

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

Case No:2025-040411

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: NO

6 May 2025

In the matter between:

IRVIN PERUMAL

Applicant

and

FDE DEBT COLLECTIONS

First Respondent

JEROME JOOSTE

Second Respondent

JUDGMENT

NOKO J

Introduction

[1] The applicant instituted an urgent application for an order declaring the

respondents to be in contempt of Court for failing to implement an order granted by Crutchfield J on 2 April 2025. Crutchfield J ordered the first respondent to return a certain motor vehicle, *to wit*, BMW 3[...], with registration number J[...] with VIN number W[...] (“vehicle”). The respondents are opposing the application and have, raised a point *in limine* of misjoinder in addition to delivery of the opposing affidavit.

Parties.

[2] The applicant is Irvin Perumal, an adult male resident at 3[...] E[...] Drive, B[...], Randburg.

[3] The first respondent is FDE collections, a company (juristic person) carrying business at 5[...] S[...] Road, N[...], Roodepoort.

[4] The second respondent is Jerome Jooste, an adult male employed at 5[...] Shannon Road, N[...], Roodepoort.

Background

[5] On 2 April 2025 the applicant applied and obtained an order in the urgent court for the return of the motor vehicle seized by the first respondent. The first respondent was represented at the hearing by the second respondent. The first respondent seized the vehicle on 25 March 2025 from the applicant with the assistance of the member of SAPS and sheriff armed with the order of court granted in favour Nedbank Ltd for the seizure and collection of the motor vehicle.

[6] The applicant had kept the vehicle with him after it was brought for the repairs which were effected as at the time when the motor vehicle was seized by the first respondent.

Urgency

[7] The applicant avers that the first respondent was ordered to return the motor vehicle on 4 April 2025. Further, that he communicated with the second respondent

via whatsapp who then undertook to attend to the matter on 7 April 2025. He subsequently proceeded to issue the urgent application on 10 April 2025 for the contempt of court. In any event the court order is sacrosanct and need to be complied with.

[8] The respondents were aggrieved by the strictest time frames set out by the applicant which were not in compliance with the rules and the court's directives. The respondents contend that the application is not predicated on proper grounds decreed where one intends to approach court on the basis of urgency. The urgency is predicated on the contention that the vehicle is about to be auctioned but there is no supporting evidence for such an allegation. Further that the applicant was made aware that the vehicle is not with the first respondent and is with Nedbank Limited ("Nedbank"). The contact details of the attorneys acting for Nedbank were availed to the applicant who was intransigent and threatened to approach the court.

[9] If anything, the respondents argue that there is no urgency proved by the applicant and if same is found to exist the applicant created the urgency. The application should therefore be struck from the roll.

[10] I had regard to submissions and noted that the respondents have correctly argued that the allegations by the applicant that there is pending auction is not substantiated by any evidence from by both applicants but find that in general terms contempt of court applications are urgent more particularly that the respect of the court need to be preserved and protected. Non-compliance has the effect of impairing the effective administration of justice.¹ I therefore find that the application deserve audience of the urgent court.

Points in limine

[11] The respondents raised several points *in limine* set out below.

Lack of service.

¹ *Matjhabeng Local Municipality v Eskom Holdings Ltd & Others* 2018 (1) SA 1 CC.

[12] The respondents contended that the applicant has failed to serve the order on the respondents and having regard to the nature of the relief sought it is imperative that the order court should have been served. In the premise, the application must be dismissed with costs at a punitive scale.

[13] In retort, the applicant submitted that the respondents were in court and made undertaking to return the car. So, they are aware of the court order. In addition, the second respondent was reminded of the court order via whatsapp for which he acknowledged receipts thereof and made an undertaking to comply therewith.

[14] I had regard to the submission by both parties and note it is not the exclusive requirement that the order should be served on a party for the purposes of the contempt application. Instead, it would be sufficient if it is proved that the respondents had knowledge of the court order. In this instance the first respondent was represented at court and had the required knowledge which should be sufficient for contempt of court application. In any event it is not disputed that the order was relayed to the second respondent via whatsapp/email. In fact, the respondents stated in the answering affidavit that "The 1st Respondent upon receive (*sic*) of the Order via WhatsApp informed the Bank of the Order." ² I am satisfied that the first respondent was made aware of the order of the court, and the point *in limine* is dismissed.

Misjoinder of the second respondent.

[15] The counsel for the respondents contended that the relief sought against the second respondent is not competent since the second respondent was not properly joined as a party in the *lis*. In addition, the second respondent had at all times being acting in his capacity as the general manager of the first respondent and not in his

² See para 38 of the Respondents' Answering Affidavit at CL 02-73. The respondents disputed that service by Whatsapp is not correct, and stated at para 68 that "Sending the Order via WhatsApp to me is insufficient and not in compliance with service of a court order, particularly where contempt of same would attract criminal sanctions". CL02-78.

personal capacity. That the application must therefore be dismissed on this ground alone with punitive costs order.

[16] The applicant, in retort, contended that the second respondent has always been the party which was in the forefront of the matter on behalf of the first respondent. To this end, he must be the one to be held in contempt. In any event the order holding the first respondent in contempt may be ineffective as the company may not be committed to prison.

[17] It is indeed correct that the second respondent in his personal capacity was not cited and should have been formally joined and be found to have committed contempt of court.³ To this end the second respondent's point *in limine* is sustained.

Merits

Parties' versions and submissions.

[18] The applicant stated that the second respondent who was in court when Crutchfield J made an order informed the court that the vehicle was with the bank and made an undertaking that the car will be returned on 4 April 2025. The order was indeed forwarded by email to the second respondent and same was also followed by a whatsapp. The second respondent replied and informed the applicant that the communication including the court order were given to the bank and the latter relayed the information to the bank's attorneys for further handling.

[19] The vehicle was unlawfully taken from him and worse it was taken with the assistance of the sheriff who had no jurisdiction over the area where the applicant resided. The basis to claim his right to the common law remedy of *ius retentionis* was

³ It was, however, stated that where a director assist the company in avoiding compliance such a director may be found to be in contempt. It was held in *Twentieth Century Fox Film Corporation*³ that: "a director of the company who, with knowledge of an order of court against the company, causes the company to disobey the order is himself guilty of contempt of court. By his act or omission such a director aids and abets the company to be in breach of the order of Court against the company. If it were not so, a Court would have difficulty in ensuring that an order *ad factum* against a companies enforced by a positive order."³

premised on the fact that he expended amount in excess of R50 000.00 in the repairs effected on the vehicle.

[20] Counsel for the respondents outlined the involvement of the first respondent in the repossession of the motor vehicles from third parties. The first respondent receives instructions from the Banks which would normally have obtained an order of court against its customers for repossession. The first respondent would then trace the motor vehicle and then make whoever is in possession aware of the court order. In the event the possessor refuses to hand over the vehicle, the first respondent would summon the assistance of the sheriff and members of SAPS for assistance in carrying out the order of court.

[21] In this instance both SAPS representatives attend at the scene and assisted in repossessing the motor vehicle. The applicant insisted that the repossession should be done at the police station and all of them drove to SAPS where the vehicle was ultimately given to the first respondent. To this end, the first respondent contended that the surrendering of the car was voluntary and amounted to the waiver of the alleged lien by the applicant. In addition, the contention by the applicant that the vehicle was repossessed by sheriff without jurisdiction is unfounded since the warrant did not specify any sheriff and as such any sheriff can assist in the repossession of the vehicle wherever it is located.

[22] The respondents in retort stated that the order by Crutchfield J is not very clear and as such is difficult to implement. It says that a party should take reasonable steps to ensure that the car is brought back to the applicant and where an order is unclear a party may be entitled to ignore it. Counsel referred the court to the judgment in *University of Cape Town*⁴ where, counsel said, under these circumstances the court can be considered void.

[23] In any event, counsel argued, the second respondent has tried all that he could to get the vehicle back from the Bank. Attempts were also made to ensure that

⁴ *University of Cape Town v Minister of Education and Culture (House of Assembly and House of Representatives) and Others* 1988 (3) SA 203 (C).

the second respondent communicates with the applicant to directly discuss the matter with the attorneys acting for the bank. The applicant spurned the suggestion and stated that he would approach the court for the necessary relief if the vehicle was not returned.

[24] Counsel further contended that, having regard to the submission aforesaid, the applicant has failed to prove that the respondents had the intention to disregard the court order. Reference was made of *Fakie NO*⁵ which set out the requirements which must be satisfied before an order is granted, namely, existence of the order, service or notice of the order, non-compliance and wilfulness and mala fides in relation to non-compliance. Further, that the standard of proof to establish evidence for contempt is beyond reasonable doubts and finally that the applicant is required to proof service and non-compliance and thereafter the onus shift to the respondents to proof lack of *mala fides* or intention to disobey the order.

Issues

[25] The issue for determination is whether the applicant has made out a case for contempt of court.

Legal principles

[26] The argument that certain court orders are a nullity was considered by the Constitutional Court in *Ndabeni*⁶ where it was held that no one is entitled to ignore an order of court. Further that court order remain extant and enforceable until set aside.

[27] It was stated in *State Capture*⁷ that:

“As set out by the Supreme Court of Appeal in *Fakie*, and approved by this Court in *Pheko II*, it is trite that an applicant who alleges contempt of court

⁵ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA).

⁶ *Municipal Manager O.R Tambo District Municipality and Another v Ndabeni* 2023 (4) SA 421 (CC).

⁷ *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] ZACC 18.

must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with an order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and *mala fides* are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt would have been established.”⁸ (footnotes omitted).

Analysis

[28] Counsel was taken to task with the contention that the judgment which is not clear need not be complied with. To this end counsel, with a measure of reluctance, persisted that the order enjoined the respondent to do all that was reasonable and to this end he complied with the order. This was despite the caution from me that it may not be proper for counsel as an officer of the court to advise, intentionally or otherwise, her clients not to comply with an order of court because it was not clear to him. The first respondent contends that in an attempt to take reasonable steps in accordance with the order “...it has informed the Bank of the Order and attempted to connect the applicant and the Bank’s attorneys to try to resolve the despite that the possession of the Vehicle.”⁹ The communication of the order to the Bank cannot be construed as an attempt (or reasonable attempt without more) to comply with the order or to deliver the vehicle in compliance. The first respondent should have demanded the vehicle and if the bank refuses, as applicant contended, second respondent should have then approached the court to state that he is frustrated to execute the order and not ignore it.

[29] Despite having referred to authorities that the burden is on the respondents to prove lack of intention or *mala fides* the respondents stated that “... the applicant has failed to establish how the respondents are in wilful default of the order.”¹⁰

⁸ *Id* at para 37.

⁹ See Respondents’ Heads of Argument, CL 19-10, at para 41.

¹⁰ *Id* at para 39.

[30] Though counsel has further intimated the possibility of appeal such an indication fortifies the applicant's allegations that the first respondent was represented by the second respondent who had the opportunity to address the court and he did so. Otherwise, the respondents could be speaking of rescission and not appeal. To this end one can safely conclude that the attempt to raise a dispute is hopeless, implausible and untenable.

[31] In this case the applicant was able to demonstrate that the first respondent has knowledge of the court order more so that it was made in their presence and same being sent by WhatsApp and acknowledged by the second respondent. The respondents had the onus to displace possibility of intention or mala fides on their part. The only thing which in any event fell short of attempt to execute the order was just to notify the bank of the Order and not demand the motor vehicle, whilst the respondents thought of challenging the order (by appealing same) decided not to do so even through a counter application, if appropriate. The respondents argued that the judgment in *University of Cape Town*¹¹ entitle them to ignore the order. Further, that there are several interpretations to be attached to the order. Counsel referred this Court to the passage in *University of Cape Town*¹² where it was stated that:

“Turning to the applicants second ground, that the conditions are void uncertainty, the question is whether conditions, properly interpreted, bear a reasonably precise meaning sufficiently to inform the Universities what is required of them. In other words, is it reasonably ascertainable what action will constitute compliance and what omission will constitute non-compliance? If the answer to those questions are in the negative, the conditions are bad in law and therefore void.”

[32] *University of Cape Town* judgment is distinguishable as it related to conditions in the University Act 61 of 1955. The case serving before me relates to court orders.

¹¹ Footnote 3 above.

¹² *University of Cape Town* at 213A.

It is settled law that court orders are valid and enforceable until set aside by a court. It was stated by the Constitutional Court in *Ndabeni*¹³ that

“Trite, but necessary it is to emphasise this Court repeated exhortation that constitutional rights and court orders must be respected. ... no one should be left with the impression that court orders - including flawed court orders - are not binding, or that they can be flouted with impunity.”

This Court in *State Capture* reaffirmed that irrespective of their validity, under section 165 (5) of the Constitution, court orders are binding until set aside. Similarly, *Tasima* held that wrongly issued judicial orders are not nullities. They are not void or nothingness but exist in fact with possible legal consequences. (Footnotes omitted)

[33] The applicant submitted the second respondent stated in court that he will ensure that the motor vehicle is returned on 4 April 2025. In return the court ordered that all that is necessary should be done to ensure that the vehicle is returned. There is nothing unclear about this order. The applicant has correctly stated that if for any reason the respondents is being frustrated to execute the order the respondents should have approached the court to obtain an order against whomsoever is frustrating the implementation of the order alternatively approach the court to vary the order if so advised.

[34] Instead, the respondents just notified the bank about the order and conveyed the contacts of the Bank's attorney to the applicant. This cannot be construed as action from a party attempting to give effect to the order. The defence that the order is unclear is unsustainable as it is not ambiguous that do all to ensure the vehicle is returned. Even if it could be argued that it is unenforceable the respondents are not entitled to take a supine posture and consider same to be a nullity but should approach court for clarity or even appeal the order as it was intimated during argument.¹⁴ Taking a conscious decision that nothing is going to be done is a

¹³ *Municipal Manager O.R Tambo District Municipality and Another v Ndabeni* at para 23-24.

¹⁴ It was held in *S v S* 1998 (4) SA 714 (W) at 726E that “... in general, all orders of court, whether correct or incorrectly granted have to be obeyed until they are properly set aside. If it were otherwise

deliberate conduct on the part of the respondent which the respondent failed to dispel.

[35] It is noted that some of the exculpatory stance could be where a party can demonstrate that there was reasonable mistake¹⁵ or demonstrated his own bona fides¹⁶. It is further noted from *Scalabrini Centre*¹⁷ that the “Courts ought not to compel the impossible”.¹⁸ The court held in *Scalabrini Centre* that “Moreover, litigants who are required to comply with court orders, at the risk otherwise of being in contempt if they do not, must know with clarity what is required of them.”¹⁹ In the premises I find that the applicant has proved his case against the first respondent.

Appropriate sanction

[36] Once a court has returned a decision that contempt of court has been committed, an appropriate sanction should be imposed and this could either be a coercive or punitive order. A coercive order would accord a contemnor an opportunity to purge the contempt and comply with the order granted and avoid the sentence of paying a fine or imprisonment. The amount payable is generally discretionary and Court may have regard to seriousness and extent of defiance, purpose of the fine being to encourage compliance, prevalence of the infraction and comparative orders. The contemnor was ordered to pay R40 000.00 in *T.M.B*²⁰.

[37] The respondents should be sentenced to a fine of R50 000.00 which is suspended for a period of 30 days to enable the respondents to purge the contempt, failing which the aforesaid fine must be paid to the Department of Justice. The applicant’s wish was that the fine should be paid to himself and this argument fail to

respondents will be able to defy the court orders with impunity, contending that they believed such orders to be wrong”.

¹⁵ *Consolidated Fish Distributors v Zive* 1968 (2) SA 517.

¹⁶ *Noel Lancaster Sands EDMS BPK v Theron and Wickee v Wicke* 1929 WLD 145.

¹⁷ *Minister of Home Affairs v Scalabrini Centre, Cape Town* 2013 (6) SA 421 (SCA),

¹⁸ *Id* at para 76.

¹⁹ *Id* at para 77.

²⁰ *T.M.B v M.C.R and Others* [2024] ZAGPPHC 1062 (30 October 2024).

appreciate that the offence of contempt of court is an affront to the court and not the applicant.²¹

Costs

[38] There applicant was not represented and therefore no costs order would be made in his favour. There will be no costs order granted in respect of the points *in limine* raised by the respondents.

Order

[39] In the result, I make the following order:

1. The Applicant's non-compliance with the rules and /or practice directives relating to service and time periods is condoned and the application is allowed to be heard in accordance with Rule 6(12) of the Uniform Rules of Court.
2. The Respondents' point *in limine* of misjoinder is upheld.
3. The Respondents' point *in limine* of lack of service is dismissed.
4. It is declared that the First Respondent is found to be in contempt of the order of Court dated 2 April 2025.
5. The First Respondent is ordered to comply with the order of the Court dated 2 April 2025 within 15 days of handing down of this order, failing the First Respondent is sentenced to pay a fine of R50 000.00 payable to the Department of Justice with 7 days thereafter.

²¹ See *State Capture* at para [61] where it was stated that "... contempt of court is not an issue *inter partes* [between the parties]; it is an issue between the court and the party who has not complied with a mandatory order of court"... the overall damage caused to society by conduct that poses the risk of rendering the Judiciary ineffective an eventually powerless is the very heart of why our law forbids such conduct."

6. No order as to costs.

MV NOKO
JUDGE OF THE HIGH COURT
JOHANNESBURG

This judgement was prepared and authored by Noko J 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 6 May 2024.

Date of hearing: 14 April 2025

Date of judgment: 6 May 2025

Appearances

For the Applicant: *In person*

For the Respondents: FA Darby

Instructed by UMS Attorneys.