



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 6823/2023

In the matter between

CONNECTPRO (PTY) LTD t/a NASHUA WELKOM

APPLICANT

and

MATJHABENG LOCAL MUNICIPALITY

FIRST RESPONDENT

THE MUNICIPAL MANAGER

SECOND RESPONDENT

MATHJABENG LOCAL MUNICIPALITY

THABO CHRISTIAN PANYANI

THIRD RESPONDENT

Neutral citation: *Connectpro (Pty) Ltd t/a Nashua Welkom v Matjhabeng Local Municipality and Others* (6823/2023) [2025] ZAFSHC 165 (5 June 2025)

Coram: Boonzaaier AJ

Heard: 17 April 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 14h00 on 5 June 2025

Summary: Contempt of court — requisites for contempt — wilful and *mala fides* — non-joinder — non-compliance with court order – non-compliance attributed to municipal manager in his personal capacity – duty to comply with court orders.

ORDER

1 The first and second respondents be and are hereby declared to be in contempt of court by failing to comply with the orders of the above Honourable Court granted under case number 6823/2023 dated 1 September 2022, and order of this court dated 21 September 2023 under case number 3477/2021 as well as court order dated 28 December 2023 under case number 6823/2023.

2 The first and second respondents are to pay a fine of R 250 000 to the applicant, jointly and severally, the one paying the other to be absolved, which fine is wholly suspended for a period of six months on condition that the respondents, jointly and severally, purge their contempt as follows:

3 Should the respondents fail to purge their contempt in any manner as set out in paragraph 1 of this order, the applicant may approach the above Honourable Court, with papers duly supplemented, if necessary, to implement the committal of the first and second respondents to pay the fine.

4 The respondents are to pay the applicant's costs on a scale as between attorney and client, jointly and severally, the one paying the other to be absolved which to include counsel's fee on scale B.

JUDGMENT

Boonzaaier AJ

Introduction

[1] This matter dates back to September 2021, when the first court order was granted. Since then, the same parties - some of whom were joined at later stages - have appeared before this court on numerous occasions, all concerning the same matter and substantially the same issues. At the heart of the dispute is a recurring sewage spillage that continues to overflow onto the applicant's property.

[2] The applicant has now issued an application for a contempt of court order for failure to comply with the previous orders of this court.

[3] On 1 September 2022, the court granted an order in favour of the applicant against the

first respondent, Matjhabeng Local Municipality. This court order re addresses the problem and contains inter alia the following:

'1. Second Respondent, the Municipal Manager of Matjhabeng Local Municipality (presently Zingisa Khuthaza Tindeli), is ordered to take all steps necessary to ensure full and timeous compliance with the orders below.

...

8. The First Respondent shall, on or before 28 January 2023, and thereafter on or before the 28th of each and every succeeding month until finalization of the repairs, serve on the Applicant's attorneys written reports explaining the extent of compliance with the terms of this order.

9. First Respondent shall take all the necessary steps and ensure that the current temporary mobile pumps which regulates the flow of sewerage within interim installed pumps be kept in place and the First Respondent shall take all precautionary steps to avoid in the interim any possible contamination and /or associated problems/issues/damages with the sewage lines/infrastructure and the proper and effective flow thereof up until the final date of resolution of this matter as ordered in terms hereof relating to the sewerage infrastructure /sewerage lines , including pipe, pumps and associated appurtenances.

10. Any of the parties shall be entitled to approach this Court on the same papers, and duly supplemented, if need be, for the further directives and or orders I the event of a change of circumstances or non – compliance with the terms of this order.'

[4] On the 18 December 2024, another court order was obtained by agreement between the parties and contains the following terms:

'1. The First and Second Respondents will as far as reasonably possible in the interim pump the sewerage lines at or near the Applicant's premises, 375 Stateway, Doorn, Welkom twice a day and if necessary, and the circumstances change, as at rainfall, the First and Second Respondents shall ensure that the pumping of the sewerage line is done at regular intervals including jet pumping to address any emergency to avoid any possible contamination and/or associated problems/issues/ damages in and onto the Applicant's property.

2. In addition to the aforesaid interim measures, the First and Second Respondents will also clean any current sewerage spills at the Applicant's premises and surrounding areas to avoid any further pollution and or health risks.

3. In addition to the aforesaid interim measures, the First and Second Respondents will implement a logbook to be signed by the operator as well as the Applicant immediately after the pumping as set out in paragraph 1 supra . . .'

These interim measures remained in effect until the ultimate return date of 2 May 2025.

Parties

[5] The applicant is Connectpro (Pty) Ltd, trading as Nashua Welkom, a private company with its principal place of business located at Stateway, Doorn, Welkom. The first respondent is Matjhabeng Local Municipality, the second-largest municipality in the Free State. The second respondent is Mr Thabo Christiaan Panyani, the Municipal Manager of Matjhabeng Local Municipality. The third respondent is Mr Thabo Christiaan Panyani in his personal capacity.

Background

[6] On 14 August 2023, the first and second respondents filed an answering affidavit in response to a previous contempt application. In summary, they stated that the sewer network responsible for collecting wastewater from residences along Nyala Street is blocked at three points along the same sewer line. These blockages result in sewer overflows at various locations, including Stateway Road, Koppie Alleen Road, and Nyala Street.

[7] The previous Municipal Manager described the measures they took as reasonable, which measures were implemented to address the sewage overflow, to areas that include the applicant's property.

[8] In April 2022, the first respondent had:

- (a) Procured six of its own diesel generator pumps four of which were stationed in Doorn, Stateway Road, Jan Hofmeyer Road and Nyala Street.
- (b) Appointed a team of more than five people to operate the pumps and to ensure that there was no sewage overflow and resultant flooding of the affected areas, including Stateway Road where the applicant's premises is situated.
- (c) The operations team is responsible for the monitoring at the affected areas. The manholes are pumped for periods of two hours in the morning and two hours in the afternoon which prevents the flooding until the next day.
- (d) In the event of heavy rainfall which exacerbates the sewerage overflow problem, or other emergencies, the first respondent make use of jet - pups as an additional measure to avoid the spillage.

[9] Due to these measures, the contempt application was, by agreement, removed from the roll on 21 September 2023.

[10] The respondents in the current application revealed that the two instances of sewerage

overflow were as a result of unexpected circumstances. It includes: (a) a lack of available resources and equipment during the end of November 2024 and beginning of December 2024. During which increased pumping was required as a direct result of a further collapse of the sewerage pipeline, heavier flow and the fact that available equipment had already been allocated and utilised in compliance with the court orders; (b) failure by the appointed service provider to deliver sufficient amount of diesel to run the pumps.

[11] The respondents argued that on 25 March 2025, the first respondent also provided the applicant with two detailed reports related to the ongoing repairs and upgrades to the sewerage network. It is obvious that neither the first nor the third respondent, or any other representative of first respondent had been in willful, *mala fide* contempt of any of the court orders granted.¹

[12] The applicant has now issued a contempt of court application for failure to comply with the order of justice van Zyl J of 18 December 2024, seeking the following relief:

- 'a) The application is heard as one of urgency in accordance with Rule 6(12), the requirements of the Rules of Court in respect of notice, service and time periods being dispensed with and the Applicant's departure therefrom being condoned;
- b) A rule *nisi* is issued requiring the First and Second Respondent and Third Respondents to show cause, on a date to be determined by this court, why an order should not be made on a final basis-
 - i) Declaring that the First Respondent, the Local Municipality and or the Second and Third Respondent, Mr. Thabo Christian Panyani are in contempt of paragraph (9) of the court order dated 1 September 2022 and order of this Court dated 21 September 2023 under case number 3477/2021 as well as Court order dated 28 December 2023 under case number 6823/2023.
 - ii) Imposing a period of six months imprisonment, such as appropriate by this court on the Third Respondent, Mr Thabo Christiaan Panyani, on conditions deemed appropriate by this Court; alternatively
- c) Imposing a fine of R 250 000 such is deemed appropriate by this court, on the First, Second and or Third Respondent, Mr. Thabo Christian Panyani, and
- d) Directing the First, Second and Third Respondents to bear the cost of this application, jointly and severally, on an attorney client scale, the one paying the others to be absolved.'

Points in limine

[13] The respondents raised several points *in limine*, the most significant being that the

¹ Admittedly, counsel for the respondents explained there were reasons for non-compliance. This must, however, be distinguished from whether there was non-compliance in the first place.

applicant had instituted an urgent application under case number 6823/2023, to which neither the applicant nor the third respondent had been joined as parties. The court is accordingly requested to declare the order granted on 28 December 2024 as invalid.

[14] The applicants responded that the third respondent's appointment was recent when this application was issued, he has been served with all the relevant court orders, including the court orders that precedes his appointment. He is thus well aware of the challenges that he faces.

[15] Another point in limine raised related to the joinder of the third respondent in his personal capacity as being unjust. The respondents are of the contention that the third respondent was appointed as chief financial officer of Matjhabeng Local Municipality during or about mid-2017. Given the resignation of Advocate Ngoqo as the municipal manager of Matjhabeng, he was subsequently appointed on 6 November 2024 to temporarily assist Matjhabeng Local Municipality for an expected period of three months in the position of Acting Municipal manager pursuant to the appointment of a new Municipal Manager. This appointment has since been extended temporarily until a new Municipal Manager can be appointed, especially given the pending litigation seeking to have the municipal manager of Matjhabeng Local Municipality (regardless of period appointment) incarcerated.

[16] The third respondent, cited in his personal capacity, was never told nor formally joined to any of the applications and subsequent proceedings related to case number 3477/2021 or case number 68323/2023. The relief sought by the applicant would have a direct impact on the third respondent in a matter where he has had very little or any control or insight, at the time. As such, his rights in terms of s 12(1)(c) and 35(3) of the Constitution of the Republic of South Africa been severely prejudiced.

[17] When considering this point of objection, I had regard to the case of *Meadow Glen Home Owners Association and Others v Tshwane City Metropolitan Municipality and Another*,² where the director in question, was directly cited by name and served with the application. The application was however refused on the basis that the court deemed it inappropriate to hold the municipality manager in contempt of a structural order. The Constitutional Court held as

² *Meadow Glen Home Owners Association and Others v City of Tshwane Metropolitan Municipality and Another* [2014] ZASCA 209; [2015] 1 All SA 299 (SCA); 2015(2) SA 413 (SCA).

follows in *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others*:³

'Bearing in mind, that the persons targeted were officials concerned – the Municipal Manager and Commissioner in their official capacities – the non-joinder in the circumstances of these cases, is thus fatal. Both Messrs Lepheana and Mkhonto should thus have been cited in their personal capacities – by name – and not in their nominal capacities. They were not informed, in their personal capacities, of the cases they were to face, especially when their committal to prison was in the offing. It is thus inconceivable how and to what extent Messrs Lepheana and Mkhonto could, in the circumstances, be said to have been in contempt and be committed to prison.'

[18] This was further stressed in *Mjeni v The Minister of Health and Welfare (Mjeni)*,⁴ where Jafta J held:

'[C]ontempt of court proceedings can only succeed against a particular public official or person if the order has been personally served on him or its existence brought to his attention and it is his responsibility to take steps necessary to comply with the order but he wilfully and contemptuously refuses to comply with the court order.'

[19] From the above, it is clear that a court may grant an order for contempt of court against the municipal manager in his personal capacity, when he was cited, properly served and being found wilful and *mala fides* regarding the non-compliance.

[20] Another point *in limine* related to allegation that the applicant had failed to join the National Department of Water and Sanitation and the Central Water Board as necessary parties. In paragraph 41-47 of the opposing affidavit under case number 33477/2021, Mr Ngoqo specifically stated that the National department of Water and Sanitation, the Vaal Central Board and the Minister of Water and Sanitation had to be joined as parties to the matter given that they were responsible for conducting the repairs, refurbishments and upgrades to the sanitation infrastructure and given the Matjhabeng Local Municipality was no longer responsible for the resolving of the sewerage problem.

[21] In a previous application, Mr Ngoqo explained that Matjhabeng Local Municipality engaged the services of African Engineering and Construction Services as consulting engineers to conduct site investigation and report the cause of the sewerage problems

³ *Matjhabeng Local Municipality v Eskom Holdings Ltd and Other; Mkhonto and Others v Compensation Solutions (Pty) Limited* [2017] ZACC 35; 2017 (1) BCLR 1408 (CC); 2018 (1) SA 1 (CC) para 103.

⁴ *Mjeni v Minister of Health & Welfare* EC 2000 (4) (Tkh) (*Mjeni*) at 454G-H.

experienced the affected areas as well as a possible long-term solution. Due to the extent of the repairs required and the estimated cost of the repair works, the municipal council resolved to approach the National Department of Water and sanitation to assist financially to fund the repair works to the sewerage system. The National Department issued a directive in terms of s 4(1)(II) of the Water Services Act 108 of 1997 directing Vaal Central Water (Vaal Water) board (formerly Bloemwater) to immediately intervene and to refurbish and upgrade the sanitation infrastructure within the municipal jurisdiction. The respondents contend that the Matjhabeng Local Municipality is no longer solely responsible for the implementation of the order and for ensuring that the sewerage repair works are carried out efficiently and effectively. The applicant persists in their view that the respondents are responsible and not Vaal Water.

[22] It is well accepted that the relationship between a municipality, as a service provider, and company like the applicant as a consumer is a public-private service relationship, which is both contractual and regulatory in nature. The municipality provides essential public services, which can include, inter alia, sewage and waste management. The company, as a consumer or user of these services, relies on the municipality to deliver them consistently and efficiently to support business operations. This relationship is governed by municipal bylaws and regulations: these dictate how services are accessed, the obligations of users, and penalties for non-compliance. The municipality charges fees, rates, or taxes for services rendered. The company, as a consumer, must pay these fees according to the applicable tariffs or rates (eg, utility bills and business taxes). The municipality is accountable to the public (including businesses) and must ensure transparency and service quality. Companies have the right to lodge complaints, appeal decisions, or seek legal redress if services are inadequate or decisions are unfair.

[23] In my view, there is a relationship and a contract between the applicant and the first respondent. The objection of non-joinder by Vaal Water is purely idle or a technical one taken simply to cause delays. I find therefore, that the points *in limine* have no merit and is thus dismissed.

Urgency

[24] Both counsels conceded that urgency was no longer in dispute.

Contempt of court

[25] Generally, all orders of court, whether correctly or incorrectly granted, must be obeyed until properly set aside.⁵ This principle was properly explained in *Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal* (*Herbstein and Van Winsen*).⁶ This is a principle that is fundamental to the rule of law and is enshrined in s 165(5) of the Constitution. Section 165(5) provides that:

'An order or decision issued by a court binds all persons to whom and organs of state to which it applies.' The role of the judiciary, as the third branch of government, is indispensable for individual liberty.⁷

[26] Non-compliance with an order of court undermines not only the judiciary's role but also disturbs, sometimes imperceptibly, at other times blatantly, the democratic values of dignity, equality, and freedom, upon which our constitutional democracy is built. Contempt of court proceedings must be considered within such a context.

[27] The requirements for issuing an order of committal for contempt of court are well-known. The commentary in *Herbstein and Van Winsen* indicates that an applicant must show:

- '(a) that an order was granted against the respondent;
- (b) that the respondent was either served with the order or informed of the grant of the order and could have no reasonable ground for disbelieving that information; and
- (c) that the respondent has either disobeyed the order or neglected to comply with it.'

[28] In *Fakie NO v CCII Systems (Pty) Ltd*,⁸ Cameron JA summarised the nature of contempt proceedings as follows:

- '1. 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.
- 2. The respondent in such proceedings is not an "accused person", but is entitled to analogous protections as are appropriate to motion proceedings.
- 3. In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and *mala fides*) beyond reasonable doubt.

⁵ A C Cilliers et al *Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa* – Advance 5 ed (2009) at 1110.

⁶ *Ibid.*

⁷ *Lawsa* 2 ed para 285.

⁸ *Fakie NO v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) para 42.

4. But, once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and *mala fides*. Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and *mala fide*, contempt will have been established beyond reasonable doubt.
5. A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.'

[29] In *Mjeni*, Jafta J said the following:⁹

'The constitutional right of access to courts would remain an illusion unless orders made by the courts are capable of being enforced by those in whose favour such orders were made. The process of adjudication and resolution of disputes in courts of law is not an end in itself but only a means thereto; the end being the enforcement of rights or obligations defined in the court order.'

[30] This recently received the stamp of approval 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 and Others*,¹⁰ which, after referring to this passage, went on to say: 'Contempt of court proceedings exist to protect the rule of law and the authority of the Judiciary. As the applicant correctly avers, "the authority of courts and obedience of their orders – the very foundation of a constitutional order founded on the rule of law – depends on public trust and respect for the courts".' It is thus no exaggeration to say that giving effect to court orders is an incident of the rule of law.

[31] As already stated, once the applicant has proved the existence of the order, the service thereof and failure to comply with the order, *mala fides* requirements are inferred and the onus will be on the respondents to rebut the inference on balance of probabilities.

[32] As previously stated, the respondents admit the existence of and the terms of the previous judgments. Equally, the respondents admit that the first respondent has not complied fully with the said order but give reasons which reasons the court may consider.

[33] There was no dispute regarding the existence of the order granted by van Zyl J on 18 December 2024, nor was there any dispute that it had been properly served on the

⁹ *Mjeni* at 453B-C.

¹⁰ *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; 2021 (9) BCLR 992 (CC); 2021 (5) SA 327 (CC) para 27.

respondents. On the available evidence, it was also common cause at the hearing that the respondents had failed to comply with the order. In the circumstances, willfulness could be inferred, placing an evidential burden on the respondents to raise a reasonable doubt as to whether their non-compliance was willful or in bad faith (*mala fides*).

[34] I now deal with the second issue which is whether the respondents have deliberately ignored the court orders. It is trite that a party to a civil case against whom a court has given an order and who intentionally refuses to comply with it, commits contempt of the order.

[35] The respondents stated that they provided all requested information, including a comprehensive report of over 300 pages to the applicant on 25 March 2025. This report detailed the Vaal Central Water Board's appointment, responsibilities, and actions taken since 2022 in repairing and upgrading the sanitation infrastructure as the implementing agent. They submitted that this demonstrates the matter is being addressed. Although progress has been slow due to the scale and cost of the work, the project remains ongoing and in progress.

[36] The previous court orders were issued when different officials held office in the Matjhabeng Local Municipality. In my view, it would be inappropriate to attribute that responsibility to the current acting official in his personal capacity, particularly given the temporary nature of his position.

[37] However, I am not persuaded that the first and second respondents made every reasonable effort to comply with the court order. The issue persists, and its impact continues to be felt not only by the applicant but also by the general public.

Order

[28] In the result I make the following order:

1 The first and second respondents be and are hereby declared to be in contempt of court by failing to comply with the orders of the above Honourable Court granted under case number 6823/2023 dated 1 September 2022, and order of this court dated 21 September 2023 under case number 3477/2021 as well as court order dated 28 December 2023 under case number 6823/2023.

2 The first and second respondent are to pay a fine of R 250 000 to the applicant, jointly and severally, the one paying the other to be absolved, which fine is wholly suspended for a period

of six months on condition that the respondents, jointly and severally, purge their contempt as follows:

3 Should the respondents fail to purge their contempt in any manner as set out in paragraph 1 of this order, the applicant may approach the above Honourable Court, with papers duly supplemented, if necessary, to implement the committal of the first and second respondents to pay the fine.

4 The respondents are to pay the applicant's costs on a scale as between attorney and client, jointly and severally, the one paying the other to be absolved which to include counsel's fee on scale B.


BOONZAAIER AJ

Appearances

For the applicant: PT Masihlelo

Instructed by: Riaan Van Wyk Attorneys, Johannesburg
c/o Hill Mc Hardy & Herbst Attorneys, Bloemfontein

For the respondents: CLH Harms

Instructed by: BMH Attorneys, Vereeniging
Pieter Skein Attorneys, Bloemfontein.