



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

CASE NO: 13708/24P

In the matter of:

**UBILO GENERAL TRADING CC
MVIKELI SECURITY (PTY) LTD**

**FIRST APPLICANT
SECOND APPLICANT**

and

**MATATIELE LOCAL MUNICIPALITY
SIBAKHULU TRADING (PTY) LTD
THE CHAIRPERSON OF THE INTERNAL BID
APPEALS TRIBUNAL
LIZO MATIWANE N.O.
THE COMMANDER OF THE SAPS MATATIELE**

**FIRST RESPONDENT
SECOND RESPONDENT

THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT**

ORDER

The following order is granted:

1. The application is dismissed with costs, such costs to include the costs of counsel on scale B.

JUDGMENT

Pietersen AJ:

[1] This is an application for an order declaring the Matatiele Local Municipality ('the Municipality') and the second and fourth respondents to be in contempt of the order granted by this court on 27 September 2024. The applicants further seek consequential orders, directing the fourth respondent, who is cited as the Municipality's accounting officer, to immediately reverse his decision to appoint the second respondent as a service provider to the Municipality and that the second respondent be ordered to immediately vacate the Municipality's premises. The applicants also seek an interdict to restrain the Municipality and the second and fourth respondents from continuing further work in terms of the appointment of the second respondent as a provider of security services to the Municipality.

[2] During 2024, the Municipality published an invitation for interested persons to submit bids for the provision of security services to the Municipality. The applicants formed a joint venture and submitted a bid in this joint capacity. In the subsequent process of consideration and adjudication of the various bids, the applicants' bid was disqualified on the basis that it failed to comply with the prescribed minimum requirements of the tender.

[3] The Municipality decided to award the bid to the second respondent and distributed its intention to award to unsuccessful candidates, including the applicants, on 9 July 2024.

[4] The applicants objected to the award of the bid to the second respondent and applied to this court for an interdict to prevent the implementation of the Municipality's decision pending the objection process. The applicants' application for an urgent interdict was unsuccessful as the court found that the applicants had failed to exhaust all available internal remedies, which included an appeal procedure in terms of which the applicants would have been provided with all relevant documents. A subsequent internal appeal by the applicants was also unsuccessful and the applicants subsequently

instituted review proceedings in this court, challenging the award of the bid as well as the appeal ruling in the internal appeal. The applicants' review application remains pending in this court.

[5] Shortly after the applicants instituted the review proceedings, they also applied to this court for an urgent interdict to interdict the implementation of the award pending the review proceedings. On 27 September 2024, Pitman AJ, as he then was, granted an interim interdict in favour of the applicants. This order forms the subject-matter of the present application and it reads as follows:

'1. The matter be heard as a matter of urgency in terms of Rule 6 (12) of the Uniform Rules of Court and that the forms and services provided in Rule 6(5) be and is hereby dispensed with.

2. A rule nisi be and is hereby issued calling upon the First and Second Respondents ("the respondents") and any other respondent who opposes this application to show cause, if any, before this Court sitting at Pietermaritzburg on the 11th day of DECEMBER 2024, at 9h30 or so soon thereafter as Counsel may be heard, why an order in the following terms should not be granted:

- 1.1 interdicting and restraining the First Respondent from appointing or implementing the appointment of the Second Respondent and/or giving effect to in any manner whatsoever, the appointment of certain Respondents under Bid No. MATAT/2023/2024/208 for the provision of security services to the First Respondent; alternatively;
- 1.2 interdicting and restraining the First and Second Respondents from implementing and/or continuing to implement the bid.
- 2.2 Interdicting and restraining the Second Respondent from carrying out any works and/or continuing with any work in terms of the award for the provision of security services and/or any contracts which may have been concluded between the First and Second Respondent.
- 2.3 Interdicting and restraining the Second Respondent from carrying out any work and/or continuing with any work in term of the award for the provision if security services and/or any contracts which may have been concluded between the First and Second Respondents;
- 2.4 Interdicting and restraining the First and Second Respondents from concluding any contracts as a consequence of the award.

2.5 Costs of the application.

3. Pending the finalisation of the review application, paragraph 2.1, 2.2, 2.3 and 2.4 shall operate as an interim relief with immediate effect.'

[6] The Municipality was legally represented in the interdict proceedings and the court order was granted in the presence of its legal representatives. The court order was also properly served on the Municipality on 30 September 2024. The Municipality's knowledge of the court order is not disputed before me.

[7] The applicants argued that the Municipality failed to comply with the order when it issued a public notice on 30 September 2024, advising the public that the newly appointed security company would resume its operations in all municipal buildings as of 1 October 2024.

[8] The applicants' attorneys immediately addressed correspondence to the Municipality's attorneys and insisted that the Municipality acted in breach of the court order by appointing the service provider. The applicants' attorneys threatened to launch a contempt of court application. The Municipality's attorneys responded on 1 October 2024 and advised that the court order only interdicted the Municipality from implementing the award of the tender and that the Municipality's agreement with the first applicant terminated by effluxion of time on 30 September 2024. The court order of 27 September 2024 did not renew or extend that contract. In the circumstances, the Municipality had to procure security services on an emergency basis to safeguard its property, staff and assets, pending the outcome of the litigation regarding the tender. The procurement of the security services was therefore not pursuant to the tender, which is the subject of the interdict. The Municipality, accordingly, disputed that it was in contempt of the court order.

[9] The applicants proceeded to argue that the Municipality, as well as the second and fourth respondents, deliberately disobeyed the court order and, notwithstanding the applicants drawing the Municipality's attention to the matter, continued with such

disobedience. The applicants further argued that the Municipality had the option of extending the contract of the first applicant but failed to do so and its reliance on the provisions provided in the Municipality's Supply Chain Management Policy ('SCM Policy') to appoint the second respondent as a service provider was in contravention of the court order.

[10] In opposition to the application, the Municipality pointed out that the court order was an interim order in relation to an award made pertaining to the tender for a three-year contract for security services. The court order interdicted the Municipality from making an appointment in terms of the award or from implementing the bid. The Municipality indicated in its answering affidavit that it had not implemented the award of the bid and did not make an appointment in terms of the award. The Municipality therefore concluded that it was not in breach of the court order.

[11] The Municipality further explained in its answering affidavit that, in terms of paragraph 36 of its SCM Policy and in accordance with reg 36 of the Municipal Supply Chain Management Regulations,¹ promulgated under the Local Government: Municipal Finance Management Act 56 of 2003, the Municipality is entitled to deviate from its standard procurement process in situations of emergency and other exceptional circumstances. The Municipality reasoned that it has become reasonable and necessary for a paragraph 36 appointment to be made where the incumbent's security contract terminated on 30 September 2024 and the Municipality cannot make an appointment in terms of the bid which is the subject of the review and the court order interdicting an award or implementation of the bid. As a result, the Municipality was entitled, in terms of paragraph 36 of its SCM Policy, to appoint the second respondent as a service provider, pending the resolution of the applicants' review application. The Municipality further pointed out that the appointment of the second respondent under paragraph 36 of the SCM Policy does not affect the applicants' interests nor will the appointment affect any rights of any party that may ultimately be appointed in terms of the bid which forms the subject-matter of the pending review application.

¹ Municipal Supply Chain Management Regulations, GN 868, GG 27636, 30 May 2005.

[12] To succeed in obtaining the relief sought, the applicants are required to prove the requisites of contempt of court beyond reasonable doubt.² The applicants must therefore prove beyond reasonable doubt that the respondents have contravened the order and that they have done so wilfully and with *mala fides*.

[13] The Supreme Court of Appeal held in *Fakie*:³

'(a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.

(b) The respondent in such proceedings is not an "accused person", but is entitled to analogous protections as are appropriate to motion proceedings.

(c) In particular, the applicant must prove the requisites of contempt (the order; service or notice; non-compliance; and wilfulness and *mala fides*) beyond reasonable doubt.

(d) 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.

(e) A *declarator* and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.'

[14] In *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others*⁴ the Constitutional Court held as follows:

'Summing up, on a reading of *Fakie*, *Pheko*, and *Burchell*, I am of the view that the standard of proof must be applied in accordance with the purpose sought to be achieved, or differently put, the consequences of the various remedies. As I understand it, the maintenance of a distinction does have a practical significance: the civil contempt remedies of committal or a fine have material consequences on an individual's freedom and security of the person. However, it is necessary in some instances because disregard of a court order not only deprives the other

² *Fakie NO v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (*Fakie*) para 42.

³ *Ibid.*

⁴ *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* [2017] ZACC 35; 2018 (1) SA 1 (CC) para 67.

party of the benefit of the order but also impairs the effective administration of justice. There, the criminal standard of proof — beyond reasonable doubt — applies always. A fitting example of this is *Fakie*. On the other hand, there are civil contempt remedies — for example, declaratory relief, mandamus or a structural interdict — that do not have the consequence of depriving an individual of their right to freedom and security of the person. A fitting example of this is *Burchell*. Here, and I stress, the civil standard of proof — a balance of probabilities — applies.’

[15] It has further been held by the Constitutional Court in *Secretary, Judicial Commission of Inquiry into allegations of State Capture v Zuma and Others*⁵ that contempt ‘proceedings exist to protect the rule of law and the authority of the judiciary’. The court also held that the overall damage caused to society by conduct that poses the risk of rendering the judiciary ineffective and eventually powerless is at the very heart of contempt of court.⁶ ‘There is thus a public interest element in each and every case in which it is alleged that a party has wilfully and in bad faith ignored or otherwise failed to comply with a court order.’⁷

[16] It is necessary that the element of wilfulness be present in the act or omission alleged to constitute contempt of court.⁸ However, in addition to the element of wilfulness, it must also be shown that the non-compliance with the court order was *mala fide*.⁹

[17] It has been held in *Mchunu and Others v Executive Mayor, Ethekekwini Municipality and Others*¹⁰ that a Municipality is under a constitutional duty to comply with court orders and to lead by example. If non-compliance with a court order is established, complaints

⁵ *Secretary, Judicial Commission of Inquiry into allegations of State Capture v Zuma and Others* [2021] ZACC 18; 2021 (5) SA 327 (CC) para 27.

⁶ *Ibid* para 61.

⁷ *Victoria Park Ratepayers’ Association v Greyvenouw CC and Others* [2004] 3 All SA 623 (SE) para 5.

⁸ *Consolidated Fish Distributors (Pty) Ltd v Zive and Others* 1968 (2) SA 517 (C) at 522B.

⁹ *Clement v Clement* 1961 (3) SA 861 (T) at 866A.

¹⁰ *Mchunu and Others v Executive Mayor, Ethekekwini Municipality and Others* 2013 (1) SA 555 (KZD) para 16.

of contempt may be proceeded with against the functionaries of the Municipality concerned.¹¹

[18] The Constitutional Court also held in *Democratic Alliance (as Third Intervening Party): In re Electoral Commission of South Africa v Minister of Co-operative Governance and Traditional Affairs and others (African National Congress and others as Intervening Parties and Council for the Advancement of the South African Constitution and others as amici curiae)*¹² that '[t]he order with which a judgment concludes has been described as the "executive part of the judgment", because it defines what the court requires of the parties who are bound by it'. The Supreme Court of Appeal held in *HLB International (South Africa) (Pty) Ltd v MWRK Accountants and Consultants (Pty) Ltd*¹³ that

'The now well-established test on the interpretation of court orders is this:

"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.'" (Footnote omitted.)

[19] The Constitutional Court held in *Pheko and Others v Ekurhuleni City*:¹⁴

'[1] The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows from this that

¹¹ *Kenton-on-Sea Ratepayers Association and Others v Ndlambe Local Municipality and Others* 2017 (2) SA 86 (ECG) para 70.

¹² *Democratic Alliance (as Third Intervening Party): In re Electoral Commission of South Africa v Minister of Co-operative Governance and Traditional Affairs and others (African National Congress and others as Intervening Parties and Council for the Advancement of the South African Constitution and others as amici curiae)* [2021] ZACC 30; 2022 (1) BCLR 1 (CC) para 12.

¹³ *HLB International (South Africa) (Pty) Ltd v MWRK Accountants and Consultants (Pty) Ltd* [2022] ZASCA 52; 2022 (5) SA 373 (SCA) para 26.

¹⁴ *Pheko and Others v Ekurhuleni City* [2015] ZACC 10; 2015 (5) SA 600 (CC).

disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.

[2] Courts have the power to ensure that their decisions or orders are complied with by all and sundry, including organs of state. In doing so, courts are not only giving effect to the rights of the successful litigant but also and more importantly, by acting as guardians of the Constitution, asserting their authority in the public interest.'

[20] Mr Sibeko, who appeared for the applicants, submitted that the court order was clear and prevented the Municipality from appointing the second respondent. It was further pointed out on behalf of the applicants that the only difference between the implementation of the bid and the paragraph 36 appointment is the duration of the appointment. The service provider, the scope of work, and the rate per month are the same. Therefore, so the applicants concluded, if the review is not finalised in three years for whatever reason, the three-month contract will keep on being renewed and the second respondent would then enjoy the appointment outside of a competitive bidding process.

[21] Mr Crampton, who appeared for the Municipality and other respondents, submitted that the court order is an interdict against the performance and/or implementation of the award made under the relevant bid. The interdict, therefore, does not preclude an appointment or contract that was concluded outside of the relevant bid. In the present case, so Mr Crampton argued, the appointment in question was made under paragraph 36 of the SCM Policy, which permits procurement in emergency and/or exceptional circumstances. The second respondent was thus appointed in terms of paragraph 36, pending the finalisation of the applicants' dispute and review application. It was further argued that the paragraph 36 appointment of the second respondent will not affect the rights of any party that may ultimately be appointed to perform in terms of the bid.

[22] The respondents submitted that their interpretation of the court order, being that it does not preclude a paragraph 36 appointment of the second respondent, is a

reasonable possibility and the appointment does not contravene the court order. The respondents further argued that this interpretation is not only reasonably possible but is, in fact, the only reasonable interpretation that accords with a clear meaning and language of the order.

[23] As submitted by the respondents, each of the sub-paragraphs of the order contains a reference to the bid and/or the award. Such references serve to limit the application of the interdict to the bid and the award. In this regard, Mr Crampton summarised the references in the court order as follows:

(a) In para 2.1, the respondents are interdicted from implementing or making an appointment 'under bid no. MATAT/2923/024/208'.

(b) In para 2.2, the respondents are interdicted from 'implementing or continuing to implement the bid'.

(c) In para 2.3 (which is identical to the second paragraph numbered 2.2), the second respondent is interdicted from carrying out or continuing with any work 'in terms of the award'.

(d) In the same subparagraph, the second respondent is interdicted from performing under contracts that 'may have been concluded'. It was submitted that, in this regard, the use of the past tense is instructive. This provision cannot be used, without an alteration to the language, to interdict the future conclusion of contracts that may be concluded outside the parameters of the bid.

(e) In paragraph 2.4, the first and second respondents are interdicted from 'concluding any contracts as a consequence of the award'.

[24] In my view, the language of the court order does not prevent the Municipality from making an appointment in terms of its SCM Policy, as it did in respect of the second respondent. The interpretation submitted on behalf of the applicants is therefore not only unreasonable but simply not apparent from the court order.

[25] The applicants' case for the interim order that was granted on 27 September 2024 is made out in their founding affidavit in the main application. The following is apparent from that affidavit:

- (a) The applicants applied for an interim interdict that, pending their review application, would constitute a suspension of the decision or award.
- (b) The applicants' locus standi in the interdict application was based on their participation in the bidding process.
- (c) The applicants claimed that they would suffer irreparable harm if an interim interdict was not granted. This claim was based on their alleged prima facie right to be awarded a contract in terms of the bid, which would be impaired or dismissed if the respondents were allowed to proceed and implement the award of the bid.
- (d) It was contemplated in the founding affidavit that the Municipality would be entitled to contract for interim security services pending the review application. The applicants relied on this argument in support of their case satisfying the balance of convenience requirement for an interim interdict.
- (e) The applicants duly alleged that the Municipality would be entitled to extend their contract, as incumbent service providers. However, at no stage did the applicants allege that they had a right to such an extension.
- (f) The applicants further did not seek to make out a case for an interdict that would curtail or limit the first respondent's rights in terms of paragraph 36 of the SCM Policy.

[26] I, therefore, conclude that the court order was intended to prevent a performance of the award that would diminish the applicants' rights in the pending review application. The court order did not intend to curtail any of the Municipality's rights in terms of paragraph 36 of the SCM Policy and, therefore, did not preclude the appointment of the second respondent in terms thereof.

[27] In the circumstances, neither the Municipality nor any of the other respondents acted in contravention of the court order when the Municipality appointed the second respondent in terms of paragraph 36 of the SCM Policy.

[28] The application must therefore fail. I am satisfied that costs should follow the result and that the matter warranted the employment of junior counsel.

[29] I make the following order:

The application is dismissed with costs, such costs to include the costs of counsel on scale B.



PIETERSEN AJ

Date of hearing: 17 April 2025
Date of judgment: 12 December 2025

APPEARANCES

Applicants: Mr V Sibeko

Instructed by: DM Plaakie Attorneys Inc.
Office 31
8 Station Road
Matatiele
c/o Tenza Attorneys
14 Stranack Street
Pietermaritzburg

First, Third and Fourth
Respondents: Mr D P Crampton

Instructed by: Matthew Francis Inc.
Suite 4, 1st Floor, Block A
21 Cascades Crescent
Montrose
Pietermaritzburg
Ref: Y Maharaj/KS/04M059005