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

JUDGMENT

CASE NO.: 17216/2023

REPORTABLE

In the matter between:

DE SAUDE SADAT DARBANDI IMMIGRATION ATTORNEYS INC Applicant

and

THE ACTING PROVINCIAL MANAGER: WESTERN CAPE

DEPARTMENT OF HOME AFFAIRS

First Respondent

THE DISTRICT DIRECTOR: CAPE TOWN

DEPARTMENT OF HOME AFFAIRS

Second Respondent

THE MINISTER OF HOME AFFAIRS

Third Respondent

THE DIRECTOR-GENERAL:

DEPARTMENT OF HOME AFFAIRS

Fourth Respondent

Neutral citation: *De Saude Darbandi Immigration Attorneys Inc v The Acting Provincial Manager, Western Cape: Department of Home Affairs*
(Case no 17216/2023) [2025] ZAWCHC (04.12.25)

Coram: MOOSA AJ

Heard: 12 September 2025

Delivered: 9 December 2025

Summary: Declaratory order – failure to comply with declarator – whether contempt is competent relief arising from declarator – this question of law answered in the affirmative.

ORDER

- 1 It is declared that the respondents failed to comply with paragraph (a) of the order granted by Nziweni J on 6 March 2025 under the above case number when their screening officials at the Cape Town Home Affairs office refused to accept the late birth registration applications of certain clients of the applicant.
- 2 Each party shall be liable to pay their own costs.

JUDGMENT

Moosa AJ

Introduction

[1] This judgment concerns an application launched on 18 July 2025. Its genesis lies in a judgment penned by Nziweni J delivered on 6 March 2025 (“the *Nziweni* judgment”).¹

[2] At para [85] of the *Nziweni* judgment, the following orders are granted:

- ‘a. It is declared that the conduct of officials acting in the course and the scope of their employment duties to the Respondents, who, whilst not being authorised or delegated to do so, refuse to accept or process applications in terms of the South African Citizenship Act 88 of 1995 (“the Citizenship Act”) and /or the Births and Deaths Registration Act 51 of 1992 (“the Registration Act”) at the offices of the Department of Home Affairs (“the Department”), is ultra vires the Citizenship and/or Registration Act and unlawful.
- b. The Respondents are directed to accept the applications of the Second to Eight Applicants at the offices of the Department in Cape Town and to take the necessary steps to transfer such applications to the appointed adjudicators within the Department;
- c. The costs of this application are to be paid by the Respondents, jointly and severally, the one paying the others absolved.’

[3] In the application before me, the applicant initially sought various forms of relief, including costs. By the time this application was heard, the only relief sought, in addition to costs, is an order framed in the Notice of Motion as follows:

- ‘2. It is declared that the Respondents are in contempt of, alternatively have failed to comply with, the judgement and order handed down in this matter in this Court (per Nziweni J) on 6 March 2025 (“the Judgment”).’

[4] At the hearing, Mr Simonsz for the applicant conceded that, as a matter of law, the respondents cannot be held in contempt or breach of Nziweni J’s judgment read as a whole, but only in relation to obligations imposed by any orders made by the judge.

¹ See *De Saude Sadat Darbandi Immigration Attorneys Inc and Others v Acting Provincial Manager, Western Cape Department of Home Affairs and Others* (17216/2023) [2025] ZAWCHC 83.

[5] This application was argued solely on the basis that the applicant seeks an order holding the respondents in contempt or in breach of paragraph (a) of Nziweni J's order quoted in para [2] above. To this end, it is necessary to provide some context. Hence, I commence by briefly narrating the material facts which gave rise to this application.

Relevant background

[6] De Saude Sadat Darbandi Immigration Attorneys Inc ("De Saude") is a law firm specialising in immigration law. It brought the application forming the subject of the *Nziweni* judgment primarily for the benefit of its clients. Pursuant to that judgment, De Saude assisted various clients by facilitating the lodgement of applications at the offices of the Department of Home Affairs in Cape Town in relation to matters falling within the Department's jurisdiction under legislation administered by it. De Saude's clients included L[...] M[...] ("L[...]") and Thamisanqa Molepo ("Molepo").

[7] L[...] is a 17-year old South African who is a citizen by birth. However, L[...]’s birth was never registered by his parents. Since L[...] has no documentation which proves his South African citizenship, this has caused him to endure immeasurable hardship. In the pleadings, L[...]’s precarious situation is explained as follows:

‘L[...] is 17 years old. He has no birth certificate, no ID number, no passport, and no nationality. He cannot write matric, register for a tertiary institution, obtain a driver’s licence, open a bank account, or even legally exist in the eyes of the State. He is, for all legal purposes, invisible, not because he has done anything wrong, but because the systems designed to protect him have systematically failed him.’

[8] On 21 May 2025, L[...] attended the Home Affairs offices in Cape Town where he attempted to file an application for the late registration of his birth. To add insult to his long-standing injury, the screening officials responsible to receive such applications for processing refused to accept it. They averred that L[...] did not have an appointment with Home Affairs for the filing of his application. De Saude states that no such appointment process exists, and that the refusal by the screening officials at Home

Affairs to accept L[...]’s application is a contemptuous breach of paragraph (a) of the *Nziweni* judgment.

[9] The refusal to accept L[...]’s application meant that his application for recognition as a South African citizen with all the benefits that flow from citizenship could not be processed. De Saude complained that this refusal perpetuates L[...]’s statelessness and violates L[...]’s constitutional right not to be stateless. I pause to mention that this point is unassailable. Mr Nyathi for the respondents did not contend otherwise, and rightly so.

[10] L[...]’s afore-described plight is unacceptable in our open and democratic society based on the trinity of human dignity, equality, and freedom. To ensure that the respondents fulfil their duties arising from *Nziweni* J’s decision and order, De Saude stepped in by assisting L[...]. Its intervention proved successful.

[11] L[...]’s application was accepted by Home Affairs on 11 August 2025, being after this application was launched. It was then forwarded to the respondent’s Pretoria hub.

[12] Molepo is an adult who is also a South African whose birth was not registered. When Molepo attended the offices of the Home Affairs Department in Cape Town, the screening officials refused to accept his late registration of birth application for processing by the Pretoria hub. De Saude intervened and complained that the refusal to accept Molepo’s application is a contemptuous breach of paragraph (a) of the *Nziweni* judgment. This complaint succeeded in getting Molepo’s application accepted for processing.

Issues for adjudication

[13] De Saude persisted with its petition for the relief prayed for in paragraph 2 of its Notice of Motion. A key defence raised in answer is that this application is moot owing to the respondents’ acceptance of the applications for the late registration of birth.

[14] Two key issues arise for adjudication: first, whether this case is moot. If not, then the second issue is whether the respondents are in contemptuous breach of paragraph (a) of *Nziweni* J’s order.

[15] Flowing from the second issue formulated above, a third issue was raised at the hearing *mero motu*, namely, whether the declarator framed in paragraph (a) of Nziweni J's order can found a claim for contempt, bearing in mind that (i) Nziweni J declared certain past conduct by officials in the respondents' employ to be *ultra vires* and unlawful, namely, their unauthorised refusal to accept applications which were sought to be lodged by some of De Saude's clients under the Citizenship Act and/or the Registration Act, and their unauthorised refusal to process applications lodged by some of De Saude's clients; and (ii) Nziweni J did not expressly direct anything to be done by the respondents.

Issue 1: Mootness

[16] It is settled law that courts do not exist to provide abstract legal opinions, or decisions which would only have academic value or little, if any, practical effect. A case is moot and, therefore, not justiciable when there is no longer a live dispute or controversy.²

[17] The case with which I am seized is not moot. There are still live disputes.

[18] Although the respondents accepted the late birth registration applications of De Saude's clients which were initially rejected, that acceptance did not render this case moot. De Saude is not seeking an order to compel acceptance of the applications of its clients that were initially refused. If that was the relief sought, then there would no longer be a *lis* that is live and ripe for determination, save possibly for the issue of costs.

[19] The relief sought by De Saude is an order that declares the initial refusal of its clients' applications to be contemptuous gatekeeping by the respondents in view of the order granted by Nziweni J that declared conduct of that nature to be *ultra vires* and unlawful; alternatively, De Saude seeks an order that declares the initial refusal to accept its clients' applications to be a failure to comply with the order granted by Nziweni J.

² *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC) para 21; *Minister of Tourism and Others v Afriforum NPC and Another* 2023 (6) BCLR 752 (CC) para 23.

[20] The respondents refute the allegation that they, or any among them, acted in contempt of court when their screening officials initially refused to accept the late birth registration applications which were sought to be filed by De Saude's clients. Accordingly, this dispute remains extant.

Issue 2: Declaratory orders as a legal basis for enforcement proceedings

[21] Although the parties' counsel made off-the-cuff submissions on the issue raised *mero motu*, I afforded them an opportunity, at Mr Simonsz's request, to conduct research thereon after the hearing and to file a supplementary note. Mr Simonsz did so. Mr Nyathi stood by his oral submission that since the application is moot, the issue raised *mero motu* does not arise for adjudication. I disagree. The mootness defence holds no water.

[22] Mr Simonsz argued, persuasively in my view, that there is no sound, rational basis to exclude declaratory orders from enforcement through a proceeding designed to hold a party accountable for non-compliance therewith. He rightly conceded that, by its nature, declaratory orders generally do not impose positive duties, but rather negative ones. Relying on *R v R*³ and *Municipal Manager, OR Tambo Municipality and Another v Ndabeni*,⁴ Mr Simonsz submitted that there are declaratory orders which, properly construed, impose positive duties that must be complied with on pain of sanction.

[23] *R v R supra* involved a divorced couple. A court order had been granted which directed that both Mr and Mrs R 'shall remain joint owners of the property known as 4[. . .] R[. . .] d[. . .] M[. . .], M[. . .], Mozambique which may not be sold or encumbered without prior written consent of both parties and who shall equally be entitled to whatever net rental income the property generates'.⁵ The apex court described this order as 'purely declaratory in nature and did not require Mr R [...] to do anything'.⁶

³ 2023 (9) BCLR 1126 (CC).

⁴ 2023 (4) SA 421 (CC).

⁵ At para 37.

⁶ At para 37.

[24] The High Court held that this declaratory order imposed an obligation on Mr R to pay his ex-wife her share of the net rental. The High Court held that Mr R's failure to pay his ex-wife her share was, on the facts, contemptuous breach of the court order quoted above. On appeal to the Constitutional Court, the finding of contempt was set aside.

[25] The Constitutional Court considered the terms of the declaratory order and held that it did not have the effect of imposing a positive duty on Mr R to transfer and pay to his ex-wife her share of the net rental collected. It held that, at most, the declaratory order placed an implied obligation on Mr R to ensure that neither he, nor anyone else, utilise Mrs R's share of the rental. On this basis, non-payment to her was not contemptuous.

[26] In *Ndabeni supra*, Mjali J granted the following declarators:

- '1. The applicant is hereby declared the permanent employee of the first respondent in her capacity as the Manager at Aids Training Information and Counselling Centre Manager Section — ATICC by virtue of Resolution No 10/11 of 30 January 2011 and any contrary conduct or action taken by the respondents is hereby declared a nullity;
2. The post referred to as AIDS Training Information and Counselling Centre Manager (ATICC) previously occupied by the applicant is hereby declared a permanent post in line with Resolution No 10/11 of 30 January 2011'.

[27] Ms Ndabeni applied to the High Court to hold her employer in contempt of Mjali J's declarators. She averred that the afore-quoted declarators entitled her to be treated as a permanent employee, but that her employer terminated her employment in violation of her permanent status under the declarators. The High Court dismissed the contempt application on the basis that the elements of contempt were not proved.

[28] On appeal, the SCA set aside the High Court's order and replaced it with an order that the respondent's employer was guilty of contempt of Mjali J's declaratory order in paragraph 1 quoted in para [26] above (but not paragraph 2 thereof). Although the Constitutional Court later set aside the SCA's order, it did not do so on the basis that declaratory orders cannot be enforced through contempt of court proceedings.

[29] The judiciary has no army to enforce its orders and decisions. The public's respect for the dignity of our courts and its confidence in the judiciary are the most effective ways to ensure that court orders and decisions are complied with by all and sundry. To honour judicial authority and uphold the rule of law, courts orders and decisions must not only be complied with diligently in form but in spirit too.⁷ The spirit of an order or decision is to be found in the values and principles which underpin it. The foundations of our democracy will be imperilled if court orders and decisions may be breached without consequence.

[30] To protect our Constitution and to ensure that the judicial order created thereby is not rendered impotent, it is incumbent on our courts to ensure that its orders and decisions, including declaratory ones, are not flouted but are respected and are enforced against everyone who is bound thereby.⁸

[31] Declaratory orders are issued daily by our courts. In *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others*,⁹ it was held that declarators are useful tools in a democracy because they enable courts to declare what the law is in a particular context. Doing so, in turn, brings clarity to the legal *cum* constitutional obligations of persons and/or organs of state to whom the declarator applies.

[32] Declaratory orders would lose their usefulness if they were rendered less effective, or completely ineffective, by being unenforceable, including in the court which granted the order in the first place. Such a situation is intolerable. Consequently, declarators, like all other court orders, must be capable of judicial enforcement.

[33] However, whether enforcement is, in any instance, permissible through the remedy of contempt is an issue to be determined with reference to the terms of the declarator itself. This is a matter of interpretation in relation to each declarator. No hard and fast answers of invariable application can be laid down in advance. It is to this

⁷ *SS v VVS* 2018 (6) BCLR 671 (CC) para 23.

⁸ *Pheko v Ekurhuleni City* 2015 (5) SA 600 (CC) paras 1 - 2; *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC) para 87.

⁹ 2005 (2) SA 359 (CC) paras 107 - 108.

question that I now turn my attention as concerns Nziweni J's order quoted in para [2] above.

Issue 3: Contemptuous non-compliance or mere breach of declarator?

[34] As a matter of law, there can only be a failure to comply with the declarator issued by Nziweni J in paragraph (a) of her order, whether contemptuous or not, if it imposed an obligation on the respondents to doing something, and/or to refrain from certain conduct. Determining this entails an interpretation of paragraph (a) of Nziweni J's order utilising the trite principles of interpretation.¹⁰

[35] The proper approach to interpreting a court order is explained in *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others*¹¹ as follows:

'The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention.'

[36] The authors of *Herbstein and Van Winsen*¹² state the following of relevance here:

'The order with which a judgment concludes has a special function: it is the executive part of the judgment that defines what the court requires to be done or not done. While it may be said that the order must be read as part of the entire judgment and not as a separate document, the court's directions must be found in the order and nowhere else. Thus, if the meaning of an order is clear and unambiguous, it is decisive and cannot be restricted or extended by anything else stated in the judgment.'

[37] This extract has received the *imprimatur* of our courts.¹³ I too endorse the interpretive rule expounded by the learned authors, namely, that where the language in

¹⁰ See *Eke v Parsons* 2016 (3) SA 37 (CC) para 29.

¹¹ 2013 (2) SA 204 (SCA) para 13 (cited with approval in *Eke v Parsons supra* at para 29).

¹² Cilliers A, Loots C, and Nel H *Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa* 5 ed (2009) at 937.

the executive part of a judgment is clear and unambiguous as to what is instructed to be done or not done, then the order itself should be determinative of the court's intention as to what it directed the unsuccessful litigant must do, or refrain from doing.

[38] The natural corollary flowing from this salutary interpretive principle is that in cases where a court order is unclear or ambiguous as to the direction given, or an inconsistency or contradiction appears, then the executive part of the judgment cannot be decisive. In such event, the modalities of contextual *cum* purposive interpretation necessitate that the court's intention be ascertained with reference to the judgment read holistically. After all, a court order does not exist in isolation. It is an integral part of a broader legal document.

[39] In every instance, a court order at the end of a judgment takes its shape and colour from the discussion and analysis that precedes it. The order is an embodiment of the result which should flow logically and rationally from an application of the values and/or principles discussed as part of the court's adjudicative process in answering the issues, both factual and legal, which arose for determination by the court.

[40] *In casu*, the order in paragraph (a) of the *Nziweni* judgment is not directory in nature in the sense of instructing that something be done, or not done. The order is purely declaratory in nature: it declares certain past conduct to be *ultra vires* and unlawful.

[41] Mr Simonsz concedes that paragraph (a) of *Nziweni* J's order does not, in express terms, impose obligations on the respondents. He argues that, properly interpreted, the declarator imposes implied positive obligations on them. For the ensuing reasons, I agree.

[42] Understanding the purpose of the declarator in paragraph (a), and its spirit, requires consideration of the *Nziweni* judgment as a whole. A reading of that judgment reveals that it is underpinned by two central themes:¹⁴ first, it concerns fulfilment of the

¹³ See *Disability Economic Empowerment Trust v Independent Development Trust and Another* (2025/183503) [2025] ZAECKMKHC 91 (25 November 2025) paras 16 - 18.

¹⁴ The *Nziweni* judgment at paras 44 - 45.

constitutional right of De Saude's clients, and members of the public generally, to procedurally fair administrative action by the respondents, being constitutional organs of state responsible for statutory functions falling within the sphere of public administration.

[43] Secondly, the *Nziweni* judgment concerns the twin roles that courts play to, on the one hand, protect the constitutional rights vested in the hands of those beneficiaries for whose benefit De Saude approached the court; and, on the other, to ensure fulfilment by the respondents of their obligations arising from, *inter alia*, s 7(2) of the Constitution.¹⁵

[44] It was in this context that the *Nziweni* judgment engaged the distinction between the permissible, even admittedly necessary, practice of screening applications lodged, or sought to be lodged, for processing by the Pretoria hub in accordance with the Citizenship Act or the Registration Act (as defined), and the unlawful practice of gatekeeping that denies members of the public access to services in public administration to which they are entitled by law.¹⁶

[45] The highwater mark of the *Nziweni* judgment is the court's finding that the refusal by the respondent's screening officials to accept applications for processing by the Pretoria hub which the screening officials deem to be defective is conduct not only beyond the screening officials' levels of expertise, but also beyond their delegated powers. *Nziweni* J, at para 65, held:

'As such, in the performance of their screening functions, officials do not have wide latitude in the execution of their filtering responsibilities. *Inter alia*, though the screening officials have the power to screen, they do not have the power to refuse to accept an application.'

¹⁵ Section 7(2) reads:

'The State must respect, protect, promote and fulfil the rights in the Bill of Rights.'

¹⁶ The *Nziweni* judgment distinguishes the practice of screening and gatekeeping as follows:

'The phrase "gatekeeper" signifies access control. It is evident that there are several forms of gatekeeping, particularly in the public sector. However, there is a distinction between gatekeeping and the screening. While gatekeeping may be distinct from the screening process, it does, however, contain elements of screening. In my view, the definitions of 'gatekeeping' and 'screening' are supplementary and not mutually exclusive.' (at para [55])

[46] Nziweni J concluded that the refusal by the screening officials to accept applications for processing by the Pretoria hub is, on this basis, *ultra vires* and unlawful.¹⁷ This conclusion directly led Nziweni J to grant the declarator in paragraph (a) of her order.

[47] When the wording of paragraph (a) of Nziweni J's order is interpreted in its proper context within the judgment viewed holistically, then it becomes clear that the declarator was not confined to declaring past offending conduct by the respondent's screening officials to be *ultra vires* and unlawful. Of necessity, it applies to future conduct as well.

[48] The declaratory order in paragraph (a), read with s 165(5) of the Constitution,¹⁸ placed an implied positive duty on the respondents to ensure that their screening officials obey the order, both in form and spirit, by not engaging in the same, or substantially the same, conduct as that which was declared unlawful by Nziweni J, unless the screening officials are imbued with the relevant delegated authority. A restrictive interpretation of the declarator would have the unpalatable effect that it only covers past offending conduct. If so, the declarator would be impotent to deal with similar unlawful conduct in the future. Such violations of the law would have to be met each time with a fresh court application. This would create a state of affairs that makes a mockery of declarators, and undermines the rule of law and public confidence in the judicial system.

[49] It is common cause that the authority of the respondents' screening officials has not been extended to include the power to assess or evaluate applications sought to be lodged for onward transmission to, for e.g., the Pretoria hub where the applications would be processed. Put differently, at all material times to the application with which I am seized, the powers of the screening officials were the same as they were when Nziweni J adjudicated the application before her and granted the declarator concerned.

¹⁷ The *Nziweni* judgment at paras 64 - 65.

¹⁸ Section 165(5) reads:

'An order or decision issued by a court binds all persons to whom and organs of state to which it applies.'

[50] In these circumstances, I find that the decisions by the respondents' screening officials to refuse acceptance of the late birth registration applications of L[...] and Molepo were *ultra vires* and unlawful. Moreover, they breached the declarator issued by Nziweni J on 6 March 2025. That order was disseminated to the parties' legal representatives.

[51] It is common cause that the respondents had, at all material times, knowledge of Nziweni J's orders and understood their import and effect. By reason that their screening officials committed the same unlawful conduct which formed the subject of the *Nziweni* judgment, I find that the respondents violated the declaratory order by failing to take the necessary steps to ensure that their screening officials ceased and desisted from the kind of unlawful conduct dealt with in the declarator in question.

[52] For purposes of the contempt of court application, this latter finding placed an evidential *onus* on the respondents to show that their non-compliance was neither wilful nor *mala fide*. To this end, the respondents filed answering papers in which they explained their conduct vis-à-vis Nziweni J's orders. The respondents explained the circumstances under which their screening officials refused to accept the applications concerned which were sought to be filed at the Cape Town office of the Department of Home Affairs.

[53] After careful consideration of the respondents' explanations, I am not persuaded that their failure to comply with the declaratory order issued by Nziweni J was proved, beyond a reasonable doubt, to be wilful and/or *mala fide*.

[54] In these circumstances, while I find that the respondents failed to comply with the declarator order issued by Nziweni J, their non-compliance did not rise to the level of contempt of court.

Costs

[55] It is trite that liability for costs is a matter entirely within a court's discretion. That discretion is relatively wide, except that the discretion must be exercised judiciously.

[56] De Saude has been successful in obtaining the alternative relief sought by it. That success is a pyrrhic victory. De Saude's primary focus was on the contempt application.

[57] At the hearing, and in the court papers, much time and effort was spent on the contempt issue. The respondents were successful in resisting the contempt application.

[58] In my view, since the applicant and the respondents have some measure of success, it would be unfair to mulct any of them with costs. Consequently, an order that each party pay their own costs would be just in the circumstances of this case.

Order

[59] In the result, the following orders are granted:

- (a) It is declared that the respondents failed to comply with paragraph (a) of the order granted by Nziweni J on 6 March 2025 under the above case number when their screening officials at the Cape Town Home Affairs office refused to accept the late birth registration applications of certain clients of the applicant;
- (b) Each party shall be liable to pay their own costs.

F .MOOSA

Acting Judge of the High Court

Appearances

For applicant: D Simonsz

Instructed by: De Saude-Darbandi Immigration Attorney Inc, Cape Town

For respondents: D M Nyathi

(first to fourth respondent)

Instructed by: State Attorney, Cape Town