

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

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

CASE NO: 2026-130603

DATE: 20/08/2026

SIGNATURE..

A handwritten signature in black ink, appearing to be "R. D.", is written over a black rectangular redaction box.

In the matter between:

ELI STRÖH FAMILY HOLDINGS (PTY) LTD

First Applicant

STRÖH FAMILIE LANDGOED (PTY) LTD

Second Applicant

And

NAKEDI SOLUTIONS (PTY) LTD

First Respondent

SEBOIKANA VICTOR CHEPAPE

Second Respondent

HENDRIK WILLEM LE ROUX

Third Respondent

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **20 AUGUST 2026**.

JUDGMENT

Makoti AJ

Introduction

- [1] This is an opposed application that was heard as part of this court's urgent roll. The applicants want the court to declare the respondents to be in contempt of court for their failure to comply with a court order of 8 July 2025. The applicants want imprisonment to be imposed on the second respondent for a period of six (6) months but want the sanction to be suspended for 4 months on the condition that the respondents purge their contempt.
- [2] The applicants' complaint is that the respondents are engaging in mining activities that have been prohibited in terms of the said order. The actions relate to activities at farms known as Bronkhorstfontein and Baden despite the court ordering them to desist from any such activity. They also allege that, in failing to comply with the court's order, the conduct of the respondents constituted willful and malicious disobedience of the said order.
- [3] The spectrum of the issues to be traversed in this judgment is the following:
- [2.1] The question of urgency;
 - [2.2] Whether the respondents are in contempt of court. If so, what would be the appropriate relief; and
 - [2.3] the question of costs.
- [4] I will address the issues in the order as they appear in the preceding paragraph. For the sake of convenience, I will refer to the applicants as Eli Ströh and to the respondents by their abbreviated names. They are Nakedi,

Victor and Hendrick, respectively. The first and second respondents actively oppose the application.

Whether the application is urgent

- [5] Urgency is to be viewed primarily through the averments that are made by Eli Ströh. Two considerations reign paramount. The first concerns the allegations that the applicant avers render the application urgent. The second consideration interrogates the question of whether the applicant will have substantial redress if the matter were to be heard on a date in the future.¹
- [5] Eli Ströh alleges that the application is urgent because contempt applications are treated as such. To that extent, the applicants are wrong and misguided. An application is not urgent because of its nature but because there exist facts which, objectively viewed, render the case urgent. On this note I am in full accord with the expression of Wilson J in *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC*.²
- [6] Regardless of the nature of a case, a party seeking to jump the queue of litigation must invoke the court's discretion by providing the court with satisfactory facts. An applicant that simply throws generic references such as 'inherently urgent' to litigation will hardly satisfy the court that its case deserves a front-row seat.
- [7] Over fourteen years ago, Weppenaar J cautioned in *In Re: Several Matters of the Urgent Court Roll*³ about abuses of urgent court processes. He said, *inter alia*, the following:

¹ Luna Meubel Vervaardigers v Makin and Another 1977 (4) SA 135 (W); Nelson Mandela Metropolitan Municipality v Greyvenouw CC (3263/02) [2003] ZAECHC 5; 2004 (2) SA 81 (SE) (21 February 2003) at paras [37] to [40].

² Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC (2023/067290) [2023] ZAGPJHC 846 (1 August 2023) para [6].

³ In re: Several matters on the urgent court roll [2012] ZAGPJHC 165; [2012] 4 All SA 570 (GSJ); 2013 (1) SA 549 (GSJ) (18 September 2012).

“[8] ... Practitioners are setting matters down in the urgent court for flimsy and inadequate reasons. This practice needs to be discouraged.”

[8] Sadly, this abusive practice by litigants has not stopped. The participating respondents opposed the application on the grounds also that the application is not urgent. Despite this, the applicants did not bother to advance the case for urgency further. Perhaps this was because of their mistaken belief that they deserved to be in urgent court, because the case concerned disrespect to a court order.

[9] It is apt that I quote what Wilson J said in *Volvo Financial Services, supra*, about the notion that contempt proceedings are inherently urgent. He said the following:

“7 It is sometimes said that contempt of court proceedings are inherently urgent ... I do not think that can be true as a general proposition. I accept that the enforcement of a court order may well qualify as urgent, in situations where time is of the essence, but it seems to me that contempt proceedings entail the exercise of powers which often demand the kind of careful and lengthy consideration which is generally incompatible with urgent proceedings. For example, it cannot be sound judicial policy to commit someone to prison, even where the committal is suspended, or to impose a fine, on an urgent basis, simply because that might be the only way to enforce a court order. There must, in addition, be some other feature of the case that renders it essential that the court order be instantly enforced, such that the penalties associated with contempt require immediate imposition.”

[10] I share the views of Wilson J’s sentiments that there is no category of cases that are inherently urgent, and I do not see the need to add more to the *dicta* expressed above. This case lacks urgency. The applicant did a poor job of addressing why this application should be treated as such. Ordinarily, this should be the end of the proceedings, as there is simply not enough to sustain urgency. I, however, proceed to deal with the substance of the application, as I believe that the parties will benefit from a decision on the merits.

The court order in respect of which contempt is based

[11] This application is founded on the back of an order that was granted against the respondents *ex parte*. The court order prohibited the respondents from pursuing mining activities, or anything connected with mining, on the farms Bronkhorstfontein and Baden. The order partially reads as follows:

“Interdicted and restrained and/or their employees/contractors or agents from conducting any mining activities and any activities preparatory, ancillary or incidental to mining, including without limitation to any cutting or clearing of vegetation, any establishment of roads, any construction or installation of buildings, infrastructure or equipment and any drilling, excavation, digging, or removal of soil or coal, ore or any mineral on farms Bronkhorstfontein No. 42 RL and Baden No. 90 RL, situated in the Blouberg Local Municipality (...) ... unless and until at least, cumulatively, the following have transpired:

3.1.1 Directing the Fourth Respondent, the Department of Water and Sanitation to provide any directive or notices issued to the First Respondent, within twenty-one days of the date of this order to the applicants.

3.1.2 Directing the Fourth Respondent, the Department of Water and Sanitation to provide their report and letters as to the outcome of the investigations of the mining area within (21) twenty-one days of the date of this order to the Applicants.

3.1.3 Directing the Second Respondent, the Department of Minerals and Energy to provide the following information or documents within twenty-one days of this order to the applicants:

3.1.3.1 The mining rights application submitted to the Second Respondent by the Second Respondent.

3.1.3.2 The Mining Work Program for the mining area authorised by the Second Respondent.

3.1.3.3 The Environmental Management Plan.

3.1.3.4 Proof of compliance with section 10 of the Mineral Petroleum Resources Development Act, 28 of 2002;

3.1.3.5 Proof of compliance with the Interim Protection of Informal Land Rights Act, 31 of 1996 ("IPILRA").

..."

- [11] The expansive nature of the order is palpable. When they get that extensive and limiting of established rights, court orders ought not to be sought *ex parte*. I do not seek to determine the question whether the court order was granted correctly or inappropriately, lest I get into the temptation of reviewing another court's decision. Eli Ströh accuses the respondents of maliciously disrespecting the court's order by performing functions and activities on the farms that relate to the prohibited mining activities.
- [12] Although Eli Ströh obtained the court order *ex parte*, with a rule *nisi* that was returnable on a specified date, they did not do enough to ensure that the Departments are brought to its knowledge and actually comply with its terms or the directives contained in its paragraphs 3.1.1 to 3.1.3. That essentially meant that the relevant government departments and functionaries stood no chance of complying with the court's order, and to do so within the stipulated period of 21 days. That period has long passed.
- [13] The applicants had no good answer when asked about service of the order, or rather the failure to serve, of the court's order. In the meantime, the rule *nisi* in terms of the court order was, on 16 September 2025, extended to 28 January 2027.
- [14] While the first rule *nisi* was operational, in December 2025, per Ngobeni J, an amendment of the order was granted in the case. The respondents did not oppose the application for amendment. The order that was granted in December 2025 retained the substance of the earlier order. The amended order still prohibited the respondents from performing any mining activities or anything that is connected to or ancillary to mining. The applicant in the second case was one Hendrik Willhem Roux. He is a party and respondent in this

application. Thus, with knowledge of the initial order, he filed an application under a different case seeking the same relief.

[15] Eli Ströh approached the court and asked for orders that clearly required compliance by the cited state departments in 21 days. It is not fathomable why the court order was not served on the two state departments. There can simply be no excuse for such failure. When probed on whether the applicants served the order on the State Departments, their lawyer responded by saying that it was *'not for the applicant to take any steps with regard to what the court ordered vis-à-vis the State Respondents'*. The applicant did not confirm that it had served the orders on the Departments, rendering a response that can best be described as of an evasive nature.

[16] The picture that emerges, worryingly, is that the applicants may be using the court order and *rule nisi* to prevent the first respondents from using the affected farms in any manner whatsoever. I struggle to understand how, on 16 September 2025, Eli Ströh asked the court to extend the return date for the *rule nisi* to January 2027. They obtained the order urgently and *ex parte*, but the urgency died to a point where the *rule nisi* was extended by a period of more than a year. I leave the point at this stage as I am not called upon to decide that issue.

Whether the respondents are guilty of contempt

[17] In defense of the application, Nakedi stated that it did not mine nor extract any minerals from the affected farms. The respondents found the order to be confusing and had to obtain a legal opinion from senior counsel on how to deal with it. On advice from senior counsel, Nakedi sought to comply with the court order. Not entirely, it seems. Apart from that, the respondents also embarked on a separate application to have the orders and the *rule nisi* anticipated and discharged or set aside.

[18] The respondents also averred that they had perceived that the order had reached its finality. This was since the date on which the State Departments had to deliver documents had passed. Such confusion was cleared by an opinion that they obtained from their legal representative. Eli Ströh, appearing confused itself, says that Nakedi ought to comply with the order at least from 26 February 2026. That is the date on which clarity was provided to the respondents about the implications of the order.

[19] I delve not, for purposes of this application, into the problems that the respondents contend engulf Eli Ströh's application and the orders that were granted. The question that I should address is whether, given the conduct of the respondents, an order holding them in contempt should be granted. The law on contempt proceedings in civil matters has become settled. The principal issue in these contempt proceedings is whether the respondents are in contempt of the Court order. For this type of relief, the applicant must prove the following:

[19.1] the existence of a court order;

[19.2] service or notice thereof;

[19.3] non-compliance with the terms of the court order; and

[19.4] wilfulness and mala fides beyond reasonable doubt.

[20] To find in favour of the applicants and against the respondents, I must find the existence of the four elements listed above. There is no controversy in respect of the first two elements. This is because Nakedi has not admitted that it has failed to comply with the court order.

[21] In our law, once the three elements have been established, a presumption may be held that the non-compliance was *mala fide* and willful. In such a case the contemnor would have to adduce sufficient evidence to create a reasonable

doubt about the existence of willfulness and malice. Should the contemnor prove unsuccessful in discharging this evidential burden, contempt will be established.

[22] At the heart of this application lie both the third and fourth elements. More so the fourth element. The authority in terms of the seminal *Fakie NO. v CCII Systems (Pty) Ltd*⁴ provides the test or guidance. In that case, the court held, *inter alia*, that:

“9. 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).” [Notes excluded]

[23] As I understand it, it is not just the mere failure to obey a court order that would lead to a finding of guilt for contempt. The disobedience must have been willful and in bad faith. Cameron JA made that point clear in the subsequent paragraph, as follows:

“10. These requirements – that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt – accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court’s dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent.” [Emphasis added]

[24] I also understand it to be part of the defense that the order, at least up to 26 February 2026, was confusing. Eli Ströh seems to accept this to be the position, at least from the correspondences that have been exchanged

⁴ *Fakie NO v CCII Systems (Pty) Ltd* (653/04) [2006] ZASCA 52; 2006 (4) SA 326 (SCA) (31 March 2006).

between the parties. It suggested that Nakedi ought to have complied with the court order from the said date.

[25] Loyalty to the law on contempt must be understood to not being merely for punishing the contemnor but to see to it that the rule of law is protected. The Constitutional Court in *S v Mamabolo*⁵ held that the purpose of a finding of contempt of court is to protect the fount of justice by preventing unlawful disdain for judicial authority. Discernibly continual non-compliance with court orders imperils judicial authority.⁶ Where the judiciary cannot function properly, the rule of law will die.

[26] An order that is not fully understandable may result in its terms not being complied with. In such circumstance, the failure to comply with an order can hardly be said to be contemptuous. Thus, where non-compliance is proven, the next step should be to inquire if the failure to act in accordance with its terms was willful and *mala fide*. From the facts that I have already traversed, the alleged non-compliance with the court order could not have been *mala fide*, at least up to 26 February 2026.

[27] Nakedi explained its activities in its answering affidavit. It says that the activities that it conducted on the farms were not mining. Eli Ströh, on the other hand, contends that the activities have been prohibited by the Court order as they are incidental to mining. The activities include keeping the mining site maintained. In addition, Nakedi indicated that it had conducted dry testing of equipment. For that purpose, it used material that was previously extracted from a pre-existing mining dump. On its understanding, Nakedi refuted that any of those activities amounted to mining activities that were prohibited in terms of the court order.

[28] Eli Ströh contends that the admission that Nakedi performed those activities is proof that it and its directors are guilty of contempt. This is quite simplistic as an

⁵ 2001 ZACC 17; 2001 (3) SA 409 (CC) at para 24.

⁶ Matjhabeng Local Municipality v Eskom Holdings Limited and Others 2018 (1) SA 1(CC) at paras 47 & 48.

approach. I say so because the evidence provided by the respondents was that it had already ordered equipment from China by the time when the order was first obtained. The equipment was in shipment, and it received it on the premises. Further, when delivery was made, the machine had to be tested for functionality, hence the dry testing.

- [29] Reality dictates that the respondents could, at the very least, be expected to receive a shipment that they had ordered. How else were the respondents to receive delivery, if not at the designated address? To hold otherwise would be to lose pragmatism. Assuming that the shipment could be received at a storage facility, that would mean that the respondents were to incur the costs of storage and related costs. The established facts in my view belie the notion of willful and malicious non-compliance.
- [30] Eli Ströh relied on photographic images for the contention that Nakedi was busy with prohibited activities. The respondents raised two contentions about the photographs. First, that the photographs were inadmissible evidence, and second, that, even if they were to be admitted, they still did not prove the case for contempt.
- [31] Concerning the works that Eli Ströh had complained about, the respondents indicated that the premises had previously had extensive works. There were also stockpiles of manganese that the previous owner had left on the mine premises. Further, it cleared vegetation on the property as a maintenance or safety measure. The essence of Nakedi's contention was that the images displayed were consistent with an area of an already mined property. Further, Nakedi argued that the photographs did not constitute evidence of something that happened after the date of the court order.
- [32] In its terse reply, Eli Ströh attached still images that were allegedly taken from July 2025 to June 2026. It sought to rely on the images, including Google

Images, for a contention that mining activities were increased during the period under consideration. The contention was also that Nakedi was not truthful with its statement that it only cleared vegetation from the property. Of importance, Eli Ströh did not address the question of admissibility of the photographic images that were relied on for founding the application. It simply produced more photographs, with the deponent to the affidavit asserting some competence as a valuer. I do not get to deal with this question in this judgment.

[33] Backed by the admissions that Nakedi received equipment, dry-tested the equipment, cleared vegetation, etc., I accept that there were elements of failure to fully comply with the terms of the order. I however, on the established facts, any non-compliance with the order was not willful nor malicious. For some time, the order was confusing and the respondents believed that it had been overtaken by events.

[34] In *Lujabe v Moruatona*,⁷ to which Nakedi relied, the Court held, amongst others, as follows:

“[17] The issue that arises in a case where the settlement agreement has been made an order of Court and in the context of contempt proceedings is whether such an order is executable or enforceable. The basic principle is that for an order to be executable or enforceable, its wording must be clear and unambiguous. An order that lacks clarity in its wording or is vague is incapable of enforcement. The other basic principle is that the order should as soon as it is made, be readily enforceable. In other words, the order must give finality to the dispute between the parties and not leave compliance therewith to the discretion of the party who is expected to comply with such an order.”

[35] As I pointed out, the order was neither clear nor unambiguous. This is because the order, while it prohibited resumption of mining, would have had to engage in an interpretive exercise to understand its full implications. The question that

⁷ *Lujabe v Maruatona* (35730/2012) [2013] ZAGPJHC 66 (15 April 2013).

comes to mind is what, in the context of the order, could Nakedi do on the farms? It contended that its clearing of vegetation was a necessary maintenance exercise. I agree with the viewpoint. I have already dealt with the question relating to receiving the equipment. The notion that the equipment should not have been received at the farms because it is an activity that is incidental to mining, *inter alia*, has pragmatic difficulties. I struggle to fathom how to accept and work with that contention. Where would it have been kept, and at whose costs?

[36] The explanations proffered by the respondents are understandable. More than that, they are acceptable. Eli Ströh relied on *Meadow Glen Home Owners Association and Others v City of Tshwane Metropolitan Municipality and Another*⁸ to suggest that the respondents ought to have made good faith endeavours to comply with the order. This is binding authority. However, the applicants ignore the fact that the respondents initially understood the order to have expired after 21 days. Also, they did take legal advice from their lawyers, after which it was confirmed that the order still had to be complied with. It is not upon me to criticize them for taking what may not have been the best choice.

[37] There are photographs that Eli Ströh used as proof of mining. The submissions made by the respondents in respect of the photographs and the undisputed factual averments made in the answering affidavit establish a reasonable doubt. On that basis, also, I am unable to find the respondents guilty of contempt of court.

Court's order

[38] The following order is made:

“[a] The application is dismissed with costs on a party-and-party scale “B”.

⁸ 2015 (2) SA 413 (SCA).

[e] The costs are to include the costs for the employment of counsel.


MOKGERWA MAKOTI

ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

FOR APPLICANTS

: J MATTHEE
MACROBERT ATTORNEYS INC
c/o ESPAG MAGWAI ATTORNEYS
POLOKWANE

FOR RESPONDENTS

: HWS MARTIN
WJJ BADENHORST INC
c/o DU TOIT SWANEPOEL STEYN
AND SPRUYT ATTORNEYS
POLOKWANE

HEARD ON

: 23 JUNE 2026

DELIVERED ON

: 20 AUGUST 2026