



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

CASE NO: 41126/2020

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED. YES.

21.10.2021.

DATE

Electronic.

SIGNATURE

In the matter between:

CT MED AND TRAUMA (PTY) LTD t/a CAPE MEDICS

Applicant

and

AIRPORTS COMPANY SOUTH AFRICA SOC LIMITED

First Respondent

MPOFU; NOMPUMELELO

Second Respondent

MATSHOGO; BADISA

Third Respondent

MBOMVU; BONGIWE

Fourth Respondent

JUDGMENT

CRUTCHFIELD AJ:

[1] The respondents in the main application seek leave to appeal ('leave'), against the whole of my judgment including the costs order delivered on 12 August 2021. The parties are referred to herein as they were in the main application.

[2] The respondents contend that the prospective appeal holds prospects of success sufficient to justify the award of leave in terms of section 17(1)(a)(i) of the Superior Courts Act, 2013.

[3] The applicant opposes the application for leave to appeal (the 'application'), primarily on the basis that the application is without merit and the prospective appeal is equally without reasonable prospects of success.

[4] The application comprises of a plethora of grounds for appeal, various of which are dealt with in the judgment in the main application and others of which are without merit. I do not propose to deal with each ground but to focus on one in particular.

[5] The respondents take issue with my finding that the respondents' non-compliance with the court order, incorporating the settlement agreement, granted on 10 June 2020 under case number 10223/2020 ('court order'), was both wilful and *mala fide*.

[6] The respondents argue that I misapplied the onus in making the impugned finding and that I relied on baseless assumptions rather than facts, in order to find both wilfulness and *mala fides*. The essence of the respondents' argument is that there is *prima facie* doubt that the respondents' conduct, considered individually, was both wilful and *mala fide*.

[7] The respondents assert inter alia that parties who are in wilful and *mala fide* contempt would not embark upon and participate in the verification exercise that

demonstrated that some of the contracted equipment was not delivered, some was incomplete and other equipment not according to specification. Furthermore, the respondents contend inter alia that the correspondence between the Applicant and ACSA and the tone thereof, is not indicative of contempt.

[8] The respondents rely on the judgment in *Fakie NO v CCII Systems (Pty) Ltd*¹, arguing that the facts before me are analogous to those in *Fakie* in that the auditor-general in *Fakie* provided an explanation for the failure to comply with the court order. The respondents contend that ACSA's explanation, similarly, is sufficient. Moreover, that ACSA's explanation demonstrated that it had not deliberately violated the court order and that there was no wilfulness or *mala fides* on the part of the respondents, considered individually.

[9] The respondents, in my view, hold a reasonable prospect of success on the ground of whether or not the respondents' non-compliance with the court order was both wilful and *mala fide* and I intend to grant leave to appeal to the Full Court of this Division on that ground alone.

[10] By virtue of the aforementioned, I grant the following order.

1. The first, second, third and fourth respondents in the main application, being the first, second, third and fourth applicants in the application for leave to appeal, are granted leave to appeal to the Full Court of the Gauteng Local Division on the ground of whether or not the respondents' non-compliance with the court order

¹ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 325 (SCA) ('*Fakie*') para 65 and 67.

granted on 10 June 2020 under case number 10223/2020, was both wilful and *mala fide*

2. The costs of the application for leave to appeal are costs in the appeal.

**A A CRUTCHFIELD SC
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG**

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 21 October 2021.

COUNSEL FOR THE APPLICANT: Mr P T Roodt SC.

INSTRUCTED BY: Mfusi & Co Attorneys.

COUNSEL FOR RESPONDENTS: Mr W R Mokhare SC &
Mr M Skhosana.

INSTRUCTED BY: Mashiane Moodley & Monama Inc.

DATE OF THE HEARING: 4 October 2021.

DATE OF JUDGMENT: 21 October 2021.