



**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

CASE NO: LCC03/2021B

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐
/ No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 03 June 2025 Signature: _____

**Heard on 19 May 2025
Delivered on 3 June 2025**

In the matter between:

**MPHELENG COMMUNAL PROPERTY
ASSOCIATION**

Applicant

And

**KGOSHIGADI MATHEBE OF
BANTWANE TRADITIONAL
COMMUNITY**

First Respondent

BANTWANA TRADITIONAL COUNCIL

Second Respondent

**HEADWOMAN MRS MATHEBE
MPHELENG VILLAGE**

Third Respondent

MR APHANE (THE UNKOWN PERSON

Fourth Respondent

**WHO INTENDS OCCUPYING A NEW
RESIDENTIAL/BUSINESS SITE
UNLAWFULLY)**

ORDER

1. The application is dismissed.
2. No order as to costs.

JUDGMENT

DU PLESSIS AJ

Introduction

[1] This matter came before me as an urgent application in which the Mpheleng Communal Property Association (the Applicant) seeks an order declaring the First to Fourth Respondents in contempt of a court order granted by this Court on 29 April 2024. The original order interdicted the allocation, subdivision, clearing, and occupation of land forming part of the farm Zondagsfontein, located in Limpopo Province, which is the subject to a pending land claim lodged by the Applicant.

[2] The relevant portion of the order reads as follows:

“Having perused the papers filed on record and having heard the applicant’s legal representatives the following order is made:

That the First, Second, Third, Fourth, Fifth, Sixth and Seventh Respondents are interdicted or restrained from invading, cutting stands, allocating both residential and/or business site but not limited to dividing land into erven or sub-erven, clearing vegetation and erecting fences including temporary and/or permanent structures on the land described as Zondagsfontein 32-JS, within the Magisterial District of Moutse, Greater Sekhukhune District Municipality, Limpopo Province pending finalisation of the

land claims under reference number R/5/121/455/46267 on behalf of the applicant (hereafter referred to as the Claimant community)."

[3] The Applicant represents the "claimant community." The Bantwane Traditional Council was cited as the Fourth Respondent in the 29 April 2024 court order. However, neither Kgoshigadi Mathebe (of the Bantwane Traditional Community), Headwoman Mrs Mathebe (Mpheleng Village), nor Mr Aphane was a party to that order. The Seventh Respondent was broadly cited as "ALL UNLAWFUL OCCUPIERS OF LAND SITUATED AT ZONDAGSFONTEIN..." Kgoshi Frank Shikwane Matlala was cited as the First Respondent, and Headman Abraham Matlou as the Fifth Respondent.

[4] The Applicant alleges that, despite this court order, the Fourth Respondent, Mr Aphane, proceeded to occupy and develop a portion of the land. This occupation allegedly followed an allocation made by one or more of the First to Third Respondents, namely the traditional leader, the traditional council, and the headwoman. The application seeks an order of committal for contempt, or, alternatively, a suspended sentence pending compliance with the court order.

[5] The following factual chronology emerges from the affidavits. In August 2024, the Fourth Respondent, Mr Aphane, purportedly purchased two stands from Messrs Michael and Ernest Lepota for R6 000 and R7 000, respectively. These individuals claimed ancestral ownership of the land and stated that they were allocated the parcels in 2017. Mr Aphane then approached the local traditional leadership, specifically Headman Matlou and the Third Respondent, Headwoman Mathebe, to request registration of the site and the issuance of a Permission to Occupy (PTO) certificate. As part of this process, he paid R700 to Mr Matlou and R1 700 to Ms Mathebe. At the time, Mr Matlou was not formally recognised as headman under applicable legislation for the Ntselemotse Section.

[6] On 25 February 2025, the court order was brought to Mr Aphane's attention. Nevertheless, by 1 March 2025, he had begun offloading building materials and erecting a brick structure, supported by poles. The Applicant, accompanied by a fellow CPA member, inspected the site and documented the development with photographs annexed to its papers.

[7] In his founding affidavit, Mr Jerry Nnawe, deposing on behalf of the Applicant, states that the construction activities occurred on a site unlawfully allocated to Mr Aphane by one or more of the First to Third Respondents. The Applicant contends that this conduct constitutes a direct breach of the court order. It further alleges that attempts to resolve the matter outside court were unsuccessful. Urgency is grounded in the Applicant's limited resources, its status as a historically disadvantaged community, and the principle that ongoing contravention undermines both the rule of law and the authority of court orders.

[8] The First Respondent opposes the application mainly based on the Applicant's failure to meet the legal requirements for a finding of contempt. She denies allocating the site or acting in wilful disregard of the order. The Second and Third Respondents did not file separate affidavits; however, the Third Respondent filed a confirmatory affidavit supporting the First Respondent's version.

[9] In her confirmatory affidavit, the Third Respondent avers that Mr Aphane came to her in the company of Michael and Ernest Lepota. These individuals stated they had sold a site to Mr Aphane and sought her assistance in facilitating registration. She denies making any allocation and says she referred the matter to the tribal office at Ntwane. After receiving a letter of demand, she informed the tribal office, which acknowledged the court order, saying they will inform Mr Aphane of the order. However, Mr Aphane never returned to the office to receive further information.

[10] The Applicant in reply, argued that the Third Respondent's conduct amounted to tacit approval or acquiescence, particularly given her role in facilitating documentation and payments. The Applicant contends that she had a duty to comply with the order and prevent further encroachments by alerting the community.

[11] When the matter initially came before the Land Court, Cowen DJP requested that Mr Aphane obtain legal representation and file an answering affidavit before the case could proceed. In his affidavit, Mr Aphane confirms that he purchased the land in August 2024 from the Lepota brothers. He asserts that he acted in good faith, believing them to be the rightful owners, and attaches documentation purporting to

confirm ownership, including a written sale agreement. He also notes that he agreed with the Matemotja families to pay R22 000 for using the land on which the family graves are situated, and to put a fence around the graveyard.

[12] Mr Aphane contends that the Lepota brothers were not parties to the original interdict and, as such, he believed the transaction lawful. By the time he became aware of the court order, construction had already begun. He maintains that he was waiting for the PTO to be finalised and denies wilful disobedience of the order.

[13] The Applicant, in reply, rejects the transaction's validity, characterising it as a disguised allocation. It also points out the mismatch between the surnames of the sellers and the family whose graveyard it is.

[14] The Applicant annexes a PTO issued in Mr Aphane's name on 7 January 2025, after the order. It contends that issuing this PTO, which was sanctioned by the traditional council, constitutes a prohibited allocation and thus amounts to prima facie contempt. Mr Aphane's statement that he would not cease construction unless instructed by the traditional authority is not denied and is taken as an admission of disregard for the court's authority.

[15] The question for determination is whether the conduct of each respondent, particularly that of Mr Aphane, amounts to contempt of court.

Requirements for contempt

[16] An important function of the rule of law, a foundational value of our Constitution, is upholding the courts' dignity and authority. This is crucial, enabling the court to carry out its functions. Section 165(5) of the Constitution provides that court orders are binding on all persons and organs of state to whom they apply and that no person may interfere with the functioning of the courts. Disobedience erodes judicial authority and, if unchecked, could provoke a constitutional crisis.

[17] To uphold the court's dignity and ensure compliance with the rule of law, courts have the authority to guarantee that their orders are followed. One mechanism to

achieve this is through a contempt of court order when there is wilful disobedience to lawful court directives. Contempt orders are intended to impose a penalty that vindicates the court's honour when a prior order is ignored, with the hope that it will compel compliance with the previous order.

[18] Civil contempt occurs when a litigant fails to comply with a court order granted in favour of another. Such disregard of the court order typically arises outside the court and prompts the other party to initiate an application to compel obedience.

[19] In *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*¹ the Constitutional Court held that contempt requires proof of three elements:

- a. An order was granted against the alleged contemnor;
- b. The alleged contemnor was served with the order or had knowledge of it;
- c. The alleged contemnor failed to comply with the order.

[20] If these three elements are established, wilfulness and bad faith are presumed, and the evidentiary burden shifts to the respondent to rebut that presumption. Failing this, contempt is established.

[21] Because contempt proceedings may carry penal consequences, a court, faced with an ambiguously worded order, must adopt a strict and narrow interpretation of the order. More so in the absence of a reasoned judgment explaining its background and intended reach, as is the case here, the court should be cautious not to expand its meaning in a manner that could unjustly lead to imposing a criminal sanction on the alleged contemnors.

¹ 2021 (11) BCLR 1263 (CC).

Was the order of 24 April 2024 granted against the respondents?

[22] A threshold issue is whether the respondents cited in this application were bound by the court order of 29 April 2024. As noted earlier, contempt of court can only arise where the order in question applies to the alleged contemnor. The Applicant bears the burden of establishing this foundational element.

[23] Not all the respondents in the current application were cited in the original court order. Specifically, Kgoshigadi Mathebe of the Bantwane Traditional Community, Headwoman Mrs Mathebe of Mpheleng Village, and Mr Aphane were not named parties in that order. This raises a preliminary hurdle for the Applicant.

[24] The Second Respondent, the traditional council, is not a person but a structure made up of individuals. This makes it challenging to attribute personal culpability, which makes it difficult to attribute specific knowledge and responsibility to an identifiable individual within the council, which in turn means that one cannot know if the order was wilfully disregarded. In other words, *who* should have had the knowledge, *who* had the knowledge, *who* disregarded the order, and were they indeed mala fide? In *Meadow Glen Home Owners Association v City of Tshwane Metropolitan Municipality*², the Supreme Court of Appeal cautioned that:

‘...it must be clear beyond reasonable doubt that the official in question is the person who has wilfully and with knowledge of the court order failed to comply with its terms. Contempt of court is too serious a matter for it to be visited on officials, particularly lesser officials, for breaches of court orders by public bodies for which they are not personally responsible.’³

[25] This principle applies equally to members of traditional councils: there cannot be liability for contempt unless it is shown that an identified individual knowingly and wilfully disobeyed an order directed at them. If a specific individual within the council, tasked with ensuring compliance with the court order, fails to act and that person is properly cited, they may be held in contempt, provided all the requisite elements are proven. However, as a collective entity, a traditional council cannot be held in

² [2015] 1 All SA 299 (SCA).

³ Ibid para 22.

contempt. Beyond the practical impossibility of enforcing imprisonment against an entity, contempt proceedings require personal accountability and a demonstrated capacity to act or refrain from acting. For this reason, the focus must remain on whether the actions or omissions of specific individuals within the council satisfy the requirements for a finding of contempt.

[26] With regard to the First and Third Respondents, the Applicant faces a similar challenge. Although the Applicant alleges that they facilitated what amounted to an allocation, neither was cited in the original court order. That said, their predecessors were cited and bound by the order. Should the new traditional leader, now occupying an office cited in the original order, adopt the same allegedly contemptuous stance as her predecessor, she may be liable. The court order binds her due to the office she holds, but she will only be in contempt if it is demonstrated that she herself acted in wilful and mala fide contravention of the order of which she was aware.

[27] As for the Fourth Respondent, the Applicant contends that he falls within the scope of the order. However, they describe him as an “unknown person,” whereas the order refers to “unlawful occupiers.” The phrase “unknown persons” does not appear in the court order and cannot be retroactively read into it. But the order does not use that term. It refers to “all unlawful occupiers.” Whether Mr Aphane falls within this category is a matter for careful assessment.

[28] The determination of whether Mr Aphane is an “unlawful occupier” hinges on the lawfulness of his occupation. He asserts that he purchased the stands from the Lepota brothers lawfully and was in the process of having the PTO registered in his name. If that assertion is accepted, he states the transaction is lawful under the relevant customary or statutory framework, then he is not an unlawful occupier and the order does not apply to him.

[29] However, if the sale and subsequent registration are invalid, either because they constituted a fresh allocation prohibited by the order or because the Lepota brothers lacked the authority to alienate the land, then Mr Aphane’s occupation may fall within the meaning of “unlawful occupier.” In that event, the order would apply to him, and any development or clearing of the land would be in breach.

[30] Much thus turns on whether the conduct in question constituted an “allocation” as prohibited by the order. The respondents maintain that the process was merely a change in name on an existing PTO, an administrative act rather than a substantive reallocation of land rights. The Applicant disputes this and argues that the transaction, followed by formal registration, amounted to a new land allocation violating the order.

[31] Mr Aphane’s understanding, as explained in his answering affidavit, is that the site had been allocated to Mr Lepota in 2017. In the heads of argument, it is contended that according to the Bantwane Traditional Community’s practices, an individual who has been allocated a site is not prohibited from selling it. However, the transfer process includes a procedure whereby the name on the PTO registry must be changed. Similar to first-time allocation, this process requires endorsement by the Tribal Office in Ntwane, which must update the register to reflect the new holder. As will be shown later, this understanding is incorrect. Still, this is not the end of the road, as the other requirements must also be met.

Did the parties know about the order?

[32] It is not disputed that all the respondents had knowledge of the court order. The First and Third Respondents, as traditional leaders in positions of authority, were notified in their official capacities, and the Applicant provided sufficient evidence that they were aware of the order’s terms. Mr Aphane acknowledges that the order was brought to his attention on 25 February 2025, after the sale had been concluded and construction had commenced. While his knowledge postdates the initiation of his activities on the land, it is significant that he continued construction despite being informed of the order. Knowledge of the order is a fundamental element in contempt proceedings, as it establishes whether a respondent could have acted wilfully in defiance of the court’s directive. This element is therefore satisfied for all respondents.

Was there a failure to comply with the order?

[33] This requirement is intertwined with the respondent’s justification (and thus denial of mala fides) and will be discussed together. The respondents believe they did

comply with the order since Mr Aphane bought the site from the Lepota brothers, and the other respondents merely facilitated the site registration. There was thus no allocation, as is prohibited. I disagree.

[34] The court order of 29 April 2024 does not expressly prohibit the sale of stands. On that basis alone, I accept that the sale agreement concluded between the Lepota brothers and Mr Aphane falls outside the direct ambit of the interdict. However, the act of sale must be distinguished from the process that follows it. In communal tenure systems, the question of who may lawfully exercise rights over a particular parcel of land is governed by the rules and social structure of the community. These rules often require endorsement by traditional leaders, and the validity of transactions depends on compliance with these internal norms. It is not simply a sale from the Lepota brothers to Mr Aphane, with the registration a mere formality. There is usually a process that oversees the transferring of these rights in line with community rules, often following a consultation process.

[35] Such rights are thus relational and socially embedded.⁴ Access to land is generally tied to group membership and community authorisation. While a person may claim to have acquired rights through sale, those rights only become effective once the traditional authority recognises them after a consultative process with the relevant community structures.

[36] As the headwoman, Ms Mathebe, stated:

“[Mr Aphane] came to my home in the company of the two brothers, only known to me as Michael and Ernest respectively, and told [me] that he bought the said site from the brothers. They wanted me to assist them in the procedure of getting the site registered, which is something done at the Tribal Office at Ntwane, Moshate. We as the Headpersons only write confirmatory letters that the prospective occupier is indeed a resident of our respective villages. The two brothers confirmed that they indeed sold

⁴ See Weeks, S. M., & Claassens, A. (2011). “Tensions between vernacular values that prioritise basic needs and state versions of customary law that contradict them.” *Stellenbosch Law Review*, 22(3) page 828.

the particular site (which is a combined site of the two sites that belong to each of them).” [own emphasis]

[37] This means that, even assuming the sale agreement was concluded, the registration of the site in Mr Aphane’s name could not occur without authorisation from the traditional leadership. The central issue is whether such a step amounts to a mere clerical registration or a substantive (re)allocation of land.

[38] These contextual complexities, the sale, the involvement of traditional authorities, and the broader land dispute, frame but do not determine the immediate question before this court. The core issue in the contempt application remains whether the conduct attributed to the respondents, particularly the process leading to the registration of the site in Mr Aphane’s name, constitutes an “allocation” as contemplated in the court order.

[39] The respondents deny that the procedure was an allocation and framed it as a routine change of name on the PTO, following a private sale. The Applicant disputes this, arguing that the formal involvement of the traditional leadership in endorsing the change constituted a fresh allocation of land, which is in breach of the interdict.

[40] The headwoman specifically denies that she allocated the site. The Applicant does not directly engage with this denial but asserts that, as headwoman of Mpheleng village, she bears the duty to allocate residential and business sites within the traditional community. This response implies that her involvement in the process had allocative significance.

[41] In communal land systems, “allocation” typically refers to the conferral of a right to occupy or use unallocated land, which is then formalised through a PTO. This is not a transfer of ownership but rather a locally recognised right of occupation, subject to community norms. Such rights cannot be freely transferred outside the community without proper authorisation.⁵ The process usually ends in the appropriate traditional authority providing the holder of the rights a “Permission to Occupy” certificate, setting

⁵ Okoth-Ogendo HWO (2008) “The nature of land rights” in A Claassens & B Cousins *Land, Power & Custom* page 100 explains such a system in detail.

out the permitted use of the land. Since the holder of the PTO is bound by the social rules of the community, a PTO cannot be freely sold or transferred without the necessary approval.⁶

[42] Does the traditional leadership's endorsement of the PTO transfer after the sale amount to a *new* allocation? In my view, it does. The term “allocation” is not confined to the initial assignment of unallocated land. Rather, allocation encompasses the conferring, reassigning, or validating of occupational rights, regardless of whether another person previously held rights to the same land. Updating the PTO register, the receipt of payments by traditional officials, and the formal recognition of Mr Aphane’s right to occupy constitute a fresh allocation for the purposes of the interdict, and thus, the third element is also met, specifically as far as the first and third respondents are concerned.

Did the respondents wilfully fail to comply with the order (*mala fides*)?

[43] This then turns to the question of the *mala fides* of the respondents. If the respondents genuinely understood the process to be a continuation of existing rights rather than a fresh allocation, then the Applicant’s case cannot succeed. That is because the element of *mala fides* is not present as the respondents, even if they were mistaken, believed that their conduct fell outside the scope of the order.

[44] In *SAMWU obo Members v Thaba Chweu Local Municipality*,⁷ the Labour Court explained:

‘... for this Court to be satisfied that a respondent, in a contempt application, is indeed in contempt of Court, the Court must be satisfied beyond reasonable doubt that: (1) there was a refusal to comply with the order; (2) this refusal was willful (deliberate); and (3) the deliberate refusal to comply must be *mala fide*, in other words there must be a complete absence of any kind of *bona fide* justification for the refusal to comply (even if this justification relied on is ultimately found to be objectively unreasonable or unsustainable). Crystallised down to its simplest terms, a respondent is in contempt

⁶ Chanock M *Land, custom and social order* (1985) explains this system at page 231.

⁷ [2015] ZALCJHB 31.

where the respondent knows and understands the terms of the order and what is required to be done to comply with the order but then without any cause or justification deliberately does not comply.’⁸

[45] The meaning of “allocation” in the context of this order is not self-evident, particularly in the absence of a reasoned judgment and given the overlap between administrative functions and allocative authority. While the conduct constituted an allocation, I am not persuaded that the respondents acted mala fide. Instead, they appear to have relied, even if mistakenly, on the belief that their conduct was lawful. However, now that the term “allocation” has been clarified in this context, similar conduct in the future may no longer be defensible.

The request to invalidate the sale

[46] In their replying affidavit to the fourth respondent’s answering affidavit, the applicants request, in the alternative, that should this Court find the sale to have been valid (which they continue to dispute), it should declare the transaction null and void. However, this relief was not sought in the founding papers, nor were the alleged sellers, Messrs Michael and Ernest Lepota, or other potentially affected parties joined to the proceedings. I agree with the Fourth Respondent that seeking such relief for the first time in reply is procedurally impermissible. This Court cannot make an order with far-reaching consequences for parties without being cited or afforded an opportunity to be heard. If the applicants seek to challenge the lawfulness of the underlying transaction, that must be done through a properly formulated and separately instituted application.

[47] It should be noted that while a valid sale may have occurred between private parties, it does not necessarily follow that the registration of the PTO in Mr Aphane’s name was valid or lawful. That question hinges on whether the appropriate decision-making processes were followed according to the relevant community rules, whatever those may be. The validity of that process was not challenged in this application and is therefore not for me to decide.

⁸ Ibid para 27.

[48] A further complicating factor in such an assessment is the ongoing dispute over which community is the rightful custodian of this land. This question goes to the heart of who has the authority to decide its use and occupation. It is, however, a matter that must be determined in the context of the broader restitution proceedings. It cannot be resolved in this contempt application.

Costs

[49] Both parties sought cost orders. I am mindful, however, that neither party was wholly successful. Given the broader context in which this dispute arises, I consider it just and equitable not to burden either party with an adverse costs award.

Conclusion

[50] This case underscores the tensions where unresolved restitution claims, contestation over who the rightful owners of the land are, and community-level transactions converge. In this legal and social uncertainty, some parties act in good faith, others test boundaries, and all await clarity that is too long in coming. Courts must respond with procedural flexibility balanced by judicial restraint, stepping carefully but resolutely into these contested spaces in an attempt to provide clarity.

Order

[51] The following order is made:

1. The application is dismissed.
2. No order as to costs.


WJ du Plessis
Acting Judge of the Land Court

Date of hearing: 19 May 2025

Date of judgment: 3 June 2025

For the Applicant:

Mr KK Kekana instructed by G
Maswanganye Attorneys

For the First to Third Respondents:

Mr Mathebe instructed by M Wentzel Inc

For the Fourth Respondent:

KMC attorneys