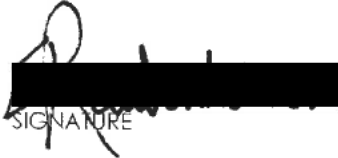


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-111687

(1)	REPORTABLE: YES / ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES / ☒ NO
(3)	REVIEWED: ☒ YES / ☐ NO
19 February 2025 DATE	
 SIGNATURE	

In the matter between:

SHENG TENG (Pty) Ltd

Applicant

And

SA BULK COMMODITY TRADING AND STORAGE
SERVICES (Pty) Ltd

Respondent

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I make the following order:

1. The application is dismissed.
2. The Applicant to pay the Respondent's costs of this application on scale C.

[2] The reasons for the order follow below.

Introduction

[3] The applicant urgently approached the court for an order that the respondent be in contempt of a court order and that a period of imprisonment be imposed on the directors of the respondent with the period of imprisonment be suspended on conditions deemed appropriate by the Court and that a fine be imposed on the respondent in an amount deemed appropriate by the Court. The applicant also prayed for a cost order on a punitive scale as between attorney and client and cost *de bonis propriis* against the attorney of record of the respondent.

[4] The matter came before me on 5 November 2024 but as the application for the eviction of the applicant was also on the roll for the same week I directed both matters to be heard on consecutive days.

[5] The application is premised on the failure of the respondent to adhere to a court order that was granted by my brother Noke J on 15 October 2024 in a spoliation application in which he ordered the respondent to restore the electrical connection to the premises leased by the applicant from the respondent in an industrial park.

[6] The factual background has been dealt with in my judgement in the eviction application under case number 2024/124871 and need not be repeated here.

[7] Suffice to mention that the respondent disconnected the electrical supply to

the premises leased by the applicant on or about 26 September 2024 prompting the spoliation application of which the judgement was delivered on 15 October 2024 ordering the reconnection of the electricity supply and further ordering that the electricity supply may not be disconnected unless there is a court order to do so.

[8] The respondent filed an application for leave to appeal on 22 October 2024.

[9] After an inspection by an inspecting electrician of the status of the premises in respect of compliance with the respective statutory provisions contained in the contract of lease the respondent armed with the report from the inspecting electrician dated 22 October 2024 cataloguing various serious and dangerous acts of non-compliance decided to disconnect the electricity supply on 25 October 2024. This was done in an attempt to limit the risks posed by the non-compliance with safety standards by the applicant.

[10] At the time of the disconnection the respondent had filed an application for leave to appeal and was advised by his lawyers that such application suspends the order granted by Noko J until the application has been finalised.

[11] The application was heard on 4 November 2024 and leave to appeal was granted on 11 November.

The contraventions of the court order

[12] The order was furnished to the respondent on 15 October 2024 late in the afternoon. The electricity supply was restored in the morning of 16 October 2024.

[13] Notably, the respondent communicated to the applicant on 16 October 2024 that it has no intention not to adhere to the court order.

[14] The first occasion when the electricity supply to the leased premises was disconnected was on 25 October 2024. This was 3 days after it applied for leave

to appeal the order granted on 15 October.

[15] The disconnection was done on the basis of advice received from its lawyers that the application for leave to appeal suspended the effect of the court order and was further advised that if the applicant wanted the order not to be suspended it should have approached the court in terms of sect 18 of the Superior Courts Act, Act 10 of 2013 and show exceptional circumstances warranting the order not to be suspended.

[16] The second reason for the disconnection was that the respondent had received the report from the inspecting electrician containing the numerous instances of non-compliance. Based on this report the respondent assessed the risks involved in the non-compliance and concluded that the risks are too high and prominent and puts the entire industrial park under threat. It consequently disconnected the electrical supply as a pre-emptive risk mitigating measure.

[17] After the disconnection on 25 October the electricity supply was restored without the knowledge or permission of the respondent. When the respondent endeavoured to disconnect the electricity supply on 28 October it was met with fierce resistance from the applicant and even an intervention by the police. The electrical supply was then not disconnected.

[18] The essence of the contempt application is thus predicated on the fact that the electrical supply was not restored immediately on 15 October 2024, was disconnected on 25 October and 28 October.

The legal requirements

[19] To be successful in a contempt application the applicant must prove that an order was granted against the respondent who had knowledge of the order and

had failed to comply with the order.¹

[20] Once the mentioned elements have been established the presumption of wilfulness and *mala fides* is activated. The respondent then bears the burden to establish a reasonable doubt.²

[21] The respondent is not required to disprove wilfulness and *mala fides* on a balance of probabilities. It merely has to present evidence that establishes reasonable doubt as to the presence of wilfulness and *mala fides*.³

[22] The respondent had to violate the dignity, repute and authority of the court in an intentional and deliberate manner. The mere non-compliance with a Court order does not suffice.⁴

[23] As the application is for an order for imprisonment it entails a loss of freedom the Court should be circumspect in its evaluation of the facts⁵ and be satisfied that the contempt has been proven conclusively.⁶

Analysis

[24] The respondent did restore the electricity supply after receipt of the judgment. The applicant submits that the contempt is located in the fact that the supply was only restored the following day.

[25] The respondent provided a reasonable explanation for restoring the supply only the next day. The order was received close to close of business, the applicable director was in Turkey and could only be reached the next day and the reconnection had to be effected by an electrician who was only available the next

¹ 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 21 (5) SA 327 (CC)

² Pheko v Ekurhuleni City [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC)

³ Fakie N.O. v CCI Systems (Pty) Ltd [2006] ZASCA 52; 2006 (4) SA 326 (SCA)

⁴ Fakie (n 3 above)

⁵ Dezius v Dezius [2007] 1 All SA 483 (T)

⁶ Fakie (n 3 above)

day.

[26] The respondent furthermore communicated with the applicant informing it that they had no intention not to adhere to the Court order and that the electricity supply will be restored by noon. The supply was restored before noon.

[27] The conduct of the respondent does not amount to the requirements set in the *Fakie* decision as it does not amount to an intentional and deliberate violation of the dignity, authority and repute of the Court.

[28] That brings me to the disconnection of the 25th and 28th of October 2024.

[29] This disconnection was done on the advice to the effect that as the application for leave to appeal had already been launched the effect of the court order has been suspended. Whether this advice is correct is immaterial. The respondent was entitled to rely on the advice of his lawyers. If the advice turned out to be incorrect such cannot be ascribed to the respondent.⁷

[30] The second disconnection similarly does not meet the requirements as stated in the *Fakie* judgment.

Conclusion

[31] The conduct of the respondent does not amount to contempt of Court and I make the order in paragraph 1 based on the reasons as set out above.



E Raubenheimer

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

⁷ CSARS v The Thistle Trust 2023 (2) SA 120 SCA; Thistle Trust v Commissioner for the South African Revenue Service 2024 (12) BCLR 1563 (CC)

**GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **19 February 2025**

COUNSEL FOR THE APPLICANT:

Adv Rasivhetshela

INSTRUCTED BY:

Singhs Attorneys Inc Inc

COUNSEL FOR THE RESPONDENT:

Adv vd Berg

INSTRUCTED BY:

Nourse Inc

DATE OF ARGUMENT: 07 November 2024

DATE OF JUDGMENT: 19 November 2025