

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 11237/2024

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED</u>
.....	
DATE 16 September 2025	
SIGNATURE 	

In the matter between:

BENJANIN MAENETJA

APPLICANT

AND

**THE BALEPYE COMMUNAL PROPERTY
ASSOCIATION**

1st RESPONDENT

PETER RAGANYA

2nd RESPONDENT

In re

THE BALEPYE COMMUNAL PROPERTY
ASSOCIATION

1ST APPLICANT

PETER RAGANYA

2ND APPLICANT

and

BENJANIN MAENETJA

RESPONDENT

Delivered: 16 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 16 September 2025 at 10:00 am.

Date heard : 09 September 2025

Coram : Chidi AJ

**REASONS FOR THE ORDER
OF THE 12TH OF SEPTEMBER 2025**

Chidi AJ:

Introduction:

- [1] These are reasons for the order which was transmitted to the parties on the 12th of September 2025. In this matter, the applicant approached the Court on an urgent basis, for a hearing on the 9th of September 2025. I entertained the matter as such. It was a reconsideration application in terms of Rule 6(12)(c). In paragraph 11 of his 'founding' affidavit, the jurisdictional requirement of absence is established by the applicant. In paragraph 3.9 of their 'answering' affidavit, the respondents confirm, in the negative, that the impugned proceedings went on without the applicant's version. In paragraphs 3.9 and 3.10, the respondents concede the reason for the applicant's absence when annexure X 2025 order was granted. Absence is established.
- [2] On urgency, I proceeded to hear the matter. Generally, reconsideration applications turn to be heard on an urgent basis, should the requirements of urgency be met by the applicant. In his affidavit, the applicant did set out material grounding urgency. The respondents aver that there is no urgency, on two grounds. I deal with those, which are the first and second. The interest of justice is a question I, *mero motu*, put to the respondents-

First- timelines for filing

- 2.1. the respondents' complaint is that the timelines for their filing was not commensurate with urgency. Effectively, the respondents had three days to file a notice of intention to oppose and the relevant affidavit;

- 2.2. my view is that the respondents were already well versed with the facts in the matter. So were their legal representatives. The reconsideration application was not a matter in which fresh facts were to be dealt with. The facts were known between the parties, given previous proceedings and the founding papers in the impugned proceedings;
- 2.3. a study of the respondent's affidavit reveals that the respondents do set out a number of things, in the main-
- a. urgency;
 - b. background to the reconsideration application, in paragraph 4 of the said affidavit;
 - c. averments as per their founding papers in the impugned proceedings;
 - d. to some degree, restatement of what appears in their founding affidavit;
 - e. the setting out of the basis for the argument to be advanced, and
 - f. the new issues, namely: service of the order and why the bringing of the impugned proceedings were not in contempt of the order the applicant was held to have been in contempt of (it will become clear below what the issue is in this regard).
- 2.4. Nothing in the respondents' answering affidavit needed elaborate time for their version to be advanced. At any rate, the respondents were able to and did indeed file their affidavit within the applicant's regulated timelines. The respondents' main version, in my view, is in the founding affidavit in the impugned proceedings.

- 2.5. there was no need for the applicant to file an affidavit of the length it did. In paragraph 32, below, under a different context, the reasons for this conclusion appear.

Second- substantial relief

- 2.6. a possibility of imprisonment- in the impugned proceedings, the applicant was held to have been contemptuous of the order in paragraph 3.1, below. Direct imprisonment was suspended for two months. The suspension was to be and was still alive, as of the date of the order and these reasons, until around the 18th of October 2025. By implication, the initiation of the reconsideration application amounted to a decision relevant to the 1st respondent;
- 2.7. if I did not hear the matter on an urgent basis, the applicant would possibly have been imprisoned, for making a decision to bring the reconsideration application, when it appeared, in the circumstances, to be that the 2nd respondent seemed to have thought that he was either permitted to make a decision on behalf of the 1st respondent or that he could bring legal proceedings without making a decision to initiate such proceedings. By simply initiating the impugned proceedings, the respondents seem to have hoped that when the applicants invoke the Rules of Court for reconsideration, if they could, as they did, the respondents' defence would be that the applicants violate the 05th of December 2024 order. Even if that may not have been what the respondents intended, the effect is the same;

- 2.8. no relief in due course was available to the applicant, let alone a substantial one;

Substantial relief- test for urgency and immediate assistance

- 2.9. if the above is not enough, the applicant passed the test for urgency. For this, I rely on *Tsengwa v Exxaro Resources Limited* (2024/148733) [2025] ZAGPPHC 82, paragraph [18], in which the Court held-

'... the test for urgency begins and ends with whether the applicant can obtain substantial redress in due course. It means that a matter will be urgent if the applicant can demonstrate, with facts, that it requires immediate assistance from the court, and that if her application is not heard earlier than it would be in due course, any order that it might later be granted will by then be no longer capable of providing her with the legal protection she requires.' (My emphasis).

- 2.10. The applicant requires immediate judicial assistance. As for the underlined in the preceding paragraph, it does not apply in this matter, since there would not have been any relief in respect of imprisonment. If I did not hear the matter, the applicant would have stood no chance of demonstrating, before any forum, why he should not be imprisoned for bringing the reconsideration application.

Thirdly, Interest of justice

- 2.11. the interest of justice- on their own version, the respondents pleaded that the order in paragraph 3.1, below, prohibited the applicant from deciding on behalf of the 1st respondent. The respondents so submitted, and this was in

line with their papers. The submission was that by filing a certain process in some other proceedings elsewhere, the applicant had decided for and on behalf of the 1st respondent. There appears to have been another leg to the prohibition. The respondents were silent about this. They disclosed the prohibition but were silent about its meaning and effect on them. The prohibition seemed not limited to the applicant. On a reading of the papers, and when urgency was a subject of argument, the prohibition seemed to have been against the respondents as well. I set out the relevant facts and give my reasons for this, below;

2.12. the above considered, the interest of justice dictated that I proceed on an urgent basis, as I did.

[3] Enough about urgency, I turn to the order sought to be reconsidered and set aside. On the face of it, the application is for reconsideration of two orders, namely-

3.1. the impugned order, of August 2025, attached to the papers as annexure X. The date that appears on the applicant's reconsideration notice is not the date which appears on the order. In paragraph 4.4 of its answering affidavit to these reconsideration proceedings, the 1st respondent records yet another date. I will, for ease of reference, refer to the order by my brother Muller J, as annexure X August 2025 order (it is attached to the applicant's affidavit); and

3.2. one dated the 12th of August 2025. This, according to prayer 3 of the notice of reconsideration. This date is the one on which the notice of motion in the

impugned proceedings was signed.

- [4] A reading of the 'founding' affidavit reveals that the challenged order is annexure X August 2025 order. Since the affidavit contains the applicant's evidence, nothing turns on prayer 3. Prayer 3 concerns an alleged order of the 12th of August 2025. At any rate, the alleged order is not attached to the papers. There appears not to be such an order.
- [5] Only at the commencement of the hearing did it occur to me that what I perused, which was the material on *caselines*, was not the case I had to entertain. The applicant's papers were not filed. The founding papers were handed up in Court. The 1st and 2nd issues in this matter, specified by the applicant, were set out in the papers. So were the remaining issues. In argument, the applicant referred to those issue as they are pleaded in the papers and made submissions.
- [6] The applicant's summarized grounds for reconsideration appear below, *albeit* couched in these reasons as issues for determination. On completion of oral submissions, I could not deliver an *extempore* judgment. Heads of argument on a specific issue had to be filed. I specify the issue below. By the way, a reconsideration application is a process for re-determination of the matter (in this case the impugned proceedings and the relevant order). See the reported judgment of ***Basil Read (Pty) Ltd v Nedbank Ltd and Another*** 2012 (6) SA 514 (GSJ), paragraph 17. The papers in the impugned proceedings, the applicant's (applicant in the reconsideration application) papers and all the material filed in this reconsideration had to be considered, as is trite law. I considered them.

- [7] Allocated a civil trial matter under a case number different from the one under which this application proceeded, on special roll, one decided and proceeded to hear the applicant's reconsideration application even when the founding papers were handed up at the commencement of the hearing. I thought it proper to assist in entertaining the matter, since I was so allocated the reconsideration application.

Issues for determination

- [8] The issues for determination are (and I have dealt with urgency above)-
- [8.1] whether the 1st respondent was properly before the court when it obtained annexure X August 2025 order. This relates to the 2nd respondent's authority to litigate on behalf of the 1st respondent;
- [8.2] whether the 2nd respondent (2nd applicant in the main case) may not have violated the Court order of my sister, Naude-Odendaal J, dated the 5th of December 2024. If violated, what then would be the effect, in respect of the impugned proceedings?
- [8.3] whether the respondents complied with the duty of material disclosure, and
- [8.4] that, there was no service of the order of the 5th of December 2024, as required.

Background to this application

- [9] Relevant to this matter, the applicant and the 2nd respondent are brought together, though they have a dispute/s, by the 1st respondent. There is a history of litigation involving them. Four sets of proceedings are, other than this matter, pleaded.

- [10] The proceedings are evinced by the order dated the 05th of December 2024. Further by the May 2025 proceedings and the proceedings in the Gauteng High Court. On the material before me, the impugned proceedings are, so far, the penultimate set.
- [11] The reconsideration proceedings herein concerned were the last set, as of the date of the hearing of the reconsideration application.
- [12] Regarding the impugned proceedings, the 2nd respondent cited himself for no apparent reason. In paragraph 3 of his 'founding' affidavit, he records that-
- 'I am duly authorised to bring this application by virtue of a resolution taken by the first applicant in the main application... attached hereto marked annexure PR1'
- [13] Nowhere does the 2nd respondent state that he acts in his personal capacity. He just joins himself, without acting for himself. Under a different context, I come back to this issue below.
- [14] The impugned proceedings, as is the case with these reconsideration proceedings, were and are still between the applicant and the 1st respondent.
- [15] Some relevant timelines are set out below, under the rubric, 'authority'.

Parties' submissions and filing

- [16] The parties made submissions mainly on two issues, namely: the authority to litigate for and on behalf of the 2nd respondent and whether the 2nd respondent, a person who, on the applicant's version, appears to have made a decision to institute the impugned proceedings for and on behalf of the 1st respondent, may have violated the order of the 5th of December 2024. The order prohibits the 2nd respondent and

others from making decisions on behalf of the 1st respondent.

- [17] The impugned proceedings centred on the applicant's conduct, as both parties submitted. During the impugned proceedings, the Court found the applicant to be criminally contemptuous. The applicant's conduct was visited with a two-month direct imprisonment sentence.
- [18] Given the imposed imprisonment, *albeit* suspended, I had to hear the applicant, regardless of the filing challenges in the matter. Invariably, given the applicant's papers being handed up in Court, this had a bearing on the duration of the hearing.
- [19] The non-filing of the papers on *caselines* was explained at the hearing. At the heart of the explanation was a number of the challenges the parties seem to experience with access, uploading of papers, and related issues. This was not the only matter, on my roll, in which the *caselines* issue cropped up. Practitioners should really make more efforts to cause the system to work and for it to be as efficient as reasonably possible, a great system, it must be said. I hope practitioners in this Division will, with time, make it more functional.
- [20] During argument, the applicant submitted that the respondents did not disclose material information to my brother Muller J. It was submitted by the applicant that the undisclosed matter was a contempt application which was struck off the roll by my brother, Mangena AJ (May 2025 proceedings). Reference by the applicant to the papers in respect of the May 2025 proceedings and the relevant notice of application in such May 2025 seemed persuasive. In summary, the applicant's Counsel submitted that the 1st respondent sought, in the May 2025 proceedings,

the same relief as in the impugned proceedings and the parties were the same. Had there been disclosure, the applicant's Counsel submitted, the Court in the impugned proceedings may not have granted annexure X 2025 order. The applicant's Counsel submitted that disclosure was material. Counsel for the respondents' submission was to the contrary. There was no obligation to disclose, on the respondents' submission. The respondents' submissions contradicted those of the applicant. Too, the respondents' submissions seemed persuasive.

- [21] At the end of the submissions, I directed the parties to file heads of argument on the **10th of September 2025**, at or before **10:00 AM**, on the material disclosure and costs. I reserved judgment.
- [22] When, therefore, the matter adjourned on the **09th of September 2025**, material disclosure was the third issue. Costs as well. All issues for determination are specified above.
- [23] The respondents' heads of argument were filed nine minutes later than the directed time. Only on the **11th of September 2025**, at 16:34 PM, did the applicant file his heads of argument, limited to the material disclosure.
- [24] The construction of the judgment ensued immediately after receipt of the applicant's heads of argument. On the **12th of September 2025**, judgment was still to be finalized. What remained was the form, in the sense of editing. I deemed it proper to cause the order to be transmitted to the parties. On the **12th of September 2025**, I caused the order to be transmitted. What had to follow were the reasons for the order, a promise I made to the parties on transmission of the order.

- [25] I now turn to the issues. Under each rubric, I also set out the parties' submissions relevant thereto.

Authority

- [26] During argument, the applicant raised and in the papers, objected to the 2nd respondent's lack of authority to act for and on behalf of the 1st respondent in the impugned proceedings. The question was, therefore- whether the 1st respondent was properly before the court during the impugned proceedings. This is related to the 2nd respondent's authority to litigate on behalf of the 1st respondent.
- [27] As stated above, the 2nd respondent was not a party seeking any relief. The reason why he was the 2nd applicant (now 2nd respondent) in the impugned proceedings does not appear in the papers. Consequently, the annexure X August 2025 order was obtained by the 1st respondent. In this re-determination, given the applicant's averment and submissions on lack of authority, and the respondents' submissions to the contrary, the issue was whether the 1st respondent was properly before the Court in August 2025.
- [28] The 1st respondent obtained an order on an urgent basis and in the absence of the applicant. This was on a date in August 2025. The applicant's pleadings reveal a different date. What cured the applicant's case is reference to annexure X in its prayer 2. Hence, I call the order annexure X August 2025 order, instead of referring to it as an order of a specific date, except in the next paragraph, the conclusion and order I make, below and in certain instances.

- [29] In August 2025, the 1st respondent initiated reconsideration proceedings. The application was heard on the 19th of August 2025, on the urgent roll.
- [30] The 1st respondent's affidavit supporting the impugned proceedings was deposed to on a date after or not before the 7th of August 2025. This is gleaned from paragraph 5.3 of the said affidavit. The affidavit was in support of and led to annexure X August 2025 order being granted.
- [31] The decision by the 2nd respondent to initiate the application proceedings, a subject of reconsideration, would have been made closer but prior to the date on which annexure X order was granted. The decision was made around the 12th of August 2025.
- [32] On *caselines*, the date of the affidavit in the impugned proceedings does not appear. I do not place reliance on this for the decision I arrive at. If the incomplete affidavit was to be an issue, I would have invited the 1st respondent to hand up a full affidavit in Court. Since the respondents filed an affidavit in answer to the applicant's 'founding' affidavit in the reconsideration application, and the portion of the respondents' founding affidavit in the impugned proceedings filed on *caselines* was in respect of the issues for determination, all issues could be and were ventilated. Not that I am not alive to what ***Basil Read*** means. The following are relevant-
- 32.1. a move away from the approach in ***Basil Read*** should not ordinarily be encouraged. I exercised my discretion to proceed in the manner I did on the basis that the respondents' answering affidavit was not substantially different to the founding affidavit in the impugned proceedings. What is titled an

answering affidavit was not, in the language of **Basil Read** in paragraph 22, a 'supplement' of the 'original founding affidavit'. I summarised its content in paragraph 2.3, above;

- 32.2. the applicant, for instance, alleged that the respondents did not serve annexure X 2025 order. Other issues raised by the applicant is material disclosure, with attachments the applicant wished could support this point. The applicant is entitled to refute such. There is no other way of refuting such, other than in the form of filing an affidavit. They are factual issues. In my view, **Basil Read** and the authorities it relies on, remain sound law. The rule deduced from **Basil Read** judgment does not exclude an affidavit, in addition to a founding affidavit, of a party who, after obtaining an order in the absence of the other, is called for redetermination of the order. As stated above, what is not required is the supplementation of the original founding affidavit, and
- 32.3. the above is supported by paragraph 37 of **Basil Read** which I understand it to mean that '... especially where the aggrieved party has not filed any affidavits...', no further affidavit, other than the founding affidavit, is allowed in reconsideration applications. In *Casu*, the applicant, who is the aggrieved party, filed an affidavit it titled a founding affidavit and states that it answers the founding affidavit of the respondents (none of the two found any proceedings, save to initiate them). It follows, from **Basil Read**, and in my opinion, that the respondents could, as they did, file an affidavit, perhaps not titled answering affidavit. The title does not matter.

[33] The date on which the decision to initiate the impugned proceedings was made

does not appear in the 1st respondent's founding papers (as an applicant in the impugned proceedings). By whom, other than the 2nd respondent, as well, the decision was made, is not revealed in the said affidavit. It is apparent from the deponent to the 1st respondent's affidavit that the decision may have been made on the 7th of August 2025 or between the 8th to the 12th of August 2025. The notice of motion is dated the 12th of August 2025. Further, the index is dated the 14th of August 2025. The fact is, as of the 12th of August 2025, a decision to litigate had already been made.

- [34] The only person who made that decision is the 2nd respondent. This, he says, as I will show below.
- [35] The above notwithstanding, the resolution purportedly authorizing the 1st respondent to initiate the impugned proceedings is not of the year 2025. It is of the year 2024, dated 8th of October.
- [36] In the said 2024 resolution, the 1st respondent (through persons recorded as its Executive Committee members) authorized the 2nd respondent, who is its Chairperson, to be a deponent and to initiate interdictory proceedings. The impugned proceedings were not interdictory in nature. They were punitive, criminally.
- [37] Counsel for the respondents, when invited to address the court on the issue, indicated that the resolution is one from the first set of proceedings. He was not referring to the impugned proceedings. Rather, he was referring to the proceedings which resulted in the order of the 05th of December 2024.

[38] The cause of action for the impugned proceedings arose on the 7th of August 2025. After that date, no resolution to litigate was made. On his version, the 2nd respondent, for the 1st respondent, avers, in paragraph 1.3, that-

'I am duly authorized to bring this application by virtue of a resolution taken by the first applicant in the main proceedings'

[39] Counsel for the 1st respondent conceded that the main proceedings refer to the proceedings which led to the order of the 5th of December 2024. From the attached resolution to litigate, the 2nd respondent appears to have been under an impression and thought that since he was authorised under the December 2024 proceedings, he was, too, authorised to bring the impugned proceedings. That is not what the resolution says.

[40] To bring the criminal contempt proceedings, a decision had to be made. The entity to make the decision was the 1st respondent, through its Executive Committee members. If it so decided, it would have resolved to bring contempt proceedings, since in 2024, it resolved to initiate interdictory proceedings. Concerning when the resolution could have been made, it could only have been made on or after the 7th of August 2025. The said date is one on which the cause of action arose in the impugned proceedings. I do not suggest that the decision would have been to set the law in motion by way of issuance of the papers, under a new case number. What I mean is that no litigation may be commenced without a decision to bring it. That decision had to be made.

[41] As averred by the 1st respondent, which I set out in paragraph 47, below, Part B was still pending when the decision to bring the impugned proceedings was made.

For this reason, the 1st respondent would appear, as speculative as this may be, to have been aware of this. That may explain why it did not decide to litigate and commence proceedings. Even if my speculation is incorrect, on the material before me, the 1st respondent did not decide to institute the impugned proceedings.

[42] In my considered view, the attached resolution was not one for the impugned proceedings. Since the 1st respondent was not properly before the Court when the annexure X August 2025 order was obtained, it ought not to have sought the order. It should not have succeeded.

[43] The 1st respondent was not entitled to annexure X August 2025 order. Nevertheless, if I am incorrect in my finding, the matter should not end here. The applicant would still have succeeded on the next issue.

Acting against the court order

[44] In paragraph 5.2 of its affidavit in the impugned proceedings, the 1st respondent avers that the order of the 5th of December 2024 prohibits decisions from being made regarding the 1st respondent. Indeed, prayer 8 of the order so directs. It is attached to the 'founding' affidavit in the impugned proceedings, marked annexure PR-2. It is important to record, in my reasons, the wording of prayer 8-

'none of the parties (Applicants and Respondents) may take any further decisions or call meetings pending finalization of part B'

[45] The 1st and 2nd respondents are the 1st and 2nd applicants in the proceedings in which the order of the 5th of December 2024 was granted. Having succeeded in the application, they should be the ones who endeavour to protect the order. In the

context of these reasons, the first set of persons who should advance and protect prayer 8 are the two of them.

- [46] The 1st respondent has not violated the order. Wearing the 1st respondent's chairpersonship hat, it is the 2nd respondent, as the chairperson, who did so.
- [47] Before my brother Muller J, on the 19th of August 2025, the deponent (2nd respondent) relied on paragraph 5.2 of the 'founding' affidavit. In the paragraph, the said respondent averred that part B was still pending.
- [48] During the hearing, and this was on merits, I pointed out to Counsel for the 1st respondent that maybe the parties should consider applying for a variation of the relevant term of the order.
- [49] My view was and is still, without making a ruling on the issue, that certain decisions relating to the 1st respondent had and still have to be made. However, since there is a Court Order, it should, until set aside, be complied with. If, as is the law, administrative decisions are binding, what of court orders? That Court orders are binding is trite law. The case law I set out below on this point should, I believe, fortify my view that court orders, until set aside, remain binding. They enjoy their currency. My approach is not aimed at restating the law on a trite position. The authorities are relied on for a different subject.
- [50] The 1st respondent's conundrum is that the decision to institute the impugned proceedings offends the order of the 5th of December 2024. The order still existed when the order sought to be set aside was granted. It still exists. It should be complied with. That, sadly for the respondents, is the quagmire from which they may

not be able to extricate themselves in respect of the applicant's application.

[51] Perhaps as though it is a sub-rubric, without labelling it as such, the dirty hands principle seemed, during argument, to me applicable in this matter. Before seeking compliance with an order of Court, a litigant must first comply with such an order of Court. That seems, to me, to be the essence of the principle. If non-compliance with the order is established, an applicant would have challenges in proceeding further with the case. During argument, I gave the 1st respondent's Counsel an opportunity to address me on whether the principle applies and if not why. The kernel of his response was that it does not apply.

[52] Relying on the South African law (from paragraph 34), a *Namibian* judgment makes clear the principle. It was in the matter of *Ae Gams Data (Pty) Ltd and Others v Sebata Municipal Solutions (Pty) Ltd and Others* (A224/2009) [2011] NAHC 6 (21 January 2011), paragraph 46. Muller J, of Namibia, held and I quote with approval-

'In the light of the court's decision to confirm the Rule Nisi issued on 21 August 2009, the respondent is in contempt of court. As long as that order is not complied with the respondent's hands are dirty and no legal proceedings can be conducted by the respondent in this court. The respondent is either a crucial or only relevant defendant in the exception. The exception can therefore also not be entertained by this court at this stage.'

[53] The Court had earlier stated in the judgment, in paragraph 34, and too, I quote with approval-

'Our law is clear that a litigant cannot act against an existing court order or an Act. This is commonly referred to as the doctrine of "*dirty hands*" or "*clean hands*". This doctrine has been considered in old English cases and the ratio is "*purge first and argue later*". In the context of an existing law or court order it means that until such time as that law or court order had been set aside it must be complied with. It is

irrelevant that the law or court order may be unconstitutional or wrong.¹

- [54] Context specific to and indistinguishable from the facts in *casu* respecting the 1st respondent's compliance with the order of the 5th of December 2024, the Namibian judgment clarifies the application of the principle. The judgment heavily draws from the South African law. It is as good as South African law. I state this because some may ask- why go far when Courts in South Africa have had occasions to consider and have expressed themselves on the principle.
- [55] The law, therefore, is that as long as an existing order is not complied with, a non-compliant party's hands are dirty. The consequence of that is- no legal proceedings initiated by such a non-compliant litigant will be conducted. I am not invited to make a ruling on the effect of not hearing a non-compliant initiating litigant. The point is that such a litigant will not be heard. Whether there should be dismissal of the initiated proceedings or not is not an issue for my determination.
- [56] What serves before me is whether the 1st respondent ought to have been heard, on the day the impugned proceedings were held.
- [57] Coming back home, in the reported judgment of ***Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH***, 2024 (1) SA 331 (CC), paragraph 72, the Constitutional Court held that-²

'... the authorities do bear out the proposition that to dismiss a claim that a litigant would pursue before the courts on the grounds of abuse is not precluded because that claim exists in law. The claim is dismissed because the litigant who would bring it is disqualified from doing so by reason of their abuse.' (footnotes excluded).

¹ Commonly applied in the field of tax.

² In 2005, the Supreme Court of Appeal, in *Klokow v Sullivan*, 2006 (1) SA 259 (SCA), paragraph 17, further confirmed that the principle applies in South Africa.

- [58] As I pointed out above, to dismiss or not is not an issue in the reasons I give for the order I made. The Namibian Judgment states that such a litigant will not be heard. According to ***Villa Crop***, a litigant with dirty hands should be dismissed. For the purposes of this matter, whether not heard or dismissed, the 1st respondent would not have been entitled to annexure X 2025 order.
- [59] The Constitutional Court referred, with approval, to judgments which had already been made before the ***Villa Crop*** matter on the dirty hands principle. The principle applies in certain other instances, such as fraud, dishonesty and *mala fide*. See ***J.K v E.S.K***, 2024 1 All SA 775 (WCC), paragraphs 37-42. Non-compliance with court orders seems to be the essence of the principle, as I stated above. The three other jurisdictional facts of the principle (fraud, dishonesty and *mala fide*) or any one of them or non-compliance with the Court order, if established, would vitiate a litigant's application. This reconsideration application is not concerned with fraud, dishonesty and *mala fide*. In this matter, at the centre is an existing Court order and whether it was violated.
- [60] The closest persuasive case law on a broad approach, which fortifies the approach on unclean hands, is in the unreported judgment of ***Uniqon Wonings (Pty) Limited v Brooklyn and Eastern Areas Citizen Association*** (A253/2022) [2024] ZAGPPHC 105 (7 February 2024). The judgment is neither about compliance with an order nor the three grounds in the preceding paragraph. In paragraph 32, the Court held that-
- 'The doctrine of unclean hands means that a party seeking relief cannot have acted

unethically or unjust in its own matter.'

- [61] There is another set of grounds for holding that a party has unclean hands, which is acting unethically or unjustly in an applicant's own matter. In *casu*, in August 2025, the 1st respondent ought not to have decided to institute the impugned proceedings. By instituting the impugned proceedings, the respondents acted 'unjust in its own matter'. The 5th of December 2024 case and the impugned proceedings were under the above case number. The proceedings relevant herein and the applicant's reconsideration application are under the respondents 'own matter'. That said, the respondents acted unjustly in their own matter.
- [62] To allow the 2nd respondent to decide for the 1st respondent, when the applicant is not permitted, would mean that the order of the 5th of December 2024 was meant only for the applicant, to the benefit of the respondents. That would be unjust. The respondents should not be permitted, in their own matter, to act unjustly. I do not see how such unjust conduct and results which may come with it should be permitted. Judicial pronouncement to this effect has got to, as I do, be made.
- [63] The respondents should not have sought the order. To obtain the order, the 2nd respondent had to first comply with the said order. Compliance, unfortunately, for the 2nd respondent, meant that the said respondent ought not to have decided for the 1st respondent to institute the impugned proceedings. That he decided is manifest in the litigation.
- [64] The 2nd respondent ought not to have violated the order by deciding and proceeding to approach, as he did, through the 1st respondent, the Court. He ought not to have

instituted the impugned proceedings. He ought not to have sought the annexure X August 2025 order.

Material disclosure

[65] I appreciate the parties' filing of heads. The applicant is the party who raised the issue- material disclosure. He had to prove this.

[66] In addition to the papers filed of record and the submissions, I considered the heads of argument. Regarding the papers, motion proceedings are based on the pleadings and evidence in the affidavit, as supported by the attachments. The applicant, in paragraph 30 of his affidavit, attaches annexure BDM04, the notice of motion which served before my brother Mangena AJ in May 2025. On a reading of the papers and consideration of the parties' submissions, disclosure would not have been material for the following reasons-

66.1. the hearing relevant to annexure BDM04, as recorded above, was in May 2025, and

66.2. the cause of action in the impugned proceedings arose on the 7th of August 2025.

[67] Although the relief sought is the same, however, the cause of action is not the same. In respect of the impugned proceedings, what caused the application is the filing of a Rule 7 notice in the Pretoria High Court. As for the matter in May 2025, the cause of action relevant to the impugned proceedings had not arisen. I reject the material dispute point concerning the May 2025 proceedings. What the 1st respondent did

not disclose was not material. It could not have had a bearing on the decision to be made by my brother, Muller J. Had the applicant proved that disclosure was apposite. And, that it was material, the principle of *res judicata* would possibly have found application. It does not since there was no obligation to disclose the May 2025 proceedings.

[68] What remains under this rubric is the Gauteng proceedings. Nothing turns on this, since the applicant has not, unlike in respect of the May 2025 proceedings, attempted to show why there is, in his view, material deserving of disclosure.

[69] Since I have already found that annexure X August 2025 order ought not to have been sought, the limitations on the duty of disclosure in this matter compel me not to take the issue any further. I stop here on the Gauteng High Court aspect of this issue.

Service of the order

[70] During argument, the applicant's counsel did not strongly advance this issue. He seemed resigned to a possibility that the applicant might not succeed on this point. On the 5th of December 2024, when the order was delivered, the applicant was present in Court. His legal representatives were also in Court. Counsel so indicated during the hearing that the applicant was in Court. I do not think that legal representatives would not have advised the applicant, on the day of the order, soon thereafter or around May 2025 proceedings, about the effect and meaning of the order. At any rate, after the 5th of December 2024, the order was served on his attorneys.

- [71] Assuming, without agreeing, in the applicant's favour, that he needed personal service, as he submitted, he is the one who attached the notice of motion in the May 2025 proceedings. He personally became aware of the said proceedings. The last page of annexure BDM004 shows that his attorneys were served with the papers. At the centre of the papers was the Court order of 5th of December 2024.
- [72] The Sheriff is a Messenger of the Court. If a litigant is in Court when the order is made, and when a litigant is legally represented, full knowledge of the order may be said to have been obtained from the original source, which is the Court, and not its Messenger. The legal representatives, in this matter, possibly advised the respondents, a point I made above.
- [73] When the cause of action arose on the 7th of August 2025, the applicant was already aware of the order of December 2024. He had personal knowledge of the order. I do not agree with the applicant on this issue of service.
- [74] The respondents' point on material disclosure falls to be dismissed. On both grounds of material disclosure, I dismiss the applicant.

Conclusion

- [75] I have set out grounds why the applicant's prayer 3 should not be granted. I do not grant it, as I stated above. The annexure X August 2025 order, which order was granted by my brother Muller J, (dated the 19th of August 2025), deserves to be, on an urgent basis, reconsidered, as I have, and set aside, as I do.
- [76] I need to state that this case partly demonstrates the challenges inherent in the

urgent Court, where, within a short space of time, Judges have to deal with many matters. It is usually on the return date, and in some instances on the reconsideration or anticipated day, that issues may be ventilated as best may be required. With the benefit of more than one version, Judges usually benefit from Counsel's contributions on the reconsideration, anticipation and/or Court fixed return date. That was not so on the 19th of August 2025.

Costs

[77] The 2nd respondent remains the chairperson of the 1st respondent. He, however, in the impugned proceedings, did not have a resolution to litigate and no authority to act enforce the order of the 5th of December 2024. The 1st respondent is liable for the 2nd respondent's actions when the latter, as in this case, acts as its chairperson. It is trite that costs follow the results, unless there are cogent grounds to move away from that position. In this case, there is no basis for me to deviate from that position.

Order:

[78] In the result, the following order is made:

1. the applicant's non-compliance with the prescribed Uniform Rules, regarding:

1.1. service of the papers, the manner of time limits for filing of the application papers, and

1.2. the enrolment,

is hereby condoned,

2. the applicant's reconsideration application is declared **urgent**, it is enrolled and heard on the urgent roll;
3. the annexure X August 2025 order, dated the 19th of August 2025, is hereby reconsidered and set aside, and
4. the 1st respondent shall pay the costs of the application, party and party, scale A.



Chidi AJ

ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPLICANT : Adv Raselebana

INSTRUCTED BY : MPHELA MOTIMELE ATTORNEYS
Polokwane
motimele@mphelamotimeleattorneys.co.za

FOR THE RESPONDENTS : Adv TD Sibiya

INSTRUCTED BY : ISRAEL MAENETJA ATTORNEYS
eazym10@mailil.com