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**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
LIMPOPO DIVISION, POLOKWANE**

**CASE NUMBER: 9338/2024**

**(1) REPORTABLE: YES/NO**

**(2) OF INTEREST TO THE JUDGES: YES/NO**

**(3) REVISED.**

**DATE: 4 September 2025**

**SIGNATURE:**

In the matter between:

**MASHEBANE DANIEL MALESA N.O.**

**1<sup>ST</sup> APPLICANT**

**JOSEPH KAMELA MODIBA N.O.**

**2<sup>ND</sup> APPLICANT**

**MOTHOKO TERRENCE MOSIBIHLA N.O.**

**3<sup>RD</sup> APPLICANT**

**THETELE JOSEPH MALATJI N.O.**

**4<sup>TH</sup> APPLICANT**

**MANKUROANE SAMUEL MODIBA N.O.**

**5<sup>TH</sup> APPLICANT**

**MOTLATSO IVY MAGOELE N.O. 6<sup>TH</sup> APPLICANT**

**MAATISHI SIMON MAKGOBA N.O. 7<sup>TH</sup> APPLICANT**

**MOGOWE WINDSOR MADIA N.O. 8<sup>TH</sup> APPLICANT**

**MOKGADI ONICA MAKGOBOLA N.O. 9<sup>TH</sup> APPLICANT**

**MMAMOKGOTLA MONICA MATLEBJANE N.O. 10<sup>TH</sup> APPLICANT**

**REFILWE IRENE LETSOALO N.O. 11<sup>TH</sup> APPLICANT**

**MOTLOKWA SUZAN MOJAPELO N.O. 12<sup>TH</sup> APPLICANT**

**MATOME DAVID MODIBA N.O. 13<sup>TH</sup> APPLICANT**

**MOHALE ELIAS NYAKALA N.O. 14<sup>TH</sup> APPLICANT**

**MATLOU JACQUELINE MAKGOBA N.O. 15<sup>TH</sup> APPLICANT**

**(In their capacities as duly authorised Trustees of  
the MAMPHOKU MAKGOBA COMMUNITY TRUST)**

**MAKGOBA ASSET MANAGEMENT COMPANY 16<sup>TH</sup> APPLICANT  
(PTY) LTD**

**-and-**

**MOKOPA GARIBALD MAKGOBA 1<sup>ST</sup> RESPONDENT**

**MOSHIBUDI MAKGOBA 2<sup>ND</sup> RESPONDENT**

**ALBERT JILENI 3<sup>RD</sup> RESPONDENT**

**MAGALANE MAKGOBA 4<sup>TH</sup> RESPONDENT**

**MALESELA MAKGOBA**

**5<sup>TH</sup> RESPONDENT**

**MAKGOKA MAKGOBA**

**6<sup>TH</sup> RESPONDENT**

**PHILIP MAKGOBA**

**7<sup>TH</sup> RESPONDENT**

**WILLIAM MATHABATHA**

**8<sup>TH</sup> RESPONDENT**

**SEGODI MALAHLELA**

**9<sup>TH</sup> RESPONDENT**

**MASILU MADIA**

**10<sup>TH</sup> RESPONDENT**

**Delivered : 4 September 2025**

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **4 September 2025 at 10:00 am.**

**Date heard : 28 May 2025**

**Coram : Bresler AJ**

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## **JUDGMENT**

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**BRESLER AJ:**

**Introduction:**

[1] The Applicants apply for an order that the Respondents be found in contempt of the order granted by the Honourable Tshidada J on the 11<sup>th</sup> of May 2024 and under case number 4697/2024. The Applicants also pray for a suspended sentence of 18 months.

[2] The matter was previously enrolled on 17 September 2024 on the urgent roll. It was however struck from the roll by the Honourable Madam Justice Naude-Odendaal due to lack of urgency.

[3] The Respondents oppose the application for contempt *inter alia* on the basis that the application is premature, that there was no proper service of the order and that there was no breach of the said order. The grounds of opposition, insofar as they may be relevant to the determination of the matter, shall be addressed *ad seriatim* herein under.

**Issues that require determination:**

[4] This Court is called upon to determine if the Respondents should be found to be in contempt of the order. If so, the appropriate sanction must be determined accordingly.

**Factual Synopsis:**

[5] The Mamphoko Makgoba Community Trust (hereinafter referred to as 'MMCT') is the registered owner of several immovable properties within the Limpopo Province. These properties are, in return, leased to the Makgoba Asset Management Company (Pty) Ltd (the 16<sup>th</sup> Respondent).

[6] Over the course of time, the properties of the MMCT have formed the subject of unlawful conduct by a certain Frans Kubjana (hereinafter 'Kubjana') and his cohorts. This conduct was met with various forms of legal action. More recently, Kubjana has also solicited the involvement of the Makgoba Traditional Authority, its Senior Traditional Leader and his daughter (the First and Second Respondents).

[7] Several incidents transpired during the period 16 April 2024 to 11 May 2024 resulting in an order being granted in favour of the Applicants by the Honourable Tshidada J on the 11<sup>th</sup> of May 2024 *inter alia* in the following terms:

*‘2. An interim order is granted pending the finalization of the application in terms whereof the first to fourteenth Respondents are interdicted and restrained from further arranging, convening, facilitating, hosting or attending any meeting at the REMAINING EXTENT OF THE FARM MIDDELKOP 552 LT, LIMPOPO at any time on Sunday, 12 May 2024, or from instructing or permitting any person to do so on their behalf.*

*3. An interim order is granted pending the finalization of this application in terms whereof the first to fourteenth Respondents are interdicted and ordered to:*

*3.1 Not enter or access onto the following farms (all located in the Limpopo Province)*

*3.1.1 FARM GRENSHOEK 544 LT, LIMPOPO held under deed of transfer T[...];*

*3.1.2 PORTION 1 OF THE FARM ROOIKOPJES 545 LT, LIMPOPO held under deed of transfer T[...];*

*3.1.3 REMAINING EXTENT OF THE FARM MIDDELKOP 552 LT, LIMPOPO held under deed of transfer T[...] (save for the area on which the residences of the First to Eleventh Respondents are located)*

*3.1.4 ANY OTHER PROPERTY under the control and management of the Applicants or to be placed under the control and management of the Applicants;*

*(the properties referred to above are jointly referred to as “the Properties”)*

*3.2 not the arrange, convene, facilitate, host or attend any meeting at the Properties without the previously obtained written consent of the Applicants.*

*...*

*6. The orders set out in paragraphs 2 to 5 supra shall have immediate operation and effect pending the finalization of the application.’*

[8] The order was duly brought to the attention of the Respondents. Notwithstanding knowledge of the existence of the said order, the Makgoba Traditional Authority held a meeting on Sunday, 12 May 2024, at Middelkop and the First Respondent acted as chairperson of the meeting.

[9] Hereafter several incidents followed where the Respondents, either individually or in groups, contravened the said order primarily on the basis that they are entitled to do so by virtue of being representatives of the Makgoba Traditional Authority.

### **Legal Framework:**

[10] In ***Fakie NO v CCII Systems (Pty) Ltd***<sup>1</sup> Cameron JA stated:

*'It is a crime unlawfully and intentionally to disobey a Court order. This type of contempt of Court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the Court. The offence had, in general terms, received a constitutional 'stamp of approval', since the rule of law — a founding value of the Constitution — 'requires that the dignity and authority of the Courts, as well as their capacity to carry out their functions, should always be maintained.'*

[11] It is trite law that an Applicant for committal must show<sup>2</sup> —:

- 11.1 The existence of the court order;
- 11.2 The Respondent has knowledge of the order; and
- 11.3 The Respondent either disobeyed the order or neglected to comply with it.

[12] If an applicant in contempt of court proceedings has proved that the respondent has disobeyed the order of court, then both wilfulness and mala fides will be inferred.<sup>3</sup> The *onus* is on the Respondent to rebut the inference of mala fides and wilfulness on a balance of probabilities.

[13] The Respondents submitted that the application is premature as merely an interim order was granted. This order has not been confirmed to date hereof. This

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<sup>1</sup> 2006 4 SA 326 (SCA)

<sup>2</sup> *Facie NO v CCII Systems supra*

<sup>3</sup> See *Haddow v Haddow* 1974 (2) SA 181 (R)

Court does not agree. As correctly stated by the Applicants: the order stands, has not been set aside and is valid and binding. Even if the order might be of an *interim* nature, the purpose of the order would be defied if the Respondents are entitled to breach the order pending finalization of the application.

[14] Likewise, the Court also does not agree that the statements made by the witnesses are improperly before court. The Respondents were able to rebut these alleged statements yet elected to merely attack them on technical grounds.

[15] As to the service of the order, this Court is of the view that the purpose of service is to bring the order to the attention of the contemnor as per the judgment of the Constitutional Court in the matter of ***Pheko v Ekurhuleni Metropolitan Municipality***<sup>4</sup>. The facts show that the Respondents were, at all material times, aware of the said order. It is also clear that it is not knowledge of the order that is in dispute, but rather the way it was brought to the Respondents' knowledge.

[16] It must also be considered that the main application is opposed and any objection as to the service of the interim order, is therefore largely moot.

[17] As to the current proceedings being discriminatory (insofar as all the Respondents cited in the main proceedings are not before court in the current proceedings) it is this Court's view that a person cannot be held in contempt if that person did not violate the order. The Applicants explicitly state that the Respondents in the current proceedings are in breach of the said order. There is no need to join the remaining respondents in the main case as their rights will not be infringed with the granting of relief in these proceedings.

[18] The Respondents also raise the issue of an alleged factual dispute. In this Court's view, the *crux* of the dispute raised by the Respondents turns on technicalities such as the application being premature or improper service, whilst they are aware of the proceedings. This does not constitute *bona fide* factual disputes that will result in the refusal of the application. As such, this Court is

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<sup>4</sup> 2015 JDR 0841 (CC)

satisfied that the alleged disputes raised do not bar the Court from hearing the matter on application.

[19] As to the requirements for succeeding with a contempt application of this nature, this Court is accordingly satisfied that it has been shown that the Respondents are aware of the order and that they are in breach thereof. Wilfulness is assumed and the Respondents were required to rebut this assumption. They have failed to do so and elected to raise unsubstantiated technical objections to the merits.

[20] The Constitutional court in **Matjhabeng Municipality v Eskom**<sup>5</sup> clarified the position pertaining to the standard of proof as follows:

*‘The standard of proof must be applied in accordance with the consequences of the remedies sought. If the relief applied for is a declaratory order, mandamus, structural interdict or similar civil remedy where the contemnor’s right to freedom and security is not deprived, then the civil standard of proof – on a balance of probabilities – applies. Where the civil contempt remedies of committal to prison or the imposition of a fine are sought, which impact on the contemnor’s freedom and security of person, then the criminal standard – beyond reasonable doubt – applies.’*

[21] The Court consequently finds beyond reasonable doubt that the Respondents are in contempt of the order granted by the Honourable Tshidada J on the 11<sup>th</sup> of May 2024.

[22] As to the appropriate sanction to be imposed in this matter, this Court is mindful of the fact that, in certain circumstances direct imprisonment is not the appropriate remedy. Especially in an instance where the order, forming the subject of the contempt, is still subject to confirmation on its return date in due course.

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<sup>5</sup> 2018 (1) SA 1 (CC)

[23] Under the circumstances, an order aligning in principle with the concept order proposed by the Applicants' counsel will serve the dual purpose as deterrent and vindication of the Court's authority.

**Costs:**

[24] There is no reason why the costs of the proceedings should not follow the outcome. Having regard to the *inter alia* conduct of the Respondents in deliberately defying a Court order, the complexity of the matter and the importance thereof to the parties, costs to counsel on Scale C is warranted.

**Order:**

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

- 25.1 The Respondents are declared to be in contempt of the court order granted by the Honourable Tshidada J on 11 May 2024 and under case number 4697/2024;
- 25.2 The Respondents are committed to direct imprisonment for a period of 18 (eighteen) months for such contempt, wholly suspended pending the outcome of the main application under case number: 4697/2024, on condition that the Respondents do not breach the aforesaid court order during the period of suspension;
- 25.3 The Respondents are ordered to pay the costs of this application, jointly and severally, the one paying the other to be absolved, including costs to counsel on Scale C.

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M BRESLER AJ  
ACTING JUDGE OF THE HIGH COURT,

**LIMPOPO DIVISION, POLOKWANE**

**APPEARANCES:**

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