

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2025-076989

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVIEWED: YES/NO

13 June 2025

In the matter between:

NKALA: PAUL NEO

Applicant

And

RAPAPALI: MPHO MMAMOKETE

Respondent

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I made the following order on 11 June 2025:

1. Application is dismissed.
2. The applicant is ordered to pay the costs of the respondent.

[2] The applicant requested reasons for the order on 12 June 2025. The reasons for the order follow below.

Introduction

[3] The applicant brought a contempt of court application against the respondent for non-compliance with a court order granted on 8 August 2024. The operative parts of the order reads as follows:

3.1 1. *The immovable property, namely Section Number 36, in the Sectional Scheme known as Madison Manor, situated at W[...], 1[.] P[...]'s Road, Midrand Gauteng ("the Midrand Property"), be placed on the market with various estate agents within 7 days of this order.*

3.2 2. *The parties agree to accept any and all written offers received through any of the estate agents referred to in paragraph 1, for a purchase consideration of, or higher than, R 2 500 000.00 (Two million and Five Hundred Thousand Rand)*

3.3 4. *The applicant and the first respondent shall equally be liable for all costs associated with the Midrand property which include but not limited to the mortgage bond, municipal rates and levies until such time as the Midrand property is transferred into a third parties (sic) name.*

Background

[4] The parties purchased the property and became joint owners on 29 October 2021 when the property was transferred to them and registered in their names.

[5] The parties launched an application on 28 February 2023 for the dissolution of the joint ownership of the property and the sale thereof. The court granted the order referred to above

[6] The applicant contends that the respondent is in contempt of the court order in that she does not comply with paragraph 4 of the order by not making payments towards the reduction of the bond and by not paying her share of the municipal rates

and levies.

The legal requirements

[7] To be successful in a contempt application the applicant is required prove that an order was granted against the respondent, that the respondent had knowledge of the order and had failed to comply with the order.¹

[8] Once the mentioned elements have been established a presumption of wilfulness and *mala fides* becomes operative the effect of which is that respondent then bears the burden to establish a reasonable doubt.²

[9] The respondent does not have to prove wilfulness and *mala fides* on a balance of probabilities. She is only required to present evidence that establishes reasonable doubt regarding the presence of wilfulness and *mala fides*.³

[10] The contempt conduct of the respondent had to be of such nature that it violated the dignity, repute and authority of the court in an intentional and deliberate manner. The mere non-compliance with a Court order does not suffice.⁴

[11] When the application is for an order for imprisonment it entails a loss of freedom, the Court should be circumspect in its evaluation of the facts⁵ and be satisfied that the contempt has been proven conclusively⁶

Analysis

[12] The applicant contends that the application is urgent as the default of the respondent puts the applicant's credit record at risk which is untenable as he is employed at a bank. He furthermore contends that the non-compliance of the

¹ 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 21 (5) SA 327 (CC).

² Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2) (CCT19/11) [2015] ZACC 10.

³ Fakie N.O v CCII Systems (Pty) Ltd [2006] ZASCA 52.

⁴ Fakie (n3 above) para 11.

⁵ Dezius v Dezius [2007] 1 All SA 483 (T).

⁶ Fakie (n3 above) para 28.

respondent causes the bond of the property to fall in arrears as well as the municipal and levies account.

[13] The applicant has been aware of the respondent's non-compliance since at least February 2025 and his attorneys have engaged in communications with the respondent since 25 February 2025. He only instituted the current application on 26 May 2025.

[14] The only explanation offered for the delay is that the parties were engaged in talks about the disputed outstanding amounts.

[15] The applicant does not cross the threshold of urgency.

[16] The existence of the court order and the knowledge of the court order is not in dispute.

[17] The respondent contends that she is not in contempt of the order as she has made regular payments. She furthermore disputes the calculations by the applicant in arriving at the outstanding amounts alleged by the applicant.

[18] The payments made by the respondent and the disputes in respect of the outstanding amounts which was dealt with by her lawyers in correspondence with the applicant's attorneys establish reasonable doubt in respect of her wilfulness and *mala fides*.

Conclusion

[19] The applicant has not discharged the onus that the application is urgent. The respondent succeeded in establishing reasonable doubt that her conduct amounted to wilfulness and *mala fide* non-compliance of the court order.

[20] I consequently made the order in paragraph 1.

E Raubenheimer
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **13 June 2025**

COUNSEL FOR THE PLAINTIFFS:	Adv M Mfeka
INSTRUCTED BY:	Mshengu and Associates
COUNSEL FOR THE RESPONDENT:	Adv M Silawule
INSTRUCTED BY:	Matlala K Inc
DATE OF ARGUMENT:	10 June 2025
DATE OF REQUEST FOR REASONS:	11 June 2025
DATE OF REASONS:	13 June 2025