

## REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA  
(LIMPOPO DIVISION, POLOKWANE)

CASE №: 1454/2025

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

VAN WYK ASL (AJ)

A black rectangular box redacting the signature of the judge.

SIGNATURE

7 April 2026  
 DATE

In the matter between:

**SAND HAWKS (PTY) LTD****REG NO: 1999/010163/07****APPLICANT**

and

**65 TWIN PROPERTY2 (PTY) LTD****RBP SECURITY SERVICES****POLOKWANE LOCAL MUNICIPALITY****NETWORTH PROPERTIES (PTY) LTD****MINISTER OF POLICE****THE SHERIFF POLOKWANE****PHUMUDZO CONSOLIATION MAPHIRI****LETLADI MOLOTO****FIRST RESPONDENT****SECOND RESPONDENT****THIRD RESPONDENT****FOURTH RESPONDENT****FIFTH RESPONDENT****SIXTH RESPONDENT****SEVENTH RESPONDENT****EIGHTH RESPONDENT**

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## JUDGMENT

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**VAN WYK ASL (AJ):**

### **INTRODUCTION**

[1] Central to this application, the applicant, Sand Hawks (Pty) Ltd, applied to this Court on an urgent basis on 18 June 2025, seeking *inter alia* that the first, second, seventh, and eight respondents be declared in contempt of the order issued Makoti AJ delivered on 18 February 2025 under case number 1454/2025. The applicant furthermore applied for ancillary relief relating to- and flowing from the purported contempt complained of.

[2] In determining whether the respondents referred to in paragraph 1 above are in contempt of the court order by Makoti AJ as aforesaid and whether the applicant is entitled to the ancillary relief relating to- and flowing from the contempt complained of the history of this matter and previous litigation are interrelated and connected with such determination.

[3] The succinct history of the matter is as follows:

3.1 The third respondent is the registered owner of the immovable property known as the Undivided Portion of the Remainder of the Farm

Krugersburg 933 LS.

- 3.2 On the conspectus of the affidavits filed, it is either common cause or not disputed, that the applicant was previously in occupation of the third respondent's immovable property as described in paragraph 3.1 above for more than 18 years in accordance with lease agreement(s) and the subsequent renewals thereof.
- 3.3 The lease agreement between the applicant and the third respondent terminated by effluxion of time and after a further five- year period the parties continued with the lease on a month-to-month basis. On 28 August 2023 the third respondent issued a letter to the applicant notifying it of its intention to cancel the lease with one month's notice. Pursuant to the applicant receiving the notice of termination, the applicant requested a 12-month extension, which extension was granted to the applicant by the third respondent. The applicant was to vacate the third respondent's immovable property on 14 September 2024.
- 3.4 The third respondent issued a notice for proposals from third parties interested in leasing its immovable property. Following an eight-week

period to submit such proposals/tenders, same was received by the third respondent and it entered into a notarial agreement with the successful bidder, the fourth respondent "Networth Properties (Pty) Ltd". The fourth respondent subleased the immovable property to the first respondent.

3.5 On the applicant's version, when the lease agreement terminated it enforced its security and enrichment *lien* for improvements made to the third respondent's immovable property and as a result thereof the applicant refused to vacate the immovable property until it was reimbursed for such improvements. The applicant instituted claim for these improvements against the third respondent under case number 10620/2024 which claim is *sub-judice* in this court. Although this is not an issue for determination before me, I must emphasize that the applicant in any event does not possess a retention or security lien over rural land (rural immovable property) premised on the common law (*placaeten*).

3.6 The applicant, at least until 11 February 2025, remained in peaceful and undisturbed occupation and possession of the third respondent's immovable property. On the 11<sup>th</sup> of February 2025, the first and second

respondents spoliated and unlawfully dispossessed the applicant from its possession.

3.7 On 18 February 2025, Makoti AJ granted a spoliation order in favour of the applicant in terms whereof the applicant's possession and occupation of the immovable property be restored *ante omnia*.

3.8 On 19 February 2025, the third respondent approached the urgent court without notice to the applicant and obtained an *ex parte* eviction order against them before Mathabathe AJ.

3.9 The applicant, upon being served with the *ex parte* order, instituted an urgent reconsideration application to be heard within 48 hours. This application was set down for hearing before Diamond AJ, who in turn removed the matter from the urgent court roll and issued a directive, directing the applicant to approach the office of the Judge President to obtain and secure a preferential date for hearing of the application.

3.10 The reconsideration application was heard on the 26<sup>th</sup> of March 2025 before Mashifane AJ. The judgement was delivered on 25 April 2025 in this regard. He held that the application for reconsideration lost its urgency once removed from the urgent court's roll notwithstanding that it was allocated in accordance with a directive issued by the Judge President. In conclusion he found that the applicant could not utilize the reconsideration procedure contemplated in Rule 6(12)(c) any longer and ought to have premised its relief in accordance with Rule 6(8) (anticipation).

3.11 The applicant proceeded to oppose the relief prayed for by the third respondent. The initial return date was set for 13 May 2025. Thereafter the matter was postponed and the *rule nisi* extended to the 7<sup>th</sup> of October 2026.

3.12 The applicant, on an urgent basis, anticipated the *rule nisi* as aforesaid to 3 June 2025. The application was set down for hearing before Bresler AJ. On 9 June 2025 Bresler AJ discharged the *rule nisi* issued on 19 February 2025, dismissed the application in its entirety and ordered the first, third and fourth respondents to pay the costs on an attorney and client scale including the costs occasioned by the appointment of two

counsel, jointly and severally, the one paying the other to be absolved.

3.13 In her Judgment, Bresler AJ held that the current *de facto* position is that the eviction order was duly executed. The property is fenced off and has an access gate to which the applicant had no access.

3.13 On 10 June 2025, the First respondent filed and served an application for leave to appeal against the whole judgement and orders of Bresler AJ. I am aware that leave the application for leave to appeal was refused on 3 July 2025.

3.14 Following the discharge of the *rule nisi* and dismissal of the eviction application, the applicant approached this court for an order declaring the first, second, seventh and eight respondents in contempt of the order issued by Makoti AJ delivered on 19 February 2025.

[4] During argument I ruled that the matter was urgent and that I intend to deal with the merits of the application. I regard contempt of court proceedings inherently urgent, specifically when consideration is given to all the facts



contained in the affidavits filed by the parties.

### **The law**

[5] In ***Fakie N.O. v CCII Systems (Pty) Ltd [2006] ZASCA 52; 2006 (4) SA 326*** (SCA) at para 41 and 42 Cameron JA (as he then was) explained that once an applicant in contempt proceedings has proved the order, service or notice, and non-compliance the respondent bears an evidential burden in relation to wilfulness and *mala fides*. He held further that:

*“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”*. I regard contempt of court proceedings inherently urgent, specifically when consideration is given to all the facts contained in the affidavits filed by the parties.

[6] In ***Pheko and Others v Ekurhuleni Metropolitan Municipality (No2) 2015 95) SA 600 (CC)*** the Constitutional Court, with reference to *Fakie*, held that:

*“[1] The rule of law, a foundational value of the Constitution, requires the*



*dignity and the authority of court to be upheld. This is crucial, as the capacity of the courts to carry out their functions depends on it. As the Constitution commands, orders and decisions issued by a court bind all people to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.*

*[2] Courts have the power to ensure that their decisions or orders are complied with by all and sundry, including organs of state. In doing so, courts are not only giving effect to the rights of the successful litigant but also and more importantly, by acting as guardians of the Constitution, asserting their authority in the public interest. It is thus unsurprising that courts may, as in the position in this case, raise the issue of civil contempt of their own accord”*

*“ a respondent in contempt proceedings, Fakie said, is not an ‘accused person’ as envisioned by s 35 of the Constitution, and the protections afforded to a contemnor should not supersede the capacity of a non-state*

*litigant who may not have the administrative might to establish motive. Therefore, the presumption rightly exists that when the first three elements of the test for contempt have been established, mala fides and wilfulness are presumed unless the contemnor is able to lead evidence sufficient to create reasonable doubt as to their existence.”*

- [7] Considering that the applicant elected to bring the application by way of motion proceedings the normal principles applicable to adjudication of applications applies. This was confirmed in **Fakie** as follows:

“ [55] *That conflicting affidavits are not a suitable means for determining disputes of fact has been doctrine in this court for more than 80 years. Yet motion proceedings are quicker and cheaper than trial proceedings and, in the interests of justice, courts have been at pains not to permit unvirtuous respondents to shelter behind patently implausible affidavit versions or bald denials. More than 60 years ago, this Court determined that a Judge should not allow a respondent to raise fictitious disputes of fact to delay the hearing of the matter or to deny the applicant its order. There had to be a bona fide dispute of fact on a material matter’. This means that an uncreditworthy denial, or a palpably implausible version, can be rejected out of hand, without recourse to oral evidence. In Plascon-*

*Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*, this Court extended the ambit of uncreditworthy denials. They now encompassed not merely those that fail to raise a real, genuine, or bona fide dispute of fact but also allegations or denials that are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers.”

- [8] In ***Eskom Holdings SOC Limited v Matjhabeng Local Municipality and Others (A60/2024) [2025] ZAFSHC 400*** the following was said in para 10 thereof:

“[10] There is an out for an Applicant, *sans* proof of willfulness beyond reasonable doubt. In *Pheko and Others v Ekurhuleni Metropolitan Municipality (No 2)*, the court said:

‘However, where a court finds a recalcitrant litigant to be possessed of malice on balance, civil contempt remedies other than committal may still be employed. These include any remedy that would ensure compliance, such as declaratory relief, a mandamus demanding the

contemnor to behave in a particular manner, a fine and any further order that would have the effect of coercing compliance.’

- [9] In *The President of the Republic of South Africa v DA and Others* 2018 **ZASCA 79** paras 11 and 12 said the following as regards mootness:

*“ The question of mootness of an appeal has featured repeatedly in this and other courts. The cases demonstrate that a court hearing an appeal would not readily accept an invitation to adjudicate on issues that are of ‘such a nature that the decision sought will have no practical effect or result’. The Constitutional Court in **National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs** 2000 (2) SA 1 (CC) para 21 at footnote 18 said:*

*A case is moot and therefore not justiciable if it no longer presents an existing or live controversy which should exist if the Court is to avoid giving advisory opinions on abstract position of law. Such was the case in **JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others** 1997 (3) SA 514 (CC), where Didcott J said the following in para [17]*

*“There can hardly be a clearer instance of issues that are wholly academic, of issues exciting no interest but an historical one, than those on which our ruling is wanted have now become”.*

- [9] The courts have exercised discretion to hear a matter even where it was moot. In **Independent Electoral Commission v Langeberg Municipality 2001 (3) SA 925 (CC)**, the Constitutional Court held as follows at para 11:

*“ A prerequisite for the exercise of the discretion is that any order which this court may make will have some practical effect either on the parties or on others”*

- [10] The first to third, the seventh and eight respondents admits the existence of the court order dated 18 February 2025 and that they had knowledge thereof. The applicant alleges non-compliance with the court order under discussion whilst the respondents deny wilfulness or *mala fides* in that regard.

- [11] The main issues for determination are:

11.1 Whether the respondents acted wilful and *mala fide* by not complying

with the court order of Makoti AJ (spoliation order).

11.2 Whether the eviction order issued on 19 February 2025 by Mathabathe AJ supersedes the order issued by Makoti AJ effectively rendering that order moot.

11.3 Whether the respondents complied with the order granted by Makoti AJ and restored possession to the applicant following the order issued on 18 February 2025.

[12] The first, second, seventh and eight respondents stated the following in paragraph 23 of their answering affidavit: *'Immediately following the grant of the spoliation order, the Applicant took back possession of the property. This means that the first respondent obeyed the order. The applicant was thus restored to possession until removed per an eviction order obtained not by the first respondent but by the Municipality'*. These respondents furthermore stated in their answering affidavit that following the eviction order issued on 19 February 2025, they were placed back in possession of the immovable property on 26 February 2025. The respondents stated that the first respondent was advised by the third and fourth respondents pursuant to the order for eviction that it may reclaim possession of the immovable property.



[13] The applicant in response to what the respondents declared said the following in its replying affidavit : *'Almost immediately after the granting of the spoliation order the first respondent with the assistance of the second respondent again took possession of the property in terms of the now invalid eviction order which the third respondent with the support of the first respondent obtained on an underhanded and improper manner. The first and second respondent accordingly did not factually return peaceful and undisturbed possession of the property to the applicant as it immediately thereof again took possession of the property.'*

[14] The applicant did not challenge the respondent's version that the first respondent reclaimed possession of the immovable property on 26 February 2025 following advice received from the Third and/or Fourth Respondents to do so.

[15] On conspectus of all the facts presented in this application and specifically those facts referred to herein above, it follows clearly that the first respondent complied with the court order of Makoti AJ by restoring the applicants' peaceful and undisturbed possession thereof following that order.



This occurred factually.

[16] Further, the applicant, albeit vaguely, reaffirmed that the immovable property was in their possession following the spoliation order but complains that it was again dispossessed thereof following the eviction order issued on 19 February 2025 by Mathabathe AJ. Considering the normal and trite principles applicable to applications, I must accept the version of the respondents that the immovable property was reclaimed by them on 26 February 2025.

[17] In consequence hereof I am of the view that the respondents factually complied with the order issued on 18 February 2025 by Makoti AJ.

[18] On 19 February 2025, the third respondent approached this court and obtained an eviction order on an *ex parte* basis. Whether the order was warranted under the circumstances or not, or whether it was obtained wrongly or underhandedly is of no consequence within the context of this application. I did however consider these facts as regards costs of this application.

- [19] The point is that when the first respondent or any of the respondents for that matter acted thereon and reclaimed possession of the immovable property from the applicant it did so in accordance with a valid court order. It matters not whether the applicant believed it to be invalid or incorrect, at that stage. These are trite principles that don't necessitate reaffirmation.
- [20] In sequence it follows that the applicant was unlawfully dispossessed of its possession over the immovable property. The applicant obtained a spoliation order, and its possession was factually restored. The applicant subsequently lost its possession following an interim order of eviction which was later set aside by Bresler AJ on 9 June 2025. The first respondent was objectively in possession of the immovable property at least from 26 February 2025 until 9 June 2025.
- [21] Notwithstanding the factual findings already made herein, I am of the view that the eviction order issued on 19 February 2025 by Mathabathe AJ, supersedes the order issued by Makoti AJ and renders the Makoti order effectively moot within the factual context of this matter.
- [22] I agree with Mr Nalane that the spoliation order was overtaken by subsequent events in that the applicant's occupation as on 19 February 2025 or 26

February 2025, being the execution date of that order, was at least at that stage lawfully terminated and the first respondent reclaimed possession in accordance with that order.

[23] Notwithstanding the factual finding already made herein above, I agree that the subsequent eviction order interrupted the factual and legal basis of the possession that spoliation order sought to protect.

[24] As regards the history and facts of this matter, I am of the view that the order of Makoti AJ became academic with matters exciting historical issues. Following the eviction order of 19 February 2025, no live or existing controversy exists between the parties as regards the spoliation order issued.

[25] Considering the factual position i.e. that the respondents complied with the Makoti AJ order together with the facts supporting the mootness of that order, following the subsequent eviction order by Mathabathe AJ, I am of the view that there is no wilfulness or *mala fides* on the part of the respondents.

[26] I agree that insofar as the respondents deviated from the compliance with the spoliation order, their conduct was neither deliberate nor mala fide and, at that stage, they acted lawfully in accordance with the spoliation order.

[27] I must highlight that even if the factual position were that possession was not restored to the applicant following the Makoti AJ order, the subsequent interim eviction order issued although later discharged, and factual circumstances that followed thereafter, does not entitle the applicant to rely on the spoliation order specifically where that order became moot or ineffective.

[28] As a result, the application for contempt of the Makoti AJ court order must fail.

[29] Considering the facts of this matter, I am of the view that party-and party costs should follow the result. I am not inclined to award punitive costs against the applicant specifically if consideration is given to the history of this matter.

[30] On a conspectus of all the issues raised I make the following order:

30.1 The application is dismissed.

30.2 The applicant is ordered to pay the costs of the first to third respondents and the seventh and eight respondents.



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**ASL VAN WYK**

Acting Judge of the High Court  
Limpopo Division, Polokwane

**APPEARANCES:**

**HEARD ON** : 18 JUNE 2025

**JUDGMENT DELIVERED ON** : **7 APRIL 2026** . This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be at **14:20**

**FOR THE APPLICANT**

**FW BOTES SC** with him  
**L VAN GASS**

**INSTRUCTED BY**

: KAMPHERBEEK, TWINE & POGRUND  
ATTORNEYS  
POLOKWANE

**FOR THE FIRST, SECOND  
SEVENTH AND EIGHT  
RESPONDENTS**

**FANA NALANE SC** with him  
**MALOSE MONENE**  
**RABELANI MUSHIANA- SIGWAVHULIMU**

**INSTRUCTED BY**

: MPHELA MOTIMELE ATTORNEYS  
POLOKWANE

**FOR THE THIRD RESPONDENT**

**VUSUMUZI T MOYO**

:

**INSTRUCTED BY**

: KGATLA INCORPORATED  
ATTORNEYS  
POLOKWANE

POLOKWANE HIGH COURT