



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

REPORTABLE

High Court case number: 317/2025

Magistrates' Court case number: C906/2022

In the matter between:

THE STATE

and

SONWABO MDLIKIVA

Coram: Van Zyl, AJ (Henney, J concurring)

Delivered on: 21 November 2025

Summary: Criminal jurisdiction of magistrates' court – common law crime of contempt of court of a High Court order – magistrates' court has requisite criminal jurisdiction by virtue of section 89(1) of the Magistrates' Courts Act 32 of 1944

ORDER

The proceedings in the Magistrates' Court for the district of the Garden Route (held

at George) under case number C906/2022, including the accused's conviction and sentence on 23 April 2024, are confirmed.

**JUDGMENT ON SPECIAL REVIEW
UNDER S 304(4) OF THE CRIMINAL PROCEDURE ACT 51 OF 1977**

VAN ZYL, AJ:

Introduction

1. This case concerns the criminal jurisdiction of the magistrates' court in respect of charges of contempt of orders granted by the High Court.
2. The matter servers before this Court in chambers as a special review under section 304(4) of the Criminal Procedure Act 51 of 1977 (the CPA). The section reads as follows:

"If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice,¹ such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303² or this section."

¹ My emphasis.

² **"303 Transmission of record** The clerk of the court in question shall within one week after the determination of a case referred to in paragraph (a) of section 302(1) forward to the registrar of the provincial or local division having jurisdiction the record of the proceedings in the case or a copy thereof certified by such clerk, together with such remarks as the presiding judicial officer may wish to append thereto, and with any written statement or argument which the person convicted may within three days after imposition of the sentence furnish to the clerk of the court, and such registrar shall, as soon as possible, lay the same in chambers before a judge of that division for his consideration." (My emphasis.)

3. The accused was convicted in the George Magistrates' Court on 23 April 2024 on a charge of contempt of court. The charge arose from the accused's breach of the provisions of an interdict³ granted in this Court during May 2022,⁴ the Honourable Judge President Hlophe (as he then was) presiding.
4. The charge sheet set out the content of the High Court order, indicated the manner in which it had been served, and concluded as follows:

"That the accused is charged with the crime of Contempt of Court.

IN THAT upon (or about) 18.08.2022 and at (or near) CRADOCK STREET, TAXI RANK, in the SUB-DISTRICT OF GEORGE, within the DISTRICT OF THE GARDEN ROUTE, the accused did OPERATE A ROAD-BASED PUBLIC TRANSPORT SERVICE FOR COMPENSATION / AWARD as a result of which he unlawfully and intentionally impaired the dignity, repute or authority of a judicial officer, to wit HONOURABLE J. P. HLOPHE, or the body, to wit HIGH COURT SA, WESTERN CAPE DIVISION, CAPE TOWN, or as a result of which he interfered with the legal proceedings in a sub judice case."

5. The accused had legal representation at the time of his trial, and he pleaded guilty to the charge. He was sentenced to payment of a fine of R3 000,00 (deferred over a period of 5 months), or 3 months' imprisonment.
6. That was the end of the matter until, during a quality assessment undertaken in the magistrates' court in August 2025, the matter was flagged as suffering from "*an issue with judgment and sentence*". It was thus submitted to the High Court for special review under section 304(4) of the CPA. In correspondence addressed to this Court the magistrate who had presided over the accused's

³ Under case number 21709/2021. It is not necessary, for present purposes, to consider the provisions of the High Court order in any detail.

trial stated that it had been brought to her (the magistrate's) attention during August 2025 that "*the district court does not have jurisdiction to deal with such cases*". The magistrate indicated that, at the time of the proceedings, she was "*of the incorrect view that the district court had jurisdiction*".

7. It was not entirely clear to me what exactly the problem with the district court's jurisdiction was, and I accordingly telephoned the magistrate who had presided over the case to discuss the reasons for the submission of the matter for review. The magistrate confirmed that those conducting the quality assessment were of the view that the district court lacked the necessary criminal jurisdiction to find the accused in contempt of a High Court order. She, as magistrate, had always been under the impression that, as far, as criminal contempt was concerned, the district court did have jurisdiction (on the bases that I discuss below). The issue was not raised at all in the course of the trial proceedings, as the accused's legal presentative never objected to the court's jurisdiction.
8. The issue that arises is thus whether the magistrates' court enjoyed the requisite criminal jurisdiction to determine the charge of contempt against the accused.

The common law crime of contempt of court: the criminal jurisdiction of the magistrates' court

Contempt of court as a crime

9. Contempt of court is the unlawful and intentional violation of the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a

⁴ The charge sheet was formally amended in the course of the proceedings, but the amendment is not material to the issue under consideration in this judgment.

matter pending before it.⁵ It has also been described as the deliberate, intentional (i.e., wilful), disobedience of an order granted by a court of competent jurisdiction.⁶

10. It is trite that proceedings arising out of an alleged contempt of court may take either a civil or a criminal route. First, 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 rule of law requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained.⁷ Second, in the hands of a private party, a civil action or application for committal for contempt may be brought, invoking a criminal sanction, or the threat thereof. While the litigant seeking enforcement has a manifest private interest in securing compliance, the court grants enforcement also because of the broader public interest in obedience to its orders, since disregard sullies the authority of the courts and detracts from the rule of law.⁸

11. In *Fakie NO v CCII Systems (Pty) Ltd*,⁹ the Supreme Court of Appeal remarked that, before the decision *S v Beyers*,¹⁰ it was not clear whether disobedience of a civil order could lead to a public prosecution, since prosecutions were not commonly pursued. *Beyers's* case, which involved the alleged violation of an interdict granted in civil proceedings, ended the uncertainty.

12. What happened in *Beyers* was that after the alleged violation of the interdict, and while *Beyers's* appeal against its grant was pending, he and his opponent

⁵ See the definition in Burchell *Principles of Criminal Law* (5ed, Juta, 2016) p. 864, and see *S v Beyers* 1968 (3) SA 70 (A) at 76E-G.

⁶ *Consolidated Fish Distributors (Pty) Ltd v Zive and others* 1968 (2) SA 517 (C) at 522C.

⁷ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) para 6.

⁸ *Fakie NO supra* para 7.

⁹ *Supra* para 11.

¹⁰ *Supra* at 81F.

reached a settlement in which the latter abandoned the interdict with retrospective effect “*as if it had never been granted*”. The State nevertheless proceeded, and the Appellate Division (as it then was) held that the private abandonment did not preclude the public prosecution.¹¹ The court emphasised that while mere non-compliance did not necessarily constitute contempt, sustained disregard and flouting of a court order could be calculated to injure and diminish the authority and status of the court. The court described the procedure in terms of which a litigant could in his or her own interest seek punishment of an opponent for contempt of court to enforce compliance with a court order as ambivalent (“*tweeslagtig*”) in nature because, while it followed the rules of civil procedure, it did not forfeit its criminal dimension. South African case law repeatedly treated the civil infraction as a crime, with no indication that it was regarded as anything other than common law contempt of court. This appeared most clearly from the fact that an ordinary punishment was imposed if the application succeeded since the imposition of punishment without a crime being committed, would be something repugnant to (“*onbestaanbaar in*”) our law.

The magistrates’ court’s civil jurisdiction in relation to contempt

13. One must be careful not to confuse the civil jurisdiction of the magistrates’ court with its criminal jurisdiction insofar as it relates to contempt of court. The magistrates’ court is a creature of statute. Its civil jurisdiction in relation to causes of action is set out in section 29 (“*Jurisdiction in relation to causes of action*”), read with section 46 (“*Matters beyond the jurisdiction*”), of the Magistrates’ Courts Act 32 of 1944 (the MCA).

14. In *Dreyer v Wiebols and others*¹² the Court held as follows in relation to civil proceedings for contempt:

¹¹ See the discussion in *S v Beyers supra* at 77E-80F.

¹² 2013 (4) SA 498 (GSJ) para 9. Emphasis supplied.

“Proceedings for committal for contempt of court ought to be brought in the court that made the order which the respondent is alleged to have disobeyed. When a high court entertains an application in civil proceedings for committal for contempt of court, it does so in the exercise of its inherent jurisdiction to ensure that its orders are complied with. Process-in-aid is a remedy by means whereof a court enforces a judgment of another court which cannot be effectively enforced through that court's own process and it is also a means whereby a court secures compliance with its own procedure. Although it is sometimes sanctioned by a statutory provision or a rule of court, it is an incident of a superior court's ordinary jurisdiction.”

15. Section 29 of the MCA does not confer any civil jurisdiction on the magistrate's court in relation to civil proceedings for contempt of court. It has no inherent jurisdiction to entertain a civil complaint relating to the contempt of a High Court order. Such civil complaint must be brought in the High Court.

What, however, is the position in respect of contempt addressed by way of a criminal charge?

16. The breach of a court order will quite obviously not give rise to criminal prosecution in every case. A party in whose favour an order was granted may be satisfied with civil relief provided, and the purging of any contempt following civil proceedings. In cases where a criminal complaint is lodged, the decision to prosecute lies in the hands of the prosecuting authority. This authority decides, too, where such prosecution is to take place.
17. The magistrates' court's criminal jurisdiction depends, broadly, on four aspects, namely the nature of the offence, the court's territorial jurisdiction, and the sentencing and compensation limits imposed on the magistrates' court by the relevant legislation, including the MCA and the CPA.¹³

18. Section 89(1) of the MCA determines the magistrates' court's jurisdiction in relation to the nature of the crime in question:

*"The court, other than the court of a regional division, shall have jurisdiction over all offences, except treason, murder, rape and compelled rape as contemplated in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively."*¹⁴

19. Section 90(1) of the MCA determines that the court's jurisdiction in relation to its territory:¹⁵

"Subject to the provisions of section eighty-nine, any person charged with any offence committed within any district or regional division may be tried by the court of that district or of that regional division, as the case may be."

20. As to punishment, section 276 ("Nature of punishments")¹⁶ of the CPA lists the various forms that sentencing may take. Section 92 of the MCA, in turn, delineates the magistrates' court's jurisdiction as follows:

¹⁴ My emphasis.

¹⁵ My emphasis. Section 90(2) to 90(9) make additional arrangements which do not have to be considered for present purposes.

¹⁶ "(1) *Subject to the provisions of this Act and any other law and of the common law, the following sentences may be passed upon a person convicted of an offence, namely-*

- (a)*
- (b) imprisonment, including imprisonment for life or imprisonment for an indefinite period as referred to in section 286B (1);*
- (c) periodical imprisonment;*
- (d) declaration as an habitual criminal;*
- (e) committal to any institution established by law;*
- (f) a fine;*
- (g)*
- (h) correctional supervision;*
- (i) imprisonment from which such a person may be placed under correctional supervision in the discretion of the Commissioner or a parole board.*

(2) Save as is otherwise expressly provided by this Act, no provision thereof shall be construed-

- (a) as authorizing any court to impose any sentence other than or any sentence in excess of the sentence which that court may impose in respect of any offence; or*

“92 Limits of jurisdiction in the matter of punishments

(1) Save as otherwise in this Act or in any other law specially provided, the court, whenever it may punish a person for an offence-

(a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding three years, where the court is not the court of a regional division, or not exceeding 15 years, where the court is the court of a regional division;

(b) by fine, may impose a fine not exceeding the amount¹⁷ determined by the Minister from time to time by notice in the Gazette for the respective courts referred to in paragraph (a);

(c)

(d) by correctional supervision, may impose correctional supervision for a period as contemplated in section 276A(1)(b) of the [CPA].

(2)(a) The court shall have jurisdiction to impose any punishment prescribed in respect of an offence under an ordinance of a province or the territory which relates to vehicles and the regulation of traffic on public roads, notwithstanding that such punishment exceeds the jurisdiction referred to in subsection (1).

(b) Where a person is convicted of culpable homicide arising out of the driving of a vehicle as defined in any applicable ordinance referred to in paragraph (a), the court shall have jurisdiction to impose any punishment which the court may impose under that paragraph in respect of the offence of driving a vehicle recklessly on a public road.”

21. The court’s jurisdiction in relation to compensation is prescribed in section 300(1) of the CPA:¹⁸

“(1) Where a person is convicted by a superior court, a regional court or a magistrate’s court of an offence which has caused damage to or loss of property (including

(b) as derogating from any authority specially conferred upon any court by any law to impose any other punishment or to impose any forfeiture in addition to any other punishment.”

¹⁷ Currently R120 000,00 in respect of the district court.

¹⁸ Emphasis supplied.

money) belonging to some other person, the court in question may, upon the application of the injured person or of the prosecutor acting on the instructions of the injured person, forthwith award the injured person compensation for such damage or loss: Provided that- (a) a regional court or a magistrate's court shall not make any such award if the compensation applied for exceeds the amount¹⁹ determined by the Minister from time to time by notice in the Gazette in respect of the respective courts.”

22. I suspect that what might have muddled the waters for those undertaking the quality assessment in the present matter was the magistrates’ court’s lack of civil jurisdiction in relation to contempt, coupled with the provisions of section 106 of the MCA. Section 106 provides specifically as follows in relation to contempt *ex facie curiae*:

“Any person wilfully disobeying, or refusing or failing to comply with any judgment or order of a court or with a notice lawfully endorsed on a summons for rent prohibiting the removal of any furniture or effects shall be guilty of contempt of court and shall, upon conviction, be liable to a fine, or to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.”

23. Section 106 creates a statutory offence that should be charged and tried as a criminal offence.²⁰ The “court” referred to in section 106 is, in terms of section 1²¹ of the MCA, a magistrates’ court for any district or regional division. A magistrates’ court may therefore visit cases of contempt in relation to its own orders with the sanctions prescribed in the section. Section 106 does not, however, address the magistrates’ court’s jurisdiction to determine a criminal charge of contempt in relation to an order of the High Court.

24. Section 108 of the MCA, in turn, provides for specific relief - summary conviction and sentencing - in cases of contempt *in facie curiae* during a sitting of the

¹⁹ Currently R300 000,00 in respect of the district court.

²⁰ See *M v M* [2017] ZAGPJHC 279 (28 March 2017) para 19.

²¹ The definitions section.

magistrates' court.

25. A contextual consideration of all of these provisions does not offer any reason for the exclusion of the crime of contempt of court from the magistrates' court's criminal jurisdiction. On the contrary, the magistrates' court has the necessary jurisdiction to deal with the common law crime of contempt *ex facie curiae*, irrespective of and in addition to its powers under section 106 of the MCA. This is clear from section 89(1) of the MCA, which I have quoted earlier. The court is expressly empowered to deal with all offences except murder, treason, and rape. The crime of contempt is not excluded.

26. This has, in fact, been the approach in the relevant case law over the years.

27. In *R v Mans*²² it was held that contempt of court *ex facie curiae* is a crime under the common law, and if it is not excluded, it falls within the boundaries of the MCA. The Court considered various older authorities in which the same approach had been taken, including *Die Staat v Innes Grant*,²³ in which the full court stated:²⁴

"But why it should be said that the provision of this summary method of dealing with a particular form of contempt should limit the magistrate's jurisdiction in question of contempt generally I am at a loss to understand."

28. In *Die Staat v van Wyk*²⁵ the same point was made:²⁶

"In the course of the argument the point was raised whether the magistrate's court had jurisdiction to try this charge; though this ground was not set forth in the notice of appeal. In Rex v Ncapai (1937, J.C., sec. 439), GANE, A.J., held that a magistrate's

²² 1950 (1) SA 602 (C) at 604-605.

²³ 1923 NPA 425.

²⁴ At 428.

²⁵ 1934 CPD 308.

*court had no power to try the criminal offence of contempt of court committed ex facie curiae, and Rex v Cadi (1930 TPD 99) is to the same effect. The Natal Provincial Division, however, in Innes Grant v Rex (1923 NPD 425) took the opposite view. I agree with the last-mentioned decision,*²⁷

29. In *R v Van Rooyen*²⁸ the court reiterated that, in terms of section 89 of the MCA, a magistrate's court is given jurisdiction in respect of all offences except treason, murder and rape. It held:²⁹

"It is clear that contempt of court is under our common law an offence; Contempt of court as an offence may be punished in the same way as any other offence, i.e. in a criminal case initiated by way of summons. The Supreme Court, it has been held, has inherent jurisdiction to punish contempts summarily. A magistrate's court, as a creature of statute, must seek its jurisdiction in the statute creating it. ... It however contains no express provisions which remove from the normal scope of the words employed in sec. 89 of the Act the offence of contempt of court. Prima facie a magistrate's court in terms of the Act therefore would have jurisdiction to try a charge of contempt of court committed ex facie curiae if the matter be brought before it in the ordinary way by means of a summons in a criminal case. ... In principle and on authority I can see no basis for holding that the common law offence of contempt is not justiciable by a magistrate's court under its criminal jurisdiction conferred by sec. 89 of the present Act."

30. *R v Van Rooyen* was decided before the introduction of section 106 and section 108 in their current form into the MCA, but the approach taken in that case was confirmed by the Appellate Division (as it then was) in *Argus Printing and Publishing Co Ltd and others v Esselen's Estate*:³⁰

"A magistrate's court has, in addition, jurisdiction to try a contempt of court commit-

²⁶ At 312.

²⁷ See also *Die Staat v Spilkin* 1944 EDL 55.

²⁸ 1958 (2) SA 558 (T) at 560ff.

²⁹ At 560H-561G. My emphasis.

ted ex facie curiae brought before it by way of an ordinary criminal summons (see R v Van Rooyen 1958 (2) SA 558 (T)). The only difference between the magistrate's court and the Supreme Court in this sphere is that the latter can also deal with a contempt ex facie curiae by the summary procedure (see Jones and Buckle The Civil Practice of the Magistrates' Courts in South Africa 8th ed 376)."

31. On a proper interpretation, in any event, the purpose of sections 106 and 108 is to provide for a penalty (summarily imposed in the case of section 108) in the event of contempt of orders of the magistrates' court itself. These provisions appear in the "Offences" section of the MCA, and do not purport to limit the criminal jurisdiction of the magistrates' court as provided for elsewhere in the MCA. As was stated in *R v Van Rooyen*³¹ in relation to section 108 of the MCA:

*"But for a possible inference to be drawn from the terms of sec. 103 of Act 32 of 1917 (the equivalent of the present sec. 108) there was no basis at all for holding that the common law offence of contempt of court had to be added to the crimes of treason, murder and rape specifically excluded from a magistrate's jurisdiction by sec. 86 [now section 89]. And the fact that a special power was conferred on magistrates to deal summarily with contempts committed in facie curiae under sec. 103 would not in my view reasonably give rise to the inference that thereby jurisdiction to deal with contempts committed ex facie curiae when made the subject of an ordinary criminal charge was taken away. It is interesting to note that a contempt committed in facie curiae can now clearly be dealt with by a magistrate's court also on a summons and not only summarily; see the terms of sec. 108 (1) of the present Act as compared to the terms of the old sec. 103 (1). The result is that in my opinion the question as to the correctness of the decision in *Rex v Cadi*, supra, left open in the case of *Rex v Sachs*, 1932 T.P.D. 201 at p. 203, must be answered in favour of the view that the decision was clearly wrong and that in any event, under the provisions of Act 32 of 1944, a magistrate's court has jurisdiction to try the offence of contempt of court committed ex facie curiae brought before it by way of an ordinary criminal summons."*

32. Further, whilst a *civil* remedy for contempt has to be sought in the court whose order was breached (that is, the High Court pronounces on the breach of its own orders), there is no such distinction in the case of the common law *crime* of contempt. As long as the necessary elements for the criminal jurisdiction of the magistrates' court are present in relation to a criminal charge of contempt, it matters not that the court order which forms the basis of the charge was granted by the High Court, as was the case in the present matter.

33. A useful illustration of this appears from the case of *S v Bresler and another*,³² where the converse occurred: the contempt in question related to the magistrates' court, but the criminal prosecution for contempt took place in the High Court. The first accused, Mr Bresler, had made racist and disparaging remarks about a magistrate who had presided over a criminal trial involving his daughter, Ms Bresler. The magistrates' court had found Ms Bresler guilty of a traffic offence. The offending remarks were made in an application for leave to appeal which had been prepared by Mr Bresler, as well as in the course of the subsequent appeal. Although the remarks were aimed at, and constituted contempt of, the magistrates' court, Mr Bresler was prosecuted and convicted in the High Court given the seriousness of the matter, and the social ramifications of his public outburst against the magistrate in question.

34. *Samuels v S*³³ involved an appeal against the appellant's conviction and sentence in the magistrates' court on a criminal charge of contempt. Notably, the charge arose from the appellant's breach of an interdict previously granted by the High Court in civil proceedings. Whilst the High Court, on appeal, interfered with the conviction and sentence, it did not question the prosecution of the criminal proceedings in the magistrates' court, or the magistrates' court's

³¹ *Supra* at 561H-562B. My emphasis.

³² 2002 (2) SACR 18 (C).

³³ 2016 (2) SACR 298 (WCC).

jurisdiction to hear the matter.

35. Thus, the institution of a criminal prosecution for contempt of court is the prerogative of the National Directorate of Public Prosecutions, and that office may decide where the prosecution is to be instituted. The breach of a magistrates' court order, and the ramifications of such breach, may be regarded as sufficiently serious to warrant prosecution in the High Court. The breach of a High Court order may, conversely, be dealt with in the magistrates' court, as was the case in the matter under consideration.

Conclusion

36. It follows that there is no reason why the matter should not have proceeded in the magistrates' court, and there is no reason to interfere with that court's judgment and sentence.

Order

37. In these circumstances, I suggest that the following order be granted:

The proceedings in the Magistrates' Court for the district of the Garden Route (held at George) under case number C906/2022, including the accused's conviction and sentence on 23 April 2024, are confirmed.

P. S. VAN ZYL
Acting Judge of the High Court

I agree, and it is so ordered.

R.C.A. HENNEY
Judge of the High Court