REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2021/40383

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

[18 MARCH 2022] **……..**
SIGNATURE

In the matter between:

THE SOUTH AFRICAN RESERVE BANK **APPLICANT**

And

DAVID CHAUKE **RESPONDENT**

J U D G M E N T

MUDAU, J:

[1] This is an application to have the respondent committed for contempt of an Order of this Court (Pretoria, per Khumalo AJ), granted on 21 April 2021 under Case Number 57816/20 (the Order) and ancillary relief. The applicant is the South African Reserve Bank ("SARB"), which was established in terms of

section 9 of the Currency and Banking Act 9 of 1933. In terms of section 2 of the South African Reserve Bank Act 90 of 1989, SARB is a juristic person. The respondent is David Chauke, an adult who currently resides at an address in Malvern, Johannesburg.

[2] The Order by Khumalo AJ reads:

> "1. That the Respondent (" DAVID CHAUKE") …is declared to be a vexatious litigant in terms of section 2(b) of the Vexatious Proceedings Act 3 of 1956;
> 2. no legal proceedings may be instituted by DAVID CHAUKE against the Applicant, ("South African Reserve Bank") ("SARB") without having obtained the permission of the court, or any judge thereof and such permission shall not be granted unless the court or judge is satisfied that the proceedings are not an abuse of the process of the court and there is prima facie ground for the proceeding;
> 3 DAVID CHAUKE is required, prior to
> 3.1 proceeding with the existing applications instituted in the High Court under case numbers 6209/2020 (" the Existing Application"); and/or
> 3.2 instituting any further legal proceedings against the SARB;
> to first seek the leave of the Deputy Judge President of the relevant division in respect of which the first respondent intends to institute or continue proceedings;
> 4. DAVID CHAUKE is interdicted from instituting any further legal proceedings or continuing with the Existing Applications against the SARB unless DAVID CHAUKE has first obtained the written leave of the relevant Deputy Judge President to institute or proceed with such specified legal proceedings;
> 5. that prior to seeking the leave of the relevant Deputy Judge President to institute or proceed with any legal proceedings (including the Existing Application), that DAVID CHAUKE shall furnish 48 hours written notice setting out in full his basis for seeking such leave to the relevant Deputy Judge President and any respondent or defendant to those proceedings of his intention to seek such leave, to enable such respondent or defendant to those proceedings to make written submissions to the relevant Deputy Judge President in response to the first respondent's intention to seek such leave;
> 6. All the files in which DAVID CHAUKE is involved must be taken to the office of the Chief Registrar for supervision and before he places any matter on the roll, he must first approach the Deputy Judge President for leave to proceed with any litigation;
> 7. in the event of the relevant Deputy Judge President granting leave to DAVID CHAUKE to institute or proceed with any litigation (including the Existing Application) that DAVID CHAUKE is ordered and hereby required to provide security for legal costs to the BARB in that ligation in an amount and form to be determined by the Registrar…"

[3] On 29 April 2021, Robin Feinstein (an employee of TGR Inc., SARB's erstwhile attorneys), addressed an e-mail to Mr Chauke attaching a copy of

the Order. Mr Chauke does not dispute receipt thereof. Subsequently and on 29 April 2021, TGR addressed correspondence to the Deputy Judge President of this Division (Johannesburg and Pretoria respectively), the President of the Supreme Court of Appeal and the Deputy Chief Justice of South Africa, bringing the Order of Khumalo AJ to their respective attention.

[4] It has since turned out that as early as 18 October 2016, the Judge President of this division, Honourable JP Mlambo, issued a directive in the following terms:

> "I instruct you with immediate effect not to allow Mr. D Chauke access to the High Court building and/or premises and not to issue or accept any process or documents of Mr. D Chauke, whether brought by himself personally, per his agent or representative or per the Sheriff of the Court.
> Any attempts from Mr. Chauke to issue or serve documents should be brought to my attention."

The directive was directed to the Registrars of the Court and all concerned persons.

[5] The case has a long and chequered history which needs to be traversed, to the extent necessary, to give context to the current controversy. The background to the Order being granted is as follows. The applicant contended that there had been a 'lengthy and destructive history' as between the respondent and several other respondents in a plethora of applications brought by the respondent, some of which included the applicant. The respondent had brought a quasi-application/summons under Case No 6209/2020 (paragraph 3.1 of the Order) on relief previously sought and determined. On SARB's version, the matter was res judicata.

[6] SARB contends that the multiple actions/applications brought by Mr Chauke were misguided and expensive as against it, which involve the public purse, essentially, taxpayers' money. The ongoing frivolous and vexatious applications and actions brought by Mr Chauke have cost SARB considerable time, energy and money to oppose and defend numerous matters in numerous divisions on abusive and defamatory grounds. Mr Chauke was unrepresented in these matters and not of financial means, and had not been successful in any of his matters, and yet the SARB would not be in a position to recover any costs as awarded, from him. On SARB's version, Mr Chauke's conduct was offensive, defamatory, vexatious and frivolous.

[7] Mr Chauke claimed R9 572 164 914.50 from the Minister of Police and R6 500 000 000 000 (6,5 trillion rand) from the South African government and 80 million "Europe" from the Kingdom of Netherlands. According to SARB, the so-called particulars of claim were riddled with vague, unsubstantiated, defamatory and spurious allegations including: the referral of the CEO of Emirates airlines to the International Criminal Court because the respondent was allegedly humiliated for not being permitted to board a flight ;a prayer for relief in the United Nations General Assembly for matters already dismissed in the Constitutional Court under Case Number CCT234/19, with special damages in the sum of R6 500 000 000 000 000 ; a claim that the Minister of Police pay restitution to him for R28 000 000 000 000 as well as a further amount of R600 000 000 for alleged 'criminal defamation' . On the applicant's version, the proceedings under Case No 6209/20 were clearly excipiable and irrational.

[8] On 17 May 2021, merely a month after the Order was issued, Mr Chauke filed an application in the Constitutional Court under Case Numbers CCT140/21 and CCT123/21. He cited the Governor of the South African Reserve Bank as the eleventh respondent (alongside 33 other respondents). Mr Chauke did not issue the requisite 48-hour notice; failed to obtain written permission from the Chief Justice or Deputy Chief Justice to launch his application and also failed to put up security for costs for the application in violation of the Court Order, despite having received the Court Order and being aware of its terms. Mr Chauke's filling sheet purports to file a 'replying affidavit to the state attorney's application for leave to appeal'.

[9] The description of the pleadings, as SARB points out, is confusing and difficult to read. However, its apparent purpose is described as follows, '[k]indly be pleased to take notice that [Mr Chauke] intends to make Filling to this application to this court for an order as above'. The general content of the 'replying affidavit' is also unintelligible. However, Mr Chauke concludes the pleading with a prayer that 'the South African Government should compensate [him at least] an amount of R6 500 000 000 000 …'. As against SARB, he sought an Order, inter alia, for relief in the amount of R316 million for the 'church equipment looted by the police("BP-8")'.

[10] On 1 June 2021, the applicant's attorneys, Bowmans, wrote to Mr Chauke advising him of the Order. In this letter ("BP-10"), it was explained to Mr Chauke that there was an Order declaring him a vexatious litigant. BP-10 explained to Mr Chauke that should he continue with the action he is prohibited from undertaking, SARB will seek a contempt Order against him. In

his response to the above, Mr Chauke wrote a letter ("BP-11") to the Deputy Chief Justice and Bowmans, alleging that the Order issued against him is, inter alia, only valid for a limited period of time; defamatory; irregular and that he was not 'intimidated by jail'. From the above, it is clear that personal service of the Order has been effected on Mr Chauke and that he is aware of the Order; and is without doubt as to its meaning and significance as SARB contended.

[11] The decision in *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) (*Fakie*) is the leading authority on contempt or defiance of a Court Order (see also *Readam SA (Pty) Ltd v BSB International Link CC & others* 2017 (5) SA 184 (GJ)). According to *Fakie* para 42,

> "To sum up:
>
> (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."

[12] In *Pheko and Others v Ekurhuleni City* 2015 (5) SA 600 (CC) para 28, the Constitutional Court defined the crime of contempt of court thus:

> "Contempt of court is understood as the commission of any act or statement that displays disrespect for the authority of the court or its officers acting in an official capacity. This includes acts of contumacy in both senses: wilful disobedience and resistance to lawful court orders. This case deals with the

> latter, a failure or refusal to comply with an order of court. Wilful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence. The object of contempt proceedings is to impose a penalty that will vindicate the court's honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order". (footnotes omitted).

[13] On 2 September 2021, Mr Chauke served on the applicant's attorneys of record, a notice of his intention to oppose this and also an affidavit, both of which were purportedly filed 'in compliance with Rule 23(1) (2) (3) (4) and in terms of Act 108 of 1996, Sections 172(1)(a)(b)(i)(ii)(2)(a)(b)(c)(d)'. Section 172 of the Constitution deals with powers of courts in constitutional matters regarding orders of constitutional invalidity.

[14] Mr Chauke's answering affidavit is to a large extent unintelligible. SARB points out in reply that much of that affidavit is also irrelevant, and should be struck out; that little purpose would be served by engaging with the respondent in interlocutory proceedings, save to generate volumes of paper and waste the time of the Court. In sum, Mr Chauke alleges that SARB and Khumalo AJ colluded and even forged the Sheriff's proof of service. Khumalo AJ was conflicted (having 'a direct interest' in the matter) and ought not to have presided over the application to have him declared a vexatious litigant.

[15] In the answering affidavit, an extensive account is given to offer an exoneration. He avers that the Court Order is not valid and not in compliance with court procedure in that the Order or relief sought was dismissed by Avvakoumides AJ. In contrast, the Order by Avvakoumides AJ dated 28 January 2021 under Case Number 6209/20, upheld SARB's exception with costs. He denied that he violated any Court Order. He alleges that he is homeless and yet provided a home address in his papers. He avers that 'the

court cannot just restrain a person to exercise his judicial right' and that 'there are human rights violation such as slavery and fraud that characterised the whole of this proceedings' (sic).

[16] Mr Chauke urges the court to find 'that the applicants are also trying to restrain the respondent to stay domestically where there is no employment opportunities other than being made slaves of the Republic. His father has done the Nl, Ml, N3 N4 and most bridges on this road worth trillions where he was a shareholder on the company. he did gas projects in Maputo, network infrastructure in Botswana, Lesotho and Swaziland. He did also aluminium smelter in Tongaat Hullet sugar refinery plant. I did E-tolls design and on the verrge of changing the entire transportation infrastructure that is twelve industrial revolutions ahead of its time in the fourth industrial revolution as cited on the business plans and I would also contribute significantly…' (sic).

[17] He goes on to say, he 'could not afford the debts and cost of this endless fruitless litigation instituted into action from inception in 2007 by the applicants who wants to shift blame on the robbed victim and prejudiced respondent. The court should direct the applicants to make a settlement offer to the respondent rather than this profound excuses. This is very important in that the economy stands to benefits from job creations by the respondents'. (sic). It is apparent that Mr Chauke formulated the Constitutional Court pleadings to deal with Case Number 6209/2020 (i.e., the existing applications). He also invites the Constitutional Court to entertain an appeal (through a 'Jury verdict in an open court') against the Order in the vexatious proceedings.

[18] Mr Chauke, by his own version, is a former police officer and accordingly no stranger to Court Orders and the imperative to comply with Court Orders. His refusal to comply with the Order in this instance is accordingly intentional and *mala fide*. In his heads of argument, filed on 4 October 2021, Mr Chauke submits that the Order 'has been set aside in the [Constitutional Court] under Case Number CCT 140/2021'. SARB points out that the submission is incorrect and intentionally misleading.

[19] On these facts, the conclusion is inescapable that Mr Chauke is indeed in contempt and SARB has demonstrated the existence of the Court Order, that Mr Chauke received the Court Order and was aware of its terms, as well as his non-compliance. It was incumbent on Mr Chauke to demonstrate that his non-compliance was not wilful or *mala fide*. He failed to so. Mr Chauke continues to insist that the Order is invalid. He deliberately failed to comply with the Court Order, and has embarked on a strategy to circumvent complying with the Order.

[20] An Order of incarceration, suspended on condition that further defiance does not occur, is under the circumstances, appropriate. (See Twentieth Century Fox Film Corporation and Others v Playboy Films (Pty) Ltd and Another 1978 (3) SA 202 (W)). It is coercive in nature and vindicates the authority of the Court (see Meadow Glen Home Owners Association and Others v Tshwane City Metropolitan Municipality and Another 2015 (2) SA 413 (SCA) para 16). Where a litigant is held to be in contempt of an Order, it is appropriate that costs be borne, as prayed, on attorney and client scale including the costs of two counsel.

[21] **Order**

21.1 It is declared that the respondent, Mr David Chauke is in contempt of the Order granted by this Court on 21 April 2021 under case number 57816/2020;

21.2 The respondent is committed to prison for a period of three months which is wholly suspended on condition that further defiance does not occur.

21.3 Costs be borne by the respondent, as prayed, on attorney and client scale including the costs of two counsel.

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T P MUDAU

[Judge of the High Court]

Date of Hearing: 24 January 2022

Date of Judgment: 18 March 2022

APPEARANCES

For the Applicant: Adv. Jawaid Babamia SC

Adv Realeboga Tshetlo

Instructed by: BOWMAN GILFILLAN INC.

For the respondent: Mr David Chauke (self-represented)