants delivered their answering affidavit.
8. The Respondents did not deliver a replying affidavit.
9. I summarise below, under the headings used by them, the material parts of the founding affidavit delivered by the Respondents and then the answering affidavit delivered by the Applicants:

*The Founding Affidavit of the Respondents*⁵

- 9.1 The Founding Affidavit is deposed to by Hugo Baloyi, who avers that he is an attorney working at the First and Second Respondents' attorneys of record, and that he is the attorney responsible for the matter. In addition, he avers that he deposed to his affidavit on behalf of the First Respondent and the Second Respondent, as the Respondents in the Contempt Proceedings.

"The purpose and the relief sought in the present application"

- 9.2 This is an Interlocutory Application issued by the Respondents in terms of Rule 30A(2).
- 9.3 The Contempt Proceedings seek to hold the Respondents in contempt of court for their alleged failure to comply with the Order.
- 9.4 The purpose of the Application is *inter alia* to ensure that the Applicants comply with the Rules.

⁴ CaseLines 011-6-8

⁵ CaseLines 011-9-21

9.5 The relief sought by the Respondent is clearly articulated in the Notice of Motion.

“Material background facts”

9.6 On 18 January 2020, Dlamini J made the Order in favour of the Applicants.

9.7 The Second Respondent was not a party to the proceedings giving rise to the Order.

9.8 Despite the Second Respondent not being a party to the aforesaid proceedings, the Applicants, without complying with the applicable Rules, simply cited the Second Respondent in the Contempt Proceedings.

9.9 The approach taken by the Applicants amounts to a failure by them to comply with Rule 10 of the Rules.

9.10 Rule 30A, referring to a failure to comply, was amended to include the failure to comply with court orders. Rule 30A(1) provides that a party seeking to allege a non-compliance with the Rules and a court order, is to give such a party a notice, which affords the defaulting party a period of 10 days to comply with the court order and that failing compliance, a contempt of court application shall be launched.

9.11 The Applicants issued the Contempt Application without delivering a notice affording the First Respondent a period of 10 days to comply with the Order: being a failure by the Applicants to comply with Rule 30A(1).

9.12 These failures, to comply with:

9.12.1 Rule 10 when it comes to the Second Respondent; and

9.12.2 Rule 30A(1) when it comes to the giving of the 10 day notice calling for compliance with the Order,

collectively constitutes the failure by the Applicants to comply with the Rules.

“Prejudice”

10. Considering that the Applicants seek the most drastic remedy against the Second Respondent, in the form of contempt of court, the Applicants themselves are at least expected to comply with the Rules.
11. The Respondents remain prejudiced by the Applicants' failure to comply with the Rules.
12. The Applicants' notice of motion (in the Contempt Proceedings) stands to be set aside.

The Applicants' Answering Affidavit⁶

13. The answering affidavit is deposed to by Nadia Steyn, the Applicants' attorney of record, who avers that she is authorised to depose to the affidavit on behalf of the Applicants.

"Brief Background"

14. The Applicants deal with the history of the matter from the inception of the proceedings giving rise to the Order, which were commenced on or about 1 October 2020, the slow exchange of Affidavits, the failure of the First Respondent to deliver its Heads of Argument and Practice Note, resulting in the inability of the Applicants to set the matter down; the resultant Application to Compel brought by the Applicants, all of which causes the Applicants to allege that the Respondents have no real intention of ever complying with the Order.

"Alleged non-compliance with Rule 10"

15. Rule 10 relates to the joinder of parties. The Applicants deny that their failure to comply with Rule 10 constitutes non-compliance with the Rules because Rule 10 does not apply to the Contempt Proceedings.
16. The Contempt Application is a standalone application issued by the Applicants, brought by way of notice of motion and supported by an affidavit seeking declaratory relief against the Respondents. The Contempt Application is not an interlocutory application brought within the bounds of the main application. The Contempt Application was issued under the same case number as the main proceedings (which gave rise to the Order) simply as a matter of convenience⁷. The principles and

⁶ CaseLines 011-27-53

⁷ I must express my dissatisfaction with this approach. Legal practitioners must take seriously their obligation to ensure that when new proceedings are initiated a unique case number is allocated to that matter.

procedures that guide how a matter is afforded a case number is governed by the practice directives in each individual court and simply a matter for administration of the court. The Second Respondent was not joined but rather cited as a party to new proceedings.

17. The Applicants have not complied with Rule 10 because Rule 10 does not find application in the Contempt Proceedings. Rule 10 finds application before the finalisation of a fresh (new) matter where a necessary party to the matter has not been joined and has an interest in the matter. It was not possible to join the Second Respondent to the main application as this would be *ultra vires* and once the order was granted, the court became *functus officio*. Any application to join the Second Respondent to the order would be bad in law.
18. The Second Respondent is the figurehead of the First Respondent and is responsible for administrative and other decisions. He has a vested interest, but such interest is only realised upon the First Respondent's non-compliance with the Order.
19. Had the Applicants followed the Rule 10 procedure, they would have launched a joinder application to join the Second Respondent to proceedings which were yet to be instituted. This would have been illogical and not in line with the purpose of Rule 10.
20. The Contempt Application, although flowing under the same case number as the main application, stands alone, and as a complete notice of motion was issued where the Second Respondent was properly cited and served, he is deemed to be properly before the Court and any Rule 10 Application would be superfluous.
21. The Second Respondent undoubtably has a direct and substantial interest in the matter given the nature of the relief sought in the Contempt Application. The Contempt Application could not have been issued without citing the Second Respondent. The Applicants have no remedy of any force without the Second Respondent being a party to the Contempt Application. It is a matter of practice that municipal managers are included as respondents in contempt of court proceedings.

“Alleged non-compliance with Rule 30A”

22. The Applicants deny the contention that they should have issued a Rule 30A Notice to the Respondents prior to launching the Contempt Application. The Respondents are

attempting to misdirect the Court on the contents of Rule 30A. The Applicants make submissions regarding the interpretation of Rule 30A to the effect that:

- 22.1 it is not mandatory that a party gives a notice. The words used in the Rule do not impose a positive obligation. However, in the event that a party chooses to follow the route of a Rule 30A Notice, then such a party must afford the defaulting party a period of 10 days to remedy their non-compliance prior to applying to court for relief. The Applicants have not elected to seek relief by way of a Rule 30A Notice. Instead, the Applicants have sought relief by way of the Contempt Application;
- 22.2 there are two distinct and separate applications in terms of which a party may seek relief. The Respondents conflate a Rule 30A Application and a Contempt of Court Application. The Respondents misconstrue them as being one and the same; whereas the former is a procedural tool used to compel parties to comply with litigation steps prior to the resolution of a matter, the latter is a distinct form of relief sought to compel a party to comply with a Court Order;
- 22.3 there is no requirement in law for a party intending to launch contempt of court proceedings to first give a Rule 30A Notice prior thereto;
- 22.4 the Respondents reliance upon Rule 30A regarding the giving of 10 days' notice creates a false narrative in circumstances where the Respondents were notified a minimum of 4 times prior to the launching of the Contempt Application either by service from the Sheriff and/or by service on their legal representatives;
- 22.5 the Applicants have not failed to comply with any relevant Rules as none of the Rules relied upon by the Respondents find application in the Contempt Application;
- 22.6 the Respondents interlocutory proceedings are simply a way to delay dealing with either the Contempt Application and/or complying with the Order;
- 22.7 the Second Respondent could not be joined as a party to the proceedings giving rise to the Order. The Contempt Application stands alone. The Second Respondent has been properly cited and served thereby citing him lawfully to the Contempt Application;
- 22.8 Rule 30A applies to specific orders and procedures during the course of litigation and not to the enforcement of an order or judgment after the fact;

- 22.9 the Applicants submit that neither Rule 10 nor Rule 30A find application in the Contempt Application and accordingly it was not necessary for the Applicants to comply with them; and
- 22.10 it is denied that the Respondents are in any manner prejudiced by the Applicants alleged failure to comply with the Rules. The Respondents' Application is entirely unnecessary, and it is the Applicants (not the Respondents) who continue to be severely prejudiced by the Respondents vexatious and dilatory conduct.

THE ISSUES

23. At the hearing, Counsel for the Respondents informed the court that the First Respondent was not persisting with the point that the Contempt Application is premature for failure by the Applicants to give the First Respondent 10 days' notice before it's issue.
24. Nevertheless, Counsel for the Respondents submitted that the Respondents wished the court *in limine*, to adjudicate on whether the Applicants, having been granted the Order in their favour can simply cite the Second Respondent in its Contempt Application so as to hold him in contempt or whether it is necessary to bring a formal application to join the Second Respondent to the Contempt Application.

SUBMISSIONS BY THE PARTIES

25. The Respondents have taken an *in limine* point of law of non-joinder of the Second Respondent in the Contempt Application, even though cited in the Contempt Application.
26. Counsel for the Respondents placed considerable reliance upon *Diluculo Properties (Pty) Ltd v City of Johannesburg and Brink*, Floyd 18 October 2022⁸ ("*Diluculo*"), (and the authorities cited therein), where Mudau, J upheld the *in limine* point of law of non-joinder, and said that:

"[2] the respondents have taken an in limine point of law of non-joinder of the second respondent, even though cited in his nominal and personal capacity in the current proceedings. It is trite that a court could, mero motu, raise a question

⁸ Diluculo Properties (Pty) Ltd v City of Johannesburg and Brink Floyd 18 October 2022 Case No 2021/27206.

of joinder to safeguard the interest of a necessary party and decline to hear a matter until joinder has been effected. In its notice of motion, the applicant did not seek an order for joinder directed against the second respondent personally.

[3] Counsel for the respondent contends that formal joinder of the second respondent is necessary as the second respondent was not a party in litigation proceedings before Mtati AJ that preceded these contempt proceedings. This court was referred to the Labour Court of Appeal decision National Union of Metalworkers of SA and Others v Vulcania Reinforcing Co (Pty) Ltd⁹ and Another where at paragraph 18 it is stated:

"In any event, the second respondent was not a party to the proceedings when the consent order was made. The procedure followed in this matter is no different from that which was followed in Matjhabeng [Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Shadrack Shivumba Homu Mkhonto and Others v Compensation Solutions (Pty) Limited¹⁰ ("Matjhabeng")]. The second respondent was called upon to file an affidavit explaining his non-compliance with the consent order and to face a contempt of court order. He was never joined in the proceedings. Failure to join the second respondent in his personal capacity was fatal to the appellants case against him".

[4] in opposing this argument on non-joinder, counsel for the applicant submitted that it is incorrect that a separate application must be brought to join

⁹ National Union of Metal Workers of South Africa and Others v Vulcania Reinforcing Company (PTY) Ltd and Another (JA 41/21) [2022] ZALAC 91; (2022) 43 ILJ 1307 (LAC); [2022] 10 BLLR 913 (LAC) (22 March 2022)

¹⁰ Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Shadrack Shivumba Homu Mkhonto and Others v Compensation Solutions (Pty) Limited [2017] ZACC 35

such person in his or her personal capacity. Citation in a personal capacity, it was argued, was sufficient."

[5] The law on joinder is however, settled. No court can make findings that affect any person's interests, without that person first being a party to the proceedings before it. In Mjeni v Minister of Health and Welfare, Eastern Cape¹¹ [("Mjeni")] Jafta J held:

"[C]ontempt of court proceedings can only succeed against a particular public official or person if the order has been personally served on him or its existence brought to his attention, and it is his responsibility to take steps necessary to comply with the order but he wilfully and contemptuously refuses to comply with the court order".

[6] In Matjhabeng ... at para 103 the court stated thus:

"Bearing in mind, that the persons targeted were the officials concerned – the Municipal Manager and Commissioner in their official capacities – the non-joinder in the circumstances of these cases is thus fatal. Both Messrs Lepheana and Mkhonto should thus have been cited in their personal capacities – by name – and not in their nominal capacities. They were not informed, in their personal capacities, of the cases they were to face, especially when their committal to prison was in the offing. It is thus inconceivable how and to what extent Messrs Lepheana and Mkhonto could, in the circumstances, be said to have been in contempt and be committed to prison".

"[7] In this matter, the applicant has not been able to secure personal service of the order on the second respondent. The return of service indicates that service was effected upon Ms N Sefalafala, a legal clerk employed at the head

¹¹ 2000 (4) SA 446 (Tkh) at 454G-H.

office of the municipality. Brink was not informed, in his personal capacity, of the case he was to face, particularly when his committal to prison is looming.

[8] I accordingly find that that the objection of non-joinder by the municipality in this matter, is not a purely idle or technical one, taken simply to cause delays and not from a legitimate concern to safeguard the rights of Mr Brink. The point in limine is meritorious and thus upheld."

27. Counsel for the Respondents also referred me to the Judgment of Molitsoane J in *Molaoa v Molaoa and Others* 2023 JDR 1931 (FB)¹² ("Molaoa"). In that matter, Molitsoane J, also dealt with an *in limine* point of law of non-joinder in Contempt of Court proceedings. Referring to paragraph 103 of Matjhabeng (see above), he found that the failure to cite and join the Municipal Manager is fatal to the Applicants case.
28. On the strength of these authorities, the Respondents submit that the failure by the Applicants to formally join the Second Respondent to the Contempt Proceedings is fatal to the Applicants' Contempt Application, at least insofar as it relates to the Second Respondent.
29. In the result, the relief which the Respondents now seek is no longer the setting aside of the Contempt Application as originally prayed for, but for an order in the following terms¹³:
 - 29.1 that the First and Second Respondents Interlocutory Application relating to the Applicants failure to join the Second Respondent to the Contempt of Court Application is upheld;
 - 29.2 that it is declared that the Second Respondent is not a party to the Applicants Contempt of Court Application and he is not required to deliver any affidavits and that no order may be made against him;
 - 29.3 that the Applicants Contempt of Court Application is fatal for non-compliance with the rules in as far as it relates to the Second Respondent;

¹² *Molaoa v Molaoa and Others* (5723/2021) [2023] ZAFSHC 211 (26 May 2023)

¹³ Caselines 029-1-3

- 29.4 that the Applicants are jointly and severally liable for and are to pay the Respondents costs.

Submissions by the Applicants

30. Counsel for the Applicants submit that:

- 30.1 the Applicants are not required to join State functionaries in their personal capacities from the inception of a matter on the off chance that the entity may not comply.¹⁴ The court has taken exception to unnecessary joinder before;¹⁵
- 30.2 in Matjhabeng, the court found that the failure by Compsol not to seek an order in its notice of motion against Mkhonto personally, was against Compsol. In this case, the Applicants have done the opposite. That is, in seeking relief against the Second Respondent, the Applicants have set out that relief in their notice of motion.
- 30.3 the courts have an inherent power to order joinder of parties when it is necessary to do so, even without a substantive application or *mero motu*;
- 30.4 a party should be required to be joined in a matter where they have a “direct and substantial interest” in the outcome thereof; and
- 30.5 it is clear that a sanction of committal against the Second Respondent is a direct and substantial interest.

31. The above said, the Applicants also submit that the Respondents misconstrue the position stated above by implying that an entire joinder application must be brought by the Applicants to join the Second Respondent to the Order. This, so the argument goes, is bad in law because:

- 31.1 The Order is finalised, and the court is *functus officio*;
- 31.2 the Respondents fail to understand that the Contempt Application stands on its own as a new application in terms of Rule 6, despite flowing from the Order. The

¹⁴ City of Johannesburg Metropolitan Municipality v Hope [2015] 2 All SA 251 (SCA)

¹⁵ Friedshel 837 (Pty) Ltd v The City of Johannesburg Metropolitan Municipality & 7 Others (Case 2013/43575) Gauteng Local Division, Johannesburg (25 March 2015)

Contempt Application complies with all of the requirements of Rule 6, which in and of itself joins the Second Respondent as a party;

- 31.3 the very act of initiating a new process automatically joins all those cited in that process to the proceedings. If a party is not joined, then he can be added later and if a party is joined incorrectly then he can raise misjoinder;
- 31.4 the approach contended for by the Respondents would lead to absurdity: it would mean that after issuing an Application against a Defendant/s or Respondent/s the Applicant would thereafter be required to bring a joinder application in respect of each Defendant or Respondent. That is clearly not the purpose of the rule, nor a practical approach;
- 31.5 the Second Respondent is, in terms of the Rules, properly a party to the Contempt Application;
- 31.6 there is no reason that a separate joinder application be brought as this would be nonsensical and irrelevant. This is because the Second Respondent is already a party to the Contempt Application and cannot be joined as a party to the proceedings giving rise to the Order; and
- 31.7 there is no obligation on the Applicants to re-join parties that are already parties in terms of a standalone Contempt Application.

Analysis

- 32. In the ordinary course, the issue by the Applicants of their Contempt Application under the same case number as the main application which gave rise to the Order, would mean that the joinder of the Second Respondent for the purposes of executing the Order was procedurally necessary.
- 33. Furthermore, I consider it to be appropriate in this matter to follow the judgement of Mudau J in *Diluculo*. The material facts in that case and the application of the law to them is on all fours with this matter. In this regard:
 - 33.1 In *Diluculo* (the Applicant), as here, instituted proceedings against the City of Johannesburg ("COJ") and obtained an order in its favour, granted by Mtati AJ.

- 33.2 Thereafter, as here, consequent upon an alleged failure by COJ to comply with the order of Mtati AJ, Diluculo instituted contempt proceedings against COJ, and the Second Respondent, by way of notice of motion;
- 33.3 in its notice of motion, Diluculo did not, as here, seek an order for joinder directed against the Second Respondent, personally. Counsel for the Second Respondent in that matter contended that, as here, formal joinder of the Second Respondent was necessary as the Second Respondent was not a party to the litigation proceedings which preceded the contempt proceedings;
- 33.4 again, as here, Counsel for Diluculo submitted that it is incorrect that a separate application must be brought to join such person in his or her personal capacity. Citation in a personal capacity, it was argued, was enough;
- 33.5 Mudau J, after referring to *Mjeni* and *Mahtjebeng*, lands on the critical issue of the service of the order upon the Second Respondent. In *Diluculo*, as here, no personal service of the order was effected upon Second Respondent but rather upon a legal clerk at the Head Office of the Municipality. Thus, Mudau J found that the Second Respondent was not informed, in his personal capacity, of the case he was to face, particularly when, as here, his committal to prison was looming.
34. Having regard to the reasoning of Mudau J, and without pronouncing upon the merits of the Contempt Application, it is appropriate now to examine the facts upon which the Applicants in this matter rely regarding the service of the Order on the Second Respondent (“Brink”) and how it is alleged that he was informed of the case he has to meet.
35. In the Applicants’ founding affidavit in the Contempt Application, the Applicants aver that:
- 35.1 (from the facts set out earlier in the founding affidavit) it is clear that the Respondents [COJ and Brink] have wilfully, and *mala fide* failed, alternatively, refused to comply with the Original Order¹⁶; and

¹⁶ Caselines 010-17

35.2 the Respondents [COJ and Brink] have wilfully breached the order as *“it cannot be said the Respondents [COJ and Brink] were unaware of the existence of the Original Order”*¹⁷.

36. However, it appears that the facts upon which the Applicants rely in order to demonstrate that Brink was aware of the order but wilfully and *mala fide* failed, alternatively refused to comply with the order, do not relate to Brink but to someone else, namely Mr Maduka.

37. In this regard, in the founding affidavit the Applicants aver that:

37.1 (in paragraph 31)¹⁸ prior to launching the Contempt Application and to *“ensure that the First and Second Respondent [COJ and Brink] had every opportunity to comply with the Original Order”*, Schindlers [the Applicants’ attorneys of record] addressed correspondence *“directly to the Second Respondent [purportedly to Brink]”*. The said correspondence, dated 16 March 2023, is annex “NS12” to the founding affidavit¹⁹. It is addressed to Mr Bryne Maduka (not Brink). It is marked “per Sheriff” and “attention Mr Bryne Maduka” (not Brink). The letter records, inter alia, that Schindlers are instructed by their clients to direct correspondence to Maduka (not to Brink) to notify Maduka, as the representative of COJ, of the current contemptuousness of the COJ. Further, that since COJ has failed to comply with the order, it remains in contempt. Then, that *“your continued failure [Maduka’s, not Brink’s] to comply with the Original Order will force our clients to institute contempt proceedings against the COJ, in terms of which you [Maduka, not Brink] will be cited as the Second Respondent, which penalties could include imprisonment for a specified period and/or a fine or both”*;

37.2 (in paragraph 32)²⁰ a copy of the Order was attempted to be served on the Second Respondent [Maduka, not Brink] by the Sheriff on 24 March 2023, but the Second Respondent [Maduka, not Brink] was not available. The Sheriff accordingly served the Original Order and the correspondence on the Director of Litigation of COJ. A

¹⁷ Caselines 010-18

¹⁸ Caselines 010-16

¹⁹ Caselines 010-103-106

²⁰ Caselines 010-16

copy of the Sheriff's return of service is attached as annex "NS13"²¹. In the citation to the return of service it is recorded that the matter is between:

"Specitrim (Pty) Ltd and Others

First Applicant

City of Johannesburg Metropolitan Municipality

Respondent

and

Mr Bryne Maduka [not Brink]";

37.3 (in paragraph 33)²², the same correspondence²³ was served on Madhlopa Inc. (attorneys representing COJ) on 24 March 2023 advising that a copy had been served on the Second Respondent [Maduka, not Brink] by the Sheriff.

38. *In casu*, there is nothing on the papers which indicates that before the service of the Contempt Application upon the Second Respondent, Brink, he was served with the Order personally, or that he was informed in his personal capacity, of the case he was to face. These facts, as in *Diluculo*, show, in my view, that the objection of non-joinder by the Respondents is not a purely idle or technical one taken simply to cause delays but rather from a legitimate concern regarding the rights of the Second Respondent, Brink. I find therefore, that the point *in limine* has merit and is thus upheld.

Costs

39. The Respondents have been substantially successful and I consider it to be appropriate that they should be awarded costs.

40. In the result I make the following orders:

40.1 the Respondents' *in limine* point of law of non-joinder in respect of the Second Respondent, Floyd Brink, is upheld;

²¹ Caselines 010-107

²² Caselines 010- 16

²³ Caselines 010-108, Annex "NS14"

- 40.2 it is declared that the Second Respondent, Floyd Brink, is not a party to the Contempt Application issued by the Applicants against the First Respondent and the Second Respondent, Floyd Brink, under case number 28694/2020; and
- 40.3 the Costs of the Respondents' Rule 30A(2) application are to be paid by the Applicants, jointly and severally, the one paying the other to be absolved

A black rectangular box redacting the signature of the judge.

S McCafferty AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

JOHANNESBURG

APPEARANCES

For the Applicant	Adv T Paige-Green
Instructed by	Schindlers Attorneys
For the Respondents	Adv E Sithole
Instructed by	Madhlopa & Thenga Inc.
Date of Hearing	4 June 2024
Date of Judgment	17 September 2024