

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 5158/2018

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

DATE..... SIGNATURE.....

In the matter between:

MAKGARI COMMUNAL PROPERTY ASSOCIATION

Applicant

And

**DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT AND LAND REFORM,
LIMPOPO PROVINCE**

First Respondent

**MINISTER OF AGRICULTURE, RURAL
DEVELOPMENT AND LAND REFORM**

Second Respondent

REGISTRAR OF DEEDS, POLOKWANE

Third Respondent

MR FUMANI MKHABELA

**DEPUTY CHIEF-DIRECTOR, MINING
LIMPOPO PROVINCE**

Fourth Respondent

**OFFICE OF THE AREA COMMISSIONER
DEPARTMENT OF CORRECTIONAL SERVICES**

Fifth Respondent

MRS A.T. RALEHLAKA

Seventh Respondent

MALEBOGO TRIBAL AUTHORITY

Eighth Respondent

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **17 June 2025**.

JUDGMENT

MAKOTI AJ

Introduction

- [1] Contempt of court is at issue in this court application. The applicant, the Makgari Communal Property Association (the CPA), wants a declaratory order to the effect that the respondents are in contempt of a court order that was issued on 15 November 2018. Also, that the respondents should be directed to issue it with a certificate of registration within 45 days of the date of the order. The CPA bases its prayers on provisions of the Communal Property Association Act.¹ Applicant also wants committal of the fourth respondent who was not a party in the initial proceedings. It accused him of collusion which led to the order not being complied with.

¹ Act No. 28 of 1998.

[2] On 15 November 2018 the court, per Semanya J, issued an order in the following terms:

- “1. The First and Second Respondents are directed to register the communal property association of the Applicant within 45 days of the granting of the order.
2. The Third Respondent is directed to effect a Title Deed rectification to reflect the Applicant as the owner of the farm registered as **“THE FARM, LOUSENTHAL 365, REGISTRATION DIVISION MR, LIMPOPO PROVINCE, 2346, 5022, HECTARES, within 14 days of the registration of the constitution of MAKGARI COMMUNAL PROPERTY ASSOCIATION”**.

[3] The seventh respondent, the Malebogo Tribal Authority, filed papers to oppose the application. In the answering affidavit deposed to by Kgoši Ngoako Isaac Legobo, the seventh respondent contends that the land property in question, **FARM, LOUSENTHAL 365, REGISTRATION DIVISION MR, LIMPOPO PROVINCE, 2346, 5022, HECTARES** (the property) is its property. Accordingly, this court should not grant the orders sought in this application.

Principles for contempt of court order

[4] The law on civil contempt is settled, and well documented. It is recognised in our jurisprudence that civil contempt arises when a person ignores or disobeys a court order in civil proceedings. The disobedience of a court order must be wilful and malicious.² In such instances, a court application is instituted by the aggrieved party, quite often the party in whose favour the order was granted, to enforce compliance with the order that was issued by the court.

² Frankel Max Pollak Vinderine v Menell Jack Hyman Rosenberg 1996 (3) SA 355 (A) at 367H

[5] In *Fakie NO v CCII Systems (Pty) Ltd*³ the court expounded thus:

“6. It is a crime unlawfully and intentionally to disobey a court order. This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court. The offence has in general terms received a constitutional ‘stamp of approval’, since the rule of law – a founding value of the Constitution – ‘requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained’.” [Footnotes excluded]

[6] I understand many the authorities on this point to be saying that it is an affront to courts, their standing and dignity, as well as to the Constitution as the supreme law of the Republic, for anyone to wilfully and maliciously disobey court orders.

[7] Recently 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*⁴ the court had occasion to reaffirm the test for contempt, and held as follows:

“[37] As set out by the Supreme Court of Appeal in *Fakie*, and approved by this Court in *Pheko II*, it is trite that an applicant who alleges contempt of court must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and mala fides are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established.” [Footnotes excluded]

[8] The contemnors in this case are the first to the third respondents. It is undisputed that on 15 November 2018 the court granted an order which

³ *Fakie NO v CCII Systems (Pty) Ltd* (653/04) [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (31 March 2006).

⁴ *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* (CCT 52/21) [2021] ZACC 18; 2021 (9) BCLR 992 (CC); 2021 (5) SA 327 (CC) (29 June 2021).

directed the some of the respondents to perform certain functions. First, for the first and second respondents to register the CPA. Second, once the applicant is registered as CPA, for the third respondent to (within 14 days) transfer the title deed for the property into the names of the CPA.

- [9] What remains is for the applicant to show that the contemnors are aware of the court order; that they have been served with it or are aware of it; and that they have failed to comply with the order. I shall deal with these considerations below.

Whether the first to the third respondents are in contempt of the court order

- [10] There is a quick answer in respect of the third respondent, the Registrar of Deeds. In paragraph 4.12 of the founding affidavit the applicant stated that the third respondent indicated its inability to pass transfer of the property to an unregistered CPA. The contention, in my view, falls within the terms of the court order, which, at paragraph 2, specifically stipulated that the transfer of the property shall be effected within 14 days from the date of registration of the CPA.
- [11] Registration of the CPA having not taken place, it cannot be argued that the third applicant is guilty of contempt. The jurisdictional requirement has simply not materialised yet. Thus, the application as against the third respondent is premature and cannot succeed.
- [12] Concerning the first and second respondents the case pleaded is that the court order was brought to their attention. Several email exchanges have taken place between the applicant's representatives and the officials of the Department, regarding the registration of the CPA in compliance with the order. Also, there has been meetings held between them. In paragraph 4.17 of the founding affidavit it is pleaded that:

“The first respondent also contended, during the meeting held on 28 February 2023, that it wants to appoint a land enquiry Commissioner within three months from the 28th February 2023 and that such Commissioner shall render a report which will advise the second respondent about the future conduct of the applicant’s application for registration of the MCPA and for the transfer of the Farm Louisenthal to MCPA. The court’s attention is draw to the fact an undertaking to appoint such commissioner was made in 2018 and was never fulfilled.”

- [13] The first and second respondents have not filed answering papers to this application. I have no reason to not accept the point made by the applicant in the above quoted paragraph, about the role of the first respondent. It was also pleaded that the first respondent had informed the meeting of an intention to consult with the Tribal Authority of Malebogo on the matter. This is a reflection of knowledge of the order, at least in respect of the first respondent.
- [14] Not much is mentioned about the second respondent, the Minister responsible for the Department. All that is canvassed in the application relates to the role played by the officials of the Department, but who are not facing the contempt application. That is, when and how was the court order served on him or her, or how it was brought to his or her attention. I am not in a position to presume that the Minister is in contempt of the court order.
- [15] Guidance on how the presumption of contempt operate was provided by the court in *Pheko v Ekurhuleni City*⁵ in which it was held that:

“... the presumption rightly exists that when the first three elements of the test for contempt have been established, mala fides and wilfulness are presumed unless the contemnor is able to lead evidence sufficient to create

⁵ Pheko v Ekurhuleni City 2015 (5) SA 600 (CC) at para [36].

a reasonable doubt as to their existence. Should the contemnor prove unsuccessful in discharging this evidential burden, contempt will be established.”

- [16] It is for that reason that I am unable to find against the minister, because I find nothing to show that he or she had knowledge of the court order. In such situation I am unable to find that the Minister acted in contempt of the court order. Taking all of these factors into account, it seems that only the Department can be held to be in contempt of the court order.

Prayer 3 of the notice of motion

- [17] A case for the relief sought in this prayer is not made. First, the order which the applicant is enforcing issued no directives against the fourth respondent. There was a point made that he colluded with other parties. That case too was not backed up. I refuse to hold the fourth respondent accountable in this application.

Regarding the seventh respondent's opposition

- [18] The case before me does not concern ownership of the property, just wilful and malicious disobedience to the court's order. It is that right to ownership that, in essence, the seventh respondent seeks to protect. Strangely, though, it sought to make case that the application for contempt is vexatious. Section 2(1)(b) of the Vexatious Proceedings Act reads thus:

“If, on an application made by any person against whom legal proceedings have been instituted by any other person or who has reason to believe that the institution of legal proceedings against him is contemplated by any other person, the court is satisfied that the said person has persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different

persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall be instituted by him against any person in any court or any inferior court without the leave of the court, or any judge thereof, or that inferior court, as the case may be, and such leave shall not be granted unless the court or judge or the inferior court, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is *prima facie* ground for the proceedings.” [Emphasis added]

- [19] There is nothing untoward with the application. It is not directed at the seventh respondent. What this respondent is actually implying by contending that the application is vexatious is that the case lacks merit. That it should be dismissed for that reason. From what the legislation espouses, the two are not synonymous. To firm this position I refer to the dictum in *NK and Another v BB*⁶ where the court held that:

“[15] Vexatious litigation includes the launching of various proceedings for improper purposes, which includes the harassment and oppression of other persons by the multifarious proceedings brought for purposes other than the assertion of legitimate rights. ... Again, I make no finding in this regard, but remain of the view that the respondent has on numerous occasions avoided the investigation of her home environment and her relationship with her partner, by simply initiating further proceedings or disregarding court orders and settlement agreements concluded between the parties.”

- [20] The applicant was granted an order by the court. Why it is argued that it lacks locus standi to enforce the order and to hold those that it holds to be in contempt, is unfathomable. In some other opposition ground the seventh respondent pleaded the existence of material dispute of facts. That too is vainly raised. The facts of this application are clear and uncomplicated. Much farther from the case sought to be made by the seventh respondent. At best, perhaps proverbially speaking, the seventh respondent has resorted to throwing dust into the eyes of the court hoping to blind it as what is the case to be decided. That case is, plainly, whether there is contempt and, if so, by

⁶ N.K and Another v B.B (30472/21) [2023] ZAGPJHC 1025 (15 August 2023).

which party.

- [21] In any case, the seventh respondent being aggrieved by the fact that it was not cited when the application first went to court, has remedies in law that it can pursue. This is not that stage. Its opposition on the grounds that it has raised is misinformed and accordingly rejected.

Costs

- [22] I was tempted to mulct the seventh respondent with costs. However, that is not necessary. Properly assisted, it may have a case that may interest another court, not this one. Thus, regardless of how I view the state of its opposition, I merely criticise but spare it from an order of costs.
- [23] The same cannot be said about the Department, which has illtreated the applicant. Its promises have not been actualised, forcing the applicant into instituting this application. That could have been avoided. So, too, the costs of this application. I am alive to the principle that was set out in *Kruger Bros & Wasserman v Ruskin*⁷ where it was held that:

“The rule of our law is that all costs –unless expressly otherwise enacted – are in the discretion of the Judge. His discretion must be judicially exercised but it cannot be challenged, taken alone and apart from the main order without his permission”.

- [24] There is no reason why I should not exercise my discretion as to costs by awarding them to the successful litigant. Even though I have dismissed the application in relation to the second, the third, the fourth and sixth respondents, I do not award them costs. None of them participated in this

⁷ 1918 AD 63 at 69.

application to be deserving of any favourable cost order.

[25] With everything said, it leaves only the first respondent to carry the costs of this application.

The following is the court's order

[24] I make the following order:

[a] The first respondent is held to be in contempt of the court order dated granted by Semanya J on 15 November 2018, and the first respondent is ordered to:

[i] comply with the said court order within 40 days of the date of this order; and

[ii] pay the costs of this application.

[b] Paragraph 3 of the notice of motion is dismissed.

[c] The application is dismissed in respect of the second and third respondents.



M. Z. MAKOTI

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION

APPEARANCES:

**FOR APPLICANT : ADV L TSHIGOMANA
MASEWAWATLA ATTORNEYS
POLOKWANE**

**FOR SEVENTH RESPONDENT: ADV N GAISA
ESPAG MAGWAI ATTORNEYS
POLOKWANE**

POLOKWANE HIGH COURT