



Reportable:	YES / <u>NO</u>
Circulate to Judges:	YES / <u>NO</u>
Circulate to Magistrates:	YES / <u>NO</u>
Circulate to Regional Magistrates:	YES / <u>NO</u>

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

**CASE NO: UM154/2021**

In the matter between:

**CYMDEX THREE (PTY) LTD**

**Applicant**

**AND**

**SANTA VAN NIEKERK N.O.**

**Respondent**

**(in her capacity as Trustee of the Gerrit Van  
Niekerk Familie Trust)**

*In re the application between:*

**CYMDEX THREE (PTY) LTD**

**Applicant**

**And**

**SANTA VAN NIEKERK**

**1<sup>ST</sup> Respondent**

**DAWIE MAREE**

**2<sup>ND</sup> Respondent**

**WALDO LUAN**

**3<sup>RD</sup> Respondent**

**THE TRUSTEE OF THE GERRIT VAN NIEKERK**

**4<sup>TH</sup> Respondent**

**FAMILIE TRUST**

**SEWES REDELINGHUYS BOERDERY CC**

**5<sup>TH</sup> Respondent**

Heard: **19 AUGUST 2022**

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be on **06 OCTOBER 2022**

## ORDER

In the result, the following order is made:

1. The respondent is found to be in contempt of court by not complying with the order of this court on **12 July 2021** under case number UM154/2021.
2. The respondent is sentenced to a fine of R500 000-00 half of which is suspended for a period of three years on condition that the respondent is not found guilty of being in contempt of the order of **12 July 2021** during the period of suspension or until the resolution of the dispute between the parties over the ownership of the farm.
3. The respondent is ordered to pay the costs of the application.

## JUDGMENT

### DJAJE ADJP

[1] This contempt application was brought against the respondent for the following relief:

- “1. **SANTA VAN NIEKERK N.O** (herein further referred to as “the Respondent” is found to be in contempt of Court by not complying with

the order granted by this Court on **12 JULY 2021** under reference case number: **UM154/2021**

1. *The Respondent is sentenced to imprisonment for a period of six months, or such other period of time as the Court deems appropriate.*
2. *In the alternative to paragraph 2 above, the Respondent is sentenced to payment of a fine in the amount of **R500 00-00**, or such other amount as the Court deems appropriate.*
3. *The Applicant is granted leave to approach this Court on the same papers, duly supplemented, should the Respondent persist with her contempt of Court.*
4. *The Respondent is ordered to pay the costs of this application on a scale as between attorney and client.*
5. *Such further and/or alternative relief as the Court may decide to be appropriate, just and equitable is affordable to the Applicant.”*

[2] The matter between the parties started in **July 2021** when the applicant brought an urgent application against the respondents and the following order was granted:

*“1.THAT: The Applicant’s non-compliance with the Rules regarding the prescribed time limits, forms and service, and any other non-compliance with the Rules, is condoned and the matter may be heard as urgent in terms of Rule 6(12)(a).*

*2. THAT: A rule nisi with immediate effect is issued calling upon the Respondents to furnish reasons, if any, on **THURSDAY, 19 AUGUST 2021** at **10h00**, or as soon thereafter as counsel may be heard, as to why a final order in the following terms should not be made:*

*2.1 The First to Fourth Respondents are ordered to immediately appoint, at their expense, a qualified electrician to immediately do all necessary work in order to restore the electricity supply to the main dwelling and to all other buildings situated on the immovable property described as the **THE REMAINING PORTION OF PORTION 1 OF THE FARM KLIPDRIFT 395, REGISTRATION DIVISION 1Q, TRANSVAAL** (herein further referred to as “the farm”).*

*2.2 The First to Fourth Respondents are interdicted from:*

2.2.1 *Trespassing onto and/ or invading and/ or occupying and/ or attempting to trespass or invade or occupy the farm;*

2.2.2 *Interfering, in any way whatsoever, with the Applicant's occupation and use of the farm.*

2.3 *The First to Fourth Respondents are ordered not to incite, instruct or in any way whatsoever influence any third party or person to commit any of the prohibited conduct referred to in sub-paragraph 2.2 above.*

3. *THAT: The orders set out in paragraph 2.1 to 2.3 above are of immediate interim force and effect pending the outcome of the application on the return date of the rule nisi.*

4. *THAT: Any Respondent may anticipate the return date of the rule nisi within 24 hours' notice to the Applicant.*

5. *THAT: The order is ordered to be served on all the Respondents by the Sheriff."*

[3] The fifth respondent ("CC") owns the farm situated on the embankments of Klipdrift dam near Potchefstroom. The Gerrit Van Niekerk Familie Trust (hereinafter referred to as the Trust) owned 66,7% member interest in the CC. On **28 October 2020** the applicant entered into an agreement with the Trust represented by its trustees in terms of which the applicant purchased the Trust's 66,7% member's interest in the CC. As a result of the agreement, the applicant was entitled to occupy the farm from **12 January 2021** and be liable for all the expenses including rates, levies and taxes on the property. That included the Eskom accounts.

[4] The applicant as a result of its occupation of the farm developed and managed the fishing stands on the farm and rented them out to interested people. There are a number of tenants on the farm renting the fishing stands from the applicant. Before the agreement was concluded with the Trust, the applicant was informed about the irrigation rights that flow from the Klipdrift dam onto the farm.

The applicant welcomed this information as it would be helpful in the cultivation of the crops on the farm. After the conclusion of the agreement the applicant realised that the owner of the farm does not have any irrigation rights out of the Klipdrift farm and this resulted in a dispute between the parties. The dispute resulted in the respondent disconnecting the supply of water and electricity on the farm. The applicant approached court for an order as stated above.

### **Contempt Proceedings**

[5] After the order was granted on **12 July 2021**, the sheriff served same on the respondents on **13 July 2021**. The order was not anticipated or opposed and on **19 August 2021** a final order was granted. On **26 August 2021** the respondent (Santa Van Niekerk N.O) being the only trustee left after the passing of the other trustee, Gerrit Van Niekerk, caused a letter to be sent to the applicant's tenants on the farm. The contents of the letter were as follows:

- "1. The said lease agreements has reference.*
- 2. As you are aware our clients have sold their members' interest in the owner of the property in question.*
- 3. You are presently leasing a portion of this property.*
- 4. You may also be aware that our client has terminated the said sale agreement, which termination has given rise to disputes.*
- 5. Our clients are proceeding to have such disputes adjudicated.*
- 6. You are therefore aware of the above and should our client be successful in the litigation, you shall be liable for payment of rental from the date of termination, 30 June 2021 onwards.*

*7. This shall follow by operation of law and by virtue of our client then being the rightful holder of such members' interest, from termination date."*

[6] On receipt of the abovementioned letter, the applicant's tenants sent the following letter to the applicant through their attorneys:

*"Dear Sir*

**LEASE AGREEMENTS: KLIPDRIFT DAM**

- 1. We are instructed to direct this letter on behalf of Gerhard van Sittert (hereinafter referred to as "our client").*
- 2. Our client is a tenant leasing a premises at the Klipdrift Dam.*
- 3. Our instructions are that your client, Cymdex Three (Pty) Ltd, had purchased the members' interest in the property owner, in terms of which your client exercised the rights of the landlord, including the collection of rental from our client.*
- 4. We have however also been instructed that the seller of the members' interest has terminated the said sale agreement.*
- 5. There are apparently disputes concerning the validity of such termination, which disputes however do not concern our clients but shall be adjudicated in due course.*
- 6. Material however for our clients is the potential risk that should the seller be successful, and the sale agreement validly terminated, our client shall be obliged to pay the rental to the seller since termination. Otherwise put, our clients are exposed to the risk of paying rental twice.*
- 7. Our clients are not willing to run the said risk and shall therefore in future make payment of the rental into our trust account, until final adjudication of*

*the said dispute concerning the valid termination or not. We shall regularly furnish your office with the particulars of all such rental received.*

8. *We furthermore undertake to make payment of such rental received in trust to the rightful holder of the members' interest, upon adjudication of this issue.*
9. *It is submitted that such arrangement is fair to your client, the seller and our clients.*
10. *It is submitted that the status quo in respect of the interim occupation and rental be retained, as any attempt to change the status quo shall inevitably be confronted by such disputes.*
11. *It therefore makes sense to first have the disputes resolved, with the rental safeguarded in the interim."*

[7] It was as a result of the letter from the tenants that the applicant brought this application to hold the respondent in contempt of an order of court. For the sake of convenience reference to respondent in this judgment is to SANTA VAN NIEKERK N.O. as the only trustee of the trust. The applicant's case is that the letter to its tenants by the respondent's attorneys is in contravention of sub-paragraph 2.3 read with sub-paragraph 2.2 of the order of **12 July 2021**. It was argued that the letter to the tenants clearly interfered with the applicant's use of the farm as it caused panic with the tenants. This has the effect of the applicant not receiving the monthly rental from the tenants as stated in the tenants' letter which affects the rights of the applicant. The applicant submitted that it continues to occupy and use the farm pending any dispute pending with the Trust and as such the Trust was prohibited by court from interfering "in anyway whatsoever" with such occupation and use.

- [8] In contention the respondent argued that the order of **12 July 2021** was only limited to physical possession as the applicant applied approached court complaining complained of the interruption of the water and electricity supply. Therefore, the relief sought was limited to interdicting physical interference. The respondent argued that the applicant did not seek any order in respect of its rights to the use and occupation of the property which is the subject of the pending dispute between the parties.
- [9] The respondent submitted that in the event that the order of **12 July 2021** was not limited to physical interference, then it should be amended to expressly be limited to physical interference and read as follows: *“2.2.2 Interfering in any manner whatsoever with the Applicant’s physical occupation and use of the farm”*.
- [10] The principles to be considered in contempt of court matters were well set out in **Fakie NO v CC11 Systems (Pty) Ltd 2006 (4) SA 326 (SCA)** at 344, paragraph [42] in the following terms:
- “(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 willfulness 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 willfulness and mala fides: Should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was willful 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.”*

[11] The Constitutional Court in **Pheko v Ekurhuleni City [2015] ZACC 10; 2015 (5) SA 600 (CC); 2015 (6) BCLR 711 (CC)** (Pheko II) at para 28 held that:

*“[t]he 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.”*

[12] As stated above in the **Fakie** case, the applicant in contempt of court proceedings has to prove that (a) there was a court order granted,(b) it was served on the respondent or the respondent has knowledge thereof and (c) there was no compliance by the respondent. Once all these requirements are established, then the respondent must show that there was no wilful non-compliance. Failing which contempt has been established.

[13] In this matter it is common cause that on **12 July 2021** an order was granted against the respondent. The order was served on the respondent so there was knowledge of the order by respondent. The applicant’s case is that there was non-compliance with the order as the respondent is interfering with its use and occupation of the property. The basis for the non-compliance is that the

respondent caused a letter to be written to the applicant's tenants causing them to decide to withhold the monthly rent payable to the applicant. The decision by the tenants was as a direct result of the letter from the respondent's attorneys. This decision by the tenants directly affects the rights of the applicant to use and occupy the property.

- [14] The respondent argued that the order was only limited to physical possession of the property and as such there can be no contempt by the respondent. This argument raises the issue of the wording of the order and the interpretation thereof. The applicant had initially brought an application as a result of the respondent having interfered with the supply of electricity and water. In addition to ordering the respondent to restore the electricity, the order stated further that:

*"2.2. The First to Fourth Respondents are interdicted from:*

*2.2.1 Trespassing onto and/or invading and/or occupying and/or attempting to trespass or invade or occupy the farm;*

*2.2.2 Interfering, **in any way whatsoever**, with the Applicant's occupation and use of the farm" (own emphasis).*

The order did not only refer to what the respondent was not supposed to do, but went further to include the words 'in any way whatsoever'.

- [15] In **Firestone South Africa (Pty) Ltd v Gentiruco AG 1977 (4) SA 298 (A)** at 304 in dealing with the interpretation of court orders the court held that:

*“The court’s intention is to be ascertained from the language of the judgment or order as construed according to the usual, well-known rules.....Thus, as in the case of a document, the judgment or order and the court’s reasons for giving it must be read as a whole to ascertain its intention.”*

- [16] It is so that the applicant approached court as a result of physical interference of electricity and water. However, the order did not only deal with what the applicant had been complaining about but extended to include in other way of interference of use and occupation. The words ‘in any way whatsoever’ can be interpreted to include in any way that the applicant’s use and occupation of the farm may be hampered. This extends to the respondent causing a letter to be written to the tenants that once the ownership dispute is decided in its favour, the tenants would have to pay the rent twice. This letter was the interference that the respondent was interdicted from doing in the order of **12 July 2021**. The rights of the applicant to the use and occupation of the farm were interfered with.
- [17] The respondent elected not to oppose or anticipate the order of **12 July 2021** despite the words as referred to above. If there was any ambiguity in the order, the respondent was well within her rights to have anticipated the order. In accepting the order, the respondent understood very well what she was interdicted from doing. The conduct of the respondent in causing the letter to be sent, was *mala fide* and constitutes contempt. The counterclaim to vary the court order cannot be sustained and should be dismissed.

[18] The respondent in this matter is cited in her capacity as a trustee and an order for committal would be impractical. The appropriate sentence would be for a fine to be paid by the Trust.

[19] It is trite that costs follow the result and I see no reason why the respondent in her capacity as a trustee should not be ordered to pay the costs in this application.

## **Order**

[20] In the result the following order is made:

1. The respondent is found to be in contempt of court by not complying with the order of this court on **12 July 2021** under case number UM154/2021.
2. The respondent is sentenced to a fine of R500 000-00 half of which is suspended for a period of three years on condition that the respondent is not found guilty of being in contempt of the order of **12 July 2021** during the period of suspension or until the resolution of the dispute between the parties over the ownership of the farm.
3. The respondent is ordered to pay the costs of the application.

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**J T DJAJE**

**ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT  
NORTH WEST DIVISION, MAHIKENG**

**APPEARANCES**

**DATE OF HEARING : 19 AUGUST 2022**

**JUDGMENT RESERVED : 19 AUGUST 2022**

**DATE OF JUDGMENT : 06 OCTOBER 2022**

**COUNSEL FOR THE PLAINTIFF : ADV KGUGER**

**COUNSEL FOR THE DEFENDANT : ADV J J PRETORIUS**