

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2024-084969

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: YES

DATE: 23 March 2026

SIGNATURE OF JUDGE:

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In the matter between:

DINOKENG GAME RESERVE LAND OWNERS' ASSOCIATION First Applicant

DINOKENG MANAGEMENT ASSOCIATION Second Applicant

DGR GAME ENTERPRISES LTD Third Applicant

and

BON CIDRE PROPERTY (PTY) LTD First Respondent

ADRI SCHWARZ NO Second Respondent

MICHAEL SCHWARZ NO Third Respondent

JUDGEMENT

H F OOSTHUIZEN AJ

INTRODUCTION

1. The first applicant ("the association") is a voluntary association whose members are owners of immovable properties in the Dinokeng Game Reserve ("the reserve").
2. On 16 April 2015, the association and the first respondent concluded a written Dinokeng Land Incorporation Agreement ("the agreement") in terms of which the first respondent made its immovable property, portion 46 of the Farm Welgevonden ("the property"), available to the association to be managed as part of the reserve, which is an open ecosystem that allows for free roaming of wildlife and dangerous animals. The agreement provided for the dismantling of the existing internal and external fences on the property so that the whole of the reserve could form part of a single fenced area.
3. The agreement placed an obligation on the first respondent to give six months' written notice to the association of its intention to terminate the agreement.
4. Clause 17.2.1 of the agreement provided that the following should be completed by the termination date:

"[T]he [first respondent] shall, at its own cost, fence off the [property] from the [reserve] on the basis that the new fence becomes a perimeter fence and is constructed according to the same specifications as the perimeter fence to which the new fence now becomes part. If the [property] is situated on the perimeter of the [reserve], any such new fence erected by the [first respondent] shall, in the absence of agreement, become the property of [the second applicant]. Unless agreed to by the Association,

where the old perimeter fence cost more than the new fence then the difference in the cost shall be paid to [the second applicant]."

5. On 18 February 2021, the first respondent gave notice to the association of its intention to terminate the agreement but it failed to comply with its obligations in terms of clause 17.2.1 of the agreement.
6. On 30 July 2024, the association instituted an application against the first respondent ("the first application") to enforce its rights in terms of clause 17.2.1 of the agreement.
7. On 12 November 2024, Van der Schyff granted an order against the first respondent in the first application ("the order") in the following terms:

"In terms of clause 17.2.1 of the [agreement] the [first] Respondent fence- of its land, at its own cost, from the ... Reserve."

8. Due to the failure of the first respondent to comply with the order, the applicants instituted a contempt application on 14 March 2025.

LEGAL PRINCIPLES

9. The relevant legal principles pertaining to a contempt application was summarised as follows by Cameron JA (as he then was) in *Fakie NO v CCII Systems (Pty) Ltd*:¹

"(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."

¹ 2006 (4) SA 326 (SCA) par [42]

- (b) *The respondent in such proceedings is not an 'accused person', but is entitled to a 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.*
- (e) *A declarator and other appropriate remedies remain available to a civil applicant on proof on a balance of probabilities."*

10. The following *dictum* in *Fakie*² is relevant insofar as the requirement of wilfulness and *mala fides* is concerned:

"The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and mala fide'. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith)."

DISCUSSION

11. The first three requirements for contempt, namely the order, notice of the order and non-compliance, are common cause. Although the order did not stipulate when the first respondent was obliged to fence-off the property from the reserve, the parties are in agreement that the first respondent was obliged to do so within a reasonable period of time and that a reasonable period of time had expired by the time of the institution of this application.
12. The first respondent denies that non-compliance with the order was wilful and *mala fide*. Although the first respondent proffers various reasons why it has failed to comply with the order, it is only necessary to deal with one of the reasons.
13. Although it was not mentioned in the first application, it is common cause that a servitude of right of way in favour of the general public is registered over the property on the western boundary of the property. A survey plan of the property which reflects the servitude road is annexed to the answering affidavit, marked "AA3".
14. The applicants contend that the fence between the property and portion 45 of the Farm Welgevonden should not be on the cadastral boundary between the two properties but that the fence should be on the eastern boundary of the servitude road. The servitude road would, on the applicant's interpretation of the order, be inside the reserve after the property has been fenced-off.
15. The applicants in this regard stated in paragraph 12.1 to 12.3 of the replying affidavit that the first respondent is obliged to "*fence out parallel to the road*" and not "*across the servitude road*" and that "*[i]t remains patently clear that the First Respondent's is to fence of parallel to the servitude road, thereby manifesting as its demarcation and independence from the ... Reserve*".
16. In an email by the applicants' attorney to the third respondent on 13 November 2024 (the day after the granting of the order), the applicants' stance was enunciated as follows:

"[Y]ou have previously provided an undertaking that you will not fence out across the servitude road, however, should you do so we will bring an urgent court application against you as this servitude road is a general servitude for the public..."

Without belabouring the point for the 100th time the servitude does not "belong" to you it is not your road and you cannot lay claim to it as has been the case. You were aware of the road when you bought the property and cannot claim ignorance now. Should you in any way restrict the use of the road or prevent the maintenance of the road we will have no alternative but to approach the court for an interdict at your costs."

17. The first respondent contends that the dispute where the fence should be situated prevented it from complying with the order. It testifies that it attempted to resolve the dispute by contacting the local authority and proposes that the dispute be resolved by mediation or arbitration, as provided for in the agreement. It indicates that should it erect the fence on the boundary between the property and the reserve and its interpretation of the order is incorrect, it would incur substantial costs to remove the fence and face litigation as threatened by the applicants.
18. During argument, the question where the fence should be situated, turned out to be the major dispute between the parties which requires resolution to ensure compliance with the order. The parties were in agreement that it would be proper for the Court to interpret the order and grant a clarification order if necessary.
19. In *Democratic Alliance in re Electoral Commission of South Africa v Minister of Co-Operative Governance*³ the Constitutional Court referred to the "modern approach" to interpretation of court orders:

³ 2022 (1) BCLR 1 (CC) para [12]

"The order with which a judgement concludes has been described as the "executive part of the judgement", because it defines what the court requires of the parties who are bound by it. For this reason, it was said in Ntshwaqela that although the order must be read as part of the entire judgement, and not as a separate document, the order's meaning, if clear and unambiguous, cannot be restricted or extended by anything else stated in the judgement. The modern approach is not to undertake interpretation in discrete stages but as a unitary exercise in which the court seeks to ascertain the meaning of a provision in the light of the document as a whole and in the context of admissible background material. This principle applies to the interpretation of court orders, as decisions of this Court make plain."

20. In view of the fact that the order was granted in the unopposed motion court, no judgement or reasons were provided by Van der Schyff J. The only admissible background material on which reliance can be placed is accordingly the founding affidavit in the first application which contains no reference to the servitude road.
21. The words "*fence-off its land ... from the ... Reserve*" is clear and unambiguous and can only have one meaning, namely that the fence must be on the cadastral boundary between the property and the reserve.
22. It accordingly follows that the applicants' interpretation of the order is incorrect.
23. The existence of the dispute means that the applicants have failed to prove wilfulness and *mala fides* beyond reasonable doubt. I cannot find that the first respondent did not genuinely (although mistakenly) believe to be entitled to act in the way it did.
24. During argument, Ms van der Westhuizen, who acted on behalf of the applicants, conceded that the applicants are not entitled to a contempt order and accordingly sought an order that the first respondent complies with the order within 30 days.

25. The applicants in addition sought the following relief (as enunciated in a draft order which was uploaded to CaseLines after the completion of argument):

"The first respondent should comply with ... clause 17.2.1 of the ... Agreement by installing cattle grids to the exits of the perimeter fences which grids are to comply with the Gauteng Department of Agriculture Big 5 Specifications."

26. I am not prepared to grant this relief for the following reasons:

26.1. No such relief is sought in the notice of motion.

26.2. The affidavits in the application did not deal with this aspect.

26.3. Clause 17.2.1 of the agreement merely provides that the new fence must be *"constructed according to the same specifications as the perimeter fence to which the new fence now becomes part"*. There is no reference in clause 17.2.1 to *"cattle grids"* which must *"comply with the Gauteng Department of Agriculture Big 5 Specifications"*.

COSTS

27. Although the respondents are substantially successful in that I cannot find beyond reasonable doubt that the first respondent's non-compliance with the order was wilful and *mala fide* and I have found that the first respondent's interpretation of the order is correct, I am not prepared to grant a costs order in the respondents' favour.
28. The fact remains that the first respondent has failed to comply with the order. It should either have complied with the order (in accordance with its interpretation thereof, which was correct) or it should have approached the court for clarification.

29. The following was in this regard held by the Constitutional Court in *Municipal Manager, OR Tambo Municipality v Ndabeni*:⁴

"[24] This court in State Capture⁵ reaffirmed that irrespective of their validity, under s 165(5) of the Constitution, court orders are binding until set aside. Similarly, Tasima held that wrongly issued judicial orders are not nullities.⁶ They are not void or nothingness, but exist in fact with possible legal consequences. If the judges had the authority to make the decisions at the time that they made them, then those orders would be enforceable.

[25] To distinguish the role of the litigants from the courts, the majority in Tasima said:

'The act of proving something irresistibly implies the presence of a court. It is the court that, once invalidity is proven, can overturn the decision. The party does the proving, not the disregarding. Parties cannot usurp the court's role in making legal determinations.'⁷

[26] Court orders are effective only when their enforcement is assured. Once court orders are disobeyed without consequence, and enforcement is compromised, the impotence of the courts and the judicial authority must surely follow. Effective enforcement to protect the Constitution earns trust and respect for the courts. This reciprocity between the courts and the public is needed to encourage compliance, and, progressively, common constitutional purpose."

30. I am accordingly of the view that it is just and equitable that the parties pay their own costs.
31. A similar costs order was granted under the same circumstances in *Mphahlele v The South African Board for Sheriffs*.⁸ Labuschagne J dismissed the orders pertaining to contempt of court on the basis of the Board for Sheriffs' subjective belief that the relevant court order was suspended by an application for leave

⁴ 2023 (4) SA 421 (CC)

⁵ *Secretary, Judicial Commission of Enquiry into Allegations of State Capture v Zuma* 2021 (5) SA 327 (CC) par 59

⁶ *Department of Transport v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC) par 182

⁷ *Department of Transport v Tasima (Pty) Ltd supra* par 191

⁸ Unreported judgement. 24 February 2026. Case number 2025-245823

to appeal and that the court order was moot. The learned Judge held that the Board for Sheriffs should have challenged the court order head-on in court proceedings, in which event the contempt application would not have been necessary.

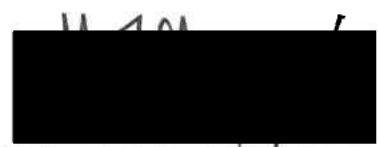
ORDER

32. In the premises I grant the following order:

32.1. The first respondent is ordered to comply with the order of Van der Schyff J, dated 12 November 2024, within 30 days of service of this order on the first respondent by fencing-off its property, at its costs, from the Dinokeng Game Reserve in terms of clause 17.2.1 of the Dinokeng Land Incorporation Agreement, which agreement was concluded between the first applicant and the first respondent on 16 April 2015.

32.2. The fence between the first respondent's property and portion 45 of the Farm Welgevonden must be erected on the cadastral boundary between the two properties as depicted from 46A to 47B on the survey plan which is attached to the answering affidavit, marked "AA3".

32.3. All parties will bear their own costs.



HF OOSTHUIZEN AJ
ACTING JUDGE OF THE HIGH COURT

This judgement was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines.

Appearances

Counsel for the First to Third Applicants: Adv M van der Westhuizen

instructed by Gildenhuys Malatsi Inc

Counsel for the First to Third Respondents: Adv L J Lowies

instructed by Jacques van der Merwe Attorneys

Date of Hearing: 29 January 2026

Date of Judgement: 23 March 2026