



**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: 29 July 2025 Signature: [REDACTED]

**Heard on 25 July 2025
Delivered on 29 July 2025**

In the matter between:

**MPHELENG COMMUNAL PROPERTY
ASSOCIATION**

Appellant

And

**KGOSHIGADI MATHEBE OF
BANTWANE TRADITIONAL
COMMUNITY**

First Respondent

BANTWANA TRADITIONAL COUNCIL

Second Respondent

**HEADWOMAN MRS MATHEBE
MPHELENG VILLAGE**

Third Respondent

MR APHANE (THE UNKNOWN PERSON)

Fourth Respondent

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

ORDER

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

JUDGMENT

DU PLESSIS AJ

Introduction

[1] This is an application brought by the Mpheleng Communal Property Association for leave to appeal against the judgment delivered by this Court on 3 June 2025, in which the Applicant's contempt of court application was dismissed.¹

[2] The application for leave is limited to Prayer 1, namely the finding that the First, Third and Fourth Respondents were not in contempt of the Court's order of 29 April 2024. It is important to note that the Notice of Motion only sought an order of contempt related to the 29 April 2024 order of Ncube J, and not any other order by this court.

[3] The grounds of appeal, as outlined in the notice of application, allege misdirection both in law and in fact. In particular, the Applicant argues that I erred in finding:

- a. that the 29 April 2024 court order did not bind the First, Third and Fourth Respondents;

¹ *Mpheleng Communal Property Association v Kgoshigadi Mathebe of Bantwane Traditional Community and Others* (LCC03/2021B) [2025] ZALCC 24.

- b. that the non-citation of those parties in that order constituted a “preliminary hurdle” to a finding of contempt;
- c. and that the evidence fell short of establishing mala fide non-compliance.

[4] Having considered the application and the opposing submissions, I am not persuaded that the appeal has reasonable prospects of success as required by section 17(1)(a)(i) of the Superior Courts Act,² which provides that leave to appeal may only be granted if the judge is of the opinion that the appeal would have a reasonable prospect of success, or there is some other compelling reason why the appeal should be heard. I say so for the following reasons.

[5] It is trite that contempt of court requires proof of three elements:³

- a. That a court order was granted against the alleged contemnor;
- b. That the alleged contemnor had knowledge of that order;
- c. That the alleged contemnor failed to comply with the order.

[6] If those elements are established, a presumption of wilfulness and mala fides arises, which the respondent must rebut. It is a criminal standard of proof, beyond reasonable doubt.⁴

[7] Critically, the first element is foundational: unless a court order binds the respondents, there can be no contempt, regardless of the conduct that follows.

[8] As set out in my judgment, none of the First, Third or Fourth Respondents was cited in the 29 April 2024 interdict that the contempt application referred to. There was no application for joinder or substitution, despite leadership changes, including the death of the initially cited traditional leader. In the interdict application, the parties were cited in both their official and their personal capacities. This creates some problems for the applicants in the contempt application, for reasons discussed in my judgment.

² 10 of 2013.

³ *Secretary, Judicial Commission of Inquiry v Zuma* 2021 (5) SA 327 (CC) para 38; *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) para 42.

⁴ *Meadow Glen Home Owners Association v City of Tshwane Metropolitan Municipality* [2014] ZASCA 209 para 19.

[9] While the Applicant urged the Court to treat the new office bearers as successors bound by the prior order, it remains a principle of law that only parties to whom an order applies can be held in contempt of it, especially when what is asked (prayer 3 of the notice of motion) is committal. The applicant's argument that it is the *conduct* that is prohibited, regardless of the citation, cannot hold, as one cannot expect a person to comply with a court order to which they are not cited. A defective application cannot be cured with an appeal.

[10] This does not mean that the applicant is without recourse. Rule 15 of the Land Claims Court Rules outlines a procedure for substituting parties when an original party ceases to exist or act, such as in cases of death or succession by another statutory body. No application for substitution under Rule 15 was submitted to this Court. The lack of such procedural steps supports the conclusion that the Respondents in question cannot be held to the obligations of the original order.⁵

[11] As to Mr Aphane, the Fourth Respondent, he was not cited in the interdict, nor does the phrase "unknown persons" appear in that order. The order referred to "unlawful occupiers," but whether he falls within that description depends on whether his occupation was unlawful. By virtue of him buying the stand, his occupation cannot be said to be *prima facie* unlawful. This was fully traversed in the judgment. Absent unlawfulness, he is not bound by the court order.

[12] It needs to be emphasised that merely being aware of the order is not enough – there needs to be a binding obligation to comply with the court order. Courts must exercise restraint in matters with criminal consequences and cannot imply obligations into a judgment that do not explicitly appear on the face of the order.

[13] Even if I am wrong and the respondents are bound, the evidence did not establish wilfulness or bad faith, for reasons set out in the judgment. The respondents

⁵ See in general *Meadow Glen Home Owners Association v City of Tshwane Metropolitan Municipality* [2014] ZASCA 209 for contempt requirements against officials, which is analogous to the respondents' position in this case.

(mistakenly) believed they were engaging in routine registration following a private transaction, not a prohibited allocation.

[14] That being said, the judgment clarified the position regarding allocation and made clear what allocation involves, which could have implications for the future conduct of the parties.

[15] None of the Applicant's grounds raises an arguable point of law or demonstrates a reasonable prospect that another court would come to a different conclusion. Nor have any compelling reasons been shown that would justify the hearing of an appeal.

Order

[16] Accordingly, the following order is made:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.


WJ du Plessis
Acting Judge of the Land Court

Date of hearing:	25 July 2025
Date of judgment:	29 July 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