



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no.: 10849/2018

In the matter between:

SHAWN WILLIAMS N.O.

First Applicant

TEBOGO MORITIDI EUSTANCE KWAPE N.O.

Second Applicant

and

ZIKHULISE GROUP (PTY) LTD

First Respondent

MABONG FLORA-JUNIOR MKHIZE

Second Respondent

JOHN WYLES

Third Respondent

JOHN WYLES N.O.

Fourth Respondent

MARY ANNE ALLAN WYLES N.O.

Fifth Respondent

WELCOME SENZENI N.O.

Sixth Respondent

EUNICE MSELESKU N.O.

Seventh Respondent

In Re:

ZIKHULISE GROUP (PTY) LTD

Applicant

and

JOHN WYLES

First Respondent

JOHN WYLES N.O.

Second Respondent

MARY ANNE ALLAN WYLES N.O.

Third Respondent

WELCOME SENZENI N.O.

Fourth Respondent

EUNICE MSELESKU N.O.

Fifth Respondent

PIETER HENK STRYDOM N.O.

Sixth Respondent

TSHIFHIWA PERSEVERANCE MUDZUSI N.O.

Seventh Respondent

SHAWN WILLIAMS.O.

Eighth Respondent

TEBOGO MORITIDI EUSTANCE KWAPE N.O.

Nineth Respondent

ORDER

The following orders are granted:

1. ZIKHULISE GROUP (PTY) LTD and MABONG FLORA-JUNIOR MKHIZE are declared to be in contempt of the Order granted by this Court on 3 May 2019 (“the Court Order”).
2. MABONG FLORA-JUNIOR MKHIZE is directed to take all the necessary steps to ensure that ZIKHULISE GROUP (PTY) LTD complies with paragraphs 3.1.6, 3.1.10, 3.1.12, 3.1.13, 3.1.14, 3.1.15 and 3.1.16 of the Court Order forthwith.

3. In the event that ZIKHULISE GROUP (PTY) LTD and MABONG FLORA-JUNIOR MKHIZE fail to comply with the order in paragraph 2 above, the applicants are granted leave to supplement their papers, in so far as it may be necessary, to seek orders committing MABONG FLORA-JUNIOR MKHIZE to a period of imprisonment and/or imposing a fine on ZIKHULISE GROUP (PTY) LTD and MABONG FLORA-JUNIOR MKHIZE, and/or any such other sanction that this Court deems appropriate, on notice to ZIKHULISE GROUP (PTY) LTD and MABONG FLORA-JUNIOR MKHIZE.
4. The costs of this application be paid by ZIKHULISE GROUP (PTY) LTD and MABONG FLORA-JUNIOR MKHIZE jointly and severally, the one paying, the other to be absolved, such costs to be on an attorney and client scale and to include the costs of two Counsel where employed.

JUDGMENT

BRAMDHEW AJ

[1] The applicants seek orders holding the first and second respondents in contempt of a court order.

[2] The relief sought in the Notice of Motion is:

“

1. The first and second respondents are declared to be in contempt of paragraphs 1, 2, 3.1.1, 3.1.3, 3.1.4, 3.1.6, 3.1.7 to 3.1.16, and 4 of the

court order dated 3 May 2019 under the abovementioned case number;

- 2. Imposing a fine, such as deemed appropriate by this Honourable Court, on the first and second respondents, jointly and severally; and/or*
- 3. Imposing a period of imprisonment, such as deemed appropriate by the above Honourable Court, on the second respondent, suspended on conditions deemed appropriate by this Honourable Court (if the Court so deems suspension appropriate); and/or*
- 4. Directing the first and second respondents to bear the costs of this application, jointly and severally, on an attorney and client scale.”*

[3] The issues for determination are:

- a. Whether the first respondent, Zikhulise Group (Pty Ltd), is in contempt of the court order.
- b. Whether the second respondent, Ms Mkhize, who was not a party to the application wherein the Court Order was granted, can be held in contempt of the Court Order.
- c. The form of the relief sought by the applicants.

[4] For convenience, the relevant parties in this application are referred to as follows:

- a. The first applicant as "*Mr Williams*"
- b. The first and second applicants as "*the applicants*" or "*the liquidators*"

- c. The first respondent as "ZG"
- d. The second respondent as "*Ms Mkhize*"
- e. Zikhulise Cleaning Maintenance and Transport CC as "ZCMT"
- f. Cloete Murray as "*Mr Murray*"
- g. Faber Goertz Ellis Austen Inc as "*FGEA*"
- h. Ian Wyles as "*Mr Wyles*"

[5] This matter has a long history. The relevant facts and timeline have been compiled from the voluminous correspondence annexed primarily to the applicants' affidavits. Only the material background facts pertinent to the determination of the current application will be summarised.

[6] The applicants are the liquidators of ZCMT. Ms Mkhize was the sole member of ZCMT and is the sole director of ZG.

[7] SARS obtained a preservation order in terms of section 163 of the Tax Administration Act, 2011 against ZCMT on 11 November 2017, and a final order was granted on 23 January 2018. Mr Strydom and Mr Mudzusi were initially appointed as joint curators *bonis*, and Mr Murray replaced them as curator *bonis* on 20 November 2018.

[8] A similar preservation order was granted on 23 November 2016 against Ms Mkhize (formerly Mpisane), her ex-husband, and ZG. Mr Murray replaced Mr Strydom and Mr Mudzusi as curator *bonis* on 27 February 2019.

- [9] ZCMT was provisionally liquidated on 22 August 2017 and finally wound up on 16 October 2020. Mr Williams and Mr Kwape were appointed as joint liquidators. The liquidators were initially represented by attorneys Kern & Partners. Thereafter, they have been represented by GMI Attorneys.
- [10] In November 2017, Ms Mkhize identified vehicles belonging to ZCMT and pointed these out to Mr Williams in Umlazi and surrounding areas. Ms Faber of FGEA (the attorneys ZG and Ms Mkhize at the time) also provided a list of vehicles owned by ZCMT. Based on the information provided, Mr Williams caused valuations of the vehicles to be obtained.
- [11] On 28 May 2018, at a meeting at FGEA, Ms Mkhize consented to ZG renting ZCMT's vehicles. She was to indicate which vehicles would be used as she advised that not all the vehicles would be required by ZG. The vehicles that would not be used by ZG would be delivered to the applicants.
- [12] On 1 June 2018, Iyesha Gaffoor (ZG's employee) provided details of one vehicle to exclude, however, it is alleged that the liquidators indicated that insufficient particularity was provided in order for a proper identification to be made.

[13] On 27 June 2018, Kern & Partners prepared a Memorandum of Agreement (“the lease agreement”) for the vehicles which was to be concluded by the applicants (as liquidators of ZCMT), ZG and Ms Mkhize. 22 vehicles were listed in the schedule annexed to the lease agreement.

[14] However, on 30 July 2018, Mr Strydom (as curator *bonis* of ZCMT and ZG) indicated that it would be best for ZG to purchase the vehicles instead of renting them.

[15] On 14 August 2018, Mr Strydom confirmed the vehicles belonged to ZCMT.

[16] However, on 12 September 2018, Mr Kern (of Kern & Partners) confirmed that 24 vehicles used by ZG would be removed by the liquidators, by agreement between the liquidators and the curators *bonis*. This decision was based on the following:

- a. In November 2017, Mr Williams and Ms Mkhize met in Durban and Ms Mkhize confirmed that the identified vehicles belonged to ZCMT;
- b. Mr Williams, thereafter, obtained sworn valuations of the vehicles;
- c. At a meeting on 17 May 2018, Ms Faber and Ms Mkhize undertook to consider the rental agreement proposal;
- d. On 28 May 2018, Ms Mkhize consented to ZG renting vehicles from ZCMT, however indicated that not all the vehicles would be required by

ZG and undertook to revert on which vehicles should be excluded from the rental agreement;

- e. On 1 June 2018, Iyesha Gaffoor provided details of a vehicle to be excluded from the rental agreement, however, the description lacked sufficient particulars to properly identify the vehicle;
- f. On 4 June 2018, Mr Strydom indicated that he had received no further feedback from Ms Faber or Ms Mkhize;
- g. On 8 June 2018, Mr Strydom indicated that he had doubts regarding ownership of the vehicles;
- h. On 20 June, Kern & Partners notified Ms Faber that they were still awaiting details of vehicles to be excluded from the lease agreement;
- i. This was provided by Mrs Faber on 3 July 2018;
- j. At a meeting on 30 July 2018, Mr Strydom indicated that the curators *bonis* preferred to purchase the vehicles as opposed to renting them. Ms Mkhize telephonically consented to this;
- k. On 14 August 2018, the curators sought the written consent from Ms Mkhize in order to request the Master's authority to sell the vehicles;
- l. Despite numerous requests, Ms Mkhize's consent was not forthcoming.

[17] On 12 September 2018, Mr Williams provided Mr Wyles, of Ian Wyles Auctioneers, a list of vehicles to remove.

[18] On 14 September 2018, the curators *bonis* of ZCMT and ZG confirmed that they had no objection to the removal of the vehicles.

[19] On 17 September 2018, Ms Mkhize raised ownership concerns with Mr Wyles. She undertook to provide a spreadsheet with correct asset details.

[20] On 18 September 2018, Kern & Partners addressed a letter to FGEA outlining the sequence of consent and ownership acknowledgments by Ms Mkhize as follows:

- a. Vehicles were identified to Mr Williams by Ms Mkhize in November 2017;
- b. The very same vehicles were valued and valuations sent to Ms Mkhize without any issues being raised by the latter;
- c. On 28 May 2018, Ms Mkhize consented to the rental of the vehicles from ZCMT;
- d. The details of the vehicles were confirmed in the lease agreement sent to FGEA on 20 June 2018, without any issue being raised about ownership;
- e. On 30 July 2018, Ms Mkhize consented to the purchase and sale of the vehicles, without any ownership issues being raised;
- f. The curators *bonis* of ZCMT consented to the vehicles being uplifted and therefore a request was made for the location of the vehicles.

[21] On 19 September 2018, Mr Wyles addressed an email to Ms Mkhize requesting a meeting in order to identify the vehicles for upliftment.

[22] On 19 September 2018, Maharaj Attorneys, representing ZG, requested an undertaking that no vehicles would be uplifted. Mr Wyles indicated that he could not provide such undertaking as he acted on the instructions of the liquidators and advised that correspondence should be directed to the liquidators.

[23] Without such correspondence, ZG then launched an urgent application (“the urgent application”) to interdict the upliftment of vehicles. Ms Mkhize was not cited as an applicant in the proceedings, however, she deposed to the founding affidavit in support of the application.

[24] The liquidators (as eighth and ninth respondents) opposed and delivered a counter-application for delivery of the vehicles. SARS also intervened.

[25] The urgent application was heard on 3 May 2019. The Court dismissed the application with costs and granted the counter-application, ordering ZG to deliver 18 specifically identified vehicles within five days.

[26] The Court Order read as follows:

“

1. *The applicants’ application for relief set out in its notice of motion dated 21 September 2018 is dismissed with costs;*

2. *The applicant is ordered to pay the respondents' and the intervening party's costs of opposition including the costs of the application to intervene, and including the costs of two counsel where so employed;*
3. *The eighth and ninth respondents' counter-application succeeds and the following order is granted.*

3.1. The applicant is ordered to deliver to the eighth and ninth respondents at their nominated address, within 5 (FIVE) days from the granting of this order, the following vehicles listed in the applicant's notice of motion dated 21st September 2018:

- 3.1.1. 2014 HYUNDAI F/C C/C
 VIN K[...] REG NO: 4[...]
- 3.1.2. 2014 HYUNDAI H72 F/C C/C
 VIN: K[...] REG: N[...] 4[...]
- 3.1.3. 2013 NEW HOLLAND L215 LOADER SKIDSTER
 VIN J[...]
- 3.1.4. 2014 HYUNDAI H72 F/C C/C
 VIN: K[...] REG: N[...] 4[...]
- 3.1.5. 2014 HYUNDAI H72 F/C C/C
 VIN: K[...] REG: N[...] 2[...]
- 3.1.6. 2014 HYUNDAI H72 F/C

VIN: K[...] REG: 2[...]

3.1.7. 2013 NEW HOLLAND L215 LOADER SKIDSTER
VIN J[...]

3.1.8. 2007 JCD 1CX SKIDSTER LOADER
VIN: J[...]

3.1.9. 2013 HYUNDAI H72 F/C C/C
....R[...] REG: N[...] 4[...]
[illegible on Court Order]

3.1.10. 2014 HYUNDAI H72 F/C C/C
VIN: K[...] REG: N[...] 4[...]

3.1.11. 2014 HYUNDAI H940S BACKHOE LOADER
VIN: H[...] REG: N[...] 7[...]

3.1.12. 2014 HYUNDAI H940S BACKHOE LOADER
VIN: H[...] REG: N[...] 7[...]

3.1.13. 2014 HYUNDAI H72 F/C C/C
VIN: K[...] REG: N[...] 2[...]

3.1.14. 2013 HYUNDAI H72 F/C C/C
VIN: K[...] REG: N[...] 4[...]

3.1.15. DYNAPAC CA271D SINGLE DRUM VIBRATING
ROLLER

VIN: L[...]

3.1.16. SUMITOM H210 EXCAVATOR

VIN: S[...]

3.1.17. 2014 HYUNDAI H72

VIN: K[...] REG: N[...] 2[...]

3.1.18. 2014 HYUNDAI H72

VIN: K[...] REG: N[...] 1[...]

4. *The applicant is ordered to pay the respondents and the intervening party's costs of the counter-application including the costs of two Counsel where so employed."*

(the "Court Order")

[27] Importantly, the vehicles ordered to be delivered by ZG were some of the vehicles listed in its own notice of motion in the urgent application.

[28] In Ms Mkhize's founding affidavit in the urgent application¹, she confirmed that the vehicles listed in urgent application are the vehicles that were subject to discussions relating to the rental, sale and valuation.

[29] Ms Mkhize further stated² that: *"The Corporation has ceased trading and the vehicles will not be used in any gainful manner save for the use by the*

¹ Annexure "RA1a", pages 375 – 376, Volume 4, Contempt of Court Application

Applicant as has been the case for the past two years". It is apparent from the context that 'The Corporation' refers to ZCMT.

[30] ZG applied for leave to appeal. The application was refused.

[31] Despite the liquidators' attorneys making follow up investigations, FGEA and Ms Mkhize did not provide the vehicles' location. The vehicles were not returned as ordered.

[32] On 6 September 2021, during an enquiry attended by Ms Mkhize and Ms Faber, the liquidators again requested information about the vehicles. Emails followed on 6 and 9 September 2021, on 8 April 2022 and on 11 August 2022, with responses on 9 and 10 September 2021, on 8 April 2022, and on 11 August 2022, all with promises by Ms Faber to revert.

[33] On 26 October 2022, Mr Wyles emailed Ms Mkhize indicating that some vehicles were unaccounted for.

[34] A follow-up email was sent to Ms Faber on 24 November 2022. On 24 November 2022, Ms Faber indicated that she advised her clients of the requests and will follow up and revert shortly.

² Annexure "RA1a", page 377, Volume 4, Contempt of Court Application

- [35] The contempt application was issued on 14 December 2022. It was served on Ms Faber, who on 16 January 2023 confirmed receipt and advised that she had forwarded the application to Ms Mkhize.
- [36] On 30 January 2023, Ms Faber indicated that she had not received instructions to oppose the contempt application and would forward Ms Mkhize's current address once obtained.
- [37] On 2 March 2023, Ms Mkhize's personal assistant indicated that Ms Mkhize said that the application could be served at an address in La Lucia and that Ms Mkhize could also be located at two addresses in Sandown, Johannesburg.
- [38] What followed were numerous attempts to serve the contempt application on Ms Mkhize. Service was initially attempted on security guards at the Sandown addresses. Further attempts were made, but the security personnel at the properties had been instructed not to accept service.
- [39] On 18 August 2023, an attempt was made to serve the contempt application at a soccer match. The sheriff was unable to approach Ms Mkhize as she was surrounded by security guards.
- [40] Thereafter, an order for substituted service was granted by this Court authorising service on the respondents by service on Ms Mkhize at an enquiry she was to attend. The contempt application was served on Ms Mkhize on 15 September 2023.

[41] On 24 April 2024, BDP Attorneys (representing for ZG and Ms Mkhize) addressed a letter to the applicants indicating that the vehicles were never in their possession and had been stored and left at sites where they were utilised. The letter further records that the location of as many vehicles as possible have been tracked and a report Automotive Rehab (Pty) Ltd was attached. The report attached to the letter does not mention the location of any of the pictured vehicles.

[42] On 26 April 2024, BDP Attorneys indicated that their clients were willing to make delivery of the vehicles and that these vehicles were available for collection and that Mr Cloete refused to collect them due to them being 'non-runners'.

[43] On 17 May 2024, the applicants denied the allegation that the vehicles were always available for collection, and it was stated that even non-runners were to be removed, however, that the respondents have previously prevented the liquidators from doing so by removing assets, and by employing heavily armed security guards and preventing access to premises.

[44] At the time of preparing the founding affidavit in the contempt application, 4 vehicles were recovered, sold and the proceeds received by the liquidators. These were the vehicles listed in paragraphs 3.1.2, 3.1.5, 3.1.17 and 3.1.18 of the Court Order.

[45] Thereafter, the vehicles listed in 3.1.1, 3.1.3, 3.1.4, 3.1.7, 3.1.8, 3.1.9 and 3.1.11 were delivered to the applicants during June 2024. According to the applicants, the other seven vehicles (3.1.6, 3.1.10, 3.1.12, 3.1.13, 3.1.14, 3.1.15 and 3.1.16) remain outstanding.

[46] According to a schedule provided by the respondents, five vehicles remain outstanding (3.1.1, 3.1.13, 3.1.14, 3.1.15 and 3.1.16).

[47] It appears common cause between the parties that, at the very least, the vehicles listed at 3.1.13, 3.1.14, 3.1.15 and 3.1.16 remain outstanding.

[48] The above chronology sets the context for the determination of the contempt application against ZG and Ms Mkhize.

Whether Zikhulise Group (Pty Ltd) is in contempt of the court order

[49] In *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) 326 (SCA) at paragraph 41 the Court stated:

“Finally, as pointed out earlier (para 23), this development of the common law not require the applicant to lead evidence as to the respondent’s state of mind or motive: once the applicant proves the three requisites (order, service and non-compliance), unless the respondent provides evidence raising a reasonable doubt as to whether non-compliance was wilful and mala fide, the requisite contempt will have been established. The sole change is that the respondent no longer bears a legal burden to disprove

wilfulness and mala fides on a balance of probabilities but need only lead evidence that establishes a reasonable doubt.'

[50] The Court further stated at paragraph 42 that:

“(4) 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.” (my underlining)

[51] Accordingly, the applicants must prove the following beyond a reasonable doubt:

- a. The existence of a court order;
- b. Service or notice of the order on the respondents;
- c. Non-compliance with the order; and
- d. Wilfulness and *mala fides* in the non-compliance.

[52] Once the first three elements are established, the evidentiary burden shifts to the respondent in relation to wilfulness and *mala fides*.

[53] The existence of a court order is not denied and cannot be denied. This is further born of the fact that ZG applied for leave to appeal, which was refused. ZG and Ms Mkhize accept that there has not been full

compliance with the order as some vehicles have not been returned, however, contend that it cannot be returned.

[54] Accordingly, the applicants have proved the first three elements beyond a reasonable doubt.

[55] The evidentiary burden then shifts to ZG to deal with wilfulness and *mala fides*.

[56] I now turn to deal with the defences raised by ZG and Ms Mkhize in the answering affidavit, summarised as follows:

- a. ZG has returned every vehicle possible and that it is not factually possible to return any other vehicle.
- b. a few of the vehicles did not belong to ZCMT and she required more time to ascertain which vehicles could be delivered.
- c. the curators *bonis* were appointed in 2016 and were empowered to effect the sale and purchase of the vehicles provided and had control over the vehicles.
- d. on 14 June 2024, 6 vehicles had been delivered – this was after the institution of the contempt proceedings.
- e. she gave consent for the vehicles to be sold, that her written consent was requested for the sale and purchase of the vehicles and that Strydom was empowered by the Preservation Order to effect the sale

and purchase of the vehicles as the rights, title and interest of all assets vested in the curators.

- f. the urgent application arose out of the applicants' failure to provide an undertaking that the vehicles would not be removed as vehicles belonged to ZG and Ms Mkhize and not ZCMT.
- g. the remaining vehicles cannot be located, despite a diligent search and they could have been recovered by the curators *bonis* or the liquidators as far back as 2018.
- h. various entities within the group hold assets which were managed and overseen by a fleet manager and his current whereabouts are unknown.
- i. the order provided ZG pay the costs of the urgent application and the counter-application and orders *ad solvendum pecuniam* are not competent for contempt proceedings.
- j. Ms Mkhize was not a party to the proceedings wherein the Court Order was granted and she, therefore, cannot be held in contempt of court of such an order.

[57] I deal first with what is contained in (a) – (h) above.

[58] It is evident from the chronology that ZG and Ms Mkhize were afforded multiple opportunities to dispute the ownership of the vehicles. Yet, they failed to do so meaningfully. There is no indication of how much additional time was needed to verify ownership, nor is there any explanation as to why such verification was not pursued earlier.

[59] The Automotive Rehab (Pty) Ltd report is dated 19 April 2024 - after the contempt proceedings were instituted. Even accepting, for the sake of argument, Ms Mkhize's allegation that she had no knowledge of the whereabouts of the vehicles, there is no indication that any prior efforts were made to locate them.

[60] The letter dated 24 April 2024, annexed to the answering affidavit, merely states that "*The Vehicles have, at all material times, been stored and left at the sites where they were utilised*". This assertion provides no assistance. Importantly, the respondents fail to explain why this information was not communicated to the applicants at a much earlier stage.

[61] The respondents' allegation that the curators *bonis* were entitled to remove the vehicles also does not provide any assistance. There is no answer to the allegations made by the applicants that they were deprived of knowledge of the whereabouts of the vehicles or prevented access to premises to search for vehicles.

[62] There is no detail regarding any steps taken to locate the outstanding vehicles. In the answering affidavit to the contempt application, Ms Mkhize merely states that "*The various entities within the group hold assets which were managed and overseen by a fleet manager and his current*

*whereabouts are unknown*³". This bare allegation is inadequate. No attempt is made to identify the fleet manager, outline the efforts undertaken to trace him, or to establish what information he might have regarding the vehicles. Nor is there any indication that the respondents attempted to investigate the assets belonging to ZCMT.

[63] With regard to (i) above, the contention that the applicants seek to hold ZG in contempt for failing to comply with an order *ad solvendum pecuniam* is incorrect. Whilst the applicants initially sought compliance with the order made for costs in the Court Order, the request for that relief was subsequently withdrawn. The applicants persist with the orders in relation to the delivery of the vehicles itemised in the Court Order, being an order *ad factum praestandum*. Based on what has been set out in the answering affidavit, the respondents would have opposed the relief sought anyway, even if it did not initially encompass the orders in respect of payment of costs.

[64] Given the scarce answer to the allegations raised by the applicant, I cannot conclude that the respondents have discharged the evidentiary burden in respect of wilfulness and *mala fides*. There is no explanation for the failure to engage meaningfully with the liquidators since 2018, nor for the non-compliance with the Court Order.

³ Answering Affidavit, paragraph 78, page 275, Volume 3, Contempt of Court Application

Whether Ms Mkhize, not a party to the original application, can be held in contempt of the Court Order

[65] In *Twentieth Century Fox Film Corporation & others v Playboy Films (Pty) Ltd & another* 1978 (3) SA 202 (W) at 203 A-E⁴, the Court stated that:

'A director of a company who, with knowledge of an order of Court against the company, causes the company to disobey the order is himself guilty of a contempt of Court. By his act or omission such a director aids and abets the company to be in breach of the order of Court against the company. If it were not so a court would have difficulty in ensuring that an order ad factum praestandum against a company is enforced by a punitive order, Vide Halsbury 4th ed vol 9 at 75. Consequently Jagger who had knowledge of the order of Court is guilty of a contempt of an order of this Court. An order ad factum praestandum against a company should also be served on its directors if a punitive order is to be sought against the directors in order to establish knowledge of the order of Court.'

[66] In *Höltz v Douglas and Associates (OFS) CC en Andere* 1991 (2) SA 797 (O), it was held that a person who contributes to the offence of contempt of a court order, can, without being a principal offender, be punished as an accomplice.

⁴ See also *Absa Bank Ltd v Transcon Plant and Civil CC and another* [2019] JOL 45135 (KZP)

[67] In *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)* (CCT19/11) [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC) (7 May 2015) at paragraph 47, the Court referencing *Cape Times Ltd v Union Trades Directories (Pty) Ltd and Others* 1956 (1) SA 105 (N) (*Cape Times*) stated:

“When a court order is disobeyed, not only the person named or party to the suit but all those who, with the knowledge of the order, aid and abet the disobedience or wilfully are party to the disobedience are liable. The reason for extending the ambit of contempt proceedings in this manner is to prevent any attempt to defeat and obstruct the due process of justice and safeguard its administration. Differently put, the purpose is to ensure that no one may, with impunity, wilfully get in the way of, or otherwise interfere with, the due course of justice or bring the administration of justice into disrepute.”

[68] It is clear that where an individual is the controlling mind of a juristic entity and has knowledge of a court order binding that entity, such a person may be held personally liable for contempt if they are responsible for the non-compliance.

[69] Ms Mkhize deposed to the founding affidavit in the urgent application and the answering affidavit in the contempt application. She, accordingly, had knowledge of the operations of ZG. In the meetings, as recorded in the correspondence, it is clear that the legal representatives took instructions

from Ms Mkhize. In the urgent application, Ms Mkhize confirmed that the vehicles she sought to prevent from being uplifted were the vehicles that were the subject of the rental, sale and valuation. She further stated that ZCMT has not been using the vehicles, and that ZG had been using them for the past two years.

[70] The only conclusion to be reached is that Ms Mkhize exercised sole control over ZG. There is no suggestion, in the answering affidavit or in argument, that there was any other individual exercising control over or acting on behalf of ZG. Ms Mkhize must be regarded as the controlling mind of ZG.

[71] Although the Court Order directed that ZG return the vehicles, its only means of compliance with the Court Order was through Ms Mkhize. Her knowledge of the order and her exclusive control over ZG's conduct makes her personally responsible for ZG's non-compliance.

[72] To accept the argument that she cannot be held in contempt because she was not cited in the original application is to allow the veil of juristic or corporate personality to interfere with and hinder the administration of justice and the integrity of the Courts. Ms Mkhize was responsible for every step taken by ZG as if taken by herself.

The form of the relief sought by the applicants

- [73] When the matter was called, I addressed Counsel on the practice in KwaZulu-Natal for contempt of court applications, being that the transgressor is afforded a further opportunity to comply with the Court order.
- [74] Mr Leathern SC, for the applicants, contended that the conduct of the respondents meets the requirements of a contempt of court and that all the papers have been exchanged making the matter ripe for final determination.
- [75] The Court Order was granted on 3 May 2019. The contempt application was issued 14 December 2022. Only in June 2024, did the respondents return some of the vehicles. Further, the reasons for non-compliance with the Court Order are wholly insufficient.
- [76] Whilst I do not intend on imposing any sanction at this stage, I deem it appropriate to declare that the respondents are in contempt of the Court Order. It seems a waste of judicial resources to issue an interim order in respect of the contempt application in circumstances where all the papers have been exchanged, full argument has been heard, and the matter is long ongoing.
- [77] Contempt of court proceedings seek to vindicate the Court's order, as well as to compel performance with an order.⁵

⁵ *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)* at paragraph 28; In *Fakie NO v CCII Systems* at paragraph 42

[78] The respondents will be given a further opportunity to purge their contempt, failing which, the applicants may approach this Court for an appropriate sanction.

Costs

[79] In Union Government (Minister of Railways and Harbours) v Heiberg 1919 AD 477 at page 484, the Court said:

“The ordinary practice is, of course, that costs follow the event, but that is subject to the general rule of our law that costs - unless expressly otherwise enacted - are in the discretion of the Judge, Kruger Bros. v Wasserman (1918 AD 63).”

[80] Although the order that I grant differs from what is sought in the applicants’ notice of motion, the applicants have nonetheless succeeded in their application. Furthermore, the respondents failed to comply with the Court Order and only partially did so after contempt proceedings were instituted.

[81] Given the legal principles applicable and the nature of the application, I can see no reason why costs should not follow the result and that costs be granted for the employment of two Counsel on an attorney and client scale.

Order

1. ZIKHULISE GROUP (PTY) LTD and MABONG FLORA-JUNIOR MKHIZE are declared to be in contempt of the Order granted by this Court on 3 May 2019 (“the Court Order”).
 2. MABONG FLORA-JUNIOR MKHIZE is directed to take all the necessary steps to ensure that ZIKHULISE GROUP (PTY) LTD complies with paragraphs 3.1.6, 3.1.10, 3.1.12, 3.1.13, 3.1.14, 3.1.15 and 3.1.16 of the Court Order forthwith.
 3. In the event that ZIKHULISE GROUP (PTY) LTD and MABONG FLORA-JUNIOR MKHIZE fail to comply with the order in paragraph 2 above, the applicants are granted leave to supplement their papers, in so far as it may be necessary, to seek orders committing MABONG FLORA-JUNIOR MKHIZE to a period of imprisonment and/or imposing a fine on ZIKHULISE GROUP (PTY) LTD and MABONG FLORA-JUNIOR MKHIZE, and/or any such other sanction that this Court deems appropriate, on notice to ZIKHULISE GROUP (PTY) LTD and MABONG FLORA-JUNIOR MKHIZE.
 4. The costs of this application be paid by ZIKHULISE GROUP (PTY) LTD and MABONG FLORA-JUNIOR MKHIZE jointly and severally, the one paying, the other to be absolved, such costs to be on an attorney and client scale and to include the costs of two Counsel where employed.
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Case information

Heard on: 14 March 2025

Judgment delivered: 12 June 2025

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(Williams N.O. & Kwape N.O.):

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