



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case number: 2025/076955

- [1] REPORTABLE: NO
[2] OF INTEREST TO OTHER JUDGES: NO
[3] REVISED: YES

SIGNATURE

DATE: 11.08.2025

In the matter between:

MUNICIPAL EMPLOYEES' PENSION FUND

First Applicant

**AKANI RETIREMENT FUND ADMINISTRATORS
(PTY) LTD**

Second Applicant

ZAMANIN ERNEST EPHRAIM LETJANE

Third Applicant

PETER MODIKE

Fourth Applicant

PHILLIP MMAMPOU LEBELO

Fifth Applicant

EDGAR MAGEZA

Seventh Applicant

THATO MAZANGWANA

Eighth Applicant

THULI LYDIA HAPPY MLANGENI

Ninth Applicant

LEBOGANG STEPHEN MAREKWA

Tenth Applicant

BOITSHOKO DONALD SMOUS

Eleventh Applicant

SELAELO KGOMOMMU

Twelfth Applicant

MANDLA NTULI

Thirteenth Applicant

and

PHUMUDZO FARANANI NDOU

First Respondent

NDOU ATTORNEYS INC

Second Respondent

Summary:

Contempt of Court – Allegation of Compliance on morning of hearing

Costs – Punitive Cost Order – law restated

REVISED REASONS FOR JUDGMENT

Z KHAN AJ

- [1] These reasons constitute a revision of the ex-tempore judgment I delivered in the Urgent Court on 25 June 2025. The written transcript of the proceedings was received on 7 August 2025.

FACTUAL BACKGROUND

- [2] The matter was initially heard in the Urgent Court on 11 June 2025 as a fully opposed application. The Applicants contended that the Respondents had conducted themselves in a manner that defamed the Applicants.

- [3] On 11 June 2025, Raubenheimer AJ granted interdictory relief in favour of the Applicants. The portions of the court order pertinent to the present contempt application read as follows:

‘2. Pending the final determination of action proceedings to be launched by the applicants against the respondents within 30 days of this Order, the respondents are interdicted:

2.1 from making, publishing, encouraging, repeating, or facilitating the publication or making of, any defamatory and/or injurious statements as made by the respondents in (1) the eNCA interview (as defined and described at paragraphs 11,56 and 57 of the founding affidavit); (2) the municipal meetings (as defined and described at paragraphs 40 and 61 to 66 of the founding affidavit); and/or (3) the Ndou petition (“the petition”)

described in paragraphs 7 to 11.3.6 of the supplementary founding affidavit, including statements accusing or alleging that any of the applicants:

2.1.1. are (or have been found to be) criminals, thugs, rogue entities or corrupt;

2.1.2 have 'captured' the first Applicant ("the MEPF"), the Board of the MEPF, or the Financial Sector Conduct Authority; or

2.1.3 have misappropriated funds from the MEPF, stripped it of assets or engaged in fraudulent conduct in relation to MEPF properties;

2.1.4 any statements about any of the applicants which are substantially similar to those listed 2.1.1. to 2.1.3 above. (*sic*)

2.2 to desist from canvassing any work from members of the MEPF on the basis of the statements as set out in 2.1 above.

3. The respondents are ordered, within 2 (two) days of this Order, to:

3.1 publish a notice on the respondents' social media accounts that the Order has been granted;

3.2 withdraw the petition; and

3.3 alert and inform the respondents' clients who are members of the MEPF that the Order has been granted."

- [4] On 14 June 2025, the Respondents filed an application for leave to appeal the order granted by Raubenheimer AJ. As at the date of the present urgent application, that application for leave to appeal had not yet been finalised.
- [5] On 17 June 2025, the Applicants launched the present urgent application seeking, among other things, a declaration that the Respondents were in contempt of the order granted by Raubenheimer AJ. The relief sought comprised: (a) a declarator of contempt; (b) an order compelling compliance with the earlier order; and (c) a committal to prison or, alternatively, the imposition of a fine. The Applicants further sought an order referring the Respondents, as members of the legal profession, to the Legal Practice Council for investigation, and an award of costs on the attorney-and-client scale, including the costs of two counsel.
- [6] The Applicants directed that the Respondents file their answering papers by close of business on Wednesday, 18 June 2025, with the Applicants' reply to follow on 19 June 2025. The Respondents filed their answering papers on Monday, 23 June 2025, at approximately 18h00, and the Applicants filed their reply on 24 June 2025 after 17h00. The matter was thereafter presented in court on 25 June 2025.
- [7] The Applicants satisfied the requirement that the earlier court order be served on the Respondents. Their complaint is that, notwithstanding such service, the Respondents failed to comply with the order.

- [8] The court order made provision for the Respondents to withdraw the petition. The Respondents had created an electronic petition hosted on a website. The petition webpage contained two distinct features: (1) an online “click” button enabling visitors to become signatories to the petition; and (2) an electronic link to a separate webpage. Following the granting of the order, the Respondents deactivated the online “click” button, thereby rendering it impossible for further signatories to join the petition. However, the webpage itself was not removed.
- [9] The order required compliance within two days of its grant. Upon expiry of this period on 13 June 2025, the Applicants found that the petition had not been withdrawn and remained active, allowing further members of the public to sign up. Additionally, the Respondents failed to comply with the requirement to publish the mandated notices on their social media accounts. The Applicants supported their assertions by uploading screenshots of the relevant webpages. Furthermore, the Respondents continued their infringing conduct by publishing additional statements to ‘disgruntled members of the MEPF’, containing allegations in breach of the order granted by Raubenheimer AJ.
- [10] The Applicants wrote to the Respondents, calling on them to comply with the court order. Subsequently, on 14 June 2025, the Respondents filed an application for leave to appeal.
- [11] In their answering affidavit, the Respondents contended that they believed the application for leave to appeal suspended the court order. Notwithstanding this

belief, they obtained legal advice from an unnamed Senior Counsel advising compliance with the order granted by Raubenheimer AJ. The Respondents further alleged in their answering papers that they had subsequently fully complied with the order.

[12] In their reply, the Applicants attached further screenshots from the internet demonstrating that the Respondents had not complied with the order granted by Raubenheimer AJ after filing their answering papers, notwithstanding their sworn allegations of compliance. The Applicants sought that the matter be referred to the Legal Practice Council on the basis that the Respondents, as members of the legal profession, had made false statements under oath.

[13] On the morning of the hearing, I was approached in chambers by representatives of both parties. The Respondents' representatives informed me that they had now fully complied with the order granted by Raubenheimer AJ to the satisfaction of the Applicants, and that the matter need not proceed in the Urgent Court, as the urgency had been addressed. Any further relief could be pursued in the ordinary course before the Motion Court. Notwithstanding this, the Applicants' counsel persisted in seeking a declarator of contempt in respect of the period during which there was no compliance.

[14] Later that morning, counsel for the Respondents argued in court that I should decline to engage further with the matter, as the urgency had dissipated and the matter could be removed to the ordinary motion court. I refused this invitation, having regard to my discretion and the fact that all relevant papers

had already been considered. I was also mindful that it would serve no purpose to burden another court with reconsidering the matter many months later.

[15] The Applicants argued for an order, including punitive costs, in light of the egregious conduct of the Respondents. It was submitted that, notwithstanding the removal of the petition “click” button, the petition webpage remained active and, importantly, contained a link to another webpage hosting further infringing material. The Applicants further demonstrated in their reply that the Respondents’ other social media webpages continued to contain links to the offending webpage as at the date of filing their reply.

[16] In response, counsel for the Respondents conceded that he could not dispute the facts. The Respondents did not request leave to file further affidavits to clarify the matters set out in the Applicants’ reply and nor were heads of argument filed to explain their further position. I engaged with Respondents’ counsel regarding the requirements for civil contempt as set out in *Fakie NO v CCII Systems (Pty) Ltd*¹ and satisfied myself that contempt had indeed been established. Submissions by counsel for the Applicants in reply further addressed the issue of contempt and the punitive costs order sought.

[17] Even if it were accepted that there was a misunderstanding regarding the appeal—whether the Raubenheimer order was interim or final and whether it was suspended by the application for leave to appeal—the Respondents could not evade responsibility for the internet link that remained active on their social

¹ 2006 (4) SA 326 (SCA)

media page. This link directed members of the public to a webpage containing statements alleging a 'fraudulent sale,' a 'romantic relationship' between directors, directors being 'conflicted' and 'compromised,' 'corruption,' a lack of being 'fit and proper,' 'mismanagement,' and similar allegations. These statements are directly contrary to paragraph 2.1 of the Raubenheimer order, which interdicted the Respondents from making, publishing, encouraging, repeating, or facilitating the publication or making of any defamatory or injurious statements.

- [18] The Applicants appropriately addressed the Respondents' argument that the order was suspended by the application for leave to appeal by drawing attention to the wording of the Raubenheimer order, which states:

"Pending the final determination of the action proceedings to be launched by the Applicants against the Respondents within 30 days of this order, the Respondents are interdicted..."

- [19] Counsel for the Respondent was unable to take this point further.

- [20] I found that the Respondents were in contempt of the Raubenheimer order for a period of time. I refused to make an order referring the matter to the Legal Practice Council. The Applicants remain at liberty to do so, as I indicated to the parties during argument.

[21] The events recorded above arise from the record, the events on the morning of the hearing, and the ex-tempore judgment that I delivered.

APPLICABLE LEGAL PRINCIPALS REGARDING COSTS

[22] The Applicants sought punitive costs. These are cost orders made in exceptional circumstances².

[23] In *Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging*³, a leading case regarding attorney and client costs in South Africa, Tindall JA held that:

“[t]he true explanation of awards of attorney and client costs not expressly authorised by Statute seems to be that, by reason of special consideration arising either from the circumstances which give rise to the action or from the conduct of the losing party, the court in a particular case considers it just, by means of such an order, to ensure more effectually than it can by means of a judgment for party and party costs that the successful party will not be out of pocket in respect of the expense caused to him by the litigation.”

[24] The Constitutional Court⁴ supported the approach in *African Farms and Townships Ltd v Cape Town Municipality*⁵ in relation to punitive costs order for actions that are vexatious and an abuse of process.

² *Erasmus Superior Court Practice* at E12-26

³ 1946 AD 597, referred to as such in *Swartbooi v Brink* 2006 (1) SA 203 (CC) at 213.

⁴ *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1

⁵ 1963 (2) SA 555 (A)

[25] In *Mkhatshwa and Others v Mkhatshwa and Others*⁶ the Constitutional Court held that the purposes of punitive costs, being an extraordinarily rare award, are to minimise the extent to which the successful litigant is out of pocket and to indicate the court's disapproval of a party's conduct.

[26] In *Public Protector v South African Reserve Bank*⁷, the Constitutional Court reaffirmed this principle at paragraph [229]:

“A personal and punitive costs order should be granted only where the litigant’s conduct is clearly mala fide, vexatious, or constitutes an abuse of process. Courts must exercise caution not to discourage litigants from approaching the courts.”

[27] One of the key objectives of contempt proceedings is to coerce litigants into complying with court orders and to vindicate the rule of law, rather than to punish the transgressors, although the Court may express its displeasure by way of punishment.⁸

[28] The Labour Appeal Court in *Plastic Converters Association of South Africa on behalf of Members v National Union of Metal Workers of South Africa*⁹ states as follows:

⁶ 2021 (5) SA 447 (CC)

⁷ 2019 (6) SA 253 (CC)

⁸ *Mjeni v Minister of Health and Welfare, Eastern Cape* 2000 (4) SA 446 (Tkh) at 456B.

⁹ 2016 (ZALAC39)

“The scale of an attorney and client is an extra ordinary one which should be reserved for cases where it can be found that the litigant conducted itself in a clear and indubitably vexatious and reprehensible manner. Such an award is exceptional and is intended to be very punitive and indicative of extreme opprobrium”

[29] In *President of the Republic of South Africa and Others v Gauteng Lions Rugby Union and Another*¹⁰ at paragraph [11], the Constitutional Court cautioned that:

“While courts have a discretion to award costs on an attorney-and-client scale, such orders are reserved for exceptional cases where there is a clear justification for departing from the ordinary rule.”

[30] In *Johannesburg City Council v Television & Electrical Distribution (Pty) Ltd*¹¹ the court held that

“. . . in appropriate circumstances the conduct of a litigant may be adjudged "vexatious" within the extended meaning that has been placed on this term in a number of decisions, that is, when such conduct has resulted in unnecessary trouble and expense which the other side ought not to bear".

[31] The Respondents indicated on the morning of the hearing that they had fully complied with the Raubenheimer order, a compliance that was confirmed by

¹⁰ 2002 (2) SA 64 (CC)

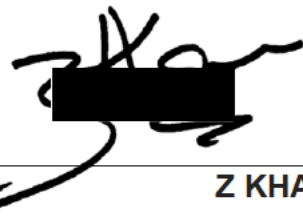
¹¹ 1997 (1) SA 157 (A) at 177 C – F.

counsel for the Applicants. Consequently, the issue of compliance had become moot. This conduct followed contrary to the contents of the Opposing Affidavit.

[32] I had regard to the Applicants being compelled to launch this application following correspondence calling for full compliance, statements within the papers that contradicted the Respondents' position regarding compliance, and the Respondents' change of stance on the morning of argument. I also took into account that the Respondents, as legal practitioners, are well versed in the law. The Applicants were fully entitled to vindicate their constitutional rights.

[33] I am of the view that a deviation from the standard costs order is warranted. The Respondent's conduct is vexatious and constitutes an abuse of process. The Respondents could have adopted a pragmatic and reasonable stance at an appropriate time and not the morning of the hearing of the matter. The Applicants were compelled to bring the Respondents before court to secure compliance, and the Respondents' further conduct justifies the imposition of a punitive costs order on the attorney client scale.

[34] In the result, I granted the order as set out in the draft order, forming part of my *ex tempore* judgment.

A handwritten signature in black ink, appearing to read 'Z Khan', is written over a black rectangular redaction box. A horizontal line is drawn below the signature.

Z KHAN

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 12h00 on 12 AUGUST 2025.

DATE OF HEARING: 25 JUNE 2025
DATE OF EX TEMPORE JUDGEMENT: 25 JUNE 2025
DATE OF REVISED JUDGEMENT: 11 AUGUST 2025

APPEARANCES:

COUNSEL FOR THE APPLICANTS: JPB McNALLY SC
B MANENTSA
ATTORNEY FOR THE APPLICANTS: WEBBER WENTZEL

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