



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 121533/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 15 December 2025

In the matter between:

TSEBO SOLUTIONS GROUP (PTY) LTD

and

ESKOM HOLDINGS SOC LIMITED

CHIEF PROCUREMENT OFFICER

ESKOM HOLDINGS SOC LIMITED

MURAFHO CONSULTING (PTY) LIMITED

APPLICANT

1st RESPONDENT

2nd RESPONDENT

3rd RESPONDENT

JUDGMENT

ALLY AJ

[1] This is an opposed application for costs that were reserved after the matter was removed from the roll by Tolmay J on 25 February 2025 arising from an urgent application launched by the Applicant.

[2] The Applicant was represented by Adv. T. Mabuda and the First and Second Respondents by Adv. B. Mkhize.

[3] Whilst this matter has come before this Court on the question of who is to pay the costs of the removed application before Tolmay J, in my view, this Court is required to assess whether at the time of launching the application:

3.1 the application was urgent;

3.2 the first and second respondents were in contempt of the Order¹ by Neukircher J.

[4] In my view, it is only after answering the above issues, can this Court come to a decision as to costs of the urgent application and the present application.

[5] The applicant contends that the first and second respondents were in contempt of the order by Neukircher J and were thus justified in launching the urgent application when they did.

[6] As I understand the case of the applicant, the first and second respondents were in contempt for the reason that there was non-compliance with all of the Orders of Neukircher J. Consequently, the applicant, in their view, was thus

¹ CaseLines: Section 06-28 – 06-30

entitled to launch an urgent application as it is trite that non-compliance with court orders is an urgent matter.

- [7] It must be stated that it is true that non-compliance with court orders is urgent and for present purposes it can be accepted, in my view, that non-compliance with a court order is urgent.
- [8] However, urgency of the matter only answers one of the questions. The first and second respondents raise the issue that at the hearing by Tolmay J, the matter was removed because the file was not in order and accordingly, on that basis alone, the first and second respondents are entitled to the wasted costs before Tolmay J.
- [9] Should this Court then go further and determine whether first and second respondents were in contempt of Neukircher J's Order? Ordinarily, the answer to this question would be in the negative because if the matter was removed because the papers before court were not in order, then *cadit quaestio*, and the matter ends there and, in my view, the first and second respondents would be entitled to their costs.
- [10] However, in the particular circumstances of this case, I am of the view that this Court should also determine whether, the first and second respondents were indeed in contempt of court at the time the matter served before Tolmay J.
- [11] In determining whether the respondent was in contempt, one must, in my view, set out the requirements for contempt of court.

- [12] The *locus classicus* for the requirements and principles of contempt of court have been set out by the Supreme Court of Appeal² and the Constitutional Court³ to which I align myself.
- [13] It is common cause that Neukircher J's Court Order existed and that the Order had come to the attention of the respondent.
- [14] The issue, however, in this case is whether the applicant on the papers before Court, can show that the first and second respondents were *mala fide* and/or wilful in not complying with the said Court Order in *toto* at the time of launching the application.
- [15] In my view, this is where the applicant falls short and this Court agrees with the first and second respondents that the applicant has failed to prove its case in respect of contempt of court.
- [16] It must, however, also be stated that the applicant, in not pursuing the matter before Tolmay J, should have offered to pay the wasted costs of the first and second respondent.
- [17] Furthermore, the launch of this application before this court can only be said to have been unwise for the reason that they should have known that they did not have a case.

² Fakie N.O. v CCII Systems (Pty) Limited 2006 (4) SA 326 SCA @ para 6;

³ Pheko and Others v Ekurhuleni Metropolitan Municipality [No. 2] 2015 (5) SA 600 CC

[18] Accordingly, for the reasons set out above, the applicant must not only pay the costs of the respondent during the abortive hearing before Tolmay J but must also pay the costs of the first and second respondents in this court.

As a result, the following Order shall issue:

- a). the applicant is to pay the party and party wasted costs of the first and second respondent before Tolmay J and the fees of counsel to be paid on Scale B;
- b). the applicant is to pay the party and party costs of the first and second respondent before this Court and the fees of counsel to be paid on Scale B.



**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA**

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the 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 for hand-down is deemed to be 15 December 2025.

Date of hearing: 1 September 2025

Date of judgment: 15 December 2025

Appearances:

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