

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 2025-213496

- (1) REPORTABLE: YES/NO
 (2) OF INTEREST TO THE JUDGES: YES/NO
 (3) REVISED.

DATE 2026/01/07 SIGNATURE..... [REDACTED]

In the matter between:

THABAZIMBI LOCAL MUNICIPALITY

APPLICANT

and

HOME-GROWN BUSINESS INTEGRATIONS (PTY) LTD

FIRST RESPONDENT

ESKOM HOLDINGS SOC LIMITED

SECOND RESPONDENT

JUDGMENT

BURNETT, AJ**INTRODUCTION**

[1] This is an urgent application to hold the First Respondent and Mr. Thaisi Shale (a director of the First Respondent) in contempt of the order handed down by his Honourable Acting Judge Magane on 11 December 2025. The Applicant seeks the incarceration of Mr. Shale for a period of 12 (twelve) months.

[2] The order of 11 December 2025 states *inter alia* that: -

[2.1] *The First Respondent is directed to deliver to the Applicant, within two court days of the granting of this order, the following information and data in accessible excel or CVS format: -*

[2.1.1] *A complete Prepaid Electricity Customer "Dump File" containing all prepaid customer details on the First Respondent's system for the municipality, including customer names, addresses, meter numbers, applicable tariff codes, and classifications of each customer including indigent, commercial, domestic or larger-power users, as applicable.*

[2.1.2] *A transactional history report covering at least one year of all prep-paid electricity vending transactions conducted for the municipality, including transaction dates, meter or customer details, amounts and vending tokens or references for each transaction.*

- [2.1.3] *An updated third-party vendor list reflecting all third-party vendors currently or recently vending electricity on the Municipality system, including for each vendor their physical address, contact person and details, and the current commission rate or fee structure applicable to that vendor.*
- [2.2] *That the First Respondent is directed to pay over to the Applicant, within two court days of the granting of this order, all monies constituting prepaid electricity revenue collected on behalf of the Applicant which the First Respondent has not yet remitted to the Municipality's designated bank account.*
- [2.3] *The First Respondent is directed to submit and hand over to the Applicant all invoices, statements, and reports required under the Service Level Agreement and the Addendums thereto, including but not limited to all invoices for its services and any periodic reports not yet furnished, such submission to be completed within two court days of the granting of this order.*
- [2.4] *The First Respondent is directed to furnish the Applicant with all contracts concluded with third parties for the vending of prepaid electricity or any related services on behalf of the municipality, within two court days of the granting of this order.*
- [3] The First Respondent opposed the application. The Second Respondent did not oppose the application; however, no relief is sought against it. Counsel for the Applicant and the First Respondent filed heads of argument and appeared on the

day of hearing to advance oral arguments. It must be noted that both counsels argued their cases diligently.

URGENCY

- [4] In urgent applications, the first issue to consider is whether the matter is urgent. The test for urgency was articulated in ***East Rock Trading (PTY) Ltd and Another v Eagle Valley Granite and Another's*** (11/33767) [2011] ZAGPJHC 196 at paragraph 6 where Justice Notshe AJ held that *"The import thereof is that the procedure set out in Rule 6(12) is not for taking. An applicant must set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course."* It was submitted by the Applicant that contempt of court applications are by their very nature urgent.
- [5] It was held in ***Protea Holdings Ltd v Wright and Others*** 1978 (3) SA 865 (W) 868 A – H that: -
- "The element of urgency would be satisfied if in fact it is shown that the respondents were continuing to disregard the order, if this be so, the applicant is entitled, as a matter of urgency, to attempt to get the respondents to desist by the penalty referred to being imposed."*
- [6] In ***Victoria Park Ratepayers Associates v Greyvenouw CC and Others*** [2004] 3 All SA 623 (SE) (11 April 2003) the court found that: -
- "That contempt of court has obvious implications for the effectiveness and legitimacy of the legal system and the judicial arm of government. 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. This added element provides to every such case an element of urgency....It is not only the object of punishing a respondent to compel him or her to obey an order that renders contempt proceedings urgent, the public interest in the administration of justice and the vindication of the constitution also renders the ongoing failure of refusal to obey an order a matter of urgency. This in my view, is the starting point, all matters in which an ongoing contempt must be dealt with as expeditiously as the circumstances and the dictates of fairness follow.”

- [7] It was held in **Rhweba Butterworth (Pty) Ltd and Others v Lubabalo Brown Mntonga & Others** (5368/2021) [2022] ZAECHMHC 9 (3 May 2022) that: -

“Contempt of court proceedings are, as a general rule, urgent and the degree of urgency will always depend on the facts of each case.”

- [8] The failure to abide by a court order is a violation of **section 165 (5) of the Constitution of the Republic of South Africa** states that: - *“An order or decision issued by a court binds all persons to whom and organs of state to which it applies.”*

I agree that contempt applications are by their very nature urgent because it concerns the rule of law. A society that is allowed to disregard court orders is a society in disarray. Contempt of court applications are especially urgent, as in this case, when the public purse is being affected. An urgent application such as the one at hand, does not just affect the right of the Applicant, but thousands of residents within its area of jurisdiction. It is in the public interest that the matter be dealt with as a matter of urgency. The allegations that are levelled against the First

Respondent are severe. It is alleged that the First Respondent has misappropriated public funds and continues to do so. The First Respondent was, *inter alia*, ordered to pay certain public funds over to the Applicant, however, has not abided by the court order. For as long as the court order is not adhered to, confidence in the rule of law diminishes. The public will not regain this confidence through substantial redress in due course. A failure to deal with an attack on the rule of law urgently, will set a precedent of leniency in these kinds of matters.

NON-JOINDER

[9] The First Respondent is a juristic person. The Applicant seeks to hold the First Respondent and a director thereof, namely Mr. Thaisi Shale, in contempt. It is not in dispute that Mr. Shale is a director of the First Respondent, however it must be noted that the Applicant did not attach a Company Search to his Founding Affidavit, and it is thus unknown whether First Respondent has any other directors. This ought to have been done.

[10] The First Respondent argues that Mr. Shale cannot be held in contempt of court because he is not a party to these proceedings. In the matter of **Stonehill Property Fund Proprietary Limited v Shongwe and Another** (20421/2024) [2024] ZAWCHC 311 (16 October 2024) at paragraph 20, 27 and 28 it was held that: -

“It should be observed that it is important to remember that when a court pronounces a judgment it should do so without prejudice to the rights and interests of persons who were not parties before it. In that context, it is peremptory that the issue of

prejudice must be considered in the determination of necessary non-joinder....the non-joinder of a necessary party is a defect in a pleading that can simply be remedied by a joinder. Accordingly, a deficiency in pleadings had nothing to do with the merits but is related to procedure. Put differently, a non-joinder cannot defeat the merits, as it may be a reversible error dependant of course, upon circumstances. To hold otherwise would be to extend the scope of and effect of a non-joinder. In the circumstances, it seems entirely reasonable to suppose that, in an application, if the court finds there is a non-joinder of a necessary party, it is competent for the court to strike the matter from the roll. In any event, nothing prevents this Court from striking the matter from the roll due to non-joinder. This is even the case as the matter is not an action but an application. In this matter, it is however significant to note that the respondents are not applying for joining of the parties, but they are rather objecting to the non-joinder of parties.”

- [11] The non-joinder of a party to legal proceedings is a matter of procedure which must be adjudicated as a point *in limine* before the merits of the matter are entertained.
- [12] To ascertain whether Mr. Shale ought to have been joined as a party to the proceedings, one must consider whether he has a direct and substantial interest in the matter.
- [13] The Appellant Division held in ***Amalgamated Engineering Union v Minister of Labour*** 1949 (3) SA 637 A at page 659 that: -

“Indeed it seems clear to me that the Court has consistently refrained from dealing with issues in which a third party may have a direct and substantial interest without

either having that party joined to the suit or if the circumstances of the case admit of such a course, taking other adequate steps to ensure that its judgment will not prejudicially affect that party's interests."

- [14] In the matter of **Stonehill Property Fund Proprietary Limited v Shongwe and Another** (20421/2024) [2024] ZAWCHC 311 (16 October 2024) at paragraph 20, 27 and 28 it was held that: -

"It should be observed that it is important to remember that when a court pronounces a judgment it should do so without prejudice to the rights and interests of persons who were not parties before it. In that context, it is peremptory that the issue of prejudice must be considered in the determination of necessary non-joinder....the non-joinder of a necessary party is a defect in a pleading that can simply be remedied by a joinder. Accordingly, a deficiency in pleadings had nothing to do with the merits but is related to procedure. Put differently, a non-joinder cannot defeat the merits, as it may be a reversible error dependant of course, upon circumstances. To hold otherwise would be to extend the scope of and effect of a non-joinder. In the circumstances, it seems entirely reasonable to suppose that, in an application, if the court finds there is a non-joinder of a necessary party, it is competent for the court to strike the matter from the roll. In any event, nothing prevents this Court from striking the matter from the roll due to non-joinder. This is even the case as the matter is not an action but an application. In this matter, it is however significant to note that the respondents are not applying for joining of the parties, but they are rather objecting to the non-joinder of parties."

- [15] In Herbstein & Van Winsen ***“The Civil Practice of the High Courts of South Africa”*** 5th edition (2009) at page 208, the learned author stated that following: -

“Apart from considerations of convenience, however there are circumstances in which it is essential to join a party because of the interest that party has in the matter. When such an interest becomes apparent the court has no discretion and will not allow the matter to proceed without joinder or the giving of judicial notice of the proceedings to that party. The reason for this is that it is a principle of our law that interests parties should be afforded an opportunity to be heard in matters that they have a direct and substantial interest....A third party who has, or may have, a direct and substantial interest in any order the court might make in proceedings or if such an order cannot be sustained or carried into effect without prejudicing that party, is a necessary party and should be joined in the proceedings....A direct and substantial interest has been held to be an interest in the right which is the subject matter of litigation and not merely a financial interest in such litigation. It is a legal interest in the subject matter of litigation, excluding an indirect commercial interest only. The possibility of such an interest is sufficient, and it is not necessary for the court to determine that in fact it exists. For a joinder to be essential, the parties to be joined must have a direct and substantial interest not only in the subject matter of litigation, but also in the outcome of it. It is important to remember that a constitutionally protected right is legally enforceable and gives rise to a legal interest which may require a joinder. Thus, whenever an order which may infringe upon the constitutional rights of any person, those persons should be joined or given judicial notice of the proceedings.”

- [16] Having regard to the above authorities, Mr Shale does have a direct and substantial interest in the matter. The Applicant is seeking incarceration. The Applicant acknowledges that a juristic person cannot be incarcerated and thus wants Mr. Shale to be incarcerated instead. The fact that the Applicant wants Mr. Shale to be incarcerated, means that he has a direct and substantial interest in the matter and accordingly must be joined as a party to the proceedings. It is trite that a court cannot grant an order against someone that is not a party to the proceedings.
- [17] Counsel for the applicant is correct in his submission that a director of a company can be held liable for the company's non-compliance with the court order; however, that director that the Applicant seeks to hold liable, must be cited as a party to the proceedings. The Applicant also needs to lay a basis in his founding papers as to the reasons why this specific director must be held liable. A failure to do this would cause substantial prejudice to Mr. Shale, especially having regard to the fact that the Applicant seeks his incarceration. If there is contempt, the directors of the First Respondent must bear the consequences, however that does not entitle to Applicant to disregard the rules of procedure.
- [18] In the matter of **Turner and Another v Ntintelo and Another** (A248/22) [2023] ZAWCHC 51 (8 March 2023) at paragraph 63 in relaying on **Skhosana and Others v Roos t/a Roos se Oord and Others** 2000 (4) SA 561 (LCC) at paragraph 19 it was held that: -

“The difference between striking a matter off the roll and dismissal is that in the case of dismissal, the matter is disposed of and can no longer be set down on the roll again. If the applicant wishes to proceed with the matter, he will have to start the

matter de novo. While on the other hand, striking the matter off the roll has nothing to do with the merits of the case. It is not aimed at terminating the proceedings but merely suspends the hearing pending an application for reinstatement.”

- [19] Having regard to the principle embodied in the **Turner** and **Skhosana** cases, the matter is accordingly struck from the roll for the directors of the First Respondent to be joined as parties to the proceedings. Once the directors have been joined as parties to the proceedings and the matter is re-enrolled for hearing, the merits of the matter can be adjudicated.

ORDER

- [20] I accordingly make the following order: -

[20.1] That the rules of the above Honourable Court pertaining to forms, service and time periods be condoned and/or dispensed with, and the matter be heard as one of urgency in terms of Rule 6 (12).

[20.2] The application is struck from roll due to the non-joinder of the directors of the First Respondent.

[20.3] The Applicant to pay the wasted costs of the First Respondent on a party and party scale B.



**ACTING JUDGE OF THE HIGH COURT,
 POLOKWANE; LIMPOPO DIVISION**

APPEARANCES

FOR THE APPLICANT:- ADV. MAUNATLALA
INSTRUCTED BY:- WAKABA AND PARTNERS

FOR THE : ADV. GEYER
INSTRUCTED BY:- SWANEPOEL ATTORNEYS

DATE OF HEARING:- 30 DECEMBER 2025

DATE OF JUDGMENT:- 7 JANUARY 2026

POLOKWANE HIGH COURT