



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU NATAL DIVISION PIETERMARITZBURG**

CASE NO: 13341/23P

Before: Honourable Ncube J
Heard on: 14 August 2025
Delivered on: 13 March 2026

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
..... DATE	 SIGNATURE

In the matter between:

COUNCIL FOR GEOSCIENCE

Applicant

and

GEOSONIC (PTY) LTD

First Respondent

HEINZ VON FINTEL

Second Respondent

ORDER

1. The Application is dismissed with costs

JUDGMENT

NCUBE J

Introduction

[1] This is opposed application for contempt of court. The Applicant seeks an order declaring the First Respondent to be in contempt of this court's order (Sibiya J) handed down on 07 October 2024, requiring the First Respondent to deliver a fully functional Drill Rig. In addition, the Applicant seeks that the Second Respondent ("Mr Von Fintel") being the Director of the First Respondent, be committed to prison for a period of thirty (30) days or for such other period as the Court may determine

Court Order

[2] The court order granted by consent on 07 October 2024 reads:

- " 1. The First Respondent shall, within a period of 14 (fourteen) days from the date of this order,
- 1.1. Deliver to the Applicant a fully function (sic) Core and Percussion Drill Rig, as per clause 3.3 of the settlement agreement concluded between the parties (hereinafter referred to as (" the agreement") in compliance with the requirements set out in Bid No (GS-2021-008A (hereinafter referred to as "the Bid" free from any defects.
 - 1.2. Deliver all tools and equipment identified in the Bid and Contempt as in the settlement agreement, including a percussion reverse circulation rotation head.
 - 1.3. Take all steps necessary to ensure that all training is completed in respect of the functionality and operation of the Drill as contemplated in the Bid, and as envisaged in paragraph 2.6.6 of the agreement and
- 2 The costs of this application to be paid by the First Respondent on a scale as between attorney and client."

Background Facts

[3] It is not necessary to discuss all the background facts herein. It suffices to say that whatever disputes existed between the parties, such disputes were resolved in

terms of the settlement agreement, concluded between the parties on 15 May 2023. The court order mentioned earlier in this judgment, refers to only two clauses of the settlement agreement. Those are clause 3.3 and 2.6.6. Clause 3.3 reads:

“ Geosonic hereby in turn agrees to complete the Project and supply and deliver a fully functionally Drill to the CGS such that all oil leaks are remedied, all defects rectified, the FAT is reached and the necessary and required training is completed on or before 30 June 2023, in the manner prescribed and as contemplated between the parties as set out in the Bid, the Bid Document and the Collective Agreement”

Clause 2.6.6 reads

“ The registration homologation and licensing of the Drill, truck trailers and related equipment, in the name of the CGS is to be completed, including but not limited to all the road worthy requirement met which costs in respect of such licensing, road worthy accreditation, homologation, shall be for the sole account of Gqozi.”

Requirements For Contempt of Court

[4] The requirements for a civil contempt of court are now trite. The first requirement is that the court order must exist. The respondent must have knowledge of it. There must be non-compliance with the said order. Lastly the non-compliance must have been wilful and *mala fide*. Once the first three requirements are proved, wilfulness and *mala fides* will be presumed. In that instance, the evidentiary burden of proving that the non-compliance was not wilful and *mala fide* shifts to the Respondent.

Common Cause Facts

[5] The existence of the court order is not in dispute. It is also not in dispute that the Respondents have knowledge of the order. It is equally common cause that the Drill Rig was in fact delivered. It is also common cause that there was testing of the Drill and training of the Applicant's employees on the Applicant's premises.

Facts in Dispute

[6] It is in dispute, whether the Bid required field testing or whether it only required testing and training of staff on the Applicant's premises. Whether the Drill is fully functional is also in dispute.

The Burden of Proof

[7] The Applicant has an onus to establish that the First Respondent did not comply with the court order which requires delivery in terms of the Bid. Since the Applicant seeks a sanction in the form of imprisonment against the Second Respondent, there must be proof of non-compliance beyond a reasonable doubt. The Respondents aver that they complied with the court order. In case the Applicant succeeds to prove non-compliance, the First Respondent will have to show a lack of wilfulness and *mala fides*.

Discussion

[8] The Applicant is required to prove that the First Respondent is guilty of contempt of court in that the First Respondent has intentionally and deliberately disregarded or disobeyed the court order granted on 07 October 2024, in that the First Respondent intentionally and deliberately failed or refused to deliver a fully functional Core and Percussion Drill Rig as per clause 3.3 of the settlement agreement in compliance with the requirements set out in Bid No CGS-2021-008A. On the other hand, the Respondents must discharge the evidentiary burden to advance evidence which establishes a reasonable doubt as to whether their non-compliance, if any, was wilful and *mala fide*.

[9] In *casu*, the Respondents deny that they disobeyed the court order. They aver that they have fully complied with the court order. Therefore, there can be no shifting of onus to the Respondents. If first three requirements of contempt were established, the onus would have shifted to the Respondents to advance evidence establishing lack of wilfulness and *mala fides*.

[10] The court order of 07 October 2024, requires the Respondents to deliver to the Applicant a fully functional Cor and Percussion Drill Rig, as per clause 3.3 of the settlement agreement in compliance with the requirements set out in Bid No CGS-2021-008A free from any defects. Paragraph two of the same court order requires the Respondents to deliver all tools and equipment identified in the Bid and contemplated as in the agreement including a percussion reverse circulation rotation head and to take all steps necessary to ensure that training is completed in respect of the functionality and operation of the Drill as contemplated in the Bid, and envisaged in paragraph 2.6.6. of the agreement.

[11] As mentioned earlier in this judgment, paragraph 3.3 of the settlement agreement states:

“Geosonic hereby in turn agrees to complete the project and supply and deliver a fully functional Drill to the CGS such that all leaks are remedied, all defects rectified, the FAT is reached and the necessary and required training is completed on or before 30 June 2023, in the manner prescribed and as contemplated between the parties and as set out in the Bid , the Bid Document and the Collective Agreement.”

[12] The court order does not define the phrase “fully *functional*”. The settlement agreement, in its interpretation clause, also does not tell us what is a “fully *functional Drill Rig*”. The definition of a “fully functional Drill Rig” turns on the Applicant’s own interpretation of the court order. The source of the definition chosen by the Applicant is not clear to me. The Applicant avers that for the Respondents to fully comply with the court order, the Applicant must be satisfied that:

“71.1 The Respondent complies fully and properly with its obligations in terms of clause 3.3 of the settlement agreement and hands over to the Applicant a fully functional Drill, free from any defects and oil leaks
71.2 FAT is reached (FAT is Factory Acceptance Testing)
71.3. All training is completed and commissioning is reached and all tooling equipment is delivered; and
71.4. The total completion of the registration and licensing of the Drill, truck and trailers and related equipment into the name of the Applicant, including all roadworthy, accreditation, and homologation, as contemplated and prescribed in the Tender Document.....”

[13] It must be mentioned that as of now, the Applicant does not know whether the Drill Rig is fully functional or not. The Applicant has never attempted to put the Drill Rig into operation. Under those circumstances the Applicant cannot say the Drill Rig is not fully functional.

[14] The Respondents argue that the court order required delivery to take place in terms of the Bid and that the Bid did not require a “*field test*”. The Respondents have

tendered to “*field test*” the Drill against payment for that test. Respondents aver that they complied with all the snags which were identified by the Applicant. Both parties agree that there was agreement to commission the Drill Rig. The *Collins Concise English Dictionary 2004* defines “*Commission*” as meaning “*good working condition*”

[15] The Respondents aver that there was no requirement of field testing of the Drill which they call “*hot commissioning*” and that all that was required was “*cold commissioning*”, which is the testing of the Drill and training of Applicant’s employees on the Applicant’s premises, which was done.

[16] Respondents aver that cold commissioning was done in October 2023 and it was finalised in October 2024 when the testing of the Rig took place on the Applicant’s premises. Respondents have attached photographs of the parts of the machine which were attended to during the testing of the machine as annexure GS4. The training of Applicant’s 8 employees took place on 11 August 2023. The copy of the training register, signed by employees trained is attached as GS5. The register records that the people whose names and signatures appear on the register “*received training on the OPERATION of the Bohmeister Multi-Purpose Crawler Drill Rig Model # BM2500MP-CR Serial # G-M0113 Customer: Council for Geoscience*”

[17] The Applicant has, on its Replying Affidavit, attached a Proposal (Function Response) by the Respondents which was accepted by the Applicant. This document lists the functions which the Respondents will carry out. Amongst other things the document reads:

“The most important milestone of the QCP is the FAT where all parties involved are required to witness, inspect and sign off before delivery to site”

In so far as the commissioning and training is concerned, the document reads:

“Commissioning Training at our works is included in our offer. Additional on site training requested at agreed rates(My own emphasis).

[18] Parties tested the Drill and signed off, in terms of paragraph 17 above. A “*Client signed off Form*” is attached to the Answering Affidavit and marked GS1. The inspection date is indicated as being the 16 October 2024. The sign off form was signed by the Second Respondent and 3 representatives of the Applicant. The sign

off form, also indicates the defects which were identified and repaired during the inspection. Indeed, in terms of the proposal, accepted by the Applicant, additional on site or field training may be requested at additional rate agreed upon.

[19] The copy of the Bid, attached to the Replying Affidavit, apart from specifications of the Drill, specifies the “*minimum requirements*”. Under minimum requirements the Bid reads:

“Provide a proposal for a three year maintenance contract for servicing and maintaining the drill rig by an accredited service provide/agent for the specific equipment, proposal including service intervals emergency support and costing structure. The supplier must have the ability to do repairs and maintenance on drill rigs and the compressor with trailer within the borders of South Africa, or be able to appoint sub agents where possible. Provide proof of ownership , or a rental agreement of the workshop where the work will be done. This will be verified during the site inspection.”

The Bid does not require on site testing or training or hot commissioning.

Finding

[20] On the facts before me, there is no proof that the First Respondent is in contempt of the Court order dated 07 October 2024. There is thus no basis for the committal of the Second Respondent to prison.

Order

[21] In the result, I make the following orders:

1. The application is dismissed with costs.

NCUBE J
Judge of the High Court of South Africa
Kwazulu-Natal Division
Pietermaritzburg

Appearances:

For the Applicant and

Fifth Respondent : Adv De Vos

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