



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case no: **3804/2023**

In the matter between:

TEBOHO NTSOARENG

Applicant

and

MUNICIPAL MANAGER

First Respondent

SETSOTSO LOCAL MUNICIPALITY

Second Respondent

CORAM: **P R CRONJÉ, AJ**

HEARD ON: **27 JULY 2023**

DELIVERED ON: **23 AUGUST 2023**

JUDGMENT BY: **P R CRONJÉ, AJ**

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 12h55 on 23 August 2023.

- [1] The Applicant brought an urgent application for the First Respondent (the Municipal Manager) to be found in contempt of an order granted by the Magistrate of Ficksburg (the Magistrate) under case number 72/2023. The Municipal Manager should be committed to imprisonment for a period of thirty (30) days or such period as this Court deems appropriate. The imprisonment should be suspended for a period of six (6) months on condition that the Municipal Manager complies with the Magistrate's order within 24 hours.
- [2] The Respondents did not file any papers as the application was moved on an urgent basis.¹ The application was issued on 24 July 2023 and set down for 27 July 2023. On 27 July 2023, a Notice of intention to oppose was filed. A return of service in respect of the papers shows that they were served on 24 July 2023 on the Municipality.
- [3] It is common cause that the Municipality discontinued the Applicant's electricity supply on 7 March 2023. On the next day, the Applicant instituted spoliation proceedings and on 11 April 2023, the Magistrate ordered that the electricity supply be restored and the Respondents and/or all other persons be ordered not to disturb the Applicant and/or his tenants and/or any other person occupying the properties access to electricity.
- [4] The Applicant alleges that the Magistrate's order was served on the Respondents on 13 April 2023. On 18 July 2023, the Magistrate issued an interim order extending the *rule nisi* to 25 July 2023. In terms thereof the final order of that court was stayed pending the finalisation of a rescission application. The Applicant was interdicted from enforcing the spoliation order. On 25 July 2023, the Magistrate made an order that the *rule nisi* be extended to 2 August 2023. The proceedings in that court are thus not finalised.

¹ I have raised my concerns before in another matter as to the risks litigants run who approach Courts on urgent basis for contempt especially where there is still pending litigation

[5] In paragraph 24 of the founding affidavit in this Court, it is stated that the Respondents acted in contempt of the final order issued by "this Honourable Court" (the High Court). In paragraph 45 it is repeated that it was an order of the High Court. The matter was allegedly set down in the High Court and on 18 July 2023, Van Rhyn J allegedly opined that the Applicant had not dealt with the reasons why the Respondents discontinued the electricity supply to the premises. The matter was removed from the roll. This is the high-water mark of any *nexus* between the application before me and what happened in the Magistrate's Court.

[6] When the matter was called I raised the question whether this Court, in view of Section 106 of the Magistrate's Court Act,² has jurisdiction to entertain the contempt proceedings. The section reads:

"Penalty for disobedience of judgment or order of court³.—Any person wilfully disobeying, or refusing or failing to comply with any judgment or order of a court or with a notice lawfully endorsed on a summons for rent prohibiting the removal of any furniture or effects shall be guilty of contempt of court and shall, upon conviction, be liable to a fine, or to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine."

[7] I requested both parties to provide short Heads of Argument on whether this Court has jurisdiction.

[8] Mr Mohono, for the Applicant, referred me to *Huysamen and Others v Bluechip Retail Solutions (Pty) Ltd and Another*⁴ where the Court held that there is no statute that grants the High Court jurisdiction to grant an order for civil contempt of court. To grant an order for the civil contempt of court, the High Court invokes its inherent jurisdiction. The Court referred to *Standard Bank of SA Ltd and Others v Thobejane and Others*; *Standard Bank of SA Ltd v Gqirana N O and Another*⁵ where it was held:

² 32 of 1944

³ Section 1 of the Magistrate's Court Act provides: "court" means a magistrate's court for any district or for any regional division

⁴ (8528/2022) [2023] ZAGPJHC 36 (19 January 2023)

⁵ (38/2019; 47/2019; 999/2019) [2021] ZASCA 92; [2021] 3 All SA 812 (SCA); 2021 (6) SA 403 (SCA) (25 June 2021)

"The discretion which the Court has in regard to costs provides a powerful deterrent against the bringing of proceedings in the Supreme Court, which might more conveniently have been brought in the Magistrate's Court. Not only may a successful applicant be awarded only Magistrate Court costs, but he may even be deprived of his costs and be ordered to pay any additional costs incurred by the respondent of the case having been brought to the Supreme Court. In all normal cases, these powers should suffice to protect the respondent against the hardship of being subject to bring unnecessarily expensive proceedings."

- [9] Mr Ponoane, who appeared on behalf of the Respondents, stated that the matter is *lis pendens* as the *rule nisi* was extended in the Magistrate's Court and the matter has not been finally disposed of. In *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite CC*⁶ this trite principle has been affirmed:

"[2] As its name indicates, a plea of lis alibi pendens is based on the proposition that the dispute (lis) between the parties is being litigated elsewhere and therefore it is inappropriate for it to be litigated in the court in which the plea is raised. The policy underpinning it is that there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions. It is a plea that has been recognised by our courts for over 100 years."

- [10] A Court may enforce another Court's order under certain circumstances. In *Bannatyne v Bannatyne (Commission for Gender Equality as Amicus Curiae)*⁷

"[23] It is for the applicant to show that there is good and sufficient reason for the High Court to enforce the judgment of another court. What constitutes "good and sufficient circumstances" warranting a contempt application to the High Court will depend upon whether or not in the circumstances of a particular case the legislative remedies available are effective

⁶ (741/12)[2013] ZASCA 129 (26 September 2013)

⁷ CCT18/02 Citations: [2002] ZACC 31 Citations: 2003 (2) BCLR 111 (CC); See also: *Van Den Bos N.O. v Mohloki and Others AND Van Den Bos N.O v Ngcameva and Another* (2020/11190; 2020/11191) [2021] ZAGPJHC 395; 2022 (2) SA 616 (GJ) (2 September 2021) para 21; *Ewing McDonald & Co. Ltd. v M & M Products Company and Others* (199/89) [1990] ZASCA 115; 1991 (1) SA 252 (AD); [1991] 1 All SA 319 (A) (28 September 1990)

in protecting the rights of the complainant and the best interests of the children.”

- [11] The Respondents submit that as there is a rescission application in the Magistrate's Court, the contempt application therefore became moot and the Applicant should pay for costs of the Respondents.
- [12] I conclude that even if there was a basis on which the Applicant could be before the High Court, the test for contempt is trite.⁸ At date when I heard the application, there was pending litigation in the Magistrate's Court and the Applicant could hardly pass the test for contempt at that stage.
- [13] Mr Mohono submitted that the matter should be removed/withdrawn from the roll and only the issue of costs remains. He submits that the Respondents should pay the costs, alternatively that each party should pay its own costs. The reason for the removal/withdrawal is the pending rescission application in the Magistrate's Court. The Applicant had no knowledge of the rescission application before the application for contempt was launched.
- [14] Mr Ponoane submits that the Applicant is economical with the facts and essentially argues that the Applicant knew of the rescission application before launching the contempt application. He submits that the Applicant should therefore pay the costs of the Respondents.
- [15] The Respondents could not file their opposing affidavits as the Municipal Manager was unwell. I enquired whether the parties wish to exchange further papers and the matter then be properly argued on an opposed basis. Both submitted that it would not serve any purpose as the rescission application proceeds in the Magistrate's Court.

⁸ *Fakie NO v CCII Systems (Pty) Ltd* [2006] JOL 17080 (SCA); [2006] ZASCA 52 (SCA); *Phoko and others v Ekurhuleni Metropolitan Municipality (Socio-Economic Rights Institute of SA as Amicus Curiae)* [2015] JOL 33198 (CC); 2012 (4) BCLR 388 (CC)

[16] There is, except for the case law that states that the High Court retains its inherent jurisdiction in all matters except where they are specifically excluded, no reason why the matter could not have been brought in the Magistrate's Court. It would have been less expensive.

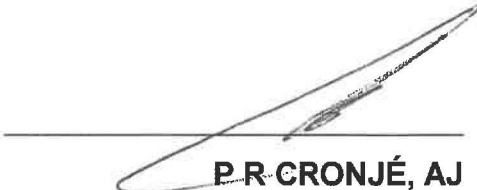
[17] Whether the Applicant knew of the rescission application is not clear. If he was; he would probably not have launched the contempt application. The outcome of that application may impact on whether a contempt application would be indicated.

[18] In the circumstances, I am of the view that it would be fair that the application be removed from the roll and each party to pay its own costs.

[19] I therefore make the following order.

ORDER:

1. The application is removed from the roll.
2. Each party pays its own costs.



P R CRONJÉ, AJ

On behalf of the Applicant: Adv K P Mohono
Instructed by:
Tsepo Mphuthi Attorneys Inc.
Bloemfontein

On behalf of Respondents: Mr M J Ponoane
Ponoane Attorneys
Bloemfontein