

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 0024981/2021

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **NO**

In the matter between:

MASONDO, MATSIBENG JEANIFER	Applicant
and	
NKOSI, STEPHAN	First Respondent
MASONDO, JUBULANI ERIC	Second Respondent
LEKALAKALA, ABRAM	Third Respondent
LEKALAKALA, MARONGWA HAZEL	Fourth Respondent

In re:

LEKALAKALA, ABRAM	First Applicant
LEKALAKALA, MARONGWA HAZEL	Second Applicant
and	
MASONDO, MATSIBENG JEANIFER	First Respondent
ALL UNLAWFUL OCCUPIERS OF ERF 4[...] B[...] V[...] X[...] V[...] D[...] L[...] ROAD, B[...]	Second Respondent

JUDGMENT

N KRÜGER AJ

Summary: Contempt of a court order- court order provides for an appointed liquidator and receiver of a joint estate to pay 50% of the net proceeds of the sale of an immovable property to the divorced parties-second respondent refuses to vacate property on due date- purchasers having to serve their bond nevertheless-no provision for occupational rental in contract of sale, liquidator and receiver unilaterally deducting monies towards 'occupational rental' from the second respondent's share.

Introduction

- [1] The applicant, Ms Masondo, seeks an order for the first respondent, Mr Nkosi, to be found in contempt of a court order made on 20 January 2022 and imprisonment for 30 days or such period as the court may deem just and equitable, suspended for a period of one year on condition that the first respondent pay the sum of R 83 453,29 within 10 days of service of the order. Failing compliance, the applicant seeks an order to be allowed to approach the court on the same papers for immediate committal to prison. In the alternative, an order is sought for the court to impose a fine upon the first respondent to the extent as deemed appropriate by the court.
- [2] For the sake of convenience and to avoid confusion, I herein after refer to the applicant as Ms Masondo and the first respondent as Mr Nkosi. The second respondent is referred to as Mr Masondo, the third respondent as Mr

Lekalakala and the fourth respondent as Ms Lekalakala. This application is only opposed by Mr Nkosi.

- [3] On 24 April 2019, the marriage between Mr and Ms Masondo was dissolved by decree of divorce incorporating a settlement agreement. Mr Nkosi was appointed as the receiver and liquidator of the joint estate. Included in the joint estate was an immovable residential property which was purchased by Mr and Ms Lekalakala on or about 4 August 2020 (*"the contract"*). In a letter dated 10 September 2020 to Ms Masondo's attorneys, Mr Nkosi requested Ms Masondo to start looking for alternative accommodation as the property had been sold..
- [4] On 10 March 2021 transfer of ownership in the property to Mr and Ms Lekalakala was registered. In a letter dated 18 March 2021, Mr Nkosi informed Ms Masondo's attorneys that the bank had already debited the purchasers' account with effect from 10 March 2021. It is recorded Ms Masondo had long known the property was to be sold and that the purchasers demand immediate occupation of the property. Ms Masondo is given notice to vacate the property on or before 22 March 2021, failing which she will be obliged to pay occupational rent from 10 March 2021.
- [5] When Ms Masondo failed to vacate the property, Mr and Ms Lekalakala brought an application for her eviction as well as all unlawful occupiers of the property in terms of the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act*, 19 of 1998. The eviction application was opposed by Ms Masondo. On 20 January 2022 the order was granted which Mr Nkosi is alleged to be in contempt of. It orders the eviction of Ms Masondo and all unlawful occupiers from the property and for them to vacate it no later than 31 March 2022. Mr Nkosi in his capacity as receiver and liquidator of the joint estate of Mr and Ms Masondo is ordered to pay 50% of the net proceeds of the sale of the property into a trust account of Ms Masondo's attorneys of record. It is ordered that each party shall pay its own costs.
- [6] According to a statement of account dated 11 March 2021 by Mr Nkosi's firm, the purchase price of the property was R 700 000,00 from which is deducted the sum of R 73 297,27 leaving an amount of R 626 702,73 recorded as being

“due to you”. It appears the latter refers to Mr and Ms Masondo. The statement of account records R 73 297,27 is the sum of disbursements towards the agent’s commission, the rates consultant’s fee, obtaining rates clearance and electrical compliance certificates, the rates clearance figure and 10% interest paid on behalf of Mr and Ms Masondo.

[7] Mr Nkosi prepared a provisional liquidation and distribution account the terms of which differs from the statement of account in several respects. The amount for the sale of the residence is recorded as R 626 707,83. From this is deducted liabilities in the amount of R 66 389,27 which consists of a 10% liquidation fee in the amount of R 62 670,77 and expenses towards a locksmith, travelling and bank charges. The net amount available for distribution is recorded as being R 560 318,46, half of which, namely R 280 159,23, each for Mr and Ms Masondo. From Ms Masondo’s half further deductions are then made in the total sum of R 83 453,29 consisting of R 72 853,65 for what is described as occupational rental together with an amount of R 10 599,64 towards municipal rates for the period April 2021 to March 2022. In consequence, the total amount due to Ms Masondo equals R 196 704,94.

[8] Upon distribution, Mr Masondo received R 280 159,23. Ms Masondo received R 196 704,94 after the deductions as referred to in the liquidation and distribution account.

[9] Though Mr Lekalakala did not oppose the contempt application, he filed an affidavit deposed to on 23 July 2025. He states he took occupation of the property on 17 April 2022 and has been paying the monthly instalments towards the bond for 12 months from March 2021 to March 2022 whilst not having occupation of the property.. The monthly bond instalment was R 5 541,25. From his legal representative he had received a total amount of R 67 114,95 as follows:

- a. R 27 808,00 on 14 August 2021;
- b. R 5 541,25 on 29 September 2021;
- c. R 5 541,25 on 15 November 2021;

- d. R 11 408,32 on 5 January 2022;
- e. R 10 816,13 on 21 April 2022;
- f. R 6000,00 towards counsel's fees. It is unclear what these fees were for.

[10] During the course of argument before me, it became clear certain aspects which counsel for both parties did not entertain before, may be pertinent to the adjudication of the matter. In the result, the parties were allowed to file additional heads. The last of these was received on or about 22 September 2025.

Ms Masondo's case in summary

[11] During argument counsel for Ms Masondo placed on record that she abandoned her claim towards municipal rates in the amount of R 10 599,64 for the period April 2021 to March 2022.

[12] The contract pertaining to the property did not contain any clause providing for payment of occupational rental. The contract expressly records in the clause which referees to occupational rental that it is "N/A" which it is contended means "*not applicable*". Any claim for occupational rental and any claim in connection therewith fall outside the ambit of the contract. Mr Nkosi unilaterally decided not only that occupational rental was due, payable and was to be deducted from the monies due to Mr Masondo, but also what it would be, namely R 5643.00 for March 2021, R 5 546,25 for April 2021 until September 2021, R 5 573,25 for October and November 2021 and R 5 704 from December 2021 until March 2022 as recorded in the liquidation and distribution account.

[13] It was contended legitimate deductions to be made from the gross proceeds of the sale are the usual disbursements associated with a sale of a house such as agents commission, obtaining the rates clearance certificate as well as an electrical compliance certificate. Any deduction of occupational rental or deduction in connection therewith falls outside the meaning of 'net proceeds' as contemplated in the court order for the liquidator to make payment of 50% of the net proceeds of the sale. Mr Nkosi had acted arbitrarily in doing so. He did

not fully comply with the court order, In consequence, Mr Nkosi had acted in contempt thereof.

[14] In effecting the deduction as he did, Mr Nkosi acted in bad faith as he is an attorney with experience and knowledge of the law. It is not his case that he had been mistaken as to the legal position pertaining to the legality of the deductions applied by him. Nor was it pleaded in the answering affidavit that he had exercised any discretion in applying the deductions. The arguments advanced by Mr Nkosi's counsel in this regard are speculative and should be disregarded.

[15] Ms Masondo's counsel referred me to *Fakie N.O. v CCII Systems (Pty) Ltd*¹ in which the Supreme Court of Appeal found, amongst others, that non-compliance, provided it is *bona fide*, does not constitute contempt. Disregard of a court order must be a deliberate and intentional violation of the court's dignity, repute or authority. An honest belief that non-compliance is justified or proper is incompatible with that intent.

[16] The reason Ms Masondo did not vacate the property as demanded was because at the time she had not received any funds or portion thereof from the sale of the property. She required the money to obtain new accommodation. The property was occupied by her and her son, then aged 29, as well as her minor grandchildren. The transferring attorneys paid R 626 707,73 to Mr Nkosi on 15 March 2021, but he only affected payment to Ms Masondo after the court order for her eviction which is dated 20 January 2022. It was submitted that, in the result, Mr Nkosi has his share of blame to shoulder for what occurred.

[17] Ms Masondo contends she is entitled to the amount of R 72 853,65 which was deducted from her share. In acting as he did, Mr Nkosi did not fully comply with the court order and, in consequence, is guilty of contempt of court.

Mr Nkosi's case in summary

[18] It is denied Mr Nkosi did not comply with the court order as well as that his conduct was wilful and *mala fide*. According to Mr Nkosi, Ms Masondo's liability

¹ 2006 (4) SA 326 (SCA) at [10]

for payment of the amounts deducted from her share accrues due to her having refused to vacate the property after registration of transfer of ownership in the name of the purchasers. The purchasers were obliged to pay the bond on the property without having the benefit of occupation thereof due to Ms Masondo's refusal to vacate it. Mr Nkosi considered such a state of affairs as not being fair to Mr and Ms Lekalakala. The 'occupational rent' was determined by the '*bond price*' and "*had to be reimbursed*".

- [19] It is contended Mr Nkosi's conduct was in good faith in that he exercised his discretion as liquidator and distributor of the seller's joint estate in making the deductions from Ms Masondo's share as he did. According to Mr Nkosi, an argument that it was incumbent upon the purchaser of the property to have claimed any loss suffered as a result of Ms Masondo not vacating the property, does not hold water "*...since the money is available and there was a liquidator appointed to accordingly distribute the proceeds.*"
- [20] According to Mr Nkosi the absence of any clause providing for occupational rent "*...does not find applicability...*" There was no need for it "*...since the new buyer wanted to occupy the house, and the applicant was unnecessarily difficult hence the eviction proceedings.*"
- [21] With reference to *T[...] M[...] B[...] v M[...] C[...] R[...] and Others*² it was submitted that the standard of proof required for an applicant to discharge in contempt proceedings where committal is ordered, is similar to the criminal standard. Since the relief claimed is for Mr Nkosi to be committed to jail should he fail to make payment as demanded, Ms Masondo must be required to prove the elements for contempt beyond reasonable doubt.
- [22] It was contended more is required in establishing contempt than an act of non-compliance. In *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*³ it was held contempt also encompasses the nature of the contempt, its extent and surrounding circumstances. I was also referred

² (328/22) [2024] ZAGPPHC 1062 (30 October 2024) at [12] by Mncube A J

³ 2021 (5) SA 327 (CC) at [92]

to *Pheko and Others v Ekurhuleni Metropolitan Municipality (2)*⁴ where the Constitutional Court found contempt to be any act that displays disrespect for the authority of the court. It includes acts of obstinate disobedience in the sense of wilful disobedience and resistance to an order of court.

[23] It was argued that as all deductions made from Ms Masondo's share are accounted for and as it was her own doing which created and caused the deduction to be made, contempt had not been established beyond reasonable doubt. Regard being had to the circumstances, the appropriate remedy more likely would have been review proceedings.

[24] Lastly, it was submitted on behalf of Mr Nkosi that in making the deduction from Ms Masondo's share, he had exercised a discretion which is intrinsic to the duties and obligations of a liquidator, after consideration of all submissions and upon investigation. In this regard, Mr Nkosi's counsel referred me to *S[...] S[...] M[...] v P[...] J[...] N.O and Another*⁵ where it was held by Le Grange AJ that the liquidation and distribution account in and of itself has no legal force. If the parties or any affected party do not accept the account, the liquidator or any affected party should approach the court to ensure finality. The court should then either confirm, amend or clarify the account and grant, where necessary further and alternative relief to enable the liquidator to bring the joint estate to practical conclusion.

Consideration

[25] It is vital to the administration of justice that court orders be obeyed. Disregard of a court order cannot be tolerated. Civil contempt is contempt *ex facie curiae* (which occurs outside of the court) and refers to contempt by disobeying a court order. Contempt includes acts of contumacy in the sense of wilful disobedience as well as in the sense of resistance to a court order.⁶ It is a crime.⁷ In civil proceedings committal may be ordered for coercive or punitive reasons. It seeks to compel the delinquent litigant to comply with the court order. Coercive

⁴ 2015 (5) SA 600 at [28]

⁵ (15515/2017) [2023] ZAGPPHC 2024 (18 December 2023)

⁶ *Pheko* [28]

⁷ *Fakie* at [8] approved in *Pheko* at [34]

contempt orders call for compliance with the original court order as well as the following contempt order. The delinquent litigant against whom a contempt order is granted may avoid imposition of a sentence for committal by complying with the coercive order.⁸

[26] The purpose of civil contempt proceedings is for a court order in civil proceedings to be brought to conclusion by the imposition of a sanction to vindicate the court's authority.⁹ Contempt at its core is the "...*crime of disrespecting the court , and ultimately the rule of law.*" ¹⁰ It has been held that for an act to constitute contempt, an intention to defeat the course of justice must have been established.¹¹

[27] Concerning the nature and extent of the infraction of the court order, it was thus stated by the Supreme Court of Appeal in *Fakie*:¹²

"The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and mala fide'. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).

These requirements - that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt - accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court's dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent."

[28] In this matter the issues to be adjudicated in respect of the trite requisites to establish contempt are non-compliance with the court order, wilful conduct by Mr Nkosi in doing so and whether his conduct was *mala fide*. Having due regard to the relief claimed as framed by Ms Masondo to include committal, once non-compliance of the order is proved, Mr Nkosi bears an evidential burden in relation to wilfulness and *mala fides*. Should no evidence be advanced establishing reasonable doubt as to whether non-compliance was

⁸ *Pheko* [25]

⁹ *Pheko* [39]

¹⁰ *Pheko* [31]

¹¹ *Coconut Express CC v SA Revenue Service (Customs & Excise)* 2016 2 All SA 749 (KZD) at [43]

¹² At [9]. This *dictum* was followed in several cases such as *Els v Weideman and Others* 2011 (2) SA 126 (SCA) and *De Freitas v Jonopro (Pty) Ltd and Others* 2017 (2) SA 450 (GJ)

wilful and *mala fide*, it would follow that contempt has been established beyond reasonable doubt.¹³

[29] In his answering affidavit sets out in chronological detail facts and circumstances prevailing in respect of the sale of the property. Numerous letters that passed between him and Ms Masondo's attorney are annexed to the affidavit. Much of this revolves around attempts to obtain Ms Masondo's co-operation in evacuating the property in order to allow the purchaser occupation and possession thereof. In a letter dated 7 March 2022 to Ms Masondo's attorneys, Mr Nkosi, amongst others, explains the reason why deductions for occupation rental were visited upon Ms Masondo, was because she was the one who was occupying the property even after being notified it had been sold and belongs to new owners. He denies that his conduct is in contempt of the court order. Mr Nkosi declares:

"Had the applicant & his [sic] legal representative needed [sic] the call to vacate the property on 10 March 2022 and pay occupational rent, the situation would have been different.

I find it incomprehensible to expect the applicant to stay on the property for 12 months without paying occupational rent.

I reiterate the applicant has received 50% of the net proceeds of the sale of the immovable property"

[30] Mr Nkosi further states that the order and settlement agreement nowhere states Ms Masondo would remain in occupation of the property pending payment of her 50% share of the selling price to enable her to relocate. He maintains that "...if she chooses to remain to stay in the property she must pay occupational rent." He further declares that had complied with the court order in that he had paid 50% of the net proceeds as required by the order and that the deduction were made from her share of the proceeds as she had remained in occupation of the property contrary to the contractual provisions. He had distributed the assets of the joint estate in accordance with his duties as appointed receiver and liquidator in terms of which, amongst others he was to receive, liquidate and distribute the assets according to law and with full power to divide and distribute the joint estate.

¹³ *Fakie* at [42]

Conclusion

- [31] Clauses 1.9 and 6 of the contract provide for the occupation date to be upon the date of registration. It further stipulates¹⁴ that if vacant possession for whatever reason not be given on that date, the conveyancer shall withhold the sellers' net proceeds of the sale in trust until such vacant possession is given to the purchasers. It appears that the Masondo's did not obtain a right totos payment of the net proceeds until such time a vacant possession was given to the In the result, Ms Masondo's contention that Mr Nkosi, in withholding payment of her share until after the eviction order was granted has his share of blame to shoulder for her not having vacated the property is more apparent than real.
- [32] The contract indicates occupational rental as not being applicable.¹⁵ In the result, the purchasers did not have a contractual right as against the sellers of the property to claim occupational rental, nor had the sellers any obligation to pay occupational rental upon vacant possession not being given on date of registration. It follows that Mr Nkosi did not have the right to have made the deductions as he did in doing so, he had acted unilaterally.
- [33] From the above, it is clear to me that Mr Nkosi's conduct leaves much to be desired. The question to be answered is if his conduct constitutes contempt of the court order. From the answering affidavit it seems to me Mr Nkosi was and remains oblivious of the error of his ill-advised ways. The authorities require that, even though there is a deliberate disregard of a court order by and of itself is not enough. Objectively speaking, Mr Nkosi was wrong, but he subjectively believes he had acted correctly in 'correcting' the imbalance which was wrought to the other parties by Ms Masondo remaining in occupation of the property when she was not entitled to do so and the purchasers having to service their bond whilst the remained in possession of the property. It follows that he had not acted with wilful *mala fides*. It cannot be held that his conduct, albeit unreasonable, was intended to impugn the court's dignity, reputre or authority,

¹⁴ Clause 6.4, CL24-27

¹⁵ Clause 1.10, CL24-25

nor to disrespect the court or offend against the rule of law. In the result, I make an order as set out hereunder.

Order

- [1] The application is dismissed;
- [2] The applicant shall pay the first respondent's costs on the party and party scale B.

N S KRÜGER
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
JOHANNESBURG

Electronically submitted

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **11 December 2025**

Counsel for the applicant:	Adv P J Coetsee
Instructed by:	Ledwaba Attorneys
Counsel for the first respondent:	Adv E Khotha
Instructed by:	Steve Nkosi & Partners
Additional heads of argument:	21 and 22 September 2025
Date of judgment:	11December 2025

