

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: 20784/2022

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| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED. |
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In the matter between:

PLAINTIFFS LISTED IN ANNEXURE "RAF 1"

First Applicants

K MALAO INCORPORATED

Second Applicant

and

ROAD ACCIDENT FUND

First Respondent

COLLINS LETSOALO: CHIEF EXECUTIVE
OFFICER OF THE ROAD ACCIDENT FUND

Second Respondent

JUDGMENT

van der Westhuizen, J

[1] The applicants approached the court by way of urgency for an order for payment of all outstanding amounts relating to the applicants which

were ordered and accepted by the first respondent and ancillary relief thereto and orders holding first and second respondents in contempt of court and the second respondent's committal to prison, and ancillary orders thereto.

- [2] From the relief sought in the notice of motion, the primary purpose of the application is to obtain payment of all amounts granted in court orders and due to the applicants. The non-payment of the due amounts find the basis of the order for contempt. The order for contempt clearly was an attempt to enforce payment of the amounts due.
- [3] In view of the approach taken in this judgment, it is not required to traverse the history leading to the launching of this application. Suffice to record that considering the primary purpose of this application, that of enforcing payment of the due amounts, alternatively an order for contempt, traversing the history will not assist in any manner.
- [4] On behalf of the respondents, it was submitted that this application stands to be dismissed on a number of issues of which the primary issue was, namely, that the applicants were not entitled to seek a finding of contempt of court, where they seek to enforce a money order. Furthermore, the applicants did not discharge the onus resting upon them to satisfy a finding of contempt of court. The issue of contempt of court being premised upon the alleged non-compliance with a court order.
- [5] In *Matjhabeng Local Municipality v Eskom Holdings Ltd & Others: Shadrack Shivumba Homo Mkhonto & Others v Compensation Solutions (Pty) Ltd*¹ the requisites for contempt and the law relating thereto are set out.

¹ (2017) ZACC 35 [49]

[6] It is trite that the relief in civil contempt proceedings is not limited to criminal sanctions, but can also be appropriately dealt with in granting other orders, such as: declaratory orders; *mandamus* and the like.²

[7] In *Eskom, supra*, the Constitutional Court at [56] held as follows:

“The common law drew a sharp distinction between orders ad solvendam pecuniam, which related to the payment of money, and orders ad factum praestandum, which called upon a person to perform a certain act or refrain from specific action. Indeed, failure to comply with the order to pay money was not regarded as contempt of court, where as disobedience of the latter order was.”

[8] The Constitutional Court in the *Eskom*³ matter further endorsed the *dictum* in *Mjeni v Minister of Health & Welfare, Eastern Cape*.⁴

[9] The Supreme Court of Appeal expressly held that the remedy of contempt of court in respect of the wilful and *male fide* ignoring of court orders *ad factum praestandum* cannot be extended to embrace court orders *ad pecuniam solvendum*.⁵ The only exception thereto relating to the payment of maintenance orders.

[10] It is clear that the primary relief is directed at an order *ad pecuniam solvendam*, inappropriately premised upon an alleged contempt of court basis. That being so, this application cannot be countenanced by the court.

[11] Furthermore, there was no urgency for the matter to be heard in the urgent court, albeit that contempt of court proceedings may have

² *Burchell v Burchell* (2005) ZAECHC 35 at [34]; *Cape Times Ltd v Union Trade Directories (Pty) Ltd* 1956(1) SA 105 (NPD) at 120A-E

³ At [57]

⁴ 2000(4) SA 446 (TKHC) at 451D-E

⁵ *Jayiya v MEC of Welfare, Eastern Cape et al* 2004(2) SA611 (SCA) at [15] and [18]

elements of urgency. In this matter, no urgency was alleged for the enforcement of an order *ad pecuniam solvendam*.

[12] The application stands to be dismissed.

I grant the following order:

1. The application is dismissed;
2. The applicants are to pay the costs, the one paying the other to be absolved, such costs to include the costs consequent on the employment of two counsel where applicable.

C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

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| Heard on: | 17 August 2022 |
| On behalf of Applicants: | J F Grobler SC M Moodley |
| Instructed by: | K Malao Inc |
| On behalf of Respondents: | T Pillay C Rip |
| Instructed by: | Mohulatsi Attorneys |
| Judgment delivered on: | 13 September 2022 |