



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

Case number: 14435/2024

In the matter between:

HELMA VAN ZYL

Applicant

and

NEO MULLER

Respondent

Heard:	29 January 2025
Order Granted:	30 January 2025
Reasons Requested:	6 February 2025
Reasons Delivered:	28 March 2025

JUDGMENT - REASONS

PARKER AJ

Introduction

[1] On 30 January 2025, an order was granted in terms of which the application was dismissed together with costs on a party and party scale including counsel's fees as taxed or agreed on scale A.

[2] On 6 February 2025 a request for written reasons was delivered in terms of Rule 49(1)(c), sought by the applicant. What follows are the written reasons.

[3] The history of the application shows it was postponed by agreement between the parties on 25 September 2024 to 29 January 2025 on the semi urgent roll, wherein applicant was seeking an order to have respondent declared to be in contempt of court for his willful failure to abide by the terms of an order granted on 21 February 2024 in the George Regional Court by the Honourable Magistrate Ramalebana. The prayers also sought that a sanction be imposed on the respondent for his committal to imprisonment for a period of three months for noncompliance of the order. In the alternative an order was to compel the respondent to comply with the order.

[4] Applicant contended that the respondent opposed the application as a strategy to delay and obfuscate the claim.

[5] The applicant set out in the detail the romantic relationship between her and respondent which led them to conclude an agreement on the 12 May 2016 that the respondent would purchase an immovable property ('the property') in Riversdale for an amount of R1 080 000.00, which comprised the purchase price and the transfer costs. In accordance with their agreement, the property was then accordingly registered in respondent's name.

[6] According to applicant she made a cash contribution towards the purchase price in the amount of R250 000.00 equating to a figure constituting 23.5% of the total costs. Respondent would finance the remaining balance of the purchase price in the amount of R830 000.00.

[7] It was further agreed that the respondent would be responsible for the bond payments monthly. According to the applicant respondent undertook that in the event

of a change in financial circumstances, to register applicant's 23.5% of the immovable property in her name.

[8] The agreement also made provision for termination. In the event that the relationship would terminate it was agreed that the parties would obtain 3 valuations for the property which would aid to determine the reasonable market value, on the basis that the average value of the valuations would be used to determine a fair value for property.

[9] Further pertinent terms were agreed providing the first option to purchase out each other, failing which the immovable property would be sold at the best price on the open market. In the event of a termination, the parties would vacate the property. The rental income would be divided between them in accordance with their property share and the proceeds from the sale of the immovable property would be divided between them in accordance with their respective ownership percentages. According to applicant, respondent would be responsible for the cancellation of the existing bond.

[10] The property was duly registered in the name of the respondent however it never reached the stage for applicant's share of 23.5% to be registered against the Title Deed of the property in her favour.

[11] When the romantic relationship terminated, applicant vacated the immovable property. It was then further agreed that the respondent would pay her an amount of R20 000 in order for her to relocate elsewhere.

[12] On the applicant's construction and interpretation of the order, she is entitled to an amount of R 473 916.67 and his failure to pay her what is due to her gave rise to

her to hold the respondent for contempt of the court order which in her view he is in willful default of.

Respondent's version

[13] It is the respondent's submission that the applicant was only entitled to receive 23.5% of the proceeds of the sale of the property after deductions which according to his calculations amounted to a sum of R 124 983.34.

[14] This method of determining the value due to applicant was met with disapproval by the applicant who argued that the bond payment would be the respondent's sole responsibility, and that applicant could not reasonably be held liable for rates and taxes incurred when she was not residing at the property any longer. Furthermore, that contempt proceedings should not be preferred against him in the face of communication exchanges to determine what is due to either party. In respondent's view he has complied with the order of the court *a quo* and was not in disobedience thereof.

George Regional Court

[15] It is necessary to examine the litigation history. Applicant proceeded to institute an action against the respondent in the George Regional Court for various claims including claim 1 for a payment of R 234 855.00 representing the 23.5% claim and a claim number 3 for an amount of R 55 000.00. The matter in the court *a quo* pivoted on the interpretation of the agreement signed between the parties in 2016. This action was defended by the respondent who pleaded that the parties had concluded a partnership which had to be dissolved in terms of the action *communi dividundo*. The

defendant did not completely deny liability however pleaded that the plaintiff is entitled to 23.5% share in the partnership which was recorded in the reasons for the judgement by the learned Magistrate. Essentially the same issues that served before the learned Magistrate served before this court, for determination then being whether:

15.1 the plaintiff is entitled to an amount of R 234 855.00 or 23.5%.

15.2 the plaintiff is entitled to 23.5% from the proceeds of the sale of the property.

[16] The judgment reflected that the magistrate considered the law and the decision in the Natal Joint Municipal Pension Fund v Endumeni Municipality¹. In the result the court ordered as follows:

*"29. Plaintiff is entitled to 23,5%. And alternative to claim is granted from clause A to E excluding F&G... the defendant is ordered to obtain 3 valuations of the property and buy out the plaintiff shares."*²

[17] Furthermore the order provided that in the event that defendant is unable to buy the property, it be put on sale. Importantly paragraph (e) read as follows.

"Pay to the plaintiff proceeds of the sale of the property equivalent to her 23.5% share in entitlement."

Therefore, Judgment was granted that plaintiff is entitled to 23.5%. Since the parties have not reached an agreement, the applicant instituted an action in the amount of R234 855.00 and in the alternative interdictory relief to compel the respondent to

¹ 2012 (4) SA 593 (SCA)

² The Magistrate used capital letters for prayers (e), (f) and (g).

undertake the process of determining a market related price of the immovable property, to sell it and to pay the applicant her share of the proceeds.

[18] The learned Magistrate embarked on an interpretive exercise and interpreted the 2016 agreement to mean that the applicant was entitled to 23.5% and an alternative claim from the *"profit from the sale of the house."*³ The applicable portions of the judgment inter alia, were that applicant was directed to obtain three valuations of the property and if a buy-out did not prevail then to place the property for sale on the market.

The issues in dispute

[19] The main issues in dispute related to whether;

- 19.1 applicant is to be paid a sum of 23.5% of the value of the immovable property.
- 19.2 the applicant is to be paid 23.5 % of the proceeds of the immovable property.
- 19.3 the respondent is in contempt of the court order for his willful default.

Respondent's version

[20] It is the respondent's submission that the applicant was only entitled to receive 23.5% of the proceeds of the sale of the property after deductions which according to his calculations amounted to a sum of R 124 983.34 in keeping with prayer (e).⁴

³ Underlined-own emphasis. See reasons for judgment para 27 dated 21 February 2024.

⁴ Inserted here for emphasis: "Pay to the plaintiff proceeds of the sale of the property."

[21] This method of determining the value due to applicant was met with disapproval by her who contended that the the bond payment would be the respondent's sole responsibility, and that applicant could not reasonably be held liable for rates and taxes incurred when she was not residing at the property any longer.

[22] On the applicant's construction and interpretation of the order, she is entitled to an amount of R 473 916.67.

Evaluation

[23] It is common cause that the parties lived together for the period of June 2016 to 15 August 2020. The applicant is unhappy with the method of calculating the amount which is due to her and is thus seeking a contempt of court order, which in her view, the Respondent is in willful default of.

[24] The law on (civil) contempt of court is well established. Contempt of court is defined as "*the deliberate, intentional (willful), disobedience of an order granted by a court of competent jurisdiction*".⁵ Contempt proceedings serve three important purposes: namely, protecting the rights of everyone to fair trials, maintaining public confidence in the judicial arm of government, and upholding the integrity of court orders.⁶

⁵ *Pheko and Others v Ekurhuleni Metropolitan Municipality* (No 2) 2015 (5) SA 600 (CC) (*Pheko II*) at 617A–B; *Minister of Home Affairs v Scalabrini Centre* 2013 (6) SA 421 (SCA) at 443H–I; and *NW Civil Contractors CC v Anton Ramaano Inc* 2020 (3) SA 241 (SCA) at para 6 [3]

⁶ Milton, *South African Criminal Law and Procedure* (Vol II: Common Law Crimes) (3 ed) Cape Town, Juta and Co: 1996 at 165

[25] For an act to constitute contempt, an intention to defeat the course of justice must be established.⁷

[26] It is trite that our law permits an aggrieved litigant to approach a court for an order of contempt pursuant to an earlier court order being defied by the contemnor.

[27] The applicant has to prove the existence of the order, service or notice non-compliance, and willfulness and mala fides beyond reasonable doubt. Once the applicant has proved the order, service or notice and non-compliance, the respondent bears an evidential burden in relation to willfulness and mala fides.⁸ *Fakie v CCII Systems* is the leading authority when a court considers a civil contempt of court application.⁹ It additionally summarised the rationale and requirements for civil contempt as being:

"(a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

(b) The respondent in such proceedings is not an accused person but is entitled to analogous protections as are appropriate to motion proceedings."

[28] The Constitution of the Republic of South Africa provides an overarching protection to the Rule of Law and the decisions made by judicial officers, which as a

⁷ *Coconut Express CC v South African Revenue Service (Customs and Excise) and others* [2016] 2 All SA 749 (KZD)

⁸ *Els v Weideman and Others* 2011 (2)126 (SCA) para 66-67

⁹ 2006 (4) SA 326 (SCA) para 42

constitutional imperative flowing from section 1 and section 165, vouchsafes judicial authority.¹⁰ The Constitutional Court recognises that disobedience towards court orders or decisions risks rendering our courts sterile, and judicial authority a mere mockery. The teeth in effect of court orders are substantially determined by the assurance that they will be enforced,¹¹ thereby ensuring their dignity and effectiveness.

[29] In *Pheko and others v Ekurhuleni City*,¹² the Constitutional Court explained that:

"Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes acts of contumacy in both senses: willful disobedience and resistance to lawful court orders. This case deals with the latter, a failure or refusal to comply with an order of court. Willful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence. The object of contempt proceedings is to impose a penalty that will vindicate the court's honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order."

[30] Accordingly, if on a conspectus of all the evidence there is a reasonable possibility that non-compliance with the court order in issue was not willful and *mala*

¹⁰ *Pheko* supra para 26

¹¹ *Matjhabeng Municipality v Eskom* 2018 (1) SA (1) at paragraph 46-67; *Pheko and others v Ekurhuleni City* ('*Pheko*') 2015 (5) SA 600 (CC); 2015 (6) BCLR 771 (CC); [2015] ZACC 10 at paragraphs 1-2 and 25 to 37 with reference inter alia to *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA).

¹² 2015 JOL 33198 (CC) at para 28

fide, contempt is not established.¹³ The willfulness (intent) consideration is further informed by the requirement that there must be an intention to defeat the course of justice for an act to constitute civil contempt,¹⁴ or otherwise cast, a court must find the “litigant to be possessed of malice on balance”.¹⁵

[31] However, where most of a court order has been complied with and the non-compliance is in respect of some minor matter only, the Court will take the substantial compliance into account and will not commit for a minor non-compliance; i.e. the applicant has to show a material non-compliance with the court order.¹⁶ It is that the relevant prevailing circumstances will determine whether a compliance matter is to be regarded as “minor” or otherwise.

[32] In these proceedings, it is common cause that (i) a court order exists; (ii) the respondent has knowledge of the court order; and (iii) it is a requirement which shows there has been strict compliance with the express terms of the order, albeit not to the satisfaction of the applicant.

¹³ See *Fakie NO v CCII Systems (Pty) Ltd* supra at para 14 and *Matjhabeng Local Municipality* supra at paras 67 and 85-88

¹⁴ *Gauteng Gambling Board and Another v MEC for Economic Development, Gauteng* 2013 (5) SA 24 (SCA) para 51

¹⁵ *Pheko* supra para 37

¹⁶ *Consolidated Fish Distributors (Pty) Ltd v Zive* 1968 (2) SA 517 (C)

[33] Accordingly, the applicant is required to demonstrate that the respondent's non-compliance is wilful and/or *mala fide*, beyond a *reasonable doubt*, to succeed with the committal of the respondent or for the court to consider alternative sanctions.

[34] It is clear that the divergent views hinge on the interpretation of the order. It would have been far better if the applicant had brought a declaratory regarding the interpretation of the order instead of her contempt application to compel the respondent to comply with the order for his disobedience thereof. However, in my view, the order of the court *a quo* is clear: "Pay to the plaintiff proceeds of the sale of the property". The definition of "proceeds" means the proceeds in this case of the immovable property. What is unclear is whether the proceeds are gross or net. This is where the problem really lies.

[35] The applicant has failed to show that the respondent has not complied with or is in willful disobedience of the order. The conduct shows substantial compliance, which can be gleaned from the exchanges between them and their legal representatives. I agree with the respondent's position that the contempt application is not competent as the applicant is using the contempt proceedings to request the court to reinterpret the meaning of the court *a quo*'s judgment that ordered that the applicant should be paid the "profit or proceeds of the sale of the property." To amplify, the exchanges between the respective legal representatives regarding the computation of the proceeds are such that they attempted to settle the capital owing. In the result, I have found that the respondent was not in willful default.

[36] The applicant followed the incorrect procedure by invoking contempt of court proceedings in an attempt to strong-arm the respondent to concede to her demands.

[37] There are alternative remedies available to the applicant. The respondent has recourse to return to the court *a quo* to determine what profit means, whether deductions or amounts have to be included, if any, to determine the proceeds of the property of the sale, alternatively to appeal the order.

[38] Accordingly, there was no need to grant the applicant the alternative prayer calling on the respondent to comply with the order, because in my view, the attempts to settle the proceeds, albeit on an interpretation not favoured by the applicant, show that he has taken steps to facilitate the resolution of the matter.

[39] In the result, it is the interpretation of the court *a quo*'s order which has caused this dilemma, not that any blame is apportioned at the feet of the magistrate. Often, parties and legal representatives in their eagerness to resolve a matter, agree to an order without having due regard to its practical consequences and without due regard to the lack of critical quantification in the event that the immovable property would be sold. Had this been thoroughly thought through, particularly how the applicant's share namely the 23.5%, would be applied in the event of a sale, much of this analysis would have not been necessary. The opposite happens when a clear analysis is not done.

[40] In my considered view, I was not convinced that the applicant had reasons to hold the respondent in contempt of court. The negotiations between the parties showed that the respondent was not in willful default of the order.

[41] As for costs, the costs followed the result.

Accordingly, the application was dismissed with costs.

A handwritten signature in blue ink, appearing to read 'Parker', is written over a solid black rectangular redaction box.

PARKER AJ

Acting Judge of the High Court

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This judgment was handed down electronically by circulation to the parties' representatives by email.