IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.
…….... ……..
DATE SIGNATURE

Case No.: 37609/14

In the matter between:

THE SOUTH AFRICAN APARTHEID MUSEUM AT FREEDOM PARK incorporated under section 21
(Registration No. 2001/ 019108/08) Applicant

and

ARNOLD MICHAEL STAINBANK
(ID: […]) First Respondent

THE APARTHEID MUSEUM FOUNDATION NPC
(Registration No. 2009/007306/08) Second Respondent

THE APARTHEID MUSEUM (Pty) LTD
(Registration No. 2009/007114/07) Third Respondent

SHIRLEY SMITH
(ID: […]) Fourth Respondent

JUDGMENT

KEIGHTLEY AJ:

INTRODUCTION

[1] The parties before me are no strangers to litigating against each other. As the Constitutional Court has remarked, they "*have a long and sticky litigation history marked by acrimonious disputes and recriminations over the conception, registration and utilisation of the trade mark 'The Apartheid Museum'*."[1] The various related disputes between the parties span 13 years, and have spawned a number of judgments.

[2] The genesis of the ongoing dispute between the parties lies in the first respondent, Mr Stainbank's, registration of the trade mark THE APARTHEID

[1] *Arnold Michael Stainbank v The South African Apartheid Museum at Freedom Park* [2011] ZACC 20

MUSEUM in his name in 1990, and in 1998. The applicant, the South African Apartheid Museum at Freedom Park, operates a museum that is located in the Gold Reef City complex. It opened its doors and was incorporated in 2001 as a section 21 Company. It operates under the name and mark THE APARTHEID MUSEUM, and has become something of a tourist landmark in Johannesburg. The applicant's museum was established as part of a casino licence bid by a company called Akani Egoli (Pty) Ltd, for what ultimately became the Gold Reef City Casino. The brothers Solomon and Abraham Krok were intimately involved in conceiving and establishing the applicant's museum. Other well-known people who were in one or other way associated with the project include Dr Reuel Khoza, who was the CEO of Akani Egoli (Pty) Ltd at the time, and Mr George Bizos, who is on the applicant's board of directors. I mention these names for reasons that will become apparent shortly.

[3] In 1998 Mr Stainbank published a prospectus detailing his conception for "The Apartheid Museum" he intended developing. The concept never reached fruition. Mr Stainbank has, for many years, ceaselessly and publicly asserted that the applicant and its directors stole his ideas and trade marks in developing its museum. He holds and has openly expressed his views that the applicant's Apartheid Museum is the antithesis of what he had envisaged, and that it is embedded in the very racism he, as a black South African, seeks to explore and uncover through his project. Central to Mr Stainbank's deeply held views is the fact that the Krok brothers profited from

developing and marketing skin-lightening products to black consumers during the Apartheid era.

[4] This background to the acrimonious relationship between the parties has featured in their various legal disputes over the years. The litigation between them has included two successful applications by the applicant for the cancellation of Mr Stainbank's trade mark registrations for THE APARTHEID MUSEUM,[2] as well as an action for damages instituted by Mr Stainbank against the applicant for an amount of some R350 million. Further litigation has resulted in an order permanently staying Mr Stainbank's action, as well as an interdict against Mr Stainbank from launching further proceedings against the applicant without the leave of the court.[3] To date Mr Stainbank has not succeeded in his quest successfully to appeal these adverse orders, although I have been advised that Mr Stainbank has recently petitioned the Supreme Court of Appeal for leave in respect of the last-mentioned of the judgments.

[5] Finally, of key importance to the present case, is an order granted by Tshabalala J in this court on 24 May 2013 ("the Order").

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2 *South African Apartheid Museum at Freedom Park (Pty) Ltd v Stainbank and Another*, unreported judgment of the Transvaal Provincial Division (as it then was) *per* Southwood J under case number 26295/02, dated 17 July 2003; *South African Apartheid Museum at Freedom Park (Pty) Ltd v Stainbank and Another* (10152/08) [2010] SAGPJHC 143 (23 February 2010)

3 *Stainbank A M v South African Apartheid Museum at Freedom Park (Pty) Ltd and five others*, unreported judgment of the South Gauteng High Court, Johannesburg *per* Pretorius AJ under case numbers 31055/07 & 30154/11, dated 14 July 2014

[6] The present application is the latest in this long line of legal battles. Despite the wide-ranging legal history between the parties, the case before me has a somewhat narrower focus. In essence, the question is whether the first respondent, Mr Stainbank, and his associated entities, which are cited as second and third respondents,[4] should be held in contempt of the Order.

[7] The Order is in the form of an interim interdict, pending the finalisation of what I will refer to as "the main application" between the parties. The main application has not yet been finalised. The Order prohibits the respondents from "publishing, disseminating to the public, or causing the publications of, statements about the Applicant, or its current or erstwhile directors, or its legal representatives, to the effect that they, or any one of them":

[7.1] "have perpetrated a fraud, or perjury or deceit in connection with the Applicant, the museum it operates, and the formation incorporation or foundation of either";

[7.2] "are criminals, racist or liars";

[7.3] " 'stole' or 'misappropriated' (or expressions to that effect) any intellectual property, idea or anything from or belonging to the First Respondent".

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[4] The applicant confirms that it does not seek any relief from the fourth respondent. She was cited in her capacity as a director of the second respondent. For this reason, when I refer to "the respondents" in this judgment, I do not include any reference to the fourth respondent.

[8] The applicant contends that Mr Stainbank has "brazenly and defiantly" continued to conduct himself in breach of the Order, and is guilty of contempt. The applicant seeks an order that:

[8.1] treats the application as one of urgency;

[8.2] declares the respondents to be in contempt of the Order;

[8.3] sentences Mr Stainbank to a period of imprisonment for a period of three months, suspended for a period of 10 days, with a view to providing Mr Stainbank with an opportunity to purge his contempt;

[8.4] directs Mr Stainbank to purge his contempt within the period of 10 days by, among other things, writing to the recipients of various correspondences withdrawing the comments made therein, and apologising to the applicant, failing which, the sentence will immediately take effect.

[9] Mr Stainbank opposes the application. He relies, in the first instance, on what may for convenience be described as a point *in limine* in which he contests the jurisdiction of the court. Should his point *in limine* fail, Mr Stainbank, who was self-represented before me, requests me to reject the applicant's application on the grounds of constitutionalism and the rule of law.

THE BACKGROUND TO THE CONTEMPT APPLICATION

[10] The applicant avers that in the months leading up to the institution of the main application, Mr Stainbank started publishing injurious statements against the applicant, its current and erstwhile directors, and its legal advisors. These statements fell into the following categories:

[10.1] statements to the effect that the applicant was incorporated fraudulently;

[10.2] statements to the effect that the applicant and/or its directors had stolen Mr Stainbank's trade mark, concept or idea for The Apartheid Museum;

[10.3] statements to the effect that the applicant and/or its directors and/or legal representatives are racists;

[10.4] statements to the effect that the applicant and/or its directors and/or legal representatives have made untrue and/or misleading statements to the court;

[10.5] statements regarding Mr George Bizos being corrupt, a racist, thief and liar;

[10.6] statements regarding other directors of the applicant, including Mr Richard Moloko, Mr John Kani, Mr Christopher Kroese and Mr Solly Krok; and

[10.7] statements regarding the applicant's legal representatives.

[11] These statements are alleged to have been made through the website www.apartheidmuseum.org.za, in respect of which Mr Stainbank is the registered administrative contact and for which he is responsible. In addition, Mr Stainbank is alleged to have emailed the statements to various recipients.

[12] In April 2013, as a result of Mr Stainbank's conduct, the applicant instituted the main application and, as a matter of urgency, obtained the interim relief set out in the Order of Tshabalala J.

[13] The applicant sets out extracts from the statements disseminated by Mr Stainbank prior to the Order being granted. It is unnecessary to repeat them here, save to note that they expressly make reference to the applicant and its directors and legal advisers as being associated with fraud, theft and racism in the establishment of the applicant's Apartheid. Indeed, Mr Stainbank does not deny that he made and disseminated these statements.

[14] It was this conduct that led to the interdict described in the Order. The interdict was clearly aimed at preventing Mr Stainbank from continuing to make public statements in the same vein. According to the applicant, it failed to have this effect, as Mr Stainbank has perpetuated the conduct expressly prohibited by the interdict. Attached to the applicant's founding affidavit in the application before me are five documents disseminated by Mr Stainbank on or about 3 October 2014 from his email address: […], as well as from associated email addresses. They are headed:

[14.1] "The Law is Brandishing Racist Batons";

[14.2] “Looking for George Bizos”;

[14.3] “Do Not Interrupt – We’re Stealing”;

[14.4] “Non-Transferral – Nedbank”;

[14.5] “Dr Reuel Khoza’s – GRCC & Nedbank”.

[15] The signature attached to the emails includes a reference to both the second and third respondents. The recipients of the emails are associated with a range of institutions including the media, banks, universities (local and international); legal firms and the Bar, and the South African Human Rights Commission.

[16] The vitriol contained in the five documents is patent. For example, Mr Stainbank refers to Gold Reef City Casino (which he clearly equates with the applicant) as being the product of “*a bunch of bigoted, duplicitous, racists with malleable and selfish black appendages as an integral part of their fraudulent attempt to dispossess me of my property*.” Further, “*the racist ethos that is the Krok Brothers and their Gold Reef City Casino is now part of the George Bizos legacy, and it is that of Rueul Khoza, Nedbank, Old Mutual plc and among others South African media (sic)*”. He refers to the applicant as “*the illegal company*”, and draws a parallel between the applicant and “*Lonmins (sic) Massacre at Marikana*”. He asserts that he has spent “*13 years in litigation fighting racist fraud*”, and refers to Dr Reuel Khoza “*while*

working on the King Report on Corporate Governance … also overseeing the theft of my philosophical content and concept…".

[17] The judiciary also does not escape Mr Stainbank's censure. In the document entitled: "The Law is Brandishing Racist Batons", he expresses the view that: "*The constitution is the supreme law of the Republic. You appear to suffer the erroneous view that the South African judiciary is the supreme law of this Republic. Some judges have a similar delusion which leads them to believe that statute is subject to their racial bias. … Judgments based on the illusion of power, rather than on the oath-of-office are null and void*." Judges Southwood and Willis, as well as Acting Judge Pretorius, who have delivered judgments adverse to him over the course of the 13 years of litigation, are singled out for censure.

[18] In addition, Mr Stainbank expressly states that in his answering affidavit in the main application, he articulates his "*refusal to retract one single word of that overarching charge*", to the effect that the conduct of the Krok brothers and Gold Reef City Casino was "*fraudulent and a racist act of dispossession*". For reasons I will elaborate on later, it is significant to record that the answering affidavit referred to in this statement was filed some three months after the interdict contained in the Order was granted.

[19] The statements contained in the 5 documents described above led the applicant to institute the present contempt proceedings as a matter of

urgency on 14 October 2014. The matter was originally set down on the urgent roll for hearing on 28 October 2014.

[20] On the same day as the scheduled hearing, Mr Stainbank sent emails to a number of people. One of the emails included, as an attachment, his answering affidavit in the contempt application. The second email contained an attachment offering two artworks for sale by way of a bidding process. The second artwork is a satirical piece, depicting Mr George Bizos sitting on gold ingots crushing what appear to be black people, while three white, male judges look on in a "see no evil, hear no evil, do no evil" pose. They are labeled "*the Cabal*" and they are offered "*For Sale*". In the covering document, Mr Stainbank tells the reader that: "*George Bizos, his co-directors Solly Krok, Christopher Till, Kim Feinberg, Steven Joffe, Christian (or Christopher) Kroese, John Kani, Richard Moloko, Sidney Abramowitch have made arrangements for Mike Stainbank, to go to prison for 3 months. Viewing (i.e. of the artworks) will be suspended until the prison term has been served. … They insist on prison because they hate being called racists, liars, fraudsters and thieves*."

[21] For reasons that are of no concern for purposes of this judgment, the matter was not heard on 28 October 2014. It was eventually heard by me on 28 November 2014.

[22] On 7 November 2014 I sent directions, via my clerk, to the parties indicating that the matter would be heard on 25 November 2014. However, due to a

misspelling in Mr Stainbank's email address, he did not receive these directions until approximately 21 November 2014. As a result, the hearing was rescheduled for 28 November, and Mr Stainbank filed an additional set of papers in support of his *in limine* point. At the hearing, Mr Stainbank made something of the email error being an attempt to treat him unfairly. There is no merit in this contention. It was a genuine administrative error, and the matter was rectified as soon as I was made aware of the fact that Mr Stainbank had not received the original direction. In addition, every accommodation was made to have the matter heard on a date suitable to Mr Stainbank, and to give him sufficient opportunity to make further representations to the court, which he did. He gave no indication at the hearing that he had suffered any prejudice in presenting his case to court as a result of the error.

THE POINT *IN LIMINE*

[23] Mr Stainbank's point *in limine* is premised on the averment that the applicant is not "duly incorporated" as a juristic person. This is because, so the argument proceeds, it was incorporated contrary to Mr Stainbank's protected trade mark, THE APARTHEID MUSEUM. Mr Stainbank submits that his trade mark was registered before the applicant was incorporated, and consequently, the Registrar of Companies acted *ultra vires* and contrary to the law in registering the applicant.

[24] Mr Stainbank relies on the case of *Hollywood Curl (Pty) Ltd and Another v Twins Products (Pty) Ltd*[5] as precedent in this regard. His point about this case is that it involved the same Krok brothers who were instrumental in establishing the applicant. Their company, Twins Products (Pty) Ltd, was successful in obtaining relief under section 45(2) of the previous Companies Act.[6] Twins Products succeeded in opposing an appeal against an order enforcing a name change on the part of a competitor on the basis that its registered name, Hollywood Curl (Pty) Ltd, was calculated to cause damage to the Krok's business in terms of which they marketed products under the "Hollywood" label. Mr Stainbank is of the view that this case constitutes binding precedent on this court, and on the applicant, and prevents it from approaching the court for relief when it falls foul of the protection accorded to Mr Stainbank's trade mark. On Mr Stainbank's understanding, the *Hollywood Curl* judgment had the effect that any registration of a company by the Registrar of Companies under a name overlapping with a registered trade mark would automatically be rendered *ultra vires* and invalid.

[25] On this basis, he submits that this court lacks jurisdiction to give audience to an applicant that was incorporated *ultra vires* and in contravention of the law as laid down in the *Hollywood Curl* case. In addition, he submits that the

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5 [1989] 1 All SA 377 (A)

6 Section 45(2) read as follows:

> "If within a period of one year after the registration of any memorandum, ... any person lodges an objection in writing with the Registrar against the name contained in the memorandum ... on the grounds that such name ... is calculated to cause damage to the objector, the Registrar may, if he is satisfied that the objection is sound, order the company concerned ... to change the said name ..."

alleged fraud involved in the incorporation of the applicant, as well as its embedded association with racism, should be sufficient to persuade me, on inherent constitutional grounds, to non-suit the applicant from seeking the protection of the court in the present application.

[26] I earlier pointed out that Mr Stainbank represented himself and the other respondents in the case before me. He also indicated in the papers filed on the respondents' behalf that he was responsible for drafting them and for formulating the defences raised by the respondents. While the respondents' point *in limine* may have a certain layperson's logic to it, it does not survive legal scrutiny. The fact of the matter is that the applicant was incorporated as a section 21 company in 2001, and remains so incorporated. Mr Stainbank accepted that no legal steps had been taken to interfere with its incorporation. The fact that Mr Stainbank may hold the view that it ought not to have been registered under its name because this infringed his pre-existing trade mark does not change the applicant's legal status. Unlike the Krok brothers in the *Hollywood Curl* case, Mr Stainbank did not raise any objection to the applicant's registration under its name in terms of section 45(2) of the previous Companies Act. Furthermore, as any law student will tell you, precedent simply does not work in the manner assumed by Mr Stainbank.

[27] As Mr Salmon for the applicant pointed out in his submissions, the thrust of Mr Stainbank's argument has previously been raised by him and has been

dismissed by the courts. So, for example, in the judgment of Willis J, referred to earlier, the following is said:

> "Without putting too fine a point on it, the first respondent accuses the Krok brothers as having fraudulently and dishonestly 'stolen' his idea of an apartheid museum. It was submitted that there were no 'clean hands' in the bringing of this application. Much emotion was put into describing how disgraceful it has been that the Krok brothers, who allegedly made their fortunes, *inter alia*, by selling skin-lightening creams to black persons, should have established this museum to apartheid. … I accept and understand that there may be ideological sensitivities when white persons are perceived to be the driving forces behind a museum which has apartheid as its focus. I also accept that there may be sensitivities in there being a close association between a museum to apartheid, on the one hand and a casino and entertainment complex, on the other. If casinos are indeed 'dens of iniquity', the close congruity between a casino and an apartheid museum may offend at least some persons. Nevertheless, except when it comes to the enforcement of constitutional rights, the courts cannot arbitrate ideological disputes between members of the public."[7]

[28] I am in respectful agreement with the views of Willis J in this regard.

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[7] At para 9

[29] Mr Stainbank sought to persuade me that on broad constitutional grounds, and in a quest to prevent the perpetuation of racism, this court should decline to exercise its jurisdiction so as to come to the aid of the applicant. I am unable to accept Mr Stainbank's submissions in this regard. The present case concerns an application to hold Mr Stainbank and his associated respondents in contempt of an order of this court, which order was sought and granted at the suit of the applicant, and is directed against the respondents. Section 165(5) of the Constitution provides that:

> "An order or decision issued by a court binds all persons to whom and organs of state to which it applies."

Mr Stainbank's appeal to constitutionalism and the Constitution ignores this fundamental constitutional principle that lies at the very heart of the present matter. His ideological stance, deeply held as it may be, cannot justify a departure from this principle. This would be antithetical to the very rule of law he purports to seek to uphold.

[30] In the circumstances, the respondents' point *in limine* is without substance and must fail. This court would be failing in its constitutional duty if it declined to consider and make a determination on the applicant's application.

[31] I turn now to consider the main issue before me, viz. whether the respondents are guilty of contempt.

THE PRINCIPLES REGULATING CONTEMPT OF COURT

[32] The civil contempt procedure is a firmly established practice in the High Courts in terms of which a party may, by way of a notice of motion, seek a committal in order to bring about a proper discharge of obligations under an order *ad factum praestandum* or a prohibitory interdict. It is a valuable and important mechanism for ensuring compliance with court orders.[8]

[33] Contempt of court in this context means "the deliberate, intentional (i.e. willful) disobedience of an order granted by a Court of competent jurisdiction".[9] The requirements for contempt of court are: the existence of the order concerned, service of the order on, or notice thereof to the respondent, non-compliance by the respondent with the order, which non-compliance must be willful and *mala fides*.

[34] The onus is on the applicant to establish these requirements beyond reasonable doubt. However, once the applicant has established the existence of the order, service or notice and non-compliance, the respondent assumes an evidentiary burden in respect of the willfulness and *mala fides* elements. If the respondent fails to adduce evidence as to whether the non-compliance was willfulness or *mala fides*, contempt will be established beyond reasonable doubt.[10]

[35] In other words:

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8 *Fakie N.O. v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at 344G-345A

9 *Consolidated Fish Distributors (Pty) Ltd v Zive* 1968 (2) SA 517 (C) at 522

10 *Fakie N.O. v CCII Systems (Pty) Ltd*, loc cit

"… Once a failure to comply with an Order of Court has been established, both willfulness and *mala fides* will be inferred, and since the defaulting party is regarded as having intended the natural consequences of his action, namely to bring the administration of justice into disrepute and contempt, it will be incumbent on him/her to demonstrate that his/her disobedience was neither *mala fide* or willful."[11]

[36] The object of contempt proceedings is to obtain the imposition of a penalty in order to vindicate the court's honour consequent upon the disregard of its order as well as to compel performance in accordance with the order.[12] Accordingly, there is an important public interest and rule of law element inherent in ensuring obedience to court orders through contempt proceedings.[13] As this court has stated, "*chaos may result if people are allowed to defy court orders with impunity*".[14]

[37] The willful but *bona fide* disobedience of a court order does not constitute contempt. So, for example, a reasonable misunderstanding of the court order, such that a respondent mistakenly believed that he or she was entitled

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11 *UNCEDO Taxi Service Association v Mtwa and Others* 1999 (2) SA 495 (E) at 501D

12 *Fakie N.O. v CCII Systems (Pty) Ltd*, above at 333A-B, and see the additional cases cited by Farlam *et al* Erasmus Superior Court Practice (RS45) (hereafter "Erasmus") B1-p58G, note 353

13 *Victoria Park Ratepayers' Association v Greyvenouw CC and Others* [2004] 3 All SA 623 (SE) at para 5

14 *Culverwell v Beira* 1992 (4) SA 490 (W) at 494A-C

to act as he or she did, will not amount to contempt.[15] On the other hand, a respondent's belief that the order was wrongly granted will not constitute a defence. This principle was stated by the Supreme Court of Appeal as follows:

> "However, the outcome of the review application is irrelevant to the question whether the Respondents were acting in contempt of Court. In terms of the Court Order Gap Distributors and Trust Electrical Wholesalers are interdicted from infringing registered design A96/0687. That Court Order is a final order and has to be obeyed even if it is wrong as is alleged by the Respondents. Should the review application be successful and the registration of the design be set aside, the interdict would come to an end as there would no longer be a registered design, but until that happens the interdict stands and has to be obeyed."[16]

[38] The same principle was earlier expressed by this court in the *Culverwell v Beira* judgment:

> "All orders of this Court, whether correctly or incorrectly granted, have to be obeyed until they are properly set aside."[17]

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15 *Consolidated Fish Distributors (Pty) Ltd v Zive*, above, at 524D

16 *Clipsal Australia (Pty) Ltd and Others v Gap Distributors and Others* 2010 (2) SA 289 (SCA) at para 20

17 Above, loc cit

See, too, *Bezuidenhout v Patensie Sitrus Beherend Bpk*, in which the court held, in the context of contempt proceedings, that: "An order of court stands and must be obeyed until set aside by a court of competent jurisdiction."[18]

[39] All of these decisions echo the fundamental constitutional principle contained in section 165(5) of the Constitution, to which I made reference earlier. The principal is a critical component of the rule of law, which is an express founding provision of the Constitution.[19]

[40] Finally, in view of the public interest element in ensuring compliance with court orders, contempt proceedings inherently involve an element of urgency.[20]

ARE THE RESPONDENTS IN CONTEMPT?

[41] The respondents do not dispute the existence of the Order, notice of the Order, or their non-compliance. In fact, at the hearing before me, Mr Stainbank offered the information that he had distributed the emails in question to significantly more recipients than those recorded in the applicant's affidavits.

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18 2001 (2) SA 224 (E) at 228F-230A

19 Section 1(c) of the Constitution

20 *Victoria Park Ratepayers' Association v Greyvenouw CC and Others*, loc cit; *Protea Holdings (Pty) Ltd v Wright and Another* 1978 (3) SA 865 (W) at 868H-869A; *Wright v Saint Mary's Hospital, Melmoth and Another* 1993 (2) SA 226 (D) at 228 E-F

[42] In accordance with the principles discussed above, the respondents' failure to dispute these first three elements means that I must infer that their non-compliance with the Order was willful and *mala fide* unless they adduce evidence to the contrary.

[43] In his statement filed on behalf of the respondents opposing the application, Mr Stainbank records that he denies that the respondents are in contempt. He records further that he will address the matter at the hearing. Save for this denial, the statement does not address the respondents' defence directly. Mr Stainbank states his view that the content of the applicant's founding affidavit "*is too far beyond any semblance of the facts and the documented evidence that is available*", and that it "*presents an affront to my culture; the essence of my intrinsic Afrikan (sic) self and beliefs*". In the additional statement filed in support of the respondents' point *in limine*, Mr Stainbank records that: "*The truth of South African history in every detail is certainly not in the interest of the brothers Krok and Gold Reef City Casino, which owes its origins to the foundational profits derived from the abject suffering of the indigenous dispossessed as they targeted black skin. Contempt of court and imprisonment will silence that voice: Apartheid lives. Long live the South African Judiciary*." (my emphasis)

[44] From these extracts, as well as from Mr Stainbank's submissions in court, it seems to me that the respondents' defence rests on the premise that they know the truth behind the incorporation of the applicant and the establishment of its museum; this truth is very different to that put into the

public domain by the applicant and supported by the courts thus far; in truth, the applicant and its museum are intimately linked to South Africa's apartheid past, and the perpetuation of racism; the respondents are entitled to publicise the real truth, and should not be muzzled by a court order to prevent them from doing so. On this basis, Mr Stainbank submitted to me at the hearing that in the interests of justice, and on the basis of the need to advance the constitutional imperatives of human dignity, the achievement of equality and non-racialism, I should reject the attempt to find the respondents guilty of contempt of the Tshabalala J Order.

[45] I have no doubt that Mr Stainbank is absolutely convinced of the truth as he sees it. I also have no doubt that he is deeply committed to the cause he espouses in his writings, and that he feels justified in what he believes is a betrayal by the applicant of his ideal of exposing the evils of apartheid though a museum project. But, none of this, however sincerely Mr Stainbank believes in it, justifies the respondents' patent contempt of the Tshabalala J Order.

[46] As I have already recorded, our courts have time and again laid down that even though a respondent may believe that a court order was wrongly granted, unless and until the order is set aside, the respondent is not at liberty to ignore it. Non-compliance in those circumstances will amount to contempt. The reason for this is not hard to fathom: if every person could disobey a court order because of his or her personal belief that it was wrongly granted, the administration of justice would fall into chaos.

[47] In the present matter, the respondents have adduced no evidence to suggest that they did not understand the Order, or that their non-compliance was innocent. On the contrary, Mr Stainbank's conduct, and the attitude he has displayed throughout, demonstrates clearly that he is very aware of the prohibition contained in the Order, and has made a conscious decision to act in defiance of it in order to advance what he believes to be the true state of affairs. As I recorded earlier, he has expressly stated that he refuses to retract one single word of his averments of fraud and racism against the applicant. This statement was made under oath in his answering affidavit in the main application, which was filed after Tshabalala J granted the Order. He repeated the statement in October 2014, shortly before the contempt proceedings were instituted. Mr Stainbank perpetuated this attitude thereafter: in the emails sent out on the day of the first scheduled hearing of the present application, he implies once again that various people associated with the applicant are racists, liars, fraudsters and thieves, and says that they have "made arrangements" for him to go to prison for 3 months. It is impossible to draw any other conclusion from Mr Stainbank's conduct but that he is utterly contemptuous of the interdict imposed on him and the other respondents by this court. By his words and conduct, he has demonstrated time and again that he has no respect for, or intention to comply with, court orders that do not support his concept of reality.

[48] In these circumstances, I am satisfied that the applicant has established, beyond reasonable doubt, that the respondents are guilty of contempt of the Order.

[49] I have already indicated that contempt of court is inherently a serious matter, deserving of an appropriately severe sanction. In the present matter, the contempt was patently *mala fide*. Mr Stainbank expressed no contrition for his conduct. On the contrary, his statements indicate that he sees the threat of imprisonment as justifying further defiance of the Order. The underlying objective of holding someone in contempt of court is to secure compliance with the order concerned, and to restore the dignity of the court. The applicant has submitted that the threat of a 3-month period of imprisonment is appropriate in this case to meet this objective. I agree with this submission: perhaps when reality sinks in, Mr Stainbank will reflect on his conduct and the harm it has done to dignity of this court, and elect to purge his contempt rather than to submit himself to a not insignificant term of imprisonment. In an effort to provide Mr Stainbank with sufficient time to reflect on the consequences of his decision, I will provide him with an additional 5 days within which to purge his contempt.

[50] Insofar as the issue of costs is concerned, the applicant seeks a punitive costs order against the respondents. In view of the very deliberate and public nature of the contempt exhibited by them, I am of the view that such an order is warranted in this case.

ORDER

[51] I make the following order:

1. Condonation is granted for the process in and hearing of this matter other than in accordance with the Uniform Rules of Court, and for treating it as one of urgency;

2. The First to Third Respondents are declared to be in contempt of the Court's Order in case number 2013/14590 made on 24 May 2013 ("*the Court Order*");

3. The First Respondent is sentenced to imprisonment for a period of three months, which sentence is subject to paragraphs 4 to 7, below.

4. In order to give effect to the sentence imposed in terms of paragraph 3 above, the Registrar of this Court is directed to issue a warrant of arrest in respect of the First Respondent, which warrant shall be effective from 15 days after the date of this order;

5. The sentence and direction in paragraph 3 are suspended for a period of 15 days from the date of this order;

6. The First Respondent is directed to purge his contempt, and to cause the Second and Third Respondents to purge their contempt, within 15 days from the date of this order, by:

a. Disclosing to the Court and the Applicant, in writing under oath, the names and contact details of each and every person to whom any of the statements forming the subject matter of this application have been published, communicated and/or disseminated;

b. Writing to each and every one of those recipients and explaining that their conduct was in contempt of the Court Order, withdrawing the statements, and issuing an apology to the Applicant in the wording shown in the apology set out hereunder, and marked "Annexure A", which apology is to be contained:

   i. Prominently on the home page of the First Respondent's website at www.apartheidmuseum.org.za and to remain there for a period of 6 months; and

   ii. In the body of the email communications sent to the recipients mentioned in paragraph 5a above.

c. Copying the Applicant's appointed legal representative (using the email address […]) in each and every such notification to the recipients.

7. Should the First Respondent fail to comply with the Court Order within the period of 15 days stipulated in paragraph 5 above, the sentence in paragraph 3 hereof will come into effect immediately;

8. Directing the First to Third Respondents, jointly and severally the one paying the others to be absolved, to pay the costs of this application, on the scale as

between attorney and client, including the cost consequent upon the employment of two counsel.

ANNEXURE A

APOLOGY

Mike Stainbank, The Apartheid Museum Foundation NPC (Registration No.2009/007306/08) and The Apartheid Museum (Pty) Ltd (Registration No. 2009/007114/07) were, in terms of an order delivered by the honourable Justice Tshabalala of the South Gauteng High Court on 24 May 2013, interdicted and restrained, pending the outcome of proceedings in case number 14590/2013, from defaming the South African Apartheid Museum at Freedom Park, its current and/or erstwhile directors and/or its legal representatives, by publishing and/or disseminating to the public statements to the effect that they, or any one of them:

(a) have perpetrated a fraud, or perjury, or deceit in connection with the Applicant, the museum it operates, and the formation, incorporation or foundation of either;
(b) are criminals, racists or liars; and/or
(c) “stole” or “misappropriated” (or expressions to that effect) any intellectual property, idea or anything from or belonging to Mr Stainbank.

Recent statements communicated, published and/or disseminated to you by Mike Stainbank, The Apartheid Museum Foundation NPC and The Apartheid Museum (Pty) Ltd were communicated, published and/or disseminated in contempt of the Court’s order.

Mike Stainbank, The Apartheid Museum Foundation NPC and The Apartheid Museum (Pty) Ltd hereby unconditionally retract all statements made to such effect and apologise unreservedly to the South African Apartheid Museum at Freedom Park, and its current and erstwhile directors and legal representatives for having made such statements.

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R KEIGHTLEY
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date Heard: 28 November 2014
Date of Judgment: December 2014
Counsel for the Applicants: Adv. O Salmon SC
Adv I Joubert
Instructed by: Edward Nathan Sonnenbergs Inc
Counsel for Respondent: Mr A M Stainbank