



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

CASE NO: D14519/2024

In the matter between:

NATIONAL BIOPRODUCTS INSTITUTE NPC

APPLICANT

and

THOKOZANI PETRUS CEBEKHULU

RESPONDENT

ORDER

The following order is made:

1. The rule *nisi* issued on 3 December 2024 is confirmed.
2. The respondent is declared to be in contempt of the order of this Court dated 3 December 2024.
3. The respondent is directed to purge his contempt by:
 - 3.1 Identifying, under oath, the person who signed the anticomplementary activity ("ACA") and fragment crystallisable function ("Fc") test results referred to in the main order;
 - 3.2 Authenticating all relevant test results as required by paragraph 6 of the order dated 3 December 2024; and
 - 3.3 Delivering such affidavit and authenticated documents within seven days of service of this order.

4. Failing compliance, the applicant may enrol the matter on 48 hours' notice for imposition of sanctions.
5. The respondent shall pay the costs of the main and contempt applications on the attorney-and-client scale, including costs of senior counsel where employed.

JUDGMENT

Delivered: 28 November 2025

MASIPA J

Introduction

[1] This matter concerns the confirmation of a rule *nisi* issued on 3 December 2024 and whether the respondent is in contempt of that order. The applicant seeks final relief compelling the respondent to return and authenticate specified anticomplementary activity (“ACA”) and fragment crystallisable function (“Fc”) results generated during his tenure as Quality Control Manager. Following the respondent’s alleged non-compliance with the December 2024 order, a contempt application was launched, and a consent order was granted on 30 January 2025 directing the respondent to file an explanatory affidavit if he was unable to comply.

[2] The respondent filed no answering affidavit to oppose the main application. The only affidavit deposed to by him is the explanatory affidavit delivered pursuant to the contempt order. Notwithstanding this, his counsel filed written submissions. For reasons that follow, the matter remains unopposed, and the proper factual matrix must be assessed solely on the applicant’s affidavits and the respondent’s explanatory affidavit.

Background and procedural history

[3] On 3 December 2024, the applicant obtained an urgent order directing the respondent to return specified ACA and Fc test results and to authenticate them. The respondent, who had been the custodian of these results for the applicant for more than three decades, was served with the order and given clear obligations to perform.

The respondent did not comply. Consequently, the applicant instituted contempt proceedings. These culminated in a consent order before Hemraj AJ on 30 January 2025. In terms of that order, the respondent was required to file an explanatory affidavit within five days should he be unable to comply with the main order.

[4] On 7 February 2025, the respondent filed an explanatory affidavit. He did not file an answering affidavit, nor a notice of intention to oppose, at any point. The matter was thereafter set down on the opposed roll, but that administrative classification does not alter the nature of the pleadings.

Whether the respondent opposed the application

[5] Uniform rule 6(5)(d)(ii) requires a respondent wishing to oppose motion proceedings to file an answering affidavit. The respondent did not do so. Filing heads of argument does not amount to opposition and cannot substitute for evidence under oath. Material disputes of fact cannot arise from submissions by counsel. The matter is therefore unopposed. The court must consider the applicant's version together with the respondent's explanatory affidavit but cannot attach evidentiary weight to the submissions contained in heads of argument filed on his behalf.

The respondent's explanatory affidavit

[6] In his affidavit, the respondent claims to have returned data in his possession and asserts that he cannot authenticate certain information because his employment ended. He suggests that the matter is moot since he no longer has access to all the records. These assertions do not address the core factual duties placed upon him by the December 2024 order. Crucially, although he was the custodian of the ACA and Fc tests and the only person who could identify the signatory on the test results, he refuses to disclose who signed them. No attempt is made to describe the storage process, retrieval method, or chain of custody of the documents. He does not explain what he did upon leaving the applicant's employ, nor whether he took steps to secure or return data. The affidavit is incomplete, vague, and does not meaningfully address compliance. It therefore cannot constitute adequate compliance with paragraph 2 of the contempt order.

Applicable legal principles

Contempt of court

[7] The test for civil contempt arises from *Fakie NO v CCII Systems (Pty) Ltd*,¹ which held that the applicant must prove (a) the order; (b) service or notice; and (c) non-compliance. Once these are established, the evidential burden shifts to the respondent to show that non-compliance was neither wilful nor *mala fide*. Section 165(5) of the Constitution requires that court orders bind all persons. In *Pheko and Others v Ekurhuleni City*,² the Constitutional Court stressed that the rule of law demands obedience to court orders and that disobedience risks rendering judicial authority a “mere mockery”.

[8] In *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others*,³ the Constitutional Court emphasised that wilful non-compliance particularly by persons previously holding responsibilities threatens the administration of justice. Similarly, in *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others*,⁴ the Constitutional Court reaffirmed that defiance of a court order “strikes at the heart of the rule of law” and warrants decisive judicial intervention.

Motion proceedings

[9] In *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*,⁵ the Supreme Court of Appeal held that a real dispute of fact arises only when the respondent seriously and unambiguously engages with the applicant’s allegations. Bare denials or evasive assertions are insufficient, particularly where the facts lie within the respondent’s exclusive knowledge.

Analysis

[10] The applicant’s case is founded upon clear, uncontested factual averments establishing that the respondent was the senior custodian of the ACA and Fc testing

¹ *Fakie NO v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (*Fakie*) para 42.

² *Pheko and Others v Ekurhuleni City* [2015] ZACC 10; 2015 (5) SA 600 (CC) (*Pheko*) para 1.

³ *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* [2017] ZACC 35; 2018 (1) SA 1 (CC) para 67.

⁴ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* [2021] ZACC 18; 2021 (5) SA 327 (CC) (*Secretary, JCI v Zuma*) para 26.

⁵ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) (*Wightman*) para 13.

regime. He held this responsibility for more than thirty years. The applicant's evidence shows that all ACA and Fc results generated by the respondent or under his supervision were subject to an internal process of review, authentication, and sign-off. These processes formed a critical part of the applicant's regulatory, quality-assurance, and public-safety obligations. It is against this backdrop that the respondent's conduct must be assessed, as it demonstrates the gravity of the obligations imposed on him by the December 2024 order.

[11] The respondent does not dispute that he was the custodian of these test results nor does he deny that the applicant repeatedly demanded the return and authentication of ACA and Fc data. These undisputed facts have two implications. First, they establish that the respondent was uniquely positioned to comply with the order because he possessed the direct knowledge enabling him to identify the signatory, authenticate the documentation, and confirm the integrity of the test data. Second, they demonstrate that failure to comply is not the result of ignorance or inadvertence but arises from a conscious withholding of information.

[12] The respondent's explanation that he "no longer has access" because his employment ended is illogical. Authentication requires, at minimum, disclosure of the identity of the analyst or signatory and confirmation that the contents of the results correspond with the records generated or reviewed. These are matters falling within his personal knowledge, not dependent on access to the applicant's facilities. The respondent's silence on whether he performed the ACA tests himself or supervised them is equally troubling. The applicant's replying affidavit demonstrates that the respondent has never explained who signed the results or how the signature was generated. Whether he personally performed the tests or supervised them, he would necessarily know the signatory. His refusal to disclose this is inconsistent with *bona fide* compliance.

[13] The principle in *Wightman* applies. The respondent's affidavit does not "seriously and unambiguously" address the central allegations. Where the applicant's version is supported by documentary evidence and undisputed facts, the respondent's

bare assertions cannot create a dispute. The rule in *Plascon-Evans*⁶ requires this Court to accept the applicant's version. The unexplained refusal to identify the signatory raises the inference that the signature is irregular. Whether it was forged, improperly inserted, or reflects an incomplete testing process, the respondent's refusal to engage reinforces the inference of wilfulness.

[14] Applying *Fakie*, the respondent has failed to rebut the inference of wilfulness. His termination of employment cannot extinguish obligations under a court order. He offers no substantive steps taken to comply. The broader constitutional context reinforces this conclusion. Section 165 of the Constitution mandates that court orders bind all persons. In *Pheko* the Constitutional Court held that disobedience strikes at the heart of the judicial system. The respondent's seniority within the applicant's scientific governance structure renders his breach particularly serious. He was entrusted with safeguarding data critical to public safety. For these reasons, the Court finds that the respondent is in wilful and *mala fide* contempt, and that the applicant has established an entitlement to confirmation of the rule *nisi*.

Costs

[15] The respondent's conduct compelled the applicant to incur unnecessary costs. In *Secretary, JCI v Zuma*, the Constitutional Court confirmed that punitive costs are warranted where conduct undermines judicial authority. The respondent's failure to comply, refusal to disclose critical information, and failure to oppose properly, warrant a punitive attorney-and-client order.

Order

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

1. The rule *nisi* issued on 3 December 2024 is confirmed.
2. The respondent is declared to be in contempt of the order of this Court dated 3 December 2024.
3. The respondent is directed to purge his contempt by:
 - 3.1 Identifying, under oath, the person who signed the anticomplementary activity ("ACA") and fragment crystallisable function ("Fc") test results

⁶ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

- referred to in the main order;
- 3.2 Authenticating all relevant test results as required by paragraph 6 of the order dated 3 December 2024; and
 - 3.3 Delivering such affidavit and authenticated documents within seven days of service of this order.
4. Failing compliance, the applicant may enrol the matter on 48 hours' notice for imposition of sanctions.
 5. The respondent shall pay the costs of the main and contempt applications on the attorney-and-client scale, including costs of senior counsel where employed.

Masipa J

Details of the matter:

Date of Hearing: 5 November 2025
Date of Judgment: 28 November 2025

Appearances:

For the applicant: Mr A Stokes (SC)
Instructed by: MacGregor Erasmus Attorneys Inc

For the Respondent: Mr SN Mlondo
Instructed by: Ngcamu Attorneys Incorporated,
Pietermaritzburg