

REPUBLIC OF SOUTH AFRICA



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

Case Numbers: 075603/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>13 May 2026</u>	
DATE	SIGNATURE

In the matter between:

CANDICE CLAIRE FOURIE N.O.

First applicant

CARL HILTON FOURIE N.O.

Second applicant

MARIE LOUISE NYKAMP N.O.

Third applicant

MICHAEL GEORGE GRERGORY N.O.

Fourth applicant

MITSOUKO MARIE-LOUISE FOURIE N.O.

Fifth applicant

and

BIG D LOGISTICS (PTY) LTD

REGISTRATION NUMBER: 2017/389156/07
(AND ALL THOSE HOLDING UNDER IT)

First respondent

JASON OLIVIER DOMINGUEZ-BAYA
(AND ALL THOSE HOLDING UNDER HIM)

Second respondent

THE CITY OF JOHANNESBURG

Third respondent

JUDGMENT

Mahosi J

[1] The applicants brought an interlocutory application for an order declaring the first and second respondents in contempt of a “compelling order” granted by Kruger AJ on 4 December 2025 and striking out the respondents’ defence in the main eviction application. The compelling order required the respondents to deliver their heads of argument and a practice note in the main eviction application on or before 20 January 2026. It is common cause that the respondents have not done so.

[2] The respondents objected to re-enrollment of this application on the basis that it is *res judicata* as it has already been heard in the Special Interlocutory Court by Liebenberg AJ, who allegedly held in her extemporaneous judgment that it should be heard in the opposed motion Court. The order issued by Liebenberg AJ removed the matter from the roll. In the absence of an order transferring this matter to the opposed motion court, it is properly before this Court.

[3] The issue to be determined is whether the respondents are in contempt of the compelling order. If so, whether their defence should be struck out.

[4] The principles of civil contempt are well settled. There is no dispute on the existence of the order of Kruger AJ, service thereof on the respondents, and non-compliance is admitted. The burden, therefore, shifts to the respondents to advance evidence that raises a reasonable doubt about wilfulness and mala fides.

[5] The respondents' main contention is that the compelling order was a nullity because the applicants did not comply with paragraph 25.1.7.1 of the Practice Directive 1 of 2024, which requires a formal demand on three days' notice before launching a compel application. Clause 25.1.7 of the Practice Directive reads:

"A party who has complied with the prescripts in this paragraph (the aggrieved party) shall, upon noncompliance by an adversary, (the delinquent party):

25.1.7.1 make formal demand to comply on 3 days' notice, failing which an application shall be made in the Special Interlocutory Court (SIC) for a compelling order.

25.1.7.2 if the delinquent does not comply timeously, or at all, the aggrieved party shall apply for an order compelling the delinquent to comply within 5 days of service of that order, by email on the attorney of record or by service on the delinquent in person, in terms of the rules of court, and,

25.1.7.3 If the delinquent remains in default:

25.1.7.3.1 the aggrieved party shall, in the compliance statement - form 5.1 - declare that the delinquent is in contempt of the compelling order and seek an order holding the delinquent in contempt of the compelling order and an order striking out the delinquent's claim or defence, as the case may be, and

25.1.7.3.2 the aggrieved party shall, thereupon, seek an enrolment from the registrar upon the basis set out in the compliance statement.

25.1.7.3.3 all the documents relevant to the delinquency shall be uploaded in a section titled "delinquency" on the case datafile."

[6] The applicants do not dispute that they failed to make the formal demand as contemplated in paragraph 25.1.7.1 of the Practice Directive. Instead, they argue that this defect does not render the order a nullity. They submit that, at most, it makes it irregular and liable to rescission. In this regard, they rely on the distinction between an order made

without jurisdiction (true nullity) and an order made within jurisdiction but following an irregular procedure (voidable, not void).

[7] The distinction is legally sound. Kruger AJ plainly had jurisdiction over the subject matter, being interlocutory delinquency in a pending case. The alleged defect is procedural, not jurisdictional. It can, thus, not be said that his order is a nullity. A litigant may not simply ignore a court order simply because they believe it was obtained irregularly. The proper route is rescission, variation, or a stay and, crucially, compliance in the meantime.

[8] However, in the specific context of a contempt hearing, where the standard is beyond a reasonable doubt, the applicants' failure to comply with a mandatory precondition of the Directive is relevant to the respondents' state of mind. The respondents were entitled to point to the Directive and say: "The applicants did not comply with the very rule that gives the court power to compel. Therefore, we genuinely believed the order was invalid and that we could await rescission without being in wilful default". This is not to say the respondents were correct. As a matter of law, they should have complied while pursuing rescission or sought a stay under Rule 45A.

[9] The question in contempt proceedings is not who is legally correct. Rather, it is whether the non-compliance was wilful and *mala fide* beyond a reasonable doubt. The absence of the prescribed demand, the fact that the defect was pointed out before the order was granted (as alleged in the replying affidavit), and the respondents' immediate launch of a rescission application create a reasonable doubt as to whether their conduct was wilful. Therefore, the respondents' argument, while legally flawed as a justification for disobedience, is sufficient to raise a reasonable doubt about wilfulness. It follows that the applicants failed to prove contempt beyond a reasonable doubt.

[10] The respondents further rely on their rescission application, which was launched on 25 February 2026 and is opposed. It is trite that rescission does not automatically suspend an order. The respondents did not seek a stay under Rule 45A. The mere pendency of a rescission application does not excuse non-compliance. If it did, every defaulting litigant could neutralise an order by filing a rescission. That cannot be the law.

Nevertheless, the rescission application, taken together with the procedural defect in the application to compel, reinforces the reasonable doubt about the respondents' state of mind. They did not simply ignore the order. Instead, they actively challenged it. Their failure to seek a stay was imprudent, but not necessarily evidence of *mala fides*.

[11] The respondents argue that the heads of argument were not yet due because the status of the applicants' replying affidavit in the main application was unresolved. This point appears to be an afterthought and not a genuine justification for non-compliance. The applicants withdrew their replying affidavit in November 2025, well before the compelling order was issued. Therefore, the Rule 30 notice became moot. The withdrawal of the replying affidavit resolved any uncertainty. The respondents could and should have filed their heads of argument once the compelling order was granted. In light of the above, the applicants have not proved contempt beyond a reasonable doubt. The application for a declarator of contempt ought to be dismissed. In the circumstances, there is no need to consider the strike-out application. However, it is only considered for completeness.

[12] It is trite that the strike-out of a defence is a drastic remedy. It deprives a litigant of the right to be heard on the merits, which is protected by section 34 of the Constitution. In this matter, the main application is for eviction, and the respondents have raised arguable defenses regarding the authority of trustees, the arbitration clause, the validity of cancellation, and compliance with the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act. These defences should be determined in the main application, not disposed of on an interlocutory delinquency point. Moreover, the applicants themselves did not follow the prescribed procedure for the compel application. Proportionality requires a less draconian remedy. Resultantly, the strike-out application should, therefore, be refused.

[13] The respondents characterise the contempt application as an abuse of process, aimed at striking out their defences without the full ventilation of the merits. There is no basis for this submission. The applicants are entitled to use the mechanisms in the Practice Directive to compel compliance. The fact that they refused the respondents' conditional offer to deliver heads in exchange for withdrawal of the contempt application

does not make the application an abuse. The respondents could have filed heads unconditionally at any time, but they did not.

[14] Although the respondents are not in contempt, their conduct has been unreasonable. They did not file heads of argument for many months after they were due, failed to comply with the compelling order, and did not seek a stay. Instead, they offered to comply only on condition that the applicants withdraw this application. Further, they raised a Rule 30 point that became moot, and they have not yet delivered their heads of argument or practice note. Their opposition, while not *mala fide*, was obstructive and caused unnecessary litigation.

[15] The applicants, for their part, also contributed to the procedural morass by failing to make the formal demand required by the Directive. That factor has been taken into account in refusing the contempt and strike-out. But it does not excuse the respondents' persistent non-compliance. In the circumstances, a refusal to grant them costs is justified to signal that litigants may not simply disregard court orders, even if they believe them to be irregular, without first seeking proper judicial relief.

[16] Accordingly, the following order is made:

1. The application for a declaration that the first and second respondents are in contempt of the order of Kruger AJ dated 4 December 2025 is dismissed.
2. The application to strike out the first and second respondents' defence in the main eviction application is dismissed.
3. The first and second respondents are directed to deliver their heads of argument and practice note, accompanied by a condonation application in the main eviction application, on or before 15 May 2026.
4. Should the first and second respondents fail to comply with paragraph 3, the applicants are granted leave to apply on the same papers, supplemented if necessary, for an order striking out the respondents' defence.

5. There is no order as to cost.



D. Mahosi
Judge of the High Court
Gauteng Division, Johannesburg

Heard: 30 April 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives through email. The hand-down date is deemed to be 13 May 2026.

Appearances

For the applicants: Advocate M. Amojee

Instructed by: Hadar Incorporated Attorneys

For the respondents: Advocate V. de Wet

Instructed by: K. Jordaan and Associates Incorporated Attorneys