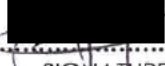


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2120/2022

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
(3)	<u>REVISED.</u>
<u>11/08/2025</u> DATE	 SIGNATURE

In the matter between:

INSTITUTE OF MARKET AGENTS OF SOUTH AFRICA

Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

First Respondent

**MINISTER OF PUBLIC WORKS AND
INFRASTRUCTURE**

Second Respondent

**MINISTER OF PROVINCIAL AND LOCAL
GOVERNMENT**

Third Respondent

MINISTER OF LABOUR AND EMPLOYMENT

Fourth Respondent

MINISTER OF HEALTH AND FAMILY WELFARE

Fifth Respondent

NATIONAL TREASURY/MINISTER OF FINANCE

Sixth Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

Seventh Respondent

**MUNICIPAL MANAGER: CITY OF TSHWANE
METROPOLITAN MUNICIPALITY**

Eighth Respondent

J U D G M E N T

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading it to the electronic file of this matter on Caselines.

The date and time of hand-down is deemed to be 10:00 on 11 August 2025.

TEFFO, J:**Introduction**

[1] The applicant seeks an order that the first respondent be found in contempt of court in that it has failed to comply with an order that was granted by this Court on 31 October 2022 (*"the previous court order"*).

[2] It also seeks an order that the Municipal Manager and the Executive Mayor of the first respondent be joined in these proceedings as the eighth and ninth respondents respectively.

[3] In addition, the applicant seeks an order that the Municipal Manager and the Executive Mayor of the first respondent be imprisoned for a period of one month, alternatively, that this court impose upon them such sentence and/or punitive fine as it considers appropriate.

[4] Furthermore, an order is sought that the imprisonment and/or committal and/or alternative sentence and/or fine be suspended for a period of one (1) year on condition that the first respondent and/or its Municipal Manager and/or its Executive Mayor comply with the previous order within a period of ten (10) court days from the date of this order.

[5] The applicant further seeks ancillary relief as set out in the notice of motion.

[6] The application is only opposed by the first respondent.

The parties

[7] The applicant is the Institute of Market Agents of South Africa ("IMASA"). It is the spokesperson for market agents in South Africa. It is a non-profit organisation whose membership is a voluntary association. Its membership comprises market agencies and individual market agents. The applicant represents various members in various organisations such as the Agricultural Produce Agents' Council, the Fresh Produce Sector, the Department of Agriculture, Forestry and Fisheries as well as all official bodies and organised agricultural organisations.

[8] The first respondent is the City of Tshwane Metropolitan Municipality. The second to the seventh respondents are Ministers who have been cited in their official capacities. No relief is sought against them. They have been cited as interested parties only.

Factual background

[9] On 17 January 2022 the applicant instituted an application for a declaratory order that the first respondent is responsible to provide and facilitate municipal services in terms of Section 1 of the Local Government, Municipal Systems Act, 32 of 2000 ("*the Act*"), at the Tshwane Fresh Produce Market ("*the Market*") ("*the main application*").

[10] The applicant claimed that the first respondent failed to provide the services and sought relief that it be ordered to comply with its obligations in terms of the Act, the Constitution read with the By-laws; which includes a risk assessment and recovery plan, the implementation thereof and to convene a task team with the executive authority to execute, implement, effect and oversee the same; alternatively, that an external service provider should be appointed as provided for in terms of Section 77 of the Act.

[11] In response to the allegations made in the main application, the first respondent made the following concessions: It admitted the *locus standi* of the applicant and its entitlement to the constitutional and statutory rights, which must be provided to it and its members; that the applicant is an interested party and has existing future and contingent rights in respect of municipal services which must be provided to it; that it has failed to provide these services, alternatively, to maintain and upgrade the infrastructure due to various challenges experienced at the market; that it is responsible for providing an infrastructure and related facilities and that same must be upgraded.

[12] On 31 October 2022 Meersingh AJ granted a consent order (*"the previous court order"*) against the first respondent. The order reads:

"AFTER HAVING HEARD Counsel for the applicant and the first respondent, the following order is made:

- 1. Submit a precinct-plan (which plan may include a risk assessment and recovery plan/report) in respect of the market premises which will include, but not to be limited, to the following:*

- 1.1 *occupational health and safety management process.*
- 1.2 *quality management.*
- 1.3 *financial management.*
- 1.4 *details of the person/party responsible for implementing and overseeing the plan.*
- 1.5 *details of date of roll-out and implementation of the plan.*

which report must be submitted to the applicant and the second to the seventh respondents, a draft plan within 60 days and a final plan within 180 days of this order.

- 2. *Implement the contents of the approved precinct-plan in respect of repairs and/or implementation of:*

- 2.1 *fire and smoke detection compliance.*
- 2.2 *electrical connectivity and facility compliance.*
- 2.3 *security and checkpoint management.*
- 2.4 *lift and hoist facility compliance.*
- 2.5 *damage to all sanitation facilities.*
- 2.6 *refuse removing facility compliance.*

which must be implemented/repaired/affected within 60 days of the date detailed in paragraph 1 supra.

3. *That the first respondent's allocated budget of R18 million will be utilized for both capex (R10 million) and opex (R8 million) to implement the precinct plan referred to above for the current annual budget.*
4. *That the parties will engage one another during the Integrated Development Process to assess future budgets to be allocated in respect of the market precinct.*
5. *Paragraphs 3.5, 3.6 and 4 of the Notice of Motion to be postponed sine die.*
6. *The first respondent is ordered to pay the applicant's costs of this application."*

[13] It is the alleged non-compliance with the above order (*"the previous court order"*) that prompted the applicant to launch this application. The applicant contends that shortly after the granting of the previous court order, on 30 December 2022 its attorneys received a draft precinct-plan. However, the draft precinct plan did not comply with the provisions of the previous court order.

[14] Correspondence was exchanged between the parties after the applicant's attorneys raised concerns regarding the alleged non-compliance of the draft precinct-plan with the previous court order. While the parties were busy discussing when to have a meeting to address the issues raised by the applicant, on 28 April 2023, the first respondent's attorneys, Ncube Inc sent

an email to the applicant's attorneys to which the final precinct-plan was attached.

[15] Further correspondence was addressed to the first respondent and its attorneys by the applicant's attorneys raising their concerns regarding the alleged non-compliance of the final precinct-plan with the previous court order, its submission to them without first addressing the issues and concerns previously raised and the failure of the first respondent and its attorneys to respond to their correspondence. The correspondence also referred the first respondent and its attorneys to the time frames and duties the first respondent had to comply with in terms of the previous court order. Moreover, the correspondence stated that the applicant held instructions to approach the court for contempt of court proceedings against the first respondent and seek an appropriate sanction in respect thereof.

[16] On 10 August 2023, the first respondent's attorneys addressed correspondence to the applicant's attorneys stating that the first respondent submitted the draft and the final precinct-plans within the time frames set out in the previous court order and the plans have addressed the issues set out in the court order. The correspondence further stated that the first respondent has complied with the terms and conditions of the previous court order, and it is therefore, not in contempt of the previous court order.

[17] Aggrieved by the conduct of the first respondent and its attorneys of not addressing the concerns it has raised in the previous correspondence relating to the previous court order, the applicant instituted this application.

The parties' cases

[18] Basically, the applicant contends that the first respondent failed and/or refused to comply with the terms and conditions of the previous court order in that the draft and final precinct plans submitted to it do not comply with the terms and conditions of the order. It claims that the contents of the plans do not prioritise the problems that need to be attended to in terms of the previous order.

[19] It asserts that notwithstanding the concerns it has raised about the draft precinct-plan, the first respondent proceeded to submit a final precinct-plan without inputs from it.

[20] The applicant submits that it has established the requisites for contempt of court against the first respondent and the first respondent should advance evidence that establishes a reasonable doubt as to whether the non-compliance was wilful and *mala fide*, failing which, contempt would have been established beyond reasonable doubt.

[21] The first respondent denies that it is in contempt of the previous court order. It asserts that it has complied with the order and in the event the court finds that it has not, the non-compliance thereof could not have been wilful and *mala fide*.

Applicable legal principles

[22] Section 165(5) of the Constitution of the Republic of South Africa (the Constitution) states that an order or decision issued by a court binds all persons to whom and organs of State to which it applies.

[23] The court in *Pheko and Others v Ekurhuleni Metropolitan Municipality*¹ held that:

“The starting point is the Constitution. It declares its own supremacy and this supremacy pervades all law. Section 165 vouchsafes judicial authority. It provides that courts are vested with judicial authority, and no person or organ of state may interfere with the functioning of the courts. The Constitution explicitly enjoins organs of State to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness. To ensure the courts’ authority is effective, section 165(5) makes an order of court binding on ‘all persons to whom and organs of State to which it applies’. These obligations must be fulfilled. It is significant that this subsection specifically mentions organs of State for justiciability [sic] and powers of constitutional review make sense only if non-judicial authorities cannot and do not undo court orders and/or their consequences. These sections, read alongside interpretive injunction of the supremacy clause, demonstrate why continual non-compliance with court orders and decisions would, inevitably, lead to a situation of constitutional crisis.” [footnotes omitted]

[24] The court in *Pheko*² further observed that:

“Although a distinction exists between civil and criminal contempt of court, contempt arising from civil proceedings constitutes a criminal offence. Consequently, it may be prosecuted either by the State or by

¹ 2015 (5) SA 600 (CC) at para 26

² *Ibid* at para 30

*the court mero motu*³. Civil contempt is a crime, and if all the elements of criminal contempt are satisfied, civil contempt can be prosecuted in criminal proceedings, which characteristically lead to committal. Committal for civil contempt can, however, also be ordered in civil proceedings for punitive or coercive reasons.” [footnotes omitted]

[25] Civil contempt is the wilful and *mala fide* refusal or failure to comply with an order of court other than a money judgment⁴. In *Meadow Glen Homeowners Association and Others v The City of Tshwane and Another*⁵ the Supreme Court of Appeal had this to say:

“Although some punitive element is involved, the main objectives of contempt proceedings are to vindicate the authority of court and coerce litigants into complying with court orders. The foundation and basis for a conviction of contempt of court have been authoritatively set out in *Fakie NO v CCII Systems (Pty) Ltd*:⁶

To sum up:

(a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

³ *Putco Ltd v TV and Radio Broadcasting Guarantee Co (Pty) Ltd* 1985 (4) SA 809 (A)

⁴ *Badenhorst N.O. and Another v Moqhaka Local Municipality and Others* [2016] 3 All SA 723 (FB)

⁵ 2015 (2) SA 413 (SCA)

⁶ 2006 (4) SA 326 (SCA) para 42

- (b) *The respondent in such proceedings is not an 'accused person' but is entitled to analogous protections as are appropriate to motion proceedings.*
- (c) *In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and mala fides) beyond reasonable doubt.*
- (d) *But, once the applicant has proved the order, service or notice, and non-compliance, the respondent bears an evidential burden in relation to wilfulness and mala fides: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and mala fide, contempt will have been established beyond reasonable doubt.*
- (e) *A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities."*

Discussion

[26] The applicant explains the alleged non-compliance with the previous court order as follows in its founding affidavit:

"31. The court order in clause 1 thereof, specifically sets out the issues that must be addressed in the precinct-plan, being:

31.1 occupational health and safety management process.

31.2 quality management.

31.3 *financial management.*

31.4 *details of the person/party responsible for implementing and overseeing the plan.*

31.5 *details of the date of roll-out and implementation of the plan."*

[27] It contends that the order provides in paragraph 3 that the first respondent's allocated budget to the market of R18 million will be utilised for both Capex (R10 million) and Opex (R8 million) to implement the precinct-plan referred to above for the 2022/2023 current annual budget.

[28] It claims that specifics should have been addressed in respect of the capital and operational expenditure of the R18 million. It asserts that the first respondent did not provide extended details and projections on expenditure of the market precinct, it seems as if (although allocated) the budget has not even been approved yet.

[29] The applicant avers that it should have been informed how the allocated R18 million would be utilised before the end of the current financial year (2022/2023) to address the immediate and critical predicaments and issues the market faces.

[30] It further alleges that essential information and supporting documentation have not been provided to it and, accordingly, it does not have anything to compare or verify the information set out in the purported precinct-plan as ordered.

[31] The applicant further refers to various correspondence exchanged between the parties after the letter of 19 January 2023 and submits that the correspondence demonstrates the first respondent's wilfulness and *mala fides* in its non-compliance with the court order.

[32] The first respondent admits that the previous court order was granted directing it to do certain things and that it has knowledge of the previous court order. It, however, disputes that it did not comply with the previous court order.

[33] The first respondent asserts that it submitted both plans within the time frames stipulated in the previous court order.

[34] It claims that the dispute between the parties lies in the interpretation of the previous court order and submits that depending on the interpretation thereof, it can be determined whether it has complied with the order. It contends that it is evident from the correspondence exchanged between the parties that they have differing views as to the interpretation to be given to the court order.

[35] The first respondent disputes that the final precinct-plan does not address the issues referred to in the previous court order.

[36] It claims that the previous court order did not direct it to provide the applicant with the information set out in its founding affidavit. The previous court order merely directed it to utilise the allocated budget of R18 million for both Capex (R10 million) and Opex (R8 million) to implement the precinct-plan during the financial year 2022-2023. It asserts that there can thus be no

complaint of failure to comply with the previous court order merely because the applicant seeks information and/or documents not provided for in the court order.

[37] The first respondent further contends that the contents of the letter dated 19 January 2023 cannot be used as evidence to show that it has failed to comply with the previous court order. It claims that the information sought in the letter is beyond what is expected of the first respondent to do in terms of the court order. The first respondent claims that the Opex and Capex budget amounts were utilised during the financial year 2022/2023.

[38] It asserts that the issue of its conduct being wilful and *mala fide* does not even arise as the applicant has failed to prove its non-compliance with the previous court order.

[39] It contends that the information provided in the precinct-plan was sufficient to address the issues referred to in the court order.

Interpretation of the court order

[40] The first respondent contends that the applicant seems to interpret the court order broadly outside its language and context. It argues that the applicant seems to hold the view that the court order clothed it with the power to micromanage its implementation of the precinct-plan. This, according to the first respondent, is the reason why as it is evident from the correspondence between the parties, the applicant insists on being provided with information and/or documents not requested in the previous court order. Since the documents were not coming from it, the applicant bemoans and

claims that the first respondent failed and/or refused to comply with the court order. It asserts that there is no basis for the applicant to claim that it is entitled to be provided with the documents and information not referred to in the court order.

[41] It contends that the court order is plain, clear and not open to multiple interpretations. It claims that the court order provides what it ought to do and within which time frame. The order does not grant the applicant the power to demand that it be provided with information and documents requested in its correspondence addressed to it, other than the right to be provided with the draft and final precinct-plans for the market.

[42] On the other hand, the applicant submitted that it is not the first time that the first respondent has attempted to raise the interpretation of a court order as a defence in contempt proceedings. I was referred to the case of *Meadow Glen Homeowners Association and Others v City of Tshwane Metropolitan Municipality and Another*⁷ and it was submitted that the interpretation argument by the first respondent has no merit and should be rejected.

[43] The applicant asserts that it instituted the application *in casu* after it dispatched numerous correspondence to the first respondent complaining about its non-compliance with the court order and over a protracted period upon its failure and/or refusal to comply.

[44] It contends that the requirements and the directives of the order were unequivocally clear and left no room for ambiguity.

⁷ *Supra*

[45] In *Meadow*⁸ the Supreme Court of Appeal (“the SCA”) had this to say:

“If there was a dispute between them and the appellants regarding the scope of the order and what needed to be done to comply with it, it was not appropriate for the municipality to wait until the appellant came to court complaining of non-compliance in contempt proceedings. It should have taken the initiative and sought clarification from the court. Its failure over a protracted period to take steps is to be deprecated.”

[46] After the submission of the draft precinct-plan numerous correspondence was addressed to the first respondent and its attorneys clearly stating the alleged non-compliance of the plan with the court order which was not responded to. Thereafter, a final precinct-plan was submitted to the applicant. Further correspondence was again addressed to the first respondent and its attorneys, and it was also not responded to. The first respondent contends that from the correspondence exchanged between the parties, it is evident that they have differing views regarding the interpretation of the previous court order. The first respondent has been aware of this fact from the correspondence it was receiving from the applicant. It did nothing to address the issue. It waited until the applicant instituted this application complaining about its non-compliance with the court order. As held in *Meadow*⁹, the first respondent should have taken the initiative and sought clarity from the court. It should not have waited for the applicant to come to court complaining about its non-compliance with the previous court order. The court order was granted on 31 October 2022, and the draft precinct-plan was

⁸ *Supra* para 8

⁹ *Supra*

submitted to the applicant on 30 December 2022. As early as 19 January 2023 the applicant's attorneys have been addressing correspondence to the first respondent and its attorneys complaining about the draft precinct-plan and eventually the final precinct-plan. The current application was instituted in December 2023. This took a year and the first respondent did nothing about the fact that the parties were allegedly at loggerheads about the interpretation of the court order. This is not acceptable. It follows, therefore, that the defence of the first respondent about the interpretation of the court order cannot stand. It is therefore rejected.

Does the Court order direct the first respondent to provide the information requested?

[47] In a letter dated 19 January 2023, the applicant requested the following information from the first respondent as proof that it has complied with the previous court order:

" ...

7. As such, we kindly request that you provide us with the following answers/documentation to sensibly [sic] consider the contents of the draft plan:

7.1 Capex Plan for which R10 million has been allocated

- How has money been spent to date for the current financial year and how will monies still be spent in this financial year to utilise the full R10 million? Specifies need to be provided

i.e. the quotations obtained to attend to the work to be undertaken etc.

- *No dated action plan on each item please provide details.*
- *Tender documents with appointments of the service providers need to be made available.*
- *No specific responsible person identified please provide details.*
- *No plan on item 3.1.1 – Banana Ripening Centre – what is being done in terms of the fact that the service provider has withdrawn?*

7.2 Opex Plan for which R8 million has been allocated

- *We are unable to determine that you have answered to the full R8 million allocated – expenditure in respect of only R5,6 million can be identified. This is not in accordance with the provisions of the court order.*
- *How has the money been spent to date for the current financial year and how will monies still be spent in this financial year to utilise the full R8 million? Specifics need to be provided i.e. the quotations obtained to attend to the work to be undertaken.*
- *No dated action plan on each item – please provide details.*

8. *Our clients have furthermore requested that you provide us with a copy of the approved budget for the 2022/2023 financial year to verify the figures so included in the Draft Precinct-Plan.*
9. *We thus suggest that you provide us with the information and documentation so requested in paragraph 7 above, as well as a concise and revised plan dealing only with the R18 million, how, when, and on what will it be spent, which is the matter at hand currently.*
10. *Once our clients have been provided with this, we will revert with their comments and recommendations in respect of the plan to finalise same.*
11. *We would also like to take this opportunity to refer you to the contents of clause 4 of the Court Order which requires you to engage our clients to assess future budgets. It is our submission that the 2023/2024 budget should be in a discussion phase now, prior to it being approved before the end of this financial year. As such we request that you provide us with a copy of this provisional draft 2023/2024 budget as well as confirm when the due date is for its approval, in order to allow our clients their involvement in the process."*

[48] The first respondent contends that the previous court order did not direct it to provide the applicant with the information it has requested and which prompted it to institute this application. The order merely directed it to utilise the allocated budget of R18 million for both Capex (R10 million) and

Opex (8 million) to implement the precinct-plan during the financial year 2022-2023.

[49] The first respondent further contends that the applicant cannot complain that it has failed to comply with the court order merely because it seeks information and/or documents not expressly provided for in the court order.

[50] It asserts that it is one thing to claim that it did not utilise the R18 million for both Capex and Opex to implement the precinct-plan within the 2022/2023 financial year and something else to claim that it did not provide the extended details and projections on the expenditure of the market precinct and/or that the applicant was not informed on how the allocated R18 million would be utilised.

[51] In the replying affidavit the applicant contends that the first respondent's submission that its interpretation of the court order is self-serving is flawed in that it ignores the practical and business-like reason why it was granted. It avers that a report back on the plan is essential. This, it contends, is a sensible and business-like interpretation to be read into the previous court order. The applicant further asserts that the way to confirm and prove compliance with the court order lies in proof and confirmation of the detail of when and how it was implemented.

[52] I have already dealt with the interpretation argument above. However, I find it apposite to touch on the principles applicable in the interpretation of documents, statutes and court orders to dispose of this issue...

[53] In addressing the issue of interpretation both parties referred me to the case of *Natal Joint Municipal Pension Fund v Endumeni Municipality*¹⁰.

[54] The SCA in *Natal Joint Municipal Pension Fund*¹¹ describes the process of interpretation as follows:

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document ...”

[55] The Constitutional Court in *Amabhungane Centre for Investigative Journalism NPC v President of the Republic of South Africa*¹² also dealt with the issue of interpretation and had this to say:

¹⁰ 2012 (4) SA 593 (SCA)

¹¹ *Supra* at para 18

¹² [2022] ZACC 31 at para 36

"When interpreting statutes one must start with the words, affording them their ordinary meaning, bearing in mind that statutory provisions should always be interpreted purposively, be properly contextualised, and must be construed consistently with the Constitution. This is a unitary exercise. The context may be determined by considering other subsections, sections or the chapter in which the keyword, provision or expression to be interpreted is located. Context may also be determined from the statutory instrument. A sensible interpretation should be preferred to one that is absurd or leads to an unbusinesslike outcome."

[56] The court order in paragraph 1 directs the first respondent to submit a precinct-plan (which may include a risk assessment and recovery plan/report) in respect of the market premises. The submission of the risk assessment and recovery plan or report was only discretionary and not peremptory. The first respondent must prove to the Court that it has complied with the order. The only way to do so is to provide the information or documents requested.

[57] Sight should not be lost that the order was granted by consent. All what the applicant requested from the first respondent is proof that the Court order had been complied with. To hide behind the defence that the Court order did not direct it to provide the information requested to the applicant, does not assist the first respondent's case.

[58] Having considered the principles referred to above, I am of the view that it would be meaningless and unbusinesslike to refuse information and actual proof of the implementation of the Court order. The interpretation

proffered by the first respondent that it was not directed to provide the applicant with information it requested is not sensible and businesslike. It will, in my view, undermine the purpose of the previous court order.

Does the final precinct-plan address the issues referred to in the Court order?

[59] According to the first respondent the final precinct-plan does address the issues referred to in the Court order and the issues have been mentioned in the answering affidavit.

[60] In the replying affidavit the applicant asserts that it was not its contention that the final precinct-plan does not deal with the issues set out in the court order. Its concern is that the first respondent does not provide any proof that the work thereof has been done. Further that some of the implementation dates do not correlate with the implementation dates as provided for in the court order.

[61] It appears that the applicant concedes that the issues have been addressed in the final precinct plan. It raises other issues which will be dealt with later.

Is the information provided in the final precinct-plan sufficient to address the issues referred to in the Court order?

[62] The first respondent explains the steps it has taken to implement the final approved precinct-plan in respect of the Capex and Opex budget for the 2022/2023 financial year as follows:

- (a) The market was allocated a budget of R10 million for the Capex project, and it had spent R8 235 174,00 on the implementation of the Capex project which is 82% of the total budget allocated for the project.
- (b) The budget was allocated to the following sub-projects:
- (i) Replacement of evaporator coils in ripening rooms (R2 million);
 - (ii) Installation of new generator for market Hall B (R1,3 million).
 - (iii) Installation of new public lights (R2,4 million).
 - (iv) Redesign of entrance and exit gates (R2 million) and
 - (v) Installation of new roller shutter door for market Hall B (R2,3 million).

Replacement of evaporator coils in ripening rooms

[63] The first respondent contends that the service provider who was appointed for this project withdrew from the project in October 2022 on the grounds that the escalation of the costs to replace the evaporator had become unaffordable for him to proceed herewith. The tender process had to be embarked upon to appoint a new service provider. As a result, there was a likelihood that the project would not be commenced nor completed in the 2022/2023 financial year.

[64] After consultation with the relevant unit (the Enterprise Programme Management Unit), it was decided to allocate the budget to the acquisition of (5) five new forklifts at a budget of R2 million which budget was initially allocated for the replacement of evaporator coils in ripening rooms.

[65] The actual costs for the acquisition of the five new forklifts were R1 988 136,00. A service provider was appointed and successfully implemented the project. This project improved service delivery at operations such as the ripening facility, cold storage and waste services.

Installation of a generator for market Hall B

[66] In respect of this project, the first respondent alleges that a budget of R1,3 million was allocated for the completion of the project. The appointment letter was signed by the city manager towards the close of the financial year. It was therefore not practical to implement the project in the 2022/2023 financial year. The division's Capex budget on the MTREF for the 2023/2024 was reduced to R0 because the generator was not procured in the current financial year.

[67] Consequently, during power failures it is unavoidable that sales operations within market Hall B would be interrupted and that would expose the city to a loss of income as market agencies would sell their produce outside of the city's official system for cash.

[68] It claims that a recommendation has been made that a service provider be appointed for this project and that the funding be made available for the 2023/2024 mid-term adjustment budget.

Installation of new public lights

[69] With regard to this project, the first respondent avers that the budget was reduced from R2,4 million to R2 million and the total amount of R1 990 310,00 was spent, which is 83% of the budget allocation.

[70] It claims that the service provider was appointed and successfully implemented the project during the 2022/2023 financial year. The project improved visibility at night and during the early hours of the morning.

Construction of a passage and secure area at the cashier complex in Market Hall B

[71] The first respondent further avers that the budget allocation for this project was R400 000,00 and the total spent was R399 850,00. It claims that the project was successfully completed during the 2022/2023 financial year. The amount of R399 850,00 was spent on the following operational needs:

- (a) Construction of a passage at emergency exit door of the cashier complex in market hall B to address non-compliance with OHSACT (the Occupational Health and Safety Act).
- (b) Construction of a secure area for the cash in transit vehicle that collects market cash takings from the cashier complex in market hall B daily.

Re-design of entrance and exit gates

[72] The first respondent alleges that the initial budget allocation for this project was R2 million. It claims that the process to appoint a service provider

was delayed by a decision taken by the national treasury to amend the supply chain management policy. The amendment was only finalised late towards the end of the financial year. In the light thereof it was decided to allocate the budget to address the following operational needs that could be completed within the 2022/2023 financial year:

(a) Upgrade of the securing lunchroom.

(b) Upgrade of processing facility.

[73] It contends that these operational needs were also allocated a budget of about R2 million. Further that the total spent in the implementation of the project was R1 551 604,00 which is 70% of the budget allocation. It avers that the project in respect of these operational needs addressed the Occupational Health and Safety (OHS) issues at staff facilities, and the upgraded processing and storage facilities were no longer in a state where they could be leased ensuring that revenue could be generated for these facilities.

[74] It further alleges that a service provider was appointed and successfully implemented the project during the 2022/2023 financial year.

Installation of new roller shutter doors for Market Hall B

[75] The first respondent alleges that the initial allocated budget for this project was R2,3 million. The amount spent on the project was R299 987,00. It contends that the project addressed the longevity of fresh produces within market hall B as it improved the air flow within the hall. It further alleges that the service provider was appointed and successfully implemented the project.

Expenditure incurred on the Opex budget allocation

[76] In respect of this project, the following summary was provided:

Vote	Vote Description	Revised budget	Actuals	%
415056	Market Infrastructure	R4 688 506-00	R4 510 420-53	96
415851	Horticulture	R851 826-99	R844 514-38	99
415892	Computer Equipment	R245 589-04	R243 811-00	99
415894	Equipment	R3 million	R2 446 267-11	82
Total		R8 785 922-03	R8 045 083-02	92

[77] The first respondent contends that from the above information there can be no question that the Capex and Opex budget for the 2022/2023 financial year was fully utilised as ordered by the Court. It claims to have complied with the Court ordered in this regard.

Steps taken to implement paragraph 2 of the Court order

[78] The first respondent further contends that the Court order directed it to implement the approved precinct-plan in respect of the repairs and/or implementation of the items set out in paragraph 2 of the order within 60 days after the submission of a final plan i.e. 180 days.

Fire and smoke detection compliance

[79] The first respondent alleges that it commenced the process to appoint service providers to ensure the fire and smoke detection compliance during 2022/2023 financial year. The process was completed in August 2023. The appointed service provider carried out an assessment of the market during October 2023 and it was expected that the purchase order would be issued by no later than the end of November 2023 for purposes of installing smoke detectors in the market cold storage facilities; servicing the market's fire

hydrants; smoke detectors and the fire extinguishers; repairing fire hydrants and placing any missing fire extinguishers; securing the fire hydrants and issuing the certificate of compliance.

Electrical connectivity and facility compliance

[80] It avers that the market made a Capex budget submission during the 2022-2023 financial year to ensure electrical compliance for the following projects: upgrading of substations in the market and upgrading of the electrical reticulation system. It further avers that according to the precinct plan this project was planned to start in the 2023/2024 financial year. Due to financial constraints the city has not allocated a Capex budget to the market for the 2023/2024 financial year. As a result, this project must be postponed to the 2024/2024 financial year and later.

[81] The first respondent avers that the market made a Capex budget submission during the 2022/2023 financial year to ensure facility compliance for the following projects: upgrading of the market cold storage facilities; upgrading of the market facilities roof and upgrading of the fresh produce loading platforms. It contends that as per the precinct-plan the commencement of this project has been planned for the 2023/2024 financial year. However, due to financial constraints, the first respondent could not allocate a Capex budget to the market for the 2023/2024 financial year. This means that this project must be postponed to the 2024/2025 financial year and later.

Security and checkpoint management

[82] The first respondent alleges that the market submitted a request for additional funding in the 2022/2023 midterm budget review for additional funding to acquire additional security officers and this was approved. In May 2023, the number of security officers deployed at the market was increased to ensure that all checkpoints are manned. Since then, the market experienced a significant improvement in the number of incidents.

Lift and hoist facility compliance

[83] It is submitted that the City Group Property Management ensures lift and hoist compliance in the following manner: The original equipment manufacturer of all lifts within the city carries out a monthly safety inspection; where the monthly safety inspection has not been carried out, the lift is switched off; a service register is completed; and an independent lift inspector carries out an annual annexure B inspection.

Damage to all sanitation facilities

[84] The first respondent avers that sanitation facilities have been damaged due to vandalism. It claims that this was addressed by upgrading the facilities to restore them to an acceptable state. However, vandalism remains a major challenge for the market.

[85] The first respondent asserts that it has taken all possible steps to implement paragraph 2 of the order. It submitted that some of the projects listed in paragraph 2 of the order cannot be implemented immediately due to financial constraints. It argues that the project implementations are fully set out

in the precinct-plan and as soon as the funds become available, the project will be implemented. I will come back to this aspect later.

Deponent to the answering affidavit has no personal knowledge of the facts

[86] Before I deal with the above issues, it is apposite that I deal with this issue.

[87] In the replying affidavit the applicant raised some concerns regarding the deponent to the answering affidavit's lack of personal knowledge of the facts alleged therein. It is contended that the deponent to the answering affidavit, Mr Makgorometje Makgatha being the Groups Head: Economic Development and Spatial Planning is rarely, if ever, at the market precinct. The officials tasked with overseeing the operations at the market precinct such as Mr Tshifiwa Madima, the Market Manager, have not confirmed the hearsay answering affidavit of Mr Makgatha.

[88] Mr Makgatha states in the first respondent's answering affidavit that the facts stated are within his personal knowledge. He has been fully briefed in the matter and has access to all relevant information and documents in possession of the first respondent. Mr De Beer for the applicant argued that Mr Makgatha does not say who briefed him and the information he has provided has not been confirmed or supported by any evidence. Further that Mr Makgatha does not have personal knowledge of what is happening at the market.

[89] Mr Mpshe for the first respondent submitted that the market falls within the Department of Economic Development and Spatial Planning. Further that the deponent to the answering affidavit in the main application is the same

person as the one in the current application. This is the person to whom everybody reports issues pertaining to the market. He argued that the issues raised were never raised in the main application. They can, therefore, not be raised now. Mr Mpshe further submitted that the allegations in the answering affidavit are not seriously contested by the applicant save to say that it is hearsay evidence and has not been confirmed. Further submissions were that who ought to have confirmed if Mr Makgatha states that he is the manager, the overall person in charge who states what he had done. He cannot be expected to approach all service providers he had appointed for confirmatory affidavits. According to Mr Mpshe if the facts alleged are disputed by the applicant, it is a dispute of fact which should have been anticipated and referred to oral evidence.

[90] It is correct that Mr Makgatha also deposed to the answering affidavit in the main application and that the issues raised by the applicant were never raised in the main application. This does not take away the fact that the allegations made in the answering affidavit deposed to by Mr Makgatha have not been confirmed by the people he alleges reported them to him. It is even worse for the first respondent that Mr Makgatha does not even mention who briefed him. I do not agree with Mr Mpshe that the allegations are not seriously contested. The fact that these issues are raised is an indication that the allegations are being contested. I also disagree that the fact that these allegations are contested raise disputes of fact which cannot be resolved on these papers and that they should have been referred to oral evidence. Not every dispute of fact should be referred to oral evidence. In my view the allegations made are bald and not supported by any evidence. They therefore

do not raise genuine disputes of fact to justify a referral to oral evidence. I accept that the answering affidavit is deficient for the above reasons. However, the Court cannot reject it on a mere technicality without testing the veracity of the allegations made therein.

Is the information provided in the final precinct-plan sufficient to address the issues referred in the court order?

[91] To address this issue, I find it necessary to concentrate more on paragraphs 2 and 3 of the previous court order.

Fire and smoke detection compliance

[92] The allegations made in the answering affidavit are not confirmed by any supporting evidence to prove to the court that the service provider was appointed as claimed, that the assessment was indeed carried out as alleged and that the purchase orders were issued as expected. The first respondent must prove compliance with the court order. Without any supporting evidence to prove the allegations made, it cannot be concluded that the information provided in the precinct-plan is sufficient to address the issues referred to in the court order.

Electrical connectivity and facility compliance

[93] The first respondent contends that a project that was planned to commence in the 2023/2024 financial year must be postponed to the 2024/2025 financial year and later due to financial constraints.

[94] In *Railway Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others* the Constitutional Court (CC) had this to say:

“... A final consideration will be the relevant human and financial resource constraints that may hamper the organ of State in meeting its obligation. This last criterion will require careful consideration when raised. An organ of State will not be held to have reasonably performed a duty simply on the basis of a bald assertion of resource constraints. Details of the precise character of the resource constraints, whether human or financial, in the context of the overall resourcing of the organ of State will need to be provided. The standard of reasonableness so understood conforms to the constitutional principles of accountability, on the one hand, in that it requires decision-makers to disclose their reasons for their conduct and the principle of effectiveness on the other, for it does not unduly hamper the decision-maker’s authority to determine what are reasonable and appropriate measures in the overall context of other activities.”

[95] The first respondent has not presented any admissible evidence before this Court to prove the allegations made. Without any admissible evidence to prove the alleged financial constraints, it cannot be concluded that the information provided in the precinct-plan is sufficient to address the issues referred to in the court order.

Security and checkpoint management

[96] The applicant submitted that the first respondent did not provide any details of how the security and checkpoints will be managed. It argued that

appointing more security officers does not relate to the management thereof. There is merit in this submission and in my view the information provided is not sufficient to address the issue.

Lift and hoist facility compliance

[97] In my view the information provided does not address the issue.

Damage to all sanitation facilities

[98] The allegations made are not supported by any evidence.

Paragraph 3 of the court order – Allocation/use of the R18 million annual budget

[99] The applicant contends that the first respondent has not provided any proof of how the R18 million has been spent. Regarding the replacement of evaporator coils in ripening rooms, the applicant asserts that the money that was allocated for this project was utilised to buy new forklifts due to the issues with the first applicant's tender process. The forklifts acquired are currently non-operational as there are not enough qualified drivers to operate them. From the first respondent's explanation as to why the forklifts were bought instead of the evaporator coils in ripening room, no information has been provided to explain how the buying of the forklifts had assisted in the compliance of the court order. I am persuaded that the first respondent did not spend the money as set out in its final precinct-plan.

[100] The applicant further contends that the cold rooms and ripening rooms which have not been attended to, generate an income for the market and by

not repairing and fixing them, this exposes the producers to risk of produce loss which leads to claims and further losses against the market.

[101] The allegations made by the first respondent in respect of this project have not been supported by any evidence. There is no proof that the letter referred to was signed at the close of the financial year during which the project was supposed to be completed. In my view the information provided is not sufficient to address the issues referred to in the court order.

[102] Furthermore, the first respondent admits that it is critical to have a generator at the market to prevent power failures which would interrupt the sales operations at the market and expose it to a loss of income. However, while aware of this fact the first respondent did not prioritise to implement this project. The explanation provided for not implementing this project is not acceptable.

[103] In the replying affidavit the applicant contends that the information provided by the first respondent pertaining to how the R10 million Capex budget was spent, is not correct. It asserts that the amount allegedly spent on the installation of new public lights, did not come out of the budget of the first respondent. It claims that all the lights in both halls, the agent's offices, the watermelon shed, and management office were donated by the Department of Minerals and Energy. Confirmation thereof has been annexed to the replying affidavit and marked annexure "RA2".

[104] The criticism of the information provided by the first respondent in relation to the implementation of the court order comes because the first respondent has failed to deal with the specifics and provide supporting

evidence to prove the bald and sketchy allegations made in its answering affidavit. From the information provided by the applicant, annexure "RA2", the amount spent on the installation of new public lights, did not come out of the budget of the first respondent. There is no explanation as to why the amount allegedly spent has been included as forming part of the allocated R10 million for the Capex budget when it did not.

[105] Regarding the installation of new roller shutter doors for market hall B, the applicant claims that this project was already done in 2021/2022 financial year. It questions how it is possible that the amount of R2 299 987,00 allegedly spent on this project forms part of the additional R10 million Capex expenditure. Had the first respondent provided proof of how it has implemented the project, all these concerns would not have been raised. It is not clear to the court as to when was the project implemented and proof of the implementation. There is nothing to support the bald allegations made in the answering affidavit. I am therefore not persuaded that this issue has been sufficiently addressed.

[106] In reply to the allegations made on the expenditure incurred on the Opex budget allocation, the applicant contends that it is only aware of the trees that were cut. According to it there is a yearly maintenance and cleaning budget which makes provision for the cutting and felling of trees. The court still does not know what the amount allegedly spent under horticulture was for. This aspect has not been sufficient addressed.

Has the previous court order been complied with?

[107] I do not find it necessary to deal with all the concerns raised to answer this question. Once again, my focus will be on the aspects dealt with under paragraph 2 and 3 of the order discussed above.

Paragraph 2 – Implementation of the final plan

[108] It is common cause between the parties that paragraph 2 of the previous court order mandates the first respondent to execute and implement the specific sections of the final plan within 60 days following the 180 days stipulated in paragraph 1. This requires the first respondent to implement these sections within a period of 240 days from the granting of the order and the due date for the implementation thereof is 28 June 2023. The specific sections are therefore discussed.

[109] In respect of the fire and smoke detection compliance, the first respondent's allegations that a service provider was appointed in August 2023, an assessment was carried out in October 2023 and that the purchase orders would be issued by not later than the end of November 2023, are a clear admission that it failed to implement this project before 28 June 2023. There is also no proof on the papers that the order has been complied with to date.

[110] Regarding the electrical connectivity and facility compliance, the first respondent states that due to financial constraints, this project must be postponed to the 2024/2025 financial year and later. It undertakes to comply with the order at a future time, on a date it deems fit that is yet to be disclosed. I agree with applicant's submission that by so saying, the first respondent admits that it has not implemented this project before 28 June 2023.

[111] In reply to the first respondent's allegations as regards lift and hoist facility compliance, the applicant contends that the first respondent has presented no facts to establish lift and hoist facility compliance. It has merely stated that City Group Property Management Department ensures lift and hoist facility compliance. The applicant further asserts that the fact that a third party now bears responsibility for lift and hoist compliance does not absolve the first respondent of its duties. The first respondent must demonstrate how it has complied with the order in respect of this project.

[112] In my view, this argument is sound. The first respondent has not provided any admissible evidence as to how it has complied with the court order. There is therefore no evidence that it has complied with the court order in respect of this project.

[113] As regards the damage to all sanitation facilities, I cannot find any admissible evidence to prove that the first respondent has complied with the order.

Paragraph 3 of the order – implementation of the final plan in respect of the Capex budget for the 2022/2023 financial year

[114] I have already found that the first respondent did not spend the money as stipulated in the precinct-plan when it bought the forklifts with the money that was earmarked to be spent on the replacement of evaporator coils in the ripening rooms. I also found that no information has been provided to explain how the buying of the forklifts had assisted in the compliance of the court order. The first respondent has therefore not complied with the court order.

[115] Regarding the installation of a generator for marked hall B, I have already found that the explanation proffered by the first respondent for not implementing this project is not acceptable. I therefore on that basis find that it has failed to comply with the court order in respect of not seeing to it that this project is implemented.

[116] Concerning the installation of the new public lights, I have already found that there is no explanation as to why the amount allegedly spent has been included as forming part of the allocated R10 million for the Capex budget when it did not. This is clear evidence that the first respondent did not utilise the budget as ordered and therefore did not comply with the court order.

[117] In respect of the installation of the new roller shutter doors for market hall B, I already found that this aspect has not been sufficiently addressed by the first respondent. It, therefore, follows that it cannot be said that the first respondent has complied with the court order.

[118] During argument issues were raised that the complaints pertaining to the non-compliance of the court order are more focused on the draft precinct plan and not on the final precinct plan and the fact that the applicant contended that it was not certain that the final precinct plan was approved. It was contended that the draft precinct plan has been overtaken by events in that a final precinct plan has now been submitted. I understood the argument of the applicant to be that the draft precinct plan was incorporated in the final precinct plan as it was and the complaints thereof related to both plans as they were submitted to the applicant. On this basis, I find no merit in the argument advanced by the first respondent. Regarding the issue of the approval of the

final precinct plan, the first respondent explained the process of approving it and submitted that it is the applicant's problem if it did not participate in the process. The difficulty with this submission is that there is no proof on the papers that the final precinct plan has been approved.

[119] Having said that I conclude that the applicant has proved beyond reasonable doubt the non-compliance of the court order by the first respondent.

Was the non-compliance wilful and *mala fide*?

[120] Once the applicant has proved the order, service or notice, and non-compliance, the first respondent bears an evidential burden in relation to wilfulness and *mala fides*: Should the first respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful and *mala fide*, contempt will have been established beyond reasonable doubt.

[121] In the heads of argument of the first respondent it was submitted that the first respondent has complied quite substantially with the court order and that in the event the court finds that it has not complied, such non-compliance was necessitated by the factual circumstances that existed at the time such as the financial constraints on the part of the first respondent and/or the fact that the appointed service providers could not provide the services pursuant to being appointed and given the time frame, completion of the project had to be deferred to the next financial year.

[122] Mr Mpshe for the first respondent further submitted in court that the first respondent only had about two months to implement the order, that the order envisaged that not everything contained in the precinct-plan could be done with

the R18 million. He argued that it was not possible to implement the order within the two months, and this was the reason why the court said going forward the parties must engage in the Integrated Development process and then decide on the future budget for the market.

[123] In *Meadow*¹³ the SCA held that where a party has consented to the court making an order in such terms, that obliged it to make serious good faith endeavours to comply with it. If it had trouble in doing so, then it should have returned to court seeking relaxation of its terms.

[124] It is not correct that the first respondent has complied with the order substantially for the reasons advanced above. However, there are things that were done to comply with the order. The fact of the matter is that the problems or difficulties mentioned were never brought to the attention of the court and/or the applicant prior to the institution of this application. When the first respondent encountered or experienced the difficulties, it did not return to court to seek relaxation of the terms of the court order. The first respondent decided to postpone the implementation of certain critical projects such as the replacement of evaporator coils in the ripening rooms and the installation of the generator for market hall B.

[125] Furthermore, there are concerns relating to the buying of forklifts, how the money allocated for the Capex budget were utilised more specifically in relation to the installation of public lights and the new roller shutter doors. In the face of all these concerns, the worst for the first respondent was to submit the final precinct plan without proof of how the plan was implemented. I cannot

¹³ *Supra* at para 8

find any evidence that establishes a reasonable doubt that the non-compliance with the court order was wilful and *mala fide*. I am persuaded that the first respondent is in contempt of the court order dated 31 October 2022.

Joinder of the eighth and ninth respondents

[126] The first respondent contends that the applicant cannot bring the joinder application now in the current application when it failed to do so in the main application.

[127] This issue was dealt with by the SCA in the *City of Johannesburg Metropolitan Municipality and Others v Hlophe and Others*¹⁴ as follows:

"The argument on behalf of the functionaries is that the mandamus could only have been granted had the functionaries been joined in the eviction application from the beginning. I am unable to agree. A party that initiates legal proceedings against a municipality cannot be expected to act on the assumption that if the litigation is successful the municipality will not comply with the order against it. Changing Tides was under no obligation to cite the functionaries in the eviction application. Only when the City failed to comply with the order of Claassen J, did the need arise to look to the functionaries and that was the purpose of the enforcement application." (own underlining)

[128] In *Meador*¹⁵ the SCA had this to say:

¹⁴ [2015] 2 All SA 251 (SCA) at para 22

¹⁵ *Supra* at para 23

“There are numerous legislative provisions regarding the person or persons responsible for the administration of local authorities. Section 82 of the Local Government: Municipal Structures Act 117 of 1998 determines that the municipality must appoint a municipal manager as the person responsible for the administration of the municipality and such person will also be the accounting officer of the municipality. In terms of s 56(3) of the same Act, the executive mayor, in performing his duties must monitor the management of the municipality’s administration in accordance with the direction of the municipal council (s 56(3)(d)) and oversee the provision of services to the communities in the municipality in a sustainable manner (s 56(3)(e)). Section 54A of the Local Government: Municipal Systems Act 32 of 2000 also provides that the municipal council must appoint a municipal manager as the head of the administration of the municipal council. Furthermore, s 55 sets out the responsibilities of the municipal manager as the head of administration subject to the policy directions of the municipal council. Section 55(1)(b) determines that the municipal manager is responsible and accountable for the management of the municipality’s administration. Section 60 of the Local Government: Municipal Finance Act 56 of 2003 provides that the municipal manager is the accounting officer of the municipality.”

[129] The test for joinder requires that a litigant has a direct and substantial interest in the subject-matter of the litigation, that is, a legal interest in the subject-matter of the litigation which may be affected by the decision of the

Court.¹⁶ The view of what constitutes a direct and substantial interest has been explained and endorsed in a number of decisions by our courts.¹⁷

[130] It is clear from the abovementioned provisions that the municipal manager is, so far as the officials of the municipality are concerned, the responsible person tasked with overseeing the implementation of court orders against the municipality. He would know, as the accounting officer, what is feasible and what is not. He is the official who is responsible for the overall administration of the municipality and the logical person to be held responsible. Even if, as must necessarily be the case, the municipal manager delegates tasks flowing from a court order to others, it remains his or her responsibility to secure compliance therewith.¹⁸

[131] An executive mayor in a municipality has the key role of providing political leadership and strategic direction. He is responsible for overseeing the municipality's administration, monitoring service delivery, and promoting social and economic development. This includes tasks like evaluating progress against performance indicators, managing the municipal budget and ensuring public participation in local government matters.

[132] By virtue of their constitutional and statutory responsibilities, the joinder of the municipal manager and the executive mayor in respect of the implementation of court orders, is appropriate. The argument advanced on

¹⁶ *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A)

¹⁷ See, for example, *National Union of Metal Workers of South Africa v Intervolve (Pty) Ltd and others* [2014] ZACC 35; 2015 (2) BCLR 182 (CC); (2015) 36 ILJ 363 CC at paras 186-7; *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* 2012 (4) SA 618 CC; *Judicial Services Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA) at para 12.

¹⁸ *Meadow Glen Homeowners Association and Others v City of Tshwane Metropolitan Municipality and Another* *supra* at para 24

behalf of the first respondent that the municipal manager and the executive mayor cannot be joined in this application when they have not been joined in the main application (the initial application) has no merit as it does not accord with the decision arrived at in the *City of Johannesburg Metropolitan Municipality and Others v Hlophe and Others*¹⁹.

[133] On 4 July 2025 I requested the parties to submit short heads of argument regarding the enforceability of the order of Meersingh AJ. I only received the short heads from the applicant. Considering the route that I had taken in this judgment, I found it unnecessary to deal with that point.

Costs

[134] Mr De Beer for the applicant sought costs on a scale as between attorney and client. He submitted that the applicant should not be put out of pocket. He further argued that the institution of the contempt application would not have been necessary if the respondents complied with the previous court order or even attempted to comply in a *bona fide* manner.

[135] In *Nel v Waterberg Landbouers Ko-Operatiewe Vereniging*²⁰ the Court explained the basis for costs on attorney and client scale as follows:

“The true explanation of awards of attorney and client costs not expressly authorised by statute seems to be the reason of special circumstances arising either from the circumstances which gave 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

¹⁹ *Supra*

²⁰ 1946 AD 597 at 608

more effectuality than it can do by means of a judgment for party and party costs that a successful party will not be out of pocket in respect of the expense caused to him by litigation."

[136] The applicant waited for almost a year before it could institute this application trying to engage the first respondent and requesting it to comply with the court order. Unfortunately, its numerous correspondence was not responded to and eventually it instituted this application. I find merit in the argument on behalf of the applicant, and I am convinced that this application justifies an order for costs against the respondent on attorney and client scale.

[137] In the result the following order is made:

1. That the Municipal Manager and the Executive Mayor of the first respondent be joined to this contempt of court proceedings as the eighth and ninth respondents respectively.
2. That the first respondent be found in contempt of court by failing to comply with the court order granted by the above Honourable Court under the above case number on 31 October 2022 by the Honourable Justice Meersingh.
3. That prayer 3 of the notice of motion be postponed *sine die*.
4. That the first respondent and/or its Municipal Manager and/or its Executive Mayor within thirty (30) days from the date of this order comply with the court order of the Honourable Justice Meersingh.

5. That the first respondent and/or Municipal Manager and/or Executive Mayor be compelled to, within thirty (30) days from date of service of this order, provide the applicant with the draft and/or final precinct-plan, a risk assessment plan and recovery plan in respect of the market premises and all documents and information detailed in paragraphs 1, 1.1, 1.2, 1.3, 1.4 and 1.5 of the court order of the Honourable Justice Meersingh.
6. That the first respondent and/or its Municipal Manager and/or Executive Mayor be compelled to, within ten (30) days from date of service of this order, provide the applicant with full details by way of affidavit of the manner in which paragraph 2 was implemented in terms of the aforesaid court order of the Honourable Justice Meersingh.
7. That the first respondent and/or its Municipal Manager and/or Executive Mayor be compelled to, within thirty (30) court days of the date of service of this order, provide the applicant with full details by way of affidavit of the manner in which the first respondent allocated and implemented its R18 million of Capex and Opex annual budget for the 2022 financial year in terms of paragraph 3 of the aforesaid court order of the Honourable Justice Meersingh.
8. That the Municipal Manager and the Executive Mayor of the first respondent be imprisoned for a period of one month. The imprisonment and/or committal thereof shall be suspended for a period of one (1) year on condition that the first respondent and/or

its Municipal Manager and/or its Executive Mayor comply with the order of Meersingh AJ within a period of thirty (30) court days from the date of this order.

9. That the first respondent pays the costs of this application on a scale as between attorney and client.


M J TEFFO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for the applicant	Adv J de Beer SC
Instructed by	Lötz Baloyi Horn
Counsel for the first, eighth and ninth respondents	Adv H A Mpshe
Instructed by	Ncube Inc Attorneys
Date of judgment	11 August 2025