



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 12735/2023

STELLENBOSCH UNIVERSITY

Applicant

and

GRANVILLE COLIN CARLSON

First Respondent

GORINGHAICONA HOME OF COLOURED

Second Respondent

Date of hearing: 29 October 2024

Post-hearing note: 29 October 2024

Date of judgment: 22 November 2024

JUDGMENT delivered electronically

PANGARKER AJ

Introduction

1. Section 1 (c) of the Constitution of South Africa, 1996, recognises the supremacy of the rule of law and the Constitution as one of the core values upon which the Republic of South Africa is founded. At the most basic of levels, it means that each of us, including organs of State and Traditional leaders, is subject to the rule of law and the Constitution. In respect of the latter, section 211 recognizes Traditional leaders insofar as their institution, status and their role of traditional leadership are concerned, but that their traditional authority and the application of customary law, where applicable, are similarly subject to the Constitution.

2. In this matter, the applicant (the university) contends that the first respondent personally and seemingly as a Traditional leader, monarch and/or king and representative, has acted in a manner which signifies that he has no regard for the rule of law in that it does not apply to him. I say seemingly because there is no indication in the first respondent's (Carlson's) answering affidavit that he has been recognised as a king in terms of section 8 of Chapter 2, Part 2 of the Traditional Khoi-San Leadership Act 19 of 2019. The university has submitted in its papers and during argument of the contempt of Court application that Carlson is a self-appointed leader and while I make no specific finding on this aspect because it is ultimately not relevant to the contempt application, there is certainly no indication that the provisions of section 8 of the aforementioned Act were complied with, but if so, the answering affidavit is in any event silent on this aspect.

3. Having set the tone in the preceding paragraphs, the university approaches the Court to hold Carlson, who also describes himself as *His Majesty King Khoekhoe De Goringhaicona the First*, and also as a representative of *Goringhaicona Home of Coloured*¹, the second respondent, in contempt of a Court order which declared both

¹ Answering affidavit, p124

respondents as vexatious litigants. For all intents and purposes, Carlson represents or is the alter ego of the second respondent.

Chronology and post-hearing developments

4. On 31 August 2023, under the same case number 12735/2023, the university obtained an order from Nuku J declaring Carlson, Goringhaicona Home of Coloured and/or any entity that Carlson is associated with, as vexatious litigants in terms of section 2(1)(b) of the Vexations Proceedings Act 3 of 1956 (the Act). In terms of paragraph 2 of the Nuku J order, Carlson and the second respondent were barred from instituting any legal proceedings in any Court against the university without leave of the High Court or any Judge thereof.

5. The above order was granted in view of Carlson's multiple frivolous and persistent applications against the university seeking unsubstantiated relief and multi-million Rand claims. Carlson also instituted proceedings against the university in the *Traditional Lore Court of Equity of the Kingdom of Goringhaicona*. According to the history of the vexatious litigation application, Carlson contended that the Lore Court of Equity granted a judgment against the university. The submission in this application is that no such body and/or Court exists and if it does, it has no authority nor jurisdiction over the university.

6. Notwithstanding the granting of the Nuku J order, and subsequent thereto Carlson caused to be issued out of the Equality Court sitting in this Division, on 10 December 2023, an application under case number EC13/2023. The Equality Court application was brought against various respondents, namely Cluver Markotter, the university's legal representatives, the South African government, Stellenbosch University, the Western Cape Government: Department of Cultural Affairs and Sport,

the City of Cape Town, Department of Justice, Department of Police², National Prosecuting Authority, Cape Town High Court and Stellenbosch Magistrates' Court. The Equality Court application was thus launched more than three months after the Nuku J order and is currently pending in that Court.

7. On 8 September 2023, the Sheriff for Stellenbosch served a copy of the vexatious litigant order on Carlson per electronic transmission to his email address as reflected on the Sheriff's return of service³. In July 2024, the university launched this contempt application and my understanding is that this date coincides more or less with when it filed its answering affidavit in the Equality Court application. Carlson delivered an answering affidavit to the current application.

8. On 7 August 2024, the contempt application was postponed to Fourth Division for hearing on the semi-urgent roll with a timetable for the delivery of affidavits. Service of the replying affidavit and updated Index in this application was effected, according to the Sheriff's returns of service, per electronic transmission on the respondents. By all accounts, and given the content of the affidavits herein and documents filed of record, Carlson was aware of the date for the hearing of the opposed contempt application.

9. When the application was called on 29 October 2024, Carlson was not present at Court. His name was called outside the Courtroom and the Registrar reported that he was absent, and there were no appearances on behalf of the respondents. Counsel for the university then advised that emails were sent to the Acting Judge President's secretary on 28 October 2024 enquiring about the allocation of this matter. In reply, the secretary informed the university's legal representatives that the matter was allocated for hearing on 29 October 2024.

² Presumably this is a reference to the SAPS or Minister of Police, but it is unclear

³ PH3 to founding affidavit

10. Furthermore, email correspondence indicates that Carlson responded to the legal representatives' enquiry regarding his Court attendance shortly after 22h00 that evening, indicating his stance, which I summarise as follows: Carlson advised that he had taken a significant decision in that he would be opening his own Court in South Africa; that the legal system is plagued by *"ongoing injustices and systemic issues"* and that *"we take bold steps towards achieving real justice for all"*⁴. He goes further by stating that his Court would be dedicated to addressing these issues and providing a *"fair and transparent process for all"*. Carlson signs off the email as *HM King Khoekhoe De Goringhiacona*⁵.

11. However, not content to leave things be after advising the Acting Judge President's secretary, the Registrars, the acting Court manager, the university's counsel and his attorney of his plans to open his own Court, Carlson, as if to foreshadow his later email and conduct, then issued a veiled threat which stated that:

"Also, the House of Carlson have (sic) made contact with the Russian Parliament in aid of weapons to liberate my people from your law, we have decided to pick up arms".⁶

12. Having heard counsel's submissions and satisfied that Carlson was indeed aware of the application and the day's proceedings, in fairness and in order to secure Carlson's attendance at Court on the day, the matter stood down until at least 11h30 for his attendance at the hearing. The idea was that the Registrar and the university's legal representatives would contact Carlson with a view to enquiring whether he would be attending the contempt of Court proceedings. The Registrar communicated with Carlson per electronic mail at 10h30, informing him that the matter stood down for him to attend Court and enquiring whether he wished the matter to be postponed. He was

⁴ Carlson email, 28 October 2024

⁵ I safely accept that "HM" is a reference to "His Majesty"

⁶ Carlson email, 28 October 2024

requested to respond urgently. Subsequently, having received no reply to the email nor to calls made to Carlson's mobile phone numbers, the matter was recalled at 11h30 and Carlson was still absent.

13. When the matter was recalled, counsel for the university placed on record that messages were sent via WhatsApp to Carlson regarding his attendance at Court, but that all indications were that he had not read the messages at that stage. Counsel made submissions as to Carlson's non-attendance and having considered same, the content of the Court file and returns of service, I was indeed satisfied that the respondents were aware of the application, the Court date and time of hearing. Furthermore, I accepted the submissions that Carlson was present in Court on 7 August 2024 before Montzinger AJ when the matter was postponed by agreement between the parties to 29 October 2024. The order granted by Montzinger AJ confirms that the postponement for hearing was by agreement between the parties.

14. Having satisfied myself of Carlson's knowledge of the application, and hearing date, and having no postponement application before me, I was advised that the university elected to proceed with the contempt application in Carlson's absence. The application was thus duly argued, and in view of a question posed to counsel during argument, counsel requested an opportunity to provide a brief post-hearing note, which was duly provided later the same day.

15. After the hearing, the matter stood down to await the post-hearing Note, which was received later the afternoon. It is at this stage that I was alerted to an email sent by Carlson at 16h30 in which he responded to the Registrars' email of 10h30 that morning when the matter stood down. The Registrar, the Court and legal representatives for the university were met with what may only be described as a vile, verbally abusive, expletive laden and insulting email from Carlson. The email becomes relevant later in the consideration of the contempt application and to the extent necessary, I set it out below, though omitting certain vulgar and verbally abusive

words and phrases directed at a Judge in this Division and the President of South Africa:⁷

"Take your court and shuff (sic) it in your m&## se p&%% you all corrupt m%\$# se p&%%\$ your judiciary is a f#\$% fluke and a joke you protect corrupt bastards you, on my land you f\$@& collaberators (sic) of the white bastards.

You tell Judge this is King Khoekhoe and tell her I say %\$& \$#@ %\$ tell i say #@% &%\$# so the f%\$#@ f&%\$ n%\$# with a @#\$ &\$#.

I dispise (sic) you your f#\$@! law".

16. In addition to the expletive-laden and abusive email from Carlson, he also included another Notice of Motion which purports to be a review brought in terms of Uniform Rule 53. While most of the relief from paragraphs 2 to 6 on page 2, under the heading "*Relief Sought*" is on the face of it incompetent, paragraph 1 seeks a declaratory order reviewing and setting aside the application under this case number 12735/2023 against HM King Khoekhoe De Goringhaicona. This new, un-issued Notice of Motion, is brought against the Board of Directors of Stellenbosch University, Ebosch Heritage Projects, Cluver and Markotter and Stellenbosch University.

17. The post-hearing Note addresses the question posed during the hearing and also the effect and significance of the 29 October email and the latest Notice of Motion launched by Carlson. These aspects are considered below in the discussion which follows.

⁷ Carlson email, 29 October, 16h30

Discussion and findings

18. In its Notice of Motion, the university seeks a declaration that the first respondent be found in contempt of the Nuku J order; directing him to withdraw his complaint against it in the Equality Court matter and ordering Carlson to pay costs. Briefly, the complaint in the Equality Court, brought against several respondents including the university, deals with a number of grievances. The main complaint against the university is that it uses the name “Krotoa” on one of its buildings, which Carlson explains is derived from the Krotoa family of the Khoisan. Briefly, Carlson as the King of the Krotoa family, explains that he is a descendant of Krotoa of Goringhiacona, with Traditional reference number CKSM 1/70/2023⁸.

19. Whether Carlson is a Traditional leader or not, or self-proclaimed, is unknown. Certainly, the university is of the view that he is self-proclaimed and has assumed a title unto himself. On the one hand, he identifies himself as Granville Colin Carlson, also known as His Majesty King Khoekhoe, and on the other hand, he states that the name Granville Colin Carlson is imposed upon him.

20. From the Nuku J order, which was granted pursuant to Carlson’s applications and actions under different case numbers, including legal proceedings demanding \$450 million from the university for trademark infringement, it is apparent that Carlson and the second respondent were declared vexatious litigants in terms of the Vexatious Proceedings Act. The application and documents purporting to be founding affidavits in case number 8116/2023, another of Carlson’s matters against the university, were set aside by Cloete J on 25 August 2023.

⁸ See Equality Court affidavit

21. The university alleges that Carlson did not obtain leave from a Judge of this Division nor the High Court before instituting such proceedings against the university. Certainly, from the affidavits filed of record, this averment is not disputed. The university's further averments and submissions are that Carlson is in contempt of Court on two bases: firstly, insofar as contravention of section 2(4) of the Vexatious Proceedings Act is concerned, and secondly, in respect of the ordinary rules of contempt.

22. Having regard to the facts in this matter, and the chronology of events, Carlson is indeed in contempt of Court as he instituted the Equality Court application after being declared a vexatious litigant. Section 2(1)(b) of the Act prohibits Carlson and the second respondent from instituting legal proceedings in any Court, and "*any Court*" would include the Equality Court sitting in this Division. Certainly, the evidence points to the conclusion that Carlson did not obtain leave from a Judge nor from the High Court to institute the application against the university under case number EC13/2023.

23. At this juncture I must point out that on 30 October, a day after the hearing, Carlson sent an email to the Chief Registrar and Court administration personnel and others, which is titled "*Letter to AJP in regards to Vexatious Litigant case number 20740/2022 From the Desk of His Majesty King Khoekhoe de Gori*". In the email, Carlson expresses surprise that on his attempt to have the Rule 53 application issued at the Registrars' office, he was informed that he was declared a vexatious litigant. Accordingly, he was confused as he had written to the Acting Judge President and was (according to him) given permission in relation to the Equality Court matter, to enter the Courtroom.

24. Attached to his email, Carlson addresses correspondence to the Acting Judge President regarding case number 20740/2022. My research indicates that case number 20740/2022 refers to a vexatious litigation application before Van Zyl AJ,

wherein she granted orders against Carlson in ***Emam v Carlson***⁹, whereby Carlson was declared a vexatious litigant and similar orders to those granted by Nuku J under this case number.

25. The purpose and significance of Carlson's 30 October email is two-fold: firstly, even though Carlson failed to appear at the contempt hearing on 29 October, he cannot rely on his correspondence to the Acting Judge President in case number 20740/2022 as some form of consent or leave from a Judge to institute legal proceedings against the university. Secondly, it is telling that Carlson was declared a vexatious litigant twice within the space of four months in 2023.

26. Turning to the ordinary rules of contempt of Court, the university has fulfilled the requirements or test for contempt. Firstly, it has proved the existence of the order granted by Nuku J on 31 August 2023. Secondly, the university has proved service of the above-mentioned order on Carlson, as stated above, on 8 September 2023 and it has shown that Carlson did not comply with the order in that he instituted the Equality Court application without first obtaining leave of the High Court or a Judge to do so.

27. Having regard to these uncontested facts, and at the risk of repetition, it bears emphasising that the Nuku J order does not allow Carlson and the second respondent to institute any legal proceedings in any Court, yet this is exactly what Carlson proceeded to do. Counsel for the university submitted that section 2(4) of the Act does not require the recently declared vexatious litigant to have acted in bad faith and I agree with this submission. Furthermore, section 2(4) simply requires the vexatious litigant to have launched the proceedings in contravention of the section 2(1)(b) order and without leave of the High Court or a Judge.

⁹ [2023] ZAWCHC 68

28. Ultimately, Carlson's right to approach a Court is limited by the procedural barrier imposed by section 2(1)(b) of the Act. In **Beinash and Another v Ernst & Young and Others**¹⁰, Mokgoro J stated the following when referring to the limitation of the access to justice right when having regard to section 36 of the Constitution:

"[16] The effect of section 2(1)(b) of the Act is to impose a procedural barrier to litigation on persons who are found to be vexatious litigants. This serves to restrict the access of such persons to courts. That is its very purpose. In so doing, it is inconsistent with section 34 of the Constitution which protects the right of access for everyone and does not contain any internal limitation of the right. The barrier which may be imposed under section 2(1)(b) therefore does limit the right of access to court protected in section 34 of the Constitution. But in my view such a limitation is reasonable and justifiable."¹¹

29. Furthermore, **Beinash** makes it clear in paragraph [15] that the screening mechanism in the Act, namely first seeking leave to institute proceedings, serves to protect the victim of the vexatious litigant who is repeatedly subjected to unmeritorious litigation, costs and embarrassment, and the public interest that the Courts and administration of justice are not hamstrung by *"the clog of groundless proceedings"*¹².

30. Turning to Carlson's answering affidavit, it becomes apparent that he does not dispute the absence of having first sought leave from a Judge or Court before issuing the Equality Court application against the university. Thus, on all the uncontested facts

¹⁰ [1998] ZACC 19

¹¹ The remainder of paragraph [15], which sets out section 36 of the Constitution, and footnotes, is excluded

¹² Beinash supra, par [15]

before the Court, it is apparent that Carlson failed to seek such leave and in instituting legal proceedings in the Equality Court, he disobeyed the Nuku J order.

31. The Notice of Motion seeks a declaration of contempt and the test in these circumstances is the civil test, in other words, on a balance of probabilities¹³. Once the university has established the first three requirements, as referred to earlier, the evidential burden then shifts to Carlson in respect of wilfulness and *mala fide* conduct¹⁴. In the founding affidavit, the university contends that although it did not seek the imposition of committal to prison it remains within the Court's discretion to grant such sanction should the Court believe that the requirements for contempt are established beyond reasonable doubt, and that such sanction is justified.

32. In the replying affidavit, the university repeats its view that it is open to the Court to impose a criminal sanction, even though such an order has not specifically been requested in the Notice of Motion. The motivation for such averment and submission is that Carlson is clearly guilty of contempt of Court. On this issue, I posed the question to counsel as to whether this Court could commit Carlson to prison and/or impose a wholly suspended period of committal to prison in circumstances where such relief was not requested in its Notice of Motion. This question was thus addressed in the university's post-hearing Note and I consider it after addressing Carlson's answering affidavit.

33. Carlson's answering affidavit, stripped of its irrelevant matter, raises what may charitably be referred to as defences to the contempt application. These defences are summarised as follows:

¹³ Fakie NO v CCII Systems (Pty) Ltd [2006] ZASCA 52 par 22

¹⁴ Herbstein and Van Winsten The Civil Practice of the High Courts of South Africa, Fifth Edition, Vol. 2, AC Cilliers, C Loots and HC Nel

33.1 a refusal to recognise or “*acquiesce*” to the High Courts’ jurisdiction¹⁵;

33.2 the multiplicity of orders sought in a single case; and

33.3 that the matter must be heard by the Constitutional Court.

34. Unsurprisingly, paragraph 6 of the answering affidavit is indicative of Carlson’s view of the rule of law, the authority of the Courts, particularly the Western Cape High Court, and the administration of justice generally. He states as follows:

“6. *It is thus the position of the GORINHAICONA HOME OF COLOURED AND HM KING KHOEKHOE DE GORINGHAICONA IMPOSED AS GRANVILLE CARLSON, that it will not acquiesce to the jurisdiction of the de jure High Court of South Africa (Western Cape Division, Cape Town) because this will be tantamount to mocking, disobeying, nullifying and voiding Chapter 12 of the Constitution of the Republic of South Africa, 1996.*”

35. It is clear from the Carlson’s answering affidavit, that he views the application as an insult to the role of Traditional leaders and the tenets, strictures and belief systems institutionalized in customary law¹⁶ and for that and other reasons, Carlson will not “*acquiesce*” to this Court’s jurisdiction. The problem with his stance is that Carlson conveniently ignores that Chapter 12 of the Constitution, which deals with Traditional leaders, makes it abundantly clear in section 211 (1), that the institution, status and role of Traditional leadership according to customary law are recognised, *subject to the Constitution*¹⁷.

¹⁵ Paragraph 6, answering affidavit

¹⁶ Paragraph 10, answering affidavit

¹⁷ My emphasis

36. Furthermore, while Carlson seems to believe that Traditional authority can or may act with impunity, section 211 (2) of the Constitution says the contrary, in that the observation of a system of customary law may function subject to applicable legislation and custom. Put simply, Chapter 12 clarifies that Traditional leadership is subject to the overarching provisions of the Constitution, meaning that a Traditional leadership issue could be resolved by the Courts, as referred to in section 211(3) of the Constitution.

37. Furthermore, in terms of section 169(1) of the Constitution, the High Court may decide any constitutional matter and any other matter not assigned to any other Court. It follows therefore from the provisions of the Constitution, that the High Court would have jurisdiction in respect of a Traditional leadership or customary law issue. However, even more significantly in my view, is section 21 of the Superior Courts Act 10 of 2013, which vests the High Court with jurisdiction over all persons residing or being in and in relation to all causes of action and offences and all other matters of which it may take cognisance of.

38. Thus, as Carlson lives in Stellenbosch, and the second respondent's address is also in Stellenbosch, the Western Cape High Court indeed has jurisdiction over these respondents. In my view, Carlson's belligerent attitude regarding jurisdiction is ultimately irrelevant given the provisions of section 21 of the Superior Courts Act, which vests the High Court with jurisdiction over him in this application. His suggested defence regarding jurisdiction is irrational and unmeritorious, and his statements in his affidavit and emails are indicative of disrespect and contempt for the High Court and the rule of law itself.

39. Carlson's understanding of Chapter 12 is incorrect and possibly blinded by a complete disregard of what the Constitution actually states in respect of the recognition of customary law and traditional leadership, to suit his own purpose and narrative. If anything, Chapter 12, read with sections 165, 166 and 169 of the Constitution

respectively, allows for a symbiotic relationship between Traditional leadership, customary law and the South African Courts, including the High Court. Carlson's self-created *Lore Court of Equity* certainly has no jurisdiction nor authority in this matter, as envisaged by the legislation I refer to above. Accordingly, this defence is without merit.

40. In respect of the second defence, the complaint that there is a multiplicity of Orders sought is similarly without merit. There is nothing procedurally wrong in a litigant seeking more than one order in a matter and in this matter, the orders sought are not incompetent. Lastly, Carlson is of the view that this matter and others must be heard by the Constitutional Court. In this respect, his application to that Court under Constitutional Court case number CCT226/24, against the university, its attorneys, the Western Cape Government and the Department of Co-operative Governance and Traditional Affairs, was refused on 6 September 2024 on the basis that Carlson, in his many guises or capacities, had made out no case for direct access.

41. In respect of the above order by the Constitutional Court, it is important to note that Carlson approached the Constitutional Court after 31 August 2023¹⁸, after being declared a vexatious litigant, and without leave of the High Court or a Judge. It also seems that no leave was granted by any other Court to institute such legal proceedings against the university but Carlson simply forged ahead nonetheless. While the contempt application did not initially have as its basis the subsequent application to the Constitutional Court for direct access, Carlson's persistent actions of instituting proceedings subsequent to the vexatious litigant order is indicative of his continued contempt and disobedience in respect of such order. In conclusion on these aspects, Carlson raises no defences to the contempt application.

¹⁸ My emphasis

42. This leaves the question posed as to whether this Court, having found Carlson to be in contempt of the Nuku J Order by issuing the Equality Court application subsequently, is competent to impose a criminal sanction where it was not specifically requested in the university's Notice of Motion? The submissions are that Carlson was given notice that the university would seek to request the Court to impose a fine or a suspended period of imprisonment by way of certain paragraphs in the founding and replying affidavits¹⁹, the Practice Note in the August 2024 proceedings, heads of argument and the recent Practice Note in these proceedings. It is submitted that a suspended committal or fine is warranted in that Carlson has wilfully disobeyed the Nuku J order and acted *mala fide* by instituting further matter(s) without leave of the High Court or a Judge to do so.

43. The university submits that its failure to expressly seek a criminal sanction for contempt is not a barrier to the Court granting such Order against Carlson. The argument relies upon the Constitutional Court judgment of ***Pheko and Others v Ekurhuleni Metropolitan Municipality (2)***²⁰ which states the following at paragraph [26] of the judgment:

"[26] The starting point is the Constitution. It declares its own supremacy and this supremacy pervades all law. Section 165 vouchsafes judicial authority. It provides that courts are vested with judicial authority and that no person or organ of state may interfere with the functioning of the courts. The Constitution explicitly enjoins organs of state to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness. In order to ensure that the courts' authority is effective, section 165(5) makes an order of court binding on "all persons to whom and organs of state to which it applies". These obligations must be fulfilled. It is significant that this subsection specifically mentions organs of state, for "justiciability and powers of constitutional review make sense only if non-judicial authorities cannot and do not undo court orders and/or their consequences". These sections, read alongside the interpretive injunction of the supremacy clause, demonstrate why

¹⁹ Par 31 founding affidavit, p10; par 10 replying affidavit, p132

²⁰ 2015 (5) SA 600 (CC) at par [26]

continual non-compliance with court orders and decisions would, inevitably, lead to a situation of constitutional crisis.”

(Footnotes omitted)

44. It is thus evident that the remedy for contempt of Court exists not only to force compliance for the civil litigant's benefit, but also to vindicate the Court's judicial authority. In ***Fakie NO v CCI Systems (Pty) Ltd***²¹, Farlam JA writing for the Supreme Court of Appeal stated with reference to contempt of Court that:

“[6] It is a crime unlawfully and intentionally to disobey a court order. 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’, 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’.”

(Footnotes omitted)

45. In this matter, and from the facts, I am able to find that Carlson has not merely disregarded the Nuku J order, but has deliberately and intentionally disobeyed the order by instituting the Equality Court application without first seeking leave of a Judge or the High Court. Secondly, he thereafter approached the Constitutional Court for direct access in another matter against the university, also without first seeking leave as described above. I must pause to point out that the order relates to the university, as Carlson's opponent in both matters thus leave was first required.

²¹ 2006 [ZASCA] 52 par [6]

46. Furthermore, while his disobedience and non-compliance with the order are evident from the abovementioned actions, Carlson then gives notice in an email of what little regard he has for the High Court and the legal system as he intends opening his own Court, that “we” decided to pick up arms and then goes a step further, by insulting, verbally abusing and attacking a Judge in this Division in a vile and expletive-laden email to all and sundry. In addition to that, Carlson, seemingly unrestrained and conducting himself as if he is at liberty to do whatever he likes, approaches the Registrar again, without leave and again in disobedience of the Nuku J order, to review the current application which is pending.

47. In my view, all of these actions and conduct contribute to showing that Carlson has indeed acted wilfully and with *mala fide*, unconcerned about the restrictions imposed upon him by the Nuku J order and is clearly on his own crusade. These are not the actions and conduct of a person who genuinely, albeit mistakenly, believes that he is entitled to act as he should and I say so because Carlson clearly knows that an order was granted declaring him to be a vexatious litigant and he was required to attend Court but further than that, it is evident from his emails that he also knows that he, as with all of us, is bound by the rule of law which requires of him to obey Court orders. As illustrated in this judgment, Carlson simply refuses to obey or comply with the Court order.

48. Instead, Carlson gives notice that he intends to establish his own Court; fails to appear at Court on the hearing date, notwithstanding knowledge of the date and hearing and he contemptuously and in a vulgar and abusive manner shows his utter disdain for this Court and the rule of law in general. From the above illustration of his conduct, I am thus satisfied that the university has shown that Carlson has acted wilfully, and disobediently in relation to the Nuku J order. However, it does not end there. According to ***Fakie NO***²², the contemnor has an evidential burden in relation to wilfulness and *mala fide*. In other words, if the contemnor fails to raise reasonable doubt in relation to wilfulness and *mala fide*, then the applicant would have succeeded

²² Par [42]

in proving contempt beyond reasonable doubt²³. From the facts as described in this matter, and the conduct of Carlson, which has been nothing less than contumacious disrespect for the rule of law and judicial authority, I am indeed satisfied that the university has succeeded in establishing Carlson's contempt beyond reasonable doubt.

49. The question which further arises is whether, in view of the finding of contempt made beyond reasonable doubt, I may impose a committal order or punitive sanction even though it is not prayed for in the Notice of Motion? On this question, counsel for the university has submitted that he could not find cases on point which demonstrate that an applicant in a contempt application who/which seeks a declaration of contempt (the civil remedy of enforcement) leaves the imposition of a criminal remedy or committal to prison in the Court's hands and in fact argues that such penal sanction should be imposed.

50. At this juncture I must clarify that the draft order handed up for consideration at the conclusion of the hearing seeks, *inter alia*, an order imposing three months' imprisonment wholly suspended for five years on certain conditions. The general view, having regard to various authorities on civil contempt, is that it is undisputed that a Court has the power to impose a criminal sanction in contempt applications. However, in this matter the university relies on authorities such as ***Cape Times Ltd v Union Trades Directories (Pty) Ltd***²⁴ and ***Fakie NO*** to contend that any person has the right to inform the Court that its processes are being abused and the Court, considering the circumstances, will issue a *rule nisi* if it deems fit. Secondly, it is submitted that there is no bar to a litigant bringing to the Court's attention, criminal contempt which is connected with a breach of an order obtained in civil proceedings.

²³ See also Department of Environmental Affairs, Forestry and Fisheries v B Xulu & Partners Incorporated and Others [2021] 3 All SA 166 (WCC) par 22 - 23

²⁴ 1956 (1) SA 105 (N)

51 Thirdly, the university submits that, with reference to contempt applications, it may be regarded as an informer and relies upon ***Secretary of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others***²⁵ to argue that where a person who approaches a Court does not seek relief to enforce an order but merely punishment to vindicate the Court's authority, they are treated as an informer and the Court may act on the informer's information.

52. Counsel argues further that this is a hybrid case because the university approached the Court seeking the civil remedy, being a declaration of contempt, and compliance with the vexatious litigant order, however, it is simultaneously the informer, informing the Court of Carlson's contempt as the matter progressed. It thus argues that although a declaration of contempt was/is sought, certain facts were not present when it applied for such relief as per the Notice of Motion but, so the submission goes, the Court nonetheless has the power to impose a criminal sanction, provided that it follows a fair process.

53. Having regard to the submissions and request that a suspended punitive sanction be imposed, I firstly state that this is indeed a matter where, as time has passed, the conduct of Carlson and his Goringhaicona Home of Coloured, has become progressively more contemptuous, not only of the Nuku J order but also in respect of the Courts' authority. Put differently, the contempt of and disobedience to the Nuku J order is continuous and there seems little or no prospect that the respondents' conduct will abate. As sketched above, Carlson will not and does not accept the Courts' jurisdiction and authority over him and thinks nothing of threatening to take up arms for his cause, to verbally abuse and insult a Judge and the Western Cape High Court as the relevant judicial authority over him.

²⁵ 2021 (5) SA 327 (CC) par 184 (Theron J dissenting)

54. Insofar as fair process or procedure is concerned, and having regard to the university's submissions, Carlson was indeed made aware in the founding and replying affidavits, the Practice Notes and heads of argument, that the university motivates for a finding that his contempt is proved beyond reasonable doubt and that the imposition of a criminal or punitive sanction is left in the Court's hands.

55. Furthermore, opportunities were given to Carlson to attend Court for the hearing, but he elected or refused to heed the call to attend Court, despite service and knowledge of the Nuku J order and the contempt application. Aside from these factors, it is important to stress that this Court's approach in the matter has been to consider his defences raised in the answering affidavit notwithstanding his absence during the proceedings and to address the merits and demerits of these defences in this judgment. Ultimately, I conclude that in relation to Carlson and the second respondent, a fair process or procedure has ensued in this application.

56. Moving on, the question as to whether the university is an informer which is entitled to approach the Court and seek a punitive sanction, as described above, is slightly more nuanced than the university makes out. The university relies upon the **Cape Times Ltd** judgment to bring itself within the description of an informer in the context of contempt applications. Turning to the abovementioned judgment, the appeal in the then Natal Provincial Division (NPD) addressed a number of interesting aspects regarding contempt of Court, more specifically *locus standi* where the punishment does not seek to coerce compliance with an order.

57. The Court in **Cape Times Ltd** referred to a judgment of **Corinbatore**²⁶, where an advocate who previously represented seamen in an interdict matter, but was not instructed to represent them in a contempt matter against one McCarthy, approached

²⁶ P124 A-B

the Court and placed an affidavit before it²⁷, presenting facts to the Court and held himself “*in submission to pursue such course as to this Honourable Court it may seem well to direct*”²⁸. The advocate had cited no respondents, explained McCarthy’s disobedience to the order and on the information presented to it, the Court issued a *rule nisi* calling on McCarthy to indicate why he should not be punished for contempt. Thus, in ***Cape Times Ltd***, the view was expressed that there was no bar to a party bringing circumstances constituting criminal contempt connected to breach of an order which the party obtained in a civil matter.

58. Similarly, in ***Incorporated Law Society v Sand, Kowarsky & Co.***²⁹, Wessels J held that anyone may approach a Court and indicate that its processes are being abused, which may result in the Court issuing a *rule nisi*. This was the approach according to the common law, and in such circumstances, the university would be in the position of the original applicant, seeking enforcement of the order and also be an informer, which alerts the Court to the criminal contempt connected to the disobedience or breach of the Nuku J order.

59. The question may well be asked about the Courts’ approach post-Constitution, to the informer in civil contempt matters and the answer is found in the minority judgment by Theron J (Jafta concurring) in the aforementioned ***Secretary of the Judicial Commission of Inquiry v Zuma***³⁰. It is well known that Mr Zuma made certain utterances against the Constitutional Court, regarded as “*direct assaults*” and attacks on judicial authority, and a refusal to comply with Court orders and a Summons issued by the State Capture Inquiry³¹. In that contempt of Court matter, the majority declared Mr Zuma in contempt of Court and imposed an unsuspended period of imprisonment of 15 months. The minority judgment agreed that he was in contempt of

²⁷ Presumably, the affidavit was attached to an application but it is unclear whether this was in fact so

²⁸ P124 C-D

²⁹ 1910 TPD 1295 at 1296

³⁰ Supra

³¹ Para 1-2

Court but questioned the imposition of an unsuspended committal which was not associated with coercing compliance with the Constitutional Court's order which Mr Zuma was in contempt of.

60. In her discussion and consideration of the **Cape Times** judgment, Theron J was of the view that the issue of punitive committal was not one of standing, as the latter judgment would have it, but rather that an essential element of civil contempt was missing where there was no interest in pursuing or seeking enforcement of an order. At paragraphs [184] and [187] of the **Zuma** contempt judgment, Theron J stated that:

“[184] In later decisions, our courts have taken a more permissive approach to private parties who act as so-called “informers” by bringing contempt of court to the attention of a court without seeking coercive or remedial relief. In cases where a contempt application is brought for the sole purpose of punishing the respondent, the applicant is “no more than an informer who brings the contempt to the attention of the court”. Though the informer may not seek compliance with the original order, that does not change the nature and character of the application, which is “directed towards the protection of the courts, respect towards the courts and court orders, and the protection of the integrity of the court system”. In Lan, the Court explained that where contempt is followed by late compliance with the original court order, the commission of the offence of contempt cannot be ignored and that, “[o]nce the requirements of the offence have been established to have existed at a certain period in time, and once it is found that no valid defence has been raised in that regard, a positive finding should follow”. This notwithstanding, I have not found a single case in which a court has granted punitive relief at the request of an informer. It is only in Lan that the court granted a warning as a sanction and noted in passing that even if there has been compliance with the original court order, the court is not precluded from granting a sanction not aimed at enforcement.

*[187] To sum up, the common law position is that civil proceedings for contempt of court can serve the object of compelling compliance with a court order and the object of punishing the respondent. They can be both coercive and punitive in nature. Under the common law, where an applicant claimed punitive relief not linked to compelling compliance with a court order, the applicant had no locus standi to claim that relief. In later judgments, our courts allowed an applicant with no intention of enforcing a right or a claim to act as an informer to bring to the attention of the court an alleged violation of a court order granted in its favour. Notably, however, a purely punitive committal order has never been granted in the context of civil contempt proceedings. On the contrary, the Full Court in *Mashiya* accepted that the initiating party had standing to act as an informer but specifically refused to grant the purely punitive relief sought by him. Underpinning this conclusion is the premise that where only punitive relief is sought for contempt of court, recourse to a summary procedure is unjustifiable because, by definition, compliance with a court order is not capable of being achieved in those proceedings. This absence of a civil rationale for the summary procedure undercuts the justification for adopting a procedure which falls short of the protections that could be afforded an accused person.*

(footnotes omitted)

61. In my view, the above paragraphs in the **Zuma** contempt judgment are authority for the view that an informer, post-Constitution, may approach the Court to inform it of the violation of a Court order granted in its favour and may seek purely punitive relief. From my reading of Theron J's discussion, it also seems that it is indeed recognised that the purely punitive order which is sought by the informer may well be used to encourage compliance with the initial order. However, the misgivings regarding the constitutionality or otherwise of granting an unsuspended committal or purely punitive relief, as eventually imposed by the majority judgment in **Zuma**, were expressed succinctly by Theron J in its minority judgment. Theron J held the view that the contemnor faced with a coercive order may well escape the committal by complying

with the initial order and thus the limitation of section 35 rights is then tempered³². Ultimately, the minority judgment rather viewed a suspended punitive order suitable as the contemnor, if he does not then comply, faces a period of imprisonment³³.

62. Having regard to the above, I would agree that the university is in the position of an informer, but it does not bear all the hallmarks as referred to in the **Zuma** contempt matter. To elaborate, the university seeks compliance with the Nuku J order but also seeks a punitive order in its capacity as informer. It does not seek an unsuspended committal order. Thus, in my view, the university in the position of informer and applicant in the initial vexatious litigant order, seeks to enforce its rights in relation to a coercive remedy and also, by bringing the ongoing contempt committed by Carlson to the Court's attention, seeks to recover and vindicate the Court's authority. Having regard to the authorities discussed, I do not see that such an approach is excluded in contempt of Court proceedings. In my view, the imposition of a suspended committal order would hopefully bring Carlson to his senses but also serve to vindicate the Court's authority in view of his continued breaches of the order, his verbal and abusive attacks on the High Court judiciary, the utter contempt displayed at the authority of the Court and the refusal to attend the proceedings.

63. This is a case where a committal order was not sought initially, but as the matter progressed and Carlson's conduct, contemptuous as it is, continued unabated, even the warning in the affidavits and practice notes that a committal order would be left up to the Court, did not deter the contemnor. Having considered these aspects and the submissions in the matter, I hold the view that this Court is not precluded from imposing a coercive order with a suspended committal order in order to vindicate its judicial authority and the rule of law. As already discussed above, in reaching this stage, the process followed in this application has been fair to Carlson and the second respondent.

³² Par [238]

³³ Par [261]

64. While I have considered issuing a *rule nisi*, given Carlson's conduct, flouting the rule of law and attacks on the Court and judiciary, I also take cognisance that the legal representatives in this matter have also come under attack and that Carlson has made it clear in his communications to them and Court administration, that we are corrupt and racist and as mentioned, there are veiled threats of violence towards the rule of law. Any invitation for Carlson to return to Court on a further date, to purge his contempt, given these attacks on the Court and its authority, would most likely lead to a situation of a further attack, insults and abuse directed at the Court and legal representatives. In my view, the dignity of the Court cannot be allowed to be violated by anyone, including Carlson.³⁴

65. Certainly, it seems more than likely that this would be the result, and given Carlson's refusal to attend and recognise the Court, ultimately the order I grant would dispense with the need for a further Court appearance. In view of the unauthorised Equality Court application, issued without first obtaining leave of the Court or a Judge, the relief in prayers 1 to 3 of the Notice of Motion 3 will be granted, with some adjustments.

66. Lastly, whether Carlson intends to seek leave of the Court or Judge before having his Rule 53 application issued, is unclear, but his conduct in approaching the Registrar to have the application issued is yet another act of breaching the Nuku J order and wilfully disobeying it. Lastly, to the extent that Carlson displays contempt for the Court's authority, has created his own Court and does not acquiesce to the Court's jurisdiction, he nonetheless approaches the Registrar's office to have a Rule 53 application issued which request was correctly refused. In the circumstances, a copy of the order granted below will be forwarded to the Chief Registrar for her office's

³⁴ Pheko, *supra*, par [26]

attention and to the Chief Magistrate, Cape Town, for the attention of the Stellenbosch Magistrates' Court³⁵.

Order

67. In the result, I grant the following orders:

1. It is declared that Granville Colin Carlson and/or King Khoekhoe De Goringhaicona, and Home of Coloured, are in contempt of the order granted by Nuku J on 31 August 2023.

2. The first respondent (Carlson) is directed to withdraw his complaint and application against the University of Stellenbosch (the applicant) in Equality Court case number EC13/2024, within 10 (ten) Court days of date of this order, failing which, the application would be deemed to be withdrawn.

3. The first respondent is fined R4000 or 4 months' imprisonment, wholly suspended for 5 (five) years on condition that: (i) he does not breach the terms of the order granted by Nuku J on 31 August 2023 again, and (ii) he complies with the terms of this order.

4. The first respondent is ordered to pay the costs of the application on an attorney and client scale.

³⁵ Stellenbosch Magistrates' Court is also cited as a respondent in one of Carlson's applications

5. A copy of this judgment shall be forwarded to the Chief Registrar and to the Chief Magistrate, Cape Town, for their attention.



M PANGARKER
ACTING JUDGE OF THE HIGH COURT

Appearances for applicant: M BISHOP

Instructed by: Cluver Markotter Inc.

P L Hill

Stellenbosch

Appearances for respondents: None (in person)