REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 25846/2014

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

13/06/2014 .....
DATE SIGNATURE

19/6/14

In the matter between:

THEODORE FREDERIK KIES	Applicant
and	
PIETER HENDRIK STRYDOM	First Respondent
JOHN RODERICK GRAEME POLSON	Second Respondent
LOUIS STRYDOM	Third Respondent
DEON BOTHA	Fourth Respondent
SANDRA JOAN McKENZIE	Fifth Respondent

JUDGMENT

THOBANE, AJ

[1] On the 22nd January 2014 the applicant launched an application under case number 4363/2014 in this court for an order in the following terms:

1.1. That the sequestration order granted against the applicant on 28th February 2012, under case no. 16679/10 is rescinded, alternatively that applicant may apply for his rehabilitation.

1.2. That respondents are ordered to pay the costs of this application in an attorney and client scale. Applicant to appoint counsel prior to replying affidavit,

1.3. Further and/or alternative relief.

[2] The applicant is an adult male business person, who was on the 28th February 2012, by order of this Court, finally sequestrated.

[3] According to the applicant, respondents 1 to 3 are trustees of Allegro Bridging (PTY) Ltd, an unregistered credit provider from whom he, as a developer, obtained development finance. Respondents 4 and 5 are trustees in his estate.

BACKGROUND

[4] These proceedings have their origins from the sequestration of the applicant. What is discernible and clear is that the applicant is unhappy with the order of sequestration, which he opposed with vigor. His opinion is that it should not have been granted. His behavior, which will follow here under, is indicative of his resolve to stop at nothing to have the order overturned.

[5] On the 9th September 2012, a few months after his sequestration, the applicant launched an application against 10 entities plus respondents one to four in these proceedings. In total there were fourteen respondents in that application. The applicant sought an order for the following relief:

(a) to set aside the sequestration order;

(b) award damages to the applicant.

[6] On the 19th February 2013 the Honorable Vorster, AJ, dismissed the application and made the following order:

"Dat die aansoek word van die handgewys met koste insluitend koste van twee advokate"

[7] Thereafter in March 2013 the applicant issued a summons against various defendants, 18 in total, including the respondents herein, where he claimed payment in the sum of R94 905 762,00. The cause of action was wrongful sequestration. The applicant took various irregular steps in that matter. He, *inter alia*, served a Notice in terms of Rule 47, a Notice in terms of Rule 32 as well as a Notice of Set Down.

[8] The respondents herein along with the 14 others, in that matter applied to court, as they were entitled to do, for relief. The following order was accordingly granted by Honorable Justice Rabie:

1. THAT the respondent's notice of application for security for costs (rule 47) and summary judgment (rule 32) be and is hereby set aside.

2. *THAT the respondent's notice of application for date of set down rule 6(f) be and is hereby set aside.*
3. *THAT the respondent pays the costs of this application.*
4. *THAT this order be served by the Sheriff or Deputy Sheriff at 479B Milner Street, Waterkloof, Pretoria.*

[9] On the 7th January 2013 the applicant launched another application. The second applicant in that matter was Theo & Izak Ontwikkeling CC, (In liquidation). According to the Notice of Motion, the following order was sought:

1. *That respondent no. 9, Allegro Bridging (PTY) Ltd, withdraw their abortive claim of R39 420 351,90 lodged with the Master of the High Court on file No. 2637/09, alternatively have the claim expunged.*
2. *That respondents 1-14 withdraw their incorrect claim of R22 961 075,89 under case number 16679/2010, or have their claim expunged.*

[10] The first to fourth respondents herein, were respondents number eleven to fourteen respectively, in the application referred to above. The fifth respondent was not a party in those proceedings.

[11] The respondents opposed the application referred to above and brought a counter application, seeking an order interdicting the applicant from *inter alia*, harassing them. The application was dismissed with costs. The counter application was granted with costs. I pause to indicate that prior to the granting of the order, the applicant had lodged various complaints with, the Master, the SAPS, The Minister of Justice as well as the Law Society.

[12] The Honorable Justice Mothle, on the 10th of April 2013, granted an order in the following terms:

1. THAT the first applicant be restrained from:

1.1. Harassing the eleventh, twelfth and thirteen respondents;

1.2. Lodging complaints against the eleventh, twelfth and thirteenth respondents with the Master, the South African Police Service, The Minister of Justice and the Law Society without first having obtained the leave of this Court to do so;

1.3. Instituting any litigation against the eleventh, twelfth and thirteenth respondents, the fourteenth and fifteenth respondent or or sixteenth, seventeenth and eighteenth respondents, without having obtained the leave if this Court to do so.

2. THAT the first applicant pays the costs of two counsel in this application.

3. THAT the application be and is hereby dismissed with costs of two counsel.

[13] The application referred to in 11 *supra,* was argued on the 8th April 2013. Judgment was reserved and only delivered on the 10th April 2013. On the date on which the application was being argued, the 8th April 2013, the applicant launched another application seeking, according to the Notice of Motion,the following order:

"That the sequestration order that was granted in the North Gauteng High Court under case No. 16679/10, made on the 28th February 2010, is uplifted.

[14] The first to fourth respondents herein, were respondents eleventh to fourteenth respectively, in the application referred to 13 above. The application was opposed and the

respondents, as they were within their rights to do, filed a counter application wherein they sought an order holding the applicant in contempt of the Court order granted on the 10th of April 2013, by the Honourable Justice Mothle.

[15] The application came before the Honourable Justice Potterill, who on the 11th October 2013, granted an order in the following terms:

1. *DAT die aansoek van die hand gewys word met koste;*
2. *DAT die teen aansoek toegestaan word. Die applikant word verwys na 30 (dertig) dae gevangenisetting maar word opgeskort op voorwaarde dat die applikant die interdik soos verwoord op p 151 van die stukke nakom;*
3. *DAT die applikant die koste van die aansoek dra.*

[16] On the 24th June 2013, the applicant yet again, launched another application. This time around it was against The Master of the High Court as the first respondent as well as Allegro Bridging (PTY) Ltd as the second respondent. According to the Notice of Motion, the order sought was as follows:

> *"To grant permission to applicant to proceed with an urgent investigation pertaining an alleged illegal sale of applicants immovable property commonly known as Hornbill Close"*
>
> *"Reversal of registration"*
>
> *"That all proceedings is stayed in order to allow the Master of the High Court to - convene a second meeting of creditors without the constant interference of respondents"*

[17] The respondents, again, launched a counter application in view of his persistence. The matter came before the Honourable Justice Murphy who on the 27th January 2014, gave an order in the following terms:

1. *THAT the main application be and is hereby dismissed with costs.*
2. *THAT the counter application is granted in the following terms:*
    - 2.1. *The applicant is ordered to pay all legal costs in respect of which orders have been granted against him by this court and for which he is liable, prior to proceeding with or instituting any further litigation against any of the companies in the CMM or Allegro Group, the curators and/ trustees;*
    - 2.2. *The applicant is ordered to pay the costs of the counter application.*
    - 2.3. *The registrar shall not permit the applicant to file any papers in relation to any matter whatsoever without first receiving an appropriate direction in that regard from the Deputy Judge President of this division.*

[18] After the issue of the processes referred to in 16 above, two months later, on the 27th August 2013, the applicant launched another application. The application was headed "APPLICATION IN TERMS OF SECTION 116 (bis) SECTION 82 (8) OF THE INSOLVENCY 24/1936". The application was against the fourth respondent in these proceedings. The applicant sought the following order:

"for a declaratory order to compel the respondent to: submit documents as requested in the notice served on respondent on 2-8-2013"

"submit undertaking to reverse the registration of the property of the applicant that we illegally sold, alternatively a undertaking in terms of the provisions of section 82(8) of the Insolvency Act"

"Declare the 2nd meeting of the creditors void as it was held without the compulsory presence of applicant as determined by law. Convene a special meeting of creditors in the compulsory presence of applicant".

[19] The application was opposed and the following *points in limine* were raised;

19.1. That the applicant had issued the application without the requisite leave of this court,

19.2. That the applicant had no *locus standi,*

19.3. That there was non joined in that the applicant had failed to cite other trustees,

19.4. *Lis pendens.*

[20] The matter has not progressed after the points *in limine* were raised.

[21] In the mean while, the applicant, served on the 16th August 2013, a process issued out of the Constitutional Court. The first, third and fourth respondents herein were cited in that matter as first, second and seventh respondents respectively. The said respondents

were then obligated to oppose the Constitutional Court application. On the 23rd October 2013 the Constitutional Court, through the Senior Registrar, issued out the following order:

> *"The Constitutional Court has considered the application for direct access. The application is dismissed as it is not in the interest of justice to hear the matter at this stage:*
>
> *(a) The applicant may apply for relief he seeks on appeal to the Full Bench of the High Court or Supreme Court of appeal; and*
>
> *(b) The applicant has failed to provide compelling reasons for failing to exhaust these processes before approaching this Court".*
>
> *The following order is issued:*
>
> *1. The application is dismissed.*
>
> *2. There is no order as to costs.*

[22] Armed with the Constitutional Court Order and basing his latest application on the finding of the Highest Court in the land, the applicant launched another ill advised and misguided application this time around appealing the final sequestration order. A notice in terms of Rule 30 was filed in view of the irregular path the applicant had gone down on. The applicant withdrew the appeal by serving a notice of withdrawal. The respondent, as he was entitled to do, issued and served a notice in terms of Rule 41(1)(c).

[23] The appeal served before the Honorable Justice Preller on the 27th February 2014, who granted the following order:

"After reading the argument on behalf of the respondent, the Court makes the following order:

1. *That it is noted that the applicant has withdrawn his application,*
2. *The applicant is ordered to pay the costs of the application, and that such costs be on an attorney and client scale.*

[24] On the 22nd January 2014 the applicant issued a fresh application. There are fifteen respondents cited in that matter. Respondent one to five in this matter are respondents ten to fourteen respectively in that application. The applicant was advised through numerous letters that the application was in flagrant disregard of the interdict, the contempt order as well as the costs order. The applicant proceeded to set the matter down for hearing. The applicant sought the following relief:

1. That the sequestration order granted against the applicant on 28 February 2012, under case No. 16679/10 is rescinded, alternatively that applicant may apply for his rehabilitation.
2. The respondents are ordered to pay the cost of this application in an attorney and client scale. Applicant appoint Counsel prior to replying affidavit.
3. Further and/or alternative relief.

[25] On the 30th March 2014, the applicant launched the current proceedings, which are opposed, wherein he sought the following order:

That applicant, in the interest of justice is granted consent by the Court to proceed with the application to set aside a sequestration order granted, alternatively to obtain an order of compliance as set out in the application for compliance.

Further and/or alternative relief

[26] For purposes of convenience as well as to save costs, it was agreed between the parties, that the two matters, referred to in 24 and 25 above, be heard at the same time. On the opposing papers the respondents launched a counter application for imprisonment of the applicant on account of him having acted in a contemptuous manner towards an order of this court.

[27] In summary, the following court orders are important, as well as their respective dates, as they will be referred to in detail later in this judgment:

1. granted by Mothle, J, on the 10th April 2013, which I will refer to as the Motlhe order,
2. granted by Potterill, J, on the 11th October 2013, which I will refer to as the Potterill order,
3. granted by Murphy, J, on the 27th January 2014, which I will refer to as the Murphy order,

ISSUES FOR DETERMINATION

[28] There are three applications before me,

1. The application for rescission of a sequestration order, or that applicant may apply for his rehabilitation, hereinafter referred to as "the main application,"
2. The counter application for imprisonment,

3. The application for consent to proceed with an application to set aside the sequestration order or to obtain an order of compliance, hereinafter referred to as "the consent application".

[29] At the commencement of the proceedings, I directed that the consent application be considered first, followed by the counter application for imprisonment, and finally the main application. The reason being that the parties had agreed that the matters be heard at the same time. It is also logical that the main application could not be entertained with the consent application having not been finalized. The application for consent therefore was up for determination first. This directive proved difficult because all the three applications were inextricably intertwined. What became clear was that it became critical to determine if any of the applications were properly before court. I pause to indicate that the applicant did not enjoy legal representation during the proceedings. He indicated that he did not have resources to procure services of a legal representative. He indicated that he was well conversant with legal proceedings having been associated with courts through the deeds office where he worked for many years, and that he was capable of handling his own matter. Throughout the proceedings, I gained the impression that he knew what the issues were and he was able to deal with questions directed at him.

[30] A cursory look at the date of issue of the main application as well as the consent application point clearly at the fact that there was a violation of the order of this court. The Motlhe J, order is clear and unambiguous. In 1.3. thereof, it restrains the applicant from instituting litigation against the 1st, 2nd and 3rd respondents (and others), without the leave of this court. The appellant argued before me that he in fact did obtain such leave and he pointed me to a letter penned by the Deputy Judge President, dated the 6th March 2014.

The relevant excerpts thereof read as follows;

> *I do not want your issue to deal through correspondence. The court would be an appropriate forum to deal with your issue.*
>
> *I therefore suggest that you should take whatever steps you deem fit to protect your rights."*

The appellant argued that this was a letter of consent or that this was tantamount to leave. It was submitted on behalf of the respondents that the letter from the Deputy Judge President's office does not give the appellant consent nor is it the requisite leave.

[31] A brief history of engagement between the office of the Deputy Judge President as well the applicant will place the respondents' submission into better perspective. On the 25th February 2014, the applicant wrote a letter to the Deputy Judge President. In that letter he sketched his understanding of the issues and requested the DJP to intervene. The letter to the DJP, was written while the applicant had already issued the main application, without any leave whatsoever. In fact he attached a copy of the main application to his letter for the attention of the DJP. To make matters worse, the letter was laced with blatant lies. The applicant stated *inter alia* the following:

1. That Hornbill Close Sectional Title Development was irregularly sold,
2. That there was consensus that the sequestration order was incorrectly granted,
3. That he was never insolvent,
4. That the the main application is unopposed.

The respondent responded appropriately during the engagement with the DJP.

[31] When the applicant wrote as aforementioned, there could not have been doubt in his mind about the fact that he was stating lies in that, he knew that his court challenge that Hornbill Close Sectional Title Development was irregularly sold, was dismissed by this court. He further knew that there never was consensus that the sequestration order was incorrectly granted. That allegation had been made before in court papers which were not decided in his favor. The applicant was fully aware that his insolvency was confirmed by this court when Southwood J, granted a final sequestration order. Further, there could never have been doubt in his mind, because he had challenged his sequestration several times without success. The fact that he never succeeded in all those attempts could never have been lost to him when he wrote to the DJP. Lastly, the applicant could never have been under the misapprehension that the main application was unopposed as the notice to oppose was served personally on him. This is over and above the fact that the applicant failed to disclose material facts in his letter to the DJP. In my view, he had a duty to disclose to the DJP that there is a court order, the Motlhe J order, directing him to seek leave from the DJP, prior to proceeding against the respondents in this matter. He had a further duty to disclose that there is an order, the Murphy J order, in terms of which he was ordered to pay costs prior to any litigation as well as the fact that that order prohibited the registrar from issuing any processes without the direction of the DJP. The applicant could not explain to the court, in view of the Murphy J order, how he managed to have the main application issued from the registrar's office without the requisite permission.

[32] Repeatedly, the applicant was warned by the respondents' legal representatives that he had violated the court order and that he was following an incorrect procedure by proceeding without having obtained leave. He failed to heed their warning.

[33] Following the three way exchange of correspondence between the applicant, the respondents' legal representative as well as the DJP, in my view it dawned on the applicant that the main application was issued without leave, that is why he wrote to the DJP. It is clear, as I have shown above, that the letter he relies on as a letter of consent by the DJP, is nothing else but a letter telling the applicant that he should do what is right in view of the orders that were made previously against him.

[34] On the 30th March 2014, the applicant launched the consent application. This was in clear contempt of the Murphy J order granted on the 27th January 2014, particularly 2.1 and 2.3. thereof. Although there are only two respondents being The Master as well as Allegro Bridging (PTY) Ltd, in that matter, the Murphy J order affects the respondents in this matter in view of the fact that they are trustees and they are referred to 2.1. of that order. The violated portions are to the effect that the applicant must pay all legal costs prior to him instituting action against the trustees. Also, that the registrar is barred from permitting the filing of papers without an appreciate direction of the DJP. It is evident that this application was in clear violation because the letter that the applicant relies on, is not a direction to the registrar but a letter to the parties in their three way exchange. The other reason is that legal costs remain unpaid to this day and this was conceded before me by the applicant.

[35] That the applicant was found guilty of contempt of court by Potterill J on the 11th October 2013, and a term of 30 days imprisonment imposed against him but suspended on condition that he complies with the interdict, (the Motlhe J order), is not in dispute.

THE LEGAL FRAMEWORK

[36] It is trite that even in the Constitutional dispensation committal for civil contempt is not in violation of the Constitution. In order to succeed in civil contempt proceedings the applicant had to prove the terms of the order, knowledge of these terms by the respondent, and a failure by the respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the respondent would normally be inferred, but the respondent could rebut this inference by contrary proof on a balance of probabilities. ***Bannatyne v Bannatyne 2003 (2) SA 809 (CC).***

[37] Courts are there for a reason. Citizens turn to courts for resolution of disputes. Often, they have nothing to show for their resolved disputes except court orders. It is important therefore that court orders be respected at all times. The dictum in ***Naude NO and Another v Mabetesi Construction (PTY) Ltd t/a CG Civils and Another (5688/2010) [2011] ZAFSHC 7 (20 January 2011),*** where Rampai, J, on 14 states:

> *"The courts are supposed to act as vigilant sentinels of the order they make. The dictates of any civilized system of civil justice demand that the courts must jealously guard the orders they make. It is in the interest of the community at large to do so. Respect for court orders is the hallmark of any civilized system of civil justice. The administration of justice would be brought into disrepute if directors of companies, who deliberately disobey the court orders with impunity,were not severely punished.* ***-Twentieth Century Fox Film Corporation and Others v Playboy Films (Pty) Ltd and another 1978 (3) SA 202 (W).***

[38] Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus

impact negatively on the rule of law. ***S v Mamabolo 2001 (3) SA 409 (CC). Victoria Park Ratepayers Association v Greyvenouw CC [2004] 3 SA 623 (SE).***

[39] Contempt of a civil court order is committed when such an order is unlawfully and intentionally to disobey disobeyed. This type of contempt of court is part of a broader offense, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court. The offense has in general terms received a constitutional 'stamp of approval', since the rule of law – a founding value of the Constitution – 'requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained'. ***S v Beyers 1968 (3) SA 70 (A). S v Mamabolo 2001 (3) SA 409 (CC). Coetzee v Government of the Republic of South Africa 1995 (4) SA (CC).***

[40] The test as to whether disobedience of a civil order constitutes contempt has come to be stated as, whether the breach was committed "deliberately and *mala fide*". It was emphasized in ***S v Beyers*** *"that, while the mere non compliance did not necessarily constitute contempt, sustained disregard and flouting of a court order could be calculated to injure and diminish the authority and status of the court"*, Steyn CJ. In ***Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA (SCA),*** it was held that: Elaborating this, Plasket J pointed out in the ***Victoria Park Ratepayers*** case that contempt of court has obvious implications for the effectiveness and legitimacy of the legal system and the legal arm of government: there is thus a public interest element in every contempt committal. He went on to explain that when viewed in the constitutional context –

'it is clear that contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. ... That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, and importantly, acting as guardian of the public interest'.

That in view of the compelling nature of the stated expositions, a court in considering committal for contempt of court can never disavow the public dimension of its order.

[41] Cameron JA, as he then was, summarized in the ***Facie NO v CCII Systems (Pty) Ltd,*** the current position as:

(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 wilfulness 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 wilfulness and mala fides: should the respondent fail to advance evidence that establishes a reasonable doubt as to whether non-compliance was wilful 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.

[42] The requisites for granting an order of committal, that an applicant must meet have been stated as follows:

1. That an order was granted against the defendant,
2. That the respondent was either served with the order or informed of the grant of the order and could have no reasonable ground for disbelieving that information,
3. That the respondent has either disobeyed the order or neglected to comply with it.

The test to be applied to determine if disobedience of a civil order constitutes contempt has come to be stated as:-

As whether the breach was committed 'deliberately and mala fide'. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself to act in the way claimed to constitute the contempt. In such a case, good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide(though unreasonable-ness could be

evidence of good faith. These requirements - that the refusal to obey should be both willful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt - accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation'. ***Facie NO v CCII Systems (PTY) Ltd***

THE CONDUCT OF THE APPLICANT

[41] The applicant is aware of both the orders referred to above, in particular the Motlhe J order, the Potterill J order as well as the Murphy J order. The existence of the court orders is common cause. The contempt order was granted in his presence in court and he also refers to all the orders in various correspondence. In his argument before me he admitted knowledge of those orders.

[42] From the time when the sequestration order was granted, it is clear that the applicant never accepted the order of this court. This is evident in his numerous letters, affidavits and utterances that he made wherein he indicated that the order of sequestration was granted in error. Even if it were so, an order of a court of law stands until set aside by a court of competent jurisdiction, ***Bezuidenhout v Patensie Sitrus Beherend BPK 2001 (2) SA 224 (E) at 229-C.*** Until that is done the court order must be obeyed even if it might be wrong, ***Culverwell v Beira 1992 (4) SA 490 (W) at 494-A.*** The fact that numerous court applications failed, where he had persisted with that view, was not reason enough to persuade him to accept the authority of this court. His further non-acceptance of the authority of this court is evidenced in the letter he wrote to the respondents' legal representatives where the following utterances were made by him:

In a letter dated the 10th April 2013 addressed to the respondents' legal representative, he had this to say about the Motlhe J order:

> "*1. At a* hearing today chaired by Judge Motlhe, the under mentioned were remarked. Judge Motlhe did not address the matter before him namely the removal of the contradictory affidavits.
>
> *1.1. The Judge is bound by the Appeal Court ruling in Estate Wilson vs Giddy, Giddy & White 137 AD 239 and the status quo remains.*

The intimation by the appellant was that despite the order of Motlhe J, he was not going to take it into consideration because he was of the persuasion that the Judge did not address matters before him. He went on to say in that letter, in reference to the order

> *3. The Judge made a ruling that I may not harass certain parties.*
>
> *3.1. In strong contradiction to this,* ***statutory law compels me to have the abortive affidavits removed.*** *Surely the statute overrules the Judge's remarks.*

[43] The applicant did not disclose which statutory law compels him to seek to have the abortive affidavits removed nor did indicate which remarks of the Judge (Motlhe), are overruled by statute. What is clear however is that the Honorable Motlhe J, did not make any remarks. What the applicant is referring to is the court order itself that interdicts the applicant from harassing certain parties. By referring to the interdict as a remark, thereby downgrading it, the applicant has serious assaulted the authority of this court and placed its legitimacy into disrepute.

[43] The conduct of the applicant when writing to the Deputy Judge President, which conduct in my view was aimed at misleading the DJP into believing that there were good grounds to give consent to the applicant to initiate legal proceedings against the

respondents, was deliberate and in bad faith. So was his persistence with proceeding with this matter when he was advised that in doing so, he was in contempt.

CONTEMPT OF COURT

[44] 41.1. That orders by Motlhe J, Potterill J and Murphy J, were granted by this court, is common cause.

41.2. That the respondent was aware of these orders has been shown beyond reasonable doubt. They were served on him, he referred to them in correspondence and did not express disbelief as to their origins or what they purported to say.

41.3. That the applicant disobeyed these orders has been proved beyond reasonable doubt. In my view he did not neglect to obey the orders. Evidence point to the fact that he, when he was aware of these orders, deliberately disobeyed them.

[45] The applicant could not give a cogent explanation as to his non-compliance with the orders. The closest he got to explaining himself was to indicate that he is a lay person and also that he had received some advise from an advocate in Johannesburg, whose details he could not disclose, to the effect that in particular the main action could be instituted. The applicant is a very knowledgeable man. His submission that he is only a lay person does not accord with his knowledge of the law that I observed when he argued his matter before me. Importantly however, the applicant failed to disclose his reasons for non-compliance.

He failed to explain the reasons why, having conceded knowledge of the orders and his understanding of them, did he not comply therewith. It was clear from the argument by the applicant before me that misunderstanding of the order can be excluded as a possible reason. In the absence of any explanation, I find that the contempt has been both deliberate and in bad faith. I find that such has been established beyond a reasonable doubt. My succinct findings therefore are:

1. That the applicant, when he issued the application under case number 4363/2014, without first having obtained leave to do so, was in contempt of the Motlhe J order.

2. That the applicant when he launched the current proceedings under case number 25846/2014, without having paid all legal costs in respect of which orders had been granted against him and for which he is liable, and without having received an appropriate direction issued by the Deputy Judge President, permitting the Registrar to accept papers by the applicant, was in contempt of the Murphy J order.

THE MAIN APPLICATION

[46] The main application was issued without the requisite leave. The issue thereof was therefore in violation of an interdict. For this reason, it is not necessary to even entertain the merits thereof. The application stands to be dismissed.

THE CONSENT APPLICATION

[47] In my view the consent application has two issues that arise therefrom. Firstly, it is the application for consent itself. Secondly, it is the fact that the application was issued without leave. In view of the fact that the application was issued without leave, on this point alone it stands to be dismissed. The applicant is liable for many outstanding costs orders, none of which have been paid. He launched the current proceedings without having paid the legal costs or obtaining a clear directive form the DJP, instructing the Registrar to issue the process. On this part, the second part, there is a clear violation of the order of Murphy J. An appropriate order in this regards is deserved.

COUNTER APPLICATION

[48] The applicant was on the 11th October 2013 found guilty of contempt of court by Potterill, J. He was sentenced to 30 (thirty) days imprisonment. The sentence was suspended on condition that the applicant observes or complies with the Motlhe J, order. The applicant has been found to be in contempt of the Motlhe J, order. The suspended sentence therefore stands to be put onto operation.

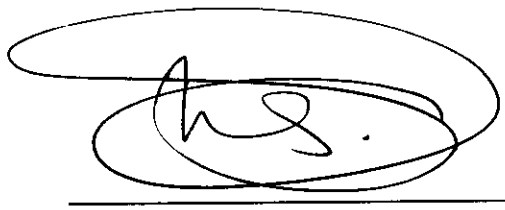
[49] For the reasons mentioned above, I make the following order;

1. The main application (case number 4363/14) is dismissed.
2. The consent application (case number 25846/14) is dismissed.
3. The applicant is found guilty of contempt of the order of Motlhe J, consequently, the suspended sentence of 30 (thirty) days imprisonment, imposed by Potterill J, is put into operation.

4. The sheriff of this Court is directed to take the applicant into custody for purposes of serving the said sentence from the date of service of this order.

5. The applicant is found guilty of contempt of the Murphy J, order. The applicant is sentenced to 60 days imprisonment which is suspended on condition the applicant does not contravene the order of Mothle J, or that of Murphy J, or both orders.

6. The applicant is ordered to pay the costs hereof.



S.A. THOBANE

Acting Judge of the High Court, Pretoria