



Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION MAHIKENG

Case No: 2025-246406

In the matter between:

SIBANYE STILL WATER LIMITED

FIRST APPLICANT

EASTERN PLATINUM LIMITED

SECOND APPLICANT

WESTERN PLATINUM (PTY) LTD

THIRD APPLICANT

And

THE HEAD OF CORRECTIONAL CENTRE:

LOSPERFONTEIN

FIRST RESPONDENT

TSHEPO HOPE MOLAOLE

SECOND RESPONDENT

THE MINISTER OF CORRECTIONAL SERVICES

STATION COMMANDER: MOOINOOI

THIRD RESPONDENT

SOUTH AFRICAN POLICE SERVICES

FOURTH RESPONDENT

Coram: Makolomakwe AJ

Date of hearing: 6 March 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down is deemed to be 16h00 on 01 April 2026.

ORDER

[1] The following order is granted:

1.1 Section 39(1) of the Correctional Services Act 111 of 1998 is not applicable to sentences of incarceration imposed for civil contempt;

1.2 The second respondent's 60 day period of imprisonment, imposed by this Court, per Tsautse AJ, on 19 September 2025, under case number 3875/2025 will only commence and take effect from the day on which the second respondent is admitted to the Losperfontein, Correctional Centre.

1.3 The first respondent is directed to receive the second respondent and keep him in custody until he has served his 60 day period of imprisonment.

1.4 The third respondent is ordered to pay the costs of this application on party and party basis on Scale B.

JUDGMENT

MAKOLOMAKWE, A J

Introduction

[2] The applicants are seeking an order declaring that paragraph 3 of the contempt of court order, properly interpreted, requires the Head of Losperfontein Correctional Centre to admit Mr. Molaole, and to keep him in custody for a period of 60 days, notwithstanding that more than 60 days has passed since the grant of the contempt of court order. The application is opposed by the respondents, except the second respondent.

Background

[3] The first applicant is Sibanye Stillwater Ltd (“Sibanye”), with registration number: 2014/243852/06, a private company duly registered and incorporated in accordance with the company laws of the Republic of South Africa. The second applicant is Eastern Platinum Ltd (“Eastern Platinum”), with registration number: 1987/070294/07, a private company duly registered and incorporated in accordance with the company laws of the Republic of South Africa. The third applicant is Western Platinum (Pty) Ltd (“Eastern Platinum”), with registration number: 1987/070294/07, a private company duly registered and incorporated in accordance with the company laws of the Republic of South Africa.

[4] The first respondent is the Head of Correctional Centre: Losperfontein, Brits, North West (“the Head of Losperfontein”), in his official capacity as the correctional services official designated by the National Commissioner to manage and control Losperfontein. The second respondent is Tshepo Hope Molaole (“Molaole”). The third respondent is the Minister of Correctional Services. The fourth respondent is the Station Commander at Mooiwooi Police Station of the South African Police Services (“SAPS Mooiwooi”)

[5] On 5 September 2025, this Court, as per Hendricks JP, granted an order (“Interdict Court Order”) in which the first respondent and its members, the second respondent and any other person acting in association with them and/or on their behalf and or on their instruction are interdicted from amongst others, interfering in any way with the mining and business operations of the applicants.

[6] On 19 September 2025, this Court, as per Tsautse AJ, granted an order against the second respondent in this matter and other parties who are not before this Court. In the following terms:

‘[1] THAT: The First and Second Respondents are declared to be in contempt of the court order granted by the Honourable Mr Justice President Hendricks on 05th of September 2025.

[2] THAT: The First Respondent shall pay a fine of R25 000, which fine shall be paid to the Registrar of this Court within 14 days of this order.

[3] THAT: The Second Respondent is imprisoned for a period of 60 days.

[4] THAT: The Station Commander of the South African Police Services for the District of Mooiwool is directed to execute the order in terms of paragraph 3 and above and is directed to arrest, to take into custody and detain the Second respondent for the period referred to in paragraph 3 above.

[5] THAT: The costs of this application, including the cost of two counsel, to be paid by the respondents, jointly and severally, in one paying the others to be absolved, on scale B.’

[7] On 8 October 2025, a Writ of Commitment for Contempt of Court (“Writ of Contempt”) was issued by this Court. In terms of paragraph 4 thereof the Sheriff and the fourth respondent were directed to take the second respondent to “the keeper of the prison” of the district in which he will be found and to be safely kept until the expiration of 60 days imposed in paragraph 3 of the court order dated 9 September 2025.

[8] On 9 October 2025, 15 October 2025 and 9 December 2025 the second respondent was arrested by members of SAPS Mooinooi. The Sheriff accompanied him to Losperfontein Correctional Centre to hand over the second respondent in order to serve his sentence. Correctional Services officials and the first respondent refused to receive him. The members of SAPS Mooinooi, released him. Until today he has not served that sentence.

Points *in Limine*

[9] The respondents raised the following points *in limine* in the answering affidavit: urgency non-compliance with Rule 41A of the Uniform Court rules; non-compliance with Regulation 4(1) of Regulations promulgated in terms of the Justices of the Peace and Commissioners of Oaths Act;¹ and lack of authority to depose to an affidavit to institute urgent proceedings against the respondents.

Pertaining Urgency

[10] On 9 December 2025 the matter was postponed to 6 March 2026 to the opposed roll for hearing after the respondents filed a notice of intention to oppose. The issue of urgency fell away. At the commencement of the hearing both counsels confirmed that position.

Pertaining non-compliance with Regulation 4(1) of Regulations promulgated in terms of the Justices of the Peace and Commissioners of Oaths

[11] During the hearing, counsel for the respondents informed this Court that it will not pursue the above point as it was addressed in the confirmatory affidavit of Commissioner of Oath annexed to the replying affidavit.

¹ paragraph 29.

Pertaining non- Compliance with Rule 41A of the Uniform Rules

[12] It was argued on behalf of the respondents that the applicant did not serve a notice required by Rule 41A. Further, that the matter be struck off roll for non-compliance with that said rule. It was contended on behalf of the applicant that prior to issuing this application emails were sent to the official email address of the first respondent and to another official of Losperfontein Correctional Centre, in order to resolve the dispute between them, but no response was received.

[13] In terms of Rule 41A (2) (a), the applicant is obliged to serve a notice indicating whether it agrees to or opposes referral of the dispute to mediation. It is common cause that the applicant did not comply with this rule.

[14] According to the founding affidavit¹ dated 3 December 2025, a letter attached to the founding affidavit was addressed to the first respondent requesting a written undertaking that the second respondent will receive into custody until he has served his sentence and also referring to a letter dated 20 November 2025. The first respondent did not dispute that correspondences were sent by the applicants, but stated that it did not reach him.

[15] The contents confirm the submissions made on behalf of the applicants that the correspondence was sent to Losperfontein Correctional Centre prior to the issuing of this application. According to the answering affidavit, ²the dispute between the parties is the manner in which the detention warrant was completed and administered by the fourth respondent and not the interpretation of the order granted on 19 September 2025.

² NDPP v Zuma 2009 (2) SA 277 (SCA).

[16] It is trite law that in motion proceedings the parties stand and fall by their papers. See *NDPP v Zuma*.³ The submission by counsel for the respondent that the refusal to receive the second respondent was due to the wording of the court order granted on 19 September 2025 and that the applicant refused to co-operate in having it corrected, is not in line with the answering affidavit. The respondents have to fall and stand by their papers.

[17] The correction of the manner in which the detention warrant was completed and administered by the fourth respondent did not require any co-operation from the applicant. Instead, it required the first and fourth respondents to co-operate with each other for mediation before this application was issued, after it was postponed to the opposed roll and before the date of hearing.

[18] In *Fakie N.O. v CCII Systems (Pty) Ltd*² the Supreme of Appeal stated the following:

‘While civil contempt is considered a “peculiar amalgam” (a civil proceeding invoking a criminal sanction), it does not need to follow the same formal, Criminal Procedure as a J7 or SAP 69, which are designed for arrests in criminal trials.’

[19] In *National Commissioner of Correctional Services v Democratic Alliance*⁴ the Supreme Court of Appeal confirmed that when a court issues a warrant of committal for contempt, the court order itself is the final, valid document for detention, regardless of the absence of traditional, preliminary criminal procedures.

[20] In the present matter the first respondent refused to receive the second respondent and insisted on the formal, Criminal Procedure or traditional,

³ [2006] ZASCA 52, at paragraph 8.

⁴ Paragraphs 12.1 and 12.4.3.

preliminary criminal procedures of J7 or SAP 69. The fourth respondent and or members of SAPS, Mooi-nooi completed J7 or SAP 69, but the first respondent refused to receive the second respondent and raised the issue of dates.

[21] It is clear from the above SCA decisions that there was no need for the first respondent to insist on compliance with the formal, preliminary criminal procedures of J7 or SAP 69 as the court order of Tsautse AJ itself is the final, valid document for detention of the second respondent. The reasons provided by the first respondent for refusing to receive the second respondent demonstrates his interpretation of the procedure, including the applicable section of the Correctional Services Act, applicable to the detention of the second respondent.

[22] I agree with the submission on behalf of the applicant that mediation was not impossible. Having regard to the aforementioned, the point in *limine* stands to be dismissed.

Pertaining lack of authority to depose to the Founding Affidavit to institute Urgent proceedings against the Respondents.

[23] The point raised in the answering affidavit⁵ is that the application is defective due to failure in the founding affidavit to state of the following: that the deponent is duly authorised to act on behalf of the applicants nor authorised to depose to the affidavit and how the facts of this matter came to be within her personal knowledge. The contention on behalf of the applicant is that the deponent to an affidavit is a witness and need not be authorised.

⁵ 2004 (3) SA 615 SCA, at paragraph 19.

[24] Both counsel relied in the case of *Ganes and Another v Telkom Namibia Ltd*. The Supreme Court of Appeal stated the position regarding authority to depose to the affidavit in motion proceedings as follows:

‘. . . 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 which must be authorised.’

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[25] The above authority supports the submission on behalf of the applicant. Applying that principle to the present matter, I find that it is irrelevant whether the deponent of the founding affidavit in the present matter was authorised or not. Further, that it is irrelevant how the facts of this matter came to be within the personal knowledge of that deponent. The averments in the founding affidavit that the second respondent was arrested, taken to Losperfontein Correctional Centre more than once and the officials of Correctional Services refused to receive him, are confirmed in the answering affidavit and therefore common cause between the parties.

[26] Having regard to the aforementioned, the point raised stand to be dismissed as it is the institution of the proceedings and the prosecution thereof that has to be authorised.

Analysis

[27] Counsel for the respondent confirmed what is stated in the answering affidavit that the relief sought by the applicant, except costs, will not be opposed in the event of dismissal of the points *in limine*. Having dismissed the points *in limine*, I grant the unopposed relief in the notice of motion.

⁶ 1909 TS 879.

Costs

[28] The general rule is that the successful party is entitled to costs. The applicant is successful and is entitled to costs. The submissions on behalf of the applicant is that the third respondent be ordered to pay punitive costs order for refusing to enforce a court order. Further, that costs *de bonis propriis* be granted against the attorneys of the respondents for making unwarranted averments about the Commissioner of Oath of the founding affidavit.

[29] It was argued on behalf of the respondents that there is no basis for granting that order as the attorneys are entitled to raise the point in the manner they deem fit and same has been corrected. A general rule is that in order to justify a personal order for costs against a litigant occupying a fiduciary capacity, his conduct in connection with the litigation in question must have been *mala fide*, negligent or unreasonable. See *Vermaak's Executor v Vermaak Heirs* ³.

[30] In the present matter the shortcomings raised in the answering affidavit were corrected in the replying affidavit and the confirmatory affidavit of the Commissioner of Oath was annexed. I do not find the conduct of the respondent's attorneys to be *mala fide*, negligent or unreasonable and will not grant costs *de bonis propriis*.

[31] Further, I find the first respondent's interpretation of the procedure applicable to the detention of the second respondent not vexatious and/or frivolous. I find that an appropriate costs order is that the third respondent be ordered to pay costs on party and party basis on Scale B.

Order

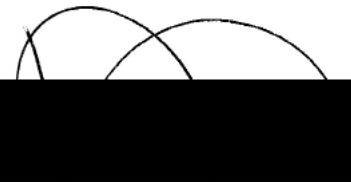
[32] Consequently, I made the following order:

1.1 Section 39(1) of the Correctional Services Act 111 of 1998 is not applicable to sentences of incarceration imposed for civil contempt;

1.2 The second respondent's 60 day period of imprisonment, imposed by this Court, per Tsautse AJ, on 19 September 2025, under case number 3875/2025 will only commence and take effect from the day on which the second respondent is admitted to the Losperfontein, Correctional Centre.

1.3 The first respondent is directed to receive the second respondent and keep him in custody until he has served his 60 day period of imprisonment.

1.4 The third respondent is ordered to pay the costs of this application on party and party basis on Scale B.

A handwritten signature in black ink, consisting of several overlapping loops, is positioned above a solid black rectangular redaction box.

L MAKOLOMAKWE
ACTING JUDGE

NORTH WEST DIVISION, MAHIKENG

APPEARENCES

Date of Hearing 06 March 2026

Judgment Handed down 01 April 2026

For the Applicant Adv I Oshman

For the Respondent Adv S K Lekitima

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Act 16 of 1993.

³ paragraph 29.

³ Paragraph 11.3.

³ NDPP v Zuma 2009 (2) SA 277 (SCA).

³ [2006] ZASCA 52, at paragraph 8.

³ (2022) ZASCA 159, at paragraph [24].

³ Paragraphs 12.1 and 12.4.3.

³ 2004 (3) SA 615 SCA, at paragraph 19.

³ 1909 TS 879.

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