



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST DIVISION, MAHIKENG)**

CASE NO: 2026-191373

In the matter between:

FERROFLOW (PTY) LTD

Applicant

and

SIMON MPATLANE MAEBANE

First Respondent

SMG MINING (PTY) LTD

Second Respondent

ALL PERSONS ACTING IN CONCERT WITH,

OR AT THE INSTANCE OF, THE FIRST RESPONDENT

Third Respondent

Date heard: 21 August 2026

Delivered: 7 September 2026

Revised date: 09 September 2026 (due to an unintended incorrect citation of the second respondent)

Coram: Reddy J

Summary: Urgent application for contempt of court - first and third respondents, arising from their disregard of an interim interdict protecting the applicant's access to - operation of, its chrome beneficiation plant- the requisites for contempt

are established beyond reasonable doubt- the first respondent's alibi being shown false by his own annexure- committal ordered, suspended on strict conditions- costs on the attorney and client scale.

JUDGMENT

REDDY J:

Introduction

[1] This is an urgent opposed application. The applicant, Ferroflow (Pty) Ltd, previously Das Minerals (Pty) Ltd (Ferroflow) prays for the following relief:

- ‘1. Declaring the first respondent and the third respondent to be in contempt of the order of this Court granted by Wessels AJ on 7 August 2026 (“the order”).
2. Committing the first respondent and the third respondent, including Raganya Moifo Brendan (identified in the papers as a person acting in concert with the first respondent), to imprisonment for such period as this Court deems appropriate.
3. Authorising the Sheriff of this Court, duly assisted by the South African Police Service where necessary, to give effect to the order of 7 August 2026, including the removal of any obstruction to Ferroflow's access to its plant.
4. Directing the first and second respondents to pay the costs of this application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved, including the costs of two counsel, one of whom is senior.
5. Further and/or alternative relief.’

[2] The application is opposed by the first and second respondents. The third respondent, defined in the papers as all persons acting in concert with, or at the instance of, the first respondent, has not itself elected to participate.

The parties

[3] Starting with the description of the parties makes the application easier to navigate and assists with the reading thereof. The applicant is Ferroflow (Pty) Ltd (Ferroflow), a private company which conducts a chrome beneficiation and washing operation at Portion 73(a) of the Farm Elandsdrift 467, Section JQ, Mooinooi, North West Province (the plant), on behalf of a third party, RGN Mining (Pty) Ltd. Its sole director is Mr Daniël Petrus Johannes Botha (Botha).

[4] The first respondent is Mr Simon Mpatlane Maebane (Maebane), an adult businessman. Maebane is the sole director and sole shareholder of the second respondent, SMG Mining (Pty) Ltd (SMG Mining), which he describes as holding a forty per cent shareholding in Ferroflow. The third respondent includes all individuals acting in common purpose alongside Maebane or at his direction. The classification of the third respondent in this fashion is necessitated by Ferroflow's inability to identify each person Maebane might deploy for his own benefit.

The background facts

[5] The relationship between Ferroflow and SMG Mining derives from a Memorandum of Undertaking concluded between Das Minerals (Pty) Ltd, as Ferroflow then was, and Maebane, signed on behalf of SMG Mining at Bokamoso on or about 6 June 2023. It is unnecessary, and premature, to resolve the disputes between the parties as to the meaning, performance or continued existence of that Memorandum. It suffices, for present purposes, to record that a relationship of some kind existed, and that it had, by August 2026, evidently soured.

[6] What is not in dispute, and what founds this application, is this. On or before 31 May 2026, Maebane vocalised, in a series of statements published on

social media, his intention to remove Botha from the operation ‘*by force*’, that he had conducted a quiet investigation in preparation for doing so, and that he could ‘*not compromise anymore*’. A threat assessment report recording those statements was prepared on 31 May 2026, more than two months before the order with which this application is concerned was ever sought.

Urgent *ex parte* application

[7] On 7 August 2026, on an urgent *ex parte* basis on which *viva voce* evidence was led, Wessels AJ granted a *rule nisi*, returnable on 29 October 2026. The gravamen of the order interdicted and restrained Maebane, SMG Mining, and all persons acting in concert with or at their instance, from:

- ‘(i) blockading, obstructing or in any manner interfering with entry to, exit from, or access to the plant;
- (ii) preventing, obstructing or interfering with Ferroflow's ordinary business operations at the plant;
- (iii) entering upon or remaining upon the plant premises otherwise than in accordance with any lawfully held right, and then only with Ferroflow's prior written consent;
- (iv) assaulting, threatening, intimidating or harassing Ferroflow's directors, employees, agents, contractors or invitees, or inciting any other person to do so; and
- (v) removing, damaging or interfering with any plant, equipment, machinery, stock or other property, or forcibly removing any of Ferroflow's employees from the plant.’

[8] Significantly the order records that the interim relief operates against the respondents from the date of grant, but is enforceable against them by way of contempt only from the date of service, or from the date the order is otherwise brought to their attention.

Service

[9] On 8 August 2026, the order, and the founding papers upon which it was granted, were transmitted to Maebane by electronic mail and by WhatsApp message in the manner the order itself authorised. On 11 August 2026, the order was thereafter served personally by the Sheriff of this Court upon Maebane. On 12 August 2026 the order was served upon SMG Mining. The Sheriff's return in respect of Maebane records, in addition, that Maebane confirmed telephonically to the Sheriff that he had already received the order and the notice of motion by email. These facts are irrefutable.

[10] What followed, on Ferroflow's evidence, was a sustained and escalating course of unlawful conduct at the plant. On 8 August 2026, the very day the order was transmitted to him, Maebane sent a voice note to Botha in which he stated, among other things, that Ferroflow's operation '*will never, ever happen*', that Maebane said 'we should *prepare your exit there*', that matters would '*come to an end*' when Maebane got there, and that he would bring his own security company to the plant.

[11] On the same day, unknown persons broke the locks on the plant gate and replaced them with their own, and when a copy of the order was handed to those persons by Mr Johannes Hendrik Last, (Last), it was torn up in his presence.

[12] On 11 and 12 August 2026, notwithstanding service of the order, the locks were broken again and the plant entrances were once more obstructed. On 12 August 2026, members of the South African Police Service attended at the plant and explained the order to the persons present. A copy of the order was handed to the driver of a vehicle associated with those persons, who examined it and, in the presence of a witness, shouted an obscenity directed at this Court. On 13 August

2026, mine material was dumped at the entrances to the plant to blockade them, the trucks having been procured by Brendan from a haulage contractor under the false representation that the plant belonged to Maebane. A sworn statement by the contractor's foreman confirms that he would not have permitted the use of the trucks had he known the truth. On 14 August 2026, motor vehicle tyres were brought onto the plant and set alight at the entrances, further obstructing access, while Maebane was personally present.

[13] On the evening of 14 August 2026, after all of the conduct detailed previously, Maebane published further statements on his WhatsApp status. Timed at 23h53, he stated, rhetorically, *'how can you interdict me from my operation'*, recorded that a warrant for his arrest had been issued that morning *'before I can go to the site'*, and declared *'I'm here'*. A further statement, timed at 23h56, read *'Victory or Death no retreat forward we go backwards never'*. Earlier public statements, not disputed, included declarations that Maebane would *'commit a serious offence'* against his *'enemies'* and would *'do so in front of police officers to witness,'* and a demand that Ferroflow *'pay back the money.'*

[14] Maebane and SMG Mining delivered a notice of intention to oppose this application on 18 August 2026. On the same day, they delivered an application for the reconsideration of the order of 7 August 2026 in terms of rule 6(12)(c) of the Uniform Rules. That application was argued before me on 19 August 2026, and was dismissed. Maebane and SMG Mining's answering affidavit in this application was delivered only on 20 August 2026, the day before the hearing, without explanation for the delay and without an application for condonation.

Submissions on behalf of Ferroflow

[15] Advocate Alberts SC, points out that the requisites for contempt are established beyond reasonable doubt. Advocate Alberts SC argues that the order was unambiguous. In tandem with this contention Advocate Alberts SC maintains that Maebane and SMG Mining admit both its terms and their knowledge of it, and that non-compliance is established independently by contemporaneous video and photographic evidence. Moreover, Advocate Alberts SC advances that the incriminating evidence has been admitted, in substantial part, on the respondents' own version.

[16] Advocate Alberts SC posits that wilfulness and *mala fides* are established affirmatively, quite apart from the presumption which arises once the first three requisites are shown. Advocate Alberts SC places reliance in this regard, on the threat assessment report which predates the order by more than two months. Counsel underscores the conduct which followed within hours of the order reaching Maebane, and, with particular emphasis, on what he describes as a demonstrably false *alibi*, advanced under oath, which Maebane's own annexures falsify.

[17] As to sanction, Advocate Alberts SC argues that a wholly suspended order of committal would be inadequate, given what he characterises as pre-meditated, violent and continuing defiance of this Court's authority, aggravated by the false *alibi*. Counsel maintains, further, that a costs order on the attorney and client scale, inclusive of the costs of two counsel, is warranted by both the respondents' conduct of the litigation.

Submissions on behalf of Maebane and SMG Mining

[18] Advocate Dlali, contends, as a preliminary matter, that Ferroflow lacks *locus standi* to bring this application, since SMG Mining, as an asserted forty per cent shareholder, was not party to the resolution authorising it.

[19] On the merits, Advocate Dlali avers that no evidence has been pleaded that Maebane and SMG Mining deliberately disobeyed the order. Advocate Dlali maintains that the persons at the plant are security personnel lawfully guarding SMG Mining's property, deployed on legal advice that Maebane and SMG Mining should themselves stay away from the plant pending resolution of the dispute. Advocate Dlali submits, in the result, that the application ought to be dismissed with costs on the punitive scale, as an abuse of this Court's process.

Points in limine

[20] Before turning to the substance of the application it would be logical to address the points *in limine* as raised by the respondents, namely urgency, a challenge to Ferroflow's *locus standi* and to Botha's authority to depose to the founding and replying affidavits. Since these points *in limine*, if sound, would be dispositive of the application.

Urgency

[21] An application is urgent where the applicant cannot be afforded substantial redress at a hearing in due course. Urgency is not a matter of the inherent nature of the relief sought, but of the circumstances in which the application is brought. It follows that what must be shown is that the ordinary timetable of motion proceedings would deny the applicant substantial redress.¹

¹*East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 para 6.

[22] During the hearing of the matter, I found that Ferroflow had complied with the jurisdictional requirements set out in rule 6(12)(b) of the Uniform Rules of Court, (the URC) and that the matter was urgent. Ferroflow is, on the papers, wholly excluded from its own plant, the entrances to which are blockaded. Notably, it is contractually exposed to a third party for whom it processes material; that exposure deepens with every day the exclusion continues. The return date of the rule *nisi* is 29 October 2026, some ten weeks distant, and Ferroflow cannot sensibly be expected to remain excluded from its own plant, and to suffer continuing and in material respects irreversible loss, for that period. There is, moreover, an inherent public interest in the prompt vindication of a disregarded order of court, an interest which does not depend upon the private financial position of the litigant who happens to bring the application. Urgency, having been firmly established, this issue need not detain this Court any further.

Locus standi and authority

[23] It is trite that the decision whether to institute or defend litigation on behalf of a company is a matter for its board of directors, in whom the management of the company's business and affairs vests. A shareholder, *qua* shareholder, holds no power to institute, veto or otherwise control litigation by the company in which it holds shares, absent some provision of the company's memorandum of incorporation, a shareholders' agreement, or the Companies Act 71 of 2008, conferring such a power.

[24] It is equally well established, in *Ganes and Another v Telecom Namibia Ltd*² that the deponent to a founding affidavit in motion proceedings need not

²*Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) para 19.

personally be authorised to depose to it. This is a separate enquiry. What must be authorised is the institution of the proceedings themselves, and that authority is ordinarily established, in the case of a company, by production of a resolution of its board. Where the deponent is, in any event, the sole director of the applicant company, that authority is not reasonably open to serious question.

Discussion

[25] Maebane's complaint is that SMG Mining, as an asserted forty per cent shareholder of Ferroflow, was not party to, and did not consent to, the resolution authorising this application. That being so Maebane contends that Ferroflow accordingly lacked the standing and the authority to bring it. The difficulty as I see it quite apart from its want of legal foundation, is that it proves too much. To my mind, on Maebane's own logic, no company could ever litigate against its own minority shareholder without that shareholder's consent. This proposition fully extended would render a company's own directors powerless to protect it from precisely the kind of shareholder against whom protection was needed. That is, to my mind, an unsustainable proposition.

[26] The resolution relied upon by Ferroflow is dated 14 August 2026 and is signed by Botha as Ferroflow's sole director, a fact confirmed by the CIPC report. Botha constitutes the board of Ferroflow. There was, in the premises, nothing further Ferroflow could have done, or was required to do, to authorise this application. I add, for completeness, that the respondents at no stage delivered a notice in terms of rule 7(1) of the URC disputing Botha's authority. This is the primary vehicle by which such a challenge may properly be raised and tested. A bald challenge raised for the first time in an answering affidavit, without more, does not suffice.

Finding

[27] In the premises, the point *in limine* is dismissed.

The law on contempt of court

[28] The requirements for civil contempt are trite. These were authoritatively restated in *Fakie NO v CCII Systems (Pty) Ltd*, where Cameron JA, summarising the position, held:³

‘[42] To sum up:

- (a) The civil contempt procedure is a valuable and important mechanism for securing compliance with court order, and survives constitutional scrutiny in the form of a motion court application adapted to constitutional requirements.
- (b) The respondent in such proceedings is not an ‘accused person’, but is entitled to 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.’

[29] It is equally settled, and bears emphasising that in a case such as this, that an order of court, whether correctly or incorrectly granted, binds those to whom it is directed. It axiomatically follows that such an order must be obeyed unless

³*Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) paras 6, 9, 10, 38 and 42; *S v S.H* [2023] ZASCA 49 paras 19 and 20.

and until it is set aside by a competent court.⁴ A litigant aggrieved by an order has recourse to this Court by way of appeal, review or reconsideration. Among these choices it is not open to a litigant to disregard the order while that recourse is pursued, still less before it is even sought.

Discussion

[30] Insofar as the first two requisites are concerned, the existence of the order is not, and could not sensibly be, in dispute. The same is annexed to the founding papers and forms part of the record of this Court. The knowledge of the order is not in issue. This much is borne out by the papers and considered as unassailable facts as conceded to by Advocate Dlaki.

[31] Maebane does not deny that persons are present upon the plant. Maebane's defence is that those persons are 'securities' deployed at his and SMG Mining's instance to guard material belonging to SMG Mining. The way I see it, that defence, closely scrutinized is itself an admission of breach. The order interdicts entering upon or remaining upon the plant premises otherwise than in accordance with a lawfully held right, and then only with Ferroflow's prior written consent. No written consent was ever sought or given.

[32] On Maebane's own account, persons deployed at his and SMG Mining's instance have remained upon the plant continuously since before this application was launched, and remained there, on the respondents' own showing, as at the date the answering affidavit was signed. Non-compliance, too, is established, and a substantial part is established on the respondents' own version.

⁴*Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC) paras 27, 59, 61 and 62; *Municipal Manager, O R Tambo District Municipality and Another v Ndabeni* 2023 (4) SA 421 (CC) para 23.

[33] The justification proffered for their presence does not withstand scrutiny. Maebane nowhere identifies the material he says is being guarded. What is more Maebane does not provide an iota of corroborating evidence. This is illustrated by the following. Firstly, the materials quantity, or how or when SMG Mining acquired it has not been established. Secondly, not a single invoice, delivery note, weighbridge certificate or assay result is produced. Ferroflow's uncontested evidence is that the material presently at the plant belongs to a third party, RGN Mining (Pty) Ltd, on whose behalf Ferroflow is contractually bound to process it. Notably SMG Mining has no right, title or interest in it whatsoever.

[34] Tellingly in his own answering affidavit, Maebane describes the very same persons as '*the securities that are guarding the property of the applicant*', which cannot simultaneously be true of the account he gives elsewhere, that they guard SMG Mining's property. An answering affidavit which advances mutually destructive versions on the very issue in dispute does not raise a *bona fide* dispute of fact. What it accomplishes, is that it impugns the credibility of both versions advanced.

[35] Even had SMG Mining possessed some genuine claim to material at the plant, which I emphatically do not find, our law does not permit a party to vindicate a proprietary claim through self-help. Still less by stationing armed persons upon another party's premises in defiance of an order of this Court. As the Constitutional Court held in *Chief Lesapo v North West Agricultural Bank and Another* the rule of law does not permit a litigant to be judge in its own cause.⁵ The proper route to have followed was to seek legal recourse. The respondents did not do so. Instead, they resorted to unlawful occupation, and did so, on the evidence, with weapons.

⁵*Chief Lesapo v North West Agricultural Bank and Another* 2000 (1) SA 409 (CC) paras 11 to 13 and 22.

[36] Non-compliance is, further, established independently and affirmatively by evidence which the respondents barely engage. The locks to the plant gate were broken on three separate occasions. The order, when first handed over, was torn up in the presence of a witness. When later shown to another individual associated with the respondents, it was met with an obscenity directed at this Court. Mine material was dumped, and tyres were set alight, at the entrances to an operating chrome beneficiation plant, denying Ferroflow full access to it. None of this is seriously disputed on the papers; Maebane's answering affidavit either '*notes*' these allegations without denial or denies them in the vaguest and most conclusory of terms, unaccompanied by any competing account of what, if not this, in fact occurred.

[37] I shift focus because of its significance to address Maebane's denial that he was personally present at the plant on 14 August 2026. That denial is demonstrably false. This conclusion is anchored by no fewer than four sources, two of them being Maebane's own.

[38] First, the very resolution upon which Maebane relies to establish his own authority to depose to the answering affidavit is signed and dated by him '*at Bokamoso on this 13 day of August 2026*', placing him in the immediate vicinity of the plant the day before the date he denies having been there. Second, Maebane's own WhatsApp status, published at 23h53 on that very evening, records his contemporaneous account of his own whereabouts: '*I'm here*'. Third, and independently, two further witnesses depose to having observed him at the plant, soliciting the assistance of a police sergeant to mediate a dispute over the release of Ferroflow's product.

[39] Fourth, the Sheriff's return records that Maebane told the Sheriff, when telephoned to arrange service, that he was then in Mpumalanga, a statement irreconcilable with his sworn averment, repeated three times in the answering affidavit, that he has been outside the North West Province '*throughout*'. A deponent who advances, under oath, an alibi so comprehensively and so variously falsified, in an application for his own committal, does not raise a reasonable doubt. He removes any doubt that might otherwise have existed, and does so conclusively.

[40] I make one final offering which was disclosed for the first time in reply. This places beyond any doubt the conclusion that Maebane's presence upon the plant, and his control over what occurs there, is neither incidental nor innocent. On 14 August 2026, Maebane approached a police sergeant present at the plant and solicited his assistance to mediate a dispute. In the course of which the sergeant conveyed to Ferroflow's witnesses that Maebane had said he would permit trucks laden with Ferroflow's product to leave the plant if Ferroflow paid him '*his 40%*'.

[41] Later the same day, Maebane transmitted, by WhatsApp from the same cellular number the Sheriff used to effect service upon him, a share certificate, a securities transfer form, SMG Mining's company registration documents, and SMG Mining's own banking details. Those are, tellingly, the very documents Maebane has since annexed to the answering affidavit as the foundation of his *locus standi* challenge. It is reasonable to conclude that in these peculiar circumstances Maebane, who offered to release Ferroflow's product, in truth the property of RGN Mining upon payment of money, is not guarding his own property.

[42] The irrefutable reality was that Maebane was holding Ferroflow's product, in truth the property of RGN Mining, to ransom, and the documents transmitted with the demand were not incidental. On my assessment the transmission of the documents was simply a deliberate manoeuvre by which payment was to be made. That conduct is inconsistent with an honestly, even if mistakenly, held belief in a right to occupy the premises. The ineluctable conclusion is that Maebane knew acutely what the order requires of him, and who has made his continued breach of it the subject of a price.

Wilfulness and mala fides

[43] Maebane announced his intentions in a threat assessment report predating the order by more than two months, in which he declared he would remove Botha from the operation '*by force*'. Within hours of the order, Maebane sent a voice note announcing that Ferroflow's operation would '*never ever happen*' and that he would bring his own security company to the plant, which he then did, not once but three times over. Maebane continued, after the order, to publish statements calculated to incite further unlawful conduct, culminating in a declaration, timed hours after he had personally attended the plant, that he could not be interdicted from '*his operation*.'

[44] Maebane advanced, under oath, in answer to an application for his own committal, an alibi shown by his own annexures to be false. None of that is the conduct of an individual labouring under an honest, if mistaken, view of his rights. From the papers before me, Maebane's conduct was that of an individual who had resolved, and who has said so publicly and repeatedly, that no order of this Court will stand between him and what he has decided to take.

Finding

[45] In the premises it has been established, beyond reasonable doubt, that the existence of the order, Maebane's knowledge of it, and his non-compliance with it are established. Moreover, the evidence reiterates that his non-compliance was wilful and *mala fide*. Resultantly, the requisites for contempt are established against Maebane. During argument, Advocate Alberts SC moved an oral application to amend the notice of motion so as to seek a declaration that SMG Mining, too, be found in contempt, conditional upon the papers establishing its conduct.

[46] After a carefully consideration of same and the opposition thereto, I cannot see my way to grant that amendment. Prayer 1 of the notice of motion, as amended and delivered in Ferroflow's heads of argument the day before the hearing, sought a contempt declaration against the first and third respondents only. This was a deliberate and considered election, not an oversight. Reviving the abandoned relief for the first time during oral argument, without a formal amendment application and without affording SMG Mining any real opportunity to address the questions peculiar to a corporate contempt finding, is procedurally unfair to it.

[47] Those questions include the attribution of the requisite knowledge and *mala fides* to a company as distinct from its director personally, and what sanction could properly follow against a corporate contemnor. The conditionality attached to the application, that it succeed only if the papers establish SMG Mining's conduct, adds nothing. It restates the ordinary onus resting on any applicant and creates no genuine opportunity for SMG Mining to be heard on the specific relief now sought against it.

[48] A contempt declaration is a serious, quasi-criminal finding, and fairness required more than an after-the-fact conditionality could offer. That said, the facts underlying SMG Mining's own conduct are not thereby rendered irrelevant. SMG Mining was served with the order, persons remain deployed at its instance to guard what it claims is its own material, and its own answering affidavit admits as much. They remain relevant to the costs order sought against it, and to the relief granted against the third respondent and in favour of enforcement by the Sheriff, addressed further below.

The position of the third respondent

[49] The order was granted, deliberately, against Maebane, SMG Mining, and all persons acting in concert with or at the instance of either of them. This formulation was necessitated by the practical impossibility, at the time the order was sought, of identifying by name each person whom Maebane might enlist. Relief in that form is competent, as the Constitutional Court confirmed in *Commercial Stevedoring Agricultural and Allied Workers' Union and Others v Oak Valley Estates (Pty) Ltd and Another* and as this Division applied in *Glencore Operations SA (Pty) Ltd v Mahuma and Others*, provided it is directed at those who have in fact engaged in the interdicted conduct; knowledge of the order, rather than personal service, suffices to found contempt against a member of such a class.⁶

[50] Ferroflow identifies one member of the third respondent by name, Brendan, who procured the trucks used to dump mine material at the plant's entrances on 13 August 2026, having misrepresented to the haulage contractor's

⁶*Commercial Stevedoring Agricultural and Allied Workers' Union and Others v Oak Valley Estates (Pty) Ltd and Another* 2022 (5) SA 18 (CC) paras 40 to 47; *Glencore Operations SA (Pty) Ltd v Mahuma and Others* [2025] ZANWHC 96 paras 7 and 12 to 15

foreman that the plant belonged to Maebane. Brendan's conduct plainly falls within what the order prohibits. What is less clear is whether Brendan personally had knowledge of the terms of the order, as opposed to knowledge merely that Maebane wished the plant blockaded.

[51] That being the case, on the evidence Brendan's personal knowledge of the order is not established beyond reasonable doubt. Accordingly, I decline to commit him. However, I am satisfied that declaratory relief, and relief authorising the Sheriff to remove any obstruction occasioned by persons acting at Maebane's instance, is appropriate and is established, at the least, on a balance of probabilities against the third respondent as a class.

Sanction

[52] It is apposite, at this stage, to turn to sanction. A sanction for civil contempt may be coercive, in the sense that its operation may be avoided by compliance, or punitive, in the sense that it may not. The two are not mutually exclusive, and a court is entitled to craft a sanction which serves both purposes, to compel compliance and to vindicate the authority of this Court.⁷

[53] The conspectus of the evidence demonstrate that a sanction of real substance is called for. The contempt was premeditated and publicly announced months in advance. It has been violent in its execution. To this end, locks were broken on three occasions. A court order was torn up and met with obscenity. Mine material dumped and tyres set alight at the entrances of an operating industrial plant. Further, the evidence discloses that at least one person associated with those deployed at the plant was found in possession of an unlicensed firearm and a replica firearm and arrested by a police tactical response team. The

⁷*Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) paras 73 to 76.

contempt is continuing and unpurged. On the respondents' own version, persons remain deployed at the plant as at the date of the answering affidavit. And the contempt has been aggravated, gravely, by Maebane's advancement, under oath, of an alibi which his own annexure falsifies.

[54] On a proper evaluation of the facts I am not persuaded that a wholly unconditional order of imprisonment is, at this stage, required to mark the gravity of what has occurred. It must be borne in mind that the objective of compelling compliance, which remains the paramount object of civil contempt proceedings, is best served by an order which holds the immediate threat of imprisonment over Maebane's head. The latter would be conditional upon strict and continuing compliance, an approach this Division adopted recently in *Bosele*.⁸ Should the conditions of suspension not be met, Maebane will have only himself to blame for the consequence.

Costs

[55] Ferroflow seeks costs on the scale as between attorney and client, including the costs of two counsel so employed. That scale is warranted. The order of 7 August 2026 itself contemplated costs on that scale in the event of opposition. Maebane and SMG Mining have, in addition, delivered their answering affidavit only on the eve of the hearing, without explanation or condonation, and have advanced, under oath, a false account of Maebane's whereabouts in answer to an application for his own committal. Conduct of that kind attracts the most censorious costs order this Court can make. The engagement of two counsel so employed was warranted by the gravity of the relief sought.

⁸*Bosele National Provident Fund v Tlholoe and Others* [2026] ZANWHC 133 para 19.

Conclusion

[56] Maebane uttered, months before this order was sought, that he would take Ferroflow's plant by force. This Court ordered him not to. Maebane received that order in his own hand, and within days he executed precisely the plan he had announced. If an order of this Court can be met with broken locks, a torn-up copy, burning tyres and a false alibi, and answered only by an application for reconsideration launched after the event, the order was worth nothing at all, and this Court's authority worth less.

Order

[57] Consequently, I make the following order:

1. The first respondent is declared to be in contempt of the order of this Court granted by Wessels AJ on 7 August 2026 under the above case number.
2. The first respondent is committed to imprisonment for a period of 30 (thirty) days, the operation of which is suspended for a period of 12 (twelve) months on condition that:
 - 2.1 the first respondent, and all persons acting in concert with or at his instance, immediately and unconditionally withdraw from the applicant's plant situated at Portion 73(a) of the Farm Elandsdrift 467, Section JQ, Mooi-nooi, North West Province;
 - 2.2 all obstructions to access to the plant, including any locks, mine material or debris placed at its entrances by or at the instance of the first respondent, are removed within 48 (forty-eight) hours of this order;

2.3 the first respondent, the second respondent, and all persons acting in concert with or at the instance of either of them, thereafter, strictly comply with the order of 7 August 2026 for the duration of the period of suspension; and

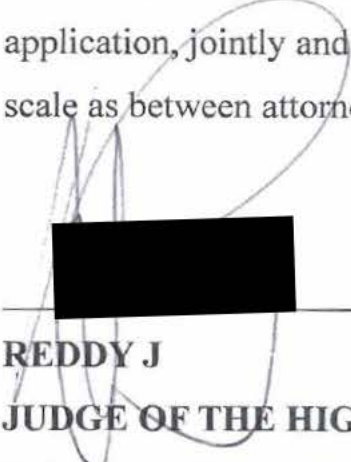
2.4 the first respondent commits no further breach of this order or of the order of 7 August 2026 during the period of suspension.

3. The Sheriff of this Court is authorised and directed, duly assisted by the South African Police Service where necessary, to take all steps necessary to give effect to paragraph 2 of this order, including the removal of any person or obstruction unlawfully preventing the applicant's access to the plant.

4. The authorisation and direction in paragraph 3 above shall apply to, and may be enforced against, all persons acting in concert with or at the instance of the first respondent, being the third respondent.

5. The application for the committal of Raganya Moifo Brendan is dismissed, without prejudice to the applicant's rights to pursue further relief against him upon a fuller evidentiary foundation.

6. The first and second respondents are directed to pay the costs of this application, jointly and severally, the one paying the other to be absolved, on the scale as between attorney and client, including the costs of two counsel.



REDDY J

**JUDGE OF THE HIGH COURT, SOUTH AFRICA,
NORTH WEST DIVISION**

Appearances

Counsel for the Applicant: Advocate G W Alberts SC and Adv D S Merrills

Instructed by: Burgerhuyser Attorneys, Pretoria, c/o Labuschagne Attorneys, Mahikeng

Counsel for the First and Second Respondents: Advocate S Dlali

Instructed by: Nkome Incorporated Attorneys, c/o Sehlabo TA Attorneys, Mahikeng