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IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: D289/2025

In the matter between

SANDRA JOHANNA DE OLIVERIA	**FIRST APPLICANT**
ENZO VALERIA VALTER GALLO	**SECOND APPLICANT**
CEMERIES CREMATION MANAGEMENT AND DEVELOPMENT CC	**THIRD APPLICANT**

and

JEAN-PIERRE MOREL	**FIRST RESPONDENT**
ROBERT JAMES CLOETE	**SECOND RESPONDENT**
MELANIE DAWN MOREL	**THIRD RESPONDENT**
TAMASIN SACHA MOREL	**FOURTH RESPONDENT**
TIFFANY DAWN MOREL	**FIFTH RESPONDENT**

Coram: Khuzwayo AJ

Heard: 25 August 2026

Delivered: 30 October 2026

ORDER

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1. The first respondent's application for condonation of the late filing of his answering affidavit as well as his heads of argument is hereby granted.
2. The first respondent is hereby declared to be in contempt of paragraphs 3.1, 3.2,3.3, 3.5 and 3.6 of the court order under case number D289/2025 dated 21 January 2025 issued by Nkosi J.
3. The first respondent is hereby declared to be in contempt of paragraphs 5.1 to 5.5, 6 and 7 of the court order under case number D289/2025 dated 12 February 2025 issued by Nqala AJ.
4. A Rule Nisi is hereby issued calling upon the first respondent to show cause on 18 **January 2027** at 09h30 or so soon thereafter as Counsel may be heard why the following orders may not be made final:
   4.1 That as a sanction of his contempt, the first respondent be and is hereby sentenced to one months' imprisonment (30 days), such sentence to be suspended, conditional upon the first respondent's compliance with the provisions of the said court orders, by complying with the provisions of and providing the documents identified in annexure " V" of the founding affidavit within 48 hours of receipt of this order;
   4.2 That the first respondent is directed to pay the costs of the application on Scale B.

JUDGMENT

Khuzwayo AJ

Introduction

[1] The applicants brought an application in terms of which they sought to have the first respondent held in contempt for failing to comply with certain parts of two orders granted by this court. The first order was granted by Justice ME Nkosi on 21 January 2025. In this regard, the applicants sought the first respondent to be held in

contempt for failing to comply with paragraphs 3.1, 3.2,3.3, 3.5 and 3.6 of that order. Acting Justice Nqala granted the second order, by consent on 12 February 2025. The applicants sought a contempt order against the first respondent for failing to comply with paragraphs 5.1 to 5.5, 6 and 7 of the order.

[2] The contempt application emanates from the main application in which the first and second applicants sought relief essentially allowing them to take control and run the business of the third respondent (the CC) to the exclusion of the first respondent in the further involvement in the business. They also sought access to relevant documentation pertaining to the CC and its bank accounts. Pursuant thereto, the orders were granted. The first order was granted on 21 January 2025, and the portions relevant to this application read:

'3. THAT, the relief set out below shall operate as interim relief pending the return date of the rule nisi –

3.1. the First and Second Applicants are authorised to transact on the Third Applicant's bank account no. 6[...], held with FNB, or any other account held in the name of the Third Applicant with FNB, jointly with the First Respondent, when any lawful payment is required to be made. Such payments shall be authorised either by written instruction or by electronic funds transfer ("EFT") in accordance with the electronic release authorisation protocol according to the electronic banking platform of FNB, with the First and Second Applicants and the First Respondent acting jointly;

3.2. the First Respondent is directed to take all steps necessary, including the giving of access to the Third Applicant's premises at Lala Kahle memorial Park, Ximba and the First Respondent's residence at [...] M[...] End, Kloof, in order to provide the First and Second Applicants, and any accountant appointed by them, access to all documents, databases, spreadsheets, and accounting records, including but not limited to all ledgers, invoices, receipts, bank account statements, tax files, returns, and notices of assessment, submitted to SARS, together with any other electronically held records in respect of the Third Applicant;

3.3. that, for purposes of the First and Second Applicants' access provided for in paragraph above, the First Respondent is directed to make available –

3.3.1. the SARS eFiling access codes for communicating with SARS;

3.3.2. access passwords for domain name controls for emails;

3.3.3. access passwords for the accounting records, where same are captured on any form of digital device or media to which the First Respondent has access

or over which he has control or ownership, either directly or indirectly or remotely;

3.4. the First Respondent is directed to permit and allow the First and Second Applicants, and any accountant appointed by them to –

3.4.1. make printouts of any physical records or electronically held records of the Third Applicant, as identified in paragraph 3.3 above;

3.4.2. make digital copies of or download any electronically held records of the Third Applicant, as identified in paragraph 3.2 above.

3.5. the First Respondent is directed to take all steps necessary in order to provide the First and Second Applicants, and any accountant appointed by them, access to the Third Applicant's burial register;

3.6. the First Respondent is directed to permit and allow the First and Second Applicants, and any accountant appointed by them to make printouts of the Third Applicant's burial register and to make digital copies of or download the Third Applicant's burial register if kept electronically.'

[3] The portions of the second court order that was granted on 12 February 2025, relevant to the application, read:

'In compliance with the provisions of paragraph 3 of the court order dated 21 January 2025, and for purposes of the Applicant preparing its supplementary affidavit, the First Respondent is directed to make available to the Applicants and the applicants' appointed accountant, Keith Flack access to the following documents, in the First Respondent's possession-

5.1 the documents referred to in paragraph 18.1.1 to 18.1.8 of the First Respondent's founding affidavit in his reconsideration application;

5.2 General ledgers of the Third Applicant;

5.3 the Sales journal identifying the different sales for the invoices rendered by the Third Applicant;

5.4 a Debtors Ledger matching sales invoices with deposits in the Third Applicant's FNB bank account;

5.5 such further documentation to which the Applicants and Flack may seek access pursuant to the forensic investigation to be conducted by Flack in respect of the financials of the Third Applicant.

6. The First Respondent is directed, in compliance with paragraph 3.3.2 of the court order dated 21 January 2025, to make available to the Applicants the email addresses, I[...] and I[...] and make available to the Applicants' attorney copies of all emails that relate to the Third Applicant;

7. The First Respondent, in compliance with paragraph 3.3.1 of the court order dated 21 January 2025, is directed to take such steps necessary in order to make available to the Applicants' attorney the SARS eFiling access codes in respect of the Third Applicant's SARS eFiling profile.'

[4] Before I proceed further with this judgment it is prudent to note that the first respondent filed an application for an order condoning the late filing of his answering affidavit as well as his heads of arguments and practice note. After consideration of the application and in the interests of justice I have decided to condone the late filing of these documents.

Legal principles

[5] The requirements and onus in contempt of court proceedings have been authoritatively stated in various judgments. In *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others*[1] the Constitutional Court stated:

'As set out by the Supreme Court of Appeal in *Fakie*, and approved by this court in *Pheko II*, it is trite that an applicant who alleges contempt of court must establish that *(a)* an order was granted against the alleged contemnor; *(b)* the alleged contemnor was served with the order or had knowledge of it; and *(c)* the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and mala fides are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established.'

[6] Prior to the *Zuma* judgment, the Constitutional Court in *Pheko and Others v Ekurhuleni Metropolitan Municipality*[2] explained the objective of contempt of court proceedings as follows:

'The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As the Constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows

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[1] *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* [2021] ZACC 18; 2021 (5) SA 327 (CC) (*Zuma*) para 37.
[2] *Pheko and Others v Ekurhuleni Metropolitan Municipality* [2015] ZACC 10; 2015 (5) SA 600 (CC) para 1.

from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.'

[7] In *Fakie NO v CCII Systems (Pty) Ltd*,[3] where committal was sought, the relevant principles were summarised by the Supreme Court of Appeal as follows:

'*(a)* The civil contempt procedure is a valuable and important mechanism for securing compliance with court orders 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.'

[8] Our courts have confirmed that where committal is sought the standard of proof in civil contempt matters has to be the criminal standard.[4] In those instances, wilfulness and *mala fides* have to be established beyond reasonable doubt.[5] The contemnor has an evidential burden to create a reasonable doubt as to whether his conduct was wilful and *mala fide*. There is a different standard of proof where no criminal sanction is sought; then, the standard of proof is that of a balance of probabilities. While all wilful disobedience of a court order made in civil proceedings is a criminal offence, civil mechanisms that are designed to induce compliance without resorting to committal are competent when proved on a balance of probabilities.[6] The combined nature of contempt proceedings which results in committal, integrates civil and criminal elements. However, notwithstanding,

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[3] *Fakie NO v CCII Systems (Pty) Ltd* [2006] ZASCA 52; 2006 (4) SA 326 (SCA) para 42.
[4] *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others* [2017] ZACC 35; 2018 (1) SA 1 (CC). (*Matjhabeng)* para 67.
[5] Ibid.
[6] *Fakie* para 17; *Matjhabeng* paras 64-67.

contemnors are still afforded the substantive and procedural protections which apply to any individual facing the loss of his freedom.

Analysis

[9] In *casu,* there is no dispute that the two orders were granted against the first respondent. There is also no dispute that he was aware of both court orders. The issue upon which the court has to decide is whether the applicants have shown that there was breach of the court orders. If the court finds that there was no breach, it is the end of the matter. However, if the court finds that there was indeed breach of the orders, the court will then have to decide whether the first respondent was able to establish reasonable doubt that the breach was neither wilful nor mala fide since the two elements are presumed once breach has been established. Since the applicants have sought the first respondent's committal, the enquiry is therefore whether they have proved beyond reasonable doubt that he was wilful and mala fide in his breach. The first respondent denied that he was in contempt of the two orders as he duly complied. He, however submitted that if the court were to find that he was indeed in contempt, he was neither wilful nor mala fide in his conduct as he genuinely believed that he complied with the court orders

[10] On 24 April 2025, before the institution of the contempt proceedings, the applicants' attorneys wrote a letter to the first respondent's attorney advising that the first respondent had not complied with the court order dated 12 February 2025. The letter identified the documents and items that had not yet been provided under the court order. The first respondent's attorney acknowledged receipt of the letter together with an indication to respond at a later date. However, no response was received. On 28 July 2025 the applicants instituted the current proceedings to hold the first respondent in contempt. The first respondent further failed to deliver his affidavit within the stipulated period in order to answer to the allegations of contempt. He eventually did so eight months later. As aforementioned I have condoned the late filing of his answering affidavit.

[11] In his answering affidavit, the first respondent did not, in the main, directly answer the specific allegations in the founding affidavit that formed the basis of his alleged contempt of the court orders. He mainly made general and broad denials. To prove compliance with the court order of 12 February 2025, which was taken by consent, he referred to annexures "DP1" to "DP45" as reflecting all the documents that were furnished to the applicants. However, an analysis of the documents referred to in annexures" DP1" to "DP37" revealed that those documents were furnished to the applicants on 29 January 2025, before the 12 February 2025 order was even issued. Prior to the issue of the 12 February 2025 order the parties discussed and agreed on a list of documents and items that were outstanding in compliance with the court order. The documents in annexures "DP1 to "DP37" did not form part of that list as they had already been furnished to the applicants.

[12] In annexures "DP38" to "DP40" the first respondent furnished documents that are irrelevant to these proceedings. These documents relate to the valuations of the CC and cashbooks. Reference is also made to a letter of the CC's accountant which has no evidentiary value in these proceedings. Annexures "DP41" and "DP42" relate to passwords that the applicants sought from the first respondent to which his attorney undertook to provide, both in respect of emails, eFiling, as well as the cashbooks. However, he only provided the passwords for the cashbooks. Annexure "DP43" is simply an email advising that the first respondent is unable to provide the passwords in respect of the SARS eFiling profile of the CC because of the link to his personal profile.

[13] What is particularly more concerning is that save to provide broad allegations of having complied with the court orders, and attaching annexures "DP1" to "DP45" in his answering affidavit as proof thereof, the first respondent still did not deal with the specific outstanding documents as set out in annexure "V", which mainly formed the basis of the current application. For example, he failed to address the fact that notwithstanding the court orders, he had not furnished the following documents: access password for domain name controls for all emails, the general ledgers of the CC, the sales journals, the debtors ledger as well as information and documents referred to in paragraph 5.5 of the court order. He did not deny that the documents had not been furnished, neither did he suggest that those documents and

information did not exist. He also failed to deal with the allegation that he declined to sign an updated FNB mandate to enable all members to access all operating functions of the CC's FNB bank account. Clearly therefore the first respondent has not complied with the court orders of 21 January 2025 and 12 February 2025

[14] When the first respondent was notified of his non-compliance with the 12 February 2025 court order in a letter of 24 April 2025, he did not respond to the merits of that letter. In my view, the only reason he did not respond was his knowledge of non-compliance and for which he had no lawful explanation.

[15] If the first respondent genuinely believed that there was compliance, he surely would have responded to the contents of annexure "V". The allegations of compliance with the court orders were only made in his answering affidavit, which he filed about eight months later. In my view, the first respondent knew very well that the documents in annexures ""DP1" to "DP37" had already been furnished to the applicants. He was also aware that the rest of the documents had no relevance in compliance with the 12 February 2025 order. It is not difficult to reasonably conclude that annexures "DP1" to "DP45" were filed with the deliberate intention to feign the bona fide subjective belief of compliance with the court orders. If the first respondent genuinely believed in his alleged compliance, he surely would have enthusiastically communicated his conviction before the institution of the contempt proceedings. He filed his belated answering affidavit only because he felt obliged to offer some opposition to the contempt proceedings notwithstanding his knowledge of non-compliance with the court orders.

[16] I have considered the cited case law in the first respondent's counsel's heads of argument, and I agree with the principles in those cases. However, they do not find application in this matter. In *casu,* contempt is clearly discernible from the first respondent's conduct, and it is palpably wilful and mala fide. It is the duty of all South Africans to respect and abide by the law. As the Constitutional Court stated in *Zuma*,[7] courts 'unlike other arms of the State . . . rely solely on the trust and

[7] *Zuma* para 1

confidence of the people to carry out their constitutionally mandated function'. Disregard of a court order 'is an attack on the very fabric of the rule of law'.[8]

Conclusion

[17] In conclusion, there is no dispute about the existence of the court orders. There is also no contention about whether the first respondent was aware of the court orders. In my view and as aforementioned, there is no question that the first respondent did not comply with the court orders as directed. His conduct to deliberately ignore the allegations in the founding affidavit that pertain to his contempt and to deliberately attach documents that do not prove his compliance, is in my view compelling evidence that his contempt was wilful and mala fide. Accordingly, the applicants have shown that the first respondent is in contempt of the court orders and have shown beyond reasonable doubt that the contempt is wilful and mala fide.

Order

[18] In the result, the following order is made

1. The first respondent's application for condonation of the late filing of his answering affidavit as well as his heads of argument is hereby granted
2. The first respondent is hereby declared to be in contempt of paragraphs 3.1, 3.2,3.3, 3.5 and 3.6 of the court order under case number D289/2025 dated 21 January 2025 issued by Nkosi J.
3. The first respondent is hereby declared to be in contempt of paragraphs 5.1 to 5.5, 6 and 7 of the court order under case number D289/2025 dated 12 February 2025 issued by Nqala AJ.
4. A Rule Nisi is hereby issued calling upon the first respondent to show cause on the **18th January 2027** at 09h30 or so soon thereafter as Counsel may be heard why the following orders may not be made final:

[8] *Samuels v Salie-Hlophe* [2023] ZASCA 49 para 17.

4.1 That as a sanction of his contempt, the first respondent be and is hereby sentenced to one months' imprisonment, such sentence to be suspended, conditional upon the first respondent's compliance with the provisions of the said court orders, by complying with the provisions of and providing the documents identified in annexure "V" of the founding affidavit within 48 hours of receipt of this order.

4.2 That the first respondent is directed to pay the costs of the application on Scale B.

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Khuzwayo AJ

Case information:

Date of hearing:	25 August 2026
Date of judgment:	30 October 2026
For the applicants:	Combrinck SC
Instructed by:	Martin Law Incorporated 41 Westville Road Westville Tel: (031) 266 1588 Cell: 082 747 0820 Email: andrew@martinlaw.co.za
For the first, third, fourth and fifth respondents:	Khan SC
Instructed by:	Darren and Associates 271 Clark Road Glenwood Tel: (031) 0545423 Email: derren@derreninc.co.za E: queries@derreninc.co.za Ref: Mr D. Pillay