



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED
DATE : 4 December 2025
SIGNATURE

CASE NO: 019404/2022

**HEARD ON: 25 November 2025
JUDGMENT: 4 December 2025**

In the matter between:-

MALLELE PHINEAS MAPOTE

APPLICANT

AND

MINISTER OF CORRECTIONAL SERVICES

FIRST RESPONDENT

MINISTER OF POLICE

SECOND RESPONDENT

NATIONAL POLICE COMMISSIONER

THIRD RESPONDENT

JUDGMENT

Strijdom J

INTRODUCTION

1. This is an urgent application in which the applicant seeks an order to declare the first respondent in contempt of a Court order, and to impose a sentence of 12 months imprisonment which is suspended on condition that the first respondent complies with the Court order dated 3 November 2023 within 10 days of the service of this order.

BACKGROUND

2. The applicant and all members of class are prisoners currently serving a life sentence for murder and other various crimes in a Johannesburg Correctional facility, under the Department of Correctional Services.
3. In January 2023, the applicant pursued an application against the first respondent ("Minister") for an order directing him to release forthwith a group of long-term prisoners whom, it was alleged, qualified for parole by virtue of having served a third of their imprisonment in terms of the Correctional Services Act 8 of 1959.

4. For these purposes, the applicant sought an order in terms of which the application is classified as a class action and that he is designated as the representative of the class of long-term prisoners (the “main application”). The Minister filed a notice to oppose the main application, however failed to file an answering affidavit.
5. On 12 July 2023, Justice Leso AJ granted an order in the absence of the Minister, certifying the main application as a class action and designating the applicant the representative of the class of long-term prisoners (the “certification order”).
6. On 3 November 2023, Justice Nyathi once again in the Minister's absence, confirmed the certification and granted an order directing the Minister to arrange for the release of all members of the class on parole forthwith (the “release order”).
7. In January 2024 the applicant brought an urgent application for an order compelling the Minister and officials of the Department of Correctional Services, with control over the facilities where the applicant and members of the class were incarcerated to comply with Nyathi J's order and release on parole or arrange the immediate release on parole of the applicant and all members of the class. The application was struck from the roll.
8. The respondent launched an application seeking to rescind and set aside Leso AJ's certification order of 12 July 2013, and Nyathi J's release order of 3 November 2023.

9. The rescission application was dismissed by Chabedi AJ on 24 October 2025.
10. The application is opposed by the first respondent.
11. At the commencement of the application, I ruled that the application is urgent.

ISSUES IN DISPUTE

12. It was submitted by the first respondent that the Nyathi order is the subject of an application for rescission of judgment and whilst the latter was dismissed by Chabedi AJ on 24 October 2025 ("Chabedi judgment"), it remains the subject of a pending application for leave to appeal.
13. It was further submitted by the first respondent that the following issues are fatal to this application, namely, (i) the premature launching of this application (ii) the applicant's failure to serve this application on the Minister in his personal capacity and (iii) on the evidence before the Court, the applicant has not made out a case of contempt of Court.

COMMON CAUSE FACTS

14. The following facts are common cause between the parties:
 - 14.1 On 3 November 2023 Justice Nyathi granted an order directing the Minister to arrange for the release of all members of the class on parole forthwith.
 - 14.2 A rescission application against the order of Justice Nyathi was dismissed by Chabedi AJ on 24 October 2025.

- 14.3 On 19 November 2025, the legal representatives of the Minister filed an application for leave to appeal the recission Judgement of Cahbedi AJ.
 - 14.4 The Minister had until 14 November 2025 to file an application for leave to appeal.
 - 14.5 This application was served at the offices of the Minister on 10 November 2025.
 - 14.6 The order of Nyathi J and this application were not personally served on the Minister.
 - 14.7 There was non-compliance of the order of Nyathi J.
15. It was contended by the applicant that the order of Nyathi J was duly served on the Minister as the Minister launched an application to rescind the order of Nyathi J and such application was dismissed. It was argued that the Minister was aware of the order and would not have instructed counsel to argue the recission application and to pursue the leave to appeal on 19 November 2025.
16. The applicant further contended that the application for leave to appeal does not suspend the operation of Nyathi J's order, but the judgment of Chabedi AJ.

THE APPLICATION IS PREMATURE

17. The Chabedi judgment was handed down on 24 October 2025.
18. In terms of Rule 49(1)(b) of the Uniform Rules of Court, leave to appeal is requested within fifteen days after the date of the order appealed against. The Minister had until 14 November 2025 to file an application for leave to appeal.

19. This application was served at the offices of the Minister on 10 November 2025, four days before the lapse of the dies prescribed by the Rule 49.
20. In my view the application is premature.

THE APPLICATION FOR LEAVE TO APPEAL

21. On 19 November 2025, the legal representatives of the Minister filed an application for leave to appeal the recission judgment of Chabedi AJ.
22. It is trite that the Minister could not appeal the order of Nyathi J as it was granted unopposed and had to launch an application for recission of the order. The application for recission of the order was dismissed by Chabedi AJ and an application for leave to appeal was filed by the Minister on 19 November 2025.
23. Section 18 of the Superior Courts Act of 2013 provides as follows:
- “(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.
- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.
- (5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave

to appeal or a notice of appeal is lodged with the registrar in terms of the rules.”

24. Rule 45A states that a court may on application suspend the operation and execution of any order for such period as it may deem fit provided that in the case of an appeal, such suspension is in compliance with section 18 of the Act.
25. I conclude that when the application for leave to appeal was lodged with the Registrar of this Court, the Nyathi order became the subject of an application for leave to appeal and that the operation and execution of the order is suspended pending the decision of the application for leave to appeal.

FAILURE TO EFFECT PERSONAL SERVICE ON THE MINISTER/NON-JOINDER

26. It is common cause that the Minister has only been served and joined in his official capacity.
27. In *Mjeni v Minister of Health and Welfare, Eastern Cape*¹ Jafta J held:

“Contempt of Court proceedings can only succeed against a particular public official or person if the order has been personally served on him or its existence brought to his attention and it is his responsibility to take steps necessary to comply with the order but he willfully and contemptuously refuses to comply with the court order.”

¹ 2000 (4) SA 446 (TKH)

28. In *Diluculo Properties (Pty) Ltd v City of Johannesburg and Another*²:

Although the Municipal Manager was cited in the proceedings, he was not formally joined or served in his personal capacity. This, the Court held to be crucial in relation to contempt proceedings, given their potential for severe sanctions. The Court held that any party against whom a contempt finding is sought must be given proper personal notice and an opportunity to respond thereto. The Court ultimately concluded that personal service is indispensable when a contempt order might impose serious consequences.

29. In *Matjhabeng Local Municipality*³ the Constitutional Court held:

30.

"Bearing in mind, that the persons targeted were officials concerned – the Municipal Manager and Commissioner in their official capacities – the non-joinder in the circumstances of these cases, is thus fatal. Both Messrs. Lepheana and Mkhonto should thus have been cited in their personal capacities – by name – and not in their nominal capacities. They were not informed, in their personal capacities, of the cases they were to face, especially when their committal to prison was in the offing. It is thus inconceivable how and to what extent Messrs. Lepheana and Mkhonto could, in the circumstances, be said to have been in contempt and be committed to prison."

² (2021) 27206; 5576/2018) [2022] ZAGP JHC 803 (18 October 2022).

³ *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others; Mkhonto and Others v Compensation Solutions (Pty) Ltd* (CCT 217/15; CCT 99/16 [2017] ZA CC 35; 2017 (1) BCLR 1408 (CC); 2018 (1) SA (CC) (26 September 2017).

31. In my view, the failure to join the Minister and/or effect personal service of the Nyathi order and this application is fatal and defective for this application.

THE CONTEMPT OF THE COURT ORDER

32. It is trite that an applicant who alleges contempt of Court must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, willfulness and mala fides are presumed, and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge the burden, contempt will have been established.⁴
33. In this matter the applicant must prove that there is a Court order that is operational before this Court and non-compliance with the order. The suspension of the operation and existence of the Nyathi order as a result of the application for leave to appeal means that there can be no issue of non-compliance with the order. With no order that is operational, the element of non-compliance is not satisfied.
34. On a conspectus of all the evidence before me, I am of the view that the applicant has not made out a case for contempt of Court.
35. In the result, the application is dismissed with costs, including the costs of 2 counsels which costs are to be taxed in accordance with scale B.

⁴ Secretary of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others [2021] ZACC 18 of para 37.



Strijdom JJ

Judge of the Hight Court, South Africa

Gauteng Division, Pretoria

Appearances:

For the applicant: Adv Mthimkhulu

Instructed by: Marwashe Attorneys

For the respondent: Adv T Mpahlwa

Adv T Mhlanga

Instructed by: State Attorney Pretoria