



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 746/2023

In the matter between:

JR 209 INVESTMENTS (PTY) LTD

IDLEWILD FARM (PTY) LTD

LIBERINI 112 CC

HY-LINE SOUTH AFRICA (PTY) LTD

MALUVHA KWEKERY (PTY) LTD

and

**HOMELESS PEOPLE HOUSING CO-
OPERATIVE LTD**

SAMUEL MANDLA SONGO

KOLOBE VIRGINIA KGOMO

SELLO SHARON LEHONG

MADUMETSA THOMAS MOJELA

KEDIBONE JOHANNES SIBANYONI

OCCUPIERS OF PORTION 8, 10

AND 38 OF THE FARM WITKOPPIES 393,

EKURHULENI

FIRST APPELLANT

SECOND APPELLANT

THIRD APPELLANT

FOURTH APPELLANT

FIFTH APPELLANT

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

FIFTH RESPONDENT

SIXTH RESPONDENT

SEVENTH RESPONDENT

Neutral citation: *JR 209 Investments (Pty) Ltd and Others v Homeless People Housing Co-Operative Ltd and Others* (746/2023) [2025]
ZASCA 63 (16 May 2025)

Coram: MOCUMIE, MAKGOKA and MOTHLE JJA and DOLAMO and
MASIPA AJJA

Heard: 11 September 2024

Delivered: 16 May 2025

Summary: Contempt of court – requirements restated – whether conduct met requirements – Co-operatives Act 14 of 2005 – s 72 (1) – whether competent to rely on a different cause of action after initial provisional order discharged per agreement.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Manamela AJ sitting as court of first instance):

- 1 The order of the high court is amended to read as follows:
 - ‘(a) The application for contempt of court is dismissed.
 - (b) The application for the liquidation of HPH Housing Cooperative Ltd is dismissed.’
 - 2 Paragraph 5 of the order of the high court is deleted.
 - 3 Save for the above, the appeal is dismissed with costs.
-

JUDGMENT

Dolamo AJA (Mocumie, Makgoka and Mothle JJA and Masipa AJA concurring):

Introduction

[1] This is an appeal against the order of the Gauteng Division of the High Court, Pretoria (the high court). That court dismissed an application by the appellants to declare: (a) the first to the sixth respondents to be in contempt of a court order granted on 19 April 2019; and (b) the first to the seventh respondents to be in contempt of court orders granted on 26 April 2019 and 17 July 2020, respectively. The high court also dismissed the appellants’ application to place the first respondent in provisional, alternatively, final liquidation. The appeal is with the leave of the high court.

The parties

[2] The first to the fifth appellants companies are the registered owners of various Portions of the Farm 393 JR Witkoppies, Ekurhuleni, Gauteng. The first

appellant is also the registered owner of Portion 11,12 and 13 of the farm Sterkfontein and Portion 10 of the Farm Haartebeesfontein, Gauteng. These properties are all earmarked for development. The first respondent, Homeless People Housing Co-operative Ltd (HPH), is the owner of three immovable properties which are adjacent to those of the appellants. HPH is a primary housing co-operative which provides housing to its members. At all material times hereto, the second to the sixth respondents were its directors.

[3] In the court below and in this court the appellants cited the seventh respondents as the unlawful invaders of the first respondent's properties. This form of citation was criticized by the Constitutional Court in *Occupiers of Mooiplaats v Golden Thread*¹. There the Court found this description of human beings as less than satisfactory as it detracts from the humanity of the occupiers, is emotive and judgmental, and comes close to criminalising the occupiers. I agree that such form of citation shall not form part of the papers serving before our court. The seventh respondents will accordingly be cited as the occupiers of the properties in question.

Litigation history

[4] In December 2017, the appellants obtained an interim interdict in terms of which HPH and unknown occupants on HPH properties were restrained from invading, taking occupation, demarcating stands, delivering any building material, or building structures on the HPH properties, pending finalisation of Part B.

[5] On 19 April 2019, the appellants again approached the high court on an urgent basis alleging that HPH and unknown occupants had not complied with the order granted in December 2017. The appellants sought further interdictory relief

¹ *Occupiers of Mooiplaats v Golden Thread Ltd and Others* 2012 (2) SA 337 (CC); CCT 25/11 [2011] ZACC 35.

against HPH and unknown occupants as the first and third respondents, respectively. On the same day, an order was granted in the following terms:

‘1. . .

2. The following order is granted, as an interim order, to operate with immediate effect, pending the final determination of the relief sought in part [B] of this application:

3.1 The Third Respondents are interdicted and restrained from invading, taking occupation, demarcating, and/or performing any unlawful building/construction on Portion 10 of the farm Witkoppies 393, Pretoria, Ekurhuleni; Portion 8 of the farm Witkoppies 393, Pretoria, Ekurhuleni; Portion 38 of the farm Witkoppies 393, Pretoria, Ekurhuleni (“the invaded properties);

3.2 The Third Respondents are interdicted and restrained from conducting any unlawful building and/or construction on the invaded properties and particularly dwellings/shacks and/or from delivering or causing to be delivered any building materials to the invaded properties;

3.3 The First Respondent is ordered and directed to take any and all steps necessary to enforce compliance with this order on and in respect of the invaded properties, to desist from any further unlawful use of the invaded properties or granting consent to do so, to prevent any further invasion of the invaded properties by the third respondent,, unlawful use, unlawful conduct on or in respect of, unlawful occupation, unlawful erection of dwellings and particularly shacks at the invaded properties. . .’

[6] On 26 April 2019, the appellants obtained an order declaring HHP to be in contempt of the above order (the contempt order). The high court imposed a fine of R100 000, which was suspended subject to certain conditions. One of the conditions was that HPH complies with the order until such time as townships would have been established on HPH properties or HPH had disposed of them. The contempt order instructed the sheriff to demolish each structure erected on the HPH properties after the order of 19 April 2019. The sheriff executed the order from 27 April 2019 to 17 May 2019. On 27 May 2019, the respondents launched an urgent application in the high court for a declarator that the contempt order did not provide for the eviction of the occupants of the HPH properties or the

demolition of structures thereon, and for an order that the sheriff reconstruct the demolished structures. Fourie J dismissed that application.

[7] On 7 May 2020, the appellants brought an urgent application for the liquidation of HPH. The high court granted a provisional order placing HPH in the hands of the Registrar of Co-operatives, returnable on 15 July 2020. An interim liquidator was appointed. On the return date the court discharged the provisional liquidation order by agreement, on condition that HPH pays the related administration costs totalling R190 644.47 within 48 hours of the granting of the order, and to ensure that:

‘4.1 [U]ntil such time as legally entitled to do so, no more than 52 persons shall at any time be present, and no further dwellings, shacks, or similar structures, other than currently on the properties owned and controlled by the respondent as on the date of this order, shall be constructed and/or erected thereon;

4.2 [N]o person shall illegally and unlawfully occupy the properties owned and controlled by the respondent;

4.3 [N]o structures of any nature shall illegally and unlawfully be erected on the properties owned and controlled by the respondent; and

4.4 [T]here shall be strict compliance with any applicable legislation relating to the properties owned and controlled by the respondent, [especially] with regard to the occupation thereof.’

[8] On 2 September 2020, the respondents paid the administration costs of the liquidation as ordered above. What remained outstanding were the taxed costs referred to in paragraph 5 of the order which, after taxation, were paid in October 2021. Subsequently, the appellants made fresh allegations of further breaches of previous orders. And, as a precursor to another urgent application, they detailed steps they took to prevent further contraventions, including seeking an undertaking from the respondents’ attorneys that the latter would desist from further illegal activities.

[9] When such an undertaking was not forthcoming, the appellants arranged with the sheriff of the court to again serve the previous orders on 18 September 2020. The sheriff was denied access to the premises. The appellants then arranged a crane to hoist building materials out of the HPH properties and removed them for storage at alternative premises identified for this purpose by the respondents. In addition, using a drone, the appellants took photographs of the HPH properties which they presented as proof of the alleged ongoing violation of the previous court orders.

[10] In the latest of the series of urgent applications, brought after the events of 18 September 2020, the appellants sought an order declaring HPH and its directors who, save for its chairperson, were cited in person for the first time, to be in contempt of court and for the liquidation of HPH. In the contempt of court relief, the appellants sought an order uplifting the suspended fine imposed on HPH and for the imposition of an additional fine of R500 000; declaring the first to the seventh respondents to be in contempt of court, coupled with an order for first respondent's committal to prison for six months; and declaring the other directors (third to sixth respondents) to be in contempt of court, and imposing a fine of R500 000 on each of them.

[11] In seeking the liquidation relief, the appellants asserted their standing to bring the application as contingent creditors for R414 012.99, being in respect of a costs order granted on 17 July 2020, though those costs were yet to be taxed. They also submitted that they were interested parties as contemplated in s 72(1) of the Co-operatives Act 14 of 2005 (the Co-operatives Act) by virtue of being owners of properties adjacent to and bordering HPH properties. They further alleged to qualify as such by virtue of being interested parties in previous court orders. They submitted that, in terms of s 72(1)(a) and (b) of the Co-operatives

Act, they have standing to apply for HPH's liquidation since it was unable to pay its debts and with no reasonable probability that it would be able to do so.

[12] In the alternative, the appellants contended that it was just and equitable, pursuant to s 72(1)(c) of the Co-operatives Act, for HPH to be wound up as its entire *substratum* and existence was premised on an illegality. The illegality, according to the appellants, was to be found in the alleged unlawful and fraudulent sale of portions of undivided agricultural land to indigent individuals; the persistent and unlawful conduct of the respondents in undermining court orders; the perceived unconscionable abuse of the separate juristic personality of HPH which manifested in the manner in which the second to the sixth respondents conducted its affairs in conflict with s 3 of the Subdivision of Agricultural Land Act 70 of 1970 (SALA) fully aware that the intention to provide residential accommodation on HPH properties is illegal and unlawful, but continuing with reckless disregard for the law; and that the respondents thereby exploited innocent members of the community. The respondents opposed the application.

[13] The respondents denied defrauding members of HPH, any person or creditor, promoting any fraudulent scheme, or engaging in any fraudulent sale of portions of the HPH properties. They further denied any abuse of the separate juristic personality of HPH. The respondents also brought an application to strike out certain paragraphs of the appellants' founding affidavit on the basis that these contained vexatious and scurrilous allegations, including baseless defamatory accusations, emotive language, similar fact evidence and assertions aimed at harassing and annoying the respondents.

[14] The matter was eventually heard by the high court which subsequently delivered its judgment on 24 March 2022, in which it dismissed the relief for contempt of court with costs on an attorney and client scale. In dismissing the

contempt of court application, the high court held that, to some extent, there is an overlap, repetition, and ambiguity between the court orders which defeats the purpose of court orders having to be in clear and readily ascertainable terms. *Per incuriam*, the high court also made an order setting aside an order for the liquidation of HPH. As mentioned, the provisional order for the liquidation of HPH was discharged on 17 July 2020, and as such there was no provisional order to discharge.

In this Court

[15] The appeal before us revolves around two narrow issues. First, whether the appellants have proved that the respondents have breached the court orders previously granted in the ongoing dispute between the parties. Second, whether HPH should be placed in provisional, alternatively, final liquidation in terms of s 72(1)(a), (b), or (c) of the Co-operatives Act.

[16] The appellants asserted that they have shown, in fact, that further informal dwellings were erected on HPH properties after the previous orders were granted. They argued that the undertaking by the respondents' attorney that steps needed to be taken as far as possible to ensure that no court order was contravened, evinced that the orders had hitherto been disregarded. For their part, the respondents denied any breach of the previous orders and submitted that none of these orders granted relief personally against the second to the sixth respondents, and that, absent any order against the respondents personally and proof that they personally breached them, no contempt of court relief against any of them was competent.

Contempt of court

[17] The requirements of contempt of court are well established in our law. An applicant for a contempt of court must prove: (a) the existence of the order; (b) the

order must be served on or brought to the notice of the alleged contemnor; (c) there must be non-compliance with the order; and (d) once the applicant has proved the order, service or notice, and non-compliance, respondent bears an evidential burden in relation to wilfulness and *mala fide*.² The non-compliance must be wilful and *mala fide*.³

[18] It is not in dispute that the various orders were granted against HPH and were brought to its attention. The issue is whether there was a wilful and *mala fide* disregard of the orders by the respondents. It must be borne in mind that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute, or authority that this evinces.⁴

[19] The deponent to the appellants' founding affidavit relied on what was allegedly conveyed to him by an owner of an adjacent property, that HPH had again caused or allowed heaps of building material to be delivered to its properties. The said owner did not file any confirmatory affidavit to support this averment. The case was further premised on the supposition that three more structures were constructed from this additional material. This was purported to be supported by the photographs that were taken on 18 September 2020. These allegations were denied by the respondents who specifically pleaded that the material and the structures which were on the HPH properties on 3 September 2020 were the same building material and structures that were on site at the time the 17 May 2020 order was granted by agreement.

² *Fakie NO v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (*Fakie*) para 42.3.

³ See *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)* [2015] ZACC 10; 2015(5) SA 600 (CC); 2015 (6) BCLR 711 (CC) para 32.

⁴ *Fakie* para 10.

[20] The appellants did not obtain any confirmatory affidavit from the owner of the adjacent property to deal with the respondents' denials, which were not merely bald denials. Instead, the appellants argued that the respondents did not explain where these heaps of building material came from nor how the three structures were erected. The appellants failed to seize the opportunity, in reply, to provide evidence of the alleged contraventions of the court orders. Such new evidence would have been in response to the defence raised by the respondents and was not such that it had to have been included in the founding affidavit to set out a cause of action.⁵

[21] The appellants also relied on the photographs taken on 18 September 2020, purporting to provide evidence of contraventions of the orders by comparing them with photographs previously taken in March and April 2020. They then submitted that, when compared with the earlier photographs, the latter photographs provided conclusive proof of an increase in the building material deposited on the premises and the erection of three additional structures. The analysis of these photographs does not bear scrutiny.

[22] The first set of photographs, said to be aerial photographs of Portions 8 and 38 of the Farm Witkoppies (HPH's immovable properties), taken from 23 March to 28 April 2020 depict a cluster of large buildings with red, grey, and white roofs, and tiny, white dots, scattered around and which are said to be the shacks erected on the HPH properties. The next set of photographs, said to be aerial photographs taken on 3 September 2020, again depict the tiny white dots and one big building with a greyish roof.

⁵ It was held, in *Drift Supersand (Pty) Limited v Mogale City Local Municipality and Another* [2017] ZASCA 118; [2017] 4 All SA 624 (SCA) para 10, that 'there is today a tendency to permit greater flexibility than previously have been the case to admit further evidence in reply'.

[23] Other photographs in this bundle depict a range of buildings with white roofs, like those appearing in the photographs taken from March to April 2020. One photograph, from the latter set, which is the only clear photograph in the bundle, depicts three piles of corrugated iron sheets with wooden planks attached thereto. The appellants drew from these images the inference that ‘a substantial amount of new building material had been delivered to the HPH properties throughout April 2020 to September 2020’ and that three new structures had been erected.

[24] It should be borne in mind that the order of 19 April 2020 specifically authorised the sheriff to demolish only unoccupied structures. Once that has been done, the material therefrom could be stored neatly on the HPH properties. There is no evidence of the number of structures that remained after the order was executed, and the amount of building material that was on the properties. These photographs therefore do not provide proof that, after the orders were executed, additional building material was brought on to the HPH properties. They also do not provide proof that additional structures were constructed from this material.

[25] The appellants also argued that the timing of the undertaking by the respondents’ attorneys, that steps would be taken to ensure that no court order would be breached, which came after service of the application on the respondents, was proof that HPH and its directors had been disregarding, disobeying, and breaching all the court orders. This undertaking by the respondents’ attorneys was without admission of any liability and accordingly cannot be construed as an admission of any of the alleged contraventions. The appellants, consequently, had not proven their case.

Liquidation of HPH

[26] Section 72(1) of the Co-operatives Act provides that a court or the tribunal may, on application by an interested person, order that a co-operative be wound up, if (a) the co-operative is unable to pay its debts; (b) there is no reasonable probability that it will be able to pay its debts or become a viable co-operative; and (c) it appears just and equitable to do so. To qualify as ‘interested persons’ and therefore have *standing* to bring an application for HPH’s liquidation, the appellants had to meet the requirements of either s 72(1)(a), (b), or (c) of the Co-operatives Act.

[27] There was much debate about whether the appellants have standing in terms of s 72(1) to apply for the liquidation of HPH. Given the view I take of the matter, it is not necessary to decide this issue. For present purposes, I assume that the appellants have the necessary standing. However, the appeal on this issue should fail because the *lis* between the parties in this regard has been settled. As mentioned, the appellants sought and obtained a provisional order for the liquidation of HPH in May 2020. That provisional order was subsequently discharged pursuant to an agreement between the parties, subject to certain conditions. Those conditions were met. It is therefore not open to the appellants to now seek to re-litigate the issue.

[28] Our law requires a party with a single cause of action to claim in one and the same action whatever remedies the law accords him upon such cause.⁶ The alleged illegal activities of HPH in relation to its affairs were known to the appellants when the initial application to liquidate HPH was made. They could have relied on this, in addition to HPH’s indebtedness. Instead, they elected not to do so, but to rely only on HPH’s indebtedness as its cause of action.

⁶ *Custom Credit Corporation (Pty) Ltd v Shembe* 1972 (3) SA 462 (A) at 472A-E.

[29] Now that the initial basis for the liquidation of HPH no longer exists because the matter was settled, the appellants now seek to rely on a different cause of action, which was available to them when the initial application was made. This, the appellants are not permitted to do. As explained in *Eke v Parsons*,⁷ the result of a settlement agreement made an order of court is that a party is precluded from relying on a cause of action or defence that could have been advanced or raised but for the settlement order.

[30] For all these reasons the high court cannot be faulted for the conclusion it reached. The appeal must fail. As mentioned, the high court purported to set aside a liquidation order in the circumstances where the appellants were not successful in the application and this order existed. This is rectified in the order that follows.

Costs

[31] The high court granted a punitive costs order against the appellants on the basis that the appellants had burdened the court with unnecessary applications. The high court was of the view that the previous court orders could have been prosecuted to finality to confirm or dismiss the interim relief that was in place. Other factors considered by the court for a punitive costs order were that: (a) it viewed negatively, the appellants' conduct in bringing a further application for the sequestration of HPH after the initial provisional order was discharged by agreement; and (b) the manner in which the appellants pleaded their case, making historical reference to past applications, compelling the respondents and the court to trawl through lengthy affidavits and annexures.

[32] It follows that, the high court properly exercised its discretion, which this Court is, ordinarily, not at large to interfere with. As an appellate court, its power

⁷ *Eke v Parsons* [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 CC para 31.

to interfere is limited to instances where a lower court has acted capriciously or upon a wrong principle or has not exercised its discretion judiciously.⁸ The appellants could not point to any of the above in how the high court exercised its discretion. There is therefore no basis to interfere with the high court's costs order.

[33] In the result, the following order is made:

- 1 The order of the high court is amended to read as follows:
 - ‘(a) The application for contempt of court is dismissed.
 - (b) The application for the liquidation of HPH Housing Co-operative Ltd is dismissed.’
- 2 Paragraph 5 of the order of the high court is deleted.
- 3 Save for the above, the appeal is dismissed with costs.

M J DOLAMO
ACTING JUDGE OF APPEAL

⁸ See, for example, *Hotz and Others v University of Cape Town* [2017] ZACC 10; 2017 (7) BCLR 815 (CC); 2018 (1) SA 369 CC paras 25 and 28.

Appearances

For the appellants:

P Lourens

Instructed by:

Strydom Rabie Inc, Pretoria

Symington De Kok Attorneys, Bloemfontein

For the respondents:

C Van der Merwe

Instructed by:

Minnie & Du Preez Inc, Kempton Park

Phatshoane Henney Attorneys, Bloemfontein.