



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO.: 962/2021

Reportable	Yes / No

In the matter between:

LUBABALO GUNTU

Applicant

and

MINISTER OF POLICE

Respondent

JUDGMENT

Cengani-Mbakaza AJ

[1] This is an application to declare the respondent in contempt of court, pursuant to the court order granted on 18 April 2023 and the second order granted on 27 November 2023 (the court orders). In terms of paragraph 2 of the notice of motion, the applicant seeks relief that the Minister of Police be ordered to comply with the court orders, failing which the applicant be granted leave to approach the court on the same papers, duly amplified, for an order holding the respondent in contempt and imposing appropriate sentence.

[2] Although the notice of motion seeks compliance with the court orders, the affidavits filed and the heads of argument effectively pursue a finding of contempt of court against the respondent. During oral arguments, Mr Tsipa, the applicant's attorney made it explicitly clear that the relief sought was a finding of contempt of court against the respondent for failing to comply with the court orders. The application is opposed for the reasons that will be presented during the course of this judgment.

[3] The court orders that form the basis of this application are couched as follows:

‘MTHATHA ON THE 18th day of April 2023

IT IS ORDERED THAT:

1. The matter is hereby postponed sine die.
2. The Defendant is directed to file expert reports within 60 days of this order and provide their names to the Plaintiff within 30 days from the date of this order.
3. The Defendant is to pay Plaintiff's wasted costs occasioned by the post (sic)
 - 3.1 Attorney and client costs.
 - 3.2 The reserved trial fee of the Plaintiff's experts **Dr De Bruin, Ms Vilana and Grootboom**
 - 3.3 The travelling and accommodation costs of the Plaintiff's legal representative and experts attending today's trial insofar incurred.’

[4] The second order is not attached in the founding papers filed, however the parties are *ad idem* that the order reads as follows:

‘The Defendant is directed to file its experts reports and make a written offer of settlement to the Plaintiff in respect of the remaining heads of argument on or before 22 January 2024.’

[5] The background facts, as presented in the founding affidavit are as follows: On 04 Marh 2021, the applicant instituted action proceedings against the respondent for unlawful arrest, unlawful detention and unlawful shooting by

police. The issues of merits and quantum were separated. The trial commenced on 08 September 2022 and the court granted judgment on the merits in favour of the applicant.

[6] Subsequently, the applicant filed expert reports and served them on the Minister of Police's attorneys of record. Following this, the matter was set down for consideration of quantum by the trial court. On 18 April 2023, a date upon which the matter was to be heard, the respondent applied for a postponement to file his own expert report and the matter was postponed for this purpose. An email was dispatched to the respondent's attorneys informing them of their failure to comply with the court orders. No response was received thereafter. The applicant avers therefore that the respondent is in contempt of court.

[7] In the answering affidavit, the respondent's attorney avers that the court order can only be enforceable if it is competent and proper and in accordance with the legal prescripts. He contends that he does not recall an order directing the respondent to settle the matter, averring that such an order would be tantamount to forcing the parties to contract. Even if the order was taken, he has instructions to apply for leave to appeal the judgment on the merits and the applicant is aware of that pending application. Therefore, the issue of settlement no longer exists due to the pending application for leave to appeal.

[8] Regarding the court order dated 18 April 2025, the respondent's case is that the occupational therapist reports were both served and filed to the applicant's attorneys on 23 November 2023. The industrial psychologist report was served to the applicant's attorneys on 13 March 2023. Furthermore, a joint minute compiled by the parties' orthopaedic surgeons is also available. The respondent avers therefore that the application amounts to abuse of court process.

[9] In their submissions, the parties highlighted the principles governing the contempt of court applications. These principles are well-settled and must be applied in the present case. It is trite that the purpose of the contempt of court order is not to punish litigants but rather to protect the integrity of the judicial system and the rule of law by preventing unlawful disdain for judicial authority which is vested in courts. The civil contempt of court carries the hallmarks of criminal proceedings, warranting proof of elements such as intention and unlawfulness. In *Fakie NO v CCI Systems (Pty) Ltd*¹ (Fakie), a case that I was referred to by Ms Da Silva SC appearing on behalf of the respondent, the court stated:

‘[6] It is a crime to unlawfully and intentionally 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 has in general terms received a constitutional stamp approval’ since the rule of law- a founding value of the Constitution- ‘requires that dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained.’ [footnoted omitted].

[10] This position was reaffirmed by the Constitutional Court (CC) in *Matjhabeng Local Municipality v Eskom Holdings Limited ; Mkhonto v Compensation Solutions (Pty) Ltd*²(Matjhabeng), where it was held:

[50] The crime of contempt of court is said to be a ‘blunt instrument’. Because of this, “[w]ilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence”. Simply put, all contempt of court, even civil contempt , may be punishable as a crime. The clarification is important because it dispels any notion that the distinction between civil and criminal contempt of court is that the latter is a crime and the former is not”.

¹ [2006] ZASCA 52; 2006 (4) SA 326 (SCA).

² 2018(1) SA 1 CC.

[51] The Full Court in *Burchell* elucidates the criminal and civil features that can be intertwined in contempt proceedings and serves as an example of how the distinction can exist. In that case Froneman J (as he then was) confirmed that committal for civil contempt remains a form of a crime under the Constitution, but also re-affirmed its pure civil character...'[footnotes omitted]

[11] Although there are divergent views regarding the standard of proof that is applicable in civil contempt proceedings, the CC in *Matjhabeng*³ opined that the standard of proof in civil proceedings is applied in accordance with the purpose sought to be achieved. Notably, in this instance the test for the contempt of court requires proof beyond reasonable doubt. This is so because the civil contempt remedies of a committal in the present matter have material consequences of an individual's freedom and security of the person (the Minister of Police).

[12] The issue is whether the essential elements of contempt were established herein. These elements were eloquently put in *Fakie*⁴ and reaffirmed by the CC in *Matjhabeng*⁵ as follows:

- (a) The existence of the court order;
- (b) the order must be duly served on or brought to the notice of, the alleged contemnor;
- (c) there must be non-compliance with the order; and
- (d) the non-compliance must be wilful and *mala fide*

[13] The existence of court order dated 18 April 2023 is not a contentious issue rather, the dispute revolves around compliance. The respondent's averments in the founding affidavit appear to be admitted in the applicant's

³ *Matjhabeng* at para 67.

⁴ Fn 1 above.

⁵ Fn 2 above.

affidavit, where it is acknowledged that the order was complied with, albeit late. Specifically, the expert reports were filed on 13 March 2024 instead of the directed 60 day- period which was due to expire on 07 March 2024. Even if the late filing is accepted, it cannot be said there was non compliance of the court order , as the reports were filed within a reasonable time. Furthermore, the filing of the expert reports on 23 November 2023 demonstrates the respondent's clear intention to file the expert report. It is worth noting that the intention was clearly established way before the court order was issued.

[14] The contentious issue regarding the second court order which is attached to the replying affidavit hinges on its specific framing. It is well-established that court orders must be clear and unambiguous to ensure effective compliance and avoid disputes.

[15] I agree with the respondent's counsel that a court order directing the parties to settle is tantamount to ordering the parties to contract. This raises questions about enforceability and clarity of such an order. Considering the fact that the court order dated 18 April 2023 was complied with, there is no basis to conclude that there was a deliberate disregard of that particular court order. Similarly, the non-compliance with the second court order due to its enforceability issue, cannot be equated with *mala fides* or wilfulness to disregarding the court order.

[16] The final issue concerns the service of the court orders in question. A crucial element of contempt of court is that the court order must be duly served on or brought to the attention of the alleged contemnor. In the matter under consideration, the applicant's attorney held a strong view that since the respondent's attorney of record was present in court when the orders were issued, that should suffice to meet the service requirement.

[17] This proposition is misconceived and lacks support from the fundamental established legal standards. It is well-established that any party against whom a contempt finding is sought must be given proper personal notice and an opportunity to respond thereto. To convict anyone for contempt of court, it must be proved that the alleged contemnor was personally aware of the court order.⁶

[18] The legal principle is that for conduct to constitute contempt, there must be an intention to defeat the course of justice. The applicant has failed to make a proper case for the relief sought.

Order

[19] In the result I make the following order:

1. The application is dismissed.
2. The applicant shall pay costs Scale ‘A’ as contemplated under Rule 67A read with Rule 69 of the Uniform Rules of Court. The costs shall include the costs of two counsel so employed.

N CENGANI-MBAKAZA
ACTING JUDGE OF THE HIGH COURT

⁶ See *Setshedi v Ndebele and Another* [2015] JOL 33120 (LC), also *Diluculo Properties (Pty) Ltd v City of Johannesburg and Another in re: Diluculo Properties (Pty) Ltd v City of Johannesburg* (2021/27206, 5576/2018) [2022] ZAGOJHC 803 (18 October 2022).

APPEARANCES:

Counsel for the Plaintiff : Adv Da Silva SC with Adv S Mzileni

Instructed by : Mr A Ludidi
Mthatha

Counsel for the Defendants : Mr Y Tsipa
Y TSIPA ATTORNEYS
Mthatha

Date Heard : 21 August 2025

Date Delivered : 23 September 2025