



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: ____

Date: 19 June 2026

Signature: _____

CASE NO: 2023/044985

DATE: 19 June 2026

In the matter between:

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

First Applicant

FLOYD BRINK

Second Applicant

and

PIBIR INVESTMENTS (PTY) LIMITED

First Respondent

SHERIFF ROODEPOORT NORTH

Second Respondent

SHERIFF JOHANNESBURG CENTRAL

Third Respondent

Coram: M Van Nieuwenhuizen, AJ

Heard on: 17 February 2026

Delivered: 19 June 2026

JUDGMENT

M VAN NIEUWENHUIZEN, AJ:

- [1] This is an application to rescind and set aside the judgment and order of Twala J handed down on 31 January 2024 and to contemporaneously set aside the warrant of committal of Mr Floyd Brink, the second applicant, issued on 19 April 2024 by Twala J as irregular, unlawful and unenforceable.

COMMON CAUSE FACTS RELEVANT TO THE RELIEF SOUGHT

- [2] The first respondent instituted proceedings against the first applicant in May 2023 under case number 2023/071667, relating to a dispute concerning the first respondent's municipal account (*"the main application"*).
- [3] On 15 August 2023 Carrim AJ granted an order directing the first applicant not to disconnect the water supply to the first respondent's property, pending finalisation of the main application. The second applicant was not a party to those proceedings.
- [4] The water supply to the first respondent's property was disconnected on 17 August 2023.
- [5] On 19 August 2023, the first respondent launched an urgent application under case number 2023/044985, seeking restoration of the water supply and relief premised on alleged contempt of the order of 15 August 2023.
- [6] On 23 August 2023, Bester AJ granted an urgent order directing restoration of the water supply, authorising reconnection by a plumber if necessary, and issued a *rule nisi* calling upon the parties to show cause

why a contempt order should not be made final, with a return date of 11 October 2023. On 10 October 2023, the first respondent delivered a supplementary affidavit addressing alleged events subsequent to the order of 23 August 2023.

- [7] The *rule nisi* was extended on 11 October 2023 to 31 January 2024.
- [8] On 31 January 2024, Twala J granted an order finding the second applicant to be in contempt of the order of 15 August 2023. A warrant of arrest was authorised, committing the third respondent [being the second applicant] to imprisonment for contempt of Court for a period of 30 days, which warrant was suspended for a period of 1 year on conditions pertaining to the first and second applicants.¹
- [9] On 19 April 2024, Twala J signed a warrant of committal of the second applicant.
- [10] On 24 April 2024, the Sheriff attempted to execute the warrant of committal at the second applicant's residence.
- [11] On 3 May 2024, Keightley J granted an order staying execution of the warrant of committal, pending the outcome of an application for leave to appeal or rescission, and directed that such application be brought within 15 days of receipt of Twala J's reasons.
- [12] Twala J's written reasons for the contempt order were delivered on 10 June 2024.
- [13] The applicants did not institute an application for rescission or leave to appeal within the 15-day period stipulated in the order of Keightley J

¹ Court Order dated 31 January 2024, CaseLines 35-33

- [14] On 12 June 2024, an order was granted by Du Plessis J in the main application, which proceeded on an unopposed basis.
- [15] During October 2024, correspondence was exchanged between the parties' attorneys concerning compliance with Court orders and the institution of further proceedings.
- [16] The applicants instituted the present rescission application on 25 October 2024, outside the period stipulated in the order of Keightley J.
- [17] On 4 December 2024 the second applicant (against whom a warrant of committal was issued in his official capacity as the Municipal Manager of CoJ) was directed in an unrelated case by this Court, per Wilson J, to relinquish his permanent appointment as the CoJ's Municipal Manager within ten days of the date of that order, or as soon as an Acting Municipal Manager is appointed, whichever occurred first.²

ISSUES FOR DETERMINATION

- [18] The issues for determination are:
- [18.1] whether the contempt order was competently granted absent personal service;
- [18.2] whether wilfulness and *mala fides* were properly established;
- [18.3] whether the suspended contempt order authorised immediate arrest;
- [18.4] whether the warrant was lawfully issued;

² *Democratic Alliance v City of Johannesburg and Others* (2024/024479) [2024] ZAPGJHC 1232; 2025 (3) SA 204 (GJ) (4 December 2024)

[18.5] whether the applicant's departure from office renders continued enforcement incompetent;

[18.6] whether the interest of justice favour rescission.

TWALA J ORDER WAS ERRONEOUSLY GRANTED IN THE ABSENCE OF THE SECOND APPLICANT – NO PERSONAL SERVICE ON BRINK

Applicants' contentions

[19] The second applicant argues that the judgment was erroneously granted without adequately considering whether he had been served or was aware of the contempt application or the contempt order itself.

[20] Judge Twala issued a warrant for his committal in his absence without prior notification or a hearing. Furthermore, the application that sought to declare him to be in contempt of Court was never personally served on him.

[21] The second applicant argues that it is essential to highlight that Judge Twala's signature was affixed to the warrant of committal on 19 April 2024. Furthermore, it is important to note that there has been no order issued to lift the suspension of the original order, as directed on 31 January 2024 or any subsequent event or breach.

[22] The second applicant states that he only became aware of the contempt order and the *"rule nisi application"* on the day when the Sheriff attempted to execute the warrant of arrest at his residence. He furthermore states that the *rule nisi* was confirmed in his absence. He asserts that the respondents are unable to provide proof of service on him regarding the application presented before Carrim AJ on the 15th of August 2023. The second applicant states that *"in accordance with legal requirements, it is imperative that I be given the opportunity to present my case before any decision is rendered that could adversely affect my liberty."*

- [23] The second applicant further submits that the mention of him in his official capacity and his exclusion in his personal capacity as one of the people found guilty of contempt of Court underscores what was stated by the Constitutional Court in the case of *Matjhabeng v Eskom*³ that:

“[76] ... there is no basis in our law for orders for contempt of court to [be] made against officials of public bodies, nominated or deployed for that purpose, who are not themselves personally responsible for the wilful default in complying with a court order that lies at the heart of contempt proceedings.”⁴

- [24] The applicants argue that service is a cornerstone of any litigation, particularly where a contempt order is being sought and for Justice Twala to grant an order without ensuring that he was served with all relevant applications constitutes a significant error. Consequently, the order was erroneously granted.

- [25] The second applicant states that he appreciates his then position as an accounting officer, however he asserts that the order is overbroad, particularly in making his incarceration contingent upon circumstances beyond his practical control and without him being served. He states that the City of Johannesburg Metropolitan (“CoJ”) and Joburg Water collectively employ over 25 000 individuals. Should any employee of the Municipality act in defiance of a Court order it could lead to his incarceration. This is even in the absence of personal knowledge regarding the individual's actions or involvement. He argues that he should have been personally served allowing him the opportunity to present his position or level of involvement, if any.

³ *Matjhabeng v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited* (CCT 217/15; CCT 99/16) [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC) (26 September 2017)

⁴ *Matjhabeng ibid* para [76]

- [26] The second applicant argues that judicial oversight on the warrant of arrest is crucial. The Judge must ensure that the individual's rights are protected and that the warrant is not issued arbitrarily but on legitimate grounds. The oversight is important for upholding constitutional rights and maintaining the rule of law. The second applicant therefore argues that the contempt order was erroneously granted without consideration of the aforementioned factors rendering it an order that ought to be set aside.
- [27] The second applicant furthermore argues that the warrant was issued erroneously.

DETERMINATION

- [28] The matter concerns the deprivation of liberty arising from civil contempt proceedings instituted against the second applicant in his former capacity as Municipal Manager.
- [29] The applicant submits that both the contempt order and subsequent warrant of arrest were erroneously sought and granted.
- [30] The second applicant was previously cited in contempt proceedings arising from alleged non-compliance with a Court order involving the first applicant. A contempt order was subsequently granted by Twala J on 31 January 2024. The wording of the contempt order expressly imposed a suspended sentence. The order of Twala J reads as follows:
- “1. *The third respondent [Mr Floyd Brink], in his capacity as Municipal Manager, is found guilty of being in contempt of the Court order granted by the Honourable Judge Carrim AJ on 15 August 2023.*
 2. *A warrant of arrest is hereby authorised, committing the third respondent to imprisonment for contempt of Court for period of 30 days, which warrant is suspended for a period of one year on condition that the first or second respondent during the period of*

suspension:

2.1 *are not found to be in contempt of Court of the order of 15 August, 2023, are not found to be in contempt of this order, and are not found to be guilty of contempt of Court,*

2.2 *are not found to be in contempt of this order, and*

2.3 *are not found to be guilty of contempt of Court.”*
(Court’s underlining)

[31] The aforesaid order of Twala J is not ambiguous or vague at all. The order did not activate a suspended sentence or prior suspended sentence, authorise immediate arrest or direct immediate committal.

[32] Notwithstanding the express wording of the order, the attorneys acting for the first respondent interpreted the order as effectively having been “*unsuspended*” as a result of the alleged breach by the second respondent of the order of Carrim AJ.

[33] The first respondent argues that:

[33.1] *“Prayer 2 authorises the issuance of a warrant of arrest committing the second applicant to imprisonment for contempt of court. This is subject to a condition precedent “which warrant is suspended for a period of one year on condition that the first or second respondent ...”*

[33.2] The condition for the suspension is then articulated in prayers 2.1, 2.2 and 2.3 which collectively stipulate that the first or second applicant must not be found in contempt of the order of 15 August 2023, the order of 31st January 2024 or be found guilty of contempt of Court in general.

- [34] Prayer 1 then explicitly finds the second applicant to be in contempt of Carrim AJ's order (the order of 15 August 2023). Therefore, the first respondent argues that the suspension was "*nullified*" by the finding of contempt in prayer 1. The first respondent argues that it is important to note that the words "*further contempt*" are not used in prayers 2.1, 2.2 and 2.3.
- [35] On the basis of that incorrect interpretation, the first respondent's attorneys prepared and transmitted a warrant of arrest to Judge Twala for signature. Had Twala J been aware that the warrant that was presented to him was irregular, he would not have authorised the aforesaid warrant. No intervention application, further event and/or breach, hearing, affidavit or evidentiary enquiry occurred before the warrant was issued. The warrant was issued without reasons. The second applicant was not personally served with the contempt order forming the basis of the warrant of arrest. The applicant is furthermore no longer the Municipal Manager and no longer possesses authority to secure compliance with the underlying order.

Legal principles

Civil contempt

- [36] The requirements for civil contempt were authoritatively set out in *Faki NO v CCII Systems (Pty) Ltd*.⁵
- [37] The applicant in contempt proceedings must establish:
- [37.1] the existence of the order;

⁵ *Faki NO v CCII Systems (Pty) Ltd* 2006 ZASCA 52

- [37.2] service upon or notice to the respondent;
- [37.3] non-compliance;
- [37.4] wilfulness and *mala fides*.
- [38] Once the first three elements are proven, the Court presumes bad faith. The respondent [the second applicant] must then prove evidence that creates a reasonable doubt about the lawfulness or risk facing a prison sentence.
- [39] Because imprisonment may result, contempt must ultimately be established beyond a reasonable doubt. The Constitutional Court in *Matjhabeng Local Municipality v Eskom Holdings*⁶ emphasised the constitutional implication of contempt proceedings involving public officials and deprivation of liberty.

Original contempt order was erroneously granted

Absence of personal service

- [40] The applicant was not personally served with the order allegedly breached. Personal service assumes particular importance where imprisonment is sought, personal commitment is pursued against an individual official and penal consequences may follow.
- [41] No proper evidentiary basis existed to establish beyond a reasonable doubt that the applicant had proper notice of the order, deliberately refused compliance and acted *mala fide*. Service upon attorneys or the Municipality does not automatically justify personal committal of an individual official bearer. A distinction must be drawn between institutional

⁶ *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others; Shadrack Shivumba Homu Mkhonto and Others v Compensation Solutions (Pty) Ltd* 2017 ZACC 35

notice to a Municipality and personal notice sufficient to justify incarceration of an individual.

[42] In the absence of personal service, the Court could not properly infer wilfulness and *mala fides* beyond reasonable doubt.

[43] The contempt order accordingly falls to be rescinded.

The second contempt order did not authorise immediate arrest

[44] The wording of the contempt order is clear and unambiguous. The order imposed a suspended sentence. It did not activate a suspended sentence or prior suspended sentence, authorise immediate execution or authorise automatic arrest.

[45] The interpretation advanced by the first respondent's attorneys is inconsistent with the plain wording of the contempt order.⁷

[46] There is a material distinction between an order activating a previous suspended sentence and a fresh suspended sentence. The contempt order falls within the latter category.

The warrant was irregularly procured

[47] The warrant of arrest was procured absent any further alleged or proven breach and absent any intervening judicial enquiry. No application was brought seeking activation of the suspended sentence. No affidavits were filed establishing breach of the suspension conditions, wilfulness and *mala fides*.

[48] The second applicant was afforded no opportunity to be heard prior to issuance of the warrant. The first respondent's attorneys simply

⁷ *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (2) All SA 262 (SCA)

transmitted the warrant to Judge Twala for signature. The warrant was consequently issued without proper jurisdictional facts, absent procedural fairness, on an incorrect interpretation of the order by the first respondent and contrary to legality principles.

Failure to provide reasons

[49] The warrant was issued without reasons. Judicial decisions affecting liberty require clear reasoning. In the absence of reasons, it is impossible to determine:

[49.1] whether the Court found breach of the suspended order;

[49.2] whether wilfulness and *mala fides* were considered;

[49.3] whether less restrictive means were considered;

[49.4] whether the criminal standard of proof was applied.

[50] The warrant accordingly falls to be set aside.

A suspended sentence does not operate automatically

[51] A suspended contempt sentence cannot become executable merely upon the unilateral interpretation of a litigant or its attorneys. Activation of a suspended sentence requires judicial determination following due process. At minimum, fairness requires notice, opportunity to be heard, evidence of breach and a judicial finding of wilfulness and *mala fides*. None of these safeguards occurred. The warrant accordingly constitutes an unlawful and irregular deprivation of liberty.

Impossibility of compliance

[52] The second applicant has ceased to hold office as Municipal Manager. The second applicant no longer possesses authority to procure

compliance with the underlying order.

- [53] Civil proceedings are primarily coercive and aimed at compelling compliance. Once compliance becomes objectively impossible, the coercive rationale falls away. The applicant cannot lawfully be imprisoned to compel performance of acts no longer within his/her powers.
- [54] Continued enforcement against the second applicant would therefore serve no lawful coercive purpose. Any imprisonment in such circumstances would become purely punitive. Punitive incarceration in civil contempt proceedings require the strictest constitutional safeguards.
- [55] Section 12 of the Constitution protects freedom and security of the person. Arrest and imprisonment through civil contempt proceedings constitute severe limitations of constitutional rights. Such limitations must comply with legality, rationality, procedural fairness and proportionality.
- [56] In *Bakoven Ltd v GJ Howes (Pty) Ltd*⁸ it was held that:

“Once the applicant can point to an error in the proceedings, he is without further ado entitled to rescission. The subrule accordingly makes the rescission of a judgment possible if it has been erroneously sought or granted in the absence of any party affected by the judgment. In this case the judgment was granted in the absence of the applicant and the applicant is affected by the judgment. The issue is whether the judgment was erroneously sought or erroneously granted. The applicant contends that there was error in the procedure that led to the judgment being granted against it in its absence without summons having been properly served on it, with the result that it had no knowledge that the respondent had instituted legal proceedings against it. The purpose of Rule 42(1)(a) is to correct the error in the procedure in obtaining the

⁸ 1992 (2) SA 466 (ECD)

default judgment.” (Court’s emphasis)

- [57] For the reasons stated above, I find that the order of Twala J dated 31 January 2024 falls to be set aside in terms of Rule 42(1)(a).
- [58] The warrant issued by Twala J on 19 April 2024 also falls to be set aside for the following reasons:
- [58.1] The suspended order was “*incorrectly interpreted*” by the first respondent’s attorney;
- [58.2] The warrant was issued absent proper enquiry;
- [58.3] The applicant was denied *audi alteram partem*;
- [58.4] The applicant no longer occupies the relevant office;
- [58.5] Substantial prejudice and deprivation of liberty have arisen.
- [59] Accordingly, the interest of justice overwhelmingly favour rescission.

MOOTNESS

- [60] The lapse of the suspension period does not automatically render the matter moot particularly where:
- [60.1] a warrant of arrest was issued and remains extant;
- [60.2] the warrant has legal consequences or continuing prejudice;
- [60.3] the underlying contempt order is challenged as irregular or erroneously granted;
- [60.4] there remains a live dispute concerning legality, liberty, costs, or reputational consequences.

[61] The argument that the case is moot is weak whilst the warrant still exists or could still be executed. The applicants sought to set aside both the contempt order and the warrant.

[62] One has to distinguish between:

[62.1] the expiry of the suspension period; and

[62.2] the continuing validity or enforceability of the warrant.

[63] A suspended contempt order means imprisonment is not immediately operative, unless the suspension condition(s) is/are breached during the period of suspension. If the suspension period expires without breach, the punitive aspect may fall away prospectively. However, that does not necessarily invalidate an irregular warrant already issued during the period of suspension, nor does it extinguish a challenge to the legality of the process.

[64] A matter is not moot where there remains:

[64.1] a practical effect or substantial prejudice;

[64.2] a live controversy;

[64.3] potential future prejudice;

[64.4] a need to clarify legality.⁹

[65] Contempt proceedings implicate liberty interests and constitutional fair

⁹ *JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others* (CCT49/95) [1996] ZACC 23; 1996 (12) BCLR 1599 (CC); 1997 (3) SA 514 (CC) (21 November 1996) *Qoboshiyane NO and Others v AVUSA Publishing Eastern Cape (Pty) Ltd and Others* [2012] ZASCA 166; 2013 (3) SA 315 (SCA) and *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs* [1999] ZACC 17; 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC) para 21

process protections. Courts are reluctant to dismiss such matters as merely academic where arrest powers were exercised or remain capable of execution.

[66] For the aforesaid reasons I hold that the matter has not become moot.

COSTS

[67] The conduct of the first respondent and its legal representatives presenting a warrant absent proper process warrants an adverse cost order. As stated in argument by the applicants' counsel the conduct complained of includes:

[67.1] seeking a warrant absent a further hearing, relying on an incorrect interpretation of the order;

[67.2] procuring judicial signature absent jurisdictional facts; and

[67.3] exposing the second applicant to unlawful arrest and detention.

[68] The applicants have however not sought an adverse costs order in their Notice of Motion nor have they given notice of an adverse costs order. Having regard to the aforesaid, I am not inclined to grant an adverse costs order against the first respondent. Costs follow the event.

ORDER

[69] Accordingly, for all the reasons stated above, I make the following order:

[69.1] The applicants are granted condonation for the late delivery of the rescission application.

[69.2] The reasons for judgment dated 10 June 2024 and order of Twala J handed down on 31 January 2024 under case number 2023/044985 is hereby rescinded and set aside.

- [69.3] The warrant of committal/arrest of the second respondent is set aside as irregular, unlawful, and unenforceable.
- [69.4] The first respondent is ordered to pay the costs of the applicants on a party and party Scale B.



M VAN NIEUWENHUIZEN

*Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be on 19 June 2026.

HEARD ON: 17 February 2026

DATE OF JUDGMENT: 19 June 2026

FOR APPLICANTS: Modise Geoffrey Khoza SC
Ramakola Makume Mahlatsi
Ncube Inc Attorneys

INSTRUCTED BY: Email: bafana@ncubeinc.co.za /
mthembu@ncubeinc.co.za

FOR FIRST RESPONDENT: Adv C Van Der Linde
Email: cvanderlinde@counsel.co.za

INSTRUCTED BY: Tanner Kenneth Coe Gittins Attorneys Inc.
Email: tanner@gittins.co.za