

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

APPEAL CASE NO:34/2024
CASE NO AQUO: 8907/2024

- (1) REPORTABLE: YES
(2) OF INTEREST TO THE JUDGES: YES
(3) REVISED.

DATE 14 February 2025 SIGNATURE [REDACTED]

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In the application for leave to appeal in the matter between:

THABAZIMBI LOCAL MUNICIPALITY

FIRST APPLICANT

LETSEKA GLADWIN TLOUBATLA

SECOND APPLICANT

and

ABSA BANK LTD

FIRST RESPONDENT

EMMA MANKGA

SECOND RESPONDENT

MELISSA MULLER

THIRD RESPONDENT

Date of Hearing: 4 February 2025 (virtually Ms Teams)

Delivered: 14 February 2025

Summary: Application for leave to appeal in terms of sections 17(1) (i) and (ii) of the Superior Courts Act 10 of 2013, against the judgment and order which found the respondents in contempt of court – Court’s inherent power to impose a non-coercive sanction - periodic imprisonment and fine respectively – respondents failure to *inter alia*: discharge evidentiary burden in contempt inquiry; bare averments made in raising defence; comply with court’s directive in terms of Rule 6(5)(g) of the Uniform Rules of Court; and their failure or refusal to place mitigating factors before the court in consideration of the appropriate sanction.

This judgment was circulated electronically to the parties’ representatives by email. The date and time of hand-down are deemed to be 10h00 on Friday, 14 February 2025.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL

MORGAN AJ

INTRODUCTION

[1] Before me is an application for leave to appeal by the respondents —Absa Bank Ltd, Emma Mankga, and Melissa Muller against the order and judgment I delivered on 18 December 2024. For purposes of this application, I will refer to the parties as they appeared before me. The respondents seek leave to appeal against findings made in the contempt of court proceedings brought by Thabazimbi Local Municipality and its Municipal Manager, Letseka Gladwin Tloubatla.

[2] The applicants —Thabazimbi Local Municipality and its Municipal Manager, Letseka Gladwin Tloubatla filed a notice to abide with the court’s order in this application.

[3] The underlying dispute pertains to the respondents' failure to comply with two court orders—granted by Naude-Odendaal J on 20 August 2024 and Phatudi J on 21 December 2023—which directed Absa to grant Thabazimbi Local Municipality and its Municipal Manager, Letseka Gladwin Tloubatla full access to and control over the Municipality's bank accounts. The respondents were found to be in wilful and *mala fide* non-compliance with these orders, leading to a finding of contempt against them.

[4] The legal standard applied in the original judgment required the court to consider whether the respondents' conduct met the established criteria for contempt of court, namely: (i) the existence of a valid court order, (ii) knowledge of that order by the respondents, (iii) non-compliance with the order, and (iv) wilfulness and mala fides in failing to comply. The court held that once non-compliance with a valid order is established, wilfulness and mala fides are presumed unless the contemnor rebuts this presumption by demonstrating a reasonable doubt. The respondents failed to meet this evidentiary burden, resulting in the contempt finding.

[5] The central issue in this application is whether there are reasonable prospects of success on appeal or compelling reasons why leave should be granted, as required by section 17(1) of the Superior Courts Act 10 of 2013.

[6] The respondents argue that their non-compliance with the orders was neither wilful nor in bad faith but rather a consequence of conflicting legal obligations arising from multiple court orders and pending appeals. They contend that:

- a. They were caught between two rival municipal factions, each claiming legitimate control over the Municipality's financial affairs.
- a. They received legal advice that they were not in a position to comply with the orders without risking liability for implementing an unlawful instruction.
- b. The orders relied upon by the applicant's had been challenged through pending appeals and conflicting court decisions, creating legal uncertainty.
- c. Their conduct did not meet the high threshold for contempt of court, particularly in light of their reliance on senior counsel's legal advice.

[7] The respondents have served a notice to abide and have not opposed this application for leave to appeal. Consequently, this court is required to determine the application on the basis of the submissions made by the respondents and the applicable legal principles.

[8] The test for leave to appeal, as set out in section 17(1)(a) of the Superior Courts Act, requires this court to assess whether:

- a. There is a reasonable prospect that another court would come to a different conclusion,¹ or

¹ This criterion requires the applicants to demonstrate that another court, applying the same facts and law, *would* come to a different conclusion—not merely that it *could*. The threshold, as held by the Supreme

- b. There is some other compelling reason why the appeal should be heard, including conflicting judgments on the issue.²

[9] To properly contextualise the issues at hand, the court will first set out the factual background before addressing the grounds for leave to appeal.

FACTUAL BACKGROUND

[10] This matter arises from a dispute concerning control over the bank accounts of Thabazimbi Local Municipality, held at Absa Bank Ltd. The litigation history spans multiple court orders, appeals, and allegations of non-compliance, primarily resulting from political instability within the Municipality and competing claims over the authority to manage its financial affairs. The protracted nature of this litigation has produced a veritable forest of court orders.

[11] The respondents—Absa Bank Ltd, Emma Mankga, and Melissa Muller—were cited for contempt of court after failing to comply with two binding court orders. First, the order of Phatudi J on 21 December 2023, which directed Absa to grant Letseka Gladwin Tloubatla (Municipal Manager) and Kedisaletse Johannes Matlou (Acting Chief Financial

Court of Appeal in *Smith v S* [2011] ZASCA 15; 2012 (1) SACR 567 (SCA) at para 7, demands a realistic, rather than remote, chance of success. The Superior Courts Act has deliberately raised this threshold, reflecting the need to prevent appeals that merely rehash arguments already considered and rejected by the trial court.

² Even if there are no reasonable prospects of success, leave may still be granted if there are compelling reasons. This includes cases that raise novel or significant questions of law, conflicting judgments on the same issue, or matters of substantial public importance (see *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* [2020] ZASCA 17; 2020 (5) SA 35 (SCA) at para 2). However, the mere presence of complex legal issues does not automatically justify an appeal unless those issues have wider implications beyond the immediate case.

Officer) full access to the Municipality's bank accounts and to restrain other individuals from accessing them.

[12] Second, the order of Naude-Odendaal J on 20 August 2024, which reaffirmed the previous order and declared that the dispute over access to the bank accounts had been finally resolved.

[13] Despite these orders, Absa refused to grant access to the Municipality's accounts, citing conflicting court orders and pending appeals. The respondents contended that they were placed in an untenable legal position due to contradictory directives issued by different courts, including orders from the Regional Court obtained by a rival municipal faction led by Butana Ben Thlabadira.

[14] The respondents, believing that Absa's refusal amounted to wilful defiance of court orders, launched an urgent contempt of court application, arguing that: (a) Absa's reliance on conflicting court orders was a deliberate attempt to frustrate the enforcement of judicial directives; (b) the orders of Phatudi J and Naude-Odendaal J had been declared immediately enforceable, meaning that any appeal did not suspend their operation; and (c) the conduct of Mankga and Muller, as senior officials at Absa, demonstrated reckless disregard for the authority of the courts and warranted punitive consequences.

GROUND FOR LEAVE TO APPEAL BY THE APPLICANT

[15] The respondents seek leave to appeal on the basis that there are reasonable prospects of success on appeal or compelling reasons why the appeal should be heard, as required by section 17(1) of the Superior Courts Act 10 of 2013. The primary grounds of appeal raised by the respondents are as follows.

[16] The test for contempt of court was misapplied:

- a. The respondents contend that the court erred in its application of the legal test for contempt of court, particularly in relation to wilfulness and *mala fides*. They argue that:
 - i. The court incorrectly reversed the onus of proof, requiring the respondents to prove that their conduct was not wilful or in bad faith.
 - ii. In ***Fakie NO v CCII Systems (Pty) Ltd***,³ the Supreme Court of Appeal held that the applicant in contempt proceedings must prove, beyond a reasonable doubt, that the respondent acted deliberately and in bad faith.
 - iii. The respondents argue that this standard was not properly applied, and instead, they were presumed to have acted *mala fide*, without the respondents discharging their criminal burden of proof.

³ ***Fakie NO v CCII Systems (Pty) Ltd*** 2006 (4) SA 326 (SCA).

[17] The Court failed to consider the defence of legal advice:

- a. The respondents argue that they acted on bona fide legal advice and that their reliance on such advice should have negated any finding of contempt. They submit that:
 - i. Contempt of court does not arise merely from non-compliance with a court order but requires a deliberate and contumacious disregard of judicial authority.
 - ii. In ***Samancor Chrome Ltd v Bila Civil Contractors (Pty) Ltd***,⁴ the court recognised that reliance on legal advice may serve as a valid defence in contempt proceedings.
 - iii. The respondents were advised by senior counsel that compliance with the orders of Phatudi J and Naude-Odendaal J could expose them to liability due to conflicting court orders and pending appeals.
 - iv. The court failed to consider this legal uncertainty and wrongly found that reliance on legal advice was not a defence to contempt.

[18] The Court did not properly consider the effect of conflicting court orders.

- a. The respondents contend that the litigation history of this matter has resulted in multiple conflicting orders, creating uncertainty as to which orders were binding. They argue that:

⁴ ***Samancor Chrome Ltd v Bila Civil Contractors (Pty) Ltd*** 2022 JDR 3569 (SCA).

- i. The orders of Phatudi J and Naude-Odendaal J were issued against the backdrop of other competing orders, including orders of the Regional Court.
- ii. The order of Gaisa AJ, which was subject to appeal, also impacted the dispute over who had lawful control over the Municipality's bank accounts.
- iii. The respondents reasonably believed that compliance with one order would place them in violation of another order, which they argue constitutes a reasonable ground to contest a finding of contempt.
- iv. The Supreme Court of Appeal or the Constitutional Court should clarify the proper approach to compliance with conflicting court orders in cases of complex litigation.

[19] The Court's order imposed unprecedented punitive consequences.

- a. The respondents argue that the sanction imposed in the contempt proceedings was overly punitive and improperly based on the Zuma precedent. They submit that:

- i. In ***Secretary of the Judicial Commission of Inquiry into Allegations of State Capture v Zuma***,⁵ the Constitutional Court imposed direct imprisonment for civil contempt, but only after the

⁵ ***Secretary of the Judicial Commission of Inquiry into Allegations of State Capture v Zuma*** 2021 (5) SA 327 (CC).

respondent had publicly and unequivocally declared his refusal to comply.

- ii. The present case is distinguishable because the respondents did not openly defy the court but instead sought clarity on their obligations in the face of legal uncertainty.
- iii. The contempt order imposed direct punitive consequences, rather than being coercive in nature, which the respondents argue is a departure from established jurisprudence.

[20] There is a broader public interest in clarifying the law on contempt.

- a. The respondents argue that, even if reasonable prospects of success were not established, there is a compelling reason to grant leave to appeal due to the public importance of the case. Specifically, they contend that:
 - i. The case raises important legal questions about how financial institutions should respond to conflicting judicial directives.
 - ii. It concerns the proper test for contempt of court, particularly in cases involving non-compliance due to legal uncertainty.
 - iii. The Supreme Court of Appeal or Constitutional Court should provide guidance on the legal duty of banks when faced with competing claims over control of municipal funds.

[21] Based on these grounds, the respondents submit that leave to appeal should be granted to allow another court to reconsider the findings on contempt and apply the appropriate test.

[22] With the grounds of appeal set out, the court will now consider the test for granting leave to appeal under section 17(1) of the Superior Courts Act.

STATUTORY FRAMEWORK FOR GOVERNING LEAVE TO APPEAL

[23] Section 17(1)(a) of the Superior Courts Act reads:

“17.(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that —

(a)(i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.”

[24] Leave to appeal is not merely for the taking. It is a high threshold that must be met before an appeal may proceed. Courts must be cautious in granting leave, as doing so too readily would undermine the principles of finality and legal certainty in litigation. The appellate process exists to correct material errors of law or fact, not to provide parties with a second bite at the cherry simply because they are dissatisfied with an outcome.

[25] Someone seeking permission to appeal a court decision must demonstrate more than just a debatable point or the possibility of a different outcome in another court. It's not enough to simply say the case *could* be decided differently. They must convincingly show a solid, logical reason to believe the appeal has a reasonable chance of succeeding.

[26] A robust approach to applications for leave to appeal is essential to prevent frivolous appeals from burdening the judicial system. If leave to appeal were granted too easily, it would clog up the appellate courts with matters that do not warrant further judicial consideration, delaying the resolution of truly meritorious appeals.

[27] The importance of finality in litigation cannot be overstated. Finality in litigation is a key principle in the administration of justice. A court order, once given, must be obeyed, and appeals must be limited to those instances where material errors warrant reconsideration. An appeal should not merely be brought in order to frustrate this.”⁶

[28] In considering the import of section 17(1)(a) of the Superior Courts Act, the Supreme Court of Appeal in ***MEC for Health, Eastern Cape v Mkhitha and Another*** stated that leave to appeal should only be granted if there is a genuine reasonable prospect of success. Section 17(1)(a) of the Superior Courts Act, 10 of 2013, stipulates that leave to

⁶ The Supreme Court of Appeal ***Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd and Others*** 2013 (6) SA 520 (SCA) at para 24, held that “[t]he importance of finality in litigation cannot be overstated. Finality in litigation is a key principle in the administration of justice. A court order, once given, must be obeyed, and appeals must be limited to those instances where material errors warrant reconsideration. An appeal should not merely be brought in order to frustrate this..

appeal may be given only where the judge concerned believes the appeal has a reasonable prospect of success or there is another compelling reason for it to be heard.⁷

[29] An applicant seeking leave to appeal must demonstrate to the Court, with proper grounds, that there is a reasonable prospect or realistic chance of success on appeal. Simply showing a possibility of success, presenting an arguable case, or proving that the case is not hopeless is insufficient. There must be a sound and rational basis to conclude that there is a reasonable prospect of success on appeal.⁸

[30] In a similar vein, the Supreme Court of Appeal in **Smith v S** held, in relation to what constitutes “reasonable prospects of success” in terms of section 17(1)(a)(i) of the Superior Courts Act, that:

“What the test of reasonable prospects of success postulates is a dispassionate decision, based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed, therefore, the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding. More is required to be established than that there is a mere possibility of success that the case is arguable on appeal or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal.”

⁷ *MEC for Health, Eastern Cape v Mkhitha and Another* [2016] ZASCA 176 at para 16.

⁸ *Ibid* at para 17.

[31] It is also trite that the Superior Courts Act, in terms of section 17, has evidently raised the threshold for granting leave to appeal against a High Court judgment. The use of the word "would" in the statute suggests a higher degree of certainty that another court will disagree with the judgment being appealed.⁹

[32] In **S v Kruger**, the Supreme Court of Appeal articulated the significance of the word 'would' and the normative weight it brings. The Court there said:

"Before dealing with the merits of the appeal, it is necessary at the outset to deal with the test applied by the high court in granting leave to appeal to this court. Despite dismissing the appellant's appeal, the high court concluded that it was 'possible' that another court might arrive at a different conclusion and that leave to appeal should not be 'lightly refused' where the person concerned is facing a lengthy sentence of imprisonment. This is an incorrect test. What has to be considered in deciding whether leave to appeal should be granted is whether there is a reasonable prospect of success. And in that regard more is required than the mere 'possibility' that another court might arrive at a different conclusion, no matter how severe the sentence that the applicant is facing.

...

The time of this court is valuable and should be used to hear appeals that are truly deserving of its attention. It is in the interests of the administration of justice that the test set out above should be scrupulously followed."¹⁰ (My own emphasis).

⁹ See **The Mont Chevaux Trust (IT2012/28) v Tina Goosen & 18 Others** 2014 JDR 2325 (LCC)

¹⁰ **S v Kruger** 2014 (1) SACR 647 (SCA) at paras 2-3.

[33] Reasonable prospects of success are a necessary but insufficient precondition for granting special leave. Additional special circumstances are required. These may include the appeal raising a substantial point of law, the prospects of success being so strong that refusing leave would result in a manifest denial of justice, or the matter being of significant importance to the parties or the public.¹¹

[34] The test is not whether another court might possibly reach a different conclusion but whether there is a reasonable prospect that another court would reach a different conclusion. Additionally, it is well-established that an applicant seeking leave to appeal must convince the court a quo that there are reasonable prospects of success on appeal. Appeals should be restricted to cases where there is a reasonable prospect that the factual matrix might be interpreted differently or where there is a legitimate legal dispute.

[35] In ***Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd***, the Supreme Court of Appeal held that:

“In order to be granted leave to appeal in terms of s 17(1)(a)(i) and s 17(1)(a)(ii) of the Superior Courts Act an applicant for leave must satisfy the court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes an important question of law or a discreet issue of public importance that

¹¹ ***Cook v Morrisson and Another*** 2019 (5) SA 51 (SCA) at para 8. See also ***Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd*** 1986 (2) SA 555 (A) at 564H – 565E; ***Director of Public Prosecutions, Gauteng Division, Pretoria v Moabi*** 2017 (2) SACR 384 (SCA) ([2017] ZASCA 85) at para 21

will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive. Caratco must satisfy this court that it has met this threshold.”¹²

[36] This was affirmed by the Supreme Court of Appeal again in ***Ramakatsa and Others v African National Congress and Another***, where it held:

“Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This Court in *Caratco*, concerning the provisions of s 17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that ‘but here too the merits remain vitally important and are often decisive’. I am mindful of the decisions at high court level debating whether the use of the word ‘would’ as opposed to ‘could’ possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A

¹² ***Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*** [2020] ZASCA 17; 2020 (5) SA 35 at para 2.

sound rational basis for the conclusion that there are prospects of success must be shown to exist.”¹³

[37] The respondents submit that they meet both elements of the test. Firstly, they argue that there are reasonable prospects of success because the trial court misapplied the test for contempt of court, particularly regarding the onus of proof, the defence of legal advice, and the effect of conflicting court orders. Secondly, they submit that there is a compelling reason to grant leave, as the case raises important legal questions regarding the duties of financial institutions when faced with competing court orders.

[38] The respondents’ grounds for leave to appeal fail to demonstrate a realistic prospect of success on appeal. Their primary contention—that the court misapplied the test for contempt by improperly shifting the onus onto them—is without substance. The court’s approach was consistent with previous case law, where it was held that while the applicant in contempt proceedings bears the initial burden to establish the existence of a court order and non-compliance, the alleged contemnor must then provide evidence that raises a reasonable doubt as to wilfulness and mala fides. The respondents, however, failed to do so convincingly. Their reliance on legal advice did not negate their duty to comply with a clear and binding court order, nor did it create a valid basis for them to unilaterally decide which judicial directives to obey. The mere fact that multiple court orders existed does not absolve a party from adhering to those expressly declared enforceable.

¹³ *Ramakatsa and Others v African National Congress and Another* [2021] ZASCA 3 at para 10.

[39] Further, the respondents' argument that conflicting court orders created insurmountable legal uncertainty is misplaced and exaggerated. The orders of Phatudi J and Naude-Odendaal J were unambiguous and had been explicitly declared operational despite any appeal. The respondents, as sophisticated litigants and corporate entities had an obligation to seek judicial clarification before withholding compliance, rather than assuming that competing orders automatically invalidated the directives they were bound to obey. The appellate courts have repeatedly emphasised that legal uncertainty, particularly when self-imposed through selective compliance, does not constitute a defence in contempt proceedings. The respondents' assertion that the trial court failed to appreciate this complexity is without merit, as the judgment fully engaged with their arguments and correctly found that their reliance on legal advice was not a legitimate excuse for non-compliance.

[40] The respondents have also failed to establish any compelling reasons warranting the appeal. While they assert that this case presents significant questions concerning the obligations of financial institutions when faced with conflicting court orders, this argument is unconvincing. The principles governing contempt of court, particularly regarding compliance with clear judicial directives, are well-settled in South African law. This case does not raise novel or unresolved legal issues that necessitate appellate intervention.

[41] Moreover, the respondents' attempt to frame the matter as one of broader public interest is misplaced. The factual circumstances are specific to the respondents' conduct in defying explicit court orders, and there is no indication that a ruling on this matter would

have widespread implications for the financial sector or public administration. The obligation of all parties—including financial institutions—to comply with enforceable court orders is a foundational principle of the rule of law and does not require further judicial clarification.

[42] In the absence of any novel legal question or demonstrable public interest, the respondents have not shown any compelling reason justifying leave to appeal. The appeal would not serve to develop the law or clarify conflicting decisions. Rather, it would merely revisit factual and legal determinations already comprehensively addressed by this court.

[43] The respondents' grounds for leave to appeal fail to demonstrate a realistic prospect of success on appeal or any compelling reason why the appeal should be heard. Their contentions, while presented as complex legal arguments, do not meet the high threshold required under the Superior Courts Act.

[44] Given the well-reasoned nature of the judgment, there is little likelihood that an appellate court would interfere with its findings. The Supreme Court of Appeal has consistently held that appellate intervention is unwarranted unless the lower court's decision is clearly wrong in principle or results in a manifest injustice. The respondents' contentions amount to mere disagreement with the outcome, rather than demonstrating any misdirection of law or fact that would warrant appellate scrutiny. This court's ruling is supported by established contempt jurisprudence, and there is no compelling basis to

suggest that an appellate court would reach a different conclusion. In light of these considerations, the grounds of appeal lack merit, and leave to appeal ought to be refused.

[45] I will elaborate on these findings below.

CONTEMPT OF COURT

[46] The respondents ignored the two court orders of Phatudi J and Naude-Odendaal J, respectively. This is common cause. The respondents did not comply with these court orders at all. At the hearing, their counsel conceded as much and further submitted that they would not comply with any other order coming from the court. This is undisputed, and the record bears the events that took place.

[47] I do not want to be misunderstood. The respondents did not comply with any of the orders and further indicated that they would not comply with any court orders. When they were given an opportunity to make oral representations and place evidence before this Court about their non-compliance in terms of Rule 6(5)(g) of the Uniform Rules of Court,¹⁴

¹⁴ Rule 6(5)(g) of the Uniform Rules of Court provides:

“Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.”

the respondents did not attend court and disregarded that court directive and purported to appeal it.

[48] I pause here to make the following observations. At their core, contempt of court proceedings are not merely about enforcing compliance with specific orders; they address a far more profound concern—the preservation of judicial authority and the rule of law. The judiciary’s legitimacy rests on its ability to ensure that its decisions are followed and implemented. When court orders are ignored or defied, the judiciary’s standing as the final arbiter of the law is gravely weakened, undermining public trust in the legal system and eroding confidence in the courts’ capacity to uphold justice.

[49] Beyond enforcing individual rulings, contempt proceedings serve a twofold purpose. First, they affirm the court’s institutional authority, making it clear that disobedience carries consequences and that judicial decisions cannot be treated as optional. Second, they act as a means of compelling compliance, reinforcing the court’s function as the primary instrument for resolving disputes and ensuring the enforcement of legal rights and obligations.

[50] Without a robust mechanism to enforce court orders, the judiciary would be rendered ineffective, and the legal system as a whole would cease to command respect. The absence of consequences for non-compliance would invite disorder, allowing litigants to selectively adhere to judgments at their convenience. Such an erosion of judicial authority would not only disrupt the administration of justice but also threaten social stability, as

adherence to the rule of law is fundamental to maintaining order and ensuring a just society.

[51] With that in mind, let us briefly consider contempt of court proceedings. There are two types of contempt of court – there is scandalising the court and non-compliance with court orders. In this case, we are concerned with the latter, that is, non-compliance with court orders.

[52] The legal test for contempt of court is well established and requires proof of (i) the existence of a court order, (ii) knowledge of the order by the alleged contemnor, (iii) non-compliance with the order, and (iv) wilfulness and mala fides in failing to comply.¹⁵ At this point, the burden shifts to the respondent, who must provide sufficient evidence to create reasonable doubt. If the respondent fails to meet this evidentiary burden, contempt will be established.

[53] The first three elements—the existence of a valid order, knowledge of the order, and non-compliance—are not in dispute. The respondents were fully aware of the orders granted by Phatudi J on 21 December 2023 and Naude-Odendaal J on 20 August 2024, both of which expressly directed them to grant the Thabazimbi Local Municipality’s officials unrestricted access to its bank accounts. Despite this, they failed to comply,

¹⁵ *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* 2021 (5) SA 327 (CC); *Consolidated Fish Distributors (Pty) Ltd v Zive* 1968 (2) SA 517 (C); *Fakie N.O. v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA).

leading to the contempt proceedings. The primary issue, therefore, is whether their non-compliance was wilful and *mala fide*, or whether they had a reasonable justification for their conduct.

[54] The courts have consistently held that wilfulness and mala fides are presumed once non-compliance with a court order is established, unless the respondent can rebut this presumption by demonstrating a reasonable doubt as to their state of mind. In ***Pheko v Ekurhuleni City***, the Constitutional Court reaffirmed this principle, stating that:

“the presumption rightly exists that when the first three elements of the test for contempt have been established, mala fides and wilfulness are presumed unless the contemnor is able to lead evidence sufficient to create a reasonable doubt as to their existence. Should the contemnor prove unsuccessful in discharging this evidential burden, contempt will be established.”¹⁶

[55] In the contempt proceedings, the respondents refused to appear and present oral representations as to their non-compliance. Thus, there was no evidence before the Court to disprove this presumption. The respondents then, ex post facto, in these proceedings then state that they lacked wilfulness and mala fides because they were placed in a legally untenable position due to conflicting court orders and pending appeals. They contend that their decision to withhold access to the bank accounts was made on legal advice, rather than out of deliberate defiance. However, this argument does not withstand scrutiny.

¹⁶ ***Pheko v Ekurhuleni City*** 2015 (5) SA 600 (CC) at para 36.

[56] It is trite that court orders must be followed unless suspended, varied, or set aside by a competent court. A party who is uncertain about the precise requirements of a court order cannot unilaterally decide how to comply based on its own interpretation of competing legal obligations. The proper course of action is to return to court and seek judicial clarification, rather than risk contempt through selective compliance.

[57] Where there is confusion about the court order, parties cannot unilaterally determine their compliance but must approach the court for clarification. Where there is confusion about the court order, parties cannot unilaterally determine their compliance but must approach the court for clarification. Contempt of court arises from a contumacious disregard for judicial authority, implying that parties cannot ignore court orders based on their own interpretation. I need not say more about this.

[58] Contrary to the respondents' argument that the court erred by applying a reverse onus, this assertion is plainly false. The court applied the well-established legal principle that, in contempt proceedings, once the existence of a valid order, knowledge thereof, and non-compliance are established, wilfulness and mala fides are presumed unless the alleged contemnor raises a reasonable doubt. This is not a reversal of onus but rather the proper application of the test set out by the Supreme Court of Appeal in **Fakie NO v CCII Systems (Pty) Ltd**, which remains binding precedent. The Fakie judgment made it clear that contempt of court carries a criminal standard of proof beyond a reasonable doubt, but once the core elements are proven, the respondent bears an evidentiary burden to

provide evidence that raises a reasonable doubt about wilfulness and mala fides. In *Pheko v Ekurhuleni City*, the Constitutional Court reiterated that a respondent must adduce evidence to demonstrate that their non-compliance was not deliberate or in bad faith, failing which the presumption of contempt remains undisturbed.

[59] The respondents, however, failed to discharge this evidentiary burden. They relied on general claims of legal uncertainty and their alleged reliance on legal advice, yet produced no concrete evidence that their refusal to comply was anything other than a deliberate choice. Their own counsel, during the proceedings, conceded that they had no intention of complying with any future orders of this court, which fundamentally undermines their position. The courts have consistently held that a mere assertion of confusion or reliance on legal advice is insufficient unless supported by clear evidence showing a genuine, reasonable, and insurmountable obstacle to compliance.

[60] Thus, this ground of appeal bears no reasonable prospects of success.

FAILED TO TAKE INTO ACCOUNT THAT ABSA RELIED ON LEGAL ADVICE ARGUMENT

[61] The argument that the respondents relied on the advice of legal counsel and therefore elected not to comply because they were advised as such is problematic. Absa is a well-resourced financial institution with significant experience in handling complex legal and regulatory matters. As one of South Africa's leading banks, it cannot plausibly claim that

it was left with no option but to act on a single legal opinion without further inquiry. Given the high stakes involved, including the fact that the Municipality's bank account remained effectively frozen, thereby crippling its ability to carry out essential public functions, Absa had a duty to exercise heightened diligence before making a unilateral decision that led to non-compliance with the court orders. It was neither an unsophisticated nor powerless litigant—it had access to the best legal minds in the country and could have sought a second legal opinion or approached the court itself for urgent clarification. Its failure to do so demonstrates a lack of prudence rather than genuine legal uncertainty.

[62] The argument that Absa was caught in a legally impossible position rings hollow when one considers its own status as a highly profitable corporate entity with vast legal resources at its disposal. A bank of its stature would routinely seek multiple legal opinions when faced with significant financial or regulatory risk, particularly where the failure to act could disrupt operations. The fact that it did not take this basic step—despite handling a Municipality's funds, which are essential for service delivery and public administration—suggests that its non-compliance was not merely a result of confusion but a conscious decision to hedge its risks at the expense of the Municipality. Public functionaries and institutions that play a crucial role in service delivery must act with heightened responsibility, particularly when their actions—or inactions—could have far-reaching consequences. Absa's decision to ignore this duty, instead choosing to self-interpret its legal obligations in a manner that favoured inaction, is inexcusable.

[63] Absa's failure to comply with the court orders directly impacted the Municipality's ability to fulfill its constitutional obligations. Municipalities are tasked with ensuring the provision of essential services, including water, sanitation, and electricity. By refusing to release the Municipality's funds or to seek urgent judicial clarification, Absa did not merely fail in its obligations as a neutral financial institution, but also directly contributed to governance paralysis within the Municipality. A financial institution entrusted with public funds cannot conduct itself as if it were merely a private actor indifferent to the consequences of its decisions. The courts have long recognised that entities exercising quasi-public functions—particularly those handling government accounts—must act in a manner that ensures accountability, transparency, and compliance with legal directives.

[64] Absa had multiple avenues available to it to prevent the legal dilemma it now claims to have been in. It could have: (a) sought a second legal opinion to confirm whether its course of action was legally defensible; (b) approached the court for declaratory relief to obtain judicial clarity rather than making its own determination; (c) complied under protest while simultaneously pursuing legal remedies to challenge the alleged conflicting orders.

[65] Thus, this ground of appeal bears no reasonable prospects of success.

PUNITIVE SANCTIONS IS WITHOUT MERIT ARGUMENT

[66] The Court's order imposed unprecedented punitive consequences. The respondents argue that the sanction imposed in the contempt proceedings was overly punitive and improperly based on the Zuma precedent. They submit that: In ***Secretary of the Judicial Commission of Inquiry into Allegations of State Capture v Zuma***, the Constitutional Court imposed direct imprisonment for civil contempt, but only after the respondent had publicly and unequivocally declared his refusal to comply.

[67] The present case is distinguishable because the respondents did not openly defy the court but instead sought clarity on their obligations in the face of legal uncertainty. The contempt order imposed direct punitive consequences rather than being coercive, which the respondents argue is a departure from established jurisprudence.

[68] This ground of appeal must fail. First, the Municipality, as the respondent, explicitly sought punitive consequences, and this court, acting within its discretionary powers, imposed an order that it deemed appropriate in the circumstances. It is trite that a court has the authority to determine the proper sanction in contempt proceedings, and where a litigant's conduct warrants punitive measures, the court is entitled to grant such relief. In ***Fakie NO v CCII Systems (Pty) Ltd***, the Supreme Court of Appeal confirmed that while contempt sanctions are often coercive in nature, there is no absolute rule precluding courts from imposing punitive orders when necessary to uphold judicial authority.

[69] Secondly, the respondents were afforded multiple opportunities to comply with the court orders and chose not to do so. They were not sanctioned for an inadvertent failure to comply—their conduct demonstrated a sustained refusal to adhere to clear judicial directives. Unlike a party that seeks genuine judicial guidance when faced with conflicting obligations, the respondents made no genuine attempt to comply but rather positioned themselves as entitled to ignore the court’s authority until it suited them to act otherwise.

[70] Thirdly, their comparison to the Zuma case is misplaced. The respondents seek to distinguish their conduct by arguing that Mr Zuma expressly and unequivocally refused to comply, while they merely sought clarity. However, the record speaks for itself—their counsel, during proceedings, conceded that they would not comply with any order issued by this court, irrespective of its content. This is functionally no different from the stance taken by Mr Zuma—both the respondents and Mr Zuma made it abundantly clear that they did not intend to comply with the court’s orders. The fact that the respondents couched their defiance in legalistic justifications does not alter its effect—a litigant who refuses to comply under the pretext of uncertainty is no less in contempt than one who refuses outright.

[71] Fourthly, the sanction imposed was necessary to vindicate the dignity of the court. Courts do not impose punitive consequences lightly, but where a party repeatedly flouts judicial authority, it becomes imperative to uphold the integrity of the judiciary. In ***Matjhabeng Local Municipality v Eskom Holdings Ltd***, the Constitutional Court reaffirmed that when court orders are disregarded, the courts must act decisively to

prevent the erosion of judicial authority. The principle is well established that litigants cannot be permitted to defy court orders with impunity, as doing so would render the judicial system toothless and unenforceable.

[72] Finally, the respondents' claim that the contempt order was purely punitive rather than coercive is misguided. A coercive order is effective only if there is a genuine likelihood of future compliance. However, where a litigant makes it clear that compliance will not occur, as the respondents did, then a punitive sanction is entirely justified. As the Constitutional Court held in *Zuma*, defiance of court orders strikes at the heart of the rule of law, and a firm judicial response is required to protect the integrity of the judiciary. In this case, a punitive sanction was the only appropriate response to the respondents' calculated defiance.

[73] In light of these considerations, the respondents' ground of appeal on this point is wholly without merit. This court exercised its discretion properly, afforded the respondents ample opportunity to comply, and imposed a sanction that was necessary and proportionate to the degree of their non-compliance. The appeal on this ground must therefore be dismissed.

PUBLIC INTEREST ARGUMENT

[74] The respondents argue that, even if they fail to demonstrate reasonable prospects of success, there exists a broader public interest that justifies granting leave to appeal. They contend that this case raises important legal questions regarding how financial institutions

should respond to conflicting judicial directives, as well as the proper test for contempt of court in cases involving legal uncertainty. Additionally, they assert that the Supreme Court of Appeal or the Constitutional Court should provide guidance on the legal obligations of banks when municipal funds are at issue.

[75] This argument must fail because it mischaracterises the nature of the case and overstates the legal uncertainty involved. The issues raised by the respondents do not present novel or unsettled questions of law—rather, they involve the straightforward application of well-established principles that have already been decisively clarified by the highest courts in South Africa.

[76] The test for contempt of court is settled law. The respondents' attempt to frame their non-compliance as a matter of legal uncertainty ignores the fact that the Supreme Court of Appeal in **Fakie NO** set out the precise test for contempt, which remains binding and widely applied. That test has been reaffirmed by the Constitutional Court in **Pheko** and **Matjhabeng**, leaving no ambiguity as to what constitutes willfulness and mala fides in contempt proceedings. The respondents do not identify any gap in the law that requires further judicial intervention.

[77] The respondents argue that higher courts should clarify the obligations of banks when handling municipal funds in the face of competing claims. However, this case is not about banking law or financial regulation—it is about contempt of court. The issue before this court was whether the respondents wilfully defied clear and binding judicial directives, not

whether banking institutions require additional legal safeguards when managing municipal funds. The argument that this matter has broad public interest implications for the financial sector is a red herring—the fundamental issue at hand is the respondents’ deliberate refusal to comply with lawful court orders.

[78] The respondents’ reliance on public interest as a justification for leave to appeal is entirely without merit. This case involves no novel questions of law, no unresolved legal uncertainty, and no broader implications requiring appellate intervention. The law on contempt is well established, the obligations of financial institutions in the face of conflicting orders are clear, and the principle that litigants must obey court orders until varied or set aside is beyond dispute. The appeal on this ground must, therefore, be dismissed.

[79] Before I could even go into hearing the merits of the contempt application two appeal applications were already brought, the first appeal was brought in terms of section 18(4) of the Superior Courts Act against my directive in terms of Rule 6(5)(g) and the other and the other was a general appeal in terms of section 17(6) of the Superior Courts Act against the remainder of the interim orders I had made prior to the return date. Both the notice to appeal my directive and application for leave to appeal the interim orders were not successful.

[80] In addition to the concession and submissions made during the hearing by the respondents counsel (that their clients would not participate in a rule 6(5)(g) inquiry or further proceedings to mitigate the sanction in the event they were found to be in

contempt), the manner and strategy in which the applicants conducted the litigation before me leads to an irresistible inference that there was no intention to fully comply or already abide by any adverse coercive order given by me to have the court orders enforced without any delay. Even so, during the hearing I had brought my concerns to the respondent's counsel on enforceability of the orders and the looming possibility of those orders being rendered moot in the event the Municipality was placed under administration.

[81] The orders of Phatudi J and Naude Odendaal have now, since the appointment of an Administrator, (after the granting of my order), become moot and any subsequent upsetting or substituting my order with a coercive order will be of no value as such an order will have no practical effect. Moreover, these orders were not subject to any appeal or review at the time the urgent contempt application came before me.

[82] It is my considered view that there are minimal to no reasonable prospects that another court would come to the conclusion that court orders are not to be obeyed by litigants, as obeying a court order and having respect for courts is a constitutional imperative which cannot be taken lightly. I cannot conceive that any reasonable court could disagree with this appraisal.

[83] In addition, it is also my considered view that on the conspectus of all the grounds for refusal stated above, nothing warrants a higher court's exercise of its discretion to entertain this appeal despite the mootness of the orders the applicant's sought

compliance with, which now have been overtaken by subsequent events, namely the appointment of an administrator to the Municipality.

[84] The notion that this case warrants intervention by the Supreme Court of Appeal or the Constitutional Court is wholly unsubstantiated. The Supreme Court of Appeal and the Constitutional Court do not entertain appeals simply because a party disagrees with an outcome. Appeals must present genuine legal uncertainty or involve an issue of constitutional or public significance that requires authoritative resolution. This is not such a case. In my view, the respondents' position rests on a mischaracterisation of well-settled law as unsettled, and their claim that further judicial clarification is required is without merit.

[85] It is trite that appeals without merit impact not just on the court (that has to increasingly deal with congested court rolls) and the litigants before the court, but also other litigants who cue for their day in court whose matters are truly deserving of the attention of this court or higher court. Unfortunately, such deserving matter must wait in the line whilst we process unmeritorious and / or appeals, such as the present one.

CONCLUDING REMARKS

[86] Disobedience of court orders is not merely a procedural irregularity—it is an affront to the rule of law and strikes at the heart of constitutional democracy. A legal system can only function when its orders are enforced, and parties respect their obligations under the law. Willful defiance of judicial authority is not only unacceptable but fundamentally corrosive to the administration of justice. As the Constitutional Court has repeatedly

emphasised, the judiciary's authority is contingent on its ability to ensure that its directives are carried out. Where litigants selectively decide which orders to obey and which to ignore, they subvert the very foundation upon which legal certainty and judicial integrity rest.

[87] In this case, the applicants' failure to comply with binding court orders was compounded by their refusal to furnish the legal advice they relied upon as justification. It is well established that a party seeking to displace the burden of non-compliance cannot do so through mere assertion. A bald claim that legal advice justified disobedience of a court order carries no weight unless that legal advice is placed before the court and properly explained. The law does not permit litigants to evade their responsibilities through unsubstantiated claims of legal uncertainty—if legal advice is central to a party's defence, that advice must be disclosed or, at the very least, its reasoning must be made available to the court. They could of course redact the parts of the legal advice that have nothing to do with the contested issue.

[88] The applicants in this case failed to do either. They did not voluntarily disclose the legal opinion upon which they claimed to rely, nor did they provide any substantive explanation of its content or basis. Instead, this court was forced to issue directives requiring the production of such advice, which should have been disclosed from the outset. The applicants' reluctance to produce it speaks volumes—where a party genuinely believes it acted lawfully based on sound legal reasoning, it would have no hesitation in disclosing that reasoning to vindicate its position. By failing to do so, the applicants offered

no evidence for this court to consider, reducing their reliance on legal advice to nothing more than an empty justification for deliberate defiance.

[89] The problem is further compounded by the fact that if the legal advice purportedly supported non-compliance with a court order, it was legally indefensible. No legal practitioner can, in good faith, advise a client that court orders may be ignored at will. The applicants, as a leading financial institution with substantial legal resources, had every opportunity to seek a second legal opinion, particularly given the serious legal and financial implications of refusing to comply with judicial directives. ABSA is not an uninformed or under-resourced litigant—it has access to eminent counsel and sophisticated legal teams. There is no credible reason why it could not have sought further legal advice, particularly if its existing legal counsel had advised it that it could disregard a court order with impunity. If such advice was in fact given, then it was not only flawed but reckless, and ABSA ought to have recognised this and taken immediate steps to seek alternative counsel.

[90] Finally, the applicants cannot shield themselves behind the veil of legal privilege while simultaneously asserting that legal advice justified their non-compliance. The principle is well established that privilege cannot be used as both a sword and a shield—a party cannot rely on legal advice to excuse its actions while refusing to disclose that advice to scrutiny. Where legal advice forms the basis of a defence in contempt proceedings, the party relying on it must either waive privilege and disclose the advice or accept that the court will not take it into account. The applicants' attempt to rely on privilege while invoking legal advice as a justification is self-defeating. The result is that no admissible evidence

supports their claim, and the reliance on legal advice amounts to nothing more than an unsupported assertion that cannot withstand scrutiny.

[91] The applicants' continued refusal to comply with the orders of this court, their failure to substantiate their legal defence, and their deliberate strategy of selective disclosure demonstrate a clear and contumacious disregard for judicial authority. Their conduct does not warrant judicial sympathy or leniency—it warrants a firm response to vindicate the dignity of the court and the rule of law. The court cannot allow well-resourced litigants to manipulate legal process to avoid compliance with orders they find inconvenient. To do so would set a dangerous precedent, encouraging parties to evade their legal obligations under the guise of unfounded claims of legal uncertainty and privilege. The law does not countenance such tactics, and this court will not either.

[92] The rule of law is not a polite suggestion, nor is it a luxury reserved for the willing—it is the bedrock upon which our constitutional democracy stands. Court orders are not words to be weighed on the scale of convenience, nor are they mere formalities to be observed at leisure. They are the voice of justice, binding in their command and unyielding in their authority. To disobey them is not simply to ignore ink on paper; it is to erode the very foundation of governance, to chip away at the fragile edifice of order that separates the rule of law from the rule of might.

[93] Yet the applicants, armed with resources vast enough to summon the finest legal minds in the country, chose not the path of duty but the path of evasion. They wrapped themselves in the cloak of legal uncertainty, offering no proof, no reasoning—only the

hollow echo of their own assertion. They treated the authority of the court as if it were a mere inconvenience to be weighed against their corporate interests, rather than the supreme directive of a constitutional democracy. And when called to account, they reached not for evidence but for privilege, seeking to wield it as both sword and shield. But privilege is not a mask behind which defiance may hide; it is not a refuge for those who seek to evade the burden of explanation. To invoke it while claiming reliance on legal advice is to speak in riddles before a court that demands only clarity.

[94] This court cannot and will not countenance such conduct. The dignity of the judiciary is not an abstract notion to be pondered in chambers—it is the force that compels compliance, that ensures the law is not mocked by the powerful or ignored by the obstinate. This judgment is not merely a rebuke of the applicants’ conduct; it is a reaffirmation of the principle that justice is not a river that bends to the will of those who seek to divert its course. It flows, unbroken, and it must be obeyed.

[95] Consequently, the following order is made:

1. The application for leave to appeal is refused.
2. No order as to costs.



M MORGAN
ACTING JUDGE OF THE HIGH COURT,
POLOKWANE; LIMPOPO DIVISION

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No Appearance.

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