



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not reportable

Case no:M160/2019

In the matter between:

**RESEBEPI PIET MOTSOALEDI
N.O.**

FIRST APPLICANT

**ANNA MATLAKALA MAHUMA
N.O**

SECOND APPLICANT

**MMASEFUDI DOROTHY
MOPHATLANE N.O.**

THIRD APPLICANT

**RAMAJA NICHOLAS
MOTLHATLHEDI N.O.**

FOURTH APPLICANT

**BOIYANE JOHANNA MAGORO
N.O.**

FIFTH APPLICANT

and

**MINISTER OF RURAL
DEVELOPMENT AND LAND
REFORM**

FIRST RESPONDENT

MANNE, PETER

SECOND RESPONDENT

MASWABELA, JOHANNES

THIRD RESPONDENT

MATLALA, ANDRIES

FOURTH RESPONDENT

Coram: Wessels AJ

Heard: 9 March 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 14h00 on 31 March 2026.

Summary: Contempt of court — Civil contempt — Application for declaratory relief and compliance order following non-compliance with a 2020 court order — Requisites for contempt established.

Practice — Applications — Answering affidavit — Authority of deponent — Challenge in terms of Rule 7(1) of the Uniform Rules of Court — Failure of deponent to respond to Rule 7(1) notice or provide proof of authority — Burden of proof on the person whose authority is challenged to satisfy the court.

Practice — Evidence — Affidavit treated as *pro non scripto* where authority of deponent is challenged under Rule 7(1) and no proof of authority is provided — Opposition to application falls away in the absence of a valid answering affidavit.

Costs — Personal costs — *De bonis propriis* — Conduct of a senior public official acting without authority and ignoring court rules — Rule *nisi* issued for deponent to show cause why he should not be personally liable for a portion of the costs on a punitive scale — Conduct found to be reckless and grossly negligent.

JUDGMENT

Wessels AJ

Introduction

[1] In this application, the applicants apply for a declaration that the respondents are in contempt of a court order granted by Stanton AJ on 17 September 2020 ('the order'). The matter has a protracted history. However, for this judgment, it is necessary to focus on the issue of the validity of the answering affidavit filed on behalf of the first respondent in the face of an unchallenged Rule 7(1) notice.

[2] The applicants did not proceed with the relief sought against the second and third respondents. They persisted only with the relief against the first respondent. To that extent, the application against the second and third respondents was withdrawn.

[3] The fourth respondent is deceased, and no relief was sought against him. The application against the fourth respondent is accordingly moot.

Rule 7(1) challenge

[4] The applicants' notice of motion was served on the first respondent on 15 August 2024. The first respondent delivered a notice of intention to oppose on 16 September 2024. However, no answering affidavit was forthcoming. Despite a collegial reminder sent on 10 October 2024 and the matter being set down on the unopposed roll for 30 January 2025, the first respondent served an answering affidavit only on 27 January 2025, some 70 court days out of time and only two days before the scheduled hearing.

[5] The answering affidavit was deposed to by one Richard Goitseone Keothaile ('Mr Keothaile'), who described himself as the Chief Director of the North West Provincial Shared Services Centre of the Department of Land Reform and Rural Development. Nowhere in his affidavit did Mr Keothaile state that he was authorised to depose to the affidavit on behalf of the first respondent (the Minister), nor did he set out how such authority was derived.

[6] In response, the applicants delivered a notice pursuant to Rule 7(1) of the Uniform Rules of Court on 10 February 2025. The notice pertinently disputed Mr Keothaile's authority to act on behalf of the first respondent and called upon him to furnish proof of such authority within ten days. No response was ever received.

[7] Rule 7(1) provides for the following:

‘(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within ten days after it has come to the notice of the party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfies the court that he is authorised to act, and to enable him to do so the court may postpone the hearing of the action or application.’

[8] It is now well established that this rule applies not only to the authority of an attorney but to the authority of anyone acting on behalf of a party. This includes a deponent who purports to deliver an affidavit on behalf of a litigant who is not a natural person. Where such authority is challenged, the burden rests on the person so acting to satisfy the court that they are duly authorised.

[9] The locus classicus on this point is the decision of the Supreme Court of Appeal (‘SCA’) in *Ganes and Another v Telecom Namibia Ltd*¹. In that case, the SCA held that it is irrelevant whether a deponent had been authorised to depose to an affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. The court stated:

‘In my view, it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised.’

[10] This approach has been followed in inter alia *ANC Umvoti Council Caucus and Others v Umvoti Municipality*² and in this Division in *Mahikeng*

¹ *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) para 19.

² *ANC Umvoti Council Caucus and Others v Umvoti Municipality* (AR 392/2009) [2009] ZAKZPHC 47;2010 (3) SA 31 (KZP) (25 September 2009).

*Local Municipality v Harrison*³. The legal position is clear. Any challenge to the authority to institute legal proceedings must be brought by way of Rule 7(1).

[11] In this case, the challenge was clear, unequivocal, and never answered. The first respondent's counsel, Ms Seboko SC, candidly conceded during oral argument that the failure to respond to the Rule 7 notice was embarrassing and stated, 'I thought by now the Rule 7 would have been responded to'. She explained that a new attorney had recently come onto the record in the office of the State Attorney and that she had assumed the issue had been resolved. No explanation was offered for the failure of Mr Keothaile, or anyone else, to place evidence before this Court establishing his authority. No application for condonation for the late filing of such proof was made, nor was any request for a postponement to rectify the defect.

[12] Applying these principles to the present matter, it is clear that the first respondent failed to utilise the correct procedure. The authority of Mr Keothaile was challenged. No response was forthcoming. In the absence of any proof of authority, the answering affidavit must be treated as *pro non scripto*. The first respondent's opposition to the application accordingly falls away.

Contempt of court

³ *Mahikeng Local Municipality v Harrison* (M209/2020) [2021] ZANWHC 87 (14 April 2021).

[13] With the answering affidavit disregarded, the applicants' case against the first respondent stands unchallenged. The applicants have established that:

- (a) a valid court order was granted on 17 September 2020;
- (b) the court order was served on the first respondent's attorneys on 28 September 2020 and acknowledged by them;
- (c) the first respondent has failed to comply with paragraphs 3 and 4 of the court order, which directed the first respondent to designate the Roodekuil Property and appoint a land title adjustment commissioner for the Bultfontein and Roodekuil properties within 60 days.

[14] There can be no genuine dispute that the first respondent was fully aware of the court order. Not only was the court order served on the first respondent's attorneys on 28 September 2020 and acknowledged by them, but the first respondent thereafter took active steps to challenge it. On 16 April 2021, the first respondent prosecuted an application for leave to appeal against the judgment of Stanton AJ. That application was dismissed on 10 August 2021. The first respondent did not pursue any further appeal steps. A litigant who seeks leave to appeal a court order cannot credibly claim ignorance of its terms or obligations. The very act of challenging an order presupposes knowledge of its existence and contents. The first respondent's pursuit of leave to appeal, and its subsequent failure to take the matter further on appeal, confirms that the first respondent was not only aware of the order but also understood its binding nature. This knowledge, coupled with the admitted non-compliance spanning more than four years since the dismissal of the appeal, lays a firm foundation for this application.

[15] The requisites for contempt of court are well established. In *Fakie NO v CCII Systems (Pty) Ltd*⁴, the SCA held that:

‘(a) 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.

(b) The respondent in such proceedings is not an ‘accused person’, but is entitled to analogous protections as are appropriate to motion proceedings.

(c) 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.

(d) 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.’

[16] Once an applicant establishes the existence of a court order, service or notice thereof, and non-compliance, an evidentiary burden shifts to the respondent to show that the non-compliance was not wilful or mala fide. Where, as here, the respondent fails to place any evidence before a court to discharge this burden, the requisites for contempt are established⁵.

[17] The first respondent has placed no such evidence before this Court. There is no explanation for the years of delay. There is also no denial of wilfulness.

⁴ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) para 42.

⁵ See also: *Pheko and Others v Ekurhuleni Metropolitan Municipality* 2015 (5) SA 600 (CC) paras 36 – 37.

Relief

[18] The applicants apply for a mandatory order compelling compliance within 30 days, and a fine of R100 000.00 in the event of non-compliance. This remedy is designed to coerce compliance and vindicate the authority of this Court.

[19] In the particular circumstances of this matter, and having regard to the fact that the first respondent bears constitutional obligations to respect and comply with court orders, I am not prepared to make a final finding of contempt at this stage. My reluctance is largely due to Mr Keothaile's intervention in this matter, casting doubt on whether the first respondent came into personal knowledge of this application. Instead, I consider it just and equitable to allow the first respondent to regularise this position. Accordingly, I will grant the first respondent a period of 60 (court) days from the date of personal service of the order emanating from this judgment upon the first respondent to comply fully with paragraphs 3 and 4 of the order (of 17 September 2020). Should the first respondent fail to do so, the applicants have the option to approach this Court on the same papers, duly supplemented (if necessary), for an order declaring the first respondent in contempt of court and for such further relief as may be appropriate. This approach balances the need to vindicate this Court's authority with the ultimate object of these proceedings, which is compliance, not punishment.

Costs

[20] The applicants have been compelled to litigate to enforce the order that should have been obeyed years ago. The first respondent's conduct has

necessitated this application and has wasted valuable judicial resources. A punitive costs order is warranted.

[21] In relation to the second and third respondents, the applicants withdrew the application against them without prejudice. In the absence of any opposition, and given that they played no active part in the proceedings subsequent to the withdrawal of their attorneys, it is just and equitable that each party bear its own costs in respect of the proceedings against the second and third respondents. No order is made against the fourth respondent.

Costs against Mr Keothaile

[22] A further cost consideration must be addressed. Mr Keothaile, the deponent to the answering affidavit, purported to oppose this application on behalf of the first respondent. He was served with a notice in terms of Rule 7(1) on 10 February 2025, disputing his authority to act. Although he was called upon to furnish proof of such authority within ten days, he did not respond. No explanation has been offered for his silence. The first respondent's counsel conceded during argument that the failure to respond was 'embarrassing'.

[23] A deponent who purports to act on behalf of a party, and whose authority is challenged, bears the obligation to satisfy the court that he or she is duly authorised. The purpose of Rule 7(1) is to ensure that litigation is properly authorised and that parties are not vexed by unauthorised persons purporting to act on their behalf. Mr Keothaile, as a senior public official, must have been aware of this requirement. His failure to respond to the Rule 7(1) notice, and his persistence in opposing the application without

establishing his authority, constitute conduct that falls squarely within the category of gross negligence, which warrants a personal costs order.

[24] *In Public Protector v South African Reserve Bank* ⁶, the Constitutional Court ordered the Public Protector to pay costs de bonis propriis for her conduct in litigation. The Court found that her conduct was reckless and grossly negligent, that she had failed to take reasonable steps to ensure that the litigation was properly conducted and that she had ignored the rules of Court. The court stated:

‘[116] Both an award of personal costs and on an attorney and client scale against a representative litigant requires that a particular test be met and certain legal principles be shown to apply and its requirements met. The test is gross negligence or bad faith in connection with litigation or the fulfilment of public obligations. And the principles for awarding costs on an attorney and client scale are frivolity, vexation or manifest impropriety. Apart from a passing reference to exceeding the bounds of good faith and to bias or its reasonable apprehension, none was sought to be relied on and no explanation was provided for how they were met. Only general statements of disapproval, conclusions and even wrong legal principles were reflected. One such wrong principle was the elevation of the Public Protector’s electronic recordal of the meetings from a practice to a legal requirement whose perceived breach must attract personal costs even on a punitive scale.

[117] It is harsh enough to be ordered to pay costs on an attorney and client scale in a representative capacity and even more so to have to pay normal costs out of one’s own pocket as a representative litigant. It is devastatingly punitive to ask of an ordinary salary-earner, acting as a representative litigant, to pay costs, no matter the percentage, out of her own pocket on an attorney and client scale. Considerations of justice and equity dictate that the legal basis for awarding such costs, appreciating their disastrous consequences, must not only be correctly identified, but how they find application in this case must also

⁶ *In Public Protector v South African Reserve Bank* [2019] ZACC 29.

be properly explained. “Gross” negligence and “bad faith” had to be demonstrated and so should the meeting of the test for imposing personal costs on an attorney and client scale have been explained. That did not happen.’

[25] The Court further held that such an order serves to mark a court’s displeasure and to deter similar conduct in the future.

[26] Similarly, in *Black Sash Trust v Minister of Social Development*⁷, the Constitutional Court held a cabinet minister personally liable for a portion of the litigation costs. The Court found that the Minister’s failure to make full disclosure to the Court, and her conduct in misleading the Court to protect herself from the consequences of her behaviour, constituted gross negligence warranting a personal costs order. In this regard, the court states as follows:

‘The inference that she did not act in good faith in doing so is irresistible. At best for her, her conduct was reckless and grossly negligent. All that is sufficient reason for a personal costs order.’

[27] The court held that such an order is appropriate to account for her degree of culpability in misleading the court, conduct which is deserving of censure by that court as a mark of displeasure, more so since she held a position of responsibility as a member of the Executive⁸.

[28] The conduct of Mr Keothaile mirrors that of the public officials in *Mkhwebane* and *Black Sash*. By opposing this application without authority, and by ignoring a Rule 7(1) notice that put him on express notice that his authority was disputed, he forced the applicants to prepare for a contested hearing that could not proceed on the merits. He wasted precious judicial

⁷ *Black Sash Trust v Minister of Social Development* [2018] ZACC 36 para 12.

⁸ *Op cit*, fn 7 para 14.

resources. His conduct was reckless and grossly negligent. It is deserving of censure by this Court as a mark of displeasure. In the circumstances, there is a strong case for holding Mr Keothaile personally liable for a portion of the costs of this application.

[29] However, before making a final determination on the extent of Mr Keothaile's personal liability, it is just and equitable to allow him to be heard on this issue. The Constitutional Court in *Mkhwebane* and *Black Sash* followed a similar process, allowing the public officials concerned an opportunity to address the question of personal costs before a final order was made. Accordingly, Mr Keothaile shall be allowed to show cause why he should not be ordered to pay 20% of the costs of this application *de bonis propriis*.

Order

[30] In the result, I make the following order:

1. The application against the second and third respondents is withdrawn, and each party shall pay its own costs in relation to the proceedings against the second and third respondents.
2. No order is made against the fourth respondent.
3. The first respondent is granted a period of 60 (sixty) court days from the date of personal service of this order upon the first respondent to comply with paragraphs 3 and 4 of the order granted by this Court under the above case number on 17 September 2020.

4. The applicants are granted leave to approach this Court with duly supplemented papers, if necessary, for an order declaring the first respondent in contempt of court and for such further relief as may be appropriate, in the event that the first respondent fails to comply with paragraph 3 of this order.
5. A rule nisi is hereby issued calling upon Mr Richard Goitseone Keothaile to show cause on a date to be arranged why he should not be ordered to pay 20% of the costs of this application de bonis propriis on the scale as between attorney and client, including the costs of two counsel.
6. The costs of this rule nisi shall be costs in the cause.



M WESSELS
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances

For applicants	:Adv Van Nieuwenhuizen
	:Adv Nxumalo
Instructed by	:Tshabalala Attorneys
	:Johannesburg

:c/o Maree & Maree
:Mahikeng

For first respondent :Adv Seboko SC
Instructed by :State Attorneys
:Mmabatho