

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

CASE NO. 22894/21

REPORTABLE:NO/ YES

OF INTEREST TO OTHER JUDGES: NO/YES

REVISED

DATE: 7 JUNE 2021

In the matter between:

MOLEFE JOSEPH NOGE
VERONICA NOGE
DIRA SOLOMON MOGALE

FIRST APPLICANT
SECOND APPLICANT
THIRD APPLICANT

and

JACOBETH NOGE
NTHABISENG NOGE
THABANG MAGASENGE
OUPA A MENYUKU
TSHEPO MOKWAPE

1st RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT

Date of Judgment: This judgment was handed down electronically by circulation to the parties' legal representatives by email, release to the library of the Court and uploaded on caselines. The date and time for handing down judgment is deemed to be 14:h30 7 June 2021.

Summary: Urgent application for reconsideration of an eviction order. Application removed from roll for lack of urgency. Contempt of court arising from the eviction order. The respondents failing to comply with the order on the ground of the pending reconsideration application. The principle that court orders are to be obeyed immediately irrespective of whether they are valid or not.

JUDGEMENT

Molahlehi J

Introduction

[1] Before this court, there are two urgent applications concerning the dispute over the property ERF [....]/House No. [....] Lehana Street, Dipkloof, Zone 4, Soweto, Gauteng Province. The two applications are about the urgent reconsideration of the default judgment made against the respondents on 12 May 2021 and the contempt of the court's order made on 12 May 2021.

[2] On 25 May 2021, Meyer J made an order consolidating the two applications.

The background facts

[3] The dispute in this matter essentially concerns a family house that the first applicant claims to have inherited from his mother. According to the applicant, the family convened a meeting after his mother passed away and agreed that he should inherit the house. The first respondent, a relative of the applicant, was also present at the meeting.

[4] At some point, the first applicant purchased another property and moved out of the one in dispute. In the meantime, the first respondent was evicted from her mortgaged house after the bank foreclosed it.

[5] In his founding affidavit, the first applicant alleges that the family approached him after the first respondent lost her house and persuaded him to allow her to stay in the property, which is the subject of the dispute.

[6] It would appear that after staying in the property for some time, the first respondent denied the applicant access to the property. In response, the first applicant obtained an eviction order against the respondents. The respondents did not comply with the eviction order, and thus, the applicant executed the eviction order resulting in them being evicted on 3 May 2021.

[7] After the eviction, the respondents went back and forcefully gained entry into the property.

[8] Following the above conduct of the respondents, the applicant instituted spoliation proceedings to regain possession of the property. The application served before Dippenaar J on 10 May 2021. The respondent attended the hearing on the virtual platform which the Registrar arranged. They were at that stage not legally represented. The matter stood down for a short while, for the applicants to discuss how they wished to proceed. After that, the court was informed that the respondents had instructed attorneys to represent them, and consequently, the matter was rolled over to the following day, 11 May 2021. However, the same attorneys withdrew after their unsuccessful application to have the matter postponed. The respondents failed to attend the hearing, and accordingly, the matter was considered in the papers. The court, on the basis of the papers before it, made the following order:

- "1. That this application be heard as a matter of urgency in terms of Uniform Rule 6(12) (a) and dispensing with the ordinary forms and service provided for in the Court Rules,
2. The Respondents and/or any other person acting directly or indirectly are directed and interdicted from unlawfully and illegally occupying the property known as ERf No [...] / Mouse [...] Lehana Street Diepkloof Zone
- 4.
3. The Respondents are directed to vacate and remove all their properties within 24 hours of this Court Order and not to come near the property at a radius of 1 kilometre and to entice/encourage members of the community to intimidate the Applicants or disturb public peace.

4. In the event the Respondents and or any other person acting directly or indirectly fails to voluntarily vacate the property within 24 hours, the Sheriff/ Deputy-Sheriff Lenasia, assisted in so far as necessary by the South African Police Services, is directed and authorised to:

4.1 Remove the Respondents and any other person found inside the property or obstructing the Sheriff/ Deputy Sheriff from executing this order,

4.2 To remove all properties belonging to the Respondents from the property mentioned in point 1 above and place the applicant in vacant, undisturbed and peaceful occupation of the property mentioned in Point 1,

4.3 The Contempt of Court relief sought is postponed *sine die*, and Applicants are granted leave to file additional or supplementary affidavits in relation to the subsequent Contempt of Court proceedings and to amend their notice of motion if necessary."

[9] Following the above order, the respondents sought an application to have the above order reconsidered. The applicants, on the other hand, instituted contempt of court proceedings on 14 May 2021. The matter was removed from the roll and re-enrolled for 25 May 2021.

[10] In the meantime, the Sheriff executed the Order Dippenaar J. The respondents acting in defiance of the order, moved back with their furniture into the property. They were charged with contempt of the court order and was released on bail by the Kiptown Regional Court.

[11] On 25 May 2021, the matter was postponed at the instance of the respondents as they were not ready to argue. In granting of the postponement, Meyer J made the following order:

"1. The hearing of reconsideration application and contempt of court application is consolidated.

2. Both applications are postponed *sine die*.

3. The Respondents are to file their founding affidavit in the reconsideration application and their answering affidavit in the contempt of court application on or before 04H00 pm on Wednesday 26 May 2021.

4 The Respondents are to pay wasted costs occasioned by the postponement of each application on Attorneys and Client Scale."

[12] The respondent failed to comply with paragraph three of the above order in that they filed their answering affidavit on 27 May 2021.

Reconsideration application.

[13] The respondent's counsel conceded during the argument that the respondents ought to have filed an application for condonation for the late filing of their answering affidavit. He further acknowledged that the respondents did not comply with the requirements of urgency. In this regard, it was conceded that the respondents did not comply with the Practice Directive in that they did not file a practice note and their heads of argument.

[14] It was for the above reasons that this court made the following order:

"The application for reconsideration is removed from the roll for lack of compliance with the requirements of urgency, including the order of Meyer J, with costs."

Contempt of court.

[15] I now turn to deal with the contempt application, which is also instituted on an urgent basis. In my view, it is apparent from the reading of the papers that the applicants have made out a case for urgency. I accordingly proceed to determine the merits of the application.

[16] The legal requirements governing the issue of contempt of court are well established in our law. The requirements are:

- (a) The existence of a court order.
- (b) The order must be served or brought to the respondent's attention.

(c) There must have been noncompliance which is wilful and mala fides. In other words, it must be shown that the respondent acted deliberately in defiance of the court order.¹

[17] There is no dispute in the present matter that the requirements for contempt of the court order have been satisfied. However, the respondents contend that the noncompliance with the order was not wilful or deliberate as they had applied for reconsideration. This argument, in my view, is unsustainable because the law is clear as to the status of the court order pending reconsideration. The basic rule is that a court's order is binding until it is set aside. In *Culverwell v Beira*,² the court held that:

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

[18] The principle was restated in *Bezuidenhout v Patensie Sitrus Beherend Bpk*,³ in the following terms:

"An order of a Court of law stands until set aside by a Court of competent jurisdiction. Until that is done the Court order must be obeyed even if it may be wrong (*Culverwell v Beira* 1992 (4) SA 490 (W) at 494 A – C). A person may even be barred from approaching the Court until he or she has obeyed an order of Court that has not been properly set aside."

[19] The respondent in the present matter does not dispute the knowledge of the Order of Dippenaar J. Their only defence, as stated earlier, is that they did not wilfully disobey the order. After all, they believed that they were entitled not to comply with the order because they had applied to reconsider the order. In light of the above authorities, there was no justification or legal basis not to comply with the court order of Dippenaar J, and thus the respondents are guilty of contempt of court. The facts and circumstances of this matter support the applicants' proposition that

¹ See *Matlhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Limited* (CCT 21 7/1 5; CCT 99/1 6) (2017) ZA CC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC).

² 2010 (2) SA 289 (SCA). 1992 (4) SA 490 (W) at 494A-C. See also *Clipsal Australia (Pty) Ltd and others v GAP Distributors and others*,

³ 2001 (2) SA 224 (E) at 229 B-D.

the respondents deserve custodial incarceration. I do not, however, agree that the period of 12 months' imprisonment is fair and reasonable.

Order

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

1. This application is treated as one of urgency in terms of Uniform Rule 6(12)(a) and noncompliance with the ordinary forms and service provided for in the Court Rules are condoned.
2. That the respondents are declared to be in contempt of order made by Dippenaar J dated 12 May 2021.
3. Each of the respondents are sentenced to a period of 90 (ninety) days imprisonment, and are committed to the Johannesburg Correctional Services, which sentences are wholly suspended on condition that the respondents voluntarily vacate the property known as Erf No [...] / House [...] Lehana Street Diepkloof Zone 4, within 24 hours of this order.
4. That the Sheriff / Deputy Sheriff Lenasia is authorised and directed to immediately arrest and detain the respondents if found within the property and still violating the order of Dippenaar J dated 12 May 2021 and commit them to Johannesburg Correctional Service, upon the issue of their warrant of committal.
5. The respondents are ordered to pay costs of this application, jointly severally the one paying the other to be absolved.

E Molahlehi
Judge of the High Court,
Gauteng Local Division,
Johannesburg

Representatives:

For the Applicant: Mr Khumalo

Instructed by; Khumalo Attorneys

For the Respondent: Mr Ayanda Ntanjana

Instructed by: AL Ntanjana Attorneys

Date of hearing: 2 June 2021

Delivered: 7 June 2021.