



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO.: 008172/2022

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
	
SIGNATURE	
08/01/2025	
DATE	

In the matter between:

PRETORIA EDUCATIONAL CENTRE (PTY) LTD

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

JOHANN METTLER

Second Respondent

[In his capacity as duly appointed municipal manager of the
First Respondent]

In re:

PRETORIA EDUCATIONAL CENTRE (PTY) LTD

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

MMASEABATA MUTLAMENG

Second Respondent

[In her capacity as duly appointed municipal manager of the
First Respondent]

JUDGMENT

CORAM NTHAMBELENI, AJ

HEARD: 17 June 2025

DELIVERED: 08 July 2025

INTRODUCTION

[1] The applicant in this matter brought an urgent application , applying for an order declaring first and second respondents, be held to be in contempt of the orders of this Court under Case Number 7440/2007 dated August 2007, the order under Case Number: 8172/2022 dated 28 January 2025 and, in effect, also the order of this Court under case number: 7440/2007 dated 22 May 2024 (“the Court orders”), together with the ancillary relief as set out in the Notice of Motion.¹

¹ See: See CaseLines 10-161 to 10-164

- [2] Prior to addressing the merits of the application before me, the applicants moved for an amendment in terms of Rule 28(1) of the Uniform Rules of this Court (as per the Notice of Amendment).² The amendment was unopposed and heard and granted as such, I will incorporate the prayers sought in the final order of this Court.

BACKGROUND AND CONTEXT OF THE APPLICATION

- [3] The applicant, on 14 May 2025, issued out of this Court, in the normal course, an application to declare respondents to be in contempt of the Court Orders.³
- [4] In the judgment by Joyini J, handed down on 28 January 2025, the Court made an order that *"the First Respondent is ordered to sign all documents required by Applicant to effect the registration of transfer (of the immovable property listed in paragraph 46.2 of the Judgment) within 14 calendar days of the Court order."*⁴
- [5] The judgment by Joyini J foreshadowed that first respondent might fail to comply with the order and, to this extent, granted an order that:

"The Applicant is granted leave, in the event that First Respondent failing to comply with paragraph 46.2 above, to approach this Court on the same papers, supplemented to the extent required to seek for payment of a fine by First Respondent."

² See: CaseLines 10-156 to 10-164

³ See: Notice of Motion CaseLines 10-2 to 10-5

⁴ See: Judgment CaseLine 0001-1 to 0001-16

- [6] The respondents then failed to comply with the order and, consequently, the contempt of court proceedings were instituted (supported by a supplementary affidavit, setting out the contentious conduct of the respondents).⁵
- [7] As at date of launching the contempt application, the transfer process had commenced and was in an advanced stage of happening, which led applicants to believe that the properties would, eventually, be transferred (albeit that it was demonstrated that up to date of the institution of the contempt application, i.e. 8 May 2025 the conveyancing attorneys confirmed that the requisite documentation had, to date thereof, not been signed by respondents).⁶
- [8] After respondents filed an application for leave to appeal (the order by Joyini J) on 19 May 2025 (i.e. being 73 court days after the judgment was handed down), respondent's attorneys by way of letter dated 27 May 2025, confirmed that, as a result of the extremely belated leave to appeal, no further steps will be taken by Respondents to effect the transfer of the properties.⁷
- [9] Consequent upon the aforesaid conduct, and respondent's blatant refusal to comply with the judgment by Joyini J (i.e. contempt of Court), the current application was launched on an urgent basis (supported by the additional supplementary affidavit setting out the full extent of respondents' contempt).⁸
- [10] On 12 August **2007** this Court granted an order, *inter alia*, that:

⁵ See: Supplementary Affidavit CaseLines 10-6 to 10-40

⁶ See: Supplementary affidavit CaseLines 10-6 to 10-40 specifically par 6.4 and 6.5 supplementary affidavit CaseLines 10-34

⁷ See: Par 4.22 to 4.24 additional supplementary affidavit CaseLines 10-179 to 10-180

⁸ See: Further supplementary affidavit CaseLines 10-169 to 10-189

*"3. That the First Respondent be ordered to sign all documentation required by the Applicant to effect registration of transfer of the properties listed in Annexure "B", "D" and "E" to the Notice of Motion within 10 (ten) days after compliance by the First Respondent with the provisions of paragraph 2 of this order."*⁹

[11] The respondents failed to comply with the order and applicant instituted contempt of court proceedings against respondents by way of Notice of Motion dated 27 July 2022.¹⁰

[12] In response to the contempt proceedings, respondents launched an application for rescission (16 years later and by way of Notice of Motion dated 13 September 2023).

[13] The rescission application was dismissed by the above Honourable Court, by way of the Judgment by Tuchten J, dated 20 May 2024.¹¹ Tuchten J, by way of the aforesaid judgment, specifically recorded that:

"25. To summarise: The city had to show good cause for the rescission it seeks. This would require it to demonstrate that it had a basis in law for its refusal to comply with the order and an acceptable "explanation" for its delay in bringing the application for rescission. The city has shown neither. The application cannot succeed."

[14] Thereafter, the main contempt proceedings (under the abovementioned case number) served before the Honourable Joyini J, who handed down a judgment dated 28 January 2025.¹²

⁹ See: Order CaseLine 01-38 to 01-52

¹⁰ See: Notice of Motion CaseLine 01-1 to 01-7

¹¹ See: Judgment by Tuchten J, CaseLines 10-59 to 10-71

¹² See: Judgment CaseLines 10-43 to 10-58

- [1] The order, as contained in the judgment by Joyini J, mirrored the 2007 order and, *inter alia*, recorded that:

*"The First Respondent is ordered to sign all documentation required by Applicant to effect registration of transfer of the following properties within 14 calendar days hereof ..." (the properties listed in paragraphs 46.2.1 to 46.2.5 of the judgment).*¹³

- [15] The order envisaged an explicit time-period, i.e. 14 calendar days, within which first respondent was obliged to comply with the order. The respondents thereafter failed to, timeously or at all, comply with the orders by Joyini J, (and with the 2007 order and that of Tuchten J), and applicant consequently instituted a new contempt application, in line with the order of Joyini J, by way of Notice of Motion dated 14 May 2025.¹⁴

- [16] After service of the new contempt application, and clearly as a result direct response thereto, respondents filed an application for leave to appeal the order as Joyini J, on 19 May 2025 (which application for leave to appeal was filed 73 (seventy-three) court days after the judgment was handed down).

- [17] The applicant, by virtue of the first supplementary affidavit (dated 14 May 2025), sets out the circumstances premised upon which respondents are in contempt of the court orders (i.e. the judgment by Tuchten, the judgment by Joyini J, and the 2007 order)¹⁵. At that stage the transfer process was in an

¹³ See: CaseLines 10-56 to 10-57

¹⁴ See: Notice of Motion CaseLines 10-1 to 10-5

¹⁵ See: Supplementary affidavit CaseLines 10-6 to 10-40.

advanced stage of happening, and respondents led applicant to believe that they would, eventually, transfer the properties to applicant.

[18] Only by virtue of the correspondence by respondents' attorneys (dated 27 May 2025 appended as annexure "TS9" to the second supplementary affidavit) did respondents unequivocally confirm that they had given instruction to put a total hold on the transfer process and recorded that "this correspondence is to courteously inform yourself that pending such application for leave to appeal that the City will not be taking any further steps to give effect to the transfer of the property."¹⁶

[19] The respondents have thus now confirmed that the whole transfer process has been completely immobilised. The said letter establishes all the jurisdictional requirements for applicant to be successful with the contempt of court application.¹⁷

APPLICABLE LAW IN CONTEMPT APPLICATIONS AND APPEALED ORDERS

[20] It is trite that compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The unique role occupied by the judiciary since the dawn of democracy is entrenched in section 165 (1) of the Constitution.

[21] In addition, section 165 states: "*An order or decision issued by a court binds all persons to whom and organs of state to which it applies*". This section must be

¹⁶ See: Par 5 of the letter

¹⁷ See: Fakie NO v CCII Systems (Pty) Ltd 2006(4) SA 276 (SCA)

read together with the supremacy clause of the Constitution¹⁸. It provides that courts are vested with judicial authority and that no person or organ of state may interfere with functioning of the courts. The Constitution enjoins organs of state to assist and protect the court to ensure, among other things, their dignity and effectiveness¹⁹.

[22] The Constitutional Court in **S v Mamabolo**²⁰ held that the purpose of a finding of contempt of court is to protect the fount of justice by preventing unlawful disdain for judicial authority. Discernibly continual non-compliance with court orders imperils judicial authority²¹. Where the judiciary cannot function properly, the rule of law will die.

[23] The law on contempt proceedings in civil matters have become settled²². The principal issue in these contempt proceedings is whether the respondents are in contempt of the Court order. For this type of relief, the applicant must prove:

- 1.1. the existence of a court order;
- 1.2. service or notice thereof;
- 1.3. non-compliance with the terms of the court order; and
- 1.4. wilfulness and *mala fides* beyond reasonable doubt.

[24] A presumption exists that when the first three elements of the test for contempt has been established, *mala fides* and wilfulness are presumed unless the

¹⁸ Section 2 of the Constitution

¹⁹ *Matjhabeng Local Municipality v Eskom Holdings Limited and Others* 2018 (1) SA 1(CC) at para 47

²⁰ 2001 ZACC 17; 2001 (3) SA 409 (CC) at para 24

²¹ *Matjhabeng Supra* n.30 at para 48

²² 2001 ZACC 17; 2001 (3) SA 409 (CC) at para 24

contemnor is able to lead evidence sufficient to create reasonable doubt as to their existence. Should the contemnor prove unsuccessful in discharging this evidential burden, contempt will be established²³.

[25] The existence of the court order and service or notice thereof is common cause between the parties. The attorney of record made several attempts to lodge after the order of court without any success. Therefore, there is no doubt that there is wilful non-compliance with the court order from the respondents and thus the respondents are in contempt of court.

[26] This division in **Waste Partner Investments (Pty) Ltd v Toyota Financial Services**²⁴ neatly summarised the position as follows:

"[12] *The established principle of our law is that the noting of an appeal suspends the operation and execution of a judgment pending the outcome of the appeal. In my view, the late filing of the applicant's application for Leave to Appeal is fatal, even if the applicant has filed an application to condone the late filing of the application.* This position was confirmed by the Full Court of this division in **Duduzile Cynthia Myeni v Organisation Undoing Tax Abuse NPC case number 15996 /2017** as follows at [19] "As, such, an important question would then be what effect would the lodging of the petition after the right to appeal has lapsed then have on the principal judgment's order. Having regard to case law, in light of the belated petition now filed by the appellant, the principal judgment's order continues to remain operational for the mere fact that the service of an application to condone the late filing of the petition to the SCA does not suspend the operation and execution of any order. To conclude otherwise would give rise to an untenable situation in law where, after an order has been operational for a number of months, a party could simply bring a condonation application which would result in such order suddenly being suspended. Such a situation"".

²³ Fakie No v CCII System (Pty) Ltd 2006 (4) SA 326 (SCA) at para 22

²⁴ Waste Partner Investments (Pty) Ltd v Toyota Financial Services and others 2024 JDR0638 (GJ)

[27] The position was recently reaffirmed by this division in **LEE v ROAD ACCIDENT FUND 2024 (1) SA 183 (GJ)**, where the Court stated :

“[20] *That leaves only one other procedural advantage that appeals generally have over rescission applications: the automatic suspension of the order appealed against. There are plainly good reasons why that procedural advantage ought only to benefit those who have actually participated in the proceedings that led to the order being challenged on appeal. In this division the benefit only accrues to an applicant who has brought their application for leave to appeal in time, or whose failure to do so has been condoned* (see *Panayiotou v Shoprite Checkers (Pty) Ltd and Others 2016 (3) SA 110 (GJ) paras 11 – 15*).”

[28] It is trite and a well-established principle that all orders of Court, whether correctly or incorrectly granted, must be complied with until they are properly set aside.²⁵ There is no justification for the respondents in this matter not to comply with the court orders on the basis that their leave to appeal suspend the enforcement of the orders of this court.

[29] The Constitutional Court in **Matjhabeng Local Municipality v Eskom Holdings Ltd & Others**²⁶ confirmed the position as follows :

“[47] *Section 165 of the Constitution, indeed, Vouchsafes Judicial Authorities. This section must be read with Supremacy Clause of the Constitution. It provides that Courts are vested with judicial authority, and that no person or organ of state may interfere with the functioning of the Court. The Constitution enjoins Organs of State to assist and protect the Court to ensure, amongst other things, their dignity and effectiveness.*

See: **Culverwell v Beira** 1992 (4) SA 490 (W) at 494 B; **Bezuidenhout v Patensi Citrus Beherend Bpk** 2001(2) SA 224 at 229 B – D; **OR Thambo International Airport Department of Home Affairs Immigration Admissions, & another** 2011 (3) SA 641 (GMP) at 657

²⁶ See: 2018(1) SA (CC)

[48] To ensure the Court's authority is effective, section 165 (5) makes orders of Court binding on "all person to whom and Organs and state to which it applies". The purpose of a finding of contempt is to protect the fount of justice by preventing unlawful disdain of judicial authority. Discernibly, continual non-compliance with Court Orders imperils judicial authority."

[30] In **PHEKO AND OTHERS v EKURHULENI CITY 2015 (5) SA 600 (CC)** the court stated that:

"[28] Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes acts of contumacy in both senses: wilful disobedience and resistance to lawful court orders. This case deals with the latter, a failure or refusal to comply with an order of court. Wilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence. The object of contempt proceedings is to impose a penalty that will vindicate the court's honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order."

CONCLUSION

[31] It is trite law that contempt of court proceedings is urgent in their nature, this Court has a duty to ensure that its orders are complied with and the reasons advanced by the respondents to justify the non-compliance are unsustainable. It is clear that the respondents are in contempt of court and will not comply with the court order unless this order is granted and enforced.

[32] In matters of this nature, the respondent must demonstrate that there is no contempt as alleged by the applicants, and the respondents failed to demonstrate that there is no contempt as alleged. In this matter the contempt

is not to be assumed as it is written in black and white. I asked Counsel for the respondent to react to the letter from the attorneys that has been used by the applicants to indicate that the jurisdictional requirements for contempt of court. There was no direct answer or submission to purge the contempt as required by law.

[33] The main arguments from Counsel of the respondents were technical in their form, substance and nature. Both in his heads of arguments and oral submissions before me, he raised two points in *limine* regarding the issue of defective service or the non-joinder of Mr Johann Mettler (Mr Mettler) in his personal capacity in proceedings that effect his freedom and liberties,²⁷ as well as the issue of lack of urgency with regards to the applicant's case.

[34] The respondent Counsel then dealt in detail with the issue of the contempt in detail with reference to some authorities though misapplied as correctly argued by the applicant's Counsel in reply. The high-end watermark of the argument was that contempt of court proceedings are not *inter partes* and concerns the respondent and the court of **Federation of Governing Bodies of South African Schools (Gauteng) v MEC for Education, Gauteng 2002 (1) SA 660 (T) at 6730 – E** where Kirk Cohen J stated that:

“Contempt of court is not an issue inter parties; it is an issue between the court and the party who has not complied with a mandatory order of court”.

²⁷ See page 4 of the Respondent's Heads of Arguments.

[35] Counsel for the respondent also cited **Pheko and others v Ekurhuleni Metropolitan Municipality**²⁸ as well as **Fakie No. v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA)**, as his main authorities amongst other authorities in his heads of arguments. I have already stated that authorities when submitted ought to persuade the Court on way or another in the determination of the case based on its merits.

[36] The merits of this matter clearly demonstrate contempt that is common cause between the parties that is only justified by the leave to appeal that has been filed by the Respondents. The argument raised were that the respondents were advised by a Senior Counsel that the judgement being appealed was flawed in various respect. The unique role occupied by the judiciary since the dawn of democracy is entrenched in section 165 (1) of the Constitution. In addition, section 165 states: *"An order or decision issued by a court binds all persons to whom and organs of state to which it applies"*. This section must be read together with the supremacy clause of the Constitution.²⁹

[37] Therefore, there can never be any opinion of a Senior Counsel that justifies non- compliance with any Court orders in South Africa or any jurisdiction governed under the rule of law. To justify such conduct will amount to anarchy and this Court is enjoined by the Constitution to ensure that Court orders are complied with as long as they are issued by a Court of law and not overturned.

²⁸ 2015 (5) SA (cc) 2015 (6) BCLR 711 (CC)

²⁹ See paragraph 21 of the judgement.

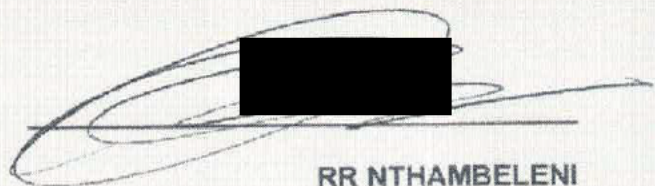
[38] Counsel for the applicants rightfully refer me to the authority of the full bench in the Myeni matter regarding the question of the suspension of court orders on appeal. I asked the Counsel for the Respondent to submit a parallel authority to counter the submissions of the applicants, and none was submitted to me, as a result, I make the following order as a result of the contents of this judgement.

ORDER

[39] Based on the foregoing, this Court makes the following order:

- 39.1. amendment in terms of Rule 28(1) of the Uniform Rules of Court (as per the Notice of Amendment) is granted;
- 39.2. this application is heard as an urgent application in terms of Rule 6 (12) of the Uniform Ruled of Court and any non-compliance with regards to service and time-frames are condoned;
- 39.3. it is declared that the first and second respondent are in contempt of orders of this Court under Case Number: 7440/2007 dated 28 August 2007 and the order under Case Number: 8172/2022 dated 28 January 2025 and in effect also the order of this Court under Case No 7440/2007 dated 22 May 2024;
- 39.4. second respondent in his capacity as the first respondent's appointed Municipal Manager is hereby fined and ordered to pay amount of R 500 000,00 [Five Hundred Thousand Rands];

- 39.5. prayer 39.4 supra is suspended for a period of 31 days on condition that the first respondent complies and purge the contempt within 15 calendar days and proceed to pass transfer of the immovable properties referred at paragraphs 46.2.1 to 46.2.5 of the judgement under the above case number dated 28 January 2025;
- 39.6. first and second respondents are ordered to pay the costs of the application on scale C as between attorney and client, including the costs of two Counsel so employed.

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke, is positioned above a solid black rectangular redaction box.

RR NTHAMBELENI

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

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