



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CIRCUIT LOCAL DIVISION, THEMBALETHU)**

Case No: 267/25

In the matter between

THABANG MOTJAMELA

APPLICANT

AND

GEORGE LOCAL MUNICIPALITY

RESPONDENT

Date of Hearing : 20 January 2026

Date of Delivering : 20 January 2026

JUDGMENT

THULARE J

ORDER

1. The application is dismissed.
2. The applicant is barred from filing any new application or re-enrolling this application unless and until such application is accompanied by the report from the Department of Health on the enquiry into the question of mental illness or intellectual capacity as envisaged in the previous order of this court.

3. No cost order is made.

[1] This court made an order. The order was made in the presence of the applicant. The applicant understood the order and out of his own volition expressed his intention to comply with the terms of the order. The applicant failed to comply with the terms of the order. In the light of the view that the court holds on the applicant, it is impossible, without more, to pronounce on whether the applicants failure to comply with the terms of the order was willful and *mala fide*.

[2] In *Fakie NO v CCII Systems (Pty) Ltd (653/04)* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (31 March 2006) at para 39 to 41 the following was said:

39. This approach conforms with the true nature of this form of the crime of contempt of court. As pointed out earlier (para 10), this does not consist in mere disobedience to a court order, but in the contumacious disrespect for judicial authority that is so manifested. It also conforms with the analysis in *Beyers* (para 11 above), where this court held that even though enforcement is the primary purpose of committal, it is nevertheless not imposed merely because the obligation has not been observed, 'but on the basis of the criminal contempt of court that is associated with it'. The punitive and public dimensions are therefore inextricable: and coherence requires that the criminal standard of proof should apply in all applications for contempt committal.

40. Finally, as pointed out earlier (para 23), this development of the common law not require the applicant to lead evidence as to the respondent's state of mind or motive: once the applicant proves the three requisites (order, service and non-compliance), unless the respondent provides evidence raising a reasonable doubt as to whether non-compliance was wilful and mala fide, the requisites of contempt will have been established. The sole change is that the respondent no longer bears a legal burden to disprove wilfulness and mala fides on balance of probabilities, but need only lead evidence that establishes a reasonable doubt. It follows, in my view, that Froneman J was correct in observing in *Burchell* (para 24) that in most cases the change in the incidence and nature of the onus will not make cases of this kind any more difficult for the applicant to prove. In those cases where it will make a difference, it seems to me right that the alleged contemnor should have to raise only a reasonable doubt.

41. To sum up:

1. 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.

2. The respondent in such proceedings is not an ‘accused person’, but is entitled to analogous protections as are appropriate to motion proceedings.
3. 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.
4. 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.
5. A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities.

[3] The position as regards mental illness or intellectual capacity of a person requires training, skill and experience beyond that of a judicial officer or a person in the position of the applicant or respondent. It requires expert intervention by those who qualify to express an opinion, and who can set out the facts upon which the opinion is based as well as the scientific tools and analysis used, to guide the court in the formulation of its own decision on the matter. In the absence of an enquiry into and a report on the mental state and intellectual capacity of the applicant, I am unable to express a judgment on whether the applicants disregard of the court order was wilful and *mala fide*. The further conduct of the applicant is not helpful. On the 7th of January 2026, whilst the application for leave to appeal and recusal were pending for the report, the applicant prepared what he termed heads of argument for leave to appeal, which he filed at court on 19 January 2026. A reading thereof suggests that the applicant is trying to argue an application which has been suspended pending the report from health professionals. It seems that he failed to appreciate that there is an order whose compliance is a prerequisite for the hearing of the application. This fortifies the view that the applicant may be a person who needs medical help more than judicial intervention. For these reasons the order is made.

DM THULARE

JUDGE OF THE HIGH COURT

Appearances

Applicant : In person(Mr T Motjamela)

Respondent : Adv. A Erasmus

Instructed by : Schoeter Inc Marco